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Scope

The “*Footpath Trading and Structures Policy*” applies to footpath trading activities and structures on footpaths in the road reserve within street orientated centres and approved commercial activities within the Mackay Regional Council area.

Objective

The policy provides for the orderly establishment and management of footpath trading and structures in the Mackay Regional Council area.

The purpose of this policy is to:

- provide a “one-stop shop” for the requirements of establishing footpath trading and structures used in conjunction with associated and approved indoor premises only;
- specify objectives and performance criteria for footpath trading and structures to ensure access, safety and amenity of public footpaths is maintained, while facilitating active and lively street frontages;
- promote a high quality visual environment to ensure footpath trading and structures are compatible with other community use of the footpath and contributes to the amenity of adjacent properties;
- ensure that proposed footpath trading and structures do not adversely impact upon the amenity of adjacent landowners and that management measures are implemented to mitigate such impacts; and
- ensure that proposed structures do not visually impact on heritage buildings. Proposed structures respect and complement the architectural significance and streetscape presence of a heritage building.

Policy Statement

This policy provides the requirements and processes for establishing footpath trading and structures. Council is endeavouring to fulfil its obligations to the broader community by accommodating the needs of business.

This process to remain in force until otherwise determined
by Mackay Regional Council

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1.0 Principles

There has been an increased interest in establishing footpath trading and structures, particularly within the Mackay City Centre. Given Council's desire to revitalise the City Centre and encourage placemaking in other centres through increased activation of the public realm, it is essential to provide a straightforward and holistic document that includes guidance on the requirements for, and a consistent approach to, footpath trading and structures. A footpath trading and structures policy guideline has been prepared to provide further background on the application process for footpath trading and structures and design requirements to support this policy.

The policy is in line with Council's overall vision for centre placemaking and the revitalisation of the Mackay City Centre to invigorate the City Centre into a vibrant, attractive, modern and accessible community hub that supports investment and inner city living - as part of a city that is a place to live, learn, earn and play.

The purpose of this policy is not to replace any overarching regulatory instruments, referenced in section 3.0 of this policy, relating to footpath trading and structures.

For all requirements and criteria of this policy relating to the assessment and applications process of footpath trading and structures, refer to the Footpath Trading and Structures Policy Guideline document. The requirements and criteria contained in the policy guideline are referenced from the relevant overarching regulatory instruments and therefore assessment under this policy is an assessment under these relevant overarching regulatory instruments.

In an instance where a proposal, or an element of a proposal, has a discrepancy with the requirements of this policy, the relevant overarching regulatory instrument(s) will prevail in determining the outcome.

Any infringement, enforcement or compliance issues relating to the requirements and criteria of the Footpath Trading and Structures Policy Guideline will be dealt with in accordance with the relevant overarching regulatory instrument.

Footpath trading activities and structures located on a designated State controlled road will require separate assessment and approval under a Road Corridor Permit from the Department of Transport and Main Roads - see Section 5 of the Footpath Trading and Structures Policy Guidelines for further details.

1.1 Footpath Structures

Proposals for footpath structures will only be considered where the footpath structure is associated with an existing or proposed footpath trading activity involving footpath dining and is required for the purpose of providing weather protection.

The landowner will be required to hold a separate approval from Council where a footpath structure is proposed to occupy an area within the road reserve. The landowner will be required to enter into a Deed of Agreement with Council to formalise that approval. Considerations as part of the Deed shall include maintenance access to the footpath as well as requirements for maintenance

of an access to utilities owned and operated by both Council and other service providers including clearance to assets requirements from foundation works.

The Deed of Agreement puts sole responsibility on the landowner for the structure's management, maintenance, public liability and removal.

The Deed of Agreement must be signed prior to the approval of the Footpath Structure application.

1.2 Heritage considerations for freestanding footpath structures in front of a Local or State Heritage Place

This policy applies to freestanding footpath structures within a road reserve that are located in front of a building that is identified as a Local or State Heritage Place (Heritage Place).

The applicant must demonstrate compliance with the heritage assessment criteria contained within the Footpath Trading and Structures Policy Guideline.

Council has the right to refuse a freestanding footpath structure within the road reserve that is located in front of or adjacent to a Heritage Place, despite meeting other criteria.

Footpath structures that are attached to or sited on a Heritage Place cannot be assessed under this policy and will be assessed against the heritage requirements contained in either the Mackay Region Planning Scheme or Mackay Waterfront PDA development scheme (whichever is relevant to the subject site).

2.0 Complaints

Any complaints in relation to a decision or a service relating from this policy will be assessed and managed in accordance with MRC's Administrative Action Complaints Policy, a copy of which can be found on MRC's website.

When an individual feels that they are the subject of MRC's failure to act compatibly with human rights, they can make a complaint directly to MRC. These complaints will be assessed against the Human Rights Act 2019.

Complaints may be made as following:

In writing to
Chief Executive Officer
Mackay Regional Council
PO Box 41
MACKAY QLD 4740

Via Email - complaints@mackay.qld.gov.au

In person at the following Council Client Services Centres:

- MRC Mackay Office – 73 Gordon Street, Mackay

- MRC Sarina Office – 65 Broad Street, Sarina
- MRC Mirani Council Office – 20 Victoria Street, Mirani

3.0 Definitions

To assist in interpretation the following definitions shall apply:

Active and lively street frontages shall mean streets that house highly active non-residential uses that create the greatest degree of pedestrian activity and interaction and which are mostly accommodated in small individual tenancies with narrow building frontages, such as shops, restaurants and cafes.

Amenity shall mean the qualities of a location in regard to noise, vibration, dust, odour, air quality, lighting, daylight, glare, breezes and shade, freedom from hazard or risk of threats to health and well-being of occupants, and the uninterrupted ability to use and enjoy the land for the purpose it was designed, that may be affected by the level, time and duration of activities on nearby sites or the impacts of natural hazards, including spatial and temporal impacts.

Centres and approved commercial activities shall mean:

- Mackay City Centre;
- Sarina Major centre (Broad Street and Central Street);
- North Mackay District centre (Evans Avenue and Palmer Street);
- Fourways District centre (Bridge Road and Nebo Road – West Mackay);
- Walkerston District centre (Dutton Street);
- Local centres and Neighbourhood centres with street orientated development;
- street orientated commercial activities within Townships;
- any existing or future centre that establishes street orientated development.

Footpath shall mean the section of the road reserve between the property boundary (front boundary) and the face of the kerb.

Footpath trading shall mean the use of public footpaths for commercial purposes, and include activities such as footpath dining, display of goods, busking or temporary events (such as street events, charity events and the like). Footpath activities may involve the placement of signs, clothes racks, tables, chairs, and ancillary equipment such as umbrellas, planter boxes, removable barriers and retractable screens.

Footpath structures shall mean awnings over a pedestrian footpath that is either attached to or detached from a building.

State or Local Heritage Place shall mean a building/s and/or site identified as being of local or State heritage significance.

Mackay Regional Council area shall mean the Mackay Regional Council local government area.

Placemaking shall mean the collaborative process of making and enhancing characteristic, diverse, vibrant and resilient places that are valued by the community and admired by visitors, which involves a holistic, multi-disciplinary approach to planning, design and development of places.

Professional (independent) certification shall mean assessment and certification of compliance with the heritage assessment criteria contained within the Footpath Trading and Structures Policy Guideline by an independent heritage professional.

Public realm shall mean any publicly accessible streets, pathways, cross-block links, arcades, plazas, parks, open spaces and any public and civic building and facilities.

Street orientated shall mean buildings with a 0m lot alignment to the front boundary.

4.0 Review of Policy

This policy will be reviewed when any of the following occur:

- The related documents are amended or replaced.
- Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than three (3) years.

5.0 Reference

- *Building Act 1975*;
 - the Queensland Development Code (Building Code).
- *Disability Discrimination Act 1992*;
- *Food Act 2006*;
- *Queensland Heritage Act 1992*;
- *Planning Act 2016*;
 - Mackay Region Planning Scheme;
- *Local Government Act 2009*;
 - Local Law No.1 (Administration) 2011:
 - Subordinate Local Law 1.1 Alteration or Improvement to Local Government Controlled Areas and Roads 2011;
 - Subordinate Local Law 1.2 Commercial Use of Local Government Areas & Roads 2011;
 - Subordinate Local Law 1.4 Installation of Advertising Devices 2011;
 - Subordinate Local Law 1.12 Operation of Temporary Entertainment Events 2011;
 - Subordinate Local Law 1.14 Undertaking Regulated Activities on Local Government Areas & Roads 2011;
 - Local Law No.3 and Subordinate Local Law 3

- Local Law No.4 (Local Government Controlled Areas, Facilities and Roads) and Subordinate Local Law 4 Local Government Controlled Areas, Facilities and Roads 2011; and
- Local Law No.5 (Parking) and Subordinate Local Law 5 Parking 2011.

6.0 Attachments

- Footpath Trading and Structures Policy Guideline – February 2022

Version Control:

Version	Reason / Trigger	Change	Adopted / Reviewed	Date
1	New Policy		Council	16.12.15
2	Review of Policy	Minor amendments	Council	25.10.17
3	Review of Policy		Council	26.10.22



Footpath Trading and Structures Policy Guideline

July 2022

DISCLAIMER

This Footpath Trading and Structures Policy Guideline (the policy guideline) forms part of the urban and public realm planning initiatives for street orientated centres and activities within the Mackay region.

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Any requests for information or details regarding this document can be made to Mackay Regional Council.

Council reserves the right to accept, reject or alter the policy guideline provisions, criteria, figures, tables, images and recommendations based on further information, consultation, legislative changes and investigations.

This document is intended to provide a resource for the establishment of footpath trading and structures. The provisions, criteria, figures, tables and recommendations of this policy guideline do not replace, but reflect the relevant overarching regulatory instruments relating to footpath trading and structures.

The relevant overarching regulatory instrument(s) will prevail in the case of any discrepancy with the requirements of this policy guideline.

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SECTION 1

OVERVIEW

The Footpath Trading and Structures Policy has been developed to provide a framework for the orderly establishment and management of footpath trading and structures in the Mackay Regional Council area. Although footpath trading is supported in principle, it is provided at Council's discretion.

Business should not assume any rights to extend a business onto the footpath, and any permit issued by Council should not be considered as a saleable commodity.

The policy guideline is in line with Council's overall vision for centre placemaking and the revitalisation of the Mackay City Centre to invigorate the City Centre into a vibrant, attractive, modern and accessible community hub that supports investment and inner city living - as part of a city that is a place to live, learn, earn and play.

This policy guideline provides the requirements and processes for establishing footpath trading and structures. This policy acknowledges that there will be times when it will not be possible for businesses to use the footpath in the way that they would like. Council is endeavouring to fulfil its obligations to the broader community by accommodating the needs of business.

The purpose of this policy guideline is to:

- provide a "one-stop shop" for the requirements of establishing footpath trading and structures used in conjunction with associated and approved indoor premises only;
- specify objectives and performance criteria for footpath trading and structures to ensure access, safety and amenity of public footpaths is maintained, while facilitating active and lively street frontages;
- promote a high quality visual environment to ensure
- footpath trading and structures are compatible with other community use of the footpath and contributes to the amenity of adjacent properties;
- ensure that proposed footpath trading and structures do not adversely impact upon the amenity of adjacent landowners and that management measures are implemented to mitigate such impacts; and

- ensure that proposed structures do not visually impact on heritage buildings. Proposed structures respect and complement the architectural significance and streetscape presence of a heritage building.

The purpose of this policy guideline is not to replace any overarching regulatory instruments relating to footpath trading and structures. In an instance where a proposal, or an element of a proposal, has a discrepancy with the requirements of this policy guideline, the relevant overarching regulatory instrument(s) will prevail in determining the outcome.

This document is part of an integrated approach to centres planning, which includes urban planning, public realm, integrated transport, economic and revitalisation initiatives.

Geographic application of this policy This policy applies to street orientated (meaning buildings with alignment to the front boundary (or close to) - 0m lot alignment) centres and approved commercial activities within the Mackay Regional Council area.

These include:

- Mackay City Centre;
- Sarina Major centre (Broad Street and Central Street);
- North Mackay District centre (Evans Avenue and Palmer Street);
- Fourways District centre (Bridge Road and Nebo Road - West Mackay);
- Walkerston District centre (Dutton Street);
- Local centres and Neighbourhood centres with street orientated development;
- street orientated commercial activities within Townships;
- any existing or future centre that establishes street orientated development.

For all other centres and commercial activities without street orientated development, any proposed outdoor trading and associated structures on private land that is greater than minor works (as defined by the planning scheme) will be assessed under the planning scheme and not this policy guideline.

1.1 Vision

Mackay is the regional centre for the broader Mackay Isaac Whitsunday region, and is a significant regional capital for commercial, residential, business, health, educational and industrial services in northern Australia. Council is committed to increasing the liveability of the region and the diversification of its economy to create a vibrant, diversified and sustainable city and region for future generations.

Council's vision is to create and maintain vibrant, diverse, dynamic, economically viable and pedestrian friendly centres that enhances and celebrates the unique sense of character, identity and experience of street orientated centres and businesses within the Mackay region.

DYNAMIC AND VIBRANT CENTRES

- Create and maintain a streetscape that is functional, practical, comfortable and convenient.
- Create and maintain a streetscape that is vibrant, interesting and inspiring.
- Create and maintain a streetscape that incorporates, and is responsive to, views and vistas of built and natural features.

PEDESTRIAN FRIENDLY CENTRES

- Create and maintain a streetscape that is comfortable, enjoyable, healthy and safe for people of all ages and levels of ability.
- Create opportunities for people to enjoy and experience Mackay's relaxed and pleasant tropical climate and lifestyle.

DIVERSE AND ECONOMICALLY VIABLE CENTRES

- Create and maintain a streetscape that supports and compliments the variety of commercial land use activities within centres.
- Create a vibrant, diverse and active streetscape setting that facilitates, supports and encourages economic growth and development.

CENTRES WITH A POINT OF DIFFERENCE

- Create and maintain a streetscape that enhances and accommodates the region's unique tropical lifestyle where streets provide outdoor living and recreation spaces.
- Create and maintain a streetscape that is distinctive by capitalising on the region's unique natural environment and heritage.
- Create and maintain a streetscape that offers a unique, enjoyable and memorable pedestrian experience where people want to visit and stay longer.



1.2 Aims and objectives

Council's footpath aims and objectives are:

- Promote a vibrant and diverse street life which balances the interests and needs of businesses, residents, landowners and visitors to centres.
- Regulate and control the placement of objects, both temporary and permanent on footpaths to achieve fairness and consistency between traders in the use of footpaths.
- Facilitate, support and encourage economic growth and development that enhances the streetscape setting and character.
- Ensure:
 - + safe and unobstructed passage for pedestrians, in particular those who may be physically or vision impaired;
 - + safe and unobstructed vision for motorists and cyclists; and
 - + limited impact on amenity, heritage value and the streetscape that characterises the area.

1.3 Overarching statutory instruments

This policy guideline applies to all roads (as defined by the Local Government Act 2009) within the Mackay Regional Council area.

This policy guideline is a supporting document to those matters that regulate the commercial use of roads and structures within the road reserve, more specifically, footpath trading and structures.

The commercial uses regulated under this policy include activities carried out on a road (including a footpath) or local government controlled area such as:

- soliciting or carrying on the supply of goods and services for profit (e.g. footpath dining);
- installing, erecting or displaying of advertisements or signs that are visible from the road;
- making alterations or improvements to local government controlled areas and roads; and
- the holding of a public place activity that has been prescribed under a Subordinate Local Law or Planning Scheme, for example, erecting an awning over a footpath.

The following overarching regulatory instruments govern footpath trading and structures within the road reserve:

- Building Act 1975:
 - + The Queensland Development Code (Building Act 1975) in relation to building matters and building over or near relevant infrastructure;
- Disability Discrimination Act 1992;
- Food Act 2006;
- Queensland Heritage Act 1992;
- Planning Act 2016 - the planning scheme in relation to heritage matters;
- Economic Development Act 2012 - the PDA development scheme in relation to heritage mappers
- Local Government Act 2009:
 - + Local Law No.1 (Administration) 2011:
 - Subordinate Local Law 1.1 2011 Alteration or Improvement to Local Government Controlled Areas and Roads;
 - Subordinate Local Law 1.2 Commercial Use of Local Government Areas & Roads;
 - Subordinate Local Law 1.4 Installation of Advertising Devices;
 - Subordinate Local Law 1.12 Operation of Temporary Entertainment Events;
 - Subordinate Local Law 1.14 Undertaking Regulated Activities on Local Government Areas & Roads;
 - + Local Law No.4 and Subordinate Local Law 4 Local Government Controlled Areas, Facilities and Roads;

This policy guideline encompasses the requirements from each of these regulatory provisions into one process to facilitate the establishment of footpath trading.

Where this policy guideline is silent on a matter(s) of relevance, the requirements of, and assessment against the relevant regulatory instrument will prevail in all circumstances. For example, this policy guideline does not include building work requirements, which are to be assessed under the Building Act 1975.

In an instance where a proposal, or element of a proposal, has a discrepancy with the requirements of this policy guideline, the relevant overarching regulatory instrument will prevail in determining the outcome.

Footpath trading activities and structures located on a designated State controlled road will not require separate assessment and approval from the Department of Transport and Main Roads (see Section 5 - Footpath trading and structures on a State Controlled Road, for further details).

1.4 Function of the footpath

The primary function of a footpath is to provide pedestrian access and movement within the streetscape and the location of significant utility corridors for stormwater, electricity and telecommunications. However, the footpath may also have a secondary function for trading purposes that can improve the character of streets and add life and vibrancy to centres. It supports the prosperity of the local economy and provides opportunities to dine, shop or recreate outside.

With the potential benefits come potential problems and competing demands. Footpath dining and awnings have the potential to obstruct the view of customers, businesses and pedestrians, and access to utility corridors. What is appropriate for one trader is not necessarily suitable for their neighbours. However, high quality design of structures and layout of footpath trading will minimise issues and impacts.

In issuing approvals for the use of footpaths, Council will consider the broader implications of any application and the interests of the streetscape and area as a whole, not just the individual trader. Council has a responsibility and authority to regulate the use of this public space.

1.5 Council's footpath priorities

Figure 1.1 - Council's footpath priorities, shows the order of Council's priorities for footpath use. It is a principle based rule-of-thumb for all decisions relating to the use of the footpath. Council's highest priority at all times is public safety, although this is not the only concern.

Public safety can be addressed while also creating a vibrant street life, ensuring accessibility for all and balancing a prosperous local economy with amenity. Achieving all these priorities is Council's goal.

There are times when it is not possible to evenly balance all priorities, so Council must favour one over another. Footpaths give streets vibrancy and liveliness but this must be limited

(in amount and location) to ensure that the footpath can be used safely by all members of the community. Council uses the following order of priority for assessing the use of footpaths and when making decisions on footpath trading applications.

PUBLIC SAFETY

Streets are:

- safe and have unobstructed passage for pedestrians, in particular those who may be physically or vision impaired; and
- safe and have unobstructed vision for drivers of vehicles and cyclists.

ACCESSIBILITY FOR ALL

- Streets are easily navigated by all pedestrians, allow unobstructed pedestrian traffic flows and support public transport use.

BALANCING A PROSPEROUS LOCAL ECONOMY WITH RESIDENTIAL AMENITY

- Supporting a prosperous local economy is balanced with ensuring that footpath use does not cause any significant impacts on pedestrian safety, parking or the amenity of surrounding areas.

VIBRANT STREET LIFE

- Streets are vibrant and lively and contribute positively to an area's sense of place and character.

ATTRACTIVE STREETScape

- Streets are attractive, clean and pleasant and any heritage significance is not diminished.

LEISURE AND COMMERCIAL OPPORTUNITIES

- The footpath supports social interaction, al fresco dining and drinking as enjoyable leisure activities.

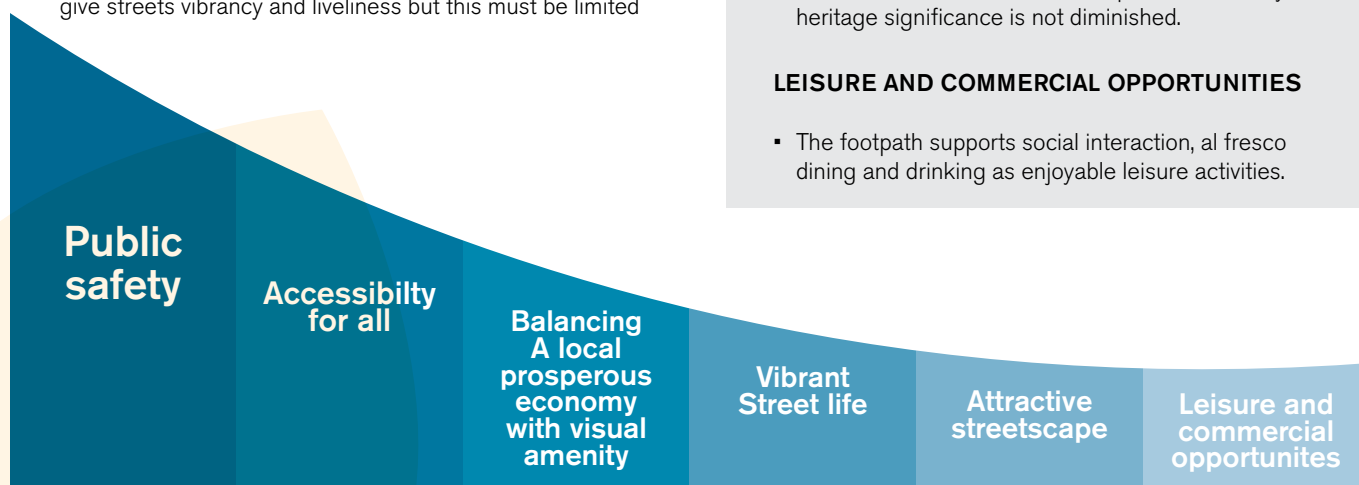


Figure 1.1 - Council's footpath priorities

1.6 Stakeholders

This policy guideline attempts to balance the different interests and needs of businesses, residents, landowners and visitors. Each has an important role to play.

COUNCIL

Interest: To provide safe and accessible pedestrian access on the footpath, while balancing the interests and needs of business, residents, landowners and visitors.

Role: Provide clear direction to businesses regarding permitted footpath trading activities and structures through the administration, enforcement and regulation of this policy guideline and the overarching statutory instruments mentioned in Section 1.3 - Links to the overarching statutory instruments.

BUSINESS

Interest: The placement of objects on the footpath achieves fairness and consistency between traders and enhances amenity to promote patronage.

Role: Manage the use of their designated Footpath Trading Zone in accordance with relevant legislation (particularly Council's Local Laws) and this policy.

PATRONS, RESIDENTS, LANDOWNERS AND VISITORS

Interest: Access to business and dining opportunities through easily defined Pedestrian and Trading Zones.

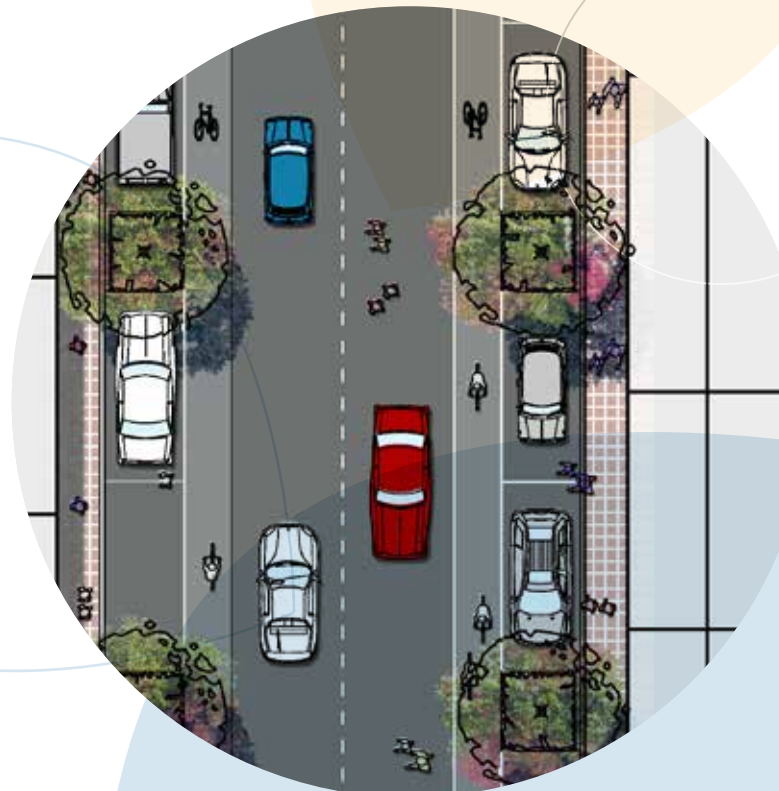
Role: Support businesses and Council's efforts to comply with legislative responsibilities and this policy guideline.

1.7 Deciding applications

Where applications meet all the requirements of the policy guideline, Council's delegated authorised officer will normally grant an approval.

In an instance where a proposal, or element of a proposal, has a discrepancy with the requirements of this policy, the relevant overarching regulatory instrument will prevail in determining the outcome.

In some cases a variation to this policy may be granted if the priority objectives can be met and there are extenuating circumstances. Each case will be decided on its merits.



1.8 Footpath management standards

A number of footpath management principles have been developed for this policy guideline.

1.8.1 Safety and accessibility

To ensure that safe and unobstructed access to the footpath area is available, the following standards apply:

- A continuous accessible path of travel must be provided along the front property boundary / building line and have a minimum width of 2 metres.
- Footpaths less than 3.2 metres in width are not suitable for footpath trading.
- Footpath trading located in close proximity to intersections should not obscure drivers' line of vision, traffic signs, signals or pedestrian crossing points and will be subject to assessment by Council.
- Required clearances and setbacks from kerbs, public assets and other street infrastructure must be maintained at all times.
- The footpath area should be an inviting, clean and safe place.
- It is the approval holder's responsibility to ensure that their patrons or clients do not unreasonably impede the flow of pedestrian traffic.
- There should be full compliance with the Disability Discrimination Act 2006 at all times.
- Bicycles should park on the footpath at designated bicycle storage areas. Bicycles parked on the footpath must not cause an inconvenience, obstruct, hinder or prevent the free passage of any pedestrian within the Pedestrian Zone.
- Use of motorised assistance scooters and electric wheelchairs is permitted on the footpath.
- Motorcycles and rickshaws (pedicabs) are not approved to be operated or parked on the footpath and must be parked within designated on-street parking zones.

1.8.2 Visual amenity

To ensure the amenity of the footpath and adjacent areas are protected and enhanced, the following standards apply:

- All footpath furniture and screens, with the exception of approved permanent/temporary structures, must be removed from the footpath upon close of business.
- All businesses must control and prevent any adverse impact on the amenity of the streetscape and surrounding area arising from the emission of noise, odour or appearance of the premises in accordance with the requirements of the Environmental Protection Act 1994 and the relevant overarching statutory instruments mentioned in Section 1.3 - Links to the overarching statutory instruments. Further details can be found at www.ehp.qld.gov.au or on Council's website, www.mackay.qld.gov.au, under Local Laws and Policies within the Laws Regulations and Forms section.

- Obstructive footpath furniture which creates a hazard for all users, including people with physical or vision impairments, must be avoided.

To ensure the appearance of any structures associated with footpath activity is appropriate and in keeping with Council's urban design and heritage controls for the streetscape and/or centre, the following standards apply:

- Structures must comply with Council's existing streetscape master plans and designs (where available), and the requirements of this policy under Section 4.2 - Permanent or temporary structures, furnishings and fixtures. Any proposed structures will be assessed as to whether they are appropriate to the streetscape and adjoining buildings. All proposed structures must have a signed Deed of Agreement prior to approval.
- Structures associated with the footpath should not privatise, fully enclose public spaces or adversely affect the openness of public footpaths and spaces.
- The types of permanent structures that may be considered are awnings, approved planter boxes and retractable screens or blinds. Any other items located on the footpath are considered temporary items and must be removed at the close of trade in accordance with the footpath trading approval.

1.8.3 Hygiene and cleanliness

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

- Litter must be cleared from the footpath by the approval holder at all times.
- Food scraps, cigarette butts and any other rubbish within the footpath must be immediately removed and deposited within the approval holder's own bins, kept within the premises.
- Litter generated by footpath trading must not be swept into the street gutter or adjacent footpath areas. It must be picked up and deposited within the approval holder's own bins, kept within the premises.
- In most situations, all footpath furniture must be removed at the end of trade to ensure the footpath can be easily cleaned by Council.
- Waste generated from the business must not be placed in public street bins.

Council's street cleaning services operate early in the morning to ensure minimum disruption to local business. However, the approval holder has a responsibility to keep the street and footpath clean and must work with Council to ensure this is achieved. Failure to adequately keep the footpath clean may result in cancellation of the footpath trading approval.

SECTION 2

FOOTPATH ZONES AND CLEARANCES

2.1 Footpath zones

The footpath is the area between the property boundary and the kerb.

The footpath is to be managed using three zones (see Figures 2.1 - Plan view of the footpath zones, and Figure 2.2 - Transect of the footpath zones).

The footpath zones are:

- Pedestrian Zone;
- Trading Zone; and
- Kerb Zone.

The footpath width minus the minimum width requirements

for the Pedestrian Zone and Kerb Zone may prohibit the establishment of a Trading Zone, where the width of the Trading Zone is below 0.6 metres. Where a Trading Zone cannot meet the minimum width of 0.6 metres, a footpath trading activity cannot be approved.

Existing landscaping, street artwork, street furniture, public infrastructure may also prohibit or limit the Trading Zone and influence the layout of a footpath trading activity.

The width of a potential Trading zone can be calculated by using the simple formula illustrated in Figure 2.3 - Trading Zone calculation.

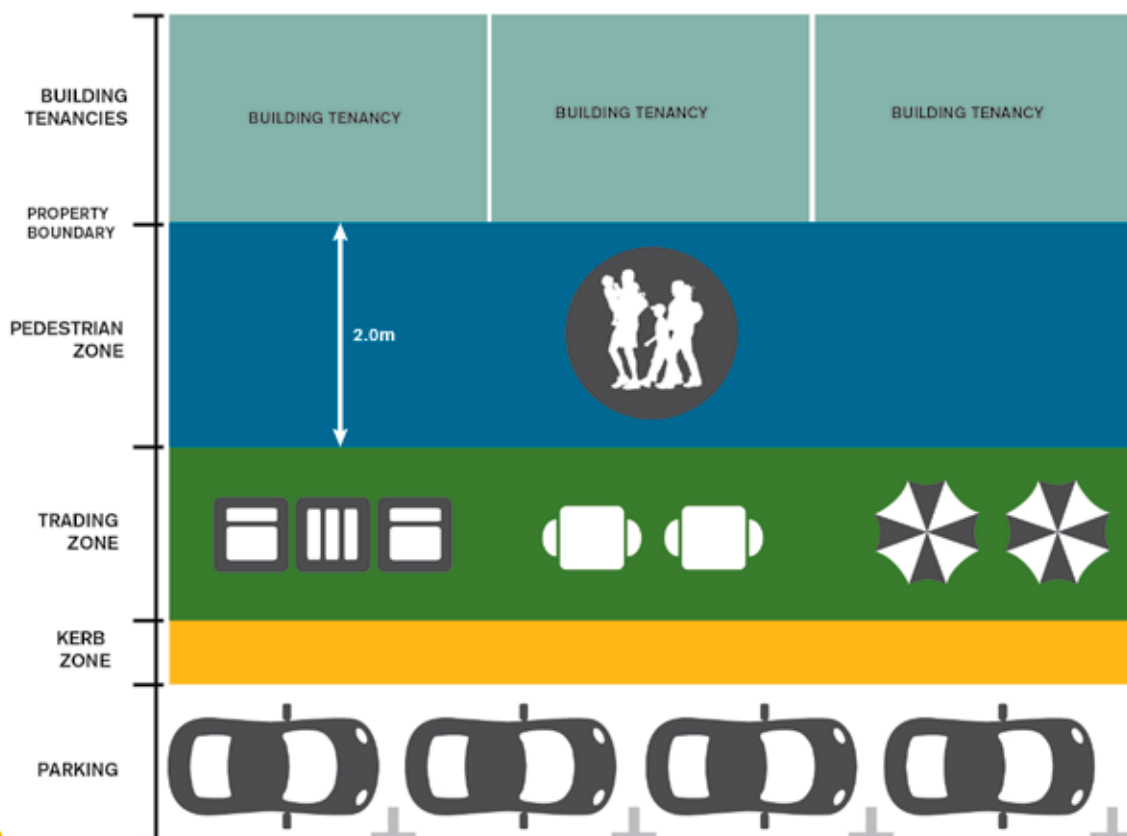


Figure 2.1 - Plan view of the footpath zones

2.1.1 Pedestrian Zone

The Pedestrian Zone is the area of the footpath measured outwards from the property boundary and is for the exclusive movement of pedestrians and must remain clear from obstructions at all times.

The Pedestrian Zone must be a continuous and accessible path of travel along the front property boundary and must provide for the safety of all the community, including meeting the access needs of people with mobility aids, prams and shopping trolleys.

The minimum clearance width required between a proposed Trading Zone and the front property boundary is 2 metres regardless of the footpath width. The minimum clearance width required at pedestrian crossing points is 3 metres.

Mackay Regional Council reserves the right to vary the width of the Pedestrian Zone from the minimum requirement depending on, but not limited to:

- pedestrian movement needs, activity, safety and circulation requirements;
- street furniture, fixtures, lighting equipment or landscaping;
- vehicular traffic; or
- existing footpath widths.

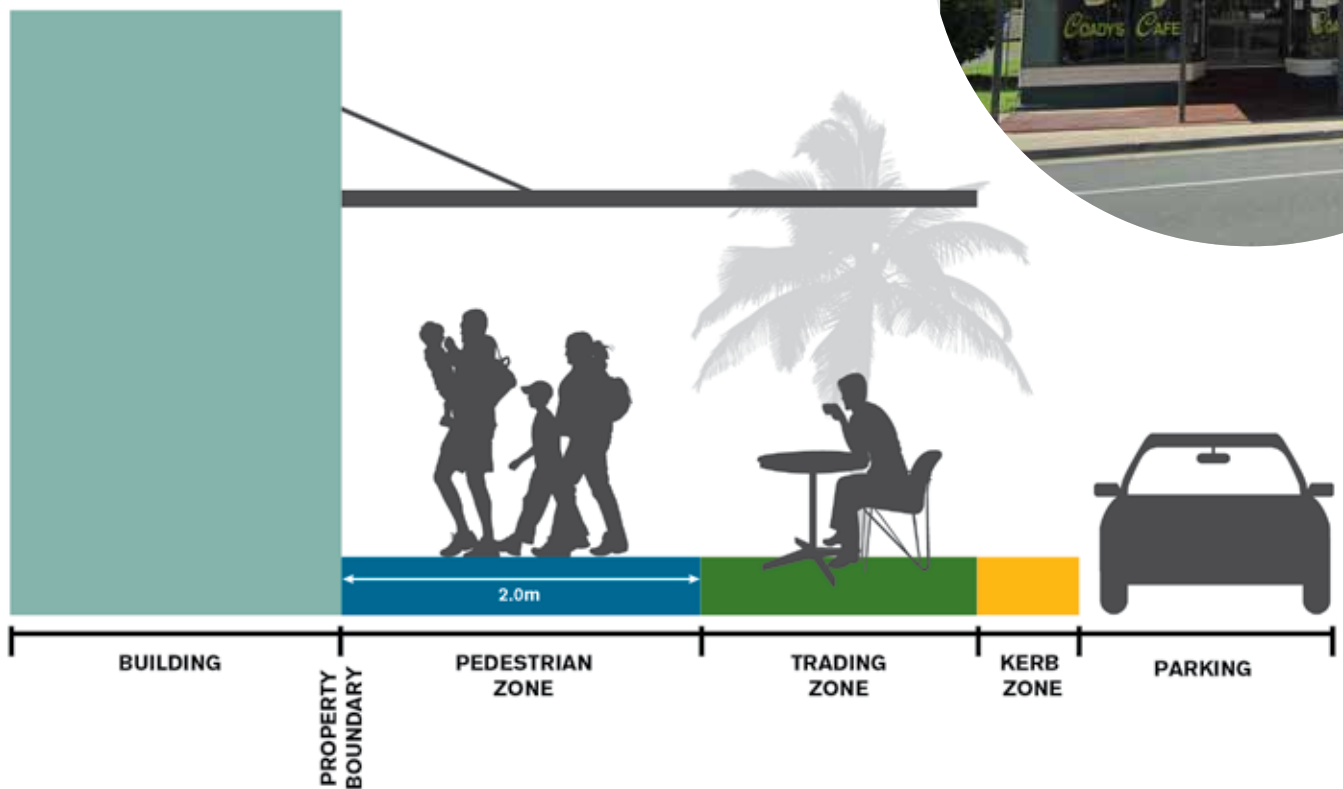


Figure 2.2 - Transect of the footpath zones

2.1.2 Trading Zone

The Trading Zone is the area of the footpath where an approved footpath trading activity is to occur. It is the area of the footpath between the Pedestrian Zone and the Kerb Zone after the relevant minimum distances for the Pedestrian Zone and the Kerb Zone are factored in.

The preferred location for the trading zone is generally on the kerb side of the footpath. This will allow all people including visually and physically impaired persons to comfortably use the property boundary line (the building edge in the majority of cases) as a continuous point of reference when moving along the footpath. It also serves to keep footpath features (furniture, equipment, trees etc.) to one side of the footpath, allowing a direct path of travel.

Proposals for trading (dining) against the property boundary may be acceptable if it can be demonstrated that this is a more desirable option for all potential users of the footpath, and is consistent with the location of existing approved footpath trading areas for other premises in the street.

Trading will not be permitted on the property boundary/building line where a bump out area is provided in the Mackay City Centre. The bump out area must first be utilised for footpath trading and if additional area is required this may be considered. Refer to Figure 3.4 in Appendix 3C for possible exception layouts.

Minimum Trading Zone width is 0.6 metres. Existing landscaping, street artwork, street furniture, public infrastructure may also prohibit or limit the Trading Zone and influence the layout of a footpath trading activity.

The width of a potential Trading zone can be calculated by using the simple formula illustrated in Figure 2.4 - Trading Zone calculation. If the remaining footpath width is less than 0.6 metres, then a Trading Zone cannot be established meaning that footpath trading cannot occur.

Where a Trading Zone is able to be established, all approved furniture and/or temporary structures associated with an approved footpath trading activity must be contained and remain within the Trading Zone at all times. Approved furniture and/or temporary structures must not protrude into the Pedestrian Zone or Kerb Zone. Chairs must not be placed to back into the Pedestrian Zone.

An access zone of 1 metre must be provided between adjoining Trading Zones with each zone set back 0.5 metres from the edge of the side property boundary - refer to Figure 2.4 – Access zone between or within Trading Zones. This is to ensure that adequate access is provided between adjoining Trading Zones for pedestrians crossing the road or alighting from vehicles.

This requirement does not apply to Trading Zones on bump-outs, as there is generally no adjoining parking and all bump-outs are frames by gardens along the kerb.

Mackay Regional Council reserves the right to vary the width of the Trading Zone.

A Trading Zone extending greater than 10 metres in length must provide an access zone in the centre of the Trading Zone. This access zone must be a minimum of 1.5 metres in width to provide for pedestrian safety when crossing the road and to allow passengers alighting from vehicles to gain immediate access to the Pedestrian Zone refer to Figure 2.3 – Access zone between or within Trading Zones.

If there is no adjacent Trading Zone, the subject Trading Zone may trade up to the property line (projected out from the property or tenancy side boundary to the Kerb Zone). If an adjacent Trading Zone is established at a later date, the gap requirement will apply to both properties and the gap requirement will be reinstated.

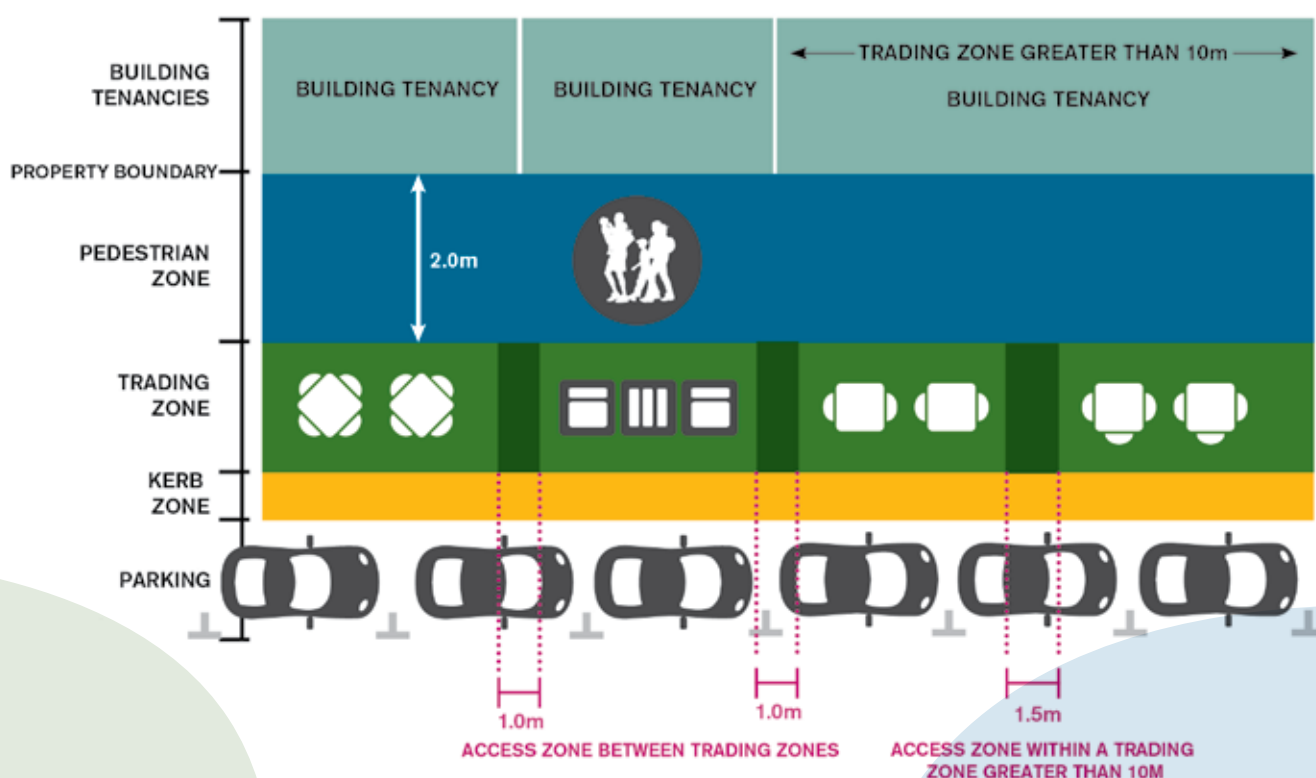


Figure 2.3 - Access zones between or within Trading Zones

2.1.2.1 Trading zones at intersections and pedestrian crossings

Any applications for footpath trading at intersections will be assessed with consideration to the width of the footpath and adequate sight lines for road users - refer to Figure 2.5 – Trading Zones at intersections and pedestrian crossings.

Trading zones and structures cannot encroach into the 3 metres Pedestrian Zone width that is required at a pedestrian crossing, refer to Figure 2.5 - Trading Zones at intersections and pedestrian crossings.

It is not permitted to obscure road users' line of vision at an intersection and pedestrian crossing points through the placement of structures (permanent or temporary) within the Trading Zone. In this case, the following may be acceptable:

- low structure under 1.05 metres that does not obstruct the road user's line of vision, or
- low structure under 1.15 metres that does not obstruct the vision of pedestrians using a road crossing.

It is not permitted to obscure the traffic signals at an intersection with any structure (permanent or temporary) within the Trading Zone.

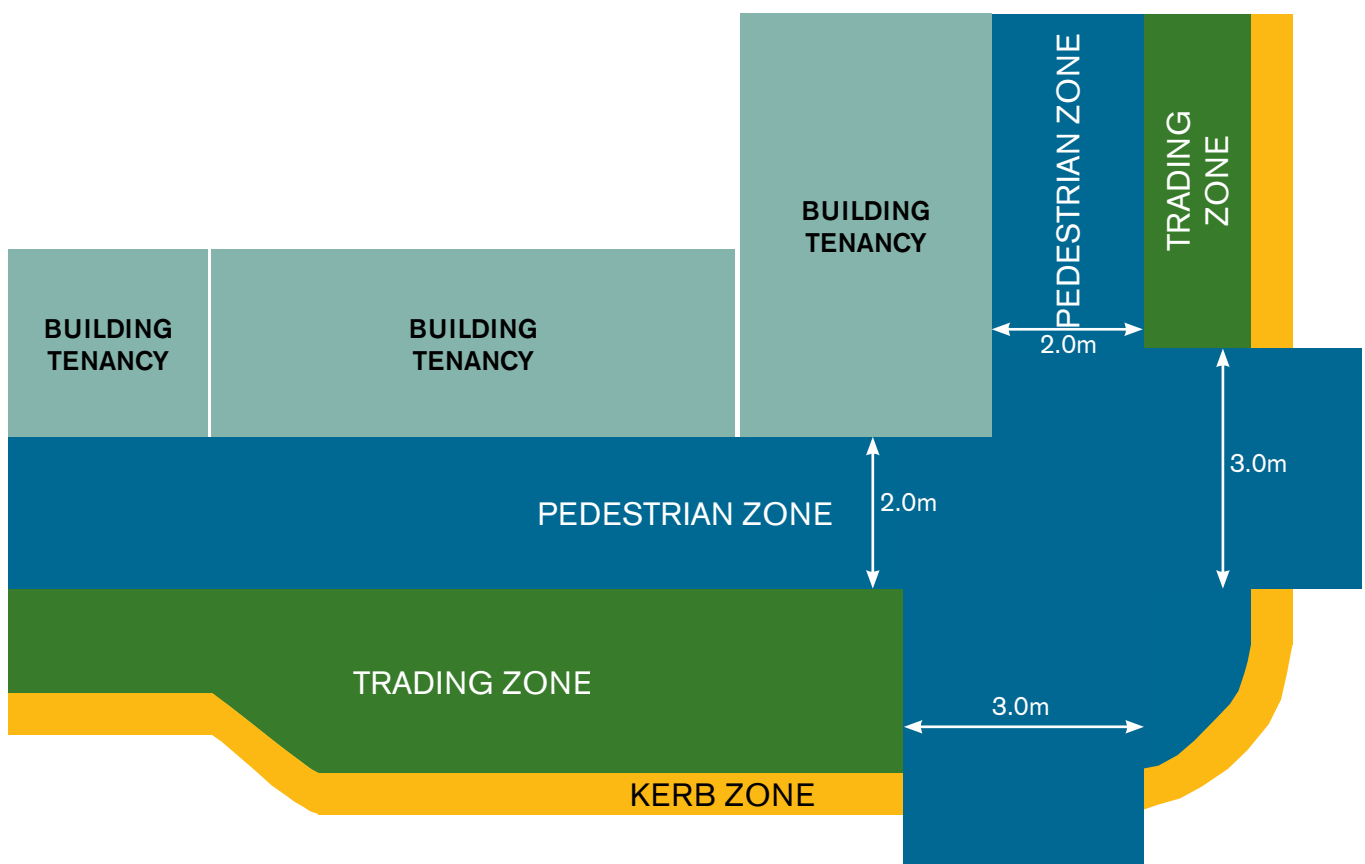


Figure 2.4 - Trading Zones at intersections and pedestrian crossings

2.1.3 Kerb Zone

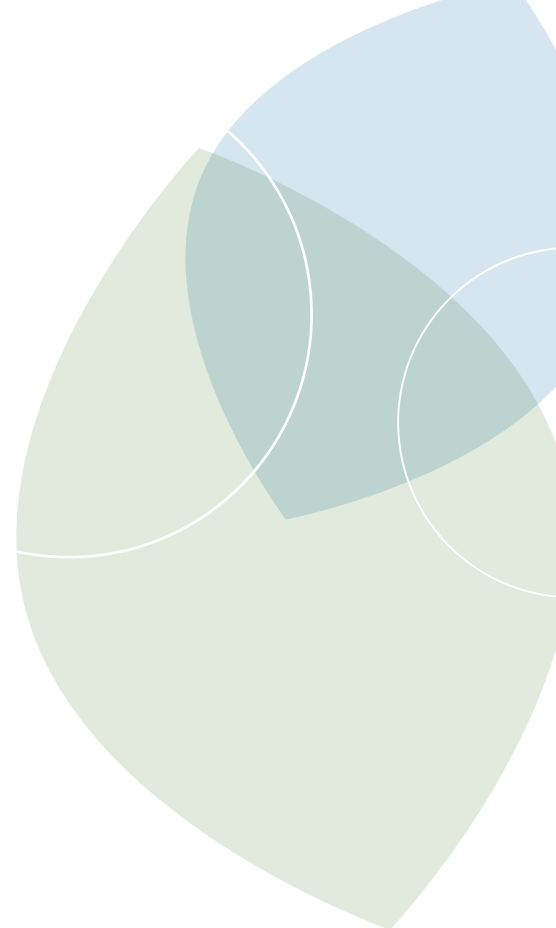
The Kerb Zone is the area between the face of the kerb and the Trading Zone. This zone is important for the safety of pedestrians crossing the road and allowing pedestrians to gain access to or from parked vehicles. This zone must remain clear of any approved furniture and/or temporary structures associated with an approved footpath trading activity within the Trading Zone.

The Kerb Zone helps to protect footpath trading activity from traffic that is either moving, parking or loading/unloading. Where there are no parking types or zones adjacent to the kerb line, a minimum Kerb Zone width will still apply. There are minimum widths specified for each of the on-street parking, bus zones, taxi ranks/zones and loading/unloading zones (refer to Table 2.1 - Minimum required widths of the Kerb Zone).

Mackay Regional Council reserves the right to vary the setback of a Kerb Zone, dependent on pedestrian activity and parking restrictions adjacent to the area.

Table 2.1 - Minimum required widths of the Kerb Zone

Parking type	Minimum Kerb Zone widths (measured from the face of the kerb)
Parallel parking	0.6 metres
Angle parking	0.6 metres where wheel stops are provided, otherwise 1 metre
Loading zone	1 metre
Taxi zone (2 or less bays)	1.5 metres
Bus zone and Taxi rank	No trading permitted
Disabled parking (parallel or angle)	1.5 metres



2.1.4 The 5 step Trading Zone calculation guide

The width of the Trading Zone can be determined by using the following formula, as illustrated, in Figure 2.4 - Trading Zone required width calculation, and the 5 step Trading Zone calculation guide.

1. Measure the footpath

The footpath is measured from the building line to the kerb. If the footpath width is 3.2 metres or less, then footpath trading is not supported.

2. Determine the required width of the Pedestrian Zone

The required width of the Pedestrian Zone on all footpaths is 2 metres, measured from the front property boundary.

3. Subtract the required Pedestrian Zone width from the footpath width

(Footpath width) minus (2 metres Pedestrian Zone width) = X

4. Determine the required width of the Kerb Zone

Table 2.1 - Minimum required widths of the Kerb Zone

Parking type	Minimum Kerb Zone widths (measured from the face of the kerb)
Parallel parking	0.6 metres
Angle parking	0.6 metres where wheel stops are provided, otherwise 1 metre
Loading zone	1 metre
Taxi zone (max. 2 bays)	1.5 metres
Bus zone and Taxi rank	No trading permitted
Disabled parking (parallel or angle)	1.5 metres

5. Determine the Trading Zone width by subtracting the required width of the Kerb Zone from answer at Step 2

(Step 2 answer) minus (required Kerb Zone width) = Trading Zone width

Existing landscaping, street art, street furniture, public infrastructure may also prohibit or limit the Trading Zone and influence the layout of a footpath trading activity.

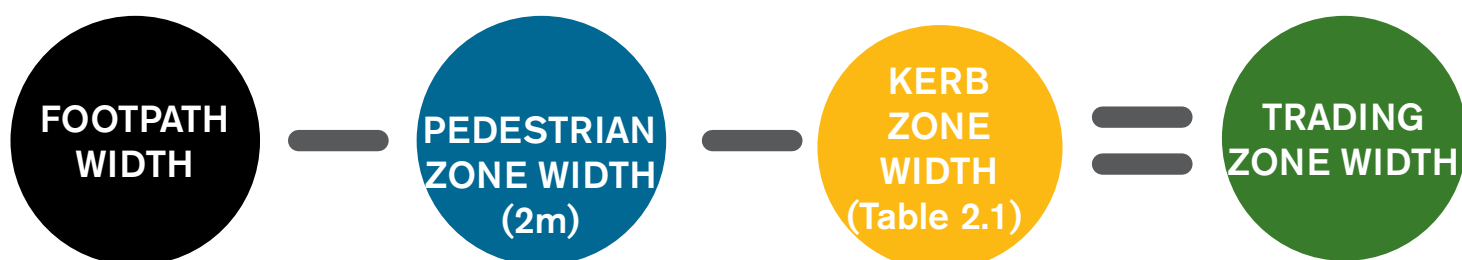


Figure 2.5 - Trading Zone required width calculation

2.2 Clearances from existing or planned public infrastructure

Public infrastructure includes items on the footpath that are required for the community and are for the benefit of the community. Minimum clearances are listed in Table 2.2 - Furniture clearances from existing public infrastructure, and illustrated in Figure A3.1 - Furniture clearances to existing or planned infrastructure.

In the event of any new public infrastructure being installed within the streetscape after the approval of a footpath trading activity, the footpath trading activities must amend its layout to comply with the prescribed clearances.

Table 2.2 - Clearances from existing public infrastructure

Public Infrastructure	Minimum Clearance from infrastructure
Litter bins	1 metre
Public seating	
Bicycle parking (from outer edges of the parking)	
Fire hydrants	
Payphones	
Traffic lights	
Pedestrian-operated lights	
Way-finding signs	
Trees	
Public art	
Electricity and telecommunications boxes	0.5 metres
Electricity poles	No clearance required
Street light poles	

Well-maintained public places improve the perception of how safe and enjoyable a place is and support the public's desire to occupy and use those places.

2.2.1 Public seating

Public seating gives people the opportunity to rest and take time out while walking to and from their destination. Public seating also provides a place for people to pause along busy walking routes and creates informal meeting places.

Council will not permit tables and chairs in the Trading Zone to be used for public seating purposes. Approvals for table and chairs will only be given for footpath dining purposes.

Footpath trading activities must not compromise or prevent the ability of the general public or service contractors to access public furniture.

2.2.2 Street trees and gardens

Clearance from existing street trees must be maintained at all times to prevent damage to root systems. Footpath trading activities and associated furniture must not protrude into gardens.

2.2.3 Bicycle parking and litter bins

Clearance from bicycle parking and litter bins must be maintained at all times to ensure direct access from the Pedestrian Zone and the Kerb Zone for the community and Council contractors.

2.2.4 Way-finding signs

Way-finding signs assist pedestrians to navigate their way around. It is important that clearance from way-finding signs is maintained at all times to ensure access and visibility.

2.2.5 Electricity and telecommunications boxes and traffic lights

Clearance from essential public infrastructure is required at all times for access purposes.

2.2.6 Relocation of public infrastructure and/or improvement to abutting footpaths

In special circumstances applicants may request Mackay Regional Council to consider relocating public infrastructure such as litter bins, bicycle parking, seating and the like. This will be considered on its merits, the level of difficulty in relocating the subject public infrastructure and if the new location is a better outcome for the general community.

Enquiries to relocate public infrastructure can be directed to Council on council@mackay.qld.gov.au.

2.2.7 Bus zones

Footpath trading activities are not permitted on the footpath in front of a bus zone. This area must remain within the Pedestrian Zone. The Pedestrian Zone in front of a bus zone must be maintained at all times to ensure that direct access to and from the Pedestrian Zone so that users can enter and exit buses safely. A minimum 1.5 metres clearance must be kept from the departure side of a bus stop sign to ensure adequate access for bus users.

Where a bus zone is 20 metres or less, outdoor seating will not be permitted on the adjacent footpath. Outdoor seating will be considered adjacent to bus zones that are greater than 20 metres on a case-by-case basis - refer to Figure 2.6 – Clearance from bus zones and taxi ranks.

2.2.8 Taxi rank

Footpath trading activities are not permitted on the footpath in front of the taxi rank and queuing area. Access to the taxi queuing line must remain unobstructed at all times. A 1.5 metres clearance must be maintained around the taxi rank at all times to ensure direct access from the Pedestrian Zone for users and maintain visibility for taxi drivers.

2.2.9 Two bay taxi zones

A 1.5m clearance must be maintained around taxi zones at all times to ensure direct access from the Pedestrian Zone for users and maintain visibility for taxi drivers - refer to Figure 2.7 – Clearance from two bay taxi zones.

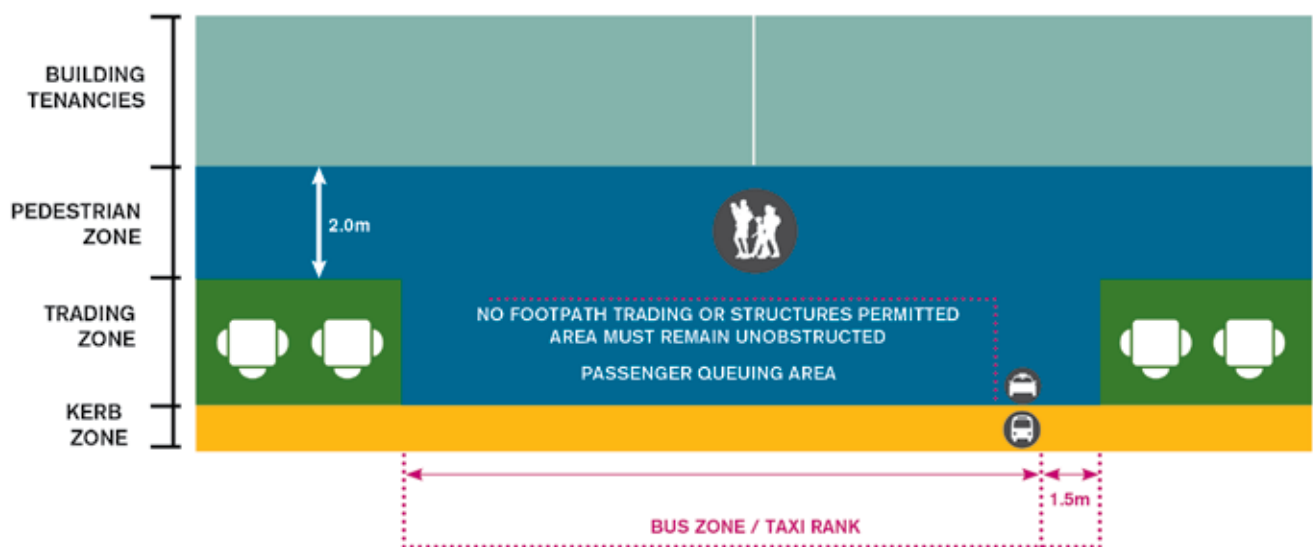


Figure 2.6 - Clearance from bus zones and taxi ranks

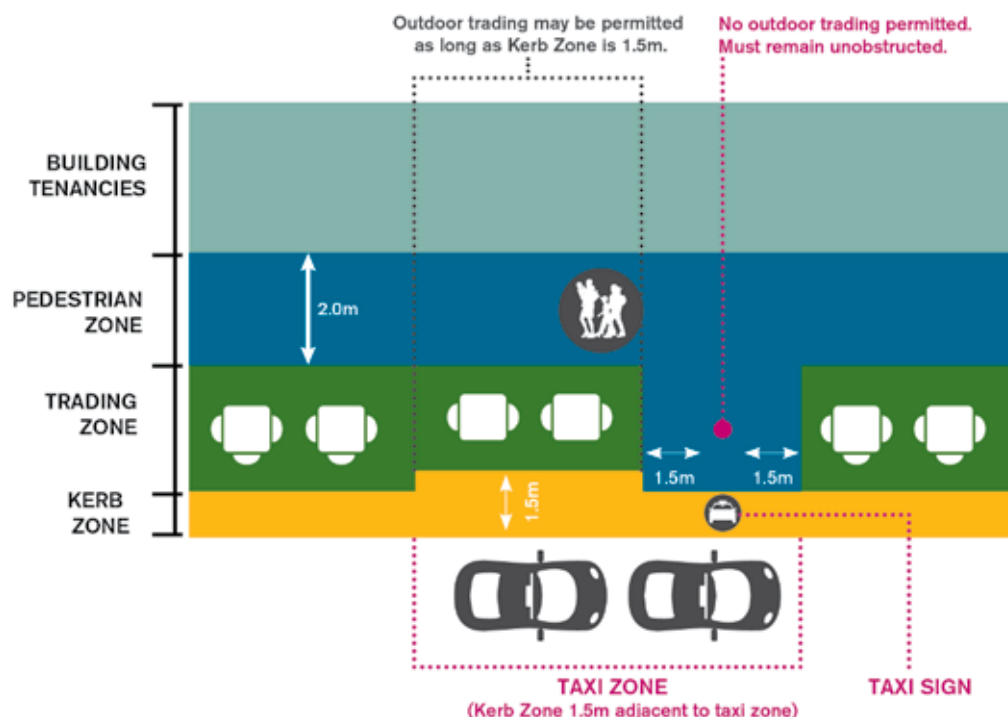


Figure 2.7 - Clearance from two bay taxi zones

2.3 Occupying an adjacent premises

If seeking to occupy the Trading Zone of an adjoining premise, the Mackay Regional Council requires the applicant to obtain and submit written consent from the building owner, body corporate (if applicable) and occupier of the adjoining premise to Council. The letters of consent must be provided on the third party's official letterhead. If the neighbouring business is sold, a new letter must be submitted to the Council by the new occupier.

The submission must include to-scale plans including both premises, a signed indemnity form from both properties and a copy of the certificate of currency noting both premises. The adjoining Trading Zone that is proposed to be occupied must be physically adjoining, meaning there is no more than 1m of separation between the 2 Trading Zones.

In the instance that the use of the footpath is not adjoining a business, Council may use its discretion in an approval if the outcome is to the benefit of the streetscape and the general community.

The footpath is public space and as such is not owned by any one business. This means a business owner and/or building owner cannot sell or sub-lease (charge rent) for the use of the footpath in front of their premises.

Mackay Regional Council will assess such applications on a case-by-case basis and consider any application with reference to streetscape and community outcomes.

Consent from the adjacent business owner and/or building owner, body corporate (if applicable) and/or occupier may be withdrawn at any time. If consent is withdrawn during the approval period, the approval will cease.

In the event that consent is withdrawn, no refund will be made in respect to fees paid in advance for the use of the Trading Zone in front of the neighbouring premises.

2.4 Delineation markers

Delineation markers must be installed on the footpath to clearly define the approved Trading Zone. This will assist owners, managers and the general community in identifying the approved Trading Zone.

The purchase of the delineation markers will be at the applicant's cost and included with the Footpath Trading Approval application fee. Delineation markers will be installed by Council upon approval of a footpath trading activity.

Delineation markers will not be required to be installed if they are already installed on the footpath.

The approval holder must ensure all furniture associated with commercial uses is located within the defined Trading Zone.





SECTION 3

FOOTPATH TRADING

3.1 What is footpath trading?

Footpath trading involves the use of public footpaths for commercial purposes.

Commercial purposes include the placement of advertising signs, display of goods (clothes racks), tables, chairs, and ancillary equipment such as umbrellas, planter boxes, removable barriers and retractable screens associated with the activities of the business.

Footpath trading is governed by Mackay Regional Council's Local Law 1.2 for the Commercial Use of Local Government Areas and Roads. The carrying on of this activity is therefore subject to an application, assessment and an annual approval from Council's Health and Regulatory Services program.

The aim of this Local Law is to control and regulate secondary activities on the footpath which does not compromise the primary function of the footpath for the safe and unobstructed movement of pedestrians.

Footpath Trading is only permitted in the Trading Zone of the footpath.

3.2 Footpath trading furnishings

Footpath trading approvals incorporate the use of tables, chairs and clothes racks with associated furnishings such as removable barriers, A-frame signs, planter boxes, menu displays, heaters and umbrellas.

Stand-alone A-frame signs on the footpath is not a footpath trading activity. As such, a stand-alone A-frame sign is assessed under Council's Local Law for advertising devices or the Planning Scheme (whichever is relevant at the time of application) and not this policy. Stand-alone planter boxes and pots on the footpath are not footpath trading activities and are not permitted to be located on the footpath at any time.

Permanent structures may be approved at Council's discretion, subject to assessment against design criteria and appropriate building approvals, in the absence of any footpath trading approval. See Section 4 - Structures for further detail on the establishment of structures.

Section 4 also provides specific requirements relating to furnishings and temporary structures associated with activities being carried out on the footpath.

3.3 Footpath trading activities

3.3.1 Permitted footpath trading activities

Activities generally supported in the Trading Zone requiring prior approval from Council are:

- Footpath dining (& permitted furnishings);
- Display of goods (& permitted furnishings);
- Busking;
- Other non-impacting footpath activities such as artists;
- Temporary activities such as:
 - + Street events including street sampling, commercial promotions, outdoor radio broadcasts, festivals and markets; and
 - + Charity events e.g. sausage sizzles, fundraising and the like.

The following activities are not permitted in the Trading Zone of a footpath:

- Street selling e.g. stands, stalls and touting;
- Masseurs or masseuses;
- Pedicures or manicures; and
- Food vans.

Where the proposed footpath trading activity results in a significant increase in dining patrons, the business must consider Building Code requirements for toilet amenities and disabled access to and within all areas normally used by patrons. A suitably qualified 'access' consultant should be engaged, particularly if the activity is within a heritage building, to assist with disability access requirements.

Council will assess applications on a case-by-case basis and reserves the right to approve, restrict or refuse any application under the relevant Local Law. Delineation markers will be installed by Council (at a cost to the applicant) in order to clearly identify the approved Trading Zone.

Footpath trading areas must be easily accessible from the footpath and must present an open and inviting image to entice participation. Pedestrians must not be forced onto the roadway or Kerb Zone by footpath dining activities or other non-permanent items/structures on the footpath.

3.3.2 Footpath dining

Footpath dining may increase risks to diners, pedestrians and motorists. To assist in the management of these risks, Council's Local Law No. 1 and Subordinate Local Law (Commercial Use of Local Government Areas and Roads) 2011 along with this policy guideline, provides for the following considerations:

- pedestrian access through the footpath dining area;
- clearances to public infrastructure;
- setbacks from the road;
- furniture, including amenity, safety, placement and storage;
- the use of umbrellas and shade structures.

Dining areas must ensure:

- safety of patrons using both indoor and outdoor areas of the business;
- safety and convenient passage of all pedestrians using the footpath (refer to 'Pedestrian Zone' requirements in Section 2);
- maintain clear view lines for both pedestrians, motorists and cyclists, especially at or near pedestrian crossings, street corners and intersections;
- no adverse impact on any adjoining premises by the activities carried out on the footpath.

Footpath dining is supported throughout the region, where the business operating this activity complies with their food business licensing requirements under the Food Act 2006 and can demonstrate compliance with the Local Law and intent of this document as mentioned above.

3.3.2.1 Provision of sanitary facilities

A proposed footpath dining activity may result in an increase in overall seating capacity. The applicant is responsible for the continued provision of the toilet facilities for their patrons. The Building Code of Australia provides guidance on what is considered an adequate number of toilets for indoor premises. As such, buildings that occupy more than 20 people must provide adequate toilet facilities that are accessible during hours of operation in accordance with the Building Code of Australia (refer to Appendix 4). Sanitary facilities need not be provided for patrons if the building accommodates not more than 20 people.

In calculating the number of patrons for footpath dining outside of the building, the same Building Code requirements are applied where more than 20 diners are proposed on the footpath and/or inside the building.

Therefore the following applies where no facilities are provided:

- Max number of patrons indoors is 20
- Max number of patrons outdoors is 20

3.3.2.2 Structures and furniture associated with footpath dining

Fixed awnings and permanent structures associated with a footpath activity may be considered by Council. See Section 4 for further information on the requirements, criteria and approvals required should this be proposed.

See Section 4.2 for further information on design and placement of temporary structures, furniture and fittings associated with footpath dining.

3.3.2.3 Alcohol consumption

Where liquor is intended to be sold, consumed or served within the Trading Zone, an approval must be obtained from the Office of Liquor and Gaming Regulation Queensland. This information should support an application made to Council, however Council may refer the application to Liquor and Gaming Regulation Queensland, in order to make a decision on the application.

Further information can be obtained from the Liquor and Gaming website: www.olgr.qld.gov.au

3.3.2.4 Designated outdoor smoking areas

Designated smoking areas on the footpath are generally not supported by Council.

Smoking within a Trading Zone must comply with Queensland's Department of Health legislation, see <http://www.health.qld.gov.au/tobaccolaws/eating/default.asp>.

Council may refer the application to the Queensland Department of Health, in order to make a decision on the application.

3.3.2.5 Dogs in footpath dining areas

A food business is prohibited from permitting live animals in areas where food is handled or served. Exemptions are in place for seafood, shellfish, other live fish and assistance animals such as guide dogs.

All food businesses must allow an assistance animal in areas used by customers. This applies to both indoor and outdoor dining areas and any other customer area. Assistance animals are not permitted to enter non-customer areas such as a kitchen, storeroom or other places where food is handled. The definition of an 'assistance animal' is contained in the Disability Discrimination Act 1992 and refers to an animal trained to assist a person with a disability to alleviate the effect of the disability.

A food business may choose to permit a dog to be present in an outdoor dining area provided the area is not enclosed by a ceiling or roof and walls and/or windows. An outdoor area with a roof and retractable screening meets the definition of an enclosed area under the Food Standards Code and therefore is not considered an outdoor dining area, meaning dogs are not allowed in this circumstance.

Animals other than dogs or assistance animals are not permitted in outdoor dining areas.

Food businesses choosing to permit dogs in footpath dining areas must consider and manage issues that may arise from the presence of dogs in their food premises, and must maintain high standards of food safety and personal hygiene required by the Food Act 2006. It is recommended that food businesses obtain the further advice on this matter from Council prior to permitting dogs in footpath dining areas.

3.3.3 Display of goods

Approval must sought from Council for the placement and display of specified goods associated with the business within the Trading Zone during trading hours.

The display of white goods or any other bulky goods in the Trading Zone is not permitted at any time.

Placement of these display items (refer to Figures 3.1 and 3.2) will consider:

- Maintenance of the Kerb Zone and Pedestrian Zone to ensure these areas are free from furniture and other obstructions.
- Suitable furnishings fit for intended use similar to footpath dining furniture.
- Selling cannot occur from the footpath and must be done in the approval holders business premises. No cash registers or money floats are permitted in the Trading Zone, Pedestrian

Zone and Kerb Zone.

- Clothes racks and display tables must be wholly located within the Trading Zone and are not permitted against the building in the Pedestrian Zone in line with disability access best practice standards.
- The length and width of the display must provide sufficient space for shoppers to look at the goods on display without obstructing pedestrian movement in the Pedestrian Zone.
- The length of a display can be up to 75 percent of the shopfront (refer to Figure 3.2 - Maximum length and width of goods displays).
- The width of a display can be up to 50 percent of the potential trading area (refer to Figure 3.2 - Maximum length and width of goods displays).
- The maximum height for goods and display stands is 1.5 metres (refer to Figure 3.1 - Maximum height of goods and display stands)

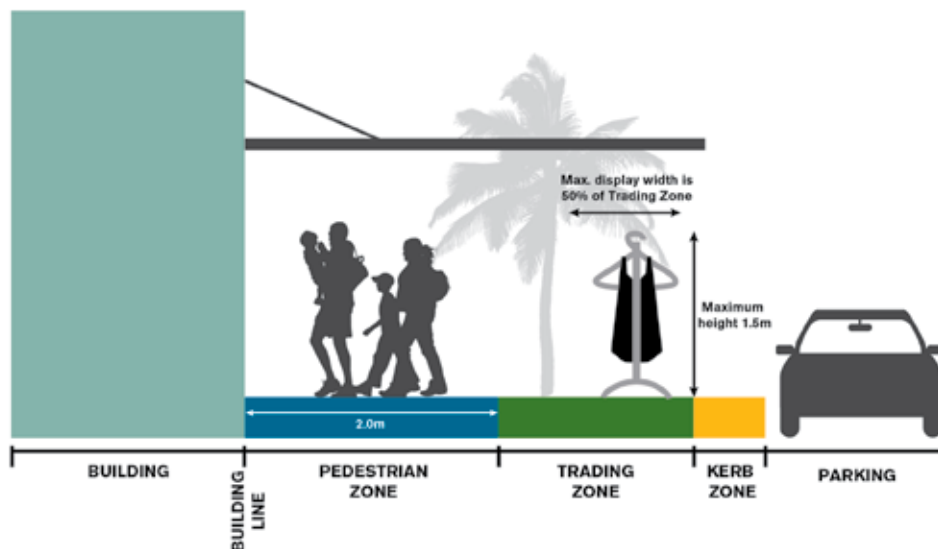


Figure 3.1 - Maximum height of goods and display stands

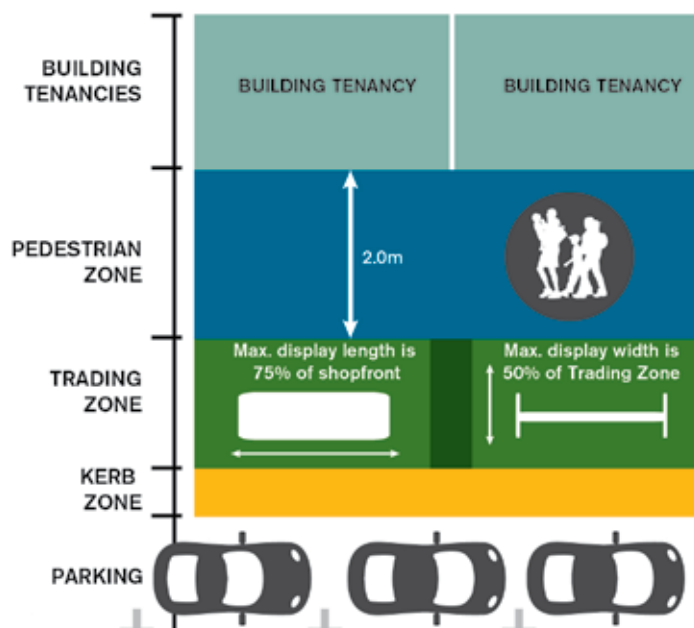


Figure 3.2 - Maximum length and width of goods displays

3.3.4 Busking

Busking involves a musical or theatrical performance undertaken by a person to entertain the public in a public place that seeks a voluntary reward for the performance.

- Busking does not include:
- Selling, offering or exposing for sale any article or commodity;
- Performances on behalf of any political or religious organisation; and
- Artists - drawing or painting (see Section 3.3.5 for requirements relating to artist activities on the footpath).

The busking activity must take place within the Trading Zone, must not obstruct the Pedestrian Zone and must not be located within the Kerb Zone. The positioning of the artist activity within the Trading Zone must provide sufficient space for on-lookers to view the activity within the Trading Zone without obstructing pedestrian movement in the Pedestrian Zone.

Anyone undertaking a busking activity must obtain a busking approval to do so. The approval holder must comply with the conditions of this approval.

Buskers must not:

- Harass, annoy or disturb any person, traders or residents of nearby accommodation premises.
- Use any amplification devices with the approved activity.
- Operate within 10m of any licensed premises.

Should a busker/s find themselves in a potentially volatile or harassing situation involving a member/s of the public, it is recommended that the busker/s:

- Remove themselves from the situation; and
- Contact Police for assistance.

If the busker is under 18 years of age, the application form must be signed by a parent/guardian and both parties must attend an interview with a Council officer. Additionally, if the busker is under 16 years of age, Council requires the parent/guardian to provide supervision during street performance activities.

3.3.5 Artists

Non-impacting footpath activities such as artists involving drawing, brush painting and the like, are generally supported by Council.

Anyone undertaking an artist activity on the footpath must obtain a footpath trading approval to do so. The approval holder must comply with the conditions of this approval.

The activity (including any selling of goods) must take place within the approved Trading Zone, must not obstruct the Pedestrian Zone and must not be located within the Kerb Zone. The positioning of the artist activity within the Trading Zone must provide sufficient space for on-lookers to view the activity within the Trading Zone without obstructing pedestrian movement in the Pedestrian Zone.

The approval holder must:

Ensure the footpath area is kept clean at all times and must provide measures to prevent any spillage of art materials directly onto the footpath. All art materials must be able to be easily removed if spilled onto the footpath. Any spillages must be cleaned immediately.

Ensure that the art drawn, brush painted and displayed is not offensive and of an appropriate nature to be displayed in a public place.

Not harass, annoy or disturb any person, traders or residents of nearby accommodation premises.

Not draw (chalk art) directly on to the footpath or wall without the express permission from Council. Drawing directly on to street furniture/infrastructure is not permitted in any circumstance.

Not paint, stick or glue anything directly on to the footpath, wall or street furniture/infrastructure in any circumstance.

Not use spray paint/s with the approved activity in any circumstance.

If the artist is under 18 years of age, the application form must be signed by a parent/guardian and both parties must attend an interview with a Council officer. Additionally, if the artist is under 16 years of age, Council requires the parent/guardian to provide supervision during the activity.

3.3.6 Street events

Street events are temporary events such as festivals, markets and commercial promotions which are generally supported by Council. These events may be subject to the following approvals:

- Temporary Entertainment Event Approval
- Traffic Management / Road Closures (Council)
- Road closure permit from DTMR (if on or affecting a State Controlled Road)
- Temporary Food Permits (Food Act 2006)
- Busking Approvals

During some of these events, businesses have an opportunity to participate by temporarily extending their approved Trading Zones onto the street or laneway.

All temporary extensions to approved Trading Zones must be approved by Council prior to events to ensure the event space is managed effectively and each activity has received relevant approval.

3.3.6.1 Commercial promotions

Temporary approvals are offered to existing businesses wishing to occupy the footpath for short periods of time for a promotional event.

This can include a business owner wanting to:

- Promote their business during an event or a commercial promotion (e.g. a store grand opening or anniversary).
- Extend an approved Trading Zone during events supported by Mackay Regional Council.

Businesses wishing to conduct street sampling and commercial promotions will require temporary approval for the use of the Trading Zone for this activity. These approvals will be subject to conditions which will be determined on assessment.

Applications are assessed on a case-by-case basis considering the information provided by the applicant. Council reserves the right to approve, restrict or refuse any application under the relevant Local Law.

3.3.6.2 Street markets and festivals

Street markets involves the sale of goods and/or local fresh produce and food originating from farms on an ongoing weekly or monthly basis, from an organised gathering of stallholders in a specific street location. Stalls and associated temporary structures and furniture must not be located within the Pedestrian Zone or established garden beds.

Festivals involve the sale of goods, food, beverages and festival specific merchandise. These events usually require the whole street space requiring the temporary closure of the street. Stalls, and temporary structures and furniture must not be located within the Pedestrian Zone or established garden beds. Approval to sell alcohol at the festival event must be gained from the Queensland Government Liquor Licensing Division.

All applications for markets and festivals must clearly indicate Pedestrian Zone (pedestrian movement corridors) and trading areas (including any dining or market stalls) on the event plans.

If it is intended for the street to be closed during the market or festival event, the event organiser must obtain a temporary road closure permit, including a traffic management plan.

3.3.6.3 Outdoor radio broadcasts

Outdoor radio broadcasts must be associated with a temporary event (market, festival or charity fundraiser) or commercial promotion and will require a Temporary Entertainment Event Approval.

The outdoor radio broadcast must be located within the Trading Zone and not within the Pedestrian Zone or Kerb Zone. Any amplification of music must not cause nuisance within the streetscape or to surrounding properties. Power leads must be made secure and not cause a nuisance to pedestrians.

3.3.7 Charity events

Mackay Regional Council generally supports the following charity event activities within the Trading Zone of the footpath:

- BBQs
- Fundraising (person only).

Where these activities apply, Council can issue a letter of no objection which will be issued after an assessment of the proposal has been submitted by the applicant. This proposal should include:

- Details of charity/non-profit organisation status;
- Public liability insurance (\$20 million);
- Details of proposed activity;
- Locations and times of activity;
- Other information required necessary by Council's assessing officer.

Any events relating to the preparation and handling of food provided to the public will require prior notification of the event to Council. Further information can be sought from Council.

3.4 FOOTPATH TRADING PROPOSALS AND APPROVALS

3.4.1 Applying for a Footpath Trading Approval

Applicants are advised to read and familiarise themselves with this policy guideline prior to making an application to Council.

Understanding the responsibilities involved in managing the footpath area, design requirements, legal obligations, costs and other relevant matters are important.

It is strongly recommended to organise a pre-lodgement meeting with Council officer prior to submitting an application. In this meeting the Council officer will be able to clarify any questions, advise of further referrals required, advise of fees associated with the application and advise of possible concerns or considerations Council may have when assessing the application (refer Appendix 2 for the application and approval process).

All footpath dining permits expire on June 30 of every year – refer to renewal of an existing permit in this Section.

3.4.2 Required information with application

Prior to any formal consideration of an application, the following information is required from the applicant when submitting an application form for Commercial use of local Government areas or Roads.

- Completed the application form (all sections, with signature);
- Appropriate fee for the application (if relevant at the time of application lodgement);
- Completed Footpath Dining Checklist.

Relevant supporting information for the activity as follows:

- A site plan of existing conditions, accurately showing:
 - + the width of the building frontage;
 - + the abutting properties – (Business names);
 - + existing public infrastructure including trees, street light/electricity poles, litter bins, street furniture, fire hydrants, parking and parking restrictions, in-ground infrastructure pits/manholes and other relevant features
 - + the area and layout of the proposed footpath trading activity. This includes the proposed location of chairs, tables, removable barriers, umbrellas and the required zone dimensions.
- All dimensions associated with the footpath must be clearly

demonstrated.

- A demonstrated public demand for the activity where deemed necessary.
- Proof of the company and business registration certificates showing the company name, ACN, ABN and business name.
- Photographs of the site clearly showing the proposed footpath activity zone relative to buildings and existing features in the footpath area.
- A colour photograph of the proposed footpath trading area.
- Details of advertising including a colour photograph or plans/drawings of any proposed advertising logo, and clear indication of its size and location.
- If goods are to be provided or displayed, the nature of these goods.
- Times and days proposed to carry on this activity.
- Details of proposed furniture including colour photographs or plans/drawings of proposed furniture, including screens, planter boxes and umbrellas.
- Public liability insurance policy, noting Council's interest, in the amount of \$20 million at a minimum in respect to any single occurrence. Public liability insurance must remain current and valid for the life of the approval.
- Form of indemnity to indemnify the Council against all claims, of any kind, arising from any negligent act either by the approval holder or the approval holder's agents and users.
- A copy of a Road Corridor Permit obtained if the activity is occurring on a State Controlled Road.
- A copy of the planning approval for the business (if relevant). It is the responsibility of the applicant to determine and confirm that a planning permit is not required where the use of premises (to which the footpath trading area relates) is accepted development under the planning scheme or PDA development scheme.
- A copy of all building approvals (if relevant).
- A copy of approval to conduct engineering works within a road reserve, where applicable.

Failure to submit all the above details may result in delays in processing the application or refusal of the application.

3.4.3 Trading Zone of adjacent premises

If applicant is proposing to occupy the Trading Zone of an adjacent premises, Mackay Regional Council requires the applicant to obtain and submit written consent of the business and/or building owner, body corporate (if applicable) and/or occupier of the adjacent premise. The letters of consent must be provided on the third party's official letterhead and signed by relevant persons. If the neighbouring business is sold, a new letter must be submitted to the Council by the new occupier.

The footpath is public space and as such is not owned by any one business. This means a business and/or building owner, body corporate (if applicable) and/or occupier cannot sell or charge rent for the use of the footpath in front of their premises.

3.4.4 Fees and charges

Application fees apply to some of the activities requiring approval under Mackay Regional Council's Local Law No. 1 for the Commercial use of Local Government Areas or Roads.

The fee applicable on lodgement of the application, is the application fee plus an annual fee and covers the following services provided by Council's Health and Regulatory Services:

- pre-lodgement meeting and advice provided;
- the assessment of the application;
- Obtaining referral advice from third parties if applicable;
- On site inspection;
- Purchase and installation of delineation markers (if not existing)
- The approval for the term of the current financial year (if approved, if the application is refused by Council, the annual fee is refundable, but the application fee is not refundable)

Fees paid are for the current financial year, 01 July to 30 June, and after approval is issued, these fees are paid when lodging an application for renewal of the approval, at the end of the financial year.

Refer to the current financial years adopted fees and charges which can be found on Council's website - www.mackay.qld.gov.au (search Schedule of Fees and Charges).

3.4.5 Lodging a Footpath Trading Application

A Footpath Trading Application must be lodged and paid with Council either:

- in person at any of Council's Customer Service Centres;
- by email council@mackay.qld.gov.au; or
- post to:
Mackay Regional Council
PO Box 41
Mackay QLD 4740

3.4.6 Application assessment process

This process is visually represented in a process flow chart which is located in Appendix 2.

On receiving an application, the Council's delegated authorised officer will:

- Check that all relevant information has been received.
- Check that the footpath trading is associated with a use legally established under the *Planning Act 2016* or *Economic Development Act 2012*.
- Check the application to ensure it meets the intent and requirements of Council's Local Law No.1 (Administration) 2011, Subordinate Local Law 1.2 (Commercial Use of Local Government areas and Roads) 2011 and proposed to be operated in line with this policy guideline.
- Refer the application to other departments within Council for advice and comment as necessary.
- Refer to other relevant agencies as deemed necessary e.g. Department of Transport and Main Roads, Office of Liquor and Gaming etc.
- Inspect the site and check the accuracy of submitted application plans
- Assess the application against other outstanding matters that may relate to the premises
- Advise the applicant of any changes that need to be made to the submitted plans, issue an information notice and await re-submission by the nominated date.
- Assess the application including referral to Council if appropriate
- Approve or refuse the approval application.



3.4.7 Decision making

Where applications meet all the requirements of the policy guideline, Council's delegated authorised officer will normally grant an approval.

Applications are not guaranteed approval and are subject to full assessment. Applications will be assessed on a case-by-case basis considering the information provided by the applicant. Council reserves the right to approve, restrict or refuse any application under the relevant Local Law.

In some cases a variation to this policy guideline may be granted if the policy guideline objectives can still be met and extenuating circumstances for deviation can be demonstrated to Council.

Extenuating or special circumstances could include, but are not limited to:

- Support of the achievement of the footpath priorities;
- Demonstrated hardship in conforming to new standards;
- Mitigating factors such as street barriers or kerb extensions;
- Previous Council approval and prohibitive expense in replacing existing infrastructure, including evidence of contributions to street furniture.

In considering applications that vary from this policy guideline, Council will assess the application and make a recommendation in accordance with the policy guideline objectives in conjunction with Council's Local Law No.1 (Administration) 2011 and Subordinate Local Law No.1.2 (Commercial Use of Government Controlled Areas and Roads) 2011. This includes matters such as:

- The effect on pedestrian traffic flows and safety;
- The impact on the appearance of the street and its surroundings;
- The impact on amenity;
- The duration of use;
- The effect on vehicular traffic flows and safety;
- Compatibility with other uses in the street;
- Whether it is complementary to the primary adjoining use;
- Whether it is less intensive than the primary adjoining use;
- The applicant's previous record of compliance;
- Any relevant policies of the Council;
- Any other matter relevant to the application.

3.4.8 Display of approval

Approval holders must display a current, legible approval clearly in the shop front window. This place must be prominent and visible to the public.

Failing to display a current approval for the activity will be in breach of a condition of the approval.



3.5 Administration of Approvals (amendments / transfers / renewals)

3.5.1 Amendments to an existing approval

Approval holders must submit an application in writing, using the required application form, for any amendments to their existing approval. Amendments may include changing furniture design, adding furniture or changing layout from an original approval.

Amendments must be made providing the information mentioned in Section 3.4.2 where relevant to the proposed changes. An amendment fee is required for Council officer assessment and liaison.

The normal assessment and decision making process will be followed as per the application process illustrated in Appendix 2. Mackay Regional Council reserves the right to amend approval conditions to ensure compliance.

3.5.2 Transfer of approvals

Footpath trading approvals belong only to the approval holder for which it is issued therefore should a business change occur it is necessary for the footpath trading approval to be amended to reflect these changes. The following three scenarios may occur in the event of a business change:

1. Should a **change in business location** be proposed, (business and activity move) this will require a new application for footpath trading and is not transferable. See Section 3.4.
2. If a **new business owner** wants to operate in an already approved footpath trading area and proposes **no changes** to furniture, layout, times etc. then a transfer of the approval can occur by completing the application form and paying a transfer fee. Note, should a transfer of a footpath trading approval occur the conditions and specifics of this approval are transferred as originally approved to the new owner. Any variation of the original approval triggers an amendment.
3. If a **new business owner** wants to operate in an already approved footpath trading area and proposes to **make changes** to furniture, layout, times etc. then an amendment of the original approval applies - see Section 3.5.1.

3.5.3 Renewal of an existing approval

Approvals for footpath trading are renewed annually at the beginning of each financial year (July 1). A renewal notice is issued for all existing approval holders. It is the responsibility of the approval holder to ensure all approval renewal details, including public liability, amendments and fees, are forwarded to the Council by June 30. Failure to provide all renewal documentation and meet the payment of annual or quarterly fees may be considered a non-application and therefore may result in the cancellation of the original approval.

Mackay Regional Council reserves the right to reassess and amend approval conditions to ensure compliance with current policy.

An annual footpath trading approval is required for all and/or occupation of the footpath in accordance with Council's Local Law No.1 (Administration) 2011 and Subordinate Local Law No. 1.2 (Commercial use of Local Government Areas and Roads) 2011. The approval holder is liable for any breach of the conditions set out in the approval, including those committed by their staff or patrons.

To be granted an annual approval for footpath trading, the applicant must agree to comply by signing the application form.



3.6 FOOTPATH TRADING

MANAGEMENT RESPONSIBILITIES

3.6.1 Approval holder's responsibilities

3.6.1.1 Daily management

The management of a footpath trading approval is the responsibility of the approval holder. To ensure appropriate management, approval holders are required to:

- Operate in accordance with the conditions of the approval, endorsed plans and the requirements and objectives as outlined within this policy.
- Monitor the Trading Zone, including observing patrons at all times and responding to behaviour that may interfere with the use, enjoyment and personal comfort of others using the footpath area.
- Observe all Local Law and legislative provisions relating to footpath trading, including noise, responsible serving of liquor, and health and amenity.
- Maintain access for all users in and around the footpath at all times, including repositioning furniture when moved outside the Trading Zone by patrons.
- Uphold the cleanliness of the footpath area, ensuring tables and chairs are kept clean and litter is removed and deposited in bins kept inside the premises.
- Remove all approved furniture from the footpath area at close of business.
- Comply with all general and specific conditions of the approval.

3.6.2 Council responsibilities

3.6.2.1 Maintenance of the footpath

Council manages the maintenance of the footpath and reserves the right to reclaim access to the footpath and remove all trading furniture at any time.

3.6.2.2 Compensation and loss of trade

There is no compensation for the removal of footpath 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, an approval holder's footpath trading area.

3.6.2.3 Access to underground services

Services such as sewer, gas, water, telecommunications and electricity conduits must not be obstructed by any permanent structures, including fixed barriers, decking, umbrellas and planter boxes.

Removable tables and chairs may be placed on top of underground service pits providing these are structurally sound. In an emergency, immediate access is required.

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

3.6.2.4 Monitoring compliance with approval

Council's delegated authorised officers proactively and routinely monitor the operation of footpath trading approvals ensuring that businesses are operating according to their approval and ensure the conditions of the approval are met.

Council's delegated authorised officers also have a duty to respond to and investigate client requests and complaints regarding an alleged compliance breach or non conformance.

Following determining non-compliance with the Local Law and/or conditions of an approval, the authorised officer will engage the approval holder or alleged offender and require remedial action.

Depending on the seriousness and regularity of the breach, the normal enforcement/compliance action process taken by an authorised officer will consist of:

1. Verbal warning;
2. Compliance Letter;
3. Compliance Notice;
4. Penalty Infringement Notice;
5. Stop Order.

In the case of a serious breach, an officer may act immediately to resolve the situation. A serious breach is one where the officer considers there is an immediate public safety risk or repeated offences where approval holder has failed to remedy the breach.

This may include instances where access is impeded to an extent that it would be difficult or impossible to walk freely through the Pedestrian Zone.

Failure to comply with the above enforcements may result in Council amending, suspending or cancelling an approval and/or seizing footpath trading furniture and associated furnishings until the matter is rectified.

3.6.2.4 Amendment, Suspension and Cancellation of Approval

The following provides for the grounds in which an authorised person can amend, suspend or cancel an approval:

- for the safety of public health and safety;
- to prevent environmental harm;
- prevent property damage or loss of amenity;
- allow for works on the local government controlled area/road;
- improve access to a road;
- improve efficiency of vehicle or pedestrian traffic;
- another approval for the trading has been suspended or cancelled;
- failing to comply with the Local Law or an Act;
- failing to comply with Compliances Notice or Stop Order served under the Local Law;
- original approval granted because of a document or representation that was false or misleading or obtained or made in an improper way.

Where Council considers there is a ground for amendment, suspension or cancellation of an approval, a **Show Cause Notice** will be issued stating the:

- proposed action;
- the grounds for this action;
- an outline of the facts and circumstances forming the grounds for this action; and
- the proposed suspension period if necessary.

The Show Cause Notice will also provide the approval holder the opportunity to make written submissions on why this action should not be taken which can be made at least 21 days after the notice is given.

If the approval holder provides submissions, this will be considered and Council can either cease action on the Show Cause Notice and give written notice to the approval holder OR uphold the Show Cause Notice and issue an information notice informing the approval holder of the decision.

This decision will take effect on the day of the written notice or a later date specified by Council.

In the instance where Council deems there is an urgent and serious threat to public health and safety, environmental harm, damage to property or loss of amenity, Council can immediately suspend an approval by giving notice to the approval holder about this decision, which takes effect immediately.

Council may instigate legal proceedings where directions provided in the aforementioned are not complied with.





SECTION 4

FOOTPATH STRUCTURES, FURNISHINGS AND FIXTURES

This section looks at the requirements for the establishment, management and maintenance of permanent and temporary footpath structures, furnishings and fixtures within the streetscape.

Table 4.1 details the permitted (subject to approval) and not permitted structures, furnishings and fixtures (both permanent and temporary) within the streetscape.

Proposals for permanent awnings will only be considered where the structure is associated with an existing or proposed footpath dining activity and is required for the purpose of providing weather protection.

Proposals for temporary structures, furnishings and fixtures will be considered on a case by case basis and will be assessed according, but not limited to available space, streetscape character, pedestrian activity, amenity and traffic conditions.

4.1 Overarching regulatory instruments

The following overarching regulatory instruments govern structures within the road reserve:

- Building Act 1975;
- Disability Discrimination Act 1992;
- Queensland Heritage Act 1992;
- Planning Act 2016;
- Economic Development Act 2012;
- Local Law 1 (Administration) 2011:
 - + Subordinate Local Law 1.1 2011 Alteration or Improvement to Local Government Controlled Areas and Roads;
 - + Subordinate Local Law 1.2 Commercial Use of Local Government Areas & Roads;
 - + Subordinate Local Law 1.4 Installation of Advertising Devices;
 - + Subordinate Local Law 1.12 Operation of Temporary Entertainment Events;
 - + Subordinate Local Law 1.14 Undertaking Regulated Activities on Local Government Areas & Roads;
- the planning scheme in relation to heritage matters;
- the Queensland Development Code (Building Code) in relation to building matters and building over or near relevant infrastructure.

This policy guideline encompasses the requirements from each of these regulatory provisions into one process to facilitate the establishment of footpath trading.

Where this policy guideline is silent on a matter(s) of relevance, the requirements of, and assessment against the relevant regulatory instrument will prevail in all circumstances. For example, this policy does not include building work requirements, which are to be assessed under the Building Code.

In an instance where a proposal, or element of a proposal, has a discrepancy with the requirements of this policy guideline, the relevant overarching regulatory instrument will prevail in determining the outcome.

4.1.1 Footpath trading and structures on a State controlled road

Footpath trading activities and structures located on a designated State controlled road will require separate assessment and approval (Road Corridor Permit) from the Department of Transport and Main Roads (see Section 5 Footpath trading and structures on a State Controlled Road for further details).

This section includes the relevant criteria in relation to design, location, use and storage of permanent and temporary structures, furnishings and fixtures within the streetscape.

4.2 Permanent and temporary structures, furnishings and fixtures

This section includes the relevant criteria in relation to design, location, use and storage of permanent and temporary structures, furnishings and fixtures within the streetscape.

Table 4.1 - Permitted / not permitted structures, furnishings and fixtures in the road reserve.

Structure, furnishing or fixture	Permitted (subject to approval)	Not Permitted
PERMANENT STRUCTURES		
Awnings (freestanding or attached)	⊙	
Footpath dining - fixed chairs and tables		⊙
Umbrellas (fixed)		⊙
Barriers		⊙
Bollards		⊙
Decking		⊙
Building entrance access ramps		⊙
TEMPORARY STRUCTURES		
Retractable blinds or screens	⊙	
Tents / gazebos*		⊙
Removable barriers	⊙	
Bicycle parking rail	⊙	
TEMPORARY FURNISHINGS AND FIXTURES		
Footpath dining - non-fixed tables and chairs	⊙	
A-frames	⊙	
Heaters	⊙	
Flags	⊙	
Planter boxes and pots	⊙	
Menu displays	⊙	
Umbrellas	⊙	
Clothes racks and display tables	⊙	
Sound amplification device(s)*		⊙
Cash register		⊙
Portable dry bar		⊙
Waiter station	⊙	

* Temporary tents or gazebos, and sound amplification device(s) are appropriate for use (subject to approval) in association with temporary street events such as street markets, festivals, charity fundraisers or outdoor radio broadcasts.

4.2.1 Awnings (freestanding or attached)

Proposed awning structures within the streetscape that are above the minimal awning requirements of the planning scheme, can be either attached to a building or freestanding (not attached to a building). Both will require a different approach to design and structural responses, and have separate approval processes.

A proposed awning structure attached to or sited on a building on an identified Heritage place cannot be assessed under this Policy and will require a Material Change of Use development application for assessment of heritage matters under the Mackay Region Planning Scheme or Mackay Waterfront PDA development scheme.

4.2.1.1 Design objectives

The design objectives for freestanding structures in the road reserve:

- promote and celebrate the tropical character of the region;
- provide a safe public environment;
- retain an open character;
- considers the location and design of nearby constructed structures so as to avoid cluttering the streetscape;
- do not create an overbearing presence within the streetscape;
- improve pedestrian amenity and experience;
- are sympathetic, not diminish and reinforce heritage elements of local and state heritage buildings and places;
- enhance business opportunity as a result of increased footpath activity and vibrancy; and
- activate streets within centres with footpath dining and retail opportunities.

4.2.1.2 Design criteria

When complimenting a building with an outdoor structure, there are several design criteria that are to be adhered to.

The proposed structure must adhere to the following set of design criteria.

STREETSCAPE AND BUILDING INTEGRATION

- The structure must be designed to create a positive visual integration with the streetscape / public realm and the adjoining building. Additional consideration must be given to buildings that are identified as 'local' or 'state' heritage (see section on heritage considerations).
- The structure design must not dominate the streetscape, be in conflict with the overall streetscape character, and appear out of proportion or character to the adjacent buildings.
- The structure design should not interfere with the neighbouring building's ability to perform their trading activities. In considering adjoining premises, the design should take into account rainwater runoff, noise, access and over shading.
- The structure must not interfere with the flow of pedestrian or vehicular traffic or create a hazard or obstruction within the streetscape.
- The structure must not obstruct the visual scope of the City Safe CCTV Network within the City Centre or any other established CCTV networks in other centres.
- The structure design must consider the location of existing street lighting and not diminish the effectiveness of the street lighting.
- The structure design must consider compatibility with existing or potential future street trees.

DESIGN PARTICULARS AND CLEARANCES

The structure design must consider the following design specifications and is also dependent on the existence of street lighting. Further detail is provided in Figure 4.1 - Site plan for a structure, and Figure 4.2 - Elevation plan for a structure

- The supporting columns of the structure must be located:
 - + within the centre of the structure and a minimum on 0.75 metres from the kerb (additional clearances may be required to accommodate street lights, traffic signs, signals, trees or traffic conditions);
 - + so they meet the requirements of public liability agencies.
- The minimum height of a structure to the soffit is 3 metres.
- The maximum fascia depth is 180mm.
- The structure design must consider the following minimum setbacks for the roofline, where not attached to a building:
 - + 0.3 metres from the footpath drainage grate;
 - + 1.2 metres from the kerb where street lighting is present, otherwise 0.6 metres from the kerb; and
 - + 0.5 metres from a driveway or laneway.

ACCESS AND MOBILITY

- The structure must provide equitable access and functionality to the premises is a mandatory requirement of any new upgrades and ensures the premises can be enjoyed by everyone. The design of the structure must be compliant with the relevant Disability Discrimination Act 1992 guidelines. Council, or your building design professional, can provide you with advice to ensure that your design complies with these requirements.

PERMEABILITY AND VISIBILITY

- The structure must provide maximum opportunity for people to admire the full streetscape with minimal disruption to the visual amenity or character of the City Centre. Permeability will also provide increased opportunity for natural light, pedestrian safety and customer supervision.
- The structure must be open on at least three sides with the option to include operable (retractable) transparent screens to modulate sun and rain.
- The structure must keep advertising signage to a minimum. Advertising signage does not obstruct or diminish the views and vistas to heritage buildings.

MATERIALS

- Lightweight materials and colours appropriate to Mackay's tropical environment and climate must be selected. A material palette of steel, timber, louvres, batten or decorative screens are to be considered. The materials must also be sensitive to the adjacent/attached building.
- The structure must be constructed of materials that are durable, non-combustible, weather proof, easily maintained, and do not stain, discolour or deteriorate.
- The design should be continuous along the façade of the associated building, rather than suiting the individual tenants.

STORMWATER DRAINAGE

- The structure design must ensure that runoff from any permanent roof or canopy is collected and legally discharged to the civic stormwater system. Stormwater runoff collected by the roof is not permitted to fall onto the footpath.

ELECTRICAL

- The structure design shall provide power to supply lighting and/or fans. Power for other requirements is to be discussed in detail with Council.

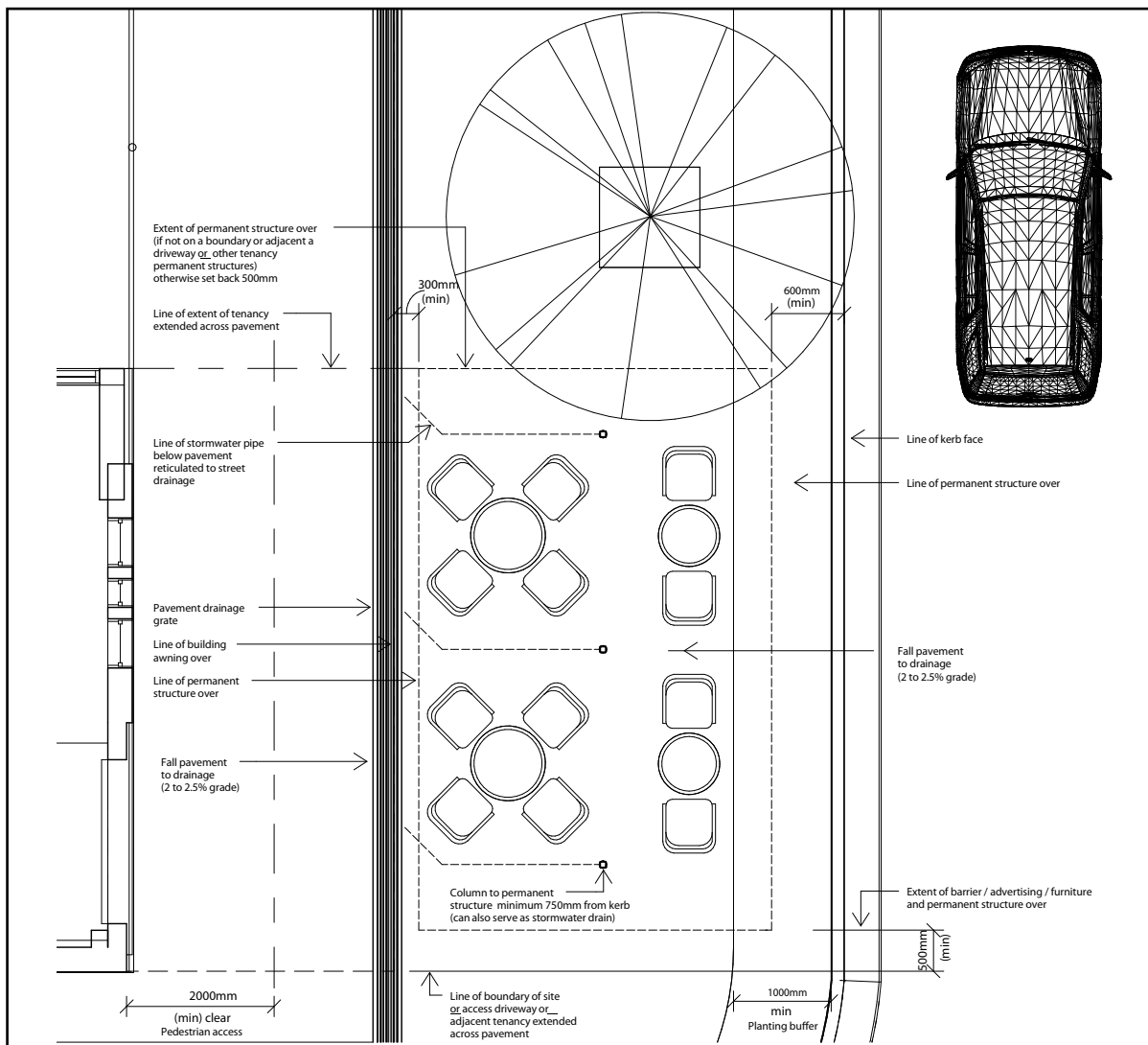


Figure 4.1 - Site plan for a structure

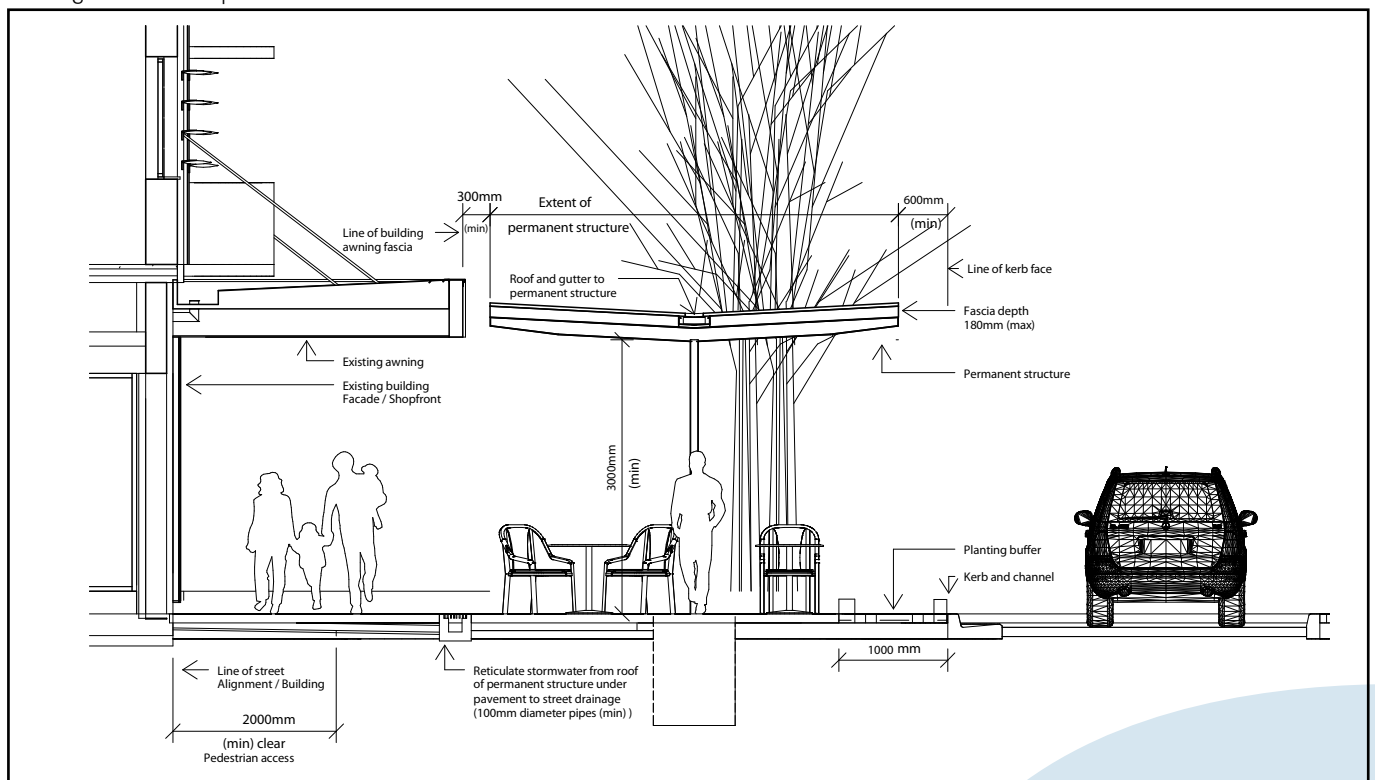


Figure 4.2 - Elevation plan for a structure

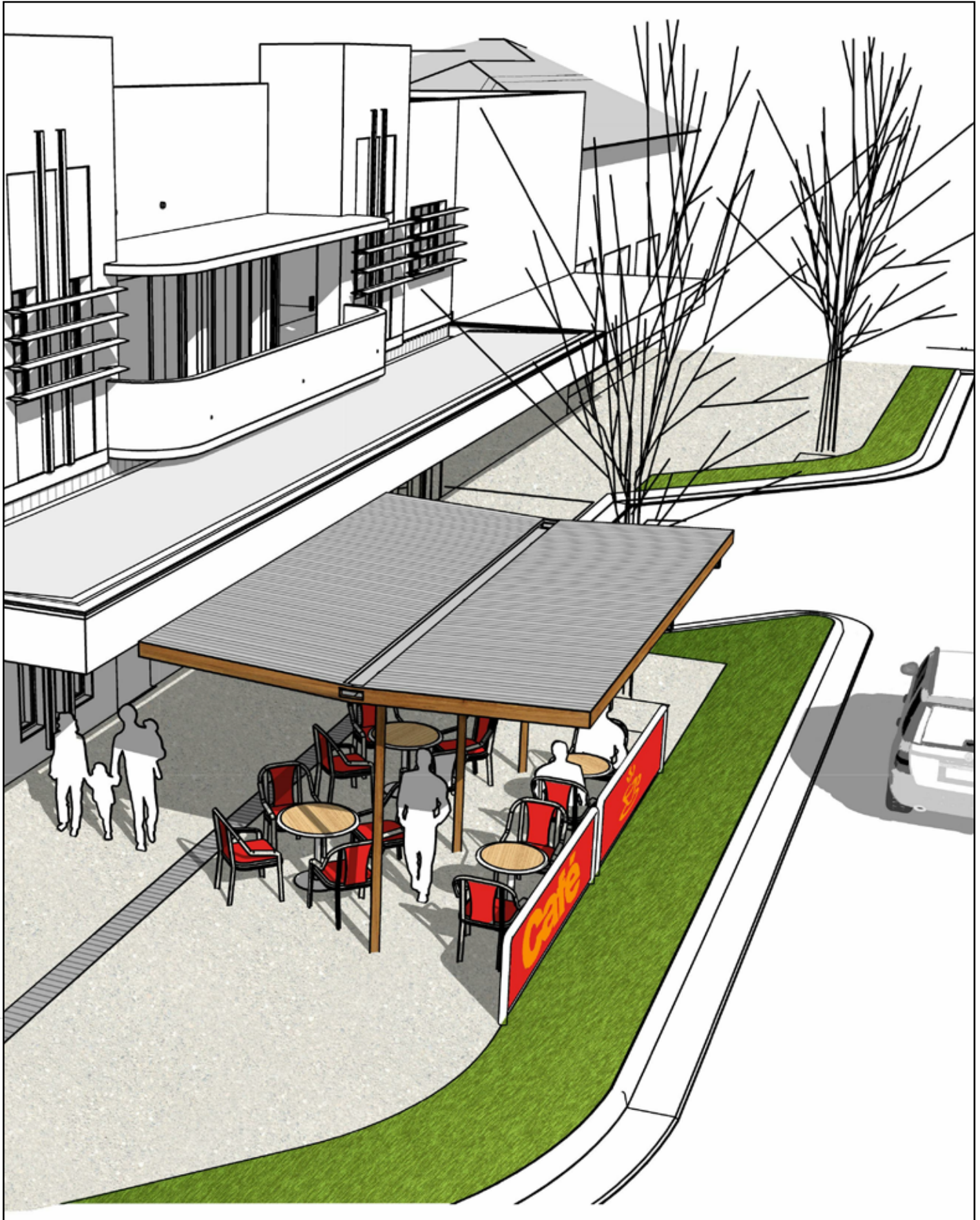


Figure 4.3 - Perspective plan for a structure

- Lighting shall be:
 - + provided below street awnings to supplement existing street lighting and 'spill' lighting from shop fronts;
 - + compliant with requirements for P4 lighting in pedestrian areas;
 - + recessed into the awning under surface and all associated wiring and conduits concealed;
 - + readily accessible to facilitate regular maintenance.

STRUCTURAL

- Structural design shall be sufficient to avoid unacceptable risks to public safety including obstructions to pedestrians, structural failure, vehicle collisions, fire, storms or earthquake.
- Structural design shall be certified by a RPEQ compliant structural engineer as being compliant with the Building Code of Australia.
- Footings for post supported awnings shall be concealed beneath the footway, or be integrated into the design of the post so as to avoid hazards to pedestrians.

HERITAGE PLACE CONSIDERATIONS

The City Centre is home to some of region's significant and prominent heritage buildings, most notably of Art Deco character.

This section only applies to freestanding structures in the road reserve that are in front of an identified Heritage place. Council has the right to refuse a freestanding structure located in front of or adjacent to a Heritage Place, despite meeting other criteria in this guideline.

The applicant must demonstrate compliance with the following criteria:

- The structure design must complement the architectural significance and streetscape presence of a heritage building by providing decorative features that are in keeping with the heritage building, applying a sympathetic colour palette, and being proportional to the heritage building.
- The structure application must demonstrate compliance with the following:
 - + identifies the significance of, and design measures for lessening any impacts to, heritage buildings;
 - + the structure must not:
 - compromise value elements of heritage buildings;
 - impede or diminish views of heritage buildings from streets and other public places.

Note - the structure application may be accompanied by a heritage impact statement prepared by a suitably qualified heritage professional or architect to assist in demonstrating compliance with these requirements.

- The structure design must be sympathetic to, and consider, adjoining heritage value elements in relation to the following:
 - + building height;
 - + building bulk, scale and shape;

- + setbacks and siting;
- + horizontal and vertical articulation;
- + roof lines, eaves and existing attached awnings;
- + building openings;
- + orientation; and
- + materials and footings.

Failure to comply will void this process and require the applicant to submit a development application that is assessed under the planning scheme (material change of use) in relation to heritage matters.

4.2.2 Tables and chairs

Permanently fixed tables and chairs for footpath dining are not permitted in the Trading Zone or any other part of the footpath in any circumstance, as it:

- significantly reduces the ability of the street to accommodate a dynamic and diverse range of footpath activities, particularly where occurring outside of cafe/restaurant trading hours;
- significantly increases the opportunity for vandalism of fixed furniture outside of business hours;
- obstructs access to the footpath for necessary repairs to infrastructure and general maintenance.

All dining furniture must be of a temporary nature and easily removed from the Trading Zone for storage on the premises at the end of trade.

Bar style tables and chairs/stools may be used for footpath dining in the Trading Zone, but must not be placed against the building line or exclusively used for the consumption of alcohol.

Council will not permit tables and chairs in the Trading Zone to be used for public seating purposes. Approvals for table and chairs will only be given for footpath dining that is associated with a tenancy.

4.2.2.1 Design

Tables and chairs must, at all times, be confined within the approved Trading Zone and council must approve all furniture (including tables and chairs before they are located in the Trading Zone).

Tables and chairs must:

- be of an outdoor design style. Indoor-style furniture is inappropriate for use in an outdoor environment.
- be hardy, sturdy and solid enough to resist wind gusts.
- be constructed of materials that do not deteriorate quickly
- be easy to clean.
- be stackable for ease of storage and readily removed and stored within the indoor (private) part of the premises or as stipulated on the approval.
- have a minimum 3cm diameter rubber pad on their legs to protect the pavement surface.

- table height maximum of 900mm for tables placed on building line. Bar stools & tables greater than 900mm high may be considered in bump out areas and dining on road side of footpath where there is no adverse effect to road and pedestrian safety.

It is the business owner's responsibility to maintain the base of all items and to ensure items placed on the footpath do not cause damage to the existing footpath or other public infrastructure. The cost of repairing any damage caused will be borne by the approval holder.

No form of advertising is approved on tables and chairs.

4.2.2.2 Placement and storage

The number of tables and chairs that will be approved for use on the footpath will be dictated by the size of the approved Trading Zone and whether or not seating is likely to have a significant adverse impact on adjoining parking and pedestrian movement.

Mackay Regional Council determines the placement and storage of furniture, as follows:

- No more than the maximum number of tables and chairs approved can be used in the footpath area
- Tables and chairs must be set back from existing infrastructure, including street trees, lights and public furniture (see Figure A3.1 - Furniture clearances to existing or planned infrastructure, in Appendix 3 for further detail).
- No furniture is approved to be located and used on grassed areas, garden beds or nature strips.
- All furniture must be removed from the footpath and stored inside the premises at the close of trade.
- The applicant must ensure that adequate storage is provided on the premises for all approved footpath furniture. The applicant will be required to demonstrate this to the assessing officer prior to approval being issued.
- No fixed tables or chairs may be used in the Trading Zone
- The number of tables and chairs placed within the Trading Zone must allow unobstructed access and circulation for patrons and staff
- 4.0m² (2.0m x 2.0m) is the minimum space requirement for a table and chairs and the separation distance between adjoining settings is as follows (see Figure A3.2 - Furniture layout options, in Appendix 3 for further detail):
 - + A two-person table requires a minimum of 2.0m² (unless a narrow footpath)
 - + A three-person table requires a minimum of 3.0m²
 - + A four-person table requires a minimum of 4.0m²
- A distance of 0.5m² must be allowed between adjoining settings.
- Tables and chairs must be durable, non-combustible, non-reflective, UV resistant, easily maintained, and do not stain, discolour or deteriorate. Glass tables must be shatter proof if proposed for use.
- Bench-style furniture is approved for use in outdoor areas,

however it must be constructed of lightweight material to ensure it can be easily removed and stored.

- Bench-style furniture must have a gap of 0.5 metres between each table setting to allow unobstructed access and circulation of patrons and staff.
- Chairs should be oriented parallel with the footpath and not be placed backing onto the Pedestrian Zone.

4.2.3 Umbrellas

Permanently fixed umbrellas are not permitted in any circumstance. Removable umbrellas must be used and located within the Trading Zone.

It is preferred that umbrellas be used where existing shelter, such as awnings do not provide sufficient sun protection. The use of umbrellas where existing awnings are present must not present a cluttered appearance or detract from the building facade and character of the street.

The following standards apply for umbrellas:

- Colour of umbrellas must be sympathetic to heritage values of adjoining heritage buildings (where relevant) and the streetscape character.
- The width of the umbrella must not protrude into the Kerb Zone, parking lane or travel lane causing a hazard to parking or passing vehicles.
- Umbrellas:
 - + may overhang into the Pedestrian Zone provided there is a minimum height clearance of 2.2 metres;
 - + where CCTV is present, must have a minimum height clearance of 3 metres;
 - + must be durable, non-combustible, non-reflective, UV resistant, weather proof, easily maintained, and do not stain, discolour or deteriorate;
 - + must have a stable base to ensure public safety;
 - + must not obstruct traffic signals or sight lines;
 - + take up space within the Trading Zone. This must be taken into account when considering the furniture layout;
 - + will only be permitted where tables and chairs have been approved; and
 - + must be removed from the footpath on close of business.
- When it is raining, water from large umbrellas should be discharged outside the access way and Pedestrian Zone.
- Advertising on umbrellas is minimal and may display the name/logo of the business or franchise. Product advertisement is kept to a minimum, is not overbearing and does not impact on the character of the streetscape. Advertising on umbrellas must not cause a visual distraction to traffic.

4.2.4 Barriers

4.2.4.1 Permanent barriers

The use of permanent barriers to separate the Trading Zone and Kerb Zone is not permitted in any circumstance.

4.2.4.2 Permanent bollards

The use of permanent bollards to separate the Trading Zone and Kerb Zone is not permitted in any circumstance.

4.2.4.3 Removable barriers

Removable barriers may be used within and on the edge of the Trading Zone to contain the footpath trading activity, define the limit of the footpath trading activity or delineate between adjoining footpath trading activities.

Removable barriers are primarily used in conjunction with footpath dining activities.

The following standards apply for removable barriers:

- To preserve the general appearance and openness of the streetscape, the maximum height for removable barriers is 0.9m.
- Removable barriers can be placed on a maximum of three sides of the Trading Zone.
- Barriers may not be placed on the boundary between the Trading Zone and the Pedestrian Zone to allow maximum access from the Pedestrian Zone to the dining activity within the Trading Zone.
- Barriers should not privatise, fully enclose or adversely impact access to the Trading Zone.
- All types of removable barriers must be lightweight to ensure they can be removed from the footpath in accordance with the footpath dining approval.
- No other structures (including plastic blinds, awnings and menu displays) can be attached to the removable barriers, at any time.
- Advertising on removable barriers is minimal and must only display the name/logo of the business or franchise. Any product advertisement is not permitted. Advertising on removable barriers must not cause a visual distraction to traffic.
- All removable barriers must be secure to ensure that they are not moved or knocked over.
- Removal barriers must be adequately stored on the premises

after close of business.

- For Trading Zones not within a footpath build-out, removable barriers will only be approved between the Kerb Zone and the edge of the Trading Zone parallel to the road.

Ropes, chains or other devices designed to cordon off the approved Trading Zone are not permitted unless specifically provided for in the approval.

4.2.5 Decking

Permanent decking to extend the footpath (and Trading Zone) into the parking zone is not permitted in any circumstance.

Any proposal for the extension of the footpath to increase its width, resulting in the reconfiguration or removal of on-street parking, must be discussed with Council with no guarantee of approval.

4.2.6 Retractable screens and blinds

Retractable blinds may be appropriately installed on structures where complying with the below requirements. These temporary structures will be given consideration where it is demonstrated to improve the visitor experience on streets where there is poor protection from the elements. Screens and blinds are primarily for use during periods of adverse weather conditions.

The location of these temporary structures will only be considered for structures on footpath build-outs.

Retractable screens and blinds must consider the following:

- available space, prevailing urban character, existing street infrastructure and traffic conditions;
- provided in areas with high exposure to rain and windy conditions;
- materials and colours - blinds must be durable, non-combustible, non-reflective, UV resistant, weather proof, easily maintained, and do not stain, discolour or deteriorate;
- must not adversely affect the streetscape character and heritage buildings (if relevant).

The following standards apply for retractable screens and blinds:

- No advertising is approved on a screen or blind.
- Screens and blinds must be UV resistant to avoid break down of the material and loss of transparency.
- Plastic selected for screens and blinds must be of maximum transparency.
- Retractable screens or blinds must not enclose public spaces or adversely affect the openness of the footpaths or create the effect of an 'outdoor room' (i.e. alienate or discourage use of footpath).
- Retractable screens or blinds must be completely raised to the highest point at close of business each day.
- All fixings must be marine-grade stainless steel.

- All screens and blinds must be retractable and ideally concealed within a pelmet when retracted.
- Screens and blinds must be kept clean at all times, maintained to a safe standard and repaired immediately if damaged.
- Council has the right to refuse a screen or blind attached to a significant heritage building or within a heritage overlay area, despite meeting other criteria.
- Screens and blinds must not intrude into the Pedestrian Zone or Kerb Zone.
- A 1.5 metre break must be provided in the centre of an outdoor area that is 10m or greater in length.
- Screens and blinds should not obscure sight lines.

4.2.7 Tents and gazebos

The use of collapsible tents or gazebos on a permanent basis is not permitted in any circumstance. However, tents or gazebos may be permitted for use during temporary events such as street festivals, markets, outdoor radio broadcasts, or short term charity fundraising events.

4.2.8 Bicycle parking rails

The use of bicycle parking rails will be considered on a case by case basis. Bicycle parking rails complement cafe activities on the footpath.

Bicycle parking rails must not be located within the Pedestrian Zone and Kerb Zone and clear of any seating used for footpath dining in the Trading Zone.

4.2.9 Signage and advertising

All signage including, but not limited to, A-frames, flags and bunting must not be located in the Pedestrian Zone.

Proposed advertising on removable umbrellas and barriers must be included in the proposal application for consideration.

All other advertising devices (e.g. wall sign, fascia sign, above/ below awning sign, roof sign, etc) are assessed under Council's Local Law 01.04 for advertising devices and not this policy.

4.2.9.1 A-frames

The following standards apply for A-frame signs:

- Only 1 A-frame sign per tenancy is permitted.
- A-frame signs must be wholly located within the Trading Zone and must not obstruct access ways.
- A-frame signs must not be located in the Pedestrian Zone, Kerb Zone or median strip.

Stand-alone A-frame signs on the footpath is not a footpath trading activity. As such, a stand-alone A-frame sign is assessed under Council's Local Law 01.04 for advertising devices and not this policy.

4.2.10 Heaters

The use of heaters will be considered on a case by case basis. Approved heaters must be located within the Trading Zone only.

The following standards apply for heaters:

- Patio style gas heaters must have a mounted base on the footpath and are not permitted to be mounted on any other surface.
- Fixed gas or electric heaters proposed to be suspended from the underside of an awning or from a building overhanging Council land must be fixed and installed in accordance with appropriate engineering standards by a licensed tradesperson and must have minimum clearance of 2.5m above the Trading Zone. Heaters will remain the responsibility of the owner / occupier of that business to provide all maintenance and upkeep at the business expense.
- Heaters must be licensed as part of the approval.
- Heaters must be covered by the approval holder's public liability insurance.
- Gas heaters must comply with the Petroleum & Gas Production & Safety Regulation 2004 (Refer to the Queensland Government, Department of Natural Resources, Mines and Energy) and Australia Standard AS4565.
- Heaters must not be positioned where they may present a fire hazard (e.g. close proximity to awnings and umbrellas).
- Gas heaters must not be in use unless sufficient ventilation is provided when retractable blinds are lowered and clear access and egress is provided.

4.2.11 Planter boxes and pots

Planter boxes and pots can be used to improve the look and feel of an outdoor area. A footpath approval must be obtained for the use of planter boxes or pots.

The following standards apply for planter boxes and pots:

- Planter boxes or pots can be used instead of removable barriers on the edge or within the Trading Zone.
- Planter boxes and pots must:
 - + be located within the Trading Zone and not in the Pedestrian Zone and Kerb Zone;
 - + not be affixed to any footpath, building, street furniture, pole or other structure;
 - + be no higher than 0.9 metres and no longer than 1.8 metres;
 - + be lightweight to ensure removal from the footpath in accordance with the footpath trading approval; and
 - + be designed to ensure mosquito breeding does not occur.
- To provide access to the street, there must be a 1.0m space between kerbside planter boxes and neighbouring zones.
- Irrigation of boxes must not stain pavements or cause spills creating puddles and slip hazards to footpaths.
- Advertising is not permitted on planter boxes or pots in any circumstance.
- Maximum height of planter box plus vegetation must not to exceed 1.2 metres.

- The placement of planter boxes and pots do not conflict with CCTV sightline requirements.
- Planter boxes are designed to enhance the streetscape and are constructed from durable materials.
- Plants are kept in a good, healthy condition and look neat and tidy all year round. Planter boxes are to be kept free of weeds and grass.

Council reserves the right to enforce removal permanent planter boxes from the footpath at a cost to the landowner.

Stand-alone planter boxes and pots on the footpath and not associated with a footpath trading activity are not footpath trading activities. Stand-alone planters and pots are not permitted to be located on the footpath at any time.

4.2.12 Menu displays

A limit of 1 freestanding menu display is permitted per tenancy. Additional signage sign displaying menus may be fixed to building frontages but must not be attached to removable barriers, umbrellas, awning columns or any other structure.

The following standards apply for menu displays:

- Freestanding menu display stands are only to be located in the Trading Zone and not in the Pedestrian Zone or Kerb Zone.
- The location of the menu display in the Trading Zone must not obstruct access ways.

4.2.13 Clothes racks and display tables

The following standards apply for clothes racks and display tables:

- Clothes racks must be no more than 1500mm height and 0.75 metres in width.
- Clothes racks and display tables must be located within the approved Trading Zone and stored on the premises at the close of trade.
- Clothes racks and display tables must not obstruct or be located in the Pedestrian Zone or Kerb Zone.
- The position of clothes racks and display tables must allow for a person to look at goods from within the Trading Zone and not from the Pedestrian Zone.

4.2.14 Sound amplification devices

No sound amplification equipment or jukeboxes may be utilised in the Trading Zone, Pedestrian zone or access ways. No live entertainment or amplified music systems are permitted without the written permission of Council. For outdoor radio broadcasts requirements relating to sound amplification, see section 3.3.6.3.

4.2.15 Cash register

Cash registers and payment counters must be located on the premises and are not permitted in the Pedestrian Zone, Trading Zone or Kerb Zone in any circumstance.

4.2.16 Portable dry bar

A portable dry bar for the purpose of serving alcoholic and non-alcoholic beverages from the Trading Zone is not permitted in any circumstance.

All alcoholic and non-alcoholic beverages must be prepared on, and served from the premises to the Trading Zone with food service.

A permanently fixed drinks service bar will not be permitted within the Trading Zone or any part of the footpath.

4.2.17 Waiter station

A maximum of one (1) waiter station per business will be permitted and must form part of the approval.

The following standards apply for waiter stations:

- The waiter station must be no more than 1500mm height x 1000mm width x 600mm depth and must be allocated an area of 1.5m².
- Menu boards and discrete product advising may be securely attached to the approved waiter station.
- The waiter station must be located within the approved Trading Zone and stored on the premises at the close of trade.
- The waiter station must not obstruct access ways or be located in the Pedestrian Zone or Kerb Zone.

4.3 Management and maintenance

4.3.1 Structure management and responsibility

The landowner will be required to hold a separate approval from Council where a structure is proposed to occupy an area within the road reserve. The landowner will be required to enter into a Deed of Agreement with Council to formalise that approval.

The Deed of Agreement puts sole responsibility on the landowner for the structure's management, maintenance, public liability and removal.

The Deed of Agreement must be signed prior to the approval of the Footpath Structure application (refer Appendix 2 for the application and approval process).

4.3.2 Structure maintenance

Provision is to be made for regular maintenance to ensure the continuing structural integrity and attractive appearance of the awning.

A maintenance plan is to be developed to include annual inspection of structural components, repainting after five (5) years minimum, regular guttering / down pipe maintenance, regular cleaning and replacement of defective lighting on other deteriorated components. No fixture or fitting will be permitted to be suspended from the underside of an awning or a building, unless all required permits required under the Building Act 1975 have been obtained.

4.3.3 Access to underground services

Services such as sewer, water, telecommunications and electricity conduits must not be obstructed by any permanent structures.

Removable tables and chairs may be placed on top of underground service pits providing these are structurally sound. In an emergency, immediate access is required.

Council and other service authorities reserve the right to:

- access all underground services within the footpath Trading Zone at all times, without notice to the footpath trading approval holder; and
- amend the footpath trading approval to better manage any conflicts with access to underground services.

4.3.4 Monitoring compliance with the approved structure

Council's officers will monitor the maintenance of approved structures and ensure the conditions of the approval are met.

Following a complaint or observation of a breach of the Footpath Structure approval, a Council officer will contact the approval holder and take appropriate enforcement action. This may be in the form of verbal instructions, a written notice or an infringement notice. Any breach of the approval will also conflict with the signed Deed of Agreement.

In the case of a serious breach, an officer may act immediately

to resolve the situation. A serious breach is one where the officer considers there is an immediate public safety risk.

This may include instances where access is impeded to an extent that it would be difficult or impossible to walk freely through the Pedestrian Zone.

Each breach will result in a compliance notice or an infringement notice depending on the seriousness of the offence.

Failure to comply with a notice may result in termination of the approval in accordance with the Deed of Agreement and removal of the structure at the sole cost to the approval holder.

Applicants are advised to read and familiarise themselves with this policy prior to making an application to Council.

The Footpath Structure Application is primarily for the assessment of permanent awning structures proposed in the road reserve (refer Appendix 2 for the application and approval process).



4.4 Applications and approvals process

4.4.1 Prior to lodging a Footpath Structure Application

Prior to lodging an application for a Footpath Structure (and a Footpath Trading), the applicant should organise a pre-lodgement meeting with Council to discuss the proposal.

The purpose of the pre-lodgement meeting is to explore any issues or concerns to:

- determine if the proposal should or should not advance to application lodgement;
- address any issues or concerns, which should be included and addressed in the application.

A pre-lodgement meeting can be organised by contacting Council on 1300 622 529 or council@mackay.qld.gov.au.

4.4.2 Footpath Structure Application process

An application for a freestanding footpath structure in the road reserve must be made and assessed under this Policy, except where attached to, or located on, a Heritage place (building or site), which is to be assessed against the Mackay Region Planning Scheme or Mackay Waterfront PDA development scheme.

Proposals for awnings that are attached to, or located on, a State heritage place (building or site) cannot be assessed under this Policy and will require separate assessment under the planning scheme (Material Change of Use for assessment against the Heritage overlay) and referral to the Department of Environment and Heritage Protection.

Applicants proposing to establish a footpath structure in the road reserve in all other circumstances, must complete, sign and lodge a Footpath Structure application (an application form can be obtained from one of Council's customer service centres or online at www.mackay.qld.gov.au) that accompanies a Footpath Trading application where no footpath trading approval exists (see Section 3 on how to make a Footpath Trading application).

Once the application is lodged, it will be assessed against the criteria of this policy. The application may be referred to other departments within Council in relation to planning, parks and infrastructure matters.

The application processing time will be a minimum of 30 business days. If further information is required to properly assess the application, then the processing time is likely to be extended. The applicant will be notified in writing of the decision within 5 business days of a decision being made on the application.

The full application process for footpath trading and structures is provided in Appendix 2.

4.4.2.1 Required information

Applications containing all of the required information will allow for an accurate and complete assessment. To avoid unnecessary delay in assessing a Footpath Structure application, the application must include the following information:

- Site plan showing the location of the proposed structure on the footpath and in relation to the building, adjoining properties and existing infrastructure elements;
- Elevations (front and side), footings and sections. Perspective drawings will further assist with the visual and aesthetic assessment of the proposed structure;
- Statement of compliance with the design criteria prescribed in Section 4.2.1.2;
- Photographs of the site clearly showing the proposed Trading Zone relative to buildings and existing features in the footpath area;
- If located in front of a Local heritage place (attached or detached structure) or State heritage place (detached structure):
 - + a heritage impact statement by a suitably qualified independent heritage professional; and
 - + a statement of compliance with the heritage considerations criteria certified by a suitably qualified independent heritage professional.
- where the proposed footpath structure is to be over an approved footpath trading activity, a copy of the current Footpath Trading approval;
- a Certificate of Currency in relation to a public liability policy of insurance, insuring against liability for the death or injury to any person or damage to any property arising out of the structure that will be authorised by the licence. The insurance policy may be Broad form or must list:
 - + Mackay Regional Council as an interested party;
 - + A minimum of 20 million dollars in public liability;
 - + The insured (including situation of risk);
 - + The Company insuring you;
 - + Expiry date; and
 - + Policy Number.

All plans, elevations and sections must:

- illustrate compliance with the design criteria prescribed in Section 4.2.1.2; and
- be drawn to scale and include dimensions of all elements, and setbacks/clearances from the kerb, boundaries and all other existing elements.

Failure to provide the required information will delay the processing and assessment of the application and may result in a refusal of the application.

The assessing officer will be available to provide advice and assistance in relation to matters relating to the application assessment.

4.4.2.2 Application fee

There is an application fee payable to Mackay Regional Council (non-refundable), being the fee for a Footpath Structure application. The nominated application fee can be obtained from Council's website www.mackay.qld.gov.au (search for Commercial Fees and Charges). The assessment of the application will not commence until the application fee is paid in full.

4.4.2.3 Lodging a Footpath Structure Application

A Footpath Structure Application must be lodged and paid with Development Services either:

- in person at any of Council's Customer Service Centres;
- by email council@mackay.qld.gov.au; or
- post to:
Mackay Regional Council
PO Box 41
Mackay QLD 4740

4.4.3 Temporary structures, furnishings and fixtures proposals

Proposals for all other temporary structures, furnishings and fixtures must be included in detail with the design and/or layout of the Footpath Trading application (see Section 3 - Footpath Trading).

4.4.4 Building works approval

If the Footpath Structure application is approved, the applicant will be required to obtain a Building Works approval for the proposed footpath structure.

This will require the applicant to lodge a Building Works application with a suitably qualified Building Certifier.

The applicant must provide evidence to Council of obtaining the Building Works approval prior to construction of the structure.

4.4.5 Building over or near relevant infrastructure

Where a proposed footpath structure is over or near to infrastructure, the proposal must be assessed under MP1.4 - Building over or near relevant infrastructure of the Queensland Development Code (QDC). This assessment will form part of the Building Works application.

The purpose of MP1.4 of the QDC is to ensure building work for a building or structure that is over or near relevant infrastructure, is carried out so the work does not:

- adversely affect the operation of the infrastructure; or
- place a load on the infrastructure that could adversely affect its structure.

Where the proposed structure does not comply with the criteria of MP1.4 of the QDC, the matter is referred to the relevant infrastructure owner to determine requirements in regard to the protection of the infrastructure. These bodies may include, but not limited to Council, Ergon Energy, Telstra, Optus, NBN, Nextgen, Reef Network for example dependent on the infrastructure within the zone being considered.

4.4.6 Building over or adjacent to stormwater infrastructure

Where a proposed footpath structure is over or adjacent to stormwater infrastructure, the proposal must be assessed under Internal Operating Guideline for Building Over and Adjacent to Constructed Drainage Systems and Easements.

The purpose of the guideline is to

- Ensure protection is provided against structural damage to existing underground infrastructure services from construction works or imposed loads;
- Ensure access is available for future maintenance of the services;
- Prevent consequential damage to the owner's structures;
- Maintain the amenity (functional use) of the property and allow the occupant use of the property without unnecessary constraints;
- Ensure that Council's costs and liabilities are minimized when constructing, replacing, maintaining or obtaining emergency access to constructed public drainage systems located within private property.

4.4.7 Application assessment process

On receiving an application, the Council's delegated authorised officer will:

- Check that all relevant information has been received.
- Check that the proposed structure is associated with an existing or proposed footpath trading activity.
- Check the application to ensure it meets the intent and

requirements of the relevant overarching statutory instruments and the requirements of this policy guideline.

- Advise the applicant of any changes that need to be made to the submitted plans and request further information to properly assess the proposal.
- Refer the application to other departments within Council for advice and comment as necessary.
- Refer to other relevant agencies as deemed necessary
- Inspect the site and check the accuracy of submitted application plans.
- Assess the application against other outstanding matters that may relate to the proposal.
- Assess the application including referral to Council if appropriate.
- Approve or refuse the application.

4.4.8 Decision-making on applications

If the application is approved, a letter outlining conditions of approval will be issued along with additional documents and approvals needed to be completed prior to construction such as Building Works approval and Building Over and Adjacent to Sewers approval (if relevant).

If the application is refused, the applicant will be notified in writing with an explanation for the refusal. Further clarification can be sought from Council.

In some cases a variation to this policy may be granted if the policy objectives can be met and there are extenuating circumstances. Each case will be decided on its merits.

Extenuating or special circumstances could include, but are not limited to:

- Support of the achievement of the footpath priorities
- Demonstrated hardship in conforming to new standards
- Mitigating factors such as street barriers or kerb extensions

In considering applications that vary from this policy, Council will assess the application and make a recommendation in accordance with the overarching requirements of the relevant statutory instrument(s).

This includes matters such as:

- The effect on pedestrian traffic flows and safety
- The impact on the appearance of the street and its surroundings
- The impact on amenity
- The duration of use
- The effect on vehicular traffic flows and safety
- Compatibility with other uses in the street
- Whether it is complementary to the primary adjoining use
- Whether it is less intensive than the primary adjoining use
- The applicant's previous record of compliance
- Any relevant policies of the Council
- Any other matter relevant to the application.



SECTION 5

FOOTPATH TRADING AND STRUCTURES ON A STATE CONTROLLED ROAD

5.1 Applications, assessment and approvals

The Department of Transport and Main Roads (DTMR) plans, provides and manages Queensland's state controlled road network. This includes managing the non-road transport activities, works and structures that occur within state controlled road corridors.

However, DTMR can delegate the management of non-road transport activities, works and structures that occur within state controlled roads to local government. This arrangement is in place for the Mackay Regional Council local government area and allows for a much more convenient, efficient and streamlined approach to the applications, assessment and approvals process, and management of footpaths across the region.

Applicants wishing to undertake a footpath activity, conduct works or erect a structure within a state controlled road corridor are not required to apply directly to DTMR for a Road Corridor Permit (RCP) as required under section 50 of the Transport Infrastructure Act 1994.

An applicant must lodge all Footpath Trading or Footpath Structure Applications under this policy to council for all roads including state controlled roads and follow the applications and approvals process as outlines in sections 3.4 and 4.4.

In addition, consideration will be given to key impacts on road safety, road network efficiency and community access to the road network.

All applications received that are located on a state controlled road will be referred to DTMR for their records.

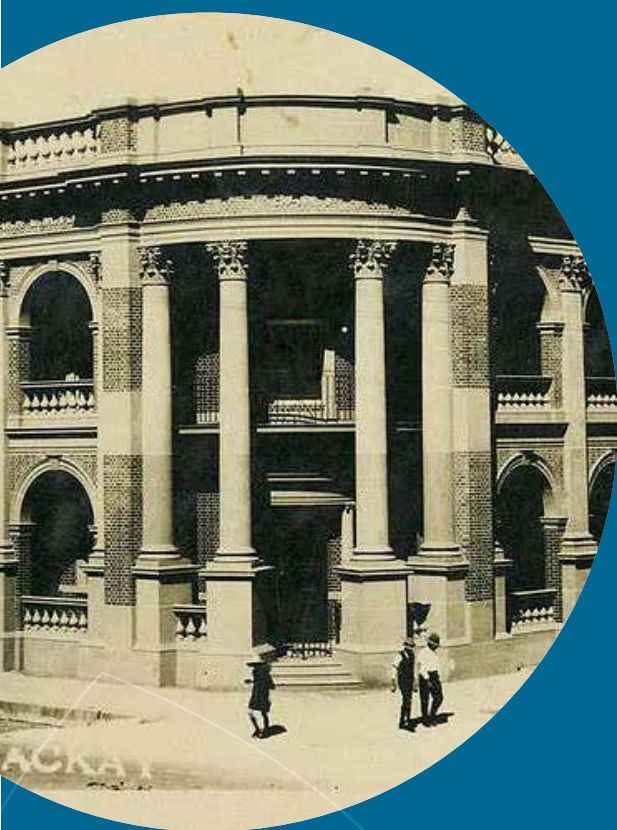




APPENDICES

APPENDIX ONE

Map indicating Local and State heritage places in the Mackay City Centre



1A. Heritage places map: Mackay City Centre

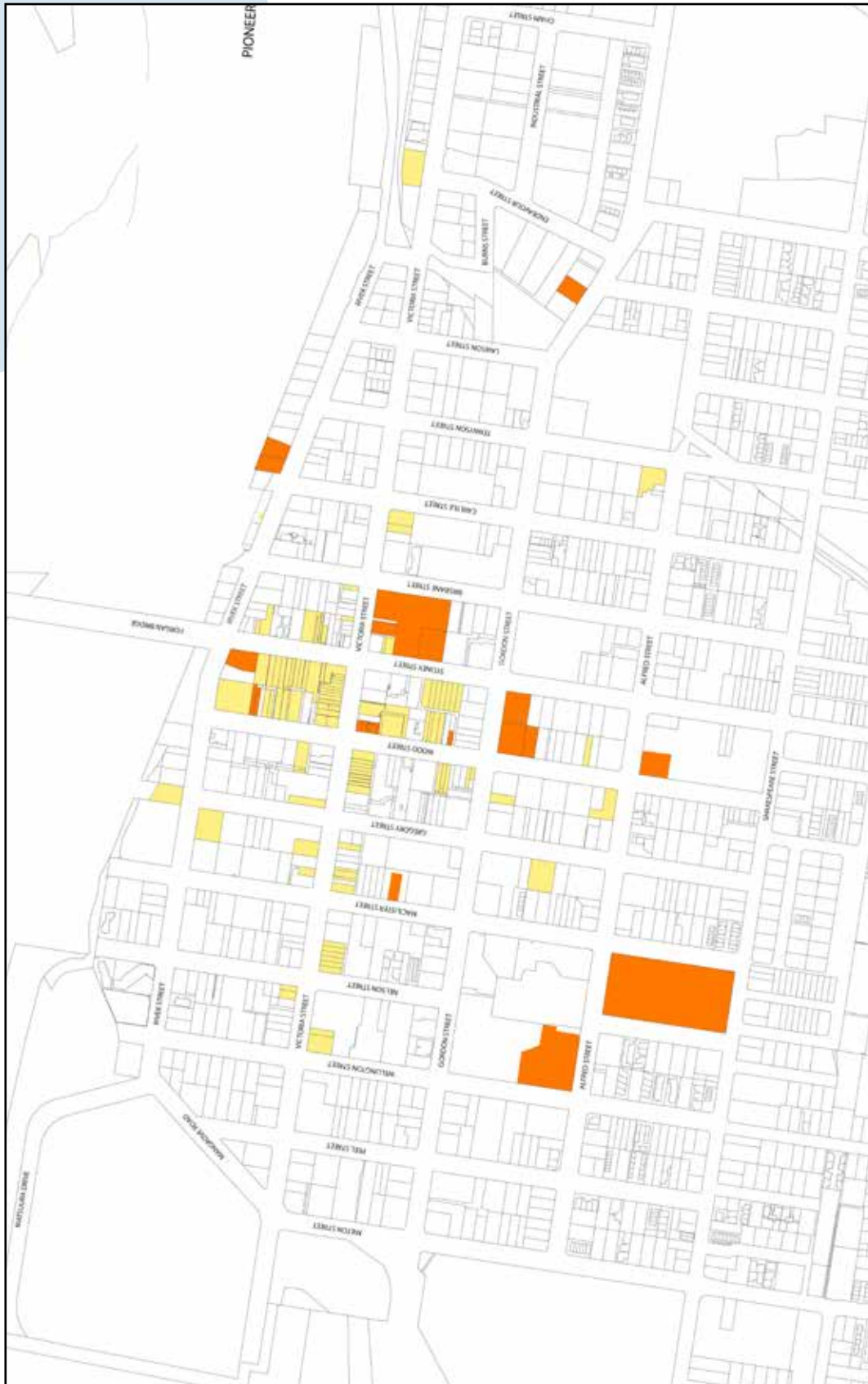


Figure A1.1 - Local and State heritage places within the Mackay City Centre. Refer to the planning scheme and State Heritage listing for the most up-to-date register. For the most up-to-date mapping visit www.mackay.qld.gov.au (search for MIMAPS).

1B. List of heritage places within centres

Heritage places in the Mackay Region

Table A1.1 comprises both Local and State heritage places within centres that are likely to accommodate footpath trading on frontages.

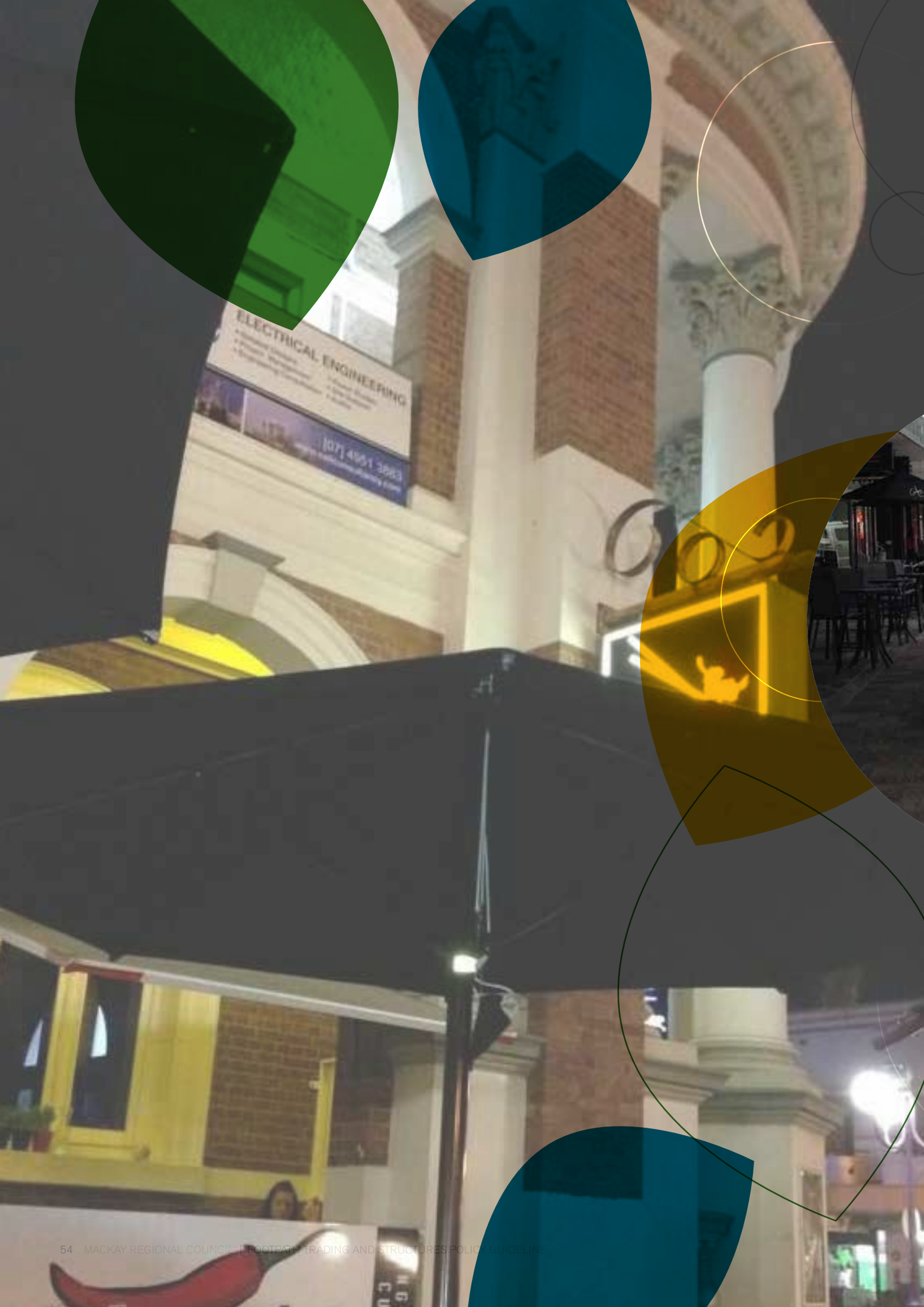
Refer to the planning scheme or State Heritage register for the most up-to-date heritage register and mapping.

NAME OF PLACE	ADDRESS
STATE HERITAGE PLACES	
Mackay Customs House	31 River Street, Mackay
Cenotaph and Jubilee Park	73 Gordon Street (Alfred Street side), Mackay
Police Station (Brisbane Street) and former Court House (Victoria Street)	57 Sydney Street, Mackay
National Bank	79 Victoria Street, Mackay
Former residence of the National Bank	29 Wood Street, Mackay
Saint Pauls Uniting Church	21 Macalister Street, Mackay
The Australian Bank of Commerce (Commonwealth Bank)	63 Victoria Street, Mackay
Town Hall	63 Sydney Street, Mackay
Former Mackay Technical College	133 Alfred Street, Mackay
Holy Trinity Church and Hall	67 Gordon Street, Mackay
Mackay Central State School	251 Alfred Street, Mackay
Pioneer Shire Building	1 Wood Street, Mackay
Masonic Temple	57 Wood Street, Mackay
Paxton Markets	10 River Street, Mackay
Sewerage pump station	38 East Gordon Street, Mackay
Former Walkerston butcher shop	13-17 Dutton Street, Walkerston
Mirani railway station	4-36 Alexandra Street, Mirani
Lt Thomas Armstrong Memorial	28 Victoria Street, Mirani
Sarina War Memorial	Broad Street, Sarina
LOCAL HERITAGE PLACES	
Port Curtis Dairy Co-op	14 Victoria Street, Mackay
Buffalo Hall	41 Victoria Street, Mackay
Blacks Building	75 Victoria Street, Mackay
Palace Hotel	82 Victoria Street, Mackay
Australian Hotel	83 Victoria Street, Mackay
Commercial premises	39, 60, 73, 74, 83, 84, 88, 89, 90, 91, 93, 94, 95, 96, 97, 99, 100-102, 104, 110, 121, 133, 139, 149 and 206 Victoria Street, Mackay
Hamiltons Building	114 Victoria Street, Mackay
T&G Building	114 Victoria Street, Mackay
Wilkinson's Hotel	140 Victoria Street, Mackay
Taylors Building	164 Victoria Street, Mackay
Keogh's Building	172 Victoria Street, Mackay
Hotel Mackay	177 and 204 Victoria Street, Mackay

Table 1.1 Local and State heritage places within centres

NAME OF PLACE	ADDRESS
LOCAL HERITAGE PLACES	
CWA Hall	43 Gordon Street, Mackay
Saint Patricks Convent	2 Gregory Street, Mackay
Commercial Premises	34 Gregory Street, Mackay
Saint Patricks Catholic Church	12 River Street, Mackay
Former Post Office	35 River Street, Mackay
Ambassador Hotel	2 Sydney Street, Mackay
Friendly Society Building	5 Sydney Street, Mackay
Chaseley House	7 Sydney Street, Mackay
Commercial premises	8, 10, 14, 21, 22, 24, 26, 28, 29, 34, 33, 36, 49, 53, 62, 66 and 68 Sydney Street, Mackay
Cominos Building	18 Sydney Street, Mackay
Central Land council	31 Sydney Street, Mackay
RSL	70 Sydney Street, Mackay
Maguires Hotel	11, 15 and 17 Wood Street, Mackay
Commercial premises	31, 41, 47, 49, 51, 53, 58, 80, 84, 86, 98 Wood Street, Mackay
Former Daily Mercury Building	36 Wood Street, Mackay
Taylors Hotel	126 Wood Street, Mackay
Former theatre	81 Wood Street, Mackay
Old Railway Hotel	40 Tennyson Street, Mackay
John Mackay Clock	Victoria Street
Leichhardt Tree	Blewater Quay (River Street)

Table 1.1 Local and State heritage places within centres



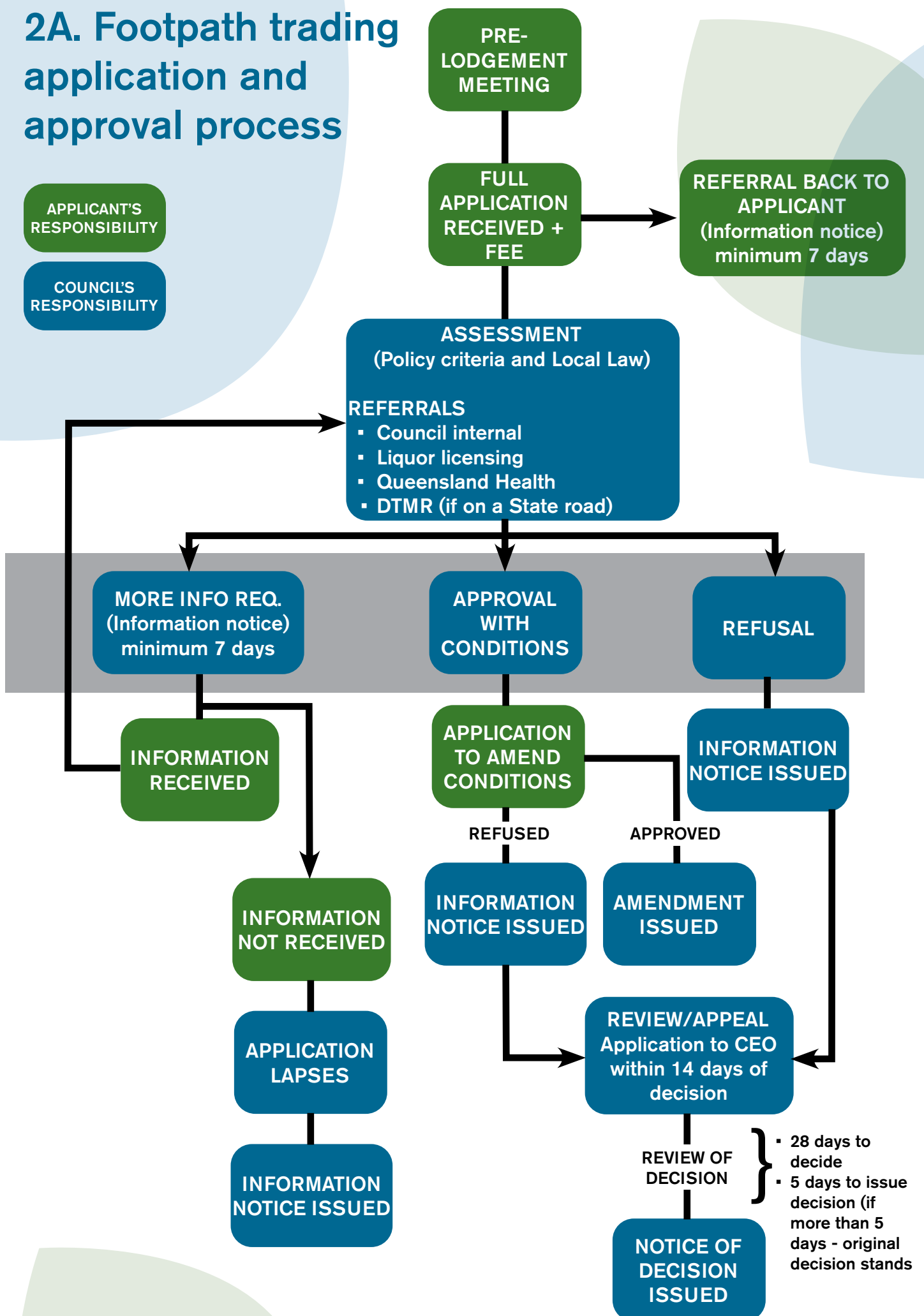
APPENDICES

APPENDIX TWO

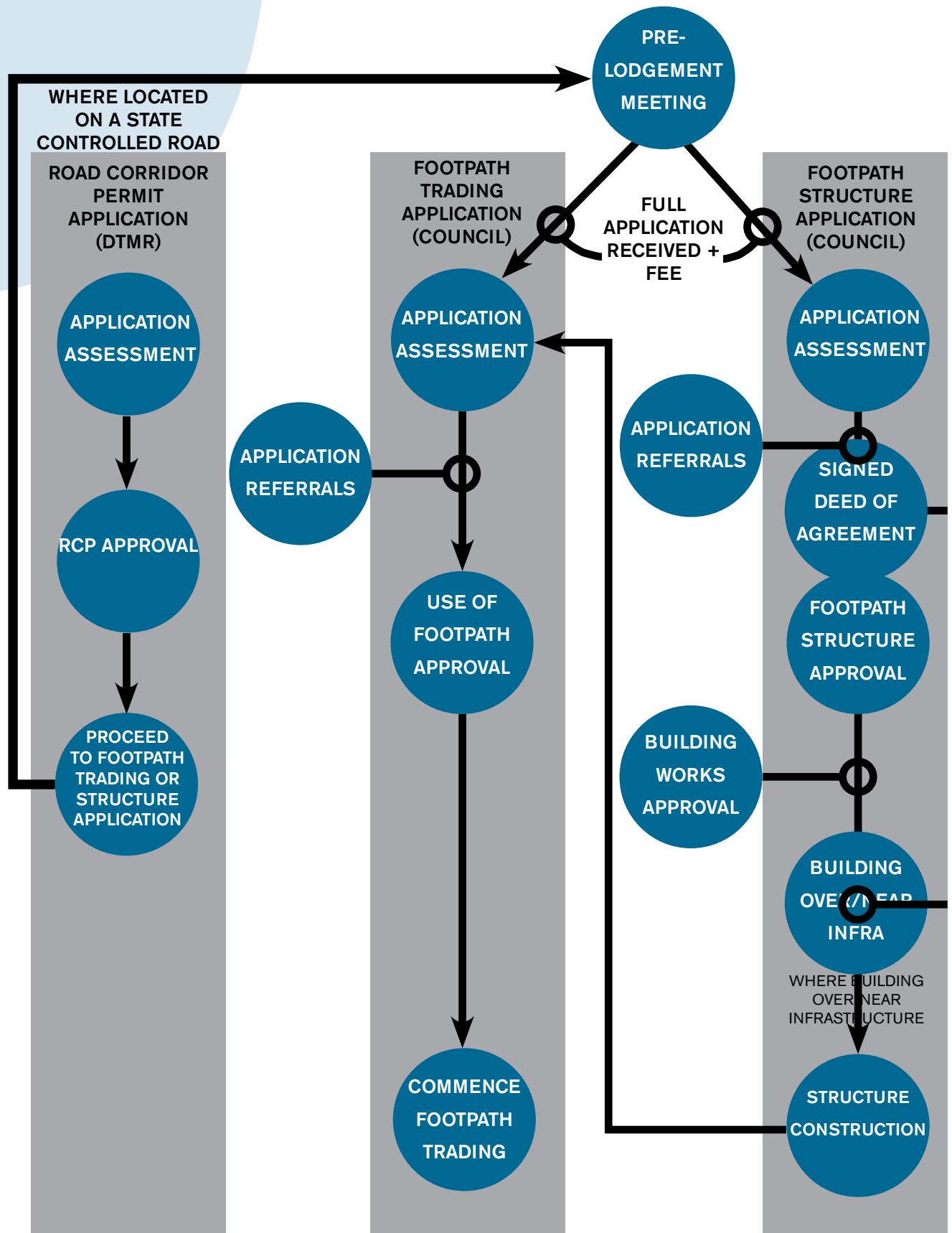
FOOTPATH TRADING AND STRUCTURES: APPLICATIONS PROCESS



2A. Footpath trading application and approval process



2B. Applications and approvals process

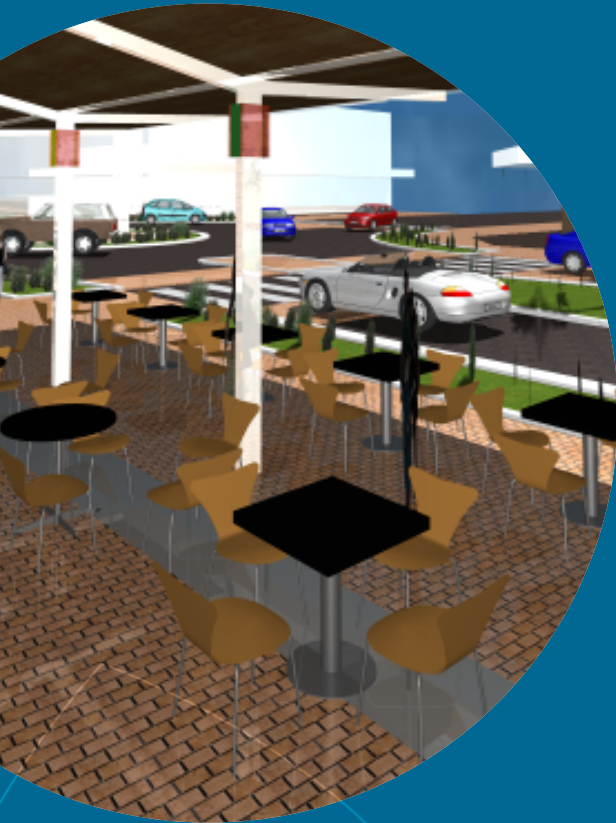




APPENDICES

APPENDIX THREE

FURNITURE LAYOUT AND CLEARANCES



3A. Furniture clearances to existing or planned infrastructure

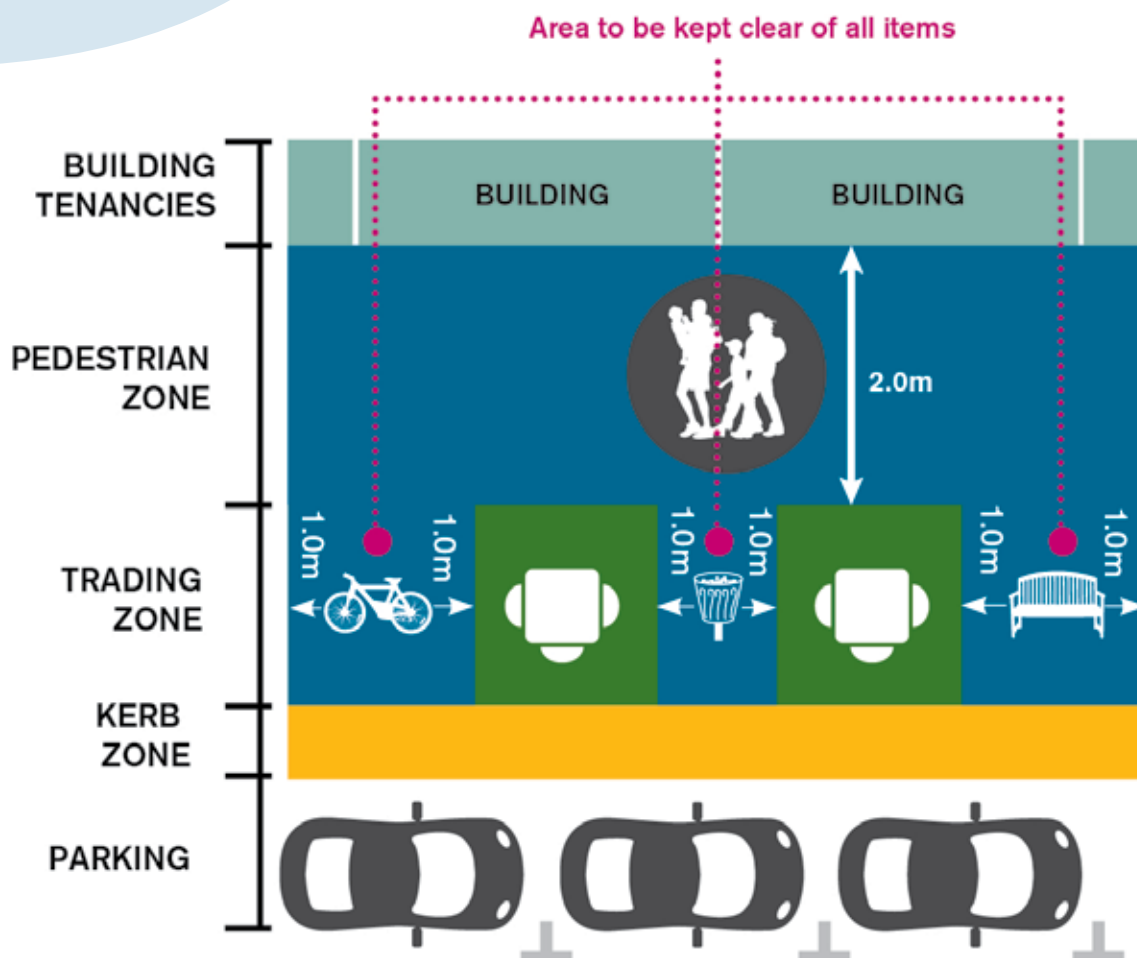


Figure A3.1 - Furniture clearances to existing or planned infrastructure

3B. Furniture layout options

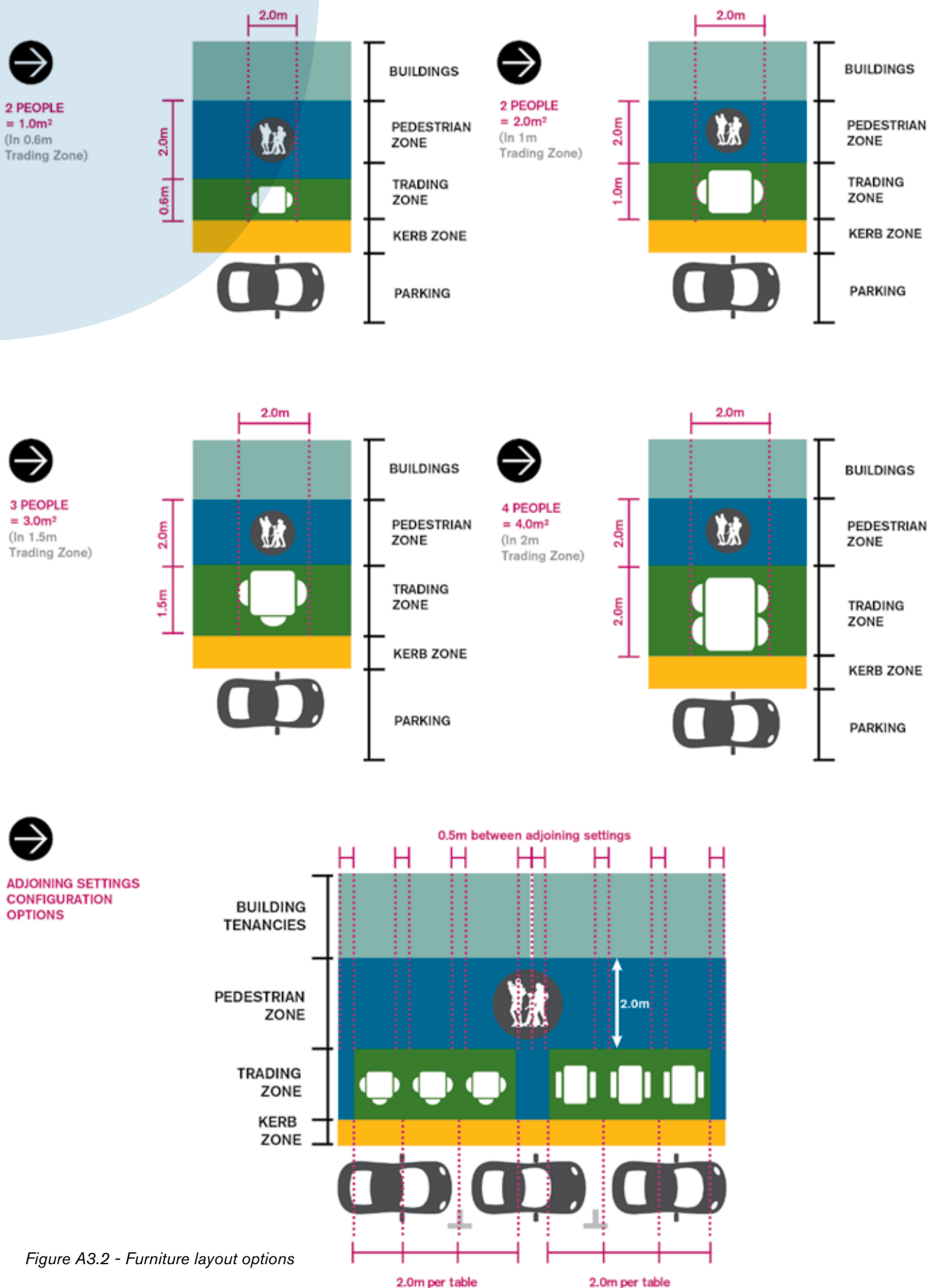


Figure A3.2 - Furniture layout options

3C. Possible exceptions to footpath zone configuration

In certain exceptional circumstances, the Pedestrian Zone and Trading Zone may have an alternative configuration to fit a specific footpath setting. Alternative zone configurations can only occur if all footpath dining activities within the street are consistent.

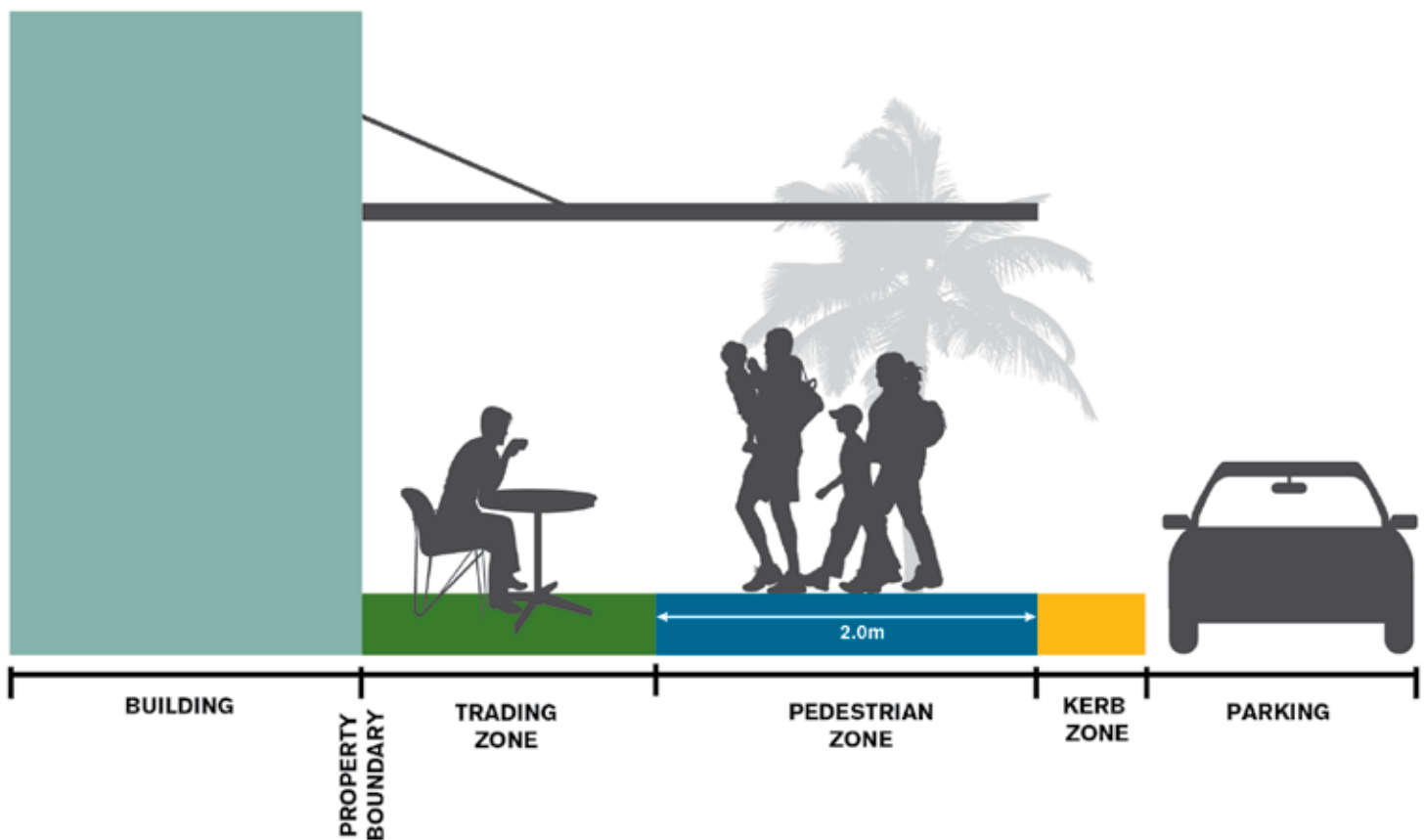


Figure A3.3 - Transect of an alternative footpath zones arrangement within the streetscape

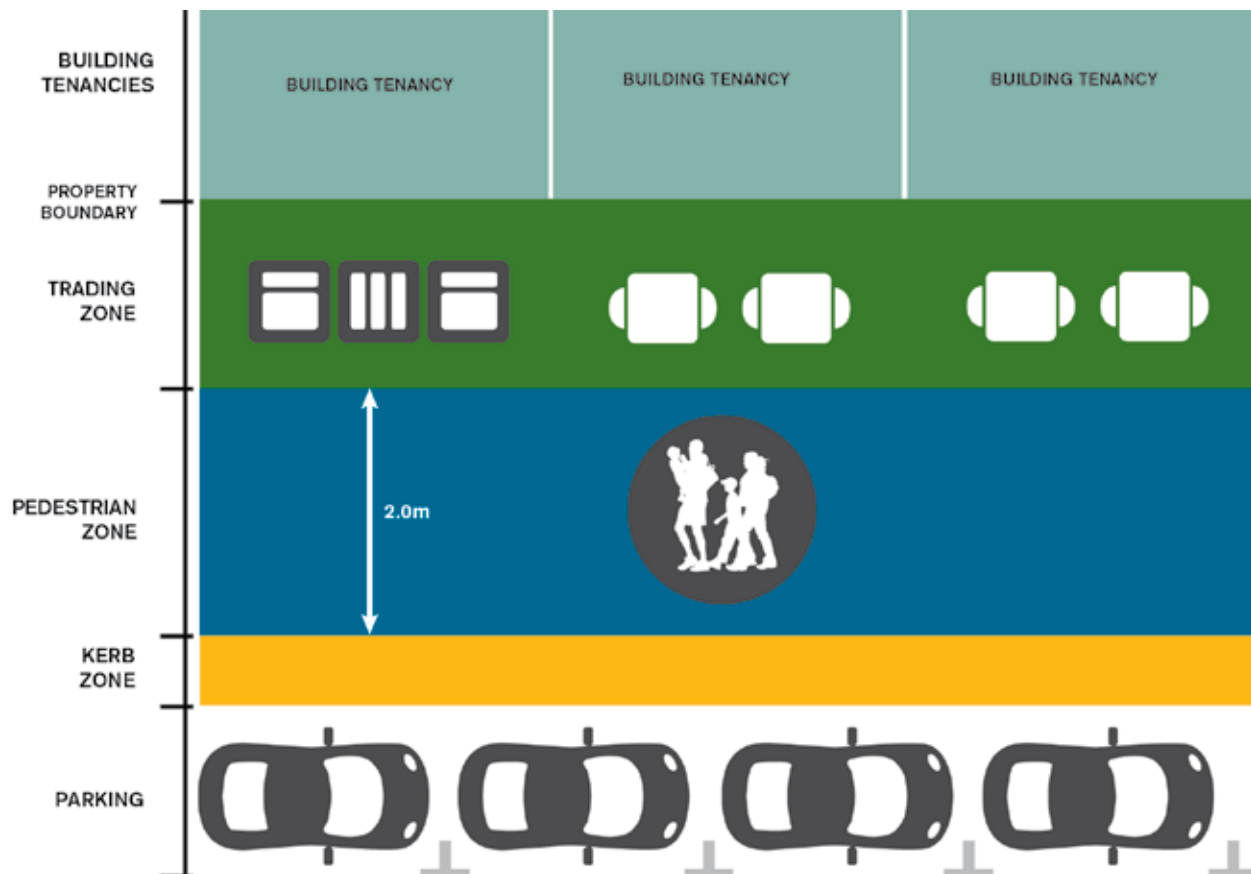


Figure A3.4 - Alternative footpath zones arrangement - Trading Zone against the building and the Pedestrian Zone against the Kerb Zone

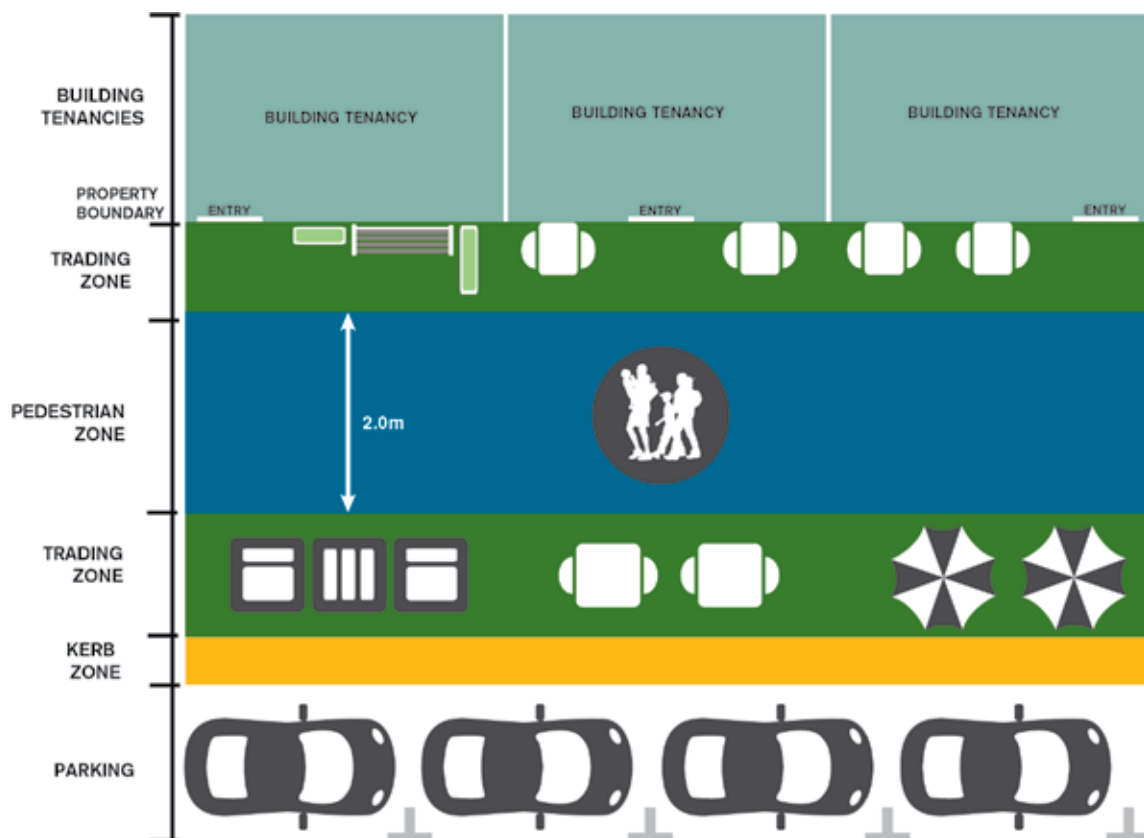


Figure A3.5 - Alternative footpath zones arrangement - split Trading Zones with the Pedestrian Zone in the centre of the footpath area

APPENDICES

APPENDIX FOUR

Access, sanitary and other facility requirements and ratios



4A. Access, sanitary and other facility requirements and ratios

The information contained in Appendix 4 was accurate at the time of printing and taken from the National Construction Code 2015 – Building Code of Australia Volume 1 - which is called upon by the Building Act 1975 and is subject to update. Please refer to the National Construction Code (NCC) <http://services.abcb.gov.au/NCCOnline> for current requirements.

Table A4.1 indicates the numbers of sanitary and other facilities to be provided in a restaurant, café, bar per occupants. These may be different if your business is different to those mentioned. Unless the premises are used predominantly by one sex, sanitary facilities must be provided on the basis of equal numbers of males and females.

Table A4.2 includes form access and egress requirements for persons with a disability.

CLASS 6 BUILDING - RESTAURANTS, CAFES, BARS						
User group	Closet pans		Urinals		Washbasins	
	Design occupancy	Number	Design occupancy	Number	Design occupancy	Number
Male patrons	1 to 100	1	1 to 50	1	1 to 50	1
	101 to 300	2	51 to 100	2	51 to 200	2
	More than 300	Add 1 per 200	101 to 150	3	More than 200	Add 1 per 200
			151 to 200	4		
			201 to 250	5		
			More than 200	Add 1 per 100		
Femal patrons	1 to 25	1	Not applicable	Not applicable	1 to 50	1
	26 to 50	2			51 to 150	2
	51 to 100	3			More than 150	Add 1 per 200
	101 to 150	4				
	151 to 200	5				
	201 to 250	6				
	More than 250	Add 1 per 100				

Note: Sanitary facilities need not be provided for patrons if the building accommodates more than 20 people.

Table A4.1 - Sanitary and other facilities requirements and ratios

CLASS OF BUILDING	ACCESS REQUIREMENTS
Class 6	To and within all areas normally used by the occupants

Table A4.2 - Requirements for access for people with a disability



GET IN TOUCH

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CUSTOMER SERVICE CENTRES

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Sir Albert Abbott Administrative Building
73 Gordon Street, Mackay

SARINA

60 Broad Street, Sarina

MIRANI

20 Victoria Street, Mirani