

## **6.14 FOOTPATH TRADING & ACTIVATION**

### **1. Introduction**

This policy applies to footpaths adjacent to non-residential properties only.

A vibrant and active footpath area has a positive impact on commercial centres and on the viability of local businesses. Carefully planned and well managed footpath trading areas, including outdoor dining, street trading, and product display areas, can activate and energise the street environment.

It is also important that the limited available space within footpaths is used in a way that does not compromise pedestrian access and safety.

This Policy sets out the requirements for the conduct of footpath trading and other forms of activation on footpaths in accordance with the City's *Thoroughfares and Public Places Local Law 2009*.

### **2. Objectives**

- a) To promote the use of the City's Footpaths for place activation purposes in a way that does not adversely impact on the amenity of adjacent businesses, residents and other street users.
- b) To activate the City's Footpaths in a way that does not visually or physically enclose the Footpaths or privatise that space.
- c) To allow Footpaths to be used by traders in a way that does not impede access to the Footpath or cause a hazard or danger to any person using the Footpath.
- d) To ensure that items placed on the Footpath do not result in visual or physical clutter, or restrict views of building and shop frontages.
- e) To promote and activate the Footpath in a way that does not obstruct or impede the use of the Footpath or access to buildings, or sight lines for pedestrians or vehicles.

### **3. Purpose**

The purpose of this Policy is to:

- a) Identify the process by which footpath trading and activation can take place without the need for Development Approval.
- b) Encourage the practice of street activation to create vibrant, innovative and economically successful activity centres and Public Places.
- c) Enhance the shopping, dining and visitor experience within the public realm.
- d) Ensure that proposals which comply with the requirements of this Policy are exempt from requiring Development Approval.

### **4. Applications Subject of this Policy**

- a) Use of the Footpath and Verge for trading and other forms of Activation shall only commence following the granting of a Permit or Development Approval from the City, as applicable.

## Policy Manual

- b) A Permit will be issued by the City for proposals for footpath trading and other forms of Activation which comply with the requirements of this Policy, as demonstrated through the 'Self-Assessment Checklist' (see Appendix 1).
- c) Proposals for footpath trading and other forms of Activation which do not comply with the requirements of this Policy will be assessed against the Objectives of this Policy and any other relevant legislation. Such proposals shall also require Development Approval.
- d) A Permit will generally only be issued to the Business Operator of an existing or proposed tenancy fronting the Public Place where the Footpath Activation Area will be situated, unless otherwise approved by the City.
- e) In addition to the information contained within this Policy, the operation of a Footpath Activation Area is to comply with all requirements of the *Disability Discrimination Act 1992*, the City of Stirling *Thoroughfares and Public Places Local Law 2009*, the Building Code of Australia and any other relevant legislation and City of Stirling local laws and policies.

Note: Applicants are required to ensure that all relevant Planning, Health and other relevant approvals are in place.

### 5. Definitions

**Activation:** means the use of Public Place by the occupants of adjoining commercial tenancies for the purposes of street Trading, commercial display, an Outdoor Eating Facility, ground-based signage, furniture, amenities and decoration.

**Applicant:** means a person who applies for a Permit.

**Building Activation Area:** means a Footpath Activation Area located immediately adjacent to a building or lot boundary.

**Business Operator:** means the owner or occupier of a Premises proposing to conduct street Activation in accordance with this Policy.

**Carriageway:** means the same as defined in the *Thoroughfares and Public Places Local Law 2009*.

**City Property:** has the same meaning as in clause 1.5 of the *Thoroughfares and Public Places Local Law 2009* – that is, it means anything except a thoroughfare –

- a) which belongs to the City;
- b) of which the City is the management body under the *Land Administration Act 1997*; or
- c) which is an 'otherwise unvested facility' within section 5.33 of the *Local Government Act 1995*.

**Clearance Zone:** means an area into which a Footpath Activation Area shall not encroach.

**Compliant Proposal:** means a proposal for a Footpath Activation Area which meets the standards and requirements of this Policy.

**Footpath:** means the same as defined in the *Thoroughfares and Public Places Local Law 2009*.

**Footpath Activation Area:** means an area within a thoroughfare where an Outdoor Eating Facility, street Trading, display of goods and other forms of Activation related to an adjoining Premises may be located. A Footpath Activation Area may be located immediately adjacent to a building or lot boundary (Building Activation Area) and/or adjacent to a Carriageway (Kerbside Activation Area).

## Policy Manual

**Furniture and Decoration:** means items which may be Permitted within Footpath Activation Areas including but not limited to, tables and chairs, decorative objects, goods displays (e.g. clothing racks, card stands, shelves etc.), screens and barriers, blinds and weather barriers, umbrellas, lighting, public art, heating devices, planter boxes, pot plants, bike racks, street furniture, and the like.

**Kerbside Activation Area:** means a Footpath Activation Area located adjacent to a Carriageway.

**Outdoor Eating Facility:** means an Outdoor Eating Facility or establishment on any part of a Public Place.

**Permanent Items:** Means Furniture and Decoration which are permanently fixed within the Footpath Activation Area.

**Permit:** means a Permit issued under this Policy and the *Thoroughfares and Public Places Local Law 2009*.

**Permit Holder:** has the same meaning as in clause 1.5 of the *Thoroughfares and Public Places Local Law 2009* – that is, a person who holds a valid Permit.

**Premises:** means a building or similar structure, but does not include a carpark or a similar place.

**Public Place:** has the same meaning as in clause 1.5 of the *Thoroughfares and Public Places Local Law 2009* - that is, it includes a thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, but does not include –

- a) Premises on private property from which trading is lawfully conducted under a written law; and
- b) City Property.

**Semi-Permanent Items:** means Furniture and Decoration that can be removed at will but which remain within Footpath Activation Area outside of trading hours.

**Street Infrastructure:** means public seating, bins, bicycle racks, street trees and tree pits, public art, parking meters, parking signage, pay phones, fire hydrants, bollards, power poles, public signage, sewer manholes, telecommunications and electricity conduits, service easements, post boxes, paving and the like.

**Temporary Items:** means Furniture and Decoration that can be shifted or removed at will and are removed from the Footpath Activation Area at close of daily trading.

**Trading:** includes –

- a) The selling or hiring of, the offering for sale or hire of, or the soliciting of orders for, goods or services in a public place; and
- b) Displaying goods in any public place for the purpose of –
  - i. offering them for sale or hire;
  - ii. inviting offers for their sale or hire;
  - iii. soliciting orders for them; or
  - iv. carrying out any other transaction in relation to them.

**Verge:** has the same meaning as in clause 1.5 of the *Thoroughfares and Public Places Local Law 2009* - that is, that part of the thoroughfare between the Carriageway and the land which abuts the thoroughfare and includes a nature strip, but does not include a Footpath.

## **6. Process for Obtaining a Permit**

### **6.1 Permit Requirements**

- a) To be eligible for a Permit, the Applicant must be the Business Operator of a business Premises adjacent to the Footpath Activation Area, including a Business Operator within a strata property.
- b) An Applicant will need to satisfy the following requirements:
  - i. Complete the Footpath Trading and Activation Form, including the Self-Assessment Checklist (Appendix 1);
  - ii. Provide a sketch of the proposed Footpath Activation Area on the supplied sheet accompanying the Footpath Trading and Activation Form;
  - iii. Provide a letter of consent where the proponent seeks to occupy the public space immediately adjoining a neighbouring premises; and
  - iv. Complete and sign the Terms and Conditions Agreement attached to the Footpath Trading and Activation Form.

### **6.2 Public Risk**

- a) The Permit Holder is responsible for any injury or damage to a third party which occurs in connection with an Activation area.
- b) The Permit Holder must ensure that it obtains and maintains, at all times, adequate public liability insurance to cover the risk of injury or damage to a third party in connection with an Activation area.
- c) To meet the City's requirements the public liability insurance must:
  - i. Be for a minimum amount of \$10,000,000 that specifically includes using the Footpath for the proposed activity.
  - ii. Cover injury, loss, or damage to persons arising out of the activity carried out under the Permit or the granting of a Permit.
  - iii. Note the interest of the City of Stirling on the insurance policy.
  - iv. State the period covered by the insurance policy (ie. commencement and expiration date) and be renewed upon expiry.
  - v. Be issued by an insurer approved by the Australian Prudential Regulation Authority (APRA).
  - vi. Be supplied in an approved form, such as a Certificate of Currency.
- d) The Permit Holder must agree to indemnify the City in respect of any injury to any person or any damage to any property which may occur in connection with an Activation area.
- e) Subclauses 6.2 c) and d) do not apply to signs that meet the requirements of Clause 8.2.5 – Signage and Advertising of this policy

### **6.3 Determination of Proposals**

The Applicant's completion of the Self-Assessment Checklist shall be used to establish if a proposal is a Compliant Proposal.

### **6.3.1. Compliant Proposals**

Where the City determines a proposal meets the standards and requirements of this Policy, the City shall issue a Permit. Development Approval will not be required for the proposed works and use of a Compliant Proposal.

### **6.3.2. Non-Compliant Proposals**

Where the City determines a proposal is not a Compliant Proposal:

- a) A Development Approval is required.
- b) The Applicant shall provide with their Development Application the following additional information:
  - i. A written description of the proposed variation(s) from the Policy standards and requirements; and
  - ii. Supporting justification for proposed variation(s) which addresses the objectives of this Policy.
- c) If the Development Approval is granted, the City shall issue a Permit.
- d) For the purpose of assessing a non-Compliant Proposal, the City may seek the comments of adjoining or nearby neighbours in accordance with the City's Planning Consultation Procedure'.

## **7. Site and Access Requirements**

### **7.1 Clearance Zone**

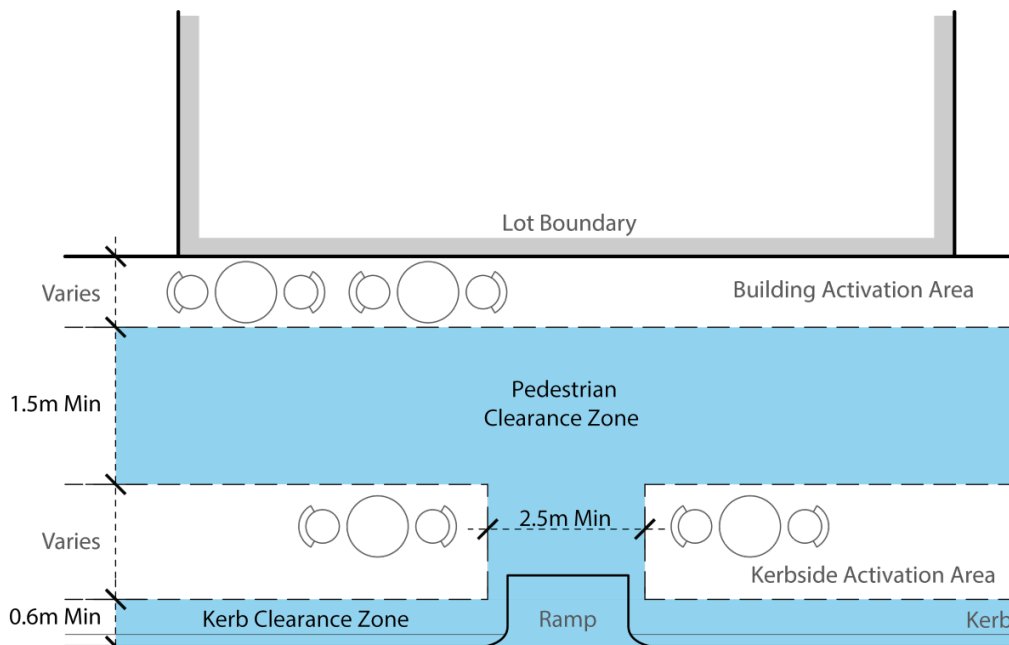
A Clearance Zone must be adhered to and shall not be encroached upon by any object or Activation associated with an approved Footpath Activation Area (refer to Figure 1). The Clearance Zones may overlap for the purposes of determining the maximum width of the Footpath Activation Area.

#### **7.1.1. Pedestrian Clearance Zone**

- a) A minimum 1.5 metre width of Footpath is to be kept clear between the building frontage and the kerb line to provide a clear path of travel for pedestrians, which is to align with any adjacent Pedestrian Clearance Zones.
- b) A Pedestrian Clearance Zone to access ramps, as measured from the centreline of the ramp, at a minimum width of 2.5 metres.
- c) Where there is no ramp, a minimum 1.5 metre wide evenly spaced pedestrian break is to be provided per lot frontage.

#### **7.1.2. Kerb Clearance Zone**

A minimum 0.6 metre setback distance is to be provided between the Footpath Activation Area and the roadway, measured from the Carriageway side of the kerb.

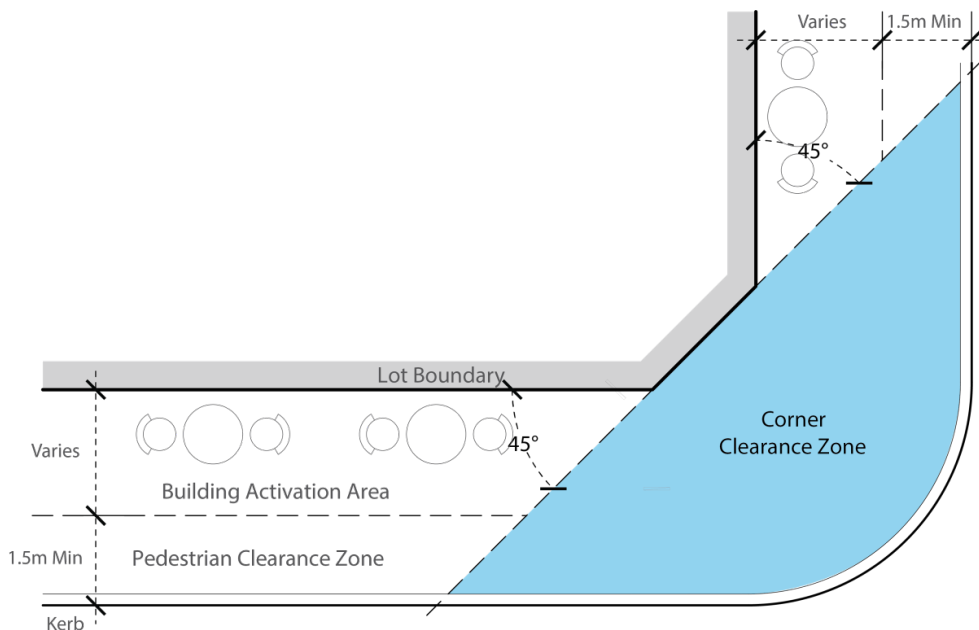


**Figure 1 - Pedestrian and Kerb Clearance Zone Requirements**

**7.1.3. Street Corner Clearance Zone**

To maintain sightlines for road users, Activation areas must be setback from intersections, including any driveway, laneway, and/or right-of-way. The typical minimum setback from intersections to the Activation area is determined by a line of sight, set at a 45-degree angle from the corner of the property to the kerb (refer to Figure 2). For a Kerbside Activation Area within 20m from the corner of the property at an unsignalised intersection, Furniture and Decoration may be no greater than 1m high and all barriers shall be visually permeable.

Setbacks from intersections may vary depending on site-specific streetscape conditions. Additional setbacks may be required at intersections with high traffic volumes, speeds and/or poor visibility. Final intersection setbacks are subject to the City’s approval.

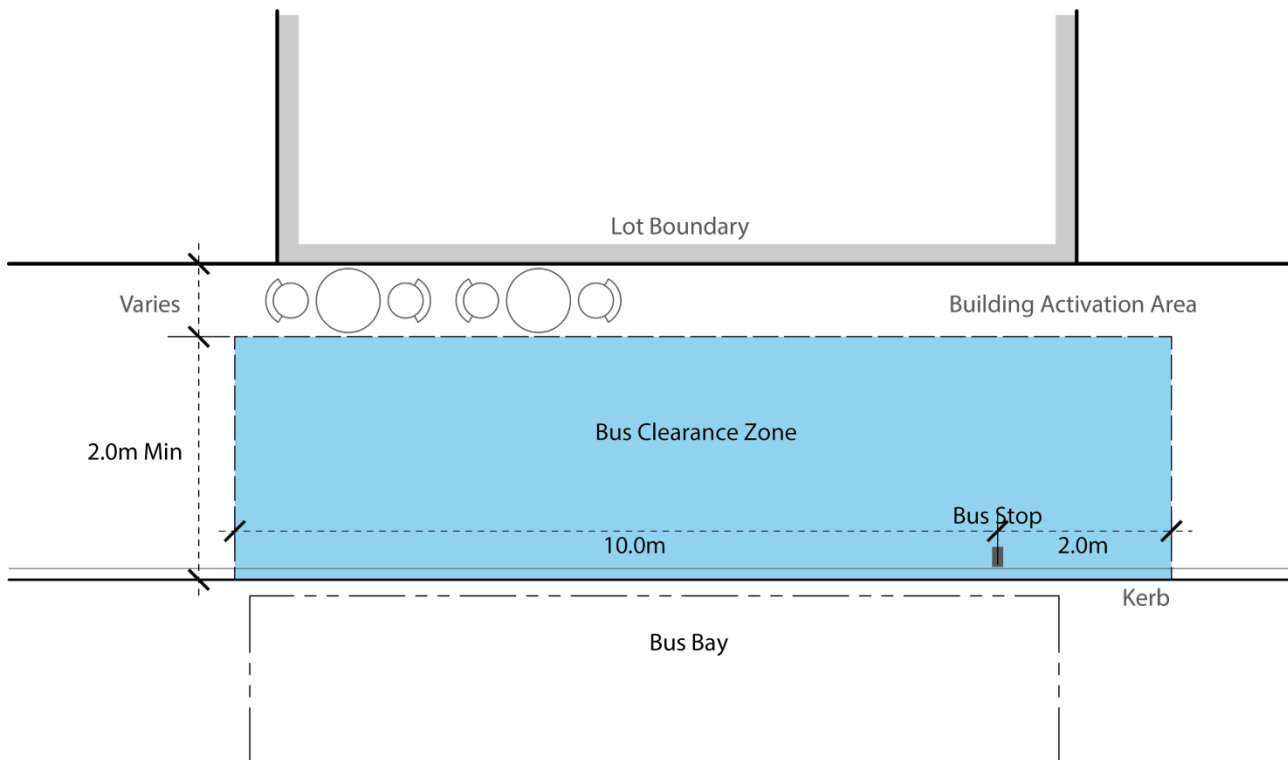


**Figure 2 - Street Corner Clearance Zone Requirements**

#### 7.1.4. Bus Stop Clearance Zone

A minimum 2 metre width of Footpath measured from the outer face of the kerb, extending laterally 10 metres behind and 2 metres forward of a bus stop, is to be kept clear to maintain pedestrian access to transit (refer to Figure 3).

*Note: The arrangement of Furniture and Decoration within Footpath Activation Areas shall not obstruct, impact or affect Public Transport Authority infrastructure, such as a bus shelter and tactile paving.*



**Figure 3 - Bus Stop Clearance Zone Requirements**

#### 7.1.5. Street Infrastructure Clearance Zone

- The arrangement of Furniture and Decoration within Footpath Activation Areas shall not compromise public access to Street Infrastructure.
- Furniture and Decoration which are deemed by the City to obstruct, impact or affect Street Infrastructure shall be removed or relocated within a timeframe specified by the City.
- The City may consider the removal/relocation of any Street Infrastructure or minor modifications to engineering treatments of a Footpath in order to safely accommodate Trading and Activation in accordance with this Policy. Such proposals will require the Development Approval of the City and will be assessed against the objectives of this Policy.
- The cost of installation and reinstatement of any works and improvements shall be borne by the Permit Holder.

### 7.2 Footpath Activation Layout and Design

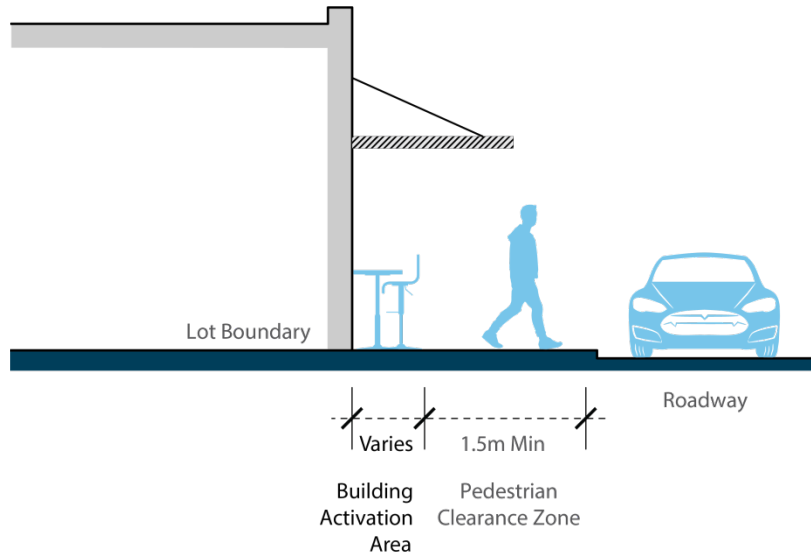
A Footpath Activation Area is:

- To be located within the existing Footpath and must not extend into parking areas or vehicle Carriageways;

- b) Not to encroach into Clearance Zones as defined in Clause 7.1; and
- c) Not exceed 30 square metres in area.

**7.2.1. Footpaths less than 3.5 metres wide**

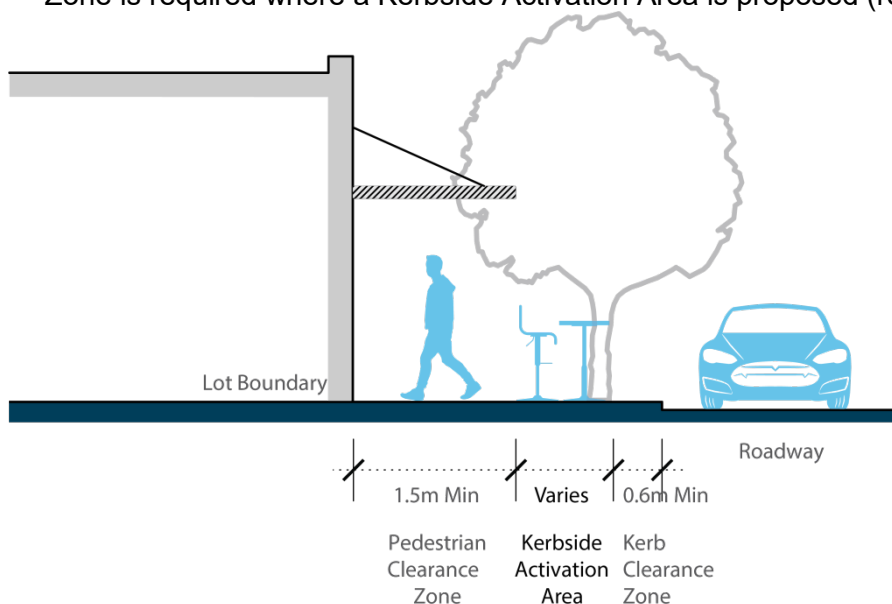
Where Footpaths are less than 3.5 metres in width, Footpath Activation Areas are to be located within the Building Activation Area (refer to Figure 4).



**Figure 4 - Building Activation Area - Footpaths Less Than 3.5 Metres Wide**

**7.2.2. Footpaths greater than 3.5 metres wide**

Where Footpaths are 3.5 metres in width or greater, Footpath Activation Areas may be located within the Kerbside Activation Area. A 0.6 metre Kerb Clearance Zone is required where a Kerbside Activation Area is proposed (refer to Figure 5).

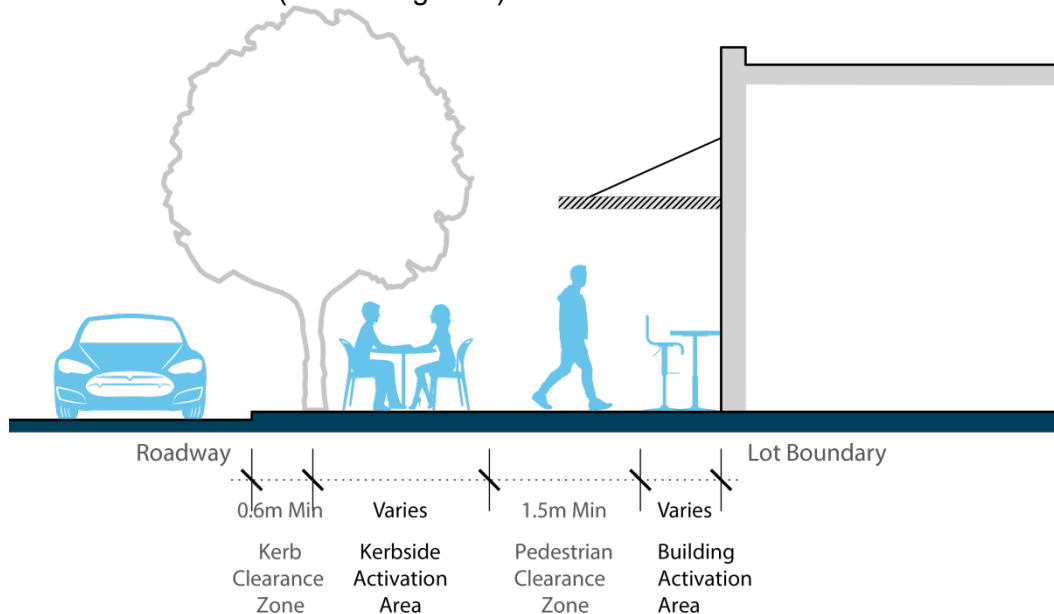


**Figure 5 - Kerbside Activation Area - Footpaths 3.5 Metres Wide or Greater**



### 7.2.3. Footpaths greater than 3.8 metres wide

Where Footpaths are greater than 3.8 metres in width, both Kerbside and Building Activation Areas may be proposed, provided required Clearance Zones can be maintained (refer to Figure 6).



**Figure 6 - Both Building & Kerbside Activation Areas – Footpaths 3.8 Metres Wide or Greater**

### 7.3 Exclusions

Irrespective of Clause 7.2.2 and 7.2.3, Building Activation Areas are mandatory and Kerbside Activation Areas are prohibited where a posted speed limit of 60km/hr or greater applies to the adjacent street.

### 7.4 Car Parking

Where a Footpath Activation Area exceeds 30 square metres in area and proposes an Outdoor Eating Facility the provisions of the City' Parking Policy will apply.

### 7.5 Use of Neighbouring Activation Areas

- a) Footpath Activation Areas shall be situated directly adjacent to the business premises.
- b) Use of a neighbouring Footpath Activation Area shall only be permitted where:
  - i. The neighbouring Business Operator provides written consent for the proponent's use the area; and/or
  - ii. Any limits to the maximum number of persons permitted at the adjacent premises under a Development Approval or Occupancy Permit are adhered to.
- c) The written consent of a neighbouring Business Operator is not required for tenants in the same strata complex. The written consent of a neighbouring Business Operator is not required where Business Operators of rear strata tenancies propose signage that meets the requirements of Clause 7.2.5 – Signage and Advertising.

Where the Business Operator of an adjacent premises has withdrawn its consent (provided in accordance with Clause 6.1b) in writing to the City, the proponent must cease using and reinstate the area to its original state within a timeframe specified by the City.

## **8. Furniture and Decoration Requirements**

### **8.1 Furniture and Decoration Permanency**

The permissibility of Furniture and Decoration shall be determined by whether they will be temporary, Semi-Permanent or permanent within the Footpath Activation Area.

#### **8.1.1. Temporary Items**

All Temporary Items shall be located with the Footpath Activation Area at all times and stored within the related business Premises outside of trading hours

#### **8.1.2. Semi-Permanent Items**

- a) Semi-Permanent Items are only Permitted on Footpaths of 3.5 metres or greater.
- b) Semi-Permanent Items must be able to be moved at the request of the City to provide for maintenance, cleaning or other activities.

#### **8.1.3. Permanent Items**

- a) Permanent Items may be supported at the City's discretion but will require Development Approval.
- b) Proposals for Permanent Items will be assessed against the objectives and clause 7.1.5 of this Policy and the following criteria:
  - i. In the opinion of the City, contributes a broader public benefit;
  - ii. The Permit Holder shall reinstate the affected public space back to its original condition at their own cost;
  - iii. Is in keeping with existing urban character and respects heritage streetscape values; and
  - iv. Does not create an impediment to cleaning or maintenance of the thoroughfare.

## **8.2 Furniture and Decoration Requirements**

All Furniture and Decoration items must be maintained in a physically sound and safe condition to the City's satisfaction.

Specific requirements apply to some but not all Furniture and Decoration. Forms of Furniture and Decoration for which standards are not prescribed are still Permitted within Footpath Activation Areas.

All Furniture and Decoration and the like must not be Permanent Items only (refer to Clause 8.1.3), fully contained within the Footpath Activation Area, including canopy, and not encroach into any applicable Clearance Zone.

### **8.2.1. Screens and Barriers**

Screens and Barriers are:

- a) To provide a minimum of 2 metre gap per lot frontage to allow access from the roadway to the Footpath; and
- b) Not to exceed a maximum height of 1 metre.

### **8.2.2. Weather Protection**

Weather protection devices are:

- a) To provide a minimum underside clearance of 2.4 metre;
- b) To be self-supporting; and
- c) To be adequately weighted or otherwise secured to ensure they do not become dislodged.

Note: *Clasps, ties, footings or other means of permanently fixing umbrellas and awnings to the Footpath Activation Area are considered to be permanent and require Development Approval.*  
*Vertical café blinds are not acceptable due to their potential to visually enclose and privatise public spaces.*

### **8.2.3. Lighting, Wiring and Electrical Devices**

No lighting or other items requiring mains power, including point-of-sale and power outlets, are to be installed on City Property. All electrical works need to be contained within the private lot. Lighting, wiring and other electrical installations are:

- a) To not comprise flashing, intermittent or running lights;
- b) To be disconnected and removed at close of daily trading unless permanent installation is approved by the City;
- c) Not to result in any occupational health and safety issues;
- d) To be sited so as not to obstruct pedestrian movement; and
- e) Not to be installed or operated in a manner that may be prejudicial to safety or inconsistent with relevant Australian Standards.

### **8.2.4. Heating Devices**

Heating devices are:

- a) To be self-contained, stable and free standing;
- b) To be sited to achieve adequate clearances from combustible objects;
- c) To operate in accordance with the manufacturers specifications; and
- d) To have a registered Australian Gas Association Number (AGA No.) or SAI Global approval where relevant.

### **8.2.5. Signage and Advertising**

Advertising signs are:

- a) To be an 'A' frame or similar Ground Based sign;
- b) To be located adjacent to the building to which the sign relates and be located on the Footpath immediately adjacent to the building;
- c) To be displayed only during the normal business hours of the business to which the sign relates;
- d) To be limited to a maximum of one sign per tenancy;
- e) To advertise only the name of the owner or occupier of the Premises, and/or the nature of the business and/or activities to which it relates and carried on therein; and
- f) To have a maximum vertical or horizontal dimension of 1 metre and have an area of not more than 0.6m<sup>2</sup>.

Product advertising additional to ground based sign is Permitted and does not require Development Approval where limited to umbrellas and barriers.

## **9. Operation, Management and Compliance**

### **9.1 Cleaning and Maintenance**

A Permit Holder is:

- a) To ensure that Furniture and Decoration within the Footpath Activation Area are maintained in a physically sound and aesthetically acceptable condition at all times;
- b) To be responsible for regular cleaning of the approved Footpath Activation Area; and
- c) To be responsible for repairing any damage to works on public land (e.g. paving, street furniture, street planting) caused by the operations of the Footpath Activation Area, to the satisfaction of the City.

Should the Footpath Activation Area not be maintained in a good condition and clean and tidy state and/or the conditions of Council's approval are not adhered to, the City may cancel the Permit (refer to the City's Clause 6.11 of the *Thoroughfares and Public Places Local Law 2009*).

### **9.2 Operations of an Outdoor Eating Facility**

- a) An Outdoor Eating Facility within a Footpath Activation Area will be considered only where it is part of a proposal to establish an eating establishment within a directly adjoining tenancy, or is proposed as an extension of an existing eating establishment operating within a directly-adjointing tenancy.
- b) If not previously granted as part of an existing eating establishment, a proposal to operate an Outdoor Eating Facility will require a separate Certificate of Registration of a Food Business.
- c) A Permit issued by the City of Stirling for a Footpath Activation Area does not authorise the sale, supply, display, or consumption of liquor. To permit the sale, supply, display and/or consumption of liquor in connection with an Outdoor Eating Facility, a Permit Holder must obtain the relevant licence or other approval under the *Liquor Control Act 1998* permit from the Department of Racing, Gaming and Liquor.
- d) The A Permit may be used to accompany an application for a licence under section 40 of the *Liquor Control Act 1988* for a Footpath Activation Area may be used to accompany a Section 40 Application.

### **9.3 Sale of Goods**

Goods on display are to reflect the products sold within the related business Premises and are to be removed at the end of trading for that day.

### **9.4 Public Works and Special Events**

- a) The City may require the use of a Footpath or adjacent area to undertake works or to allow an event or other activity to occur. This may include repair to infrastructure as a result of emergency works being undertaken. The City will endeavour to give a Permit Holder sufficient notice to vacate the Footpath Activation Area prior to the event.
- b) Where notice is given, a Permit Holder shall remove all Furniture and Decoration from the Footpath Activation Area within the time period and for the duration specified by the City.
- c) In cases of an emergency, the Footpath Activation Area may need to be cleared immediately by the Permit Holder at the request of the City or its authorised agents, and/or government agencies, or emergency services. The City shall not be responsible for any claim for loss of trade or damage and repair of the Permit Holder's Furniture and Decoration items during the time of an emergency.

### 9.5 Permit Validity

- a) A Permit is not subject to a requirement for renewal and remains valid unless otherwise cancelled by the City.
- b) A Permit is not tied to a property and will be cancelled requiring a new application where:
  - i. The Permit Holder has not complied with a condition of the Permit; or
  - ii. The Permit Holder fails to maintain any required public liability insurance or ceases to indemnify the local government against damages; or
  - iii. The transfer of a tenancy or change of ownership of a Premises; or
  - iv. Permanent cessation of the activity occurs; or
  - v. The owner of a neighbouring premises withdraws consent for the proponent to occupy public space in front or immediately adjacent to their premises; or
  - vi. In the opinion of the City, the Activation is causing a nuisance or is having an unreasonable impact upon surrounding residents, pedestrians, cyclists or surrounding businesses; or
  - vii. The Footpath Activation Area is on land defined under the Metropolitan Region Scheme as within a Planning Control Area or an Other Regional Roads or Primary Regional Roads reservation, and the Western Australian Planning Commission requests the cancellation of the Permit.

### 9.6 Cancellation of a Permit

- a) Following cancellation of a Permit, all Furniture and Decoration must be removed from a Footpath Activation Area within the time period specified by the City.
- b) Once the Permit is cancelled, a Footpath Activation Area must be restored to its original condition within the time period specified by the City, including the removal of all permanent fixtures, to the satisfaction of the City and at the Permit Holder's cost.
- c) If a Footpath Activation Area is not restored to its original condition within the time period specified by the City, or is damaged as a result of Footpath Activation, restoration works and/or repair works must be carried out at the Permit Holder's expense. The Permit Holder shall not be entitled to any payments, compensation or damages of any kind from the City where this occurs.

**OFFICE USE ONLY:**

**Local Planning Scheme No.3 – Local Planning Policy History:**

| <b>Action</b> | <b>Resolution Number</b> | <b>Effective Date</b> |
|---------------|--------------------------|-----------------------|
| Adopted       | 0719/005                 | 10 Oct 2019           |