



## **AGENDA**

### **FOR RESOURCES AND GOVERNANCE COMMITTEE MEETING TO BE HELD ON**

**18 JUNE 2018 AT THE CONCLUSION OF THE POLICY AND PLANNING  
COMMITTEE**

**IN COMMITTEE ROOM 1, 12 JAMES STREET, SALISBURY**

#### **MEMBERS**

Cr S Bedford (Chairman)  
Mayor G Aldridge (ex officio)  
Cr D Balaza  
Cr B Brug  
Cr D Bryant  
Cr L Caruso  
Cr R Cook (Deputy Chairman)  
Cr D Pilkington  
Cr D Proleta

#### **REQUIRED STAFF**

General Manager Business Excellence, Mr C Mansueto  
General Manager City Development, Mr T Sutcliffe  
Manager Governance, Mr M Petrovski  
Manager Communications and Customer Relations, Mr M Bennington

#### **APOLOGIES**

An apology has been received from Cr D Bryant.

#### **LEAVE OF ABSENCE**

#### **PRESENTATION OF MINUTES**

Presentation of the Minutes of the Resources and Governance Committee Meeting held on 21 May 2018.

## REPORTS

### *Administration*

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## OTHER BUSINESS

## CLOSE



## **MINUTES OF RESOURCES AND GOVERNANCE COMMITTEE MEETING HELD IN COMMITTEE ROOM 1, 12 JAMES STREET, SALISBURY ON**

**21 MAY 2018**

### **MEMBERS PRESENT**

Cr D Balaza  
Cr D Bryant  
Cr L Caruso (Acting Chair)  
Cr D Pilkington  
Cr D Proleta

### **STAFF**

General Manager Business Excellence, Mr C Mansueto  
General Manager City Development, Mr T Sutcliffe  
Manager Governance, Mr M Petrovski  
Manager Communications and Customer Relations, Mr M Bennington

The meeting commenced at 10:07 pm.

In the absence of the Chair and Deputy Chair of the committee, the Manager Governance called for nominations from the Committee for the appointment of an Acting Chair for the duration of the meeting.

Cr D Proleta nominated the Deputy Mayor, Cr L Caruso.

In the absence of any other nominations, Cr L Caruso assumed the Chair.

The Acting Chair welcomed the members, staff and the gallery to the meeting.

### **APOLOGIES**

Apologies were received from Mayor G Aldridge, Cr S Bedford, Cr B Brug and Cr R Cook.

### **LEAVE OF ABSENCE**

Nil

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## PRESENTATION OF MINUTES

Moved Cr D Pilkington

Seconded Cr D Bryant

The Minutes of the Resources and Governance Committee Meeting held on 16 April 2018, be taken and read as confirmed.

**CARRIED**

## REPORTS

### *Administration*

#### **3.0.1 Future Reports for the Resources and Governance Committee**

Moved Cr D Bryant

Seconded Cr D Proleta

1. The information be received.

**CARRIED**

### *Health, Animal Management and By-laws*

#### **3.3.1 Immunisation Services - Review of Clinics**

Moved Cr D Proleta

Seconded Cr D Bryant

1. The information be received.
2. The amended childhood immunisation clinics from 1 July 2018 be endorsed as follows:
  - a. Ingle Farm Clinic - every 1<sup>st</sup> and 3<sup>rd</sup> Friday 9am – 12noon.
  - b. Burton Clinic - every 2<sup>nd</sup> and 4<sup>th</sup> Wednesday 9am -12noon.
  - c. Salisbury East Clinic – every 2<sup>nd</sup> and 4<sup>th</sup> Wednesday - 1.30pm – 4.30pm.
  - d. Mawson Lakes – once a month (night to be determined) 4pm – 7pm.

Noting that a publicity campaign in relation to the revised clinic hours and services will be initiated in the lead up to the changes.

**CARRIED**

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*Corporate Governance*

**3.6.1 Review of Compliments, Comments and Complaints Handling Procedure**

Moved Cr D Pilkington  
Seconded Cr D Proleta

1. The information be received
2. The Compliments, Comment and Complaints Handling Procedure as set out in Attachment 1 to this report (Resources and Governance 3.6.1, 21/05/2018) be endorsed.

**CARRIED**

**3.6.2 Review of Prudential Management Policy**

Moved Cr D Pilkington  
Seconded Cr D Bryant

1. The Prudential Management Policy as set out in Attachment 1 to this report (Resources and Governance Committee 3.6.2, 21/05/2018), be endorsed.

**CARRIED**

**3.6.3 Review of Temporary Road Closures Policy**

Moved Cr D Pilkington  
Seconded Cr D Balaza

1. The Information be received.
2. The Temporary Road Closures Policy as set out in Attachment 1 to this report (Resources and Governance 3.6.3, 21/05/2018), be endorsed.

**CARRIED**

**3.6.4 Variations to Delegations**

Moved Cr D Pilkington  
Seconded Cr D Proleta

1. Having conducted a review of Delegations in accordance with Section 44(6) of the *Local Government Act 1999*, the Council hereby revokes its previous delegations to the Chief Executive Officer, effective from 4 June 2018 of those powers and functions under the following:
  - 1.1 *Development Act 1993, Development (Development Plans) Amendment Act 2006 and Development Regulations 2008*
    - Regulation 83(3) – Attachment 2

## 1.2 *Local Government Act 1999*

- Sections 224 and 225(1), – Attachment 3

### **Delegations made under Development Act 1993**

2. In exercise of the powers contained in Sections 20 and 34(23) of the Development Act 1993, the powers and functions under the *Development Act 1993, Development (Development Plans) Amendment Act 2006* and *Development Regulations 2008* contained in the proposed Instrument of Delegation forming Attachment 2 to this report (Attachment 2, Item No. 3.6.4, Resources and Governance Committee, 21/05/2018) are hereby delegated from 5 June 2018 to the person occupying the office of Chief Executive Officer, subject to the conditions and or limitations specified herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the *Development Act 1993, Development (Development Plans) Amendment Act 2006* and *Development Regulations 2008* as follows:
  - Regulation 83(3) – Attachment 2
3. Such powers and functions may be further delegated by the Chief Executive Officer as the Chief Executive Officer sees fit and in accordance with the relevant legislation unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the *Development Act 1993, Development (Development Plans) Amendment Act 2006* and *Development Regulations 2008*.

### **Delegations Made under the Local Government Act 1999**

4. In exercise of the power contained in Section 44 of the *Local Government Act 1999* the powers and functions under the Local Government Act 1999 contained in the proposed Instrument of Delegation forming attachment 3 to this report (Attachment 3, Item No. 3.6.4, Resources and Governance Committee, 21/05/2018), are hereby delegated from 5 June 2018 to the person occupying the office of Chief Executive Officer, subject to the conditions and / or limitations indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the following Act:
 

*Local Government Act 1999*

  - Sections 224, 225(1), 225(4), 225A(1) and 225A(4) – Attachment 3
5. Such powers and functions may be further delegated by the Chief Executive Officer as the Chief Executive Officer sees fit and in accordance with the relevant legislation unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation under the *Local Government Act 1999*.

**CARRIED**

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**OTHER BUSINESS**

Nil

The meeting closed at 10:11 pm.

CHAIRMAN.....

DATE.....





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<b>ITEM</b>	3.0.1
	<b>RESOURCES AND GOVERNANCE COMMITTEE</b>
<b>DATE</b>	18 June 2018
<b>HEADING</b>	Future Reports for the Resources and Governance Committee
<b>AUTHOR</b>	Joy Rowett, Governance Coordinator, CEO and Governance
<b>CITY PLAN LINKS</b>	4.3 Have robust processes that support consistent service delivery and informed decision making.
<b>SUMMARY</b>	This item details reports to be presented to the Resources and Governance Committee as a result of a previous Council resolution. If reports have been deferred to a subsequent month, this will be indicated, along with a reason for the deferral.

**RECOMMENDATION**

1. The information be received.

**ATTACHMENTS**

There are no attachments to this report.

**1. BACKGROUND**

- 1.1 Historically, a list of resolutions requiring a future report to Council has been presented to each committee for noting.

**2. CONSULTATION / COMMUNICATION****2.1 Internal**

- 2.1.1 Report authors and General Managers.

**2.2 External**

- 2.2.1 Nil.

### 3. REPORT

3.1 The following table outlines the reports to be presented to the Resources and Governance Committee as a result of a Council resolution:

Meeting Item	- Heading and Resolution	Officer
22/06/2015 3.3.2 <b>Due:</b>	<b>Amendments to the Dog and Cat Management Act</b> 3. Council note that staff will review the need for a cat by-law 12 months after the implementation of the proposed Bill and provide a further report to Council. July 2019	John Darzanos
28/09/2015 3.6.1 <b>Due:</b> <b>Deferred to:</b> <b>Reason:</b>	<b>Review of Provision of Elected Member IT Equipment</b> 2. A revised Elected Member Allowances, Facilities and Support Policy be brought back to Council in July 2018. July 2018 November 2018 To align with the new Council as a result of the 2018 Local Government elections	Joy Rowett
23/04/2018 3.3.1 <b>Due:</b>	<b>Parking Technology Trials</b> 5. A further report presenting the outcomes of the trials be presented to Council at the conclusion of the trials. August 2019	John Darzanos

### 4. CONCLUSION / PROPOSAL

4.1 Future reports for the Resources and Governance Committee have been reviewed and are presented to Council for noting.

### CO-ORDINATION

Officer:	EXEC GROUP	GMCID	MG
Date:	08/06/2018	06/06/2018	07/06/2018

<b>ITEM</b>	3.0.2
	<b>RESOURCES AND GOVERNANCE COMMITTEE</b>
<b>DATE</b>	18 June 2018
<b>HEADING</b>	Website Publication of Audio Recordings of Council and Standing Committee Meetings
<b>AUTHOR</b>	Mick Petrovski, Manager Governance - CEO/Governance, CEO and Governance
<b>CITY PLAN LINKS</b>	4.3 Have robust processes that support consistent service delivery and informed decision making.  3.3 Be a connected city where all people have opportunities to participate.
<b>SUMMARY</b>	This report provides advice for Council about the merits and legal considerations of “uploading” audio recordings of Council and Committee meetings on the City of Salisbury website.
<b>RECOMMENDATION</b>	<p>That:</p> <ol style="list-style-type: none"> <li>1. Audio recordings of the public component for all Council and Standing Committee meetings be uploaded and be available on the City of Salisbury website.</li> <li>2. The reference to “RECORDING OF MEETINGS” in Council’s Code of Practice for Meeting Procedures be modified to read as follows:</li> </ol> <p><i>“S.REC RECORDING OF MEETINGS/PUBLICATION OF AUDIO</i></p> <ol style="list-style-type: none"> <li>1. <i>Public meetings of Council and Council Standing Committees will be recorded for the following purposes:</i> <ul style="list-style-type: none"> <li>• <i>to assist the Minute Secretary with the preparation of the minutes following the meeting, and</i></li> <li>• <i>to ‘upload’ the audio to the Council website in pursuit of objectives of enhanced transparency and accountability in local government.</i></li> </ul> </li> <li>2. <i>All recordings of public meetings will be available on the City of Salisbury website for a period of 12 months following the meeting and will, thereafter, be retained within the City of Salisbury record keeping system in accordance with the requirements of the State Records Act 1997 with the retention period as determined by the General Disposal Schedule 20.</i></li> <li>3. <i>The City of Salisbury will display notices at all meetings in areas where the public are entitled to attend, advising of the fact that the public component of the meeting is being recorded and, in accordance with these provisions, that the audio recording will, subsequently, be ‘uploaded’ to the City of Salisbury website and, thereafter, be retained in accordance with its record keeping system.</i></li> <li>4. <i>Any person who is not an elected or staff member of the City of Salisbury and who appears at a Council or Standing Committee meeting to address the Council or the Committee in public session, whether as a deputation or otherwise, will be expressly advised by the presiding member of the meeting that the meeting is being recorded and that the audio recording will, subsequently, be ‘uploaded’ to the City of Salisbury website and, thereafter, be retained in accordance with its record keeping system.</i></li> </ol>

5. *In ‘publishing’ the audio recording of public meetings of the Council and Standing Committees by ‘uploading’ to the City of Salisbury website, the Council will ensure that any content which captures ‘personal information’ (as understood for the purposes of the Commonwealth Privacy Act 1988) of any person that is not an elected or staff member of the City of Salisbury is appropriately redacted from the recording.”*
3. The council’s privacy policy be amended to recognize and document exemptions that ensure that not every word recorded is ‘published’ in the uploading of audio recordings of Council and Standing Committee meetings, as discussed paragraphs 2.9 and 2.10 of the report to Item no. 3.0.2 on the agenda for the Resources and Governance Committee meeting on 18 June 2018.

## ATTACHMENTS

There are no attachments to this report.

## 1. BACKGROUND

- 1.1 Council, at its meeting on 26 February 2018, resolved as follows:

*“That a report be brought forward advising Council about uploading audio recordings of Committee and Council meetings to the City of Salisbury website and include information about any legal implications or risks with doing so.”*

- 1.2 The proposition to upload audio recordings of Council and Committee meetings is entirely consistent with Council’s policy as stated in its **Code of Practice for Access to Meetings and Associated Documents**, which states (in part):

*“1. The City of Salisbury will:*

- 1.1 Act in the best interest of the community, with honesty, integrity and transparency;*
- 1.2 Represent the interests of the Salisbury community through responsible, open and accessible government;*
- 1.3 Ensure confidentiality provisions will only be utilised when considered absolutely necessary;*
- 1.4 Ensure that in all cases, the information be made publicly available at the earliest possible opportunity.”*

## 2. REPORT

- 2.1 Following Council’s decision to seek this report, legal advice was sought on the matter.
- 2.2 We have been informed that there are no legal impediments to Council recording or, subsequently, uploading the recording of its meetings to its website, because the Local Government legislation limits reference to the recording of meetings to simply the taking and confirmation of minutes.
- 2.3 The audio recording of a Council/ Committee meeting is, therefore, a procedural matter which can be regulated by Council.

- 2.4 Further, the *Surveillance Devices Act 2016* does not restrict audio recording in public in these circumstances. As the Council and Committee meetings are, largely, held in public, the Council can decide to record the public component of its meetings and to upload those recordings to its website.
- 2.5 Importantly though, the Council must ensure it does not upload the audio of recordings where it resolves to exclude the public pursuant to section 90 of the *Local Government Act 1999*.
- 2.6 It has been recommended that if Council proceeds with uploading audio recording of its meetings on its website, it should post by the door to the Chamber or relevant Committee room/s, notification that the public component of the meeting is being recorded and that the recording will be uploaded to its website. This gives members of the public fair warning that their contributions will be recorded and will (or may be) uploaded and hence ‘published’ to the world at large.
- 2.7 **Relevant considerations for uploading recordings to our website**
- 2.7.1 This proposal is directly relevant to the Council’s obligation under section 8(a) of the *Local Government Act* to provide open, responsive and accountable government, along with other accountability mechanisms to ensure transparent decision-making (including the requirements for meetings to be held in public, notice of meetings and the public availability of the agenda, the release of minutes and a statutory code of practice). The uploading of audio recordings of meetings is a discretionary ‘additional layer’ of transparency and accountability.
- 2.7.2 Recording and upload of the meeting audio will require an appropriate process for record keeping in accordance with the *State Records Act 1997*, in addition to appropriate timelines for when the audio is uploaded. Our primary purpose for recording minutes was to assist with the preparation of the formal minutes, in compliance with the *Local Government Act 1999*. Therefore, it is proposed that uploading of the audio recording of the meeting occur when the minutes have been finalized and distributed to Elected Members.
- 2.7.3 The proposal to upload audio recordings of meetings may act to inhibit Elected Members contribution to debate during meetings. This may detract from informed decision-making because it may negatively influence Members’ contribution to debate during meetings because of a perceived risk that their words may be accessed and misconstrued negatively.
- 2.7.4 The availability of recordings of meetings on our website may lead to persons aggrieved by contributions made by Members to use the recording/s to support a Code of Conduct complaint or, in a worst-case scenario, evidence of defamation. The ‘publication’ to the website can heighten the sense of being aggrieved by a concerned person(s) and presents a risk that the Council as a whole becomes engaged in the ‘chain of publication’.
- 2.7.5 Recordings may also be used as evidence against the Council of its decision-making processes (and in particular, the reasons for Council decisions and/or lack thereof) including in judicial review proceedings or in the SA Civil and Administrative Tribunal to challenge the Council.

- 2.7.6 Conversely of course, the recordings may vindicate Members and/or provide evidence to the contrary of allegations made or information that has been misrepresented or inaccurately reported in the public domain.
- 2.7.7 There is a potential increased risk of adverse media scrutiny which, in turn, may give rise to Council decisions being challenged more frequently, whether by way of a section 270 review, a complaint to the Ombudsman or the OPI or other litigation and/or complaints about members under the Code of Conduct or the Council generally. It may also transpire, however, that the awareness that meetings are recorded and then uploaded to the website may discourage discourteous behaviour and promote higher standards of conduct, not least because of the ready scrutiny that may occur.
- 2.7.8 The confidential component of a meeting that is recorded but not uploaded to the website is still subject to the FOI legislation. Any person may seek access to the recording by way of an FOI application. The fact that a matter has been considered in confidence at a Council/committee meeting does not, of itself, mean that the related recording is exempt from disclosure under the FOI Act. Rather, an FOI application must be properly assessed against the provisions of the FOI legislation.
- 2.8 It is worth noting that this proposal requires particular attention to the correct operation and maintenance of the audio system and the reliability of the Council website. This is and will be an ongoing operational responsibility.
- 2.9 It is also important to recognise that while the *Commonwealth Privacy Act 1988* does not apply to the Council, Council's privacy policy does. In this regard, if members of the public can be identified in the recording, it is appropriate that a policy position be developed and adopted that addresses circumstances where personal information is or is likely to be provided, that advance notice is given where it is to be recorded and will, further, be uploaded to the website.
- 2.10 There are likely to be situations where a member of the public attends as a deputation and provides their name and address to the meeting but that person otherwise has the benefit of their personal details being suppressed from other public Council records, or otherwise there are utterances that are clearly defamatory of another person – then the policy position must, sensibly and properly, permit of those matters being redacted before the recording is uploaded.

### 3. CONCLUSION / PROPOSAL

- 3.1 This report informs the Committee and Council that “uploading” audio recordings of Council and Committee meetings on the City of Salisbury website is legally permissible, and highlights appropriate considerations for Members in their deliberations about whether to proceed with the proposal.

#### CO-ORDINATION

Officer:	Executive Group	MG
Date:		18/06/18

ITEM	3.3.1		
	RESOURCES AND GOVERNANCE COMMITTEE		
DATE	18 June 2018		
PREV REFS	Resources and Governance Committee	3.3.1	19/03/2018
	Policy and Planning Committee	1.3.1	18/04/2017
	Policy and Planning Committee	1.3.1	17/07/2017
HEADING	Update on Expanding Narrow Street Parking Procedures to all Council Verges		
AUTHOR	John Darzanos, Manager Environmental Health & Safety, City Development		
CITY PLAN LINKS	4.3 Have robust processes that support consistent service delivery and informed decision making.		
SUMMARY	Further to previous Item 3.3.1 Resources and Governance Committee presented in March 2018 which provided an update on the proposal to amend the Australian Road Rules to enable parking on council verges, it was resolved that staff provide a further report on options to expand application of the Council procedure to allow parking on verges in streets in addition to those streets that are six metres or less in width.		

## RECOMMENDATION

1. The information be received
2. The current procedure applying to verge parking on streets with a carriageway width of six metres or less be noted and continued.

## ATTACHMENTS

There are no attachments to this report.

## 1. BACKGROUND

- 1.1 At its meeting held on 26 March 2018 Council resolved:



1. *“That a further report be presented to the Resources and Governance Committee on options to expand application of the Council procedure for enforcing parking on verges, to allow parking on verges in streets in addition to those streets that are six metres or less in width.”*

1.2 This report considers the issues and benefits relating to an expansion of the existing procedures.

## **2. CONSULTATION / COMMUNICATION**

### **2.1 Internal**

2.1.1 Civil and Traffic Engineer

2.1.2 Team Leader Strategic Asset Management

2.1.3 Senior Policy Planner, City Development

## **3. REPORT**

3.1 Further to Item 3.3.1 Resources and Governance Committee presented in March 2018, it was concluded that:

3.1.1 A proposal for an amendment to the Australian Road Rules to allow for verge parking is not able to be implemented due to existing legislative provisions allowing for verge parking through the provision of signage, and,

3.1.2 Applying the current operating procedures criteria (refer Item 3.3.1 March 2018) in narrow streets allows for consistent application of the road rules and enforcement action, and gives consideration to relevant parts of Council’s verge development policy which would take precedence over allowing verge parking.

3.2 The criteria to allow parking under certain circumstances on verges of roads with a carriageway of six metre or less is applied to roads which cannot accommodate on-street parking on both sides of the road, and subsequently the verge parking option allows for access, and in particular for emergency vehicles.

3.3 The length of roads that meet the criteria of six metres or less constitute approximately 11% or 90 kilometres of the City’s road network, and the remaining network is approximately 813 kilometres.

3.4 Expanding the exemption to the additional 89% of the road network where there are generally no access issues and no identified safety hazard has the potential to create a number of issues, including:

3.4.1 significant increase for potential infrastructure and verge damage and associated maintenance cost

3.4.2 increased difficulty for access for infrastructure and verge maintenance

3.4.3 increased obstruction of utilities/underground services/service pits

3.4.4 potential for line of sight constraints and creation of traffic or pedestrian hazards



- 3.4.5 the availability of Council resources to identify locations that are not suitable for verge parking and advising the property owner/resident
- 3.4.6 the increase in complaints for verge parking occurring in front of other peoples' properties and the availability of Council staff to investigate and enforce these concerns and disputes
- 3.4.7 Conflict with pre-existing parking controls already in place such as:
- roads that have 'no stopping' lines because there is not three metres of available road width for through traffic
  - areas of verge adjacent to pavement bars or solid white centre lines or medians
- 3.5 The potential for these concerns to be realised is high as is the potential to create a significant burden on Council resources with regards to maintenance and compliance staff costs to address concerns from the increase in verge parking.
- 3.6 Restricting it to narrow streets limits the potential for the above issues to arise and provides a manageable solution to the defined problem of parking and access in those narrow streets.
- 3.7 Further to this, work is also being carried out in relation to parking and parking strategies across the City, and by State Government in relation to broader parking policy frameworks, and this may have impacts on policy, technical standards and parking legislation including impact on verge parking. Previous work undertaken and considered by Council in relation to car parking in the City of Salisbury includes Council submission on the 19th July 2017 to the Legislative Review Committee Inquiry into the Regulation of Parking and Traffic Movement in South Australia, in which Council made comments on parking and associated matters including maintaining control of parking management in local streets and consideration for new parking solutions for denser forms of development within the upcoming Planning and Design Code.
- 3.8 Council also considered Policy and Planning Item 1.3.1 on the 18<sup>th</sup> of April 2017 on the Salisbury, Mawson Lakes and Ingle Farm Car Parking Review, in which a number of matters were raised and are being actioned, including a Car Park Scenarios project that seeks to understand a range of scenarios that might apply to the parking solutions for these areas.

#### **4. CONCLUSION / PROPOSAL**

- 4.1 As a result of this additional work being carried out in the area of parking, and the potential concerns that expanding verge parking to all streets is likely to have, it is concluded that expanding the application of the Council procedure for enforcing parking on verges to streets that are six metres wide or more should not be supported.
- 4.2 There is not a demonstrated broader need to allow expanded opportunity for parking on verges. Taking into consideration the potential issues that would be generated by expanding parking on verges, the current approach relating to streets of six metres or less carriageway width is considered to be a balanced and effective approach. This addresses the majority of situations requiring an alternative approach to on-street parking through the allowance of verge parking.

#### **CO-ORDINATION**

Officer: EXECUTIVE GROUP  
Date: 08.06.18

<b>ITEM</b>	3.3.2
	<b>RESOURCES AND GOVERNANCE COMMITTEE</b>
<b>DATE</b>	18 June 2018
<b>HEADING</b>	Footpath Trading Policy Review
<b>AUTHOR</b>	John Darzanos, Manager Environmental Health & Safety, City Development
<b>CITY PLAN LINKS</b>	<p>1.2 Be the place of choice for businesses to invest and grow within South Australia, nationally and internationally.</p> <p>1.3 Have a thriving business sector that supports community wellbeing, is globally oriented and creates job opportunities.</p> <p>3.2 Have interesting places where people want to be.</p>
<b>SUMMARY</b>	<p>Council's Footpath Trading Policy applies to the use of all footpaths within the City of Salisbury for commercial purposes, by an organisation, individual or business, and for non-commercial purposes by an organisation, community group, individual or business. In accordance with statutory requirements the policy is required to be reviewed and the amended policy is presented in this report for consideration and for endorsement for public consultation. The amended Policy seeks to simplify Council's approach to footpath trading and put in place a more equitable fee structure.</p>
<b>RECOMMENDATION</b>	<ol style="list-style-type: none"> <li>1. The information be received.</li> <li>2. The Draft Footpath Trading Policy 2018 included as Attachment 1 to this report (Resources and Governance Committee 18/06/2018 Item 3.3.2) be endorsed for public consultation.</li> <li>3. The Draft Footpath Trading Policy include an application fee of \$100 in accordance with Section 188(1)(e) of the Local Government Act 1999 for footpath trading applications that require notification of adjacent residential premises.</li> <li>4. The Draft Footpath Trading Policy include Footpath Trading Permit Fees in accordance with Section 188(1)(f) of the Local Government Act 1999 as per the recommended Footpath Trading Permit Fee model presented in Attachment 3 to this report (Resources and Governance Committee 18/06/2018 Item 3.3.2.)</li> <li>5. Staff undertake the necessary public consultation process in relation to the Draft Footpath Trading Policy and Fees, including on the City of Salisbury website, social media, and a direct mail out to all premises with footpath trading permits and the Salisbury Business Association.</li> <li>6. A further report be presented to Council following public consultation outlining any feedback and presenting the final Draft Footpath Trading Policy for endorsement.</li> </ol>

**ATTACHMENTS**

This document should be read in conjunction with the following attachments:

1. Draft Footpath Trading Policy 2018
2. Draft Footpath Trading Policy 2018 - Tracked Changes Version
3. Footpath Trading Permit Fees Modelling
4. Other Council Footpath Trading Fees and Charges

**1. BACKGROUND**

- 1.1 Pursuant to Section 222 of the Local Government Act 1999, the City of Salisbury is vested with the power to grant a permit for the use roads (including footpaths) for business purposes. Council is also empowered to make the granting of a permit subject to conditions.
- 1.2 The current policy also refers to By Law 3 Roads which has the power to grant a permit for the use of streets, roads and road related areas (footpaths) held in its care for use for non-business purposes as specified in the by-law. The main purposes are not related to businesses seeking footpath trading and would relate to other activities including amplification of sound, seeking donations, preaching, public exhibitions or displays, and soliciting.
- 1.3 The existing policy does not address these activities and does not provide sufficient guidance and direction to staff in managing these activities. As a result the reference to permits for By-Law 3 activities is to be removed from the policy and it is recommended that it be dealt with under a separate process. Staff will conduct a review and consult with Community Development and other relevant Council staff, the Salisbury Business Association and relevant members of the community for the development of a draft policy and procedure to address these activities with a further report to be presented to Council. This report is focusing on footpath trading and supporting trade for businesses.
- 1.4 As the primary role of footpaths is to provide access for all people to move along them freely and without obstruction, it is the objective of the policy to provide a safe environment for pedestrians. This also ensures Council meets the requirements of the Commonwealth Disability Discrimination Act 1992.
- 1.5 This responsibility for the regulation of trading activities in public places is balanced with a commitment to enhance shopping precincts and support businesses by providing the opportunity for footpaths to be used for people to dine and trade and add vibrancy and activity to the city's streets.

**2. CONSULTATION / COMMUNICATION**

- 2.1 Internal
  - 2.1.1 Traffic Management
  - 2.1.2 Technical Services Design
  - 2.1.3 Civil Infrastructure Construction
  - 2.1.4 Community Services re: disability access
  - 2.1.5 Property Services

- 2.1.6 Development Services
- 2.1.7 Environmental Health
- 2.1.8 Insurance Officer re: risk
- 2.2 External
  - 2.2.1 Salisbury Business Association
  - 2.2.2 Other Councils with footpath or outdoor dining policies

### 3. REPORT

- 3.1 A review of the policy has been undertaken, and the overall Policy objectives remain constant with a commitment to ensure Council's legislative responsibility is managed and addressed appropriately, pedestrian safety is achieved and where possible Council will aim to achieve an effective accessible pedestrian system throughout shopping precincts through the development and maintenance of a continuous accessible path of travel.
- 3.2 The review considered matters including the requirements and costs associated with safety bollards, fixed and moveable items, and car parking fund contributions. In addition the process of receiving and processing applications across the various Council Departments was reviewed, with the objective of simplifying the process for the customer.
- 3.3 The three key zones identified in the policy have remained the same and for the purposes of the policy include the pedestrian zone, the trading activity zone and kerbside zone.

#### 1. Pedestrian Zone

- 3.4 The pedestrian zone provides a continuous accessible path of travel for people of all abilities, extending from the most forward point of the property line, building line or shop front of premises for a minimum of 1800mm. No items may extend into this zone at any time, including items overhead below a height of 2200 mm.

#### 2. Trading Activity Zone

- 3.5 The trading activity zone is that area of the footpath where goods, outdoor eating furniture and ancillary items and moveable advertising signs may be placed and where other permitted street activities may take place.
- 3.6 All activities associated with the trading must be undertaken in this zone, and this includes:
  - 3.6.1 Space for shoppers selecting or viewing items;
  - 3.6.2 Space for shopping trolleys and carts; and
  - 3.6.3 Space for chairs to be moved in and out from tables, and for seated diners.

3. Kerbside Zone

- 3.7 The kerbside zone is a buffer from the kerb adjacent to parallel parking spaces to allow for access to and from parked vehicles. A minimum of 600 mm buffer is required as measured from the face of kerb to allow for access to and from parked vehicles including at loading zones. Where there is a parallel parking bay accessible for people with a disability, the setback from the kerb will be at least 1500 mm.
- 3.8 The specific references to footpath widths have also remained unchanged and cover the options for differing widths of footpath, corners and 'shoreline' trading immediately adjacent to shopfronts.

Safety Barriers

- 3.9 The Footpath trading policy not only addresses accessibility for pedestrians but it also aims to ensure public safety for those persons utilising the outdoor dining and trading areas. The main safety concern is incursion of vehicles onto the pavement and the device that is specified by our traffic engineers and designed to prevent this is energy absorbing bollards (EAB's).
- 3.10 The requirements for EAB's are assessed by the Traffic Management Team and if it is determined that EAB's are required then footpath trading cannot commence until the safety barriers are provided.
- 3.11 A review of other councils' assessments into the requirement for EAB's identified that a risk assessment matrix is applied to determine if EAB are required. Staff have developed a draft matrix to include into the assessment process and addresses such areas as, parking angles, traffic volumes, traffic speeds, road widths and layout, proximity to intersections, pedestrian volumes and historical collision numbers.
- 3.12 Applying a risk matrix ensures that consideration is given to the identified risk factors and ensures that Council is making consistent decisions in relation to safety for the footpath trading location.
- 3.13 Once the risk matrix has been completed and a determination made the requirement for EAB's is non-negotiable as it has been determined for public safety reasons. Within this context Council shares the liability with the permit holder and has a duty of care to ensure they are installed as required. Any departure from this would increase Council's liability should an incident arise.

Installation Cost

- 3.14 The recommended spacing of approximately 1.3 to 1.4 metres between EAB's equates to several bollards for each trading location. Bollard installations can be in the vicinity of \$3000 per bollard as these costs include installation, service checks and plan provision. As such the costs associated with the bollards can make any expansion of the business cost prohibitive. In addition the type of bollard needs to comply with Council's style and colour for the locality.
- 3.15 Currently the business is required to pay for the EAB's up front as it facilitates an expansion to their business, however Council could give consideration to alternative funding models which could include:
- 3.15.1 the costs of EAB's are totally funded by Council to assist in the objective of place activation and encouraging business growth; or

- 3.15.2 identifying options for cost recovery over a set period (e.g. payment over a fixed period e.g. 5 or 10 years); or
- 3.15.3 a cost share model (e.g. 50:50 cost share for the EAB's).

Funded up-front by Council with or without cost recovery:

- 3.16 At the current rate of applications, this would be one or two new application per annum; however if EAB's are totally funded it could result in an increase in applications as the cost impediment for traders is removed.
- 3.17 A totally funded model would mean that Council would need to budget for the installation of EAB's which could equate to an average cost of \$9000 to \$12000 for a site that requires three to four EAB's. If demand increases it could require funding of up to \$50K to cover EAB installations for up to four or five new traders per year.
- 3.18 The current Technical Services Design operating and capital expenditure budgets does not include provision for these costs and additional budget provision via a budget variation would be required.
- 3.19 The current permit fee is \$80 and is reflective of an administrative fee and not tied to the inherent value of the land, or the opportunity provided to the business for increasing their trade and profitability, or based upon the size of the area utilised.
- 3.20 If the costs associated with the EAB's are fully funded the permit fees could be amended to reflect this value and provide a mechanism for cost recovery based on the size of the trading area and number of EAB's installed. An increased permit fee to recoup the costs of EAB's over time rather than an up-front lump sum is the preferred approach. A model for fees can include reference to the number of EAB's and or space utilised (total square metres). Examples of the fee structures have been included in the attachments and fees are further discussed in the report.
- 3.21 In order to address potential inequities for traders who have paid for bollard installations in total and up-front previously, new foot path trading permits that are issued after the installation of EAB's would be at an increased rate, whereas existing permits/renewals where the cost of EAB's have been paid by the business and or have been installed by Council can be at the lesser existing rate, or at an equivalent square metre rate.
- 3.22 Under a cost recovery model that involves payments built in to an annual permit fee, that will reduce the total cost to Council, but the up-front funds for the installation must still be borne by Council. Noting again, that the current operating and capital expenditure budget of the Technical Services Design area does not have provision for these costs and additional budget provision would be required.
- 3.23 If a cost recovery model is considered that is related to the costs of EAB's then there is a need to develop guiding principles about the cost recovery method, the transfer of the costs to new proprietors and a cut off period when tenancies no longer trade and cost recovery is not feasible.
- 3.24 Any change in business ownership which results in a continuation of footpath trading can include the fees for the new permit holder. If a business no longer requires or requests foot path trading, then the costs will be borne by Council with cost recovery deferred until a new permit is issued or reissued in future.



- 3.25 This model can provide a cost recovery option however Council is liable for the up-front costs of the EAB's installation, and will be unable to recover costs when a business closes or no longer wants to utilise the footpath trading area.

Cost Share

- 3.26 A cost share model would require up-front payment which could be shared at a rate of 50:50 (or other ratio), and this would reduce or remove ongoing payments and reduce the need to manage the long term cost recovery process. However it does still have an up-front cost for the business which could be a prohibiting factor.
- 3.27 If this was supported then this model would also require a budget provision for the up-front funds for a proportion of the installation costs, however significantly less than that of the fully funded model dependent upon the cost share proportion.
- 3.28 Once installed the EAB's would be deemed a Council asset and responsibility for maintenance and replacement would be by Council.
- 3.29 Where alternate safety barriers are identified as suitable alternatives to EAB's the modeling for fees and cost recovery will be applied to those devices also.

Fixed Items

- 3.30 Any item that is intended to be fixed to a footpath that is associated with footpath trading requires Council's authorisation. Examples include tables bolted to the pavement, and permanent structures such as screens or planter boxes. Authorisations require a separate application and application fee as set out in the fees & charges register, and this is administered by the Property and Buildings Division rather than the Inspectorate Team (as for footpath trading permits).
- 3.31 Businesses that are trying to implement footpath trading are encouraged to utilise moveable furniture and accessories to avoid the requirements for additional/separate authorisation for fixed items. It should be noted that Adelaide City Council is actively transitioning from fixed furniture to moveable as part of their outdoor dining permits in order to maintain flexibility with the use of the footpath area, reduce costs when furniture is outdated or damaged, reduce any liability from fixed items, and allow for easier maintenance and cleaning.
- 3.32 It is recommended that Council's policy only allows moveable items for footpath trading purposes and that traders requesting fixed items such as awnings, sails, or screens be dealt with under current procedures affecting authorisations. However as addressed later in this report, the process for the customer should be as seamless as possible should separate authorisations be required.
- 3.33 Currently if an authorisation is required for fixed items then this will be referred to Councils' Property Services team for further assessment, recommendation and approval as it must follow a required process and ensure the authorisations are legally sound and binding. The fees are listed in the application however the applicant will be invoiced separately once the authorisation process is undertaken.
- 3.34 The requirement for an authorisation and separate invoice for fixed items would not prevent an applicant from receiving a footpath trading permit and trading on the footpath if all other items were moveable and EAB's had been installed (if required).



*Car Parking Fund Contributions and Development Controls*

- 3.35 In relation to footpath trading applications relating to dining, the addition of tables and chairs to a business requires the application to be considered by Development Services. The increased seating capacity has an impact on the required car parks for that business and dependent upon their location may trigger a payment to the car parking fund.
- 3.36 As per Council resolution 1703/2017 from Item 1.3.1 Salisbury, Mawson Lakes and Ingle Farm Car Parking Review, it was resolved that :
- 3.36.1 The Council endorse the following actions:
- a. Salisbury City Centre Study Area:
    - (d) Retain the current exemption from car park contribution for small business with a further review in two years.
  - and
  - b. Mawson Lakes Study Area:
    - (c) Extinguish Mawson Lakes Car Park Fund, with the funds balance to be utilised for eligible projects and actions outlined in part (a) above.
- 3.37 As a result there are no parking contribution costs that apply to businesses wishing to expand their operations in Mawson Lakes with the fund being formally extinguished in April 2018, and for Salisbury this requirement has been exempted for a period of two years until April 2019, at which time it will be further reviewed. A 'small business' in this context is one that is 200 square metres or less in floor area.
- 3.38 An option for consideration by Council is for the Salisbury City Centre to permanently exempt car park contribution for small businesses that are established and wish to introduce outdoor dining as part of their footpath trading application. This exemption would assist in place activation as part of the Salisbury City Centre revitalisation. It is recommended that the requirement for the parking contribution be reviewed before the expiration in April 2019.
- 3.39 An alternate model is to identify options for cost recovery of the car parking contribution over a set period (e.g. payment over a fixed period of 5 or 10 years) in line with the proposal for EAB's, to reduce up-front costs and assist businesses' cash flow.
- 3.40 New businesses or changes in land use would be assessed for car parking contributions as required under existing development controls.
- 3.41 All applications are also referred to Development Services for assessment. Some of the considerations to be covered include assessment of existing approvals for the site, any conflicts with existing development approvals including approved use and approved seating numbers and trading hours.
- 3.42 If a Development Application is required then the applicant will be advised of this, and the foot path trading permit will be held until approval is granted.

Liquor Licensing

- 3.43 Whilst the consumption of liquor is covered in the specific requirements associated with outdoor eating and drinking, all applicants should reference their intention to apply for a liquor license within their application, and this has been added to the application form and policy. A separate approval for the consumption of alcohol is required and applicants will need to apply to Consumer and Business Services (<https://www.cbs.sa.gov.au/liquor-and-gambling-licenses/apply-for-a-new-liquor-or-gaming-licence/> )
- 3.44 In addition, there may be local restrictions such as a Dry Zone that may need to be considered.

Noise

- 3.45 The impact of noise from foot path trading can be a concern where the activity is in proximity to residential premises and trading is occurring outside of common trading hours. The trading hours can be addressed thorough development approvals, however the permit conditions can also address and restrict hours of activity if potential noise nuisances are identified before issue of the permit, or upon annual renewal of the permit.
- 3.46 Subject to development approval conditions and other controls along with the conditions of the permit, if footpath trading times are proposed outside of 8am to 7pm and the business is within 50 metres of residential premises, the application will require notification of any affected residential premises before the permit can be considered. This has been added to the application form and policy. The notification process is similar to that requiring notification of development applications and a fee of \$100 is recommended to address the administrative costs and postage.
- 3.47 This fee will be an application fee as per the requirements of Section 188(1)(e) of the Local Government Act and only applicable and payable if notification is required.

Smoking

- 3.48 From 1 July 2016, smoking was banned in outdoor dining areas in South Australia under section 52 of the Tobacco Products Regulation Act 1997.
- 3.49 The new law is designed to protect the community from exposure to potentially harmful tobacco smoke and increase the comfort and enjoyment of outdoor dining areas for all patrons.
- 3.50 The impact of these laws has been well received by businesses and the public and traders embracing the requirements. Dedicated smoking areas can be established for the purposes of smoking and drinking, including coffee, and or the consumption of snack foods.
- 3.51 Smoking relates to any ignited tobacco product or non-tobacco product and includes smoking from a cigarette, pipe, water pipe or any other smoking device. They cannot be used in an outdoor dining area. Water pipes are also known as shisha, sheesha, hookah, nargila, argileh, hubble bubble and goza.
- 3.52 Any smoking area must be physically separated from the dining area and not create a nuisance to pedestrians and other footpath trading areas.

- 3.53 It is recommended and included in the draft policy that the use of water pipe or any other similar smoking device is not be permitted on footpath trading areas due to the excessive smoke created and duration of the activity. This can result in potential impacts on health and nuisance impact on pedestrians and others in general proximity to the area.
- 3.54 Council can make determination that all foot path trading areas are smoke free to all products and subsequently any smoking areas would need to be established on private land. At this time there is one footpath trading permit in place that is declared a smoking area, and only coffees and drinks are served.

Application and Assessment Process

- 3.55 The assessment process for a footpath trading application starts within the General Inspectorate team, and also requires input from a number of Council Divisions. The application is received by the General Inspectorate area and referred internally to all required Divisions for their commentary and feedback on the required elements and includes:
- 3.55.1 Traffic Management – to assess EAB requirements and any other traffic management issues,
  - 3.55.2 Technical Services Design and Civil Infrastructure Construction – to assess the design and install of EAB's, and the costs for installation and to schedule install if approved.
  - 3.55.3 Community Services to assess disability access issues for applications that do not meet required parameters.
  - 3.55.4 Property and Buildings Division – only if fixed items are proposed, to assess any requirements for authorisations and implement that process with the applicant,
  - 3.55.5 Development Services – all applications are referred for assessment against previous development approvals.
  - 3.55.6 Environmental Health - only for new applications associated with new food business start-ups or change of ownership.
- 3.56 Whilst the applicant has a primary contact for their application with the General Inspectorate team in a 'case management' role, the other sections may directly communicate the applicant to facilitate a timely assessment of their application, and help the applicant with any additional requirements such as the authorisation process. However the General Inspectorate team undertakes a coordination role within the organisation to ensure the application moves through the assessment process as efficiently as possible.
- 3.57 The application form has been reviewed to capture all elements of the foot path trading application excluding statutory Development Applications if required.

Fees

- 3.58 As a result of this change and to avoid the requirement for multiple payments it is recommended that any fees associated with the applications be issued after the assessment, with the exception of the proposed \$100 public consultation fee if required. This change in process means that the business owner is not liable to any fees unless their footpath trading permit is approved. This includes permit fees and EAB payments (if approved) and would result in one invoice for the applicant.

- 3.59 Any requirement for authorisations will be dealt with separately via Property Services, noting however preference for moveable items for reasons previously outlined.
- 3.60 It is also proposed that the fees be declared a 'permit' fee rather than an application and application for renewal fee. This would apply to new permits and renewals as the assessment process for annual renewals needs to consider the same criteria as for new permits. As per the requirements of Section 188 of the Local Government Act, the permit fees can be invoiced after an application is processed and an approval granted, and no fees are payable if an application is rejected. Section 188—Fees and charges, states:
- (1) A council may impose fees and charges;*
- (f) in respect of any authorisation, licence or permit granted by the council;*
- 3.61 The current footpath trading permit application fees are as follows:
- Outdoor Footpath Trading Application – Business \$80.
- Outdoor Footpath Trading Renewal – Business \$60.
- Outdoor Footpath Trading Application or renewal - Charity/Community Group \$1.
- 3.62 Comparison council fee structures are provided in the attachment to this report, and it is recommended the current fees be re-structured to be reflective of the size of the footpath trading area and the number of EAB's required to be installed.
- 3.63 This would make the Permit fees consist of an Energy Absorbing Bollard Fee and the Trading area fee. However this is dependent on the cost recovery model for EAB's.
- 3.64 A fee structure reflecting the size of the area gives consideration to the potential financial the permit area offers to the applicant, and applying a square metre rate provides for a more equitable fee structure. In addition a minimum fee ensures that the administrative time to assess and issue permits is also addressed and subsequently the model presents a minimum rate or square metre rate whichever is the greatest. The minimum rate is reflective of the current fees endorsed by Council. However it is also recommended that the maximum fee is capped as the footpath trading areas within the City range from as low as seven square metres up to 80 square metres, which would result in a potentially large variance in fee structures if not capped.
- 3.65 The fee model is summarised in the Footpath Trading Fees and EAB Fee's Model attached to this report (Attachment 3).
- Application Assessment Process
- 3.66 The application assessment process will be a four step process:
- Apply – applicant lodges new application or renewal form;
  - Assess – staff undertake assessment, consult with the applicant and refer and consult with other relevant staff, and process the application;

- Notification - staff may give notice of the application to persons who may be affected by the granting of a permit which will entitle those persons to make a submission which must be considered by Council or by staff under delegation before a determination is made on the application.
- Issue – Invoice, and Permit upon payment of invoice, or Refusal or Cancellation:
  - Invoice and Permit - staff issue an invoice and upon payment and presentation of insurance documentation, issue the permit.
  - Refusal or Cancellation - staff may refuse to issue a permit, refuse to modify the conditions of an existing permit or cancel a permit if conditions are not met or the site conditions do not permit trading.

3.67 This process should result in a streamlined and improved customer experience as it will be dealt with by one officer as the customer interface.

#### 4. CONCLUSION / PROPOSAL

- 4.1 This policy review is focusing the Footpath Trading Policy on trading activities in order to manage the use of footpaths for businesses. Other activities will be dealt with through the development of additional policy to address non-business uses of footpaths.
- 4.2 The amended policy is attached for consideration along with the draft application form.
- 4.3 Council is requested to consider and or endorse the following:
- 4.3.1 The draft policy be endorsed and approved for public consultation.
  - 4.3.2 Endorse for public consultation as part of the Draft Footpath Trading Policy an application fee of \$100 that is applicable when public notification of adjacent residential premises is required for an application for a footpath trading permit.
  - 4.3.3 Consider and review current fee exemption for the car parking contribution requirements for small business for the Salisbury City Centre prior to the expiration in April 2019.
  - 4.3.4 Endorse for public consultation as part of the Draft Footpath Trading Policy the Footpath trading permit fees as per Attachment 3:
    1. Business/Commercial Footpath Trading Permit Annual Fee = \$ EAB fee\* plus \$Trading Area fee (\*EAB fee where applicable)
      - \$Trading Area fee = a minimum rate or a square metre rate (whichever is the greatest) for the trading area, this is recommended to be;
        - \$80 minimum or \$10 per square metre (whichever is the greatest) capped at \$200.
- and

- EAB fee = a bollard fee multiplied by the number of bollards, which is recommended to be;
  - \$100 x number of bollards

(Note that if the EAB fee is determined to be either:

- Full cost recovery - full cost of EAB's (supply and installation)
- Cost share model, - costs of EAB's (supply and installation) /2) or
- Cost recovery model, - full cost of EAB's (supply and installation) /10 (annul payment for 10 years)

then the above proposed EAB fee will be required to be amended).

2. Business/Commercial Casual Rate (Approval for up to five business days) (temporary nature and where EAB's are not required) = \$20 minimum or 10% of calculated annual fee (whichever is greatest)
3. Charity/Community Group (ongoing where EAB's are required)  
Footpath Trading Permit Annual fee = \$ EAB fee\* plus \$Trading Area fee (\*EAB fee where applicable)
  - This is the same as for Business/Commercial Footpath Trading Permit annual fee as it is ongoing and requires EAB's
4. Charity/Community Group (ongoing where EAB's not required)  
Footpath Trading Permit Annual fee = (50% of calculated business /commercial fees) \$Trading Area fee
  - \$80 minimum or \$10 per square metre (whichever is the greatest) capped at \$200, with a 50% rebate.
5. Charity/Community Group Casual Rate (Approval for up to five business days) (temporary nature and where EAB's are not required)  
Footpath Trading Permit Fee = \$10 minimum or 10% of \$Trading Area fee (whichever is greatest)

- 4.3.5 The endorsed position of Council and draft policy will be subject to the required legislated public consultation processes.

## CO-ORDINATION

Officer: EXECUTIVE GROUP

Date: 08.06.18





## Footpath Trading Policy

Policy Type:	Policy		
Approved By:	Council	Decision No:	353, 2010/2261, 2011/262, 2013/1564
Approval Date:	28 May 2007	Commencement Date:	23 March 2015
Review Date:	TBD	Internal Reference No.:	
Department:	City Development	Division:	Environmental Health and Safety
Function:	15 - Legal Provisions	Responsible Officer:	Manager Environmental Health and Safety

### A - PREAMBLE

1. Pursuant to Section 222 of the Local Government Act 1999, the City of Salisbury is vested with the power to grant a permit for the use of streets, roads and road related areas (footpaths, etc) held in its care for use for business purposes. Local government is also empowered to make the granting of a permit subject to conditions.
2. Footpaths are public spaces and their primary role is to provide access for all people to move along them freely and without obstruction. Council aims to provide a safe environment for people who move through the City. Part of this responsibility requires Council to provide a clear path for all people to move along footpaths.
3. Council also has a legal responsibility for the regulation of trading activities in public places, and is committed to ensuring strip shopping centres and business precincts are enhanced by providing the opportunity for footpaths to be used for people to dine and trade.
4. Pedestrian safety is the primary purpose of footpaths, and Council's Footpath Trading Policy has been developed with this distinction in mind. Council is committed to ensuring access for people to move along footpaths with good access and as a minimum, to meet the requirements of the Commonwealth Disability Discrimination Act (1992).
5. The Australian Human Rights Commission states that people who design, build, own, lease, operate or manage premises should achieve equitable access for people with disability by ensuring all parts of premises to which the public is entitled or allowed to enter or use are connected by a network of continuous accessible paths of travel. A continuous accessible path of travel should be the most commonly used and direct path of travel.
6. A continuous accessible path of travel is an uninterrupted route to and within premises providing access to all features, services and facilities. It should not incorporate any step, stairway, turnstile, revolving door, escalator, hazard or other impediment which would prevent it from being safely negotiated by people with disability. Premises include the whole built environment including pathways.

7. In order to achieve best practice Council will encourage compliance with the Australian Standard 1428 Design for Access and Mobility. (AS1428 Part 1 and 2)
8. Where possible Council will aim to achieve an effective accessible pedestrian system throughout shopping precincts through the development and maintenance of a continuous accessible path of travel. This should extend out from the property line to provide a consistent footpath environment inclusive of the needs of all of the community.
9. In certain locations and precincts with footpaths in excess of 3.5 metres and or where shop fronts and subsequent building lines are staggered the safety of pedestrians and access by all persons may be better achieved if trading is kept along the building or property line and alternative methods are implemented to maintain a safe and accessible path of travel.

## **B - SCOPE**

1. The Footpath Trading Policy applies to the use of all footpaths within the City of Salisbury for commercial purposes, by an organisation, individual or business, and for non commercial purposes by an organisation, community group, individual or business.

## **C – POLICY PURPOSE/OBJECTIVES**

1. The Footpath Trading Policy aims to ensure that safe and accessible pathways are provided for everyone in the community to use. Council has a legal responsibility under the Commonwealth Disability Discrimination Act 1992 to ensure the development and maintenance of a continuous accessible path of travel along footpaths.
2. This path of travel, the “pedestrian zone”, should, extend from the property line with no obstruction or projections wherever possible.
3. The City of Salisbury is responsible for ensuring safe pedestrian walkways. Where this is achieved, Council may allocate space for footpath trading.
4. The Footpath Trading Policy covers:
  - a. what parts of footpaths may be used for footpath trading or the display of goods or signs;
  - b. permit requirements for the use of a Trading Activity Area;
  - c. specific requirements for particular types of footpath trading activities and items;
  - d. administration of the Policy; and
  - e. Enforcement of permits and the Footpath Trading Policy.

## **D - DEFINITIONS**

1. Authorised Officer - a person appointed under Section 260(1) of the Local Government Act as an authorised officer and holding a position within the Inspectorial Services Section.
2. Accessible car parks - a car park designated for parking by persons with a disability
3. Shoreline – the building line or property line which runs parallel with the footpath that provides a guide for persons with a disability or vision impairment so that they may have a continuous accessible path of travel. There should be no obstructions or projections from this line in order to provide the best possible guidance line for all users including people with vision impairment.



## E - POLICY STATEMENT

### Guiding Principles

1. Council aims to provide clear, safe and unobstructed access at all times for pedestrians of all abilities on Salisbury's footpaths in accordance with Council's statutory responsibilities and the requirements of the Commonwealth Disability Discrimination Act (1992).
2. The Footpath trading activity must relate to and must make a positive contribution to the urban character and amenity of the area and surrounding residential areas.
3. Council strongly supports the long-term viability and sustainability of retail strips.
4. Council acknowledges the importance of footpath trading in enhancing the amenity, vitality and safety of the City's commercial areas.

### Footpath Zones

In order to provide for clear and unobstructed access for pedestrians, three footpath zones are defined within the width of the footpath:

#### 1. Pedestrian Zone

The pedestrian zone provides a continuous accessible path of travel for people of all abilities, extending from the most forward point of the property line, building line or shop front of premises for a minimum of 1800 mm. No footpath trading items may extend into this zone at any time, including items overhead below a height of 2200 mm.

#### 2. Trading Activity Zone

The trading activity zone is that area of the footpath where goods, outdoor eating furniture and ancillary items and movable advertising signs may be placed and where other permitted street activities may take place.

All activities associated with the trading must be undertaken in this zone, and this includes:

- Space for shoppers selecting or viewing items
- Space for shopping trolleys and carts
- Space for chairs to be moved in and out from tables, and for seated diners.

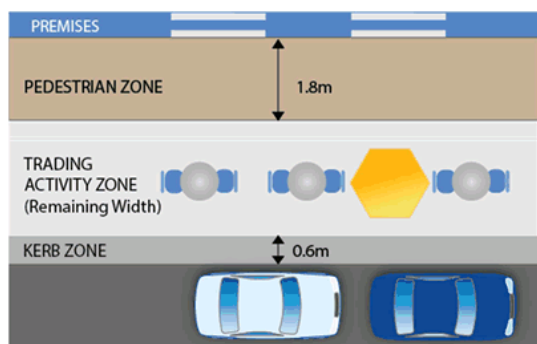
Council may place markers in the footpath or otherwise delineate the Trading Activity Zone.

#### 3. Kerbside Zone

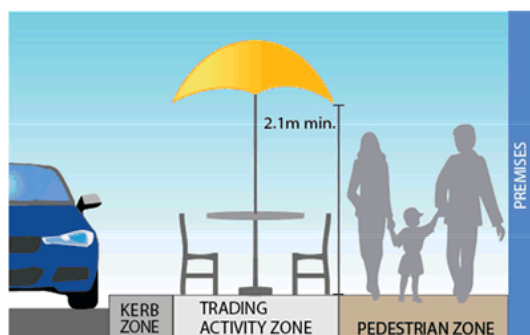
The kerbside zone is a buffer from the kerb to allow for access to and from parked vehicles. A minimum of 600 mm buffer as measured from the face of kerb to allow for access to and from parked vehicles including at loading zones. Where there is an accessible parking bay for people with a disability, the setback from the kerb will be at least 1500 mm.

### Plan View





Elevation View



### Footpaths wider than 3500 mm

For footpaths wider than 3500 mm:

The **Pedestrian Zone** extends from the building line or shop front of premises for a minimum of 1800 mm. No footpath trading items may extend into this zone at any time, including items overhead below a height of 2200 mm.

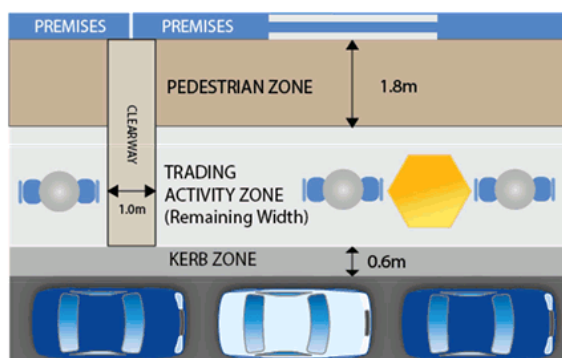
The **Trading Activity Zone** is the only area of the footpath where goods, outdoor eating furniture and ancillary items, and advertising signs, may be placed, subject to the provisions of this Policy. A setback of 500 mm is required from each side boundary of premises in order to ensure a 1000 mm wide access way between premises from the kerb to the Pedestrian Zone. Any amendment or change to this setback will be subject to individual site assessments and the written consent from adjoining tenants. Changes in tenancies will require consents to be reviewed.

Trading Activity Zone's that exceeds 900mm metres in width will be subject to individual assessment by Authorised Officers to take into account the local amenity and individual characteristics of the area in order to locate trading in the best location that maximises pedestrian safety.

The **Kerbside Zone** is a minimum of 600 mm buffer as measured from the face of kerb to allow for access to and from parked vehicles including at loading zones. Where there is an accessible parking bay for people with a disability, the setback from the kerb will be at least 1500 mm.

No items may be placed in either the Pedestrian Zone or the Kerbside Zone.

### Footpaths Wider than 3500mm



### Footpaths from 3000 mm to 3500 mm wide

For footpaths from 3000 mm to 3500 mm:

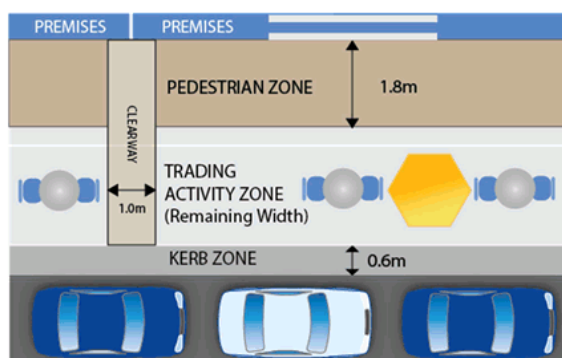
The **Pedestrian Zone** extends from the building line or shop front of premises for a minimum of 1800mm. No footpath trading items may extend into this zone at any time, including items overhead below a height of 2200 mm.

The **Trading Activity Zone** is the only area of the footpath where goods, outdoor eating furniture and ancillary items, and advertising signs, may be placed, subject to the provisions of this Policy. A setback of 500 mm is required from each side boundary of premises in order to ensure a 1000 mm wide access way between premises from the kerb to the Pedestrian Zone. Any amendment or change to this setback will be subject to individual site assessments and the written consent from adjoining tenants. Changes in tenancies will require consents to be reviewed.

The **Kerbside Zone** is a minimum of 600 mm buffer as measured from the face of kerb to allow for access to and from parked vehicles. Where there is an accessible parking bay for people with a disability, the setback from the kerb must be at least 1500 mm.

No items may be placed in either the Pedestrian Zone or the Kerbside Zone.

### Footpaths from 3000 mm to 3500 mm wide



### Footpaths less than 3000mm wide

In order to provide a continuous accessible path of travel for people of all abilities, footpaths of less than 3000 mm may not be suitable for footpath trading.

Any proposed trading will be subject to individual site assessments and may suit goods display only.

### Shoreline Trading

For footpaths wider than 3500 mm and or where shop fronts and subsequent shore lines are staggered and where the safety of pedestrians and access by all persons may be better achieved if trading is kept along the shoreline, the following definitions apply.

The **Kerbside Zone** is a minimum of 600 mm buffer as measured from the face of kerb to allow for access to and from parked vehicles including at loading zones. Where there is an accessible parking bay for people with a disability, the setback from the kerb will be at least 1500 mm.

No items may be placed in either the Pedestrian Zone or the Kerbside Zone.

The **Pedestrian Zone** extends from the Kerbside Zone for a minimum of 1800 mm. No footpath trading items may extend into this zone at any time, including items overhead below a height of 2200 mm.

The **Trading Activity Zone** extends from the shop front to the pedestrian zone and is the only area of the footpath where goods, outdoor eating furniture and ancillary items, and advertising signs, may be placed, subject to the provisions of this Policy. A setback of 500 mm is required from each side boundary of premises in order to ensure a 1000 mm wide access way between premises from the kerb to the Pedestrian Zone. Any amendment or change to this setback will be subject to individual site assessments and the written consent from adjoining tenants. Changes in tenancies will require consents to be reviewed.

The Trading Activity Zone shall be a maximum of 900mm in width and any trading zones that exceed 900mm in width will be subject to individual assessment by Authorised Officers to take into account the local amenity and individual characteristics of the area in order to locate trading in the best location that maximises pedestrian safety.

Where the trading zone exceeds 900mm, the area permitted for trading may be restricted by the permit to a maximum width below that of the available area in order to locate trading in the best location that maximises pedestrian safety and reduces the effect of creating an island trading environment that may be of greater hazard to pedestrians.

#### Access and Safety Requirements

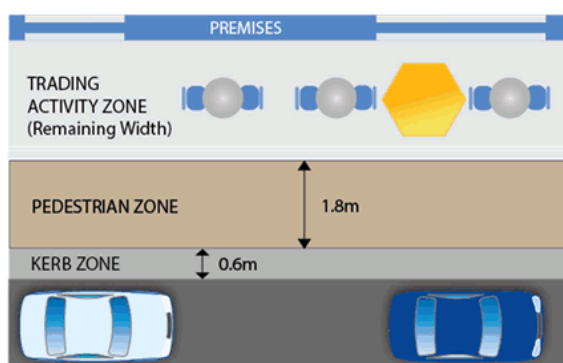
Pedestrian access along the pavement is to be maintained by the provision of at least 1.8 metres of clear pathway along the full street length of the defined area.

Where shoreline trading is permitted an alternate shoreline must be created by providing:

- a solid barrier commencing at ground level and at least 900mm high
- which provides at least 30% luminance contrast with the footpath (such contrast can be gained by avoiding using tones in the red-green spectrum and instead using yellow against a darker background and black against a paler background).

#### Explanation

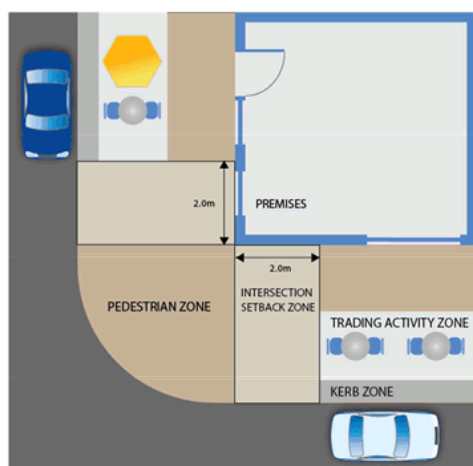
Blind or vision impaired pedestrians use either “tactile” information (with the aid of a “long cane”) and/or the “luminance contrast” between surfaces of different colours to maintain their line of travel. Examples are a long cane user will travel along a suburban footpath using the cane to detect the path ahead and correcting their line of travel if the cane detects a different surface indicating that they are wandering off the path; people who do not use a cane (and some long cane users) rely on their residual vision to identify the facade of a number of shops in a retail area and will get their bearings in relation to this facade – when the facade stops and they encounter daylight they know that they have either reached a point where the path changes direction or where the path arrives at an open space – an intersection or a park.

**Shoreline Trading:****Corner Locations**

In order to protect the safety of pedestrians and motorists, no items may be placed within 2000 mm of an intersection of building lines without the approval of Council's Traffic Management Section.

If shoreline trading is permitted with proximity to a corner location then no items may be placed within 3000mm of an intersection

Any proposed site which abuts a corner must take account of retention of an adequate view of the roadways in all directions for road users and pedestrians in the vicinity of the site.

**Corner Location****Safety Barriers**

All applications for footpath trading will be subject to the provision of safety barriers as determined by Council's Traffic Management Section

Barriers must take the form of safety rated Energy Absorbing Bollards (EAB's) mounted near the kerb. A risk assessment matrix is applied to determine if EAB's are required. If it is determined that there is a requirement for EAB's then footpath trading cannot commence until the safety barriers are installed.



EAB's must be installed to prevent the incursion of road vehicles on the pavement at any proposed site which abuts or is in the vicinity of a road or laneway of any type. If appropriate safe views or incursion prevention cannot be achieved by any applicant, a Permit is to be denied.

Other devices may be permitted at the discretion of Council's Traffic Management Section, upon application and subject to providing equivalent or better protection from vehicular incursion than EAB's.

Barrier design and installation must allow pedestrian access between the units and as far as possible blend in with the physical attributes of the site and subject to Council Design guidelines and colours.

EAB's shall be installed by Council and subject to the permit and or renewal fees or installation fees as specified on the application form and or Council's fees and charges register.

### **Authorisations**

For the purposes of footpath trading all items shall be moveable and be removed from the footpath when trading ceases. Any item that is intended to be fixed to a footpath, or that permanently overhangs a footpath area requires Council's Authorisation. Examples include:

- a fixed sign
- verandah
- sails
- encroachment by a building
- permanent structures such as screens or planter boxes

Authorisations are subject to additional fees as specified on the application form and Council's fees and charges register.

### **Development Controls**

In addition to requiring consent under the Local Government Act, the establishment of an outdoor dining area may require Development Approval (both Provisional Development Plan Consent and/or Provisional Building Rules Consent) under the Development Act 1993.

If the establishment of an outdoor dining area constitutes a change in land use, it requires Provisional Development Plan Consent. The erection of some fixtures such as blinds, other awnings and screens may also constitute building work for the purposes of the Development Act and therefore will require approval.

Any application for a change in land use and/or building work will be considered in accordance with the Development Plan policy of the Council and will address such matters as the provision of car parking, pedestrian access, and safety for patrons, pedestrians and motorists.

All applications are referred to Development Services for assessment.

### **Car Parking Fund Contributions**

Footpath trading applications relating to dining and the addition of tables and chairs to a business requires the application to be considered by Development Services. The increased seating capacity has an impact on the required car parks for that business and dependant on their locality may trigger a payment to the car parking fund.

The car parking contribution fund fees are as specified on the application form and or Council's fees and charges register.

### **Liquor Licensing**

The consumption of liquor is not permitted without the relevant approvals from Consumer and Business Services. Please refer to the following site: (<https://www.cbs.sa.gov.au/liquor-and-gambling-licenses/apply-for-a-new-liquor-or-gaming-licence/>)

Approval for the consumption of liquor will not be granted in the Permit without approval from Consumer and Business Services.

### **Noise**

The impact of noise from foot path trading can be a concern where the activity is proximity to residential premises and trading is occurring outside of common trading hours. The trading hours may be addressed thorough development approvals, however the permit conditions can also address and restrict hours of activity if noise nuisances are identified once trading begins.

Subject to Development Planning and other controls along with the conditions of the permit, if footpath trading times are proposed outside of 8am to 7pm and the business is within 50 metres of residential premises, the application will require notification of any affected residential premises before the permit can be considered. The notification process will be conducted before the application for a permit can be considered and subject to additional fees (as specified on the application form and Council's fees and charges register.)

Noise nuisances can also be subject to the provisions of the Local Nuisance and Litter Control Act 2016.

### **Smoking**

From 1 July 2016, smoking was banned in outdoor dining areas in South Australia under section 52 of the Tobacco Products Regulation Act 1997 and this includes outdoor dining areas. The new law is designed to protect the community from exposure to potentially harmful tobacco smoke and increase the comfort and enjoyment of outdoor dining areas for all patrons.

Smoking relates to any ignited tobacco product or non-tobacco product and includes smoking from a cigarette, pipe, water pipe or any other smoking device. Water pipes are also known as shisha, sheesha, hookah, nargila, argileh, hubble bubble and goza.

Dedicated smoking areas can be established for the purposes of smoking and drinking, including coffee, and or the consumption of snack foods. Snack food includes foods such as potato crisps, nuts, chocolate bars and pre-packaged biscuits. Sandwiches and hot chips are not considered to be snack food.

Any smoking area must be physically separated from the dining area and not create a nuisance to pedestrians and other footpath trading areas.

The use of water pipe or any other similar smoking device, alternatively known as shisha or sheesha and other names, are not permitted on footpath trading areas due to the excessive smoke created and usual long term duration of the activity. This can result in potential impacts on health and nuisance impact on pedestrians and others in general proximity to the area.

Approval for a dedicated smoking area is subject to site specific assessment by officers and any identified or potential impact on adjoining properties or the pedestrian zone. Public consultation may be required for any dedicated smoking area.



**Dogs in Outdoor Dining**

Under the provision of the Food Act 2001 and Food Safety Standards (standard 3.2.2 Clause 24) a food business must permit an assistance animal in areas used by customers, and a food business may permit a dog that is not an assistance animal to be present in an outdoor dining area.

Dogs that are not assistance dogs should be:

- (a) under the control of a person who is present in the outside area;
- (b) restrained by a lead that is not more than 2 metres in length;

**Public Infrastructure**

A minimum clearance of 1000 mm, or less if permitted by Council, shall be provided from any existing street furniture or other infrastructure on or adjacent to the footpath, including but not limited to seats; benches; bollards; litter bins; bike racks; post boxes; telephone boxes; service pits; public transport stops/taxi ranks; public transport shelters; loading zones; parking meters; traffic signal boxes; fire hydrants and other emergency assets; pedestrian crossings; and street trees or shrubs.

Application may be made to Council for the relocation, at the applicant's cost, of Council maintained seats, benches or bicycle racks, in association with an application for a permit for footpath trading.

Any request for relocation of seats, benches or bicycle racks, must be accompanied by a plan showing the site for the proposed relocation of the street furniture item and a letter of no objection from the owner and occupier of the premises outside which the item is proposed to be relocated.

**Service Authority Works and Special Events**

Service authorities or Council may require the use of a site to undertake works or maintenance works. When this, or any parade, festival or special event is scheduled, it will be normal practice to give at least seven days notice of the requirement to remove any item from the footpath.

In an emergency or where maintenance works are considered to be urgent, sites may need to be cleared immediately.

Permit holders will be responsible for the movement of all items and any associated costs.

**Evidence of a Permit**

Any business that is permitted to undertake a commercial activity on the footpath adjacent to that business must be able to produce a copy of the current permit to an Authorised Officer upon request.

The permit may include the permit number, date of issue and a summary of the items permitted to be placed on the footpath.

**Reinstatement**

Any damage to footpaths or alterations undertaken must be reinstated by the permit holder at their costs and to Council's specifications or the permit holder will be responsible for reimbursing Council for any reinstatement works.

**General Conditions for Footpath Trading**

Please refer to attachment 1 of this Policy

### Administration of the Policy

#### Applying for a Permit

Pursuant to Section 222 of the Local Government Act 1999, a permit is required for the use of streets, roads and road related areas (footpaths) held in Council's care for use for business purposes. Local government is also empowered to make the granting of a permit subject to conditions.

#### 1) Apply

To apply for a permit an applicant must complete and sign the Footpath Trading Permit application form.

#### 2) Assess

Staff undertake assessment, consult with the applicant and refer and consult with other Sections of Council and process the application. Other relevant areas include:

- Traffic Management – to assess EAB requirements and any other traffic management issues,
- Technical Services Design and Civil Infrastructure Construction – to assess the design and install of EAB's, and the costs for installation and to schedule install if approved.
- Community Services to assess Disability Access issues for applications that do not meet required parameters,
- Property Services – only if fixed items are proposed to assess any requirements for authorisations and implement that process with the applicant,
- Development Services – all applications are referred for assessment against previous approvals.
- Environmental Health - only for new applications associated with new food business start-ups or change of ownership.

In considering an application for Footpath Trading, Council shall have regard to the requirements under the Local Government Act, the specific and general requirements specified in this Policy and the specific local conditions relevant to the application, including

- a) the width of the footpath;
- b) the location of existing trees, street furniture or other public infrastructure;
- c) proximity to major roads, speed of road, disabled parking bays, loading bays, loading zones, clearways, and parking angles;
- d) the likely number of pedestrians, at particular times of day; and
- e) the location of nearby residences.

#### 2) Notification

Before a permit is granted for the first time, or after a change of business use, Council may give notice of the application to persons who may be affected by the granting of a permit which will entitle those persons to make a submission which must be considered by Council before a determination is made on the application.

#### 3) Issue Invoice and Permit or Refusal and Cancellation

Invoice and Permit - Staff will issue an invoice for all required fees and upon payment and presentation of insurance documentation, issue the permit.

Council may issue a permit in accordance with an application as submitted, or with modifications and with or without special conditions.

Refusal or Cancellation - Council may refuse to issue a permit, refuse to modify the conditions of an existing permit or cancel a permit if:

- a) any requirements of this Policy are not met;
- b) the sight and access of drivers, cyclists or pedestrians is interfered with so as to create a hazardous situation;
- c) there is likely to be detriment to the amenity of the area,
- d) personal safety is likely to be compromised,

- e) any existing permit conditions have not been complied with and there has been a failure to comply with any notice served, or
- f) the permit holder fails to maintain the stipulated minimum public liability insurance.

**Fees and term**

Fees and charges for footpath trading are determined by Council annually and provided in the fees & charges register and updated on the application form. Fees are subject to review and change annually or more frequently if so required and approved by Council.

Unless otherwise specified on the permit, the permit term shall expire one year from the date of issue, except in those instances where it is withdrawn by Council prior to the expiry date.

Permits are not transferable. A new permit must be obtained if the proprietorship of a business changes. This may not require any additional fees until such time that the permit is due for renewal.

A permit expires if the permit holder ceases to maintain the appropriate public liability insurance or to meet any of the conditions of the agreement and this Policy.

**Enforcement of Policy and Legislative Provisions**

Council authorised officers will check compliance with this Policy and the conditions of relevant permits on a regular basis.

Upon detection of a breach of the Footpath Trading Policy or a specific condition of any permit issued, Council will take action in accordance with the provisions of the Local Government Act as applicable.

Enforcement action may include a verbal direction or written notice to comply, an Infringement Notice or Council may impound the items on the footpath that do not comply this Policy and the conditions placed on any permit.

**Insurance**

The applicant/permit holder shall maintain a public risk insurance policy from a reputable insurer for the minimum amount of Twenty Million Dollars (\$20,000,000.00) per claim or such other amount as the Council may reasonably require from time to time. Such policy must indemnify the permit holder for any injury, loss or damage to other persons or property arising directly or indirectly from any activity associated with the permit holders footpath trading

The applicant/permit holder must not commence any activity on said footpath/road until the applicant has provided to the Council a copy of the public risk insurance policy (a Certificate of Currency) and the permit has been issued.

The Permit holder must maintain this insurance for the duration of the permit.

**F - LEGISLATION**

1. Local Government Act 1999
2. Disability Discrimination Act 1992
3. Australian Standard 1428 (Parts 1 and 2) Design for Access and Mobility.

**G - REFERENCES**

1. Local Government Association – Outdoor Dining Background Paper
2. Adelaide City Council Outdoor Dining Guidelines 2014
3. City of Holdfast Bay Outdoor Dining Policy
4. Banyule City Council Footpath Trading Policy
5. City of Yarra Footpath Trading Policy

6. <http://www.humanrights.gov.au/>

## **H - ASSOCIATED PROCEDURES**

1. City Of Salisbury Application for a Permit to Use a Public Road for Business Purposes.

### **Document Control**

<b>Document ID</b>	<b>Footpath Trading Policy</b>
<b>Prepared by</b>	<b>John Darzanos</b>
<b>Version</b>	<b>0.1</b>
<b>Document Status</b>	<b>Draft</b>
<b>Issue Date</b>	<b>28/05/2018 TBD</b>

**Attachment 1****General Conditions for Footpath Trading Permits****Outdoor Eating**

- 1) Any chairs, tables and ancillary items associated with outdoor eating:
  - a) may only be placed in the Trading Activity Zone of the footpath;
  - b) may only be placed on the footpath during the normal trading hours of the business to which they relate, unless otherwise approved by Council;
  - c) must be of a suitable design and in particular:
    - i) must be of a style, appearance, materials, finishes and colours which are of a high standard, attractive, durable, shatterproof, unobtrusive and complement the character of the streetscape.;
    - ii) must be uniform in style and design for each premises;
    - iii) must contrast with their background to assist people with vision impairment;
    - iv) must be portable, yet sturdy and windproof.
- 2) The permit holder must:
  - a) maintain the footpath eating area in a clean and tidy condition at all times and immediately clean up any spills and litter;
  - b) where smoking is permitted, supply each table outside with a wind-proof ashtray at all times and be responsible for cigarette ash, butts and any other litter generated by patrons of a footpath eating area;
  - c) ensure that patrons do not move tables and chairs or ancillary items from their positions and obstruct the Pedestrian Zone;
  - d) ensure that patrons do not allow pets, prams or any other personal items to obstruct the Pedestrian Zone;
  - e) ensure that food and beverages are not served to patrons standing on the footpath within the Pedestrian Zone;
  - f) ensure that no noise or other disturbance creates a nuisance or causes detriment to the amenity of the neighbourhood; and
  - g) be responsible for reimbursing Council for any reinstatement works as a result of damage to footpaths or street fixtures and furniture.
- 3) A condition may be placed on a permit requiring a permit holder to place written reminders to patrons in the outdoor eating facilities on the footpath, regarding the above responsibilities, if deemed appropriate by an Authorised Officer.
- 4) Liquor is not to be sold, consumed or served within the Trading Activity Zone unless approved by Consumer and Business Services.
- 5) Any premises where alcohol is served or consumed on the footpath must have its liquor licence endorsed with the footpath as part of the "licensed area" on the liquor licence for those premises.
- 6) Waiting staff at premises with outdoor eating facilities on the footpath must facilitate free access by all footpath users within the Pedestrian Zone and give all footpath users priority right of way.
- 7) Separate cash registers, counter facilities or storage facilities are not permitted on the footpath.
- 8) No food or drink is to be prepared, cooked or heated in the footpath eating area except in accordance with any permit granted for temporary food premises.



- 9) The handling and serving of food and drinks to patrons within the footpath eating area must be conducted in accordance with the requirements of Food Act and Food Safety Regulations and Council's Public and Environmental Health Services Section.

#### Goods

- 10) Any goods for display:
- a) may only be placed in the Trading Activity Zone of the footpath;
  - b) the viewing and selection of goods on display, and the positioning of any trolleys must also be conducted within the trading activity zone
  - c) may only be placed on the footpath during the normal trading hours of the business to which they relate;
  - d) must not exceed a height of 1500 mm, and the width shall allow for the viewing and selection of goods on display, and the positioning of any trolleys within the Trading Zone,
  - e) must be kept in a clean and tidy state, including the area around the display; and
  - f) if a display of foodstuffs, this must comply with the requirements of the Food Act and Council's Public and Environmental Health Services Division.
- 11) Goods (except furniture) must be displayed on stands approved by Council, which in particular:
- a) must be of a style, appearance, materials, finishes and colours which are of a high standard, attractive, durable, shatterproof, unobtrusive and complement the character of the streetscape;
  - b) must not have sharp, pointed, or jagged edges, corners or protrusions;
  - c) must be stable and able to withstand adverse weather conditions;
  - d) must be secured in a manner that ensures that adverse weather conditions will not create a risk for any footpath users, property or passing traffic but may not be affixed to any footpath, building, street furniture, pole or other structure;
  - e) must contrast with their background to assist people with vision impairment;
  - f) must not comprise any movable parts (eg. spinning, flapping);
  - g) must not be illuminated externally or internally; and
  - h) must not cause any damage to the footpath surface.
- 12) Goods for display will not be permitted:
- a) where access to a loading zone or disabled parking bay will be impeded;
  - b) where they will cause difficulty to any footpath users, including pedestrians and people exiting or accessing parked vehicles or the footpath;
  - c) to overhang either the kerb or Pedestrian Zone.

#### Moveable Advertising Signs

- 13) In addition to the requirements of By Law 2 Moveable Signs, a footpath trading permit relating to moveable signs shall also comply with the following requirements:
- 14) One movable advertising sign only may be displayed for each street frontage of a business.
- 15) Any movable advertising sign:
- a) may only be placed in the Trading Activity Zone;
  - b) may only be displayed outside of the frontage of the business to which it relates;
  - c) must not exceed 600 mm in width or 900 mm in height;
  - d) must be secured in place by a means that is not reliant on, or physically tied to any infrastructure or trees. The means by which these signs are to be secured must not extend beyond the perimeter of the permitted sign and must be of a type approved by Council. Any securing device is to be removed with the sign in accordance with permitted display times;
  - e) may only be displayed during the normal trading hours of the business to which it relates;
  - f) must contrast with its background to assist people with vision impairment; and
  - g) may only feature the business name or service provided by the business to which it relates.

- 16) Inflatable signs; portable electric signs; illuminated, revolving, spinning or flashing signs; flags and banners are prohibited.
- 17) The display of a movable advertising sign is not permitted where a business is conducting any other commercial activity on the footpath.

#### Outdoor Speakers/Amplification equipment

- 18) Permission will be required to affix speakers to a building or veranda.
- 19) Any sound or noise produced must not be annoying or cause a disturbance, which in the opinion of Authorised Officer, creates a nuisance or causes detriment to the amenity of the neighbourhood.
- 20) No sound amplification equipment or jukeboxes may be utilised in the footpath area.

#### Outdoor Heaters

- 21) Any outdoor heater:
  - a) must be associated with the use of the footpath for an outdoor eating facility;
  - b) may only be placed or fixed in the Trading Activity Zone; and
  - c) must comply with all relevant safety standards

#### Umbrellas

- 22) Any umbrellas:
  - a) may only be placed in the Trading Activity Zone;
  - b) must be not less than 2100 mm high at the lowest point other than the pole and must not protrude over the kerb or into the pedestrian zone;
  - c) Any moveable item that protrudes into the pedestrian zone must not be below a height of 2200mm.
  - d) must be weighted and/or secured so as not to pose a safety hazard.
- 23) At times when it is raining, water from umbrellas must not be discharged within the Pedestrian Zone.
- 24) Umbrellas may be secured to the footpath by a lock-in device. Lock-in devices will only be approved where the device lies flush with the footpath when the umbrellas are not displayed. Applications for approval for lock-in devices should be made to Council Property Services. Plans and specifications of the items will be required to be lodged with Council prior to any umbrella being placed with a lock-in device.

#### Barrier Screens

##### Barrier screens include:

- low barrier screens, which are predominantly made of canvas or vinyl;
- high barrier screens, which are usually made of clear material such as safety glass or heavy duty plastic and are fitted to the footpath by lock-in devices; and
- full-length awnings/blinds, which are commonly attached from a verandah to the footpath.

The form and construction of any barrier screen must be suitable for its functional requirements and location, taking into account prevailing weather conditions.

#### 25) Low Barrier Screens

- a) must be associated with the use of the footpath for an outdoor eating facility;
- b) may only be placed in the Trading Activity Zone;
- c) may be no more than 1200 mm high;
- d) may only be in place during the normal trading hours of the business with which they are associated;
- e) must be placed so that the screens are stable and secure or weighted so that they will not be moved by patrons or prevailing weather.
- f) must contrast with their background to assist people with vision impairment;

- 26) High Barrier Screens
  - a) must be associated with the use of the footpath for an outdoor eating facility;
  - b) may only be placed in the Trading Activity Zone;
  - c) may only be in place during the normal trading hours of the business to which they relate;
  - d) must be at least 1500 mm high (except where the premises are located on corner), be transparent and constructed of safety glass or heavy-duty plastic;
  - e) must have a 75 mm wide band 1000 mm above the ground that contrasts with its background to provide a visual guide for all pedestrians;
  - f) must be fitted to the footpath with a lock-in device, but be removable. Applications for approval for lock-in devices should be made to Council Property Services.
- 27) High barrier screens must be removed after the normal trading hours of the business with which they are associated in order to facilitate street cleaning by vehicles.
- 28) High barrier screens may not be used for advertising other than the name of the business or unless otherwise approved.
- 29) Lock-in devices will only be approved where the device lies flush with the footpath when the barriers (or part thereof) are not in place. Applications for approval for lock-in devices should be made to Council's Property Services. Plans and specifications of the items will be required to be lodged with Council prior to any screen being placed with a lock-in device. Please refer to the Section on Authorisations for further information.
- 30) Permanent screens will require a separate application for authorization under Section 221 of the Local Government Act from Council's Property Services Section. Please refer to the Section on Authorisations for further information.
- 31) Where the premises are located on a corner an application for screen will be assessed by Council's Traffic Management Section with regard to line of sight and a lower screen may be required.
- 32) Full Length Awnings/Blinds
  - a) Full length awnings or blinds may only be placed in the Trading Activity Zone.
  - b) Full length awnings or blinds may only be fitted subject to the approval and requirements of Council's Development Services Section and Council's Property Services Section.

#### Planter Boxes

- 33) Planter boxes:
  - a) may only be placed in the Trading Activity Zone and plants shall not extend beyond that zone;
  - b) may only be in place during the normal trading hours of the business to which they relate;
  - c) must provide a positive contribution to the visual amenity of the street;
  - d) must not exceed 1200 mm in height above the footpath level (including plants);
  - e) must be well maintained with healthy plants of suitable form, hardiness and species
  - f) must not be watered in a manner which results in the growth of mosses, algae or slime moulds; and
  - g) must be free of litter, including cigarette butts.
  - h) must contrast with their background to assist people with vision impairment
  - i) Planter boxes may not be used for advertising purposes.

#### Cleaning

- 34) The permit holder is responsible for maintaining the trading area in a clean and sanitary condition at all times, and responsible for cleaning the footpath and paved surfaces and maintaining the area in a good state of cleanliness.
- 35) Some areas may only be cleaned by Council, and if soilage is attributed to the Footpath Trading then the costs may be attributed to the permit holder.



All tables, chairs, goods, displays, movable advertising signs and ancillary items must be removed and the footpath kept clear to facilitate any additional Council cleaning at times required by Council

**Safety**

- 36) All items placed on the footpath shall be stable, must not pose a hazard to pedestrians or road users and shall not:
- include sharp or protruding items;
  - be capable of shattering;
  - include moving or oscillating parts;
  - include reflective items that pose a risk to traffic; or
  - be located where pedestrian or driver sightlines will be obstructed.

**Lighting**

- 37) All foot path trading activities that occur at times of low lighting conditions or at times after sunset may require the provision of additional lighting to ensure the approved area is adequately lit and all areas visible to users, pedestrians and road users.
- 38) Additional lighting requirements will be provided by the permit holder and shall comply with any requirements or conditions by Council.
- 39) If an approved footpath trading area cannot provide sufficient lighting then the area may not be suited to trading at times of low lighting conditions or at times after sunset and or the trading times may be restricted to daylight hours.

**Other Legislative Compliance Requirements**

- 40) A footpath trading permit does not exempt the permit holder from compliance with any other legislative provision that may be applicable to their trade or operations.
- 41) It is the responsibility of the permit holder to ensure compliance with any other legislative provisions.





## Footpath Trading Policy

Policy Type:	Policy		
Approved By:	Council	Decision No:	353, 2010/2261, 2011/262, 2013/1564
Approval Date:	28 May 2007	Commencement Date:	23 March 2015
Review Date:	23 March 2017	Internal Reference No.:	
Department:	City Development	Division:	Environmental Health and Safety
Function:	15 - Legal Provisions	Responsible Officer:	Manager Environmental Health and Safety

### A - PREAMBLE

1. Pursuant to Section 222 of the Local Government Act 1999, the City of Salisbury is vested with the power to grant a permit for the use of streets, roads and road related areas (footpaths, etc) held in its care for use for business purposes. Local government is also empowered to make the granting of a permit subject to conditions.

~~2. Pursuant to By Law 3 Roads, the City of Salisbury is vested with the power to grant a permit for the use of streets, roads and road related areas (footpaths, etc) held in its care for use for non business purposes as specified in the by law. Local government is also empowered to make the granting of a permit subject to conditions.~~

- 3.2. Footpaths are public spaces and their primary role is to provide access for all people to move along them freely and without obstruction. Council aims to provide a safe environment for people who move through the City. Part of this responsibility requires Council to provide a clear path for all people to move along footpaths.

- 4.3. Council also has a legal responsibility for the regulation of trading activities in public places, and is committed to ensuring strip shopping centres and business precincts are enhanced by providing the opportunity for footpaths to be used for people to dine and trade.

- 5.4. Pedestrian safety is the primary purpose of footpaths, and Council's Footpath Trading Policy has been developed with this distinction in mind. Council is committed to ensuring access for people to move along footpaths with good access and as a minimum, to meet the requirements of the Commonwealth Disability Discrimination Act (1992).

5. The Australian Human Rights Commission rights and Equal opportunity commission states that people who design, build, own, lease, operate or manage premises should achieve equitable access for people with disability by ensuring all parts of premises to which the public is entitled or allowed to enter or use are connected by a network of continuous accessible paths of travel. A continuous accessible path of travel should be the most commonly used and direct path of travel.

6. ~~is of the view that the continuous accessible path of travel should extend from the "shoreline". The shoreline is the property or building line which may be supplemented by the use of high luminance contrast tactile ground surface indicators where the building line recedes. There should be no obstructions or projections from this line in order to provide the best possible guidance line for all users including people with a vision impairment. The Commission encourages Local Governments with responsibility for footpaths to develop policies that reflect this best practice. A continuous accessible path of travel is an uninterrupted route to and within premises providing access to all features, services and facilities. It should not incorporate any step, stairway, turnstile, revolving door, escalator, hazard or other impediment which would prevent it from being safely negotiated by people with disability. Premises include the whole built environment including pathways.~~
7. In order to achieve best practice Council will encourage compliance with the Australian Standard 1428 Design for Access and Mobility. (AS1428 Part 1 and 2)
8. Where possible Council will aim to achieve an effective accessible pedestrian system throughout shopping precincts through the development and maintenance of a continuous accessible path of travel. This should extend out from the property line to provide a consistent footpath environment inclusive of the needs of all of the community, ~~including older persons and people with a disability.~~
9. ~~In order to achieve this, any street furniture, signs, trader's activities or displays should be located towards the kerb side, not along the property line.~~
10. ~~In certain locations and precincts with footpaths in excess of 3.5 metres and or where shop fronts and subsequent building lines are staggered and precincts~~ the safety of pedestrians and access by all persons may be better achieved if trading is kept along the ~~building or property shoreline~~ and alternative methods are implemented ~~to maintain a safe and accessible path of travel for vision impaired persons. These locations would include those that have large footpaths in excess of 3.5 metres and or where shop fronts and subsequent shore lines are staggered.~~

## B - SCOPE

1. The Footpath Trading Policy applies to the use of all footpaths within the City of Salisbury for commercial purposes, by an organisation, individual or business, and for non commercial purposes by and organisation, community group, individual or business.

## C – POLICY PURPOSE/OBJECTIVES

1. The Footpath Trading Policy aims to ensure that safe and accessible pathways are provided for everyone in the community to use. Council has a legal responsibility under the Commonwealth Disability Discrimination Act 1992 to ensure the development and maintenance of a continuous accessible path of travel along footpaths.
2. This path of travel, the "pedestrian zone", should, extend from the property line with no obstruction or projections wherever possible.
3. The City of Salisbury is responsible for ensuring safe pedestrian walkways. Where this is achieved, Council may allocate space for footpath trading.
4. The Footpath Trading Policy covers:
  - a. what parts of footpaths may be used for footpath trading or the display of goods or signs;
  - b. ~~permit licensee~~ requirements for the use of a Trading Activity Area;
  - c. specific requirements for particular types of footpath trading activities and items;
  - d. administration of the Policy, ~~including application requirements, decision making, fees, public liability insurance~~; and

- e. Enforcement of ~~permits~~~~licences~~ and the Footpath Trading Policy.

## **D - DEFINITIONS**

1. Authorised Officer - a person appointed under Section 260(1) of the Local Government Act as an authorised officer and holding a position within the Inspectorial Services Section.
2. Accessible car parks - a car park designated for parking by persons with a disability
3. Shoreline – the building line or property line which runs parallel with the footpath that provides a guide for persons with a disability or vision impairment so that they may have a continuous accessible path of travel. There should be no obstructions or projections from this line in order to provide the best possible guidance line for all users including people with vision impairment.

## **E - POLICY STATEMENT**

### **Guiding Principles**

1. Council aims to provide clear, safe and unobstructed access at all times for pedestrians of all abilities on Salisbury's footpaths in accordance with Council's statutory responsibilities and the requirements of the Commonwealth Disability Discrimination Act (1992).
2. The Footpath trading activity must relate to and must make a positive contribution to the urban character and amenity of the area and surrounding residential areas.
3. Council strongly supports the long-term viability and sustainability of retail strips.
4. Council acknowledges the importance of footpath trading in enhancing the amenity, vitality and safety of the City's commercial areas.

### Footpath Zones

In order to provide for clear and unobstructed access for pedestrians, three footpath zones are defined within the width of the footpath:

#### 1. Pedestrian Zone

The pedestrian zone provides a continuous accessible path of travel for people of all abilities, extending from the most forward point of the property line, building line or shop front of premises for a minimum of 1800 mm. No **footpath trading** items may extend into this zone at any time, including items overhead below a height of 2200 mm.

#### 2. Trading Activity Zone

The trading activity zone is that area of the footpath where goods, outdoor eating furniture and ancillary items and movable advertising signs may be placed and where other permitted street activities may take place.

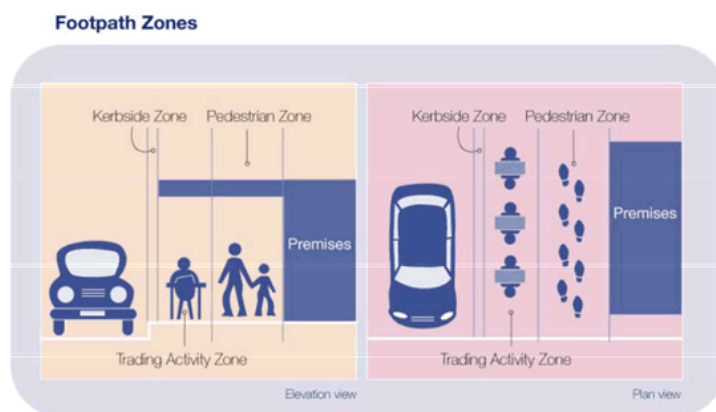
All activities associated with the trading must be undertaken in this zone, and this includes:

- Space for shoppers selecting or viewing items
- Space for shopping trolleys and carts
- Space for chairs to be moved in and out from tables, and for seated diners.

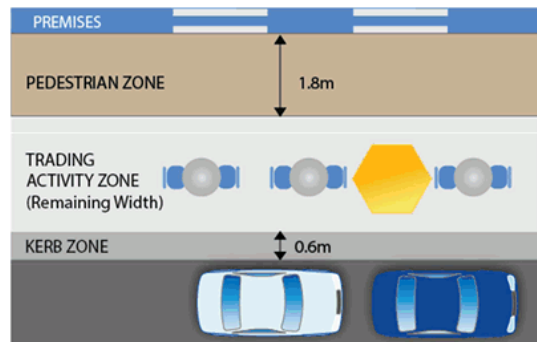
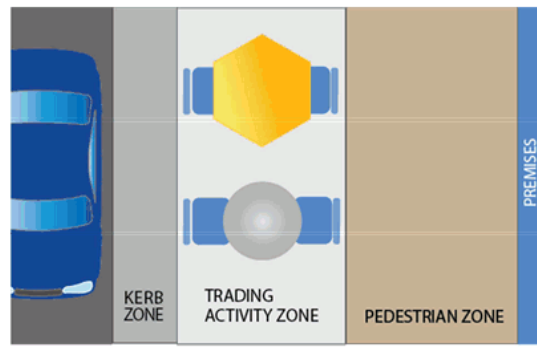
Council may place markers in the footpath or otherwise delineate the Trading Activity Zone.

#### 3. Kerbside Zone

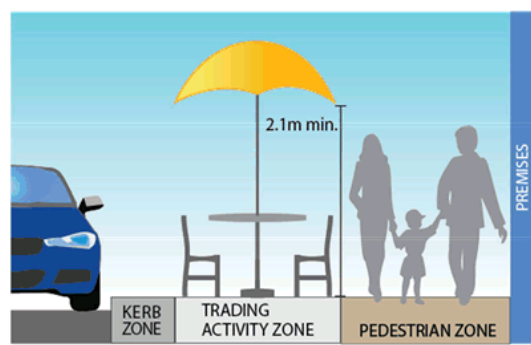
The kerbside zone is a buffer from the kerb to allow for access to and from parked vehicles. A minimum of 600 mm buffer as measured from the face of kerb to allow for access to and from parked vehicles including at loading zones. Where there is an accessible parking bay for people with a disability, the setback from the kerb will be at least 1500 mm.



Plan View



#### Elevation View





### Footpaths wider than 3500 mm

For footpaths wider than 3500 mm:

The **Pedestrian Zone** extends from the building line or shop front of premises for a minimum of 1800 mm.

No **footpath trading** items may extend into this zone at any time, including items overhead below a height of 2200 mm.

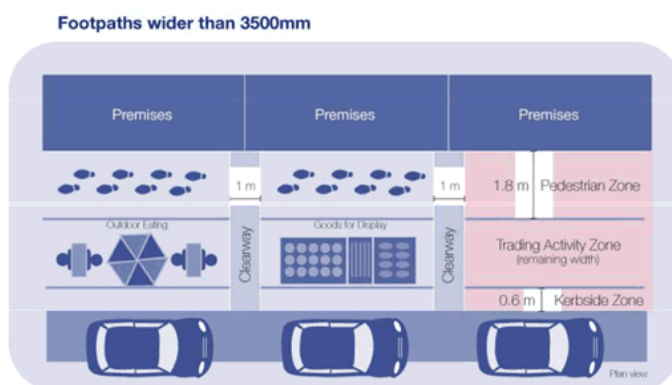
The **Trading Activity Zone** is the only area of the footpath where goods, outdoor eating furniture and ancillary items, and advertising signs, may be placed, subject to the provisions of this Policy. A setback of 500 mm is required from each side boundary of premises in order to ensure a 1000 mm wide access way between premises from the kerb to the Pedestrian Zone. Any amendment or change to this setback will be subject to individual site assessments and the written consent from adjoining tenants. Changes in tenancies will require consents to be reviewed.

Trading Activity Zone's that exceeds 900mm metres in width will be subject to individual assessment by Authorised Officers to take into account the local amenity and individual characteristics of the area in order to locate trading in the best location that maximises pedestrian safety.

~~Where the trading zone exceeds 900mm, the area permitted for trading may be restricted by the permit to a maximum width below that of the available area in order to locate trading in the best location that maximises pedestrian safety.~~

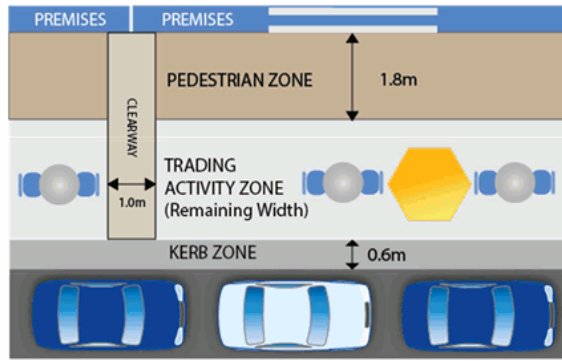
The **Kerbside Zone** is a minimum of 600 mm buffer as measured from the face of kerb to allow for access to and from parked vehicles including at loading zones. Where there is an accessible parking bay for people with a disability, the setback from the kerb will be at least 1500 mm.

No items may be placed in either the Pedestrian Zone or the Kerbside Zone.



Footpaths Wider than 3500mm





### Footpaths from 3000 mm to 3500 mm wide

For footpaths from 3000 mm to 3500 mm:

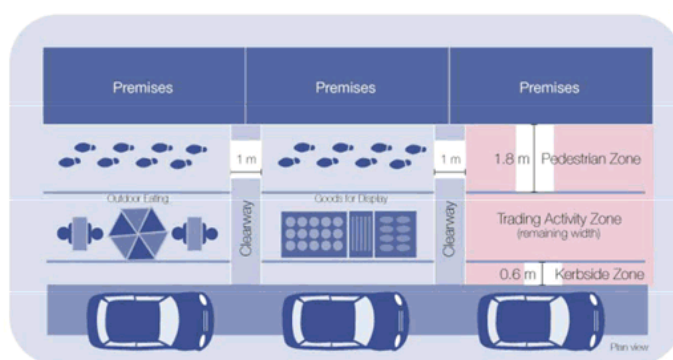
The **Pedestrian Zone** extends from the building line or shop front of premises for a minimum of 1800mm. No **footpath trading** items may extend into this zone at any time, including items overhead below a height of 2200 mm.

The **Trading Activity Zone** is the only area of the footpath where goods, outdoor eating furniture and ancillary items, and advertising signs, may be placed, subject to the provisions of this Policy. A setback of 500 mm is required from each side boundary of a premises in order to ensure a 1000 mm wide access way between premises from the kerb to the Pedestrian Zone. Any amendment or change to this setback will be subject to individual site assessments and the written consent from adjoining tenants. Changes in tenancies will require consents to be reviewed.

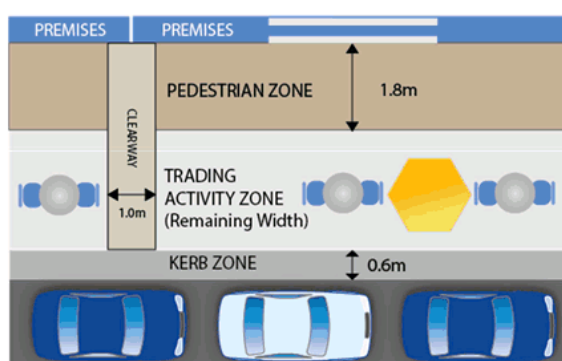
The **Kerbside Zone** is a minimum of 600 mm buffer as measured from the face of kerb to allow for access to and from parked vehicles. Where there is an accessible parking bay for people with a disability, the setback from the kerb must be at least 1500 mm.

No items may be placed in either the Pedestrian Zone or the Kerbside Zone.

Footpaths from 3000mm – 3500mm



Footpaths from 3000 mm to 3500 mm wide



### Footpaths less than 3000mm wide

-In order to provide a continuous accessible path of travel for people of all abilities, footpaths of less than 3000 mm may not be suitable ~~used~~ for footpath trading.

Any proposed trading will be subject to individual site assessments and may suit goods display only.

### Shoreline Trading

For footpaths wider than 3500 mm and or where shop fronts and subsequent shore lines are staggered and where the safety of pedestrians and access by all persons may be better achieved if trading is kept along the shoreline, the following definitions apply.

The **Kerbside Zone** is a minimum of 600 mm buffer as measured from the face of kerb to allow for access to and from parked vehicles including at loading zones. Where there is an accessible parking bay for people with a disability, the setback from the kerb will be at least 1500 mm.

No items may be placed in either the Pedestrian Zone or the Kerbside Zone.

The **Pedestrian Zone** extends from the Kerbside Zone for a minimum of 1800 mm. No footpath trading items may extend into this zone at any time, including items overhead below a height of 2200 mm.

The **Trading Activity Zone** extends from the shop front to the pedestrian zone and is the only area of the footpath where goods, outdoor eating furniture and ancillary items, and advertising signs, may be placed, subject to the provisions of this Policy. A setback of 500 mm is required from each side boundary of premises in order to ensure a 1000 mm wide access way between premises from the kerb to the Pedestrian Zone. Any amendment or change to this setback will be subject to individual site assessments and the written consent from adjoining tenants. Changes in tenancies will require consents to be reviewed.

The Trading Activity Zone shall be a maximum of 900mm in width and any trading zones that exceed 900mm in width will be subject to individual assessment by Authorised Officers to take into account the local amenity and individual characteristics of the area in order to locate trading in the best location that maximises pedestrian safety.

Where the trading zone exceeds 900mm, the area permitted for trading may be restricted by the permit to a maximum width below that of the available area in order to locate trading in the best location that maximises pedestrian safety and reduces the effect of creating an island trading environment that may be of greater hazard to pedestrians.

#### Access and Safety Requirements

Pedestrian access along the pavement is to be maintained by the provision of at least 1.8 metres of clear pathway along the full street length of the defined area.

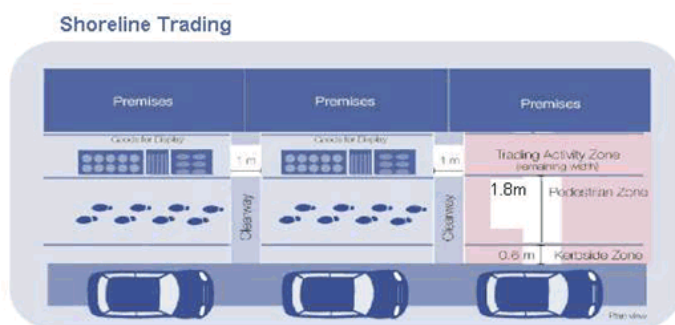
Where shoreline trading is permitted an alternate shoreline must be created by providing:

- a solid barrier commencing at ground level and at least 900mm high
- which provides at least 30% luminance contrast with the footpath (such contrast can be gained by avoiding using tones in the red-green spectrum and instead using yellow against a darker background and black against a paler background).

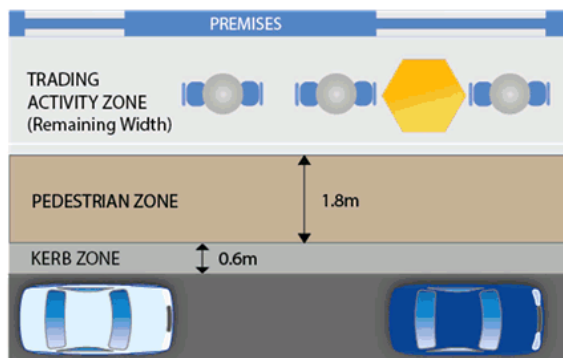
#### Explanation

Blind or vision impaired pedestrians use either “tactile” information (with the aid of a “long cane”) and/or the “luminance contrast” between surfaces of different colours to maintain their line of travel. Examples are a long cane user will travel along a suburban footpath using the cane to detect the path ahead and correcting their line of travel if the cane detects a different surface indicating that they are wandering off the path;

people who do not use a cane (and some long cane users) rely on their residual vision to identify the facade of a number of shops in a retail area and will get their bearings in relation to this facade – when the facade stops and they encounter daylight they know that they have either reached a point where the path changes direction or where the path arrives at an open space – an intersection or a park.



#### Shoreline Trading:

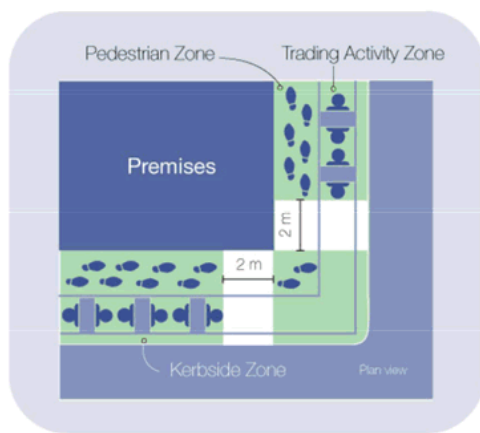
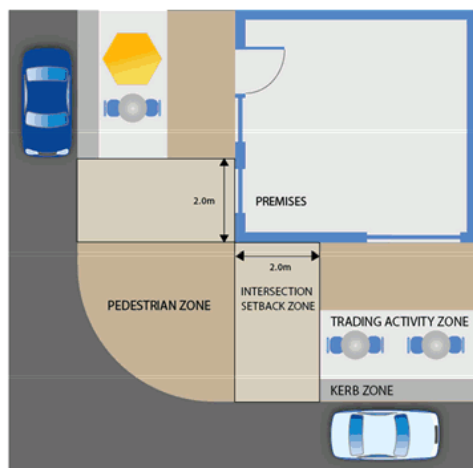


#### **Corner Locations**

In order to protect the safety of pedestrians and motorists, no items may be placed within 2000 mm of an intersection of building lines without the approval of Council's ~~Project Services~~ Traffic Management Section.

If shoreline trading is permitted with proximity to a corner location then no items may be placed within 3000mm of an intersection

Any proposed site which abuts a corner must take account of retention of an adequate view of the roadways in all directions for road users and pedestrians in the vicinity of the site.

**Corner Location****Corner Location**

~~Any proposed site which abuts a corner must take account of retention of an adequate view of the roadways in all directions for road users and pedestrians in the vicinity of the site.~~

**Safety Barriers**

All applications for footpath trading will be subject to the provision of safety barriers as determined by Council's ~~Project Services~~, Traffic Management Section:-

Barriers must take the form of safety rated Energy Absorbing B-bollards (EAB's) mounted near the kerb, ~~and in compliance with the standards prescribed in "Roadside Dining Protection—A Guideline for Local Government Authorities in South Australia" published by Transport SA.~~

A risk assessment matrix is applied to determine if EAB's are required. If it is determined that there is a requirement for EAB's safety bollards then footpath trading cannot commence until the safety barriers are installed~~provided~~.

~~Furthermore, any safety installations which must be incorporated into the site are to be specified and will be at the applicant's expense. EAB's Safety barriers approved by Council's Project Services, Traffic Section~~ must be installed to prevent the incursion of road vehicles on the pavement at any proposed site which abuts or is in the vicinity of a road or laneway of any type. If appropriate safe views or incursion prevention cannot be achieved by any applicant, a Permit is to be denied.

Other devices may be ~~permitted~~ allowed at the discretion of Council's ~~Project Services~~, Traffic Management Section, upon application and subject to providing equivalent or better protection from vehicular incursion than ~~that specified in the Guideline~~ EAB's.

Barrier design and installation must allow pedestrian access between the units and as far as possible blend in with the physical attributes of the site and subject to Council Design guidelines and colours.

EAB's shall be installed by Council and subject to the permit and or renewal fees or installation fees as specified on the application form and or Council's fees and charges register.

~~As the bollards are fixed to the footpath they will require Council's Authorisation. Please refer to the section on Authorisations and or Council Property Services Division for further information.~~

### Authorisations

For the purposes of footpath trading all items shall be moveable and be removed from the footpath when trading ceases. Any item that is intended to be fixed to a footpath, or that permanently overhangs a footpath area requires Council's Authorisation. Examples include:

- a fixed sign
- verandah
- sails
- encroachment by a building
- ~~tables bolted to the floor~~
- permanent structures such as screens or planter boxes
- ~~installation of safety bollards.~~

Authorisations ~~require a separate application and are~~ subject to additional ~~application~~ fees (as set out in the as specified on the application form and Council's fees and charges register.

~~fees & charges register) which are to be directed to Council's Property Services Division.~~

### Development Controls Act, 1993

In addition to requiring consent under the Local Government Act, the establishment of an outdoor dining area may ~~(particularly if located on a footpath)~~ require Development Approval (both Provisional Development Plan Consent and/or Provisional Building Rules Consent) under the Development Act 1993.

If the establishment of an outdoor dining area constitutes a change in land use, it requires Provisional Development Plan Consent. The erection of some fixtures such as blinds, other awnings and screens may also constitute building work for the purposes of the Development Act and therefore will require ~~the approval of the Council.~~

Any application for a change in land use and/or building work will be considered in accordance with the Development Plan policy of the Council and will address such matters as the provision of car parking, pedestrian access, and safety for patrons, pedestrians and motorists.



All applications are referred to Development Services for assessment. For further information, please contact Development Services.

### **Car Parking Fund Contributions**

Footpath trading applications relating to dining and the addition of tables and chairs to a business requires the application to be considered by Development Services. The increased seating capacity has an impact on the required car parks for that business and dependant on their locality may trigger a payment to the car parking fund.

The car parking contribution fund fees are as specified on the application form and or Council's fees and charges register.

### **Liquor Licensing**

The consumption of liquor is not permitted without the relevant approvals from Consumer and Business Services. Please refer to the following site: (<https://www.cbs.sa.gov.au/liquor-and-gambling-licenses/apply-for-a-new-liquor-or-gaming-licence/>)

Approval for the consumption of liquor will not be granted in the Permit without approval from Consumer and Business Services.

### **Noise**

The impact of noise from foot path trading can be a concern where the activity is proximity to residential premises and trading is occurring outside of common trading hours. The trading hours may be addressed thorough development approvals, however the permit conditions can also address and restrict hours of activity if noise nuisances are identified once trading begins.

Subject to Development Planning and other controls along with the conditions of the permit, if footpath trading times are proposed outside of 8am to 7pm and the business is within 50 metres of residential premises, the application will require notification of any affected residential premises before the permit can be considered. The notification process will be conducted before the application for a permit can be considered and subject to additional fees (as specified on the application form and Council's fees and charges register.)

Noise nuisances can also be subject to the provisions of the Local Nuisance and Litter Control Act 2016.

### **Smoking**

From 1 July 2016, smoking was banned in outdoor dining areas in South Australia under section 52 of the Tobacco Products Regulation Act 1997 and this includes outdoor dining areas. The new law is designed to protect the community from exposure to potentially harmful tobacco smoke and increase the comfort and enjoyment of outdoor dining areas for all patrons.

Smoking relates to any ignited tobacco product or non-tobacco product and includes smoking from a cigarette, pipe, water pipe or any other smoking device. Water pipes are also known as shisha, sheesha, hookah, nargila, argileh, hubble bubble and goza.

Dedicated smoking areas can be established for the purposes of smoking and drinking, including coffee, and or the consumption of snack foods. Snack food includes foods such as potato crisps, nuts, chocolate bars and pre-packaged biscuits. Sandwiches and hot chips are not considered to be snack food.

Any smoking area must be physically separated from the dining area and not create a nuisance to pedestrians and other footpath trading areas.

The use of water pipe or any other similar smoking device, alternatively known as shisha or sheesha and other names, are not permitted on footpath trading areas due to the excessive smoke created and usual long term duration of the activity. This can result in potential impacts on health and nuisance impact on pedestrians and others in general proximity to the area.

Approval for a dedicated smoking area is subject to site specific assessment by officers and any identified or potential impact on adjoining properties or the pedestrian zone. Public consultation may be required for any dedicated smoking area.

### **Dogs in Outdoor Dining**

Under the provision of the Food Act 2001 and Food Safety Standards (standard 3.2.2 Clause 24) a food business must permit an assistance animal in areas used by customers, and a food business may permit a dog that is not an assistance animal to be present in an outdoor dining area.

Section 112A(1) a person who handles food in an outside area cannot be taken to be in breach of any provision of the Food Act, or of any requirement imposed by or under this Act, by virtue only of the fact that he or she is handling the food while a dog is present in the outside area if the following conditions are satisfied:

Dogs that are not assistance dogs should be:

- (a) the dog is under the control of a person who is present in the outside area;
- (b) the dog is restrained by a lead that is not more than 2 metres in length;
- (c) the person in control of the dog did not enter the outside area through a part of the premises that is not an outside area.

Further information on this matter can be directed to Council's Public and Environmental Health Division.

### **Public Infrastructure**

A minimum clearance of 1000 mm, or less if permitted by Council, shall be provided from any existing street furniture or other infrastructure on or adjacent to the footpath, including **but not limited to** seats; benches; bollards; litter bins; bike racks; post boxes; telephone boxes; service pits; public transport stops/taxi ranks; public transport shelters; loading zones; parking meters; traffic signal boxes; fire hydrants and other emergency assets; pedestrian crossings; and street trees or shrubs.

Application may be made to Council for the relocation, at the applicant's cost, of Council maintained seats, benches or bicycle racks, in association with an application for a permit for footpath trading.

Any request for relocation of seats, benches or bicycle racks, must be accompanied by a plan showing the site for the proposed relocation of the street furniture item and a letter of no objection from the owner and occupier of the premises outside which the item is proposed to be relocated.

### **Service Authority Works and Special Events**

Service authorities or Council may require the use of a site to undertake works or maintenance works. When this, or any parade, festival or special event is scheduled, it will be normal practice to give at least seven days notice of the requirement to remove any item from the footpath.

In an emergency or where maintenance works are considered to be urgent, sites may need to be cleared immediately.



Permit holders will be responsible for the movement of all items and any associated costs.

### Evidence of a Permit

Any business that is permitted to undertake a commercial activity on the footpath adjacent to that business must be able to produce a copy of the current permit to an Authorised Officer upon request.

The permit may include the permit number, date of issue and a summary of the items permitted to be placed on the footpath.

### Reinstatement

Any damage to footpaths or alterations undertaken must be reinstated by the permit holder at their costs and to Council's specifications or the permit holder will be responsible for reimbursing Council for any reinstatement works.

### General Conditions~~Specific Requirements~~ for Footpath Trading ~~Activities~~

Please refer to attachment 1 of this Policy

#### Outdoor Eating

- 1) ~~Any chairs, tables and ancillary items associated with outdoor eating;~~
  - a) ~~may only be placed outside premises which have notified under the Food Act 2001 and serve food and/or beverages;~~
  - b) ~~may only be placed in the Trading Activity Zone of the footpath;~~
  - c) ~~may only be placed on the footpath during the normal trading hours of the business to which they relate, unless otherwise approved by Council;~~
  - d) ~~must be of a design approved by Council and in particular:~~
    - i) ~~must be of a style, appearance, materials, finishes and colours which are of a high standard, attractive, durable, shatterproof, unobtrusive and complement the character of the streetscape. Furniture constructed wholly of plastic will not be permitted;~~
    - ii) ~~must be uniform in style and design for each premises;~~
    - iii) ~~must contrast with their background to assist people with vision impairment;~~
    - iv) ~~must be portable, yet sturdy and windproof.~~
- 2) ~~The permit holder must:~~
  - a) ~~where smoking is permitted, comply with the Department of Health Tobacco Control requirements for Restaurants and Cafes. (further information is available from the Department of Health)~~
  - b) ~~where smoking is permitted, supply each table outside with a wind proof ashtray at all times and be responsible for cigarette ash, butts and any other litter generated by patrons of a footpath eating area;~~
  - c) ~~maintain the footpath eating area in a clean and tidy condition at all times and immediately clean up any spills and litter;~~
  - d) ~~ensure that patrons do not move tables and chairs or ancillary items from their positions and obstruct the Pedestrian Zone;~~
  - e) ~~ensure that patrons do not allow pets, prams or any other personal items to obstruct the Pedestrian Zone;~~
  - f) ~~ensure that food and beverages are not served to patrons standing on the footpath within the Pedestrian Zone;~~
  - g) ~~ensure that no noise or other disturbance creates a nuisance or causes detriment to the amenity of the neighbourhood in the opinion of Council; and~~
  - h) ~~be responsible for reimbursing Council for any reinstatement works as a result of damage to footpaths or street fixtures and furniture.~~

- i) ~~must comply with any requirements of Council's Public and Environmental Health Services Division.~~
- 3) ~~A condition may be placed on a permit requiring a permit holder to place written reminders to patrons in the outdoor eating facilities on the footpath, regarding the above responsibilities, if deemed appropriate by an Authorised Officer.~~
- 4) ~~Liquor is not to be sold, consumed or served within the Trading Activity Zone unless approved by Council's Development Planning Division and the Liquor Licensing Commission.~~
- 5) ~~Any premises where alcohol is served or consumed on the footpath must have its liquor licence endorsed with the footpath as part of the "licensed area" on the liquor licence for those premises.~~
- 6) ~~Waiting staff at premises with outdoor eating facilities on the footpath must facilitate free access by all footpath users within the Pedestrian Zone and give all footpath users priority right of way.~~
- 7) ~~Separate cash registers, counter facilities or storage facilities are not permitted on the footpath.~~
- 8) ~~No food or drink is to be prepared, cooked or heated in the footpath eating area except in accordance with any permit granted for temporary food premises.~~
- 9) ~~The handling and serving of food and drinks to patrons within the footpath eating area must be conducted in accordance with the requirements of Food Act and Food Safety Regulations and Council's Public and Environmental Health Services Section.~~

#### ~~Goods~~

- 1) ~~Any goods for display:~~
  - a) ~~may only be placed in the Trading Activity Zone of the footpath;~~
  - b) ~~the viewing and selection of goods on display, and the positioning of any trolleys must also be conducted within the trading activity zone~~
  - c) ~~may only be placed on the footpath during the normal trading hours of the business to which they relate;~~
  - d) ~~must not exceed a height of 1500 mm, and the width shall allow for the viewing and selection of goods on display, and the positioning of any trolleys within the Trading Zone;~~
  - e) ~~must be kept in a clean and tidy state, including the area around the display; and~~
  - f) ~~if a display of foodstuffs, must comply with the requirements of Council's Public and Environmental Health Services Division.~~
- 2) ~~Goods (except furniture) must be displayed on stands approved by Council, which in particular:~~
  - a) ~~must be of a style, appearance, materials, finishes and colours which are of a high standard, attractive, durable, shatterproof, unobtrusive and complement the character of the streetscape;~~
  - b) ~~must not have sharp, pointed, or jagged edges, corners or protrusions;~~
  - c) ~~must be stable and able to withstand adverse weather conditions;~~
  - d) ~~must be secured in a manner that ensures that adverse weather conditions will not create a risk for any footpath users, property or passing traffic but may not be affixed to any footpath, building, street furniture, pole or other structure;~~
  - e) ~~must contrast with their background to assist people with vision impairment;~~
  - f) ~~must not comprise any movable parts (eg. spinning, flapping);~~
  - g) ~~must not be illuminated externally or internally; and~~
  - h) ~~must not cause any damage to the footpath surface.~~
- 3) ~~Goods for display will not be permitted:~~
  - a) ~~where access to a loading zone or disabled parking bay will be impeded;~~

- b) ~~where they will cause difficulty to any footpath users, including pedestrians and people exiting or accessing parked vehicles or the footpath;~~
- c) ~~to overhang either the kerb or Pedestrian Zone;~~

#### ~~Moveable Advertising Signs~~

~~In addition to the requirements of By Law 2 Moveable Signs, a footpath trading permit relating to moveable signs shall also comply with the following requirements:~~

- 1) ~~One movable advertising sign only may be displayed for each street frontage of a business;~~
- 2) ~~Any movable advertising sign:~~
  - a) ~~may only be placed in the Trading Activity Zone;~~
  - b) ~~may only be displayed outside of the frontage of the business to which it relates;~~
  - c) ~~must not exceed 600 mm in width or 900 mm in height;~~
  - d) ~~must be secured in place by a means that is not reliant on, or physically tied to any infrastructure or trees. The means by which these signs are to be secured must not extend beyond the perimeter of the permitted sign and must be of a type approved by Council. Any securing device is to be removed with the sign in accordance with permitted display times;~~
  - e) ~~may only be displayed during the normal trading hours of the business to which it relates;~~
  - f) ~~must contrast with its background to assist people with vision impairment; and~~
  - g) ~~may only feature the business name or service provided by the business to which it relates;~~
- 3) ~~Inflatable signs; portable electric signs; illuminated, revolving, spinning or flashing signs; flags and banners are prohibited;~~
- 4) ~~The display of a movable advertising sign is not permitted where a business is conducting any other commercial activity on the footpath.~~

#### ~~Outdoor Speakers/Amplification equipment~~

- 1) ~~Permission will be required to affix speakers to a building or veranda;~~
- 2) ~~Use of the footpath for live entertainment requires the written permission of the Authorised Officer;~~
- 3) ~~Any noise produced must not be annoying or cause a disturbance, which in the opinion of Authorised Officer, creates a nuisance or causes detriment to the amenity of the neighbourhood;~~
- 4) ~~No sound amplification equipment or jukeboxes may be utilised in the footpath area;~~

#### ~~Outdoor Heaters~~

- 1) ~~Any outdoor heater:~~
  - a) ~~must be associated with the use of the footpath for an outdoor eating facility;~~
  - b) ~~may only be placed or fixed in the Trading Activity Zone; and~~
  - c) ~~must comply with all relevant safety standards~~

#### ~~Umbrellas~~

- 1) ~~Any umbrellas:~~
  - a) ~~may only be placed in the Trading Activity Zone;~~
  - b) ~~must be not less than 2200 mm high at the lowest point other than the pole and must not protrude over the kerb;~~
  - c) ~~must be weighted and/or secured so as not to pose a safety hazard;~~
- 2) ~~At times when it is raining, water from umbrellas must not be discharged within the Pedestrian Zone;~~

3) ~~Umbrellas may be secured to the footpath by a lock-in device. Lock-in devices will only be approved where the device lies flush with the footpath when the umbrellas are not displayed. Applications for approval for lock-in devices should be made to Council Property Services. Plans and specifications of the items will be required to be lodged with Council prior to any umbrella being placed with a lock-in device.~~

4) ~~No more than 25% of the umbrella's area may be used for advertising.~~

#### ~~Barrier Screens~~

~~Barrier screens include:~~

- ~~• low barrier screens, which are predominantly made of canvas or vinyl;~~
- ~~• high barrier screens, which are usually made of clear material such as safety glass or heavy duty plastic and are fitted to the footpath by lock-in devices; and~~
- ~~• full length awnings/blinds, which are commonly attached from a verandah to the footpath.~~

~~The form and construction of any barrier screen must be suitable for its functional requirements and location, taking into account prevailing weather conditions.~~

#### ~~1) Low Barrier Screens~~

- ~~a) must be associated with the use of the footpath for an outdoor eating facility;~~
- ~~b) may only be placed in the Trading Activity Zone;~~
- ~~c) may be no more than 1200 mm high;~~
- ~~d) may only be in place during the normal trading hours of the business with which they are associated;~~
- ~~e) must be placed so that the screens are stable and secure or weighted so that they will not be moved by patrons or prevailing weather;~~
- ~~f) must contrast with their background to assist people with vision impairment;~~
- ~~g) no more than 25% of the low barrier screen's area may be used for advertising.~~

#### ~~2) High Barrier Screens~~

- ~~a) must be associated with the use of the footpath for an outdoor eating facility;~~
- ~~b) may only be placed in the Trading Activity Zone;~~
- ~~c) may only be in place during the normal trading hours of the business to which they relate;~~
- ~~d) must be at least 1500 mm high (except where the premises are located on corner), be transparent and constructed of safety glass or heavy duty plastic;~~
- ~~e) must have a 75 mm wide band 1000 mm above the ground that contrasts with its background to provide a visual guide for all pedestrians;~~
- ~~f) must be fitted to the footpath with a lock-in device, but be removable. Applications for approval for lock-in devices should be made to Council Property Services.~~

~~High barrier screens must be removed after the normal trading hours of the business with which they are associated in order to facilitate street cleaning by vehicles.~~

~~High barrier screens may not be used for advertising other than the name of the business.~~

~~Lock-in devices will only be approved where the device lies flush with the footpath when the barriers (or part thereof) are not in place. Applications for approval for lock-in devices should be made to Council's Property Services. Plans and specifications of the items will be required to be lodged with Council prior to any screen being placed with a lock-in device.~~

~~Permanent screens will require a separate application for authorization under Section 221 of the Local Government Act from Council's Property Services Section. Please refer to the Section on Authorisations for further information.~~

~~Where the premises are located on a corner an application for screen will be assessed by Council's City Projects Traffic Management Section with regard to line of sight and a lower screen may be required.~~



3) ~~Full Length Awnings/Blinds~~

- a) ~~Full length awnings or blinds may only be placed in the Trading Activity Zone.~~
- b) ~~Full length awnings or blinds may only be fitted subject to the approval and requirements of Council's Development Services Section and Council's Property Services Section.~~

~~Planter Boxes~~1) ~~Planter boxes:~~

- a) ~~may only be placed in the Trading Activity Zone and plants shall not extend beyond that zone;~~
- b) ~~may only be in place during the normal trading hours of the business to which they relate;~~
- c) ~~must provide a positive contribution to the visual amenity of the street;~~
- d) ~~must not exceed 1200 mm in height above the footpath level (including plants);~~
- e) ~~must be well maintained with healthy plants of suitable form, hardness and species~~
- f) ~~must not be watered in a manner which results in the growth of mosses, algae or slime moulds; and~~
- g) ~~must be free of litter, including cigarette butts,~~
- h) ~~must contrast with their background to assist people with vision impairment~~
- i) ~~Planter boxes may not be used for advertising purposes.~~

**General Requirements****Cleaning**

~~The permit holder is responsible for maintaining the trading area in a clean and sanitary condition at all times.~~

~~All tables, chairs, goods, displays, movable advertising signs and ancillary items must be removed and the footpath kept clear to facilitate any additional Council cleaning between 5.00 am and 8.00am.~~

**Safety**

~~All items placed on the footpath shall be stable, must not pose a hazard to pedestrians or road users and shall not:~~

- ~~include sharp or protruding items;~~
- ~~be capable of shattering;~~
- ~~include moving or oscillating parts;~~
- ~~include reflective items that pose a risk to traffic; or~~
- ~~be located where pedestrian or driver sightlines will be obstructed.~~

**Public Infrastructure**

~~A minimum clearance of 1000 mm, or less if permitted by Council, shall be provided from any existing street furniture or other infrastructure on or adjacent to the footpath, including seats; benches; bollards; litter bins; bike racks; post boxes; telephone boxes; service pits; public transport stops/taxi ranks; public transport shelters; loading zones; parking meters; traffic signal boxes; fire hydrants and other emergency assets; pedestrian crossings; and street trees or shrubs.~~

~~Application may be made to Council for the relocation, at the applicant's cost, of Council maintained seats, benches or bicycle racks, in association with an application for a permit for footpath trading.~~

~~Any request for relocation of seats, benches or bicycle racks, must be accompanied by a plan showing the site for the proposed relocation of the street furniture item and a letter of no objection from the owner and occupier of the premises outside which the item is proposed to be relocated.~~

**Service Authority Works and Special Events**

~~Service authorities or Council may require the use of a site to undertake works or maintenance works. When this, or any parade, festival or special event is scheduled, it will be normal practice to give at least seven days notice of the requirement to remove any item from the footpath.~~

~~In an emergency or where maintenance works are considered to be urgent, sites may need to be cleared immediately.~~

~~Permit holders will be responsible for the movement of all items and any associated costs.~~

#### ~~Evidence of a Permit~~

~~Any business that is permitted to undertake a commercial activity on the footpath adjacent to that business must be able to produce a copy of the current permit to an Authorised Officer upon request.~~

~~The permit may include the permit number, date of issue and a summary of the items permitted to be placed on the footpath.~~

#### ~~Reinstatement~~

~~Any damage to footpaths or alterations undertaken must be reinstated by the permit holder at their costs and to Council's specifications or the permit holder will be responsible for reimbursing Council for any reinstatement works.~~

#### ~~Dogs in Outdoor Dining~~

~~Under the provision of the Food Act 2001 Section 112A(1) a person who handles food in an outside area cannot be taken to be in breach of any provision of the Food Act, or of any requirement imposed by or under this Act, by virtue only of the fact that he or she is handling the food while a dog is present in the outside area if the following conditions are satisfied:~~

~~(a) the dog is under the control of a person who is present in the outside area;~~

~~(b) the dog is restrained by a lead that is not more than 2 metres in length;~~

~~(c) the person in control of the dog did not enter the outside area through a part of the premises that is not an outside area.~~

~~Further information on this matter can be directed to Council's Public and Environmental Health Division.~~

## Administration of the Policy

### Applying for a Permit

Pursuant to Section 222 of the Local Government Act 1999, a permit is required for the use of streets, roads and road related areas (footpaths, etc) held in Council's care for use for business purposes. Local government is also empowered to make the granting of a permit subject to conditions.

~~Pursuant to By Law 3 Roads, a permit is required for the use of streets, roads and road related areas (footpaths, etc) held in Council's care for use for non-business purposes as specified in the by-law. Local government is also empowered to make the granting of a permit subject to conditions.~~

#### 1) ~~Application Requirements~~

To apply for a permit an applicant must complete and sign the Footpath Trading Permit application form. ~~(and licence agreement);~~

- ~~a) provide a site plan of existing conditions at a scale of 1:100 that shows:
 
  - i) the width of the frontage and of the footpath from outside edge of kerb to the building lines;
  - ii) location of building lines and type of abutting uses;
  - iii) location of existing trees, light poles, signs, existing street furniture, pits, fire hydrants, car parking and other public infrastructure;~~
- ~~b) provide a site plan of proposed footpath activity at a scale of 1:100 that shows the area and layout of the proposed footpath activity, including the proposed location of chairs, tables, screens, heaters, umbrellas, planter boxes, or movable signs;~~
- ~~c) provide details of proposed furniture, including colour photographs or detailed design drawings of proposed furniture and any means by which they may be proposed to be secured;~~
- ~~d) provide details of any proposed advertising, including a colour photograph of detailed design drawings of any proposed advertisement and a clear indication of its size;~~
- ~~e) provide details of the hours of operation of the business to which the activity relates and the hours of operation proposed for the footpath activity;~~
- ~~f) if the premises is currently licensed to serve alcohol, whether it is proposed to be served in a proposed outdoor eating area;~~
- ~~g) provide details of any planning permit issued for the use and development of the land and confirmation of the need or otherwise for a planning permit for the proposed footpath trading activity~~
- ~~h) provide a Certificate of Currency in relation to a public liability policy of insurance, insuring against liability for the death of or injury to any person or damage to any property arising out of the placement of the item authorised by the permit, which lists:
 
  - i) City of Salisbury Council as an interested party
  - ii) a minimum of \$10 million in public liability
  - iii) the insured (including situation of risk)
  - iv) the name of the insurer
  - v) policy expiry date
  - vi) policy number~~
- ~~i) forward the prescribed application fees (payable to City of Salisbury) and the application form, together with the above information to:~~

~~Inspectorial Services  
City of Salisbury  
P.O. Box 8  
Salisbury SA 5108~~

#### 2) Assess

Staff undertake assessment, consult with the applicant and refer and consult with other Sections of Council and process the application. Other relevant areas include:

- Traffic Management – to assess EAB requirements and any other traffic management issues,



- Technical Services Design and Civil Infrastructure Construction – to assess the design and install of EAB's, and the costs for installation and to schedule install if approved.
- Community Services to assess Disability Access issues for applications that do not meet required parameters.
- Property Services – only if fixed items are proposed to assess any requirements for authorisations and implement that process with the applicant.
- Development Services – all applications are referred for assessment against previous approvals.
- Environmental Health - only for new applications associated with new food business start-ups or change of ownership.

#### **Decision Making**

In considering an application for a Footpath Trading Permit, Council shall have regard to the requirements under the Local Government Act, the specific and general requirements specified in this Policy and the specific local conditions relevant to the application, including

- j)a) the width of the footpath;
- k)b) the location of existing trees, street furniture or other public infrastructure;
- h)c) proximity to major roads, speed of road, disabled parking bays, loading bays, loading zones, clearways, trees and angle-parking angles;
- m)d) the likely number of pedestrians, at particular times of day; and
- n)e) the location of nearby residences.

#### **2) Notification**

Before a permit is granted for the first time, or after a change of business use, Council may give notice of the application to persons who may be affected by the granting of a permit which will entitle those persons to make a submission which must be considered by Council before a determination is made on the application.

#### **3) ~~Issue~~Approval Invoice and Permit or Refusal and Cancellation**

Invoice and Permit - Staff will issue an invoice for all required fees and upon payment and presentation of insurance documentation, issue the permit.

Council may issue a permit in accordance with an application as submitted, or with modifications and with or without special conditions.

Refusal or Cancellation - Council may refuse to issue a permit, refuse to modify the conditions of an existing permit or cancel a permit if:

- a) any requirements of this Policy are not met;
- b) the sight and access of drivers, cyclists or pedestrians is interfered with so as to create a hazardous situation;
- c) there is likely to be detriment to the amenity of the area,
- d) personal safety is likely to be compromised,
- e) any existing permit conditions have not been complied with and there has been a failure to comply with any notice served, or
- f) the permit holder fails to maintain the stipulated minimum public liability insurance.

#### **4) Notification**

Before a permit is granted for the first time, or after a change of business use, Council may give notice of the application to persons who may be affected by the granting of a permit which will entitle those persons to make a submission which must be considered by Council before a determination is made on the application.

#### **Fees and term**

Fees and charges for footpath trading are determined by Council annually and provided in the fees & charges register and updated on the application form. Fees are subject to review and changed annually or more frequently if so required and approved by Council.

Unless otherwise specified on the permit, ~~the permit term it~~ shall expire one year from the date of issue, except in those instances where it is withdrawn by Council prior to the expiry date.

~~If Council refuses to issue a permit, the application fee, is non-refundable.~~

Permits are not transferable. A new permit must be obtained if the proprietorship of a business changes. ~~This may not require any additional fees until such time that the permit is due for renewal.~~

A permit expires if the permit holder ceases to maintain ~~the appropriate~~ public liability insurance or to meet any of the conditions of the agreement and this Policy.

### Enforcement of Policy and Legislative Provisions

Council authorised officers will check compliance with this Policy and the conditions of relevant permits on a regular basis.

Upon detection of a breach of the Footpath Trading Policy or a specific condition of any permit issued, Council will take action in accordance with the provisions of the Local Government Act as applicable.

Enforcement action may include a verbal direction ~~to comply, or~~ written notice to comply, an Infringement Notice ~~and associated fine~~ or Council may impound the items on the footpath that do not comply this Policy and the conditions placed on any permit.

### Insurance

~~The applicant/permit holder shall maintain a public risk insurance policy from a reputable insurer for the minimum amount of Twenty Million Dollars (\$20,000,000.00) per claim or such other amount as the Council may reasonably require from time to time. Such policy must indemnify the permit holder for any injury, loss or damage to other persons or property arising directly or indirectly from any activity associated with the permit holders footpath trading~~

~~The applicant/permit holder must not commence any activity on said footpath/road until the applicant has provided to the Council a copy of the public risk insurance policy (a Certificate of Currency) and the permit has been issued.~~

~~The Permit holder must maintain this insurance for the duration of the permit.~~

### F - LEGISLATION

1. Local Government Act 1999
- ~~2. City of Salisbury By Law 3 Roads~~
- ~~3.2.~~ Disability Discrimination Act 1992
- ~~4.3.~~ Australian Standard 1428 ~~(Parts 1 and 2)~~ Design for Access and Mobility.

### G - REFERENCES

1. Local Government Association – Outdoor Dining Background Paper
2. Adelaide City Council Outdoor Dining Guidelines 2014 ~~Policy~~
3. City of Holdfast Bay Outdoor Dining Policy
- ~~4.4.~~ Banyule City Council Footpath Trading Policy
- ~~2.5.~~ City of Yarra Footpath Trading Policy

- 3.6. <http://www.humanrights.gov.au/>;
4. ~~[http://www.humanrights.gov.au/disability\\_rights/faq/Access/access.html#DDA#DDA](http://www.humanrights.gov.au/disability_rights/faq/Access/access.html#DDA#DDA)~~
5. ~~<http://www.tobaccolaws.sa.gov.au/Default.aspx?tabid=130>~~

## H - ASSOCIATED PROCEDURES

1. City Of Salisbury Application for a Permit to Use a Public Road for Business ~~P~~urposes.

### Document Control

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Footpath Trading Policy

Prepared by

John Darzanos

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**Attachment 1****General Conditions for Footpath Trading Permits**Outdoor Eating

- 1) Any chairs, tables and ancillary items associated with outdoor eating:
  - a) may only be placed in the Trading Activity Zone of the footpath;
  - b) may only be placed on the footpath during the normal trading hours of the business to which they relate, unless otherwise approved by Council;
  - c) must be of a suitable design approved by Council and in particular:
    - i) must be of a style, appearance, materials, finishes and colours which are of a high standard, attractive, durable, shatterproof, unobtrusive and complement the character of the streetscape.;
    - ii) must be uniform in style and design for each premises;
    - iii) must contrast with their background to assist people with vision impairment;
    - iv) must be portable, yet sturdy and windproof.
- 2) The permit holder must:
  - ~~a)~~ where smoking is permitted, comply with the Department of Health Tobacco Control requirements for Restaurants and Cafes. (further information is available from the Department of Health)
  - ~~b)~~ where smoking is permitted, supply each table outside with a wind-proof ashtray at all times and be responsible for cigarette ash, butts and any other litter generated by patrons of a footpath eating area;
  - ~~e)a)~~ maintain the footpath eating area in a clean and tidy condition at all times and immediately clean up any spills and litter;
  - ~~b)~~ where smoking is permitted, supply each table outside with a wind-proof ashtray at all times and be responsible for cigarette ash, butts and any other litter generated by patrons of a footpath eating area;
  - ~~d)c)~~ ensure that patrons do not move tables and chairs or ancillary items from their positions and obstruct the Pedestrian Zone;
  - ~~e)d)~~ ensure that patrons do not allow pets, prams or any other personal items to obstruct the Pedestrian Zone;
  - ~~f)e)~~ ensure that food and beverages are not served to patrons standing on the footpath within the Pedestrian Zone;
  - ~~g)f)~~ ensure that no noise or other disturbance creates a nuisance or causes detriment to the amenity of the neighbourhood in the opinion of Council; and
  - ~~h)g)~~ be responsible for reimbursing Council for any reinstatement works as a result of damage to footpaths or street fixtures and furniture.
  - ~~i)h)~~ must comply with any requirements of Council's Public and Environmental Health Services Division.
- 3) A condition may be placed on a permit requiring a permit holder to place written reminders to patrons in the outdoor eating facilities on the footpath, regarding the above responsibilities, if deemed appropriate by an Authorised Officer.
- 4) Liquor is not to be sold, consumed or served within the Trading Activity Zone unless approved by Consumer and Business Services Council's Development Planning Division and the Liquor Licensing Commission.
- 5) Any premises where alcohol is served or consumed on the footpath must have its liquor licence endorsed with the footpath as part of the "licensed area" on the liquor licence for those premises.
- 6) Waiting staff at premises with outdoor eating facilities on the footpath must facilitate free access by all footpath users within the Pedestrian Zone and give all footpath users priority right of way.

- 7) Separate cash registers, counter facilities or storage facilities are not permitted on the footpath.
- 8) No food or drink is to be prepared, cooked or heated in the footpath eating area except in accordance with any permit granted for temporary food premises.
- 9) The handling and serving of food and drinks to patrons within the footpath eating area must be conducted in accordance with the requirements of Food Act and Food Safety Regulations and Council's Public and Environmental Health Services Section.

#### Goods

- 10) Any goods for display:
  - a) may only be placed in the Trading Activity Zone of the footpath;
  - b) the viewing and selection of goods on display, and the positioning of any trolleys must also be conducted within the trading activity zone
  - c) may only be placed on the footpath during the normal trading hours of the business to which they relate;
  - d) must not exceed a height of 1500 mm, and the width shall allow for the viewing and selection of goods on display, and the positioning of any trolleys within the Trading Zone,
  - e) must be kept in a clean and tidy state, including the area around the display; and
  - f) if a display of foodstuffs, this must comply with the requirements of the Food Act and Council's Public and Environmental Health Services Division.
- 11) Goods (except furniture) must be displayed on stands approved by Council, which in particular:
  - a) must be of a style, appearance, materials, finishes and colours which are of a high standard, attractive, durable, shatterproof, unobtrusive and complement the character of the streetscape;
  - b) must not have sharp, pointed, or jagged edges, corners or protrusions;
  - c) must be stable and able to withstand adverse weather conditions;
  - d) must be secured in a manner that ensures that adverse weather conditions will not create a risk for any footpath users, property or passing traffic but may not be affixed to any footpath, building, street furniture, pole or other structure;
  - e) must contrast with their background to assist people with vision impairment;
  - f) must not comprise any movable parts (eg. spinning, flapping);
  - g) must not be illuminated externally or internally; and
  - h) must not cause any damage to the footpath surface.
- 12) Goods for display will not be permitted:
  - a) where access to a loading zone or disabled parking bay will be impeded;
  - b) where they will cause difficulty to any footpath users, including pedestrians and people exiting or accessing parked vehicles or the footpath;
  - c) to overhang either the kerb or Pedestrian Zone.

#### Moveable Advertising Signs

- 13) In addition to the requirements of By Law 2 Moveable Signs, a footpath trading permit relating to moveable signs shall also comply with the following requirements:
- 14) One movable advertising sign only may be displayed for each street frontage of a business.
- 15) Any movable advertising sign:
  - a) may only be placed in the Trading Activity Zone;
  - b) may only be displayed outside of the frontage of the business to which it relates;
  - c) must not exceed 600 mm in width or 900 mm in height;



- d) must be secured in place by a means that is not reliant on, or physically tied to any infrastructure or trees. The means by which these signs are to be secured must not extend beyond the perimeter of the permitted sign and must be of a type approved by Council. Any securing device is to be removed with the sign in accordance with permitted display times;
- e) may only be displayed during the normal trading hours of the business to which it relates;
- f) must contrast with its background to assist people with vision impairment; and
- g) may only feature the business name or service provided by the business to which it relates.

16) Inflatable signs; portable electric signs; illuminated, revolving, spinning or flashing signs; flags and banners are prohibited.

17) The display of a movable advertising sign is not permitted where a business is conducting any other commercial activity on the footpath.

#### Outdoor Speakers/Amplification equipment

18) Permission will be required to affix speakers to a building or veranda.

19) Any sound or noise produced must not be annoying or cause a disturbance, which in the opinion of Authorised Officer, creates a nuisance or causes detriment to the amenity of the neighbourhood.

20) No sound amplification equipment or jukeboxes may be utilised in the footpath area.

#### Outdoor Heaters

21) Any outdoor heater:

- a) must be associated with the use of the footpath for an outdoor eating facility;
- b) may only be placed or fixed in the Trading Activity Zone; and
- c) must comply with all relevant safety standards

#### Umbrellas

22) Any umbrellas:

- a) may only be placed in the Trading Activity Zone;
- b) must be not less than 2100 mm high at the lowest point other than the pole and must not protrude over the kerb or into the pedestrian zone;
- ~~b)c) Any moveable item that protrudes into the pedestrian zone must not be below a height of 2200mm.~~
- ~~e)d) must be weighted and/or secured so as not to pose a safety hazard.~~

23) At times when it is raining, water from umbrellas must not be discharged within the Pedestrian Zone.

24) Umbrellas may be secured to the footpath by a lock-in device. Lock-in devices will only be approved where the device lies flush with the footpath when the umbrellas are not displayed. Applications for approval for lock-in devices should be made to Council Property Services. Plans and specifications of the items will be required to be lodged with Council prior to any umbrella being placed with a lock-in device.

~~25) No more than 25% of the umbrella's area may be used for advertising.~~

#### Barrier Screens

Barrier screens include:

- low barrier screens, which are predominantly made of canvas or vinyl;
- high barrier screens, which are usually made of clear material such as safety glass or heavy duty plastic and are fitted to the footpath by lock-in devices; and
- full-length awnings/blinds, which are commonly attached from a verandah to the footpath.



The form and construction of any barrier screen must be suitable for its functional requirements and location, taking into account prevailing weather conditions.

~~26)25)~~ Low Barrier Screens

- a) must be associated with the use of the footpath for an outdoor eating facility;
- b) may only be placed in the Trading Activity Zone;
- c) may be no more than 1200 mm high;
- d) may only be in place during the normal trading hours of the business with which they are associated;
- e) must be placed so that the screens are stable and secure or weighted so that they will not be moved by patrons or prevailing weather.
- f) must contrast with their background to assist people with vision impairment;
- ~~g) no more than 25% of the low barrier screen's area may be used for advertising.~~

~~27)26)~~ High Barrier Screens

- a) must be associated with the use of the footpath for an outdoor eating facility;
- b) may only be placed in the Trading Activity Zone;
- c) may only be in place during the normal trading hours of the business to which they relate;
- d) must be at least 1500 mm high (except where the premises are located on corner), be transparent and constructed of safety glass or heavy-duty plastic;
- e) must have a 75 mm wide band 1000 mm above the ground that contrasts with its background to provide a visual guide for all pedestrians;
- f) must be fitted to the footpath with a lock-in device, but be removable. Applications for approval for lock-in devices should be made to Council Property Services.

~~28)27)~~ High barrier screens must be removed after the normal trading hours of the business with which they are associated in order to facilitate street cleaning by vehicles.

~~28)~~ High barrier screens may not be used for advertising other than the name of the business; or unless otherwise approved.

~~29)-~~

~~29)~~ Lock-in devices will only be approved where the device lies flush with the footpath when the barriers (or part thereof) are not in place. Applications for approval for lock-in devices should be made to Council's Property Services. Plans and specifications of the items will be required to be lodged with Council prior to any screen being placed with a lock-in device. Please refer to the Section on Authorisations for further information.

30) Permanent screens will require a separate application for authorization under Section 221 of the Local Government Act from Council's Property Services Section. Please refer to the Section on Authorisations for further information.

~~31)-~~

~~32)31)~~ Where the premises are located on a corner an application for screen will be assessed by Council's City Projects-Traffic Management Section with regard to line of sight and a lower screen may be required.

~~33)32)~~ Full Length Awnings/Blinds

- a) Full length awnings or blinds may only be placed in the Trading Activity Zone.
- b) Full length awnings or blinds may only be fitted subject to the approval and requirements of Council's Development Services Section and Council's Property Services Section.

Planter Boxes

~~34)33)~~ Planter boxes;

- a) may only be placed in the Trading Activity Zone and plants shall not extend beyond that zone;
- b) may only be in place during the normal trading hours of the business to which they relate;

- c) must provide a positive contribution to the visual amenity of the street;
- d) must not exceed 1200 mm in height above the footpath level (including plants);
- e) must be well maintained with healthy plants of suitable form, hardiness and species
- f) must not be watered in a manner which results in the growth of mosses, algae or slime moulds; and
- g) must be free of litter, including cigarette butts.
- h) must contrast with their background to assist people with vision impairment
- i) Planter boxes may not be used for advertising purposes.

### General Requirements

#### Cleaning

- ~~34)~~ The permit holder is responsible for maintaining the trading area in a clean and sanitary condition at all times, and responsible for cleaning the footpath and paved surfaces and maintaining the area in a good state of cleanliness.
- 35) Some areas may only be cleaned by Council, and if soilage is attributed to the Footpath Trading then the costs may be attributed to the permit holder.
- ~~36)-~~
- ~~37)-~~ All tables, chairs, goods, displays, movable advertising signs and ancillary items must be removed and the footpath kept clear to facilitate any additional Council cleaning at times required by Council between 5.00 am and 8.00am.

#### Safety

- ~~38)36)~~ All items placed on the footpath shall be stable, must not pose a hazard to pedestrians or road users and shall not:
- include sharp or protruding items;
  - be capable of shattering;
  - include moving or oscillating parts;
  - include reflective items that pose a risk to traffic; or
  - be located where pedestrian or driver sightlines will be obstructed.

#### Lighting

- ~~37)~~ All foot path trading activities that occur at times of low lighting conditions or at times after sunset may require the provision of additional lighting to ensure the approved area is adequately lit and all areas visible to users, pedestrians and road users.
- 38) Additional lighting requirements will be provided by the permit holder and shall comply with any requirements or conditions by Council.
- ~~39)~~ If an approved footpath trading area cannot provide sufficient lighting then the area may not be suited to trading at times of low lighting conditions or at times after sunset and or the trading times may be restricted to daylight hours.

#### Other Legislative Compliance Requirements

- ~~40)~~ A footpath trading permit does not exempt the permit holder from compliance with any other legislative provision that may be applicable to their trade or operations.
- ~~39)41)~~ It is the responsibility of the permit holder to ensure compliance with any other legislative provisions.



### Footpath Trading Fees and Energy Absorbing Bollard Fee's Model

The following provides examples of the different options for cost recovery of the Energy Absorbing Bollard Fee (includes alternative safety barriers) and presents a Trading Area fee based on a minimum rate and square metre rate. The Footpath Trading permit fee will be a combination of the two fees. (The reference to EAB fee will include alternate safety barriers if applicable)

Footpath Trading permit fee = Energy Absorbing Bollard Fee plus Trading area fee.

#### Options for EAB fee's

1. Full cost recovery
  - Applicant pays for the full costs associated with the provision of Energy Absorbing Bollards (EAB's) where required.
    - i. EAB Fee: \$ full cost of EAB's (supply and installation)  
(no ongoing EAB fees)
2. Cost share model
  - Applicant pays share of EAB's up front (cost share at 50:50)
    - i. EAB fee: \$costs of EAB's (supply and installation) /2  
(no ongoing EAB fees)
3. Cost recovery model
  - Applicant pays full costs of EAB's over a fixed period of time. (10 year period equates to 10 equal payments.)
    - i. EAB Fee: \$ full cost of EAB's (supply and installation)/10  
(annul payment for 10 years)
4. EAB's funded by Council - EAB costs built into ongoing permit fee
  - Applicant pays Permit fees which include a value and number of bollards provided:
    - i. EAB Annual fee: \$bollard fee multiplied by number of bollards  
\$100 x number of bollards
  - Areas with existing approvals and pre-installed bollards
    - i. EAB Annual fee: not applicable.

#### Trading area fee

1. Footpath Trading Area - is based on the square metres of space occupied for the trading activity and is set at a rate per square metre.(rounded to the nearest 0.5 of a square metre)
  - i. Trading Area Annual Fee: \$80 (minimum fee) or \$10 per square metre  
(whichever is the greatest) capped at \$200.

#### Model Footpath Trading Permit Fee

1. Footpath Trading Permit Fee - the footpath trading permit consists of the EAB fee and Trading Area fee. If no EAB fee is applicable then the trading area fee applies or minimum fee. Fees are payable annually and or as required for casual rate fees.

Permit Category				
Business/Commercial Footpath Trading Annual Permit Fee	=	\$ EAB fee* (EAB fee where applicable)	+	\$Trading Area fee

Business/Commercial Casual Rate (Approval for up to 5 business days) (temporary nature and where EAB's are not required)	=	\$20 minimum*	or	10% of calculated annual fee* (*whichever is greatest)
Charity/Community Group Footpath Trading Permit Annual Fee (ongoing where EAB's are required)	=	\$ EAB fee (EAB fee where applicable)	+	\$Trading Area fee
Charity/Community Group Footpath Trading Annual Permit Fee (ongoing where EAB's not required)	=	\$Trading Area fee	X	50%
Charity/Community Group Footpath Trading Permit Fee Casual Rate (Approval for up to 5 business days) (temporary nature and where EAB's are not required)	=	\$10 minimum*	or	10% of \$Trading Area fee* (*whichever is greatest)

\*EAB fee: \$100 x number of bollards (\$bollard fee x number of bollards )  
(Note: The reference to EAB fee will include alternate safety barriers if applicable)

Trading Area Annual Fee: \$80 (minimum fee) or \$10 per square metre (whichever is the greatest) capped at \$200.

**Other Council Fees and Charges**

*All fees sourced from Council web sites and publically listed documents*

## Adelaide City Council Fees

<b>Outdoor Cafes - Permit/ Licence Fees</b>					
New Outdoor Cafes	per application	GST Exempt	Council	Local Government Act S222	\$350.00
Planters small < 450 mm square (No Fee Charged)	per licence	GST Exempt	Council	Local Government Act S222	\$0.00
Planters small > 450 mm square (No Fee Charged)	per licence	GST Exempt	Council	Local Government Act S222	\$0.00
Outdoor Cafes PVC Blinds per linear metre	per annum per licence	GST Exempt	Council	Local Government Act S222	\$43.50
Outdoor Cafes Screens per linear metre	per annum per licence	GST Exempt	Council	Local Government Act S222	\$43.50
Outdoor Cafes Transfer of Permit	per permit	GST Exempt	Council	Local Government Act S222	\$104.00
Outdoor Dining per square metre - Central Activities and Main Streets	per annum	GST Exempt	Council	Local Government Act S222	\$39.00
Outdoor Dining per square metre - Other areas	per annum	GST Exempt	Council	Local Government Act S222	\$34.00
Fixed Furniture levy per square metre	per annum	GST Exempt	Council	Local Government Act S222	\$5.00

## Norwood Payneham and St Peters

<b>Outdoor Dining Permits Category</b>	<b>Fee (inc GST)</b>	
Application Fee	\$50.00	Per application
The Parade Core Sydenham to Portrush – Enclosed/Licensed	\$109.50	Per m2 per annum
The Parade Core Sydenham to Portrush – Open/Licensed	\$72.50	
The Parade Core Sydenham to Portrush – Enclosed/Unlicensed	\$72.50	
The Parade Core Sydenham to Portrush – Open/Unlicensed	\$36.50	
Other Areas – Enclosed/Licensed	\$72.50	
Other Areas – Open/Licensed	\$52.50	
Other Areas – Enclosed/Unlicensed	\$52.50	
Other Areas – Open/Unlicensed	\$23.00	
Installation of New Outdoor Dining Area Bollards	10% of cost	per annum for 10 years
Replacement of Existing Outdoor Dining Area Bollards	5% of cost	per annum for 10 years
Complete development plans*	\$27.50	



## Holdfast

<b>OUTDOOR DINING: Location</b>	<i>(per m2 per annum)</i>
South Esplanade (Broadway Kiosk)	\$318.00
Moseley Square North side - Exposed	\$115.00
Moseley Square South side - Enclosed	\$318.00
Jetty Road, Glenelg (east of Jetty Hotel to Brighton Road)	\$208.00
Jetty Road, Brighton	\$98.00
Colley Terrace	\$115.00
Other locations	\$73.00
Foreshore (Glenelg)	\$98.00
<b>GOODS ON FOOTPATH: Location</b>	<i>(per m2 per annum)</i>
Jetty Road, Glenelg (east of Jetty Hotel to Brighton Road)	\$110.00
Jetty Road, Brighton	\$55.00
Foreshore (Glenelg)	\$92.00
Other locations	\$48.00

## Charles Sturt

Application Fee (including applications for amendments to current permits)	100.00
Permit Fee for Licensed Premises	\$47.00 per chair per annum
Permit Fee for Licensed Premises – Casual Rate	10% of annual fee or minimum charge is \$ 60.00 whichever is greater
Permit Fee for Unlicensed Premises – (non-serviced areas)	\$15.00 per chair per annum
Permit for Unlicensed Premises – ( serviced area)	\$30.00 per chair per annum
Permit Fee for Licensed Premises – Henley Square	\$80.00 per chair per annum
Permit Fee for Unlicensed Premises - Henley Square	\$40.00 per chair per annum
Permit Fee for Unlicensed Premises - Henley Square - Casual Rate	10% of annual fee or minimum charge of 100.00 whichever is greater
Outdoor Dining Permit late payment fee (applied when permit is not renewed within 30 days)	\$50.00

## Pt Adelaide Enfield

Outdoor Dining Authorisation and Permits on Council Land	section 188(1)(f)	FEES 2017-18 (GST INC)	FEE 2017-18 (GST EX)	GST
Application Fee (includes inspection) [188(1)(e)]	Not refundable	\$245.00	\$245.00	GST Exempt
Licensed Premises per annum	Per table and four chairs	\$65.00	\$65.00	GST Exempt
Unlicensed Premises per annum	Per table and four chairs	\$40.00	\$40.00	GST Exempt



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<b>ITEM</b>	3.4.1
	<b>RESOURCES AND GOVERNANCE COMMITTEE</b>
<b>DATE</b>	18 June 2018
<b>HEADING</b>	Nominations Sought for SA Country Arts Trust
<b>AUTHOR</b>	Joy Rowett, Governance Coordinator, CEO and Governance
<b>CITY PLAN LINKS</b>	4.3 Have robust processes that support consistent service delivery and informed decision making.
<b>SUMMARY</b>	This report provides information concerning nominations for SA Country Arts Trust and seeks Council endorsement of any nominations.

### RECOMMENDATION

1. Cr. \_\_\_\_\_ be nominated for the South Australian Country Arts Trust.

### ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. Country Arts Trust SA - Part A Selection Criteria - June 2018

## 1. BACKGROUND

- 1.1 Country Arts SA has requested from the LGA, nominations for a Local Government Member on the South Australian Country Arts Trust for a three year term commencing immediately on appointment. Nominations must be forwarded to the LGA by COB Wednesday 11 July 2018.

## 2. CONSULTATION / COMMUNICATION

### 2.1 Internal

- 2.1.1 Circular 23.2 dated 1 June 2018 from the LGA was emailed to the Executive Group, Elected Members and Community Development Divisional Managers on 4 June 2018.
- 2.1.2 At the time of writing this report no expressions of interest in nominating have been received.

### 2.2 External

- 2.2.1 Nil

## 3. REPORT

- 3.1 The Trust is established pursuant to the *South Australian Country Arts Trust Act 1992*.
- 3.2 The functions of the trust are:

- 3.2.1 To advise the Premier on matters of policy related to country arts;
  - 3.2.2 To act as an advocate for country arts;
  - 3.2.3 To manage the development of country arts;
  - 3.2.4 To establish and maintain an information service for country arts;
  - 3.2.5 To develop and manage programs for the touring of country arts activities within the State or within or outside of the State;
  - 3.2.6 To provide, manage and control premises and facilities for country arts;
  - 3.2.7 To evaluate and be responsible for the financial and artistic performance of country arts activities funded by the Trust;
  - 3.2.8 To provide ticketing services for productions or events of any kind staged or promoted by the Trust or any other person; and
  - 3.2.9 To carry out any other functions assigned to the Trust under this or any other Act or by the Premier.
- 3.3 Appointments to the Trust are for a period of three (3) years, commencing immediately. The LGA is currently represented by Councillor Peter Dunn, of the Regional Council of Goyder. Cr Dunn's term on the Trust expires on 17 June 2018, and he is eligible for re-appointment.
- 3.4 Sitting fees of \$206 per four hour session are payable to members and any reasonable travel expenses will be reimbursed.
- 3.5 Meetings are held six times a year, often in regional areas, with the meetings for the remainder of 2018 being on Thursday 28 June, Thursday 23 August, Thursday 25 October and Thursday 13 December 2018.
- 3.6 LGA nominations to outside bodies will, unless determined otherwise by the LGA Board or Executive Committee, be currently serving Council Members or Council staff.
- 3.7 Nominations addressing the Selection Criteria (attached) for the South Australian Country Arts Trust must be forwarded to the LGA by COB Wednesday 11 July 2018.
- 3.8 The LGA Board will consider nominations received at its meeting on Thursday 19 July 2018.

#### **4. CONCLUSION / PROPOSAL**

- 4.1 Council is asked to determine if a nomination is to be made for the South Australian Country Arts Trust.
- 4.2 It should be noted that Council is not obliged to submit a nomination.

#### **CO-ORDINATION**

Officer: Exec MG  
Group

Date:

**Nominations to Outside Bodies - PART A**

<b>Name of Body</b>	<b>South Australian Country Arts Trust</b>
<b>Legal Status of Body</b>	Statutory Authority
<b>Summary Statement</b>	The SA Country Arts Trust meets at least six times in one year to advise the Minister on matters of policy related to country arts, act as an advocate for country arts and perform other functions and duties as outlined in the <i>South Australian Country Arts Trust Act 1992</i> .
<b><u>SELECTION CRITERIA FOR MEMBERSHIP ON OUTSIDE BODIES</u></b> The following selection criteria must be addressed when completing Part B	
<b>Qualifications Required</b> <i>(formal qualifications relevant to the appointment)</i>	Nil.
<b>Industry Experience</b>	Practical knowledge of and extensive experience in Local Government.
<b>Board / Committee Experience</b>	Experience in working with intergovernmental boards or committees is desirable.
<b>Key Expertise</b> <i>(other relevant experience i.e. those requirements established for a Board/Committee under an Act)</i>	<ul style="list-style-type: none"> <li>• Appropriate arts skills and experience.</li> <li>• Experience in developing and maintaining meaningful working partnerships.</li> </ul>
<b><u>LIABILITY AND INDEMNITY COVER</u></b> The LGA requires that representatives on outside bodies be appropriately insured throughout the period of their appointment and seeks to collect details of the insurances provided by that organisation (on an annual basis).	
<b>Insurance information (Certificates of Currencies or equivalent) supplied by the Outside Body</b>	<b>Yes</b>
<b>Insurance Policies are Valid &amp; Current</b>	<b>Yes</b>





<b>ITEM</b>	3.6.1
	<b>RESOURCES AND GOVERNANCE COMMITTEE</b>
<b>DATE</b>	18 June 2018
<b>HEADING</b>	Review of Caretaker Policy
<b>AUTHOR</b>	Joy Rowett, Governance Coordinator, CEO and Governance
<b>CITY PLAN LINKS</b>	4.3 Have robust processes that support consistent service delivery and informed decision making.
<b>SUMMARY</b>	This report presents the reviewed Caretaker Policy for Council endorsement.

## RECOMMENDATION

1. The information be received.
2. The Caretaker Policy as set out in Attachment 1 to this report (Resources and Governance Committee Item No.3.6.1 18/06/2018), with the Caretaker Period to commence on 18 September 2018, be endorsed.

## ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. Caretaker Policy

## 1. BACKGROUND

- 1.1 The Caretaker Period for the November 2018 Council Election will commence from 18 September 2018 (or earlier if the Council determines) until the declaration of the election results. During the Caretaker period Council is prevented from making 'designated decisions' (as defined in section 91A(8) of the *Local Government (Elections) Act 1999*)
- 1.2 The Local Government Association (LGA) has reviewed its Model Caretaker Policy and Caretaker Guidelines in readiness for the November 2018 elections.
- 1.3 An updated City of Salisbury Caretaker Policy, based on the LGA Model Policy has been prepared for consideration by Council.

## 2. REPORT

- 2.1 The focus of the Caretaker Period is on prohibiting the Council from making designated decisions during an election period. Designated decisions are defined as:

*91A (8) designated decision means a decision –*

*(a) Relating to the employment or remuneration of a chief executive officer, other than a decision to appoint an acting chief executive officer; or*

- (b) *To terminate the appointment of a chief executive officer; or*
  - (c) *To enter into a contract, arrangement or understanding (other than a prescribed contract) the total value of which exceeds whichever is the greater of \$100 000 or 1% of the council's revenue from rates in the preceding financial year; or*
  - (d) *Allowing the use of council resources for the advantage of a particular candidate or group of candidates (other than a decision that allows the equal use of council resources by all candidates for election),*
- Other than a decision of a kind excluded from this definition by regulation*

- 2.2 With respect to Section 91A(8)(c) above, the relevant amount of a contract, arrangement or understanding at which it becomes a designated decision, would be \$914,380 based on Council's revenue from rates in the preceding financial year of \$91,438,000
- 2.3 The revised Caretaker Policy (Attachment 1) is based on the LGA Model Caretaker Policy and addresses the core legislative requirements for a Caretaker Policy.
- 2.4 The LGA Caretaker Guidelines provide an overview of the scope and meaning of the legislative requirements under section 91A of the *Local Government (Elections) Act 1999*. The Guidelines are intended to assist Councils and Council Members to manage their obligations during a Caretaker period. The Caretaker Guidelines have been included as an attachment to the revised Caretaker Policy.
- 2.5 The revised Caretaker Policy (Attachment 1) provides for commencement on 18 September 2018, the date on which nominations for the 2018 elections close. Council may consider whether it wishes to commence the application of the Caretaker Policy from an earlier date, however it is desirable that Council business proceed as usual until the legislated commencement..
- 2.6 Staff are monitoring all information being presented to Council to ensure that matters that would be in breach of the Caretaker Policy are not scheduled for consideration during the relevant period. At this stage no significant policy decisions have been identified as being required to be made during the period.
- 2.7 In some instances, it may be necessary to defer consideration of a matter until the December round of meetings. This decision will be made by the CEO and if necessary, in accordance with the Caretaker Policy, a report will be presented to Council in relation to any significant decision that may be required during the Caretaker Period.

### 3. CONCLUSION / PROPOSAL

- 3.1 The Draft Caretaker Policy attached to this report responds to the requirements of the *Local Government (Elections) Act 1999* and provides a clear policy position in relation to the caretaker period.

- 3.2 Council may determine whether it wishes to apply the Caretaker Policy from the close of nominations to the 2018 elections or from an earlier date. If the preference is the latter, the 'Scope' section of the Policy will be amended to reflect the earlier commencement date.
- 3.3 The LGA Caretaker Guidelines provide information that assists with understanding of caretaker period requirements and should be considered a support resource to the City of Salisbury Caretaker Policy.

#### **CO-ORDINATION**

Officer: Executive Group  
Date: 08/06/2018





## Caretaker Policy

<b>Policy Type:</b>	<b>Policy</b>		
<b>Approved By:</b>	Council	<b>Decision No:</b>	2011/522, 2014/2531,
<b>Approval Date:</b>	22 March 2010 (2010/2122)	<b>Last Reapproval Date:</b>	<del>28 July 2014</del> <u>23 April 2018</u>
<b>Review Date:</b>	<del>28 July 2016</del> <u>April 2020</u>	<b>Internal Reference No.:</b>	
<b>Department:</b>	CEO and Governance	<b>Division:</b>	Governance
<b>Function:</b>	9 - Governance	<b>Responsible Officer:</b>	Manager, Governance

### A – POLICY STATEMENT

1. It is a long established democratic principle that outgoing elected bodies should not use public resources for election campaigning, nor make decisions which may unreasonably, inappropriately, or unnecessarily bind an incoming Council.
2. This policy affirms Council's commitment to fair and democratic elections, and adherence to this principle and includes a commitment to comply with the statutory caretaker period requirements under section 91A of the *Local Government (Elections) Act 1999* (SA).

### B – SCOPE/APPLICATION

1. This policy applies throughout the election period for a general election. For the purposes of the Local Government Elections of November ~~2014~~ 2018, the policy commences on ~~16-18~~ September ~~2014-2018~~ and ends ~~at the conclusion of the election,~~ when the election results have been declared.
2. This Policy applies to:
  - 2.1. The Council; and
  - 2.2. Council staff.
3. This Policy is to be taken to form part of the *Code of Conduct for Council Members* gazetted for the purposes of section 63 of the *Local Government Act* and the *Code of Conduct for Council Employees* gazetted for the purpose of section 110 of the *Local Government Act 1999*.

### C – DEFINITIONS

1. In this Policy:
 

**Chief Executive Officer** means the appointed Chief Executive Officer or Acting Chief Executive Officer or nominee.

**Council Member** means an elected member of the **City of Salisbury**.



**Council resources** may include:

- (a) Materials published by Council
- (b) Facilities and goods owned by the Council;
- (c) Attendance and participation at functions and events;
- (d) Access to Council information; and
- (e) Media services

**Council staff** means any person that is employed full-time, part-time or casually by the Council who receives remuneration for their work.

**designated decision** means a decision:

- (a) relating to the employment or remuneration of the Chief Executive Officer, other than a decision to appoint an acting Chief Executive Officer or to suspend the Chief Executive Officer for serious and willful misconduct;
- (b) to terminate the appointment of the Chief Executive Officer;
- (c) to enter into a contract, arrangement or understanding (other than a contract for road works, road maintenance or drainage works) the total value of which exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates in the preceding financial year, except if the decision:
  - (i) relates to the carrying out of works in response to an emergency or disaster within the meaning of the *Emergency Management Act 2004* (SA), or under section 298 of the *Local Government Act 1999* (SA);
  - (ii) is an expenditure or other decision required to be taken under an agreement by which funding is provided to the Council by the Commonwealth or State Government or otherwise for the Council to be eligible for funding from the Commonwealth or State Government;
  - (iii) relates to the employment of a particular Council employee (other than the Chief Executive Officer);
  - (iv) is made in the conduct of negotiations relating to the employment of Council employees generally, or a class of Council employees, if provision has been made for funds relating to such negotiations in the budget of the Council for the relevant financial year and the negotiations commenced prior to the election period; or
  - (v) relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council; or
- (d) allowing the use of Council resources for the advantage of a particular candidate or group of candidates (other than a decision that allows the equal use of Council resources by all candidates).

**election period** means the period commencing on the day of the close of nominations for a general election and expiring at the conclusion of the general election.

**general election** means a general election of council members held:

- (a) under section 5 of the *Local Government (Elections) Act*; or
- (b) pursuant to a proclamation or notice under the *Local Government Act 1999* (SA).

**Minister** means the Minister for Local Government or other minister of the South Australian government vested with responsibility for the *Local Government (Elections) Act*.

**D – PROHIBITION ON DESIGNATED DECISIONS**

1. The Council is prohibited from making a designated decision during an election period.
2. A decision of the Council includes a decision of:
  - 2.1. A Committee of Council; and
  - 2.2. A delegate of Council.

**E – APPLICATION FOR EXEMPTION**

1. If the Council considers that it is faced with extraordinary circumstances which require the making of a designated decision during an election period, the Council may apply in writing to the Minister for an exemption to enable the making of a designated decision that would otherwise be invalid under section 91A of the Local Government (Elections) Act and this policy.
2. If the Minister grants an exemption to enable the making of a designated decision that would otherwise be invalid under section 91A of the Local Government (Elections) Act and this policy, then the Council and Council staff will comply with any conditions or limitations that the Minister imposes on the exemption.

**F – TREATMENT OF OTHER SIGNIFICANT DECISIONS**

1. So far as is reasonably practicable, the Chief Executive Officer should avoid scheduling significant decisions (including major policy decisions) for consideration during an 'election period' and ensure that such decisions:
  - 1.1 are considered by Council prior to the 'election period'; or
  - 1.2 are scheduled for determination by the incoming Council.
2. A 'significant decision' is any major policy or other decision which will significantly affect the Council area or community or will bind the incoming Council.
3. A 'major policy' decision includes any decision (not being a designated decision):
  - 3.1 to spend unbudgeted monies;
  - 3.2 to conduct unplanned public consultation;
  - 3.3 to endorse a new policy;
  - 3.4 to dispose of Council land;
  - 3.5 to approve community grants;
  - 3.6 to progress any matter which has been identified as an election issue; and
  - 3.7 any other issue that is considered a major policy decision by the Chief Executive Officer.
4. The determination as to whether or not any decision is significant will be made by the Chief Executive Officer, after consultation with the Mayor.
5. Where the Chief Executive Officer has determined that a decision is significant, but circumstances arise that require the decision to be made during the election period, the Chief Executive Officer will report this to the Council.
6. The aim of the Chief Executive Officer's report is to assist Council Members assess whether the decision should be deferred for consideration by the incoming Council.
7. The Chief Executive Officer's report to Council will address the following issues (where relevant):

- 7.1 why the matter is considered 'significant';
  - 7.2 why the matter is considered urgent;
  - 7.3 what are the financial and other consequences of postponing the matter until after the election, both on the current Council and the incoming Council;
  - 7.4 whether deciding the matter will significantly limit options for the incoming Council;
  - 7.5 whether the matter requires the expenditure of unbudgeted funds;
  - 7.6 whether the matter is the completion of an activity already commenced and previously endorsed by Council;
  - 7.7 whether the matter requires community engagement;
  - 7.8 any relevant statutory obligations or timeframes; and
  - 7.9 whether dealing with the matter in the election period is in the best interests of the Council area and community.
8. Council will consider the Chief Executive Officer's report and determine whether or not to make the decision.

#### **G – CONTINUING THE FUNCTIONS OF THE COUNCIL DURING THE CARETAKER PERIOD**

1. Nothing in this policy prevents the Mayor, Council Members and staff carrying on the business of the Council during the caretaker period. The Mayor will continue to accept invitations to attend community functions, as will Council Members, particularly when those functions are in recognition of activities of community groups whether having gained the support of the Council through grants or not.
2. The CEO will ensure as far as is practical that Council initiatives will not be launched during the caretaker period.
3. The endorsed Media Policy will continue to apply in relation to Council spokespersons during the Caretaker period.

#### **H – CONSEQUENCES OF CONTRAVENING THIS POLICY**

1. A designated decision made by Council during an election period is invalid, except where an exemption has been granted by the Minister.
2. Any person who suffers loss or damage as a result of acting in good faith on a designated decision made by the Council in contravention of this Policy is entitled to compensation from the Council for that loss or damage.
- 2.3. A breach of this policy is a breach of the Code of Conduct for Council Members and Code of Conduct for Council Employees.

#### **I – AVAILABILITY OF POLICY**

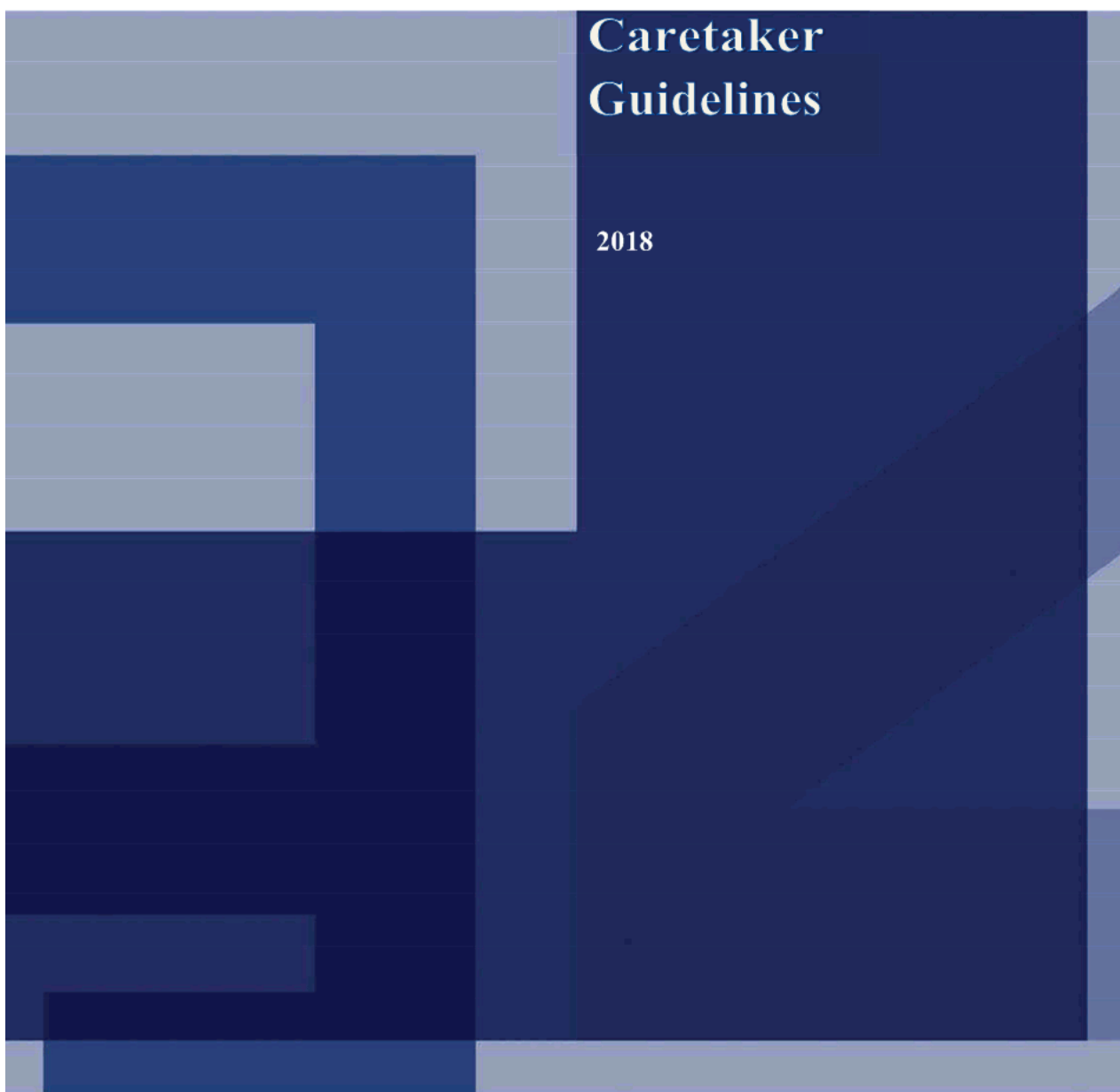
1. This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website [www.salisbury.sa.gov.au/Council Documents/Policies](http://www.salisbury.sa.gov.au/Council/Documents/Policies). Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's schedule of fees and charges.

#### **J – REFERENCES**

1. Caretaker Guidelines, May ~~2014~~ 2018 – Local Government Association (included as an attachment to this Policy)

**Document Control**

<b>Document ID</b>	Caretaker Policy
<b>Prepared by</b>	<del>Fami-Norman</del> Joy Rowett
<b>Release</b>	<del>34.00</del>
<b>Document Status</b>	DRAFT
<b>Date Printed</b>	



The Caretaker Guidelines has been prepared by the Local Government Association of SA (LGA) in conjunction with Wallmans Lawyers for the guidance of and use by member Councils. The LGA is the statutory peak body for Local Government in South Australia, representing all 68 Councils in the State.

These Guidelines were reviewed and updated March 2018.

Enquiries regarding this publication should be directed to the LGA on 08 8224 2000.



## Introduction

The Local Government (Elections) Act 1999 (SA) was amended in 2009 to require each Council to prepare and adopt a caretaker policy to govern the conduct of the Council and its staff during the election period for a general election. Section 91A of the Elections Act stipulates that the caretaker policy must at a minimum prohibit the making of certain designated decisions by the Council during an election period.

The Local Government Association of SA (LGA) has prepared a model caretaker policy on the basis of meeting the minimum legislative obligations under section 91A of the Elections Act.

These guidelines are a supplement to the model caretaker policy and provide an overview of the scope and meaning of the legislative requirements under section 91A of the Local Government (Elections) Act. Terms which are defined in the model caretaker policy have the same meanings in these guidelines.

These guidelines also examine the difference between decisions by a Council during an election period allowing the use of Council resources for the advantage of a candidate or particular candidate in a general election and the use by a person of Council resources for personal benefit.

## 1. Section 91A, Local Government (Elections) Act

### 1.1. Overview

Under the Local Government (Elections) Act, a Council's caretaker policy must at a minimum prohibit the Council from making designated decisions during an election period.

There are three elements to this prohibition:

- (a) a decision of the Council;
- (b) during an election period
- (c) which is a designated decision. Each of

these elements is described below.

The Local Government (Elections) Act stipulates that any designated decision made by a Council during an election period without a ministerial exemption is invalid.

Any person who suffers loss or damage as a result of acting on a designated decision made in contravention of section 91A of the Local Government (Elections) Act is entitled to compensation from the Council for that loss or damage.

### 1.2. Decision of the Council

Section 91A of the Local Government (Elections) Act only applies to a decision of the Council. This will include decisions made directly by the Council or indirectly through a Council committee or delegate.

A personal decision of a Council Member, or a Council employee who is not acting under a delegation, is not a decision of a Council and, consequently, cannot be a designated decision for the purposes of section 91A of the Local Government (Elections) Act.

### 1.3. Election Period

During an election period Councils are prohibited from making designated decisions, unless an exemption has been granted by the Minister.

Section 91A of the Local Government (Elections) Act prohibits the making of designated decisions during an election period. An election period:

- (a) commences on either:
  - (i) the day on which nominations for a general election close; or
  - (ii) if a Council's caretaker policy specifies an earlier date, that date; and
- (b) expires at the conclusion of the general election.

A decision which is made prior to the election period, but announced during the election period, will not be a designated decision for the purposes of section 91A of the Local Government (Elections) Act.

## 1.4. Designated Decisions

Only specific types of decision will be designated decisions under section 91A of the Local Government (Elections) Act. The designated decisions are outlined below.

Designated decisions	
(a)	A decision relating to the employment or remuneration of the Chief Executive Officer, other than a decision to appoint an acting Chief Executive Officer or to suspend the Chief Executive Officer for serious and willful misconduct.
(b)	A decision to terminate the appointment of the Chief Executive Officer.
(c)	<p>A decision to enter into a contract, arrangement or understanding (other than a contract for road works, road maintenance or drainage works) the total value of which exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates in the preceding financial year, except if the decision:</p> <ul style="list-style-type: none"> <li>(i) relates to the carrying out of works in response to an emergency or disaster within the meaning of the Emergency Management Act 2004 (SA) or under section 298 of the Local Government Act 1999 (SA);</li> <li>(ii) is an expenditure or other decision required to be taken under an agreement by which funding is provided to the Council by the Commonwealth or State Government or otherwise for the Council to be eligible for funding from the Commonwealth or State Government;</li> <li>(iii) relates to the employment of a particular Council employee (other than the Chief Executive Officer);</li> <li>(iv) is made in the conduct of negotiations relating to the employment of Council employees generally, or a class of Council employees, if provision has been made for funds relating to such negotiations in the budget of the Council for the relevant financial year and the negotiations commenced prior to the election period; or</li> <li>(v) relates to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council.</li> </ul>
(d)	A decision allowing the use of Council resources for the advantage of a particular candidate or group of candidates (other than a decision that allows the equal use of Council resources by all candidates for election).

## 2. Decisions relating to the employment of the Chief Executive Officer

### Scope of Designated Decision

Certain Council decisions regarding the Chief Executive Officer made during an election period will be designated decisions.

Any decision relating to the employment or remuneration of the Chief Executive Officer, other than a decision to:

- (a) appoint an acting Chief Executive Officer; or
- (b) suspend a Chief Executive Officer for serious and willful misconduct, will be a designated decision.

## 3. Specific contracting decisions

### 3.1. Scope of Designated Decision

Certain Council decisions regarding specific types of contracts made during an election period will be designated decisions.

Generally, a decision to enter into a contract, arrangement or understanding (other than a prescribed contract) the total value of which exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates in the preceding financial year. However, there are exclusions from this general position provided in section 91A of the Local Government (Elections) Act and the Local Government (Elections) Regulations 2010 (SA).

### 3.2. 'Prescribed Contracts'

Prescribed contracts are expressly excluded from the types of contracts which are able to be the subject of a designed decision. A 'prescribed contract' is defined in section 91A of the Local Government (Elections) Act to mean a contract entered into by a Council for the purpose of undertaking road construction, road maintenance or drainage works.

### 3.3. Exemptions

Other types of contracts are excluded from being the subject of a designated decision by the Local Government (Elections) Regulations. These types of decision are decisions:

- (a) relating to the carrying out of works in response to an emergency or disaster within the meaning of the Emergency Management Act or under section 298 of the Local Government Act;
- (b) for an expenditure or other decision required to be taken under an agreement by which funding is provided to the Council by the Commonwealth or State Government or otherwise for the Council to be eligible for funding from the Commonwealth or State Government;
- (c) relating to the employment of a particular Council employee (other than the Chief Executive Officer);
- (d) made in the conduct of negotiations relating to the employment of Council employees generally, or a class of Council employees, if

provision has been made for funds relating to such negotiations in the budget of the Council for the relevant financial year and the negotiations commenced prior to the election period; or

- (e) relating to a Community Wastewater Management Systems scheme that has, prior to the election period, been approved by the Council.

## 4. Decisions concerning the use of Council resources

### 4.1. Scope of Designated Decision

A decision of Council allowing the use of Council resources for the advantage of a particular candidate or group of candidates (other than a decision that allows the equal use of Council resources by all candidates for election) made during an election period is a designated decision.

Designated decisions do not include individual decisions of Council Members or Council staff to utilise Council resources for personal benefit. For example, the use of Council resources by a Council Member for the purposes of his or her election campaign is not a designated decision for the purposes of section 91A of the Local Government (Elections) Act.

There are constraints on the personal use of Council resources under the Local Government Act and the gazetted code of conduct applying to council members. These provisions are discussed in Part 7 of these guidelines.

### 4.2. Council Resources

'Council resources' is a broad concept which is undefined in the Local Government (Elections) Act. A general definition of the term 'resources' provided in the Macquarie Dictionary is 'the collective wealth and assets of a country, organisation, individual'. Applying this definition, any asset or information owned or controlled by a Council is a 'Council resource'.

Council resources may include:

- (a) materials published by Council;
- (b) facilities and goods owned by the Council;
- (c) attendance and participation at functions and events;
- (d) access to Council information; and
- (e) media services.

Council staff and contractors engaged by a Council are also Council resources.

### 4.3. Meaning of 'Advantage'

The concept of 'advantage' is broad and is defined in the Macquarie Dictionary as 'any state, circumstance, opportunity, or means especially favourable to success, interest, or any desired end'. In the context of section 91A of the Local Government (Elections) Act, the relevant advantage is in respect of being elected or re-elected.



An advantage will be conferred where a decision allowing the use of Council resources favours one candidate over another. An advantage arises when a candidate utilises resources, information or support that is not available to a candidate in an election who is not an existing Council Member.

The Ombudsman has given 'advantage' a broad interpretation. The Ombudsman's view is that any activity that gives a perception of favouring one candidate over another is an advantage. Whether the scope of the 'advantage' under section 91A of the Local Government (Elections) Act extends to a perceived advantage is likely to be a matter for debate. Councils should, however, be aware of this view when making decisions during an election period.

#### 4.4. Normal Council Business or Campaigning?

There is no relevant advantage where Council resources are used exclusively for normal Council business during an 'election period' and are not used in connection with a candidate's election campaign.

Where Council Members are standing for re-election, the Council should consider whether a decision to use Council resources made during the election period will provide an advantage to existing Council Members (or other particular candidates) in their election campaigns. Where there will be an advantage then the decision is a designated decision and is prohibited by section 91A of the Local Government (Elections) Act.

Where a decision to use Council resources for the ordinary business of the Council is made during the election period then, provided that no particular candidate or candidates in are favoured in their campaigning, this will not be a designated decision.

Reasonable minds are likely to differ over whether the use of particular Council resources will advantage particular candidates. Due propriety and appropriate judgment should be exercised in making decisions to use Council resources during election periods to ensure that the Council and its Members are not open to criticism.

### 5. Use of Council resources for personal benefit

The use of Council resources for personal benefit is distinct from a designated decision of a Council regarding the use of Council resources for the advantage of a particular candidate or group of candidates.

The use of Council resources for personal benefit is regulated by legislation other than section 91A of the Local Government (Elections) Act. The use of Council resources by a Council Member for the purposes of an election campaign will be a use of those resources for personal benefit. Council Members standing for re-election to Council must take care that they only use Council resources for normal Council business and not to assist them in campaigning.

The general duties on Council Members under section 62 of the LG Act include offences for improper use of information or position to gain personal advantage for the Council Member or another person. A maximum penalty of \$10,000 or imprisonment for two years applies to these offences.

Section 78 of the Local Government Act provides for the use of Council resource by Council Members. Section 78(3) of the Local Government Act states:



A member of a council must not use a facility or service provided by the council under this section for a purpose unrelated to the performance or discharge of official functions or duties (unless the use has been approved by the council and the member has agreed to reimburse the council for any additional costs or expenses associated with this use).

The Code of Conduct for Council Members also prohibit the use of Council resources for private purposes without authorisation.

The use of Council resources for personal benefit in breach of these requirements could be corruption or misconduct for the purpose of the Independent Commissioner Against Corruption Act 2012 (SA) and be the subject of a complaint to the office of Public Integrity (OPI).

Conduct of a public officer that results in a substantial mismanagement of public resources may also be the subject of a complaint to the OPI.

Disciplinary consequences or prosecutions may ultimately result from the unauthorised use of Council resources for private purposes.

## 6. Specific Council resource scenarios

The business of a Council does not cease during an election period. Council resources will continue to be used during the election period. There is a distinction between the use of Council resources in the ordinary course of Council operations and the use of Council resources by a candidate or group of candidates for campaigning purposes. Where resources are used for campaign purposes, this will be the use of Council resources for personal benefit.

During an election period, Council Members and Council staff must take care that Council resources are not used for the purpose of election campaigning. Some specific scenarios are discussed below where this issue may arise.

### 6.1. Council publications during an 'election period'

A decision by a Council to publish information for the advantage of a particular candidate or group of candidates (other than a decision which allows for the equal use of Council resources by all candidates for election) is a designated decision and is prohibited by section 91A of the Local Government (Elections) Act. Publishing includes publication by any medium, including but not limited to leaflets, newspapers, posters, email, websites, radio or television.

Councils have a statutory responsibility to publish certain information regarding general elections. Under section 12(b) of the Local Government (Elections) Act, each Council is responsible for the provision of information, education and publicity designed to promote public participation in the electoral processes for its area, to inform potential voters about the candidates who are standing for election in its area and to advise its local community about the outcome of the elections and polls conducted in its area.

All election materials published by a Council should fall within the types of material described in section 12(b) of the Local Government (Elections) Act and not contain any material which would advantage a particular candidate or candidates.

'Electoral material' is defined in the Local Government (Elections) Act as 'an advertisement, notice, statement or representation calculated to affect the result of an election or poll'. Given that the purpose of electoral material is to persuade voters towards a particular candidate or group of candidates, it will not be appropriate for a Council to publish electoral material.

Councils may publish other material during an election period. If Council is considering making a decision during the election period to publish material, the Council should consider whether or not the material would confer an advantage on a particular candidate or group of candidates for election. If an advantage would be conferred then the decision would be a designated decision.

Where a Council publication made in the ordinary course of Council operations would be published during an election period (and this is not the subject of a Council decision made during the election period), the publication will not contravene section 91A of the Local Government (Elections) Act. Care should be taken, however, as to the contents of these publications to ensure that the Council and Council Members are not criticised for publishing information which may assist Council Members to be re-elected.

Council Members are able to publish electoral material on their own behalf (provided that they comply with sections 27 and 28 of the Local Government (Elections) Act)). Council Members should not assert or imply that the electoral material originates from or is endorsed by the Council. A Council Member also should not use Council resources to create or distribute his or her electoral material, including through the use of Council stationary, computers, printers, photocopiers or staff or the application of the Council's logos.

## 6.2. Attendance at Events and Functions

Events and functions can take many forms including conferences, workshops, forums, launches, promotional activities, and social occasions (such as dinners, receptions and balls).

Council Members can continue to attend events and functions during an election period provided that their attendance is consistent with the ordinary course of the Council Member's duties and is not used for campaigning.

Council Members should consider whether or not their attendance at an event or function is likely to be viewed as campaigning. In part, this may depend on the conduct of the Council Member while in attendance at the event or function. Care should particularly be taken by Council Members if they are asked to give a speech at an event or function during an election period.

## 6.3. Access to Council Information

Section 61 of the Local Government Act provides Council Members with a right to access Council documents in connection with the performance or discharge of the functions or duties of the member. This right of access continues during an election period.

Council Members should take care that access to Council documents is in connection with the performance or discharge of their functions or duties of the member. Access to Council documents for the purpose of campaigning or to gain an advantage in an election is an improper use of information gained by virtue of the Council Member's position as a member of Council.

Council Members can be prosecuted for the improper use of Council information to gain an advantage for themselves or another person. Maximum penalties of \$10,000 or two years imprisonment apply.

#### **6.4. Media Services**

Council's media services should be used to promote Council activities or initiatives or community activities or initiatives which are endorsed or otherwise supported by Council.

Media services should, during the election period, be used in the ordinary course of Council operations. Care should be taken that media services will not be used to advantage a particular Council Member in his or her re-election campaign by profiling that member or activities which are closely associated with that member.

Council Members should not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of an election campaign. To do so, would contravene section 62(4) of the Local Government Act which prohibits a Council Member improperly using his or her position as a Council member to gain, directly or indirectly, an advantage for himself or herself or for another person. Council Members can be prosecuted for this offence. Maximum penalties of \$10,000 or two years imprisonment apply.

#### **6.5. Public Consultation During an Election Period**

Public consultation must be undertaken during an election period if the consultation is mandated by legislation.

Where consultation is discretionary then the consultation can occur during the election period. Consideration should be given prior to the consultation being scheduled as to whether or not the consultation will influence the outcome of the election. If the matter subject to the consultation is likely to be closely associated in the minds of voters with a particular candidate or group of candidates then it may be prudent to delay the consultation until after the election period.

#### **6.6. Expenses Incurred by Council Members**

Payment or reimbursement of costs relating to Council Members' out-of-pocket expenses incurred during an election period will only apply to necessary costs that have been incurred in the performance of normal Council duties. This is consistent with general requirements applying to the reimbursement of Council Members under section 77 of the Local Government Act.

No reimbursements should be provided for campaign expenses or for expenses that could be perceived as supporting or being connected with a candidate's election campaign.

#### **6.7. Council Branding and Stationery**

Councils should not endorse particular candidates for election. Council logos, letterheads, or other Council branding or Council resources or facilities should not be used for a candidate's election campaign.

### **6.8. Support Staff to Council Members**

Council staff who provide support to Council Members should not be asked to undertake any tasks connected directly or indirectly with an election campaign for a Council Member, except where similar support is provided to all candidates.

### **6.9. Equipment and Facilities**

Council resources such as Council computers, stationary and business cards can continue to be used by Council Members during an election period for normal Council business. Council resources should not be used for campaign purposes as this will contravene the Local Government Act and the Code of Conduct for Council Members (see discussion in Part 7).

## **7. Council staff activities during an election period**

Council staff should not undertake any activity that may influence the outcome of an election, except where the activity relates to the election process and is authorised by the Chief Executive Officer.

Council staff should not authorise, use or allocate a Council resource for any purpose which may influence voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer. This includes making Council resources available to Council Members for campaign purposes.

Council staff must not assist a Council Member with the Member's election campaign.

Where the use of Council resources could be construed as being related to a candidate's election campaign, the incident must be reported to the Chief Executive Officer.

All Council staff must also comply with the mandatory reporting directions and guidelines issued by the Independent Commissioner Against Corruption if these apply.

A breach of this policy is a breach of the Code of Conduct for Council Employees.

## **8. Equity of assistance to candidates**

### **8.1. Candidate Assistance and Advice**

Councils should not favour a candidate or group of candidates for election, over other candidates.

Any assistance or advice provided to candidates as part of the conduct of an election will be provided equally to all candidates. The types of assistance that are available will be documented and communicated transparently to all candidates in advance.

### **8.2. Election Process Enquiries**

All election process enquiries from candidates, whether current Council Members or not, are to be directed to the Electoral Commissioner as the returning officer or, where the matter is outside of the responsibilities of the returning officer, to the Chief Executive Officer or his or her nominee.





<b>ITEM</b>	3.6.2
	<b>RESOURCES AND GOVERNANCE COMMITTEE</b>
<b>DATE</b>	18 June 2018
<b>HEADING</b>	Review of Safe Environment Policy
<b>AUTHOR</b>	Jo Cooper, Manager Community Capacity & Learning, Community Development
<b>CITY PLAN LINKS</b>	4.4 To ensure informed and transparent decision-making that is accountable and legally compliant
<b>SUMMARY</b>	This report presents the Safe Environment Policy to Council for consideration and endorsement. The Policy has been reviewed by the Policy Owner and only minor editorial changes are required.

### RECOMMENDATION

1. The Information be received.
2. The Safe Environment Policy as set out in Attachment 1 to this report (Resources and Governance 3.6.2, 18/06/2018), be endorsed.

### ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. Safe Environment Policy

### 1. BACKGROUND

- 1.1 Council's Policy Framework provides for Council Policies to be reviewed within 12 months of a general election and thereafter every two years.
- 1.2 The Safe Environment Policy was last reviewed in November 2015 and is now again due for review.

### 2. CONSULTATION / COMMUNICATION

- 2.1 Internal
  - 2.1.1 Consultation with the Manager, Community Capacity and Learning, Manager People and Culture and Manager Communications and Public Relations has occurred as to the continuing relevance of the Policy and any changes that may be required.
- 2.2 External
  - 2.2.1 Nil



### **3. REPORT**

- 3.1 The Safe Environment Policy has been reviewed by the Policy Owner. Apart from minor editorial changes with respect to changes of titles of Responsible Officer, Division and publication and the addition of relevant legislation, no changes of substance are required in the content of the Policy to ensure its continuing relevance.

### **4. CONCLUSION / PROPOSAL**

- 4.1 The Safe Environment Policy as contained within Attachment 1 is recommended to Council for endorsement.

### **CO-ORDINATION**

Officer: EXECUTIVE GROUP  
Date: 09/04/2018



## Safe Environment Policy

<b>Policy Type:</b>	<b>Policy</b>		
<b>Approved By:</b>	Council	<b>Decision No:</b>	1169, 2008/1169, 2011/413, 2013/1686, 2015/748
<b>Approval Date:</b>	25 August 2008	<b>Last Reapproval Date:</b>	<del>23 November 2015</del> June 2018
<b>Review Date:</b>	<del>23 November 2017</del> June 2020	<b>Internal Reference No.:</b>	
<b>Department:</b>	Community Development	<b>Division:</b>	<del>Libraries and Community Centres</del> Community Capacity and Learning
<b>Function:</b>	2 - Community Relations	<b>Responsible Officer:</b>	Manager Community Capacity and Learning

### A - PREAMBLE

1. The City of Salisbury provides a broad range of facilities and programs throughout the City intended for community access and use. These facilities and programs support the community, providing both resources and access to services. By clearly stating the rights and responsibilities of all users, Council aims to ensure the maximum participation and enjoyment of these facilities by everyone.

### B - SCOPE

1. This policy applies to all facilities, services and programs offered by the City of Salisbury, its staff, contractors and volunteers.

### C - POLICY PURPOSE/OBJECTIVES

1. This policy confirms the City of Salisbury's commitment to providing safe and supportive community facilities. It outlines the rights and responsibilities of staff and all persons using Council facilities or participating in a community program or event.

### D - DEFINITIONS

1. For the purpose of this document, employees, volunteers, contractors and labour hire personnel will be referred to as "those engaged" or "persons engaged".
2. **Authorised Officer** – an employee of the City of Salisbury who has been appointed under s. 260 of the *Local Government Act 1999* as an Authorised Officer.
3. **Facility** - includes, but is not limited to, the Civic Centre, City of Salisbury libraries, recreation centres and community centres, and includes both the buildings and associated outdoor space such as car parks.

**E - POLICY STATEMENT****Rights and Responsibilities of the City of Salisbury**

1. The City of Salisbury is committed to providing facilities, services and social and community programs where all people feel respected, valued and encouraged to reach their full potential. It will make every effort to provide a safe and supportive environment within its programs and facilities.
2. The City of Salisbury will provide facilities that are designed to meet community expectations, be fit for purpose and provide an attractive and welcoming environment. Any equipment that is provided is maintained to ensure that it is both fit for purpose and meets appropriate standards.
3. The City of Salisbury endorses the principle that 'environmental' and 'building' design has and can contribute significantly to creating safe environments.
4. In order to ensure all users feel safe and supported, each facility has requirements of appropriate behaviour by the users of the facility and/or equipment provided. These are stated in their Conditions of Entry and/or Code of Conduct which are prominently displayed within the facility.
5. Council has the right to refuse entry to persons behaving in a manner that is aggressive and/or, threatening or indicates that a person is under the influence of alcohol or drugs.
6. Where a user or users of a facility or equipment behave(s) in a manner that is contrary to the Conditions of Entry and/or Code of Conduct, an authorised officer of the City of Salisbury has the right to ask that person to leave the facility. Failure to follow this direction will result in further action as outlined in the Individual Facilities Policies – Conditions of Entry Guidelines.

**Rights and Responsibility of Users**

1. All users of Council facilities and equipment are required to respect the rights of others and to use the facilities and equipment only for the purpose intended. Where facilities or equipment are damaged, users should report the damage to the appropriate persons engaged as soon as possible.
2. Users have the responsibility to follow the reasonable directions of staff and to abide by the facility's Conditions of Entry and/or Codes of Conduct.
3. All users of Council facilities have the right to appeal against a decision that affects their access to facilities and programs and should contact the Community Development Department of Council in the first instance.

**F - LEGISLATION**

1. *Local Government Act 1999*
2. ~~*Children's Protection Act 1993*~~ *Children and Young People (Safety) Act 2017*
3. *Young Offenders Act 1994 (SA)*
4. *Adoption Act 1988*
5. *Family Law Act 1975*
6. ~~*Children's Protection Regulations 2006 (SA)*~~ *Children and Young People (Safety) Regulations 2017*
7. *Family and Community Services Act 1972 (SA)*
8. *By-Law No. 4 - Local Government Land.*
9. *Summary Offences Act 1953*
10. *Work Health and Safety Act 2012*

**G – REFERENCES**

1. Child ~~Save-Safe~~ *Safe* Environments: Principles of Good Practice, Department ~~of Families and Communities 2012~~ *for Education and Child Development, 2016*

**H - ASSOCIATED POLICIES/PROCEDURES**

1. City of Salisbury Values, Goals and Strategies
2. City of Salisbury Vulnerable Persons and Children Policy
3. City of Salisbury ~~Peak Work Health Occupational Health and~~ Safety and ~~Welfare-Injury Management~~ Policy
4. City of Salisbury Internal Review of Council Decisions Procedure
5. Individual Facilities - Conditions of Entry
6. Volunteer Management Policy
- 6.7. Occupational Violence Policy

**Document Control**

<b>Document ID</b>	Safe Environment Policy
<b>Prepared by</b>	<del>Pippa Webb</del> Jo Cooper
<b>Release</b>	<del>4</del> 5
<b>Document Status</b>	
<b>Date Printed</b>	