

Frankston City Council



Kerbside Trading Guidelines

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1 Introduction

Kerbside Trading is an important part of the retail environment and can significantly contribute to the ambience and enjoyment of an area. Frankston City Council is committed to supporting the local business community to contribute to the dynamic and attractive atmosphere of the streets and laneways of our commercial precincts. However, Frankston City Council also has the responsibility to provide a safe environment for all people who use the network of footpaths throughout the municipality.

As such, Kerbside Trading must be managed to ensure that safe and dignified pedestrian access can be maintained at all times. The aim of these Guidelines are to ensure that the community's enjoyment of, and access (both to and through) public land is not unduly compromised by the use of footpaths by businesses.

When considering the opportunities that may be available for Kerbside Trading it is important to recognise that any commercial use of public space is not a right but a privilege which may be granted where required access, community safety and amenity of the streetscape can be ensured.

2 Guiding Principles of these Guidelines

Frankston City Council has identified five key principles that are upheld when considering applications for Kerbside Trading to ensure a practical balance between the needs and interests of pedestrians and adjoining businesses. These are:

2.1 Pedestrian Priority

The primary function of a footpath is to allow safe, secure and dignified access for all pedestrians. Frankston City Council has a responsibility to provide access for all consistent with the *Disability Discrimination Act 1992*.

Through the Kerbside Trading Guidelines, Council seeks to improve awareness that the concept of 'Access for All' embraces the whole community – including persons with a disability, older persons, people with prams/strollers, individuals with temporary mobility injuries, customers with shopping trolleys, or those providing delivery/courier services, etc.

These Guidelines acknowledge that the use of public footpaths for Kerbside Trading is a privilege afforded to business operators and not a right. The Guidelines also encourage businesses to strive for best practice in accessibility.

The Guidelines also seek to protect pedestrians, motorists and businesses from harm resulting from unsafe layout or equipment.

2.2 Maintenance of Community Assets

Street trees, seats, bins, and other public infrastructure along footpaths are important community assets. They have been placed in commercial precincts in accordance with streetscape designs that enhance the appearance and amenity of those centres for all centre users.

The use of the footpath for street furniture, garden beds and other infrastructure takes precedence over a business' use of the footpath for Kerbside Trading. Public infrastructure is not to be moved, except under exceptional circumstances and with prior written consent from Frankston City Council.

2.3 Commercial Vitality

Footpaths are a highly visible component of a commercial precinct. Their design, configuration and the activities that they accommodate are directly linked to the vitality of the place. Frankston City Council recognises and encourages appropriate activities on footpaths, particularly outdoor dining, that positively contribute to the vitality and interest of a centre.

The viability of many businesses is greatly enhanced by their ability to utilise footpath space. Appropriate kerbside Trading encourage diversity help to promote the local shopping areas as vibrant commercial and community precincts. These Guidelines facilitate the use of footpaths by businesses, and only place restrictions where the other four guiding principals can not be achieved.

2.4 Quality Design

The appearance of footpaths, street furniture and the Kerbside Trading contributes to the impression of a centre and its overall attractiveness as a place to stop, relax and shop in.

All Kerbside Trading must be of the highest quality, well designed and reflect the desired image and identity of the centre. They must also be compatible with existing streetscapes and street furniture.

These Guidelines encourage businesses to strive for best practice in how they present themselves and specifically how they undertake Kerbside Trading.

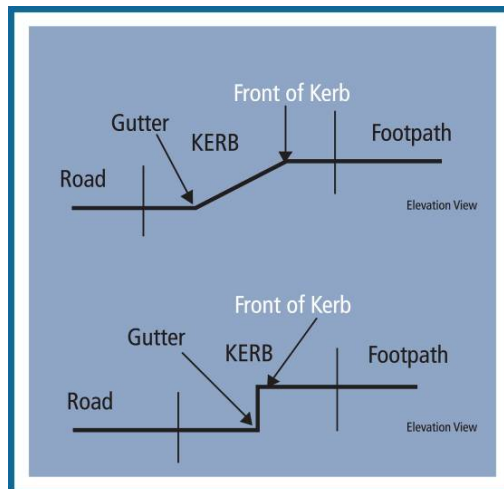
2.5 Transparent and Sustainable Governance

Through the development and implementation of these Guidelines, Frankston City Council is seeking to provide clarity of the application process for businesses seeking to use footpaths for Kerbside Trading. An extensive education process will be undertaken to ensure that both the wider community and the business community are aware of their respective rights and obligations when using public land. Through these processes, Council aims to reduce any potential conflict between footpath users by better managing and meeting expectations.

These Guidelines encourage Kerbside Trading where the activities reinforce the three pillars of sustainability – social, environmental and economic. In doing so, Kerbside Trading will only be permitted where it contributes to the achievement of the themes of the Frankston 2025 vision.

3 Definition of Terms

Term	Meaning
Access	Visually and physically clear path of travel.
A-Frame Sign	Any temporary advertising sign. The term 'A-Frame Sign' is interchangeable with 'Movable Advertising Sign' and 'Temporary Signage'.
Authorised Officer	A person appointed by Frankston City Council under Section 224 of the <i>Local Government Act 1989</i>
Display of Goods	The offer, display or exposure for sale, of any goods, merchandise, wares, commodity, article or thing on the footpath. Excludes items that could reasonably be considered bulky goods or white goods.
Footpath	The area between a property boundary and the nearest kerbside of a road, which is provided for use by pedestrians and not vehicles - includes nature strips, splay corners and entry areas not in private ownership.
Kerb	Constructed edging between the footpath and road surfaces. May be vertical or at an angle (generally with a 150mm width and 150mm height). May be accompanied by a channel/gutter. For the sake of these Guidelines the measurement of the Kerbside Zone is taken from the front of the Kerb - where it starts to descend (vertically or at an angle) towards the gutter.
Kerbside Trading	Any commercial activity occurring on the footpath that is associated with the operation of an abutting business. For the purpose of management of Kerbside Trading in these Guidelines it includes (but is not limited to) Outdoor Dining facilities, A-frame Signage, Display of Goods, Barrier Screens and Awnings. The term 'Kerbside Trading' in these Guidelines is interchangeable with 'Commercial Activity', 'Kerbside Activity', or 'Footpath Trading'.
Kerbside Trading Permit	A permit issued under the Frankston City Council Local Law that permits Kerbside Trading.
Outdoor Dining	The use of the footpath for the purpose of extending the services of an abutting business whose main function is for the provision of food and/or beverages. The term 'Outdoor Dining' is interchangeable with 'Kerbside Café', "Outdoor Eating Facility" or 'Alfresco Dining'.
Pedestrian	Any person traveling along a footpath whether walking, accompanied by a wheeled recreational vehicle, pram/stroller/shopping/delivery trolley, guide dog or other assistance animal or a mobility aid such as a wheelchair, motorized scooter, walker, crutches or walking frame, or any other aid to assist mobility or orientation.



Planter box A container made of any material used as a display (whether containing live plants or not) on footpaths and/or for segregating different parts of the footpath or for beautification.

Road Has the same meaning as defined in the *Local Government Act 1989* namely –

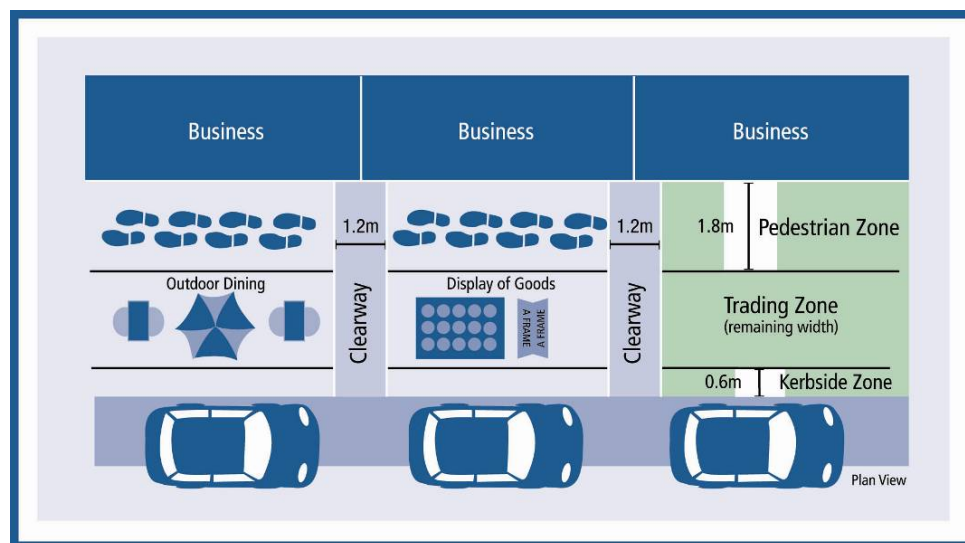
- (a) a street;
- (b) a right of way;
- (c) any land reserved or proclaimed as a street or road under the *Crown Land (Reserves) Act 1978* or the *Land Act 1958*;
- (d) a passage;
- (e) a cul de sac;
- (f) a by-pass;
- (g) a bridge or ford;
- (h) a footpath, bicycle path or nature strip; and
- (i) any culvert or kerbing or other land or works forming part of the road.

Screens/Barriers Furniture used to provide a barrier between Outdoor Dining facilities and the road. Screens may also be used to segregate different parts of the footpath in association with other approved Kerbside Trading activities.

4 Location Specifics

4.1 Footpath Zones

In order to provide for clear and unobstructed access for pedestrians, three zones – Kerbside Zone, Pedestrian Zone and Trading Zone - are defined within the width of the footpath:



Kerbside Zone The area of public land that is located between the Trading Zone and the front of the kerb. This section of the pavement provides a buffer between pedestrians and vehicles, while also giving vehicles on the road sufficient room to manoeuvre, park, and open their doors.

The Kerbside Zone is a minimum width of 600mm from the front of the kerb. Where there is a disabled parking bay, loading zone, bus stop or taxi bay, the Kerbside Zone is a minimum of 1200mm. Where Frankston City Council has designed and constructed 'kerbless footpaths' the interface between the Kerbside Zone and the Trading Zone will be appropriately marked.

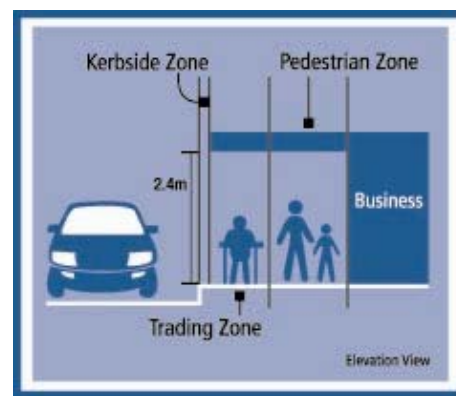
The Kerbside Zone must not be used for Kerbside Trading.

Pedestrian Zone

The area of public land that is immediately adjacent to the property boundary of the business and that is for the exclusive use of pedestrians. A continuous accessible path of travel must be maintained at all times along the Pedestrian Zone.

The Pedestrian Zone extends from the property boundary for a minimum of 1800mm. Consent will not be given to reduce this distance.

Should the business operator wish to hang anything from the building (including signs and permanent awnings), this may only occur where a minimum clearance between the protruding or hanging object and the footpath directly below is a minimum of 2400mm. Consent will not be given to reducing this clearance distance. The item should be secured to the satisfaction of Frankston City Council to ensure it does not fall onto pedestrians.



Trading Zone

The balance of the width of the footpath that is located in between the Pedestrian Zone and the Kerbside Zone that may be used for Kerbside Trading.

It is the only area of the footpath where Kerbside Trading may occur, subject to the provisions of these Guidelines.

A setback of 600mm is required from each side boundary of premises in order to ensure a 1200mm wide clearway between premises from the Kerbside Zone to the Pedestrian Zone.

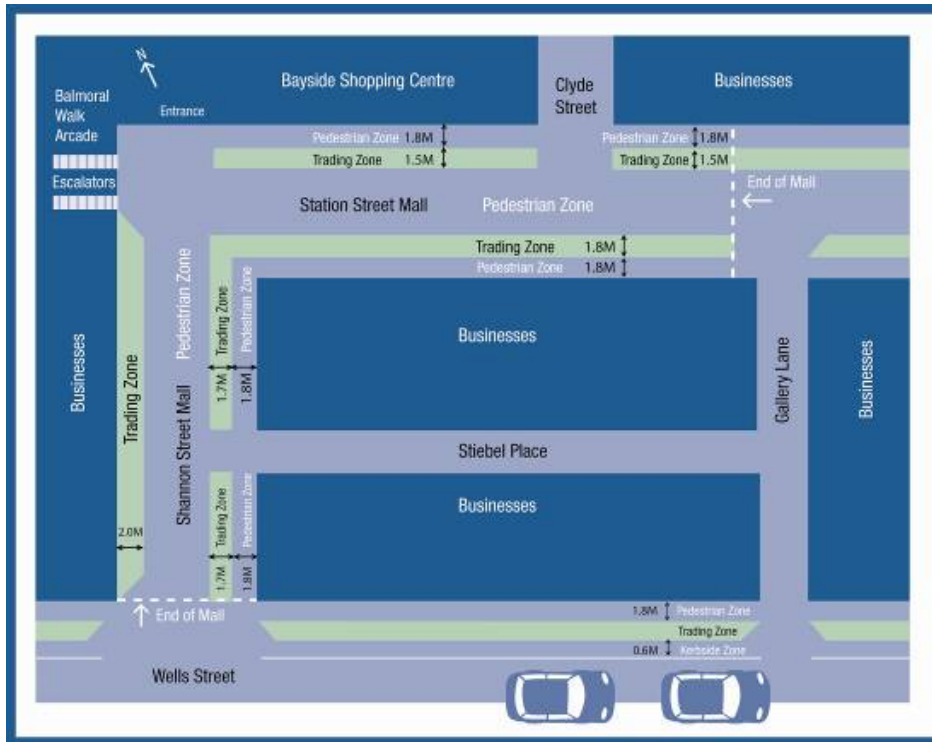
Due to the minimum dimensions of the Kerbside Zone and the Pedestrian Zone – Kerbside Trading will not be permitted to occur where the footpath width is less than 2400mm.

4.2 Shannon a Station Street Malls

These Guidelines facilitate ease of pedestrian movements by moving trading activities to the kerbsides of footpaths – thereby ensuring a clear path of travel along the front building / property line. In Station and Shannon Street Malls there are no kerbs to move trading activities to – therefore they require different management.

(NB/ This section relates purely to the placement of trading activities. It does not provide different management controls over what may be placed on the footpath, and how much.)

The following diagrams show the preferred layout:



In accordance with advice received from an access consultant, it is recommended that all trading activities are moved away from the property line.

Frankston City Council may permit a variation to the advice which permits trading to occur along the north-west side of Shannon Street Mall – the only location where trading would be permitted along the property frontage.

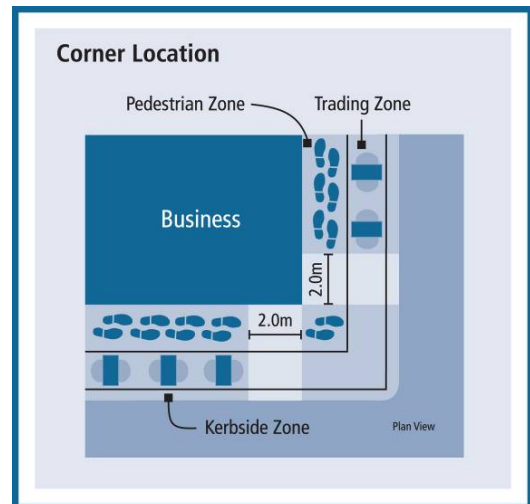
Pedestrian Zones would be provided in the centre of both malls, and with the

exception of the north-west side of Shannon Street Mall, there would also be a Pedestrian Zone directly along the property frontage.

4.3 Corner Locations and Pedestrian Crossings

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

Similarly, no items may be placed within 2000mm of a pedestrian crossing (zebra crossing or traffic lights).



4.4 Recessed building frontages

Where the front of a building is setback from the front property boundary, trading may also occur in the recessed section, but must not extend beyond the title boundary onto the footpath (into the Pedestrian Zone). As this land is on private title, no permit under Frankston City Council's Local Law is required. However, all other relevant legislation or controls must be complied with, and consideration should be given to the placement of items on private title to ensure that pedestrians continue to have safe and dignified access.

4.5 Public Infrastructure and Pavements

A minimum clearance of 1200mm (or less if permitted by an Authorised Officer of Frankston City Council) shall be provided from any existing street furniture or other infrastructure, including, but not restricted to:

- Seats
- Benches
- Bollards
- Litter bins
- Bike racks
- Post boxes
- Telephone boxes
- Service pits
- Public transport stops
- Public transport shelters
- Parking meters
- Traffic signal boxes
- Fire hydrants and other emergency assets
- Street trees or shrubs
- Public Planter Boxes
- Garden Beds

A minimum clearance of 1200mm shall be provided from Taxi Ranks, Disabled Parking Bays and Loading Zones.

Frankston City Council will not permit the relocation of street furniture or other infrastructure to facilitate Kerbside Trading. Under exceptional circumstances application may be made to Frankston City Council for the relocation, at the applicant's cost, of Council items of street furniture or infrastructure, in association with a permit for footpath trading.

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

The Business Operator will be responsible for reimbursing Council for any reinstatement works as a result of damage to footpaths or street fixtures and furniture.

When considering any modification to the footpath - including relocating existing street furniture Frankston City Council will take into consideration:

- The need for the furniture to remain to service pedestrians or other adjacent businesses;
- Loss of car parking spaces or designated public gathering areas / open space;
- How recently the street furniture was installed or the footpath developed as part of a streetscape;
- Whether there are other appropriate locations;
- Whether there are other means of allowing the Kerbside Trading to occur without the need to relocate street furniture;
- That the street furniture must provide accessible seating and table arrangements (DDA 1992); and
- The Kerbside Trading activities of nearby businesses.

If it is determined that a business operator has relocated street furniture without the prior written consent of Frankston City Council, Council will organise for the furniture to be returned to its original location at the expense of the business operator.

Where there are streetscape works or an Urban Design Framework being planned for a commercial precinct, consideration may be given to the use of different surfaces (colour, texture, materials) between the different zones (Kerbside, Trading and Pedestrian Zones) or other methods approved by Frankston City Council of defining the edges to clearly identify the change of zones.

If there is repeated non-compliance with these Guidelines, Frankston City Council will clearly define the change between the different footpath Zones at the cost of the business operator.

5 Application Requirements

A permit is required under Frankston City Council's Local Law for any Kerbside Trading occurring on footpaths within Frankston City, specifically:

- Outdoor Dining facilities;
- Locking Devices in the Footpath
- Outdoor Gas Heating
- Umbrellas
- Barrier Screens and Awnings
- Planter Boxes
- Display of Goods
- A-frame Signage

The approved application form should be used when applying to conduct any of these uses.

Under specified circumstances a Planning Permit may also be required in accordance with the Frankston Planning Scheme.

6 Requirements for Kerbside Trading

6.1 General Conditions

Other conditions may be placed on a Kerbside Trading permit by an Authorised Officer of Frankston City Council if deemed appropriate. These may include requiring a permit holder to place written reminders to patrons in the outdoor dining facilities on the footpath regarding their responsibilities.

Separate cash registers, counter facilities or storage facilities are not permitted on the footpath.

The footpath may only be used for Kerbside Trading during the hours of operation of the business or in accordance with the business operator's planning permit, lease or licence, liquor licence or local law permit. Where there appears to be conflict in these different hours of operations, the lesser number of hours will apply.

After closing the business each day, all Kerbside Trading items must be removed from the footpath (other than items that have prior written approval from Frankston City Council to remain on the footpath) and the area cleared of all litter etc.

The Permit Holder must at all times ensure that any items that they place on the footpath are not liable to become a trip hazard or impede the safe flow of pedestrian traffic.

Kerbside Trading will not be permitted where:

- Access to a loading zone, bus stop or disabled parking bay will be impeded;
- It will cause difficulty to any footpath users, including pedestrians and people exiting or accessing parked vehicles or the footpath;
- It obstructs the safe, continuous and dignified access of pedestrian traffic along the footpath;
- It obstructs the movement or safe operations of vehicular traffic along a road or intersection; or
- Impairs the vision or lines of sight of pedestrians or drivers of vehicular traffic along a road or at an intersection of a road (or private access).

6.2 Safety

All items placed on the footpath shall, to the satisfaction of a Authorised Officer of Frankston City Council, be secure and 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.

6.3 Amenity

Any business conducting Kerbside Trading must ensure that the footpath is kept in a clean and tidy manner to the satisfaction of Frankston City Council.

No sound amplification equipment shall be placed or used on the footpath for the purpose of announcements, broadcasts, playing of music except with the prior written consent of Frankston City Council in accordance with the Local Law.

6.4 Food Safety and Liquor Licences

The handling and serving of food or drinks to patrons within the Trading Zone must be conducted in accordance with the requirements of Food Safety Standards and Council's Environmental Health Department.

No food or drink is to be prepared, cooked or heated at any Outdoor Dining facility, except in accordance with any permit granted for temporary food premises.

Preparation of food on the footpath for special events or community groups on a 'one-off' basis may only occur with a Temporary Food Premises Permit and appropriate approval under Frankston City Council's Local Law and in accordance with the siting requirements of these Guidelines.

Liquor can not be sold, consumed or served to Outdoor Dining facilities unless the Permit Holder/Business Operator has the appropriate Liquor Licence (in accordance with the Liquor Reform Act 1998), planning approval and consent to occupy the footpath from Frankston City Council.

At all times, the Permit Holder/Business Operator must ensure that patrons consuming liquor at their Outdoor Dining facility are behaving in an orderly manner and not creating a nuisance to other patrons or other users of the footpath.

7 Specific Requirements

There are many different aspects of conducting Kerbside Trading on a footpath, and these are addressed individually in the following sections:

7.1 Outdoor Dining

Where a business is providing Outdoor Dining facilities on the footpath, the display of goods is not permitted.

Outdoor Dining facilities must:

- Only be placed outside premises which are registered under the Food Act 1984 to serve food and/or beverages;
- Be placed on the footpath during the normal trading hours of the business to which they relate, unless otherwise approved by Council; and
- Be positioned and contained wholly within the Trading Zone.

As a guide, business operators should allow for 1.5m² of footpath area for one table and two chairs.

Furniture used as part of an Outdoor Dining facility must:

- Be kept in good repair to the satisfaction of Frankston City Council;
- Not have sharp, pointed, jagged edges, corners or protrusions (including legs of chairs) that may cause injury to persons or act as a trip hazard or damage the pavement surface;
- 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 solely of plastic or indoor-style furniture is unacceptable;
- Be portable, yet sturdy, windproof and not of a light material that may be blown around;
- Be user friendly and of an accessible design;

- Contrast with their background to assist people with a vision impairment; and
- Have a minimum 30mm diameter rubber pad on chair and table legs to protect the footpath surface.

The permit holder must:

- 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 their Outdoor Dining facility; (this provision only applies if the Outdoor Dining area meets the requirements of the Tobacco Act for outdoor smoking). Full ashtrays must be emptied promptly. Failure to provide and maintain suitable windproof ashtrays may result in the suspension or revocation of the permit to operate on the footpath. If a business is found to be sweeping cigarette butts or other waste generated by the Outdoor Dining facility into the gutter or disposing of them in street bins, the business may forfeit all rights to operate on the footpath and any permit, licence or lease may be suspended or revoked.
- Maintain the footpath eating area in a clean and tidy condition;
- Ensure tables and chairs and all ancillary items (including menu boards) are not moved from their positions and obstruct either the Pedestrian or Kerbside Zones;
- Ensure that patrons do not allow pets, prams or any other personal items to obstruct either the Pedestrian or Kerbside Zones;
- Ensure that no noise or any other disturbance creates a nuisance or causes detriment to the amenity of the neighbourhood in the opinion of an Authorised Officer of Frankston City Council;
- Ensure that all relevant legislation, permits, licences, leases, local laws are complied with at all times; and
- Ensure that waiting staff must facilitate free access by all footpath users within the Pedestrian Zone and give pedestrians priority right of way.

Occupying unoccupied neighbouring footpath

If an operator of an outdoor dining facility seeks to occupy the unoccupied footpath in front of an immediately neighbouring business, Frankston City Council requires the applicant to obtain the prior written consent from the property owner or Body Corporate and occupier of the neighbouring property. The letter(s) of consent should be provided on official letterhead. If the proposal is for outdoor dining on the footpath in front of an adjoining multistorey building, consent from the ground floor tenant(s) and the building owner are required.

Consent from the property owner or Body Corporate and occupier for use of the neighbouring footpath may be withdrawn at any time. Depending on the specific circumstances, if the consent is withdrawn during the permit period, the permit holder may be permitted to trade in front of the neighbouring business until the expiry of the permit.

Frankston City Council will decide on a case-by-case basis if the permit should be withdrawn prior to the expiry of the permit. In the event of withdrawal of consent, no refund will be made in respect of fees paid in advance for the use of the footpath in front of the neighbouring business.

7.2 Locking Devices in the Footpath

Some Kerbside Trading activities (e.g. umbrellas, screens) may be secured to the footpath using locking devices that are installed in the footpath.

Prior written consent must be obtained from Frankston City Council's Infrastructure Department before these may be installed. Plans and specifications of the items will be required to be lodged with Frankston City Council prior to any Kerbside Trading activity using a locking device.

Locking devices will only be approved where the device lies flush with the footpath when the Kerbside Trading activity is not in place on the footpath. Only Frankston City Council approved locking devices may be used.

The installation of locking devices must occur to minimum standards as defined by Frankston City Council's Infrastructure Department and must not damage the integrity of the footpath. Any installation will be at the expense of the business operator.

Should the business use change and the locking devices be no longer required, Frankston City Council will require that the locking devices be removed and the pavement surface be restored to match the surrounding pavement surface to the satisfaction of Council. All restoration works will be at the expense of the business operator. To assist facilitation of this, at the time of application for consent to install the locking devices, a bond may be required to be paid at the time of application. This bond will be held by Council and will be used to cover the expense of restoration of the pavement and any other restitution works that are required.

7.3 Outdoor Gas Heaters

Any Outdoor Gas Heater must:

- Be undertaken in accordance with Australian Standard AS4565 (Refer to the *Safety Guide for Use of Portable Heaters in Public Places* and related guidelines for staff and employers – www.ogs.vic.gov.au);
- Only be used in association with, and sited in accordance with, the siting guidelines for Outdoor Dining facilities;
- Not be positioned where they may present a fire hazard (e.g. in close proximity to awnings/umbrellas); and
- Be used in accordance with manufacturer instructions – particularly in relation to required clearances from other combustible objects. Where manufacturer specifications do not exist, then advice from the relevant authority should be obtained to ensure health and safety standards are maintained.

7.4 Umbrellas

All umbrellas:

- May only be placed in the Trading Zone;
- Must provide a minimum height clearance of 2000mm at all times between the underside of the umbrella and the footpath;
- Must not extend into either the Kerbside or Pedestrian Zones; and
- Must be weighted and/or secured so as not to pose a safety hazard.

At times when it is raining the business operator must undertake all reasonable steps to ensure that water from umbrellas does not discharge into the Pedestrian Zone.

Umbrellas may be secured to the footpath by a locking device (refer to *Section 7.2 – Locking Devices in the Footpath*).

7.5 Barrier Screens and Awnings

Barrier screens include:

- *low barrier screens*, which are predominantly of a metal tubular frame with canvas or vinyl inserts;
- *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
- *awnings/blinds*, which are commonly attached from a verandah to the footpath.

The form and structural strength of any screen must be adequate to meet functional requirements, including wind loads, reasonable resistance to vandalism and impact from pedestrians.

All screens (including supports) must be contained wholly within the Trading Zone.

Locking devices may be used to secure screens to the footpath in accordance with the controls for locking devices outlined in these Guidelines (refer to *Section 7.2 – Locking Devices in the Footpath*).

A total clearway between screens of not less than 1200mm (600mm each side of the property 'boundary') must be provided at the 'boundary' of adjoining businesses. Additionally, should there be

more than 8000mm of screens outside a business, a 1200mm clearway must be provided every 8000mm to ensure access between the footpath and the road.

Advertising on screens in the form of a well-designed/professional standard business name or business logo may be permitted in accordance with the Frankston Planning Scheme. This advertising must not exceed 20% of the total area available on each screen. All advertising may only be displayed to a maximum height of 1000mm from the pavement so as not to impede sight lines.

A minimum clearance of 150mm must be provided between the bottom of all screens and the pavement to allow for street cleaning activities.

7.5.1 Low Barrier (Canvas) Screens

Low barrier screens:

- May only be associated with the use of the footpath for an Outdoor Dining facility;
- Must be wholly contained within the Trading Zone;
- May be no more than 1200mm high;
- May only be placed on the footpath during the normal trading hours of the business to which they relate; and
- Must be placed so that the screens are stable and secure or weighted so that they can not be moved by patrons or winds.

7.5.2 Glass Screens

Glass screens will be considered on a case-by-case basis.

Glass screens will only be permitted on the basis of:

- Adequacy of footpath space;
- Contribution to urban design and amenity;
- The location of existing street furniture;
- Surrounding traffic conditions; and
- Adjoining land uses (including whether glass screens are being used by adjoining businesses).

Glass screens:

- May only be associated with the use of the footpath for an Outdoor Dining facility;
- Must be wholly contained within the Trading Zone;
- Must be of high quality design and manufacture;
- May only be in place during the normal trading hours of the business to which they relate – except where specific permission to retain the screens beyond trading hours must be obtained; and
- Must not have any other structure (including awnings, plastic blinds, gas heaters, menu boards, cigarette bins etc) attached the glass screen or support poles;

Applications for glass screens will only be considered where the following design requirements are met:

- Must be a maximum of 1500mm high (except where the premises are located on corner – in which corner location provisions apply),
- Must be transparent and constructed of safety glass or high quality heavy-duty plastic;
- Must have a contrasting coloured strip of not less than 75mm wide on the screen (for the entire length of the screen) at a height of 900mm-1000mm above the footpath in keeping with Australian Standards requirements (CI 7.5/AS 1428.1 - 2001). This strip must be provided to ensure that the screen(s) is easily distinguished from surrounding buildings, paths and furnishings;
- Must provide a minimum 100mm clearance between the footpath surface and the base of the glass panel; and
- Must be fitted to the footpath with a locking device, but able to be removed at short notice.

All glass screens (particularly in relation to fixing and impact loads – comparable to AS 1170.1 balustrading) must be certified by a structural engineer.

If any screen is vandalised or damaged the business operator will be required to remove the screen in accordance with *Section 8.6 – Repair and Maintenance – Permit Holder Obligations*. The business operator must ensure that all remaining screens are secure and do not pose a safety risk.

7.5.3 Full Length Awnings/Blinds

- Must be wholly contained within the Trading Zone;
- Must only be fitted subject to Frankston City Council approval and requirements;
- Must be removed/retracted after the normal trading hours of the business with which they are associated in order to facilitate street cleaning services; and
- May only be secured or anchored in a way that has the prior approval of an authorised officer of Frankston City Council. They must not be lashed or secured to street furniture or other public infrastructure.

Full length awnings or blinds shall not enclose public spaces or adversely affect the openness of the footpaths or create the effect of an 'outdoor room' (ie alienate or discourage use of footpath). Accordingly blinds extending down from the business (including from verandah or eaves of a building) may only be placed on one side of the Trading Zone directly in front of the business for the purpose of providing protection from the wind or sun. These blinds may not be used to display advertising other than the business name. These blinds must be securely fastened so that they do not become a safety or trip hazard.

Retractable awnings extending from the building that do not require any support structure or anchoring to the footpath (or any other public infrastructure) may be installed. Any awning must maintain a minimum vertical distance of 2400mm between the underside of the awning and the footpath in accordance with the Building Regulations of Victoria.

(NB/ These controls do not impact upon the use of blinds within the business, especially those that may be required to prevent food spoiling.)

7.6 Planter Boxes

Planter boxes may only be provided where they contribute in a positive manner to the streetscape and amenity.

Planter boxes provided by Business Operators:

- May only be placed in the Trading Zone and plants shall not extend beyond that zone;
- May only be in place during the normal trading hours of the business to which they relate – except where specific written permission to continue to display them on the footpath beyond trading hours has been obtained from Frankston City Council;
- Must in opinion of an Authorised Officer of Frankston City Council, provide a positive contribution to the visual amenity of the street;
- Must not exceed 1200mm in height above the footpath level (including vegetation);
- Must not have sharp corners or edges, or any protruding material, and need to be frangible in case of collision by a car;
- Must be slightly elevated (approximately 150mm) above the footpath to allow for drainage;
- Must not be watered in a manner which results in the growth of mosses, algae or slime moulds; and
- Must be free of litter, including cigarette butts.

The business operator is responsible for the care, maintenance and replacement of planter boxes. Plant species must be suitable both in form, shape, hardiness, appropriateness to the area, and ability to be maintained. Vegetation shall also be maintained so as to ensure that no overhanging or outcropping vegetation becomes a trip hazard or an impediment to continuous and safe pedestrian access. Failure to maintain the planter box may result in a direction to the business operator to remove the planter box at the operator's expense.

Planter Boxes will not be permitted to display advertising material.

7.7 Display of Goods

A maximum of two Display of Goods display units may be displayed outside a single business. A separate permit fee must be paid for each display unit.

Each Display of Goods display unit may be a maximum width of 1000mm, maximum height of 1700mm and a maximum length of 1800mm. Where a single item displayed on the footpath exceeds any one of these dimensions or can not be displayed on an approved Display of Goods stand, they will be classified as a bulky good and will not be permitted to be displayed on the footpath.

Any Display of Goods must:

- Be contained wholly within the Trading Zone directly in front of the business to which it relates;
- Only be displayed during the normal trading hours of the business to which they relate;
- Be removed immediately upon being requested to do so by an Authorised Officer of Frankston City Council;
- Be kept in a clean and tidy state, including the area around the display; and
- Comply with *Food Act 1984* minimum standards if food or beverages are displayed.

Goods must be displayed on stands approved by Frankston City Council, which 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;
- Not have sharp, pointed, or jagged edges, corners or protrusions;
- Be stable and able to withstand adverse weather conditions but may not be affixed to any footpath, building, street furniture, pole or other structure;
- Be secured in a manner that ensures that adverse weather conditions will not create a risk for any footpath users, property or passing traffic and must contrast with their background to assist people with vision impairment;
- Not comprise any movable parts (eg. spinning, flapping); and
- Not be illuminated externally or internally.

A Display of Goods unit may include:

- Advertising, providing the following conditions are met:
 - It is of a well designed/professional standard;
 - It only includes the business name or town name/logo (as organised by trader groups); and
 - It must not exceed 20% of the area of the back face of the unit;
- The price of the goods on display provided that it is affixed to the front of the display or wholly within the display unit, and no other provisions of Frankston City Council's Local Law, Frankston Planning Scheme or these Guidelines are contravened.

7.8 Moveable Advertising Signs (A-Frames)

Where a business is undertaking any other Kerbside Trading activity the display of A-frame signage is not permitted.

Each business premises, which is at street level, may only display **one** sign for each street frontage of that business.

Any movable advertising sign must:

- Be positioned wholly within the Trading Zone.
- Be not greater than 1.2 metres in height and 0.9 metres in width, or have a total advertising area of 2.16 metres²;
- Refer to a business premise at street level or partly at street level;
- Be displayed directly in front of the business to which it refers;
- Be weighted or secured to prevent the sign from being blown over;
- Be non illuminated (internally/externally);
- Not comprise any moveable parts (e.g. spinning, flapping etc);
- Be removed as requested to do so by an Authorised Officer of Frankston City Council; and
- Is colour contrasted with surrounds to ensure that it does not blend into the surrounds.

8 Administration of the Guidelines

8.1 Applying for a permit under Council's Local Laws

A permit is required under Frankston City Council's Local Law to undertake Kerbside Trading.

To apply for a permit an applicant must:

- Complete and sign the Kerbside Trading application form;
- Provide a site plan of existing conditions at a scale of 1:100, or a full colour photograph that clearly shows:
 - the width of the frontage and of the footpath from front of kerb to the nearest property boundary of the applicant's business;
 - location of building lines and type of abutting uses;
 - location of existing trees, light poles, signs, existing street furniture, pits, fire hydrants, car parking, bus stops and other infrastructure on the footpath;
- 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, awnings, heaters, umbrellas, or planter boxes;
- Provide details of any locking devices to be used;
- 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;
- 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;
- Provide details of the hours of operation of the business to which the Kerbside Trading activity relates and the hours of operation proposed for the Kerbside Trading activity;
- If the premises is currently licensed to serve alcohol, whether it is proposed to be served in the proposed Outdoor Dining facility;
- 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;
- Provide a copy of the applicant's Certificate of Currency for public liability insurance;
- Forward the prescribed application and usage fees (payable to Frankston City Council) and the application form, together with the above information and fee to:

Frankston City Council
PO Box 490
FRANKSTON VIC 3199

8.2 Decision Making

In considering an application for a permit for Kerbside Trading in accordance Frankston City Council's Local Laws and the requirements specified in these Guidelines, an Authorised Officer shall have regard to the local conditions relevant to the application, including:

- The width of footpath;
- Existing street furniture and signage;
- Parking alignment;
- Landscaping;
- Access points to utility services;
- Proximity to bus stops, pedestrian crossings, pedestrian ramps, Disabled Parking spaces, post boxes, public telephones and loading zones, power poles etc;
- Potential impact upon sight lines of pedestrian and vehicular traffic;
- The location of verandah posts; and
- Other uses of the footpath.

Frankston City Council may refuse to issue a permit or refuse to modify the conditions of an existing permit if:

- Any requirements of these Guidelines are not met;

- The sight lines and access of drivers, cyclists or pedestrians is interfered with so as to create a hazardous situation;
 - There is likely to be detriment to the amenity of the area; or
 - Any existing permit conditions have not been complied with and there has been a failure to comply with a Notice to Comply served in accordance with Frankston City Council's Local Laws.
-

8.3 Fees and term

Fees and charges for the placement of items on the footpath are determined under Frankston City Council's Local Law.

The current fees and charges for Kerbside Trading are shown in Appendix 1 but will be reviewed annually in accordance with Frankston City Council's annual budget processes.

Unless otherwise specified on the permit, all Kerbside Trading Permits shall expire one year from the date of issue, except in those instances where it is revoked, suspended or amended by an Authorised Officer of Frankston City Council prior to the expiry date.

If an Authorised Officer refuses to issue a Kerbside Trading permit, the permit fee, less any application fee, may be refunded to the applicant.

Kerbside Trading Permits are not transferable. A new permit must be obtained if the proprietorship of a business changes. Similarly, if the business relocates, a separate Kerbside Trading permit for the new location must be obtained.

A Kerbside Trading permit expires if the permit holder ceases to maintain public liability insurance or to meet any of the conditions set within the Permit and/or these Guidelines.

8.4 Applying for a permit under the Frankston Planning Scheme

A planning permit may also be required under the Frankston Planning Scheme:

- where liquor is to be sold, consumed or served within the Trading Zone; or
- Where it is proposed to construct permanent fixtures within or above the footpath area.

In order to ascertain whether a permit is required for seating under the Frankston Planning Scheme applicants must check with Frankston City Council's Town Planning Department.

8.5 Public Liability Insurance and Indemnity

The applicant for a Kerbside Trading permit must, for the duration of the Kerbside Trading Permit, be the holder of a current public liability insurance policy which provides cover for the applicant in relation to the activities to be undertaken in accordance with the permit.

The public liability insurance policy must be in the name of the applicant and provide coverage for an amount of not less than \$10 million in relation to any one incident.

A copy of the current Certificate of Currency must be provided to Frankston City Council with the application for the Kerbside Trading permit and any subsequent applications to renew the permit and upon the renewal of insurance coverage.

8.6 Repair and Maintenance – Permit Holder Obligations

The following table should be used as a guide to ensure the highest standard of presentation for all Kerbside Trading is maintained:

Maintenance Problem	Action Required by Permit Holder
Glass screen broken	Removed immediately and Repair within 24 hours
Glass screen missing	Replace within 7 days
Graffiti or vandalism of glass screen	Clean within 48 hours
Graffiti or vandalism of display of goods, canvas screen, umbrella, awning	Remove immediately and clean or replace within 7 days
Components of display of goods, canvas screens, awnings or umbrellas missing or broken	Remove immediately and replace within 7 days
Outdoor dining facility furniture, display of goods, screens or awnings in disrepair or broken	Remove immediately and replace within 7 days
Outdoor dining facility furniture, display of goods, screens or awnings in unclean condition	Clean within 24 hours
Planter boxes damaged	Remove immediately and replace within 7 days
Plants wilted or plants missing	Remove wilted plants and replace plants within 7 days
Glass screens do not meet Frankston City Council's <i>Kerbside Trading Guideline</i> requirements	Install Frankston City Council approved screens within 8 weeks
Furniture does not meet Frankston City Council's <i>Kerbside Trading Guideline</i> requirements	Replace with Frankston City Council approved furniture within 14 days
Advertising on any Kerbside Trading activity does not meet Frankston City Council's <i>Kerbside Trading Guideline</i> requirements	Replace with Frankston City Council approved furniture within 14 days

If repairs or maintenance are not undertaken within a reasonable period of time at the discretion of a Responsible Officer of Frankston City Council, appropriate enforcement proceedings may occur or the Kerbside Trading permit may be forfeited.

8.7 Enforcement

When a person engages in Kerbside Trading without a current permit, breaches or fails to comply with any condition of permit, or fails to comply with the direction of an Authorised Officer of Frankston City Council, that person is guilty of an offence under the Frankston City Council Local Law.

An infringement notice carries a penalty of \$200 and a Court may impose a maximum penalty of \$400 for a first offence and up to \$2,000 for a second and subsequent offences.

8.8 Access to Footpaths for Maintenance and Special Events

Frankston City Council may require access to a section of footpath to undertake 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 all items from the footpath. In an emergency, the footpath may need to be cleared immediately.

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

8.9 Activities of Service Authorities

Frankston City Council is not able to provide notification of any action of a service authority that is likely to interrupt or affect the use of the footpath for Kerbside Trading. Frankston City Council will request that service authorities give adequate notice of street works in accordance with their customer service charters, but Frankston City Council is not able to give guarantees that such notice will be provided.

8.10 Compensation for Loss of Trade

Where Frankston City Council or any service authority carries out works that requires the removal or alteration to the Kerbside Trading arrangements, no compensation will be payable for any loss of trade experienced during or after the works.

8.11 Evidence of a Permit

Any business that is permitted to undertake Kerbside Trading must display a permit sticker provided by Frankston City Council in the window of the business premises at all times.

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

8.12 Inspection

Frankston City Council will make regular inspections of businesses that have been authorised to conduct Kerbside Trading. Authorised Officers will give advice or direction to any permit holder in respect to compliance with the permit.

Where no permit to undertake Kerbside Trading has been obtained an Authorised Officer of Frankston City Council will direct the business operator to immediately remove all items from the footpath until appropriate permits have been obtained.

Failure to comply with any direction will result in enforcement proceedings being undertaken.

8.13 Modification, Suspension, Revocation or Refusal

Frankston City Council may at its absolute discretion suspend, revoke, or amend any permit it issues. Similarly Frankston City Council may refuse to issue a permit for Kerbside Trading where it is deemed that trading is inappropriate.

Where conditions change that detrimentally impact on pedestrian or motorist access and safety, or sight lines, affected Kerbside Trading Permits may be revoked.

Frankston City Council must give the permit holder 28 days notice of its intention to suspend, revoke or amend any permit and the grounds for doing so. If there is an immediate safety concern this period of notification may be significantly reduced at the discretion of the Authorised Officer of Frankston City Council. If such action is taken the permit holder or any other person shall not be entitled to any payment of compensation or damages of any kind.

8.14 Conflicting Uses

Where there are conflicting uses these Guidelines (as empowered by the Frankston City Council's Local Law) do not apply where an act/behaviour or thing is authorised by any Act, Rule, Regulation or the Frankston Planning Scheme.

Where two uses conflict and the uses have both been granted under the Local Law, Frankston City Council will negotiate with the relevant parties to ensure an appropriate and fair outcome.

8.15 Review Period

These Guidelines are ongoing – however they will undergo a review 12 months after the original date of adoption.

9 Related Documentation

9.1 Related Legislation

- *Disability Discrimination Act 1992*
- *Planning & Environment Act 1987*
- *Local Government Act 1989*
- *Liquor Reform Act 1998*
- *Building Code of Australia 1996*
- *Road Safety Act 1986*
- *Australian Standards*
- *Food Act 1984*
- *Frankston Planning Scheme*
- *Frankston City Council Local Law No. 7*
- *Frankston City Council Kerbside Trading Policy*

9.2 Other References

- *Missed Business*
- *Good Access is Good Business*

Appendix 1 – Schedule of Fees

The fees for Kerbside Trading Activities will be reviewed on an annual basis in accordance with Council's budgeting process.

2008/09 Schedule of Fees

Outdoor Dining

Tables - \$25.00 per table per annum

Chairs - \$10.00 per chair per annum

Minimum Charge - \$100.00 per application per annum

Portable Gas Heaters

Heater - \$60.00 per heater per annum

Display of Goods

Per Unit - \$140.00 – per annum

Temporary Signage

\$130.00 – per annum