



Roadside and Footpath Trading Policy

Adopted 24 November 2021



Image: Yarragon

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Introduction

Roads and footpaths are public spaces traditionally designed for vehicles and pedestrians respectively.

Whilst unobstructed thoroughfare remains the primary purpose, the growing popularity of roadside and footpath trading has resulted in these areas having diverse uses.

As part of its commitment to developing vibrant communities, Baw Baw Shire Council acknowledges the value that roadside and footpath trading contributes to creating thriving towns.

The support for these activities must be balanced with legislative requirements which enhance accessibility and protect the safety of motorists and pedestrians alike.

To balance the potential conflict between pedestrians/vehicles and other roadside or footpath uses, this Roadside and Footpath Trading Policy has been developed.

This policy takes into account the needs of motorists, pedestrians, people with a disability, footpath and roadside trading, advertising, merchandise displays and kerbside dining.

The objectives of this policy are to:

- Facilitate opportunities for roadside and footpath trading that add to the public's enjoyment and use of the municipality, while not reducing safety or access to public land; and
- Provide a consistent and coordinated process for the assessment of applications for roadside and footpath trading within the municipality.

Definitions

Amenity means a desirable or useful feature or facility of a building or place.

Authorised Officer means a Council officer appointed under section 224 of the *Local Government Act 1989*.

Business Activity or **Business Purposes** means any activity that is engaged in for the primary purpose of making a profit.

Council means Baw Baw Shire Council.

Food Van - Any vehicle, caravan, trailer, table, stall or other similar structure for the purpose of selling or offering for sale any food and or drink (excluding alcoholic beverages).

Fundraising Stall or **Fundraising Activity** means a stall or activity operating to raise money for a charity or not-for-profit organisation where 100% of the proceeds of sales are directed to that charity or organisation.

Itinerant Trader means people, generally retailers, who may (or may not) have one central fixed place of business and who travel between towns to sell their goods. This also includes people trading from mobile vans.

Moveable Advertising Sign means any moveable board, placard, notice, sign, structure, banner or similar device used for the purposes of notifying of a sale, soliciting sales or notifying people of the presence of an adjacent property where goods and services may be obtained. This excludes commercial signage mounted on vehicles and/or trailers.

Property Line means a line usually set with respect to the frontage of a plot of land which is fixed by statute or by deed or contract and beyond which the owner of the land may not build.

Public Place means a reserve, public highway, mall, road, street, bridge, footway, footpath, court, alley, passage or thoroughfare, notwithstanding that it may be formed on private property and any other place to which the public may resort.

Road means a highway, street, lane, bridge, thoroughfare or other place that is open to or used by the public for passage with vehicles. It includes a public highway, carriageway, footpath, traffic island, nature strip and any other area that is provided to separate vehicle traffic on a highway, street, lane, bridge, thoroughfare or other place. It also means any place that is declared to be a highway under section 3(1) of the Road Safety Act 1986.

Trading means to:

- Carry on the business of selling or offering or exposing for sale any goods, merchandise, commodity, article or thing; or
- Setting up a van or other vehicle or stall or other structure, for the purpose of buying or selling any goods, merchandise, commodity, article or thing.

Vendor means someone who promotes, sells, exchanges or hires goods or services for money.

Policy Principles and Statements

The following principles guide this policy:

Access

- Unobstructed pedestrian access to footpaths for everyone, including mobility aids, prams and shopping trolleys.
- Appropriate clearances for parking and traffic.

Design

- High quality furniture design and appearance.
- Clean, attractive, functional trading and kerbside dining facilities.

Management

- Well maintained and hygienic public space.
- Minimal noise, interference or nuisance.
- Compatible with low energy use and environmental sustainability policies.

Compliance

- Providing information and policy position for permit holders.
- Ensuring traders are familiar with the requirements of roadside and footpath trading.
- Maintaining a clear and straightforward compliance process.

Policy Statements

- The use of public footpaths and roadsides by businesses and vendors selling goods should be granted only where:
 - a) there is no adverse impact on pedestrian safety or other road users; and
 - b) amenity of the locality can be preserved.
- Small temporary stalls in rural areas (as defined in the Baw Baw Planning Scheme) not exceeding 4m² and selling seasonal goods and produce from adjoining land will be required to obtain a local laws permit and show proof of relevant public liability insurance but will not be subject to a fee.
- Goods displayed for sale must not detrimentally impact on the amenity of the area or cause offence in the opinion of an Authorised Officer.
- In accordance with the recommendations of the Human Rights Commission, no obstructions or projections will be permitted within the Pedestrian Zone in order to provide the best possible guidance line for all users including people with a vision impairment.
- Business conducted from a roadside will generally not be permitted other than between sunrise and sunset.
- Permit holders must remove all vehicles and equipment from the public footpath or roadside at the end of each day or at the conclusion of business unless the permit indicates otherwise.
- Vehicles and stalls used to sell goods must display a valid permit.
- Only those parts of a road reserve which are considered safe for pedestrian and vehicular traffic may be utilised. Assessment of acceptable sight distance for rural roadside stalls will be based on the following general approach for minimum safe stopping distance (SSD) either side of the location of the stall:
 - a) 60km/h road = 73 metres SSD;
 - b) 80 km/h road = 114 metres SSD; and,
 - c) 100 km/h road = 165 metres SSD.
- A permit holder must agree to indemnify Council from all actions and damages whatsoever which may be brought against them for any wilful or negligent act.

- If the applicant is not the owner of the land adjacent to the proposed location of the stall, the applicant shall obtain the written agreement of the immediately adjoining owner(s) of land.
- Applicants must hold public liability insurance with appropriate coverage to the value of at least \$20 million. Proof of this insurance must be supplied to Baw Baw Shire Council upon application.
- The general approach to fees is:
 - a) Permit fees are set annually in Council's Fees and Charges Schedule.
 - b) Council will charge differing fees for roadside trading stalls within designated areas, generally to be within 1km of the town's post office (see appendix B).
 - c) A permit fee will apply:
 - i. to the use of the road reserve within townships and urban areas to display and sell goods or for promotional and similar purposes;
 - ii. to the use of footpaths within shopping precincts to display goods for sale, kerbside dining or for promotional and similar purposes.
 - d) No permit fee will apply:
 - i. to small temporary stalls in rural areas selling seasonal goods and produce from adjoining land;
 - ii. to fundraising stalls or fundraising activities.
- Permission to operate in a particular location does not extend to times when a major event occurs which includes that same location. Approval to operate during such events in the same location is to be obtained via the event organiser and Council.
- Permits are generally only allowed for use of roadsides and footpaths. Permits may not be issued for:
 - a) road carriageways or road surface areas, including areas set aside for the movement or parking of vehicles;
 - b) any area where the parking or movement of vehicles is prohibited or restricted; or
 - c) any other location, including roadsides, that Council determines are unsafe.
- Where a vendor sells food, the vendor must provide evidence that they have obtained the relevant registrations as per the *Food Act 1984*.

Scope

To whom does this policy apply?

This policy applies to all individuals, businesses or organisations making commercial use of roadsides and footpaths within Baw Baw Shire.

A local law permit is required to display goods, exhibit moveable advertising signs, provide kerbside dining and conduct roadside trading activities.

Exempt Businesses

The following selling activities on an itinerant basis are exempt from the need for a local law permit:

- Newspapers and magazines being home delivered;
- Milk and milk products being home delivered;
- Fruit juices and soft drinks being home delivered;
- Goods and/or services sold in a legally established market or fair;
- Goods and/or services sold from any house or shop occupied by the person offering the goods and/or services for sale;
- Goods and/or services sold directly to the occupiers of premises.

Where does this policy apply?

Footpaths

This policy applies to commercial or business activities conducted on or from footpaths.




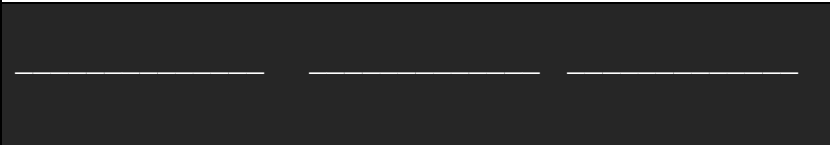
The footpath has been divided into three zones:

- Pedestrian Zone;
- Trading Zone; and
- Kerbside Zone.

Existing trees, artwork, street furniture, public infrastructure and the footpath width may prohibit or limit footpath trading activity. Council will consider the requirements of this policy when undertaking any future streetscape or landscaping works.

Due to the footpath width and parking restrictions, footpath trading may not be permitted in some instances.

Table 1: Footpath Zones

	Property Line
	Pedestrian Zone
	Trading Zone
	Kerbside Zone
	Road

Pedestrian Zone

The Pedestrian Zone is the area of the footpath that is measured from the property line and is for the exclusive use of pedestrians.

The Pedestrian Zone must be a continuous and accessible path of travel along the property line and must provide for the safety of all of the community, including meeting the access needs of people with mobility aids, prams and shopping trolleys. No obstructions or projections are permitted within the Pedestrian Zone in order to provide the best possible guidance line for all users, including people with a vision impairment.

Trading Zone

The Trading Zone is the area that the Council allows for commercial activity. It is the area left between the Pedestrian Zone and the Kerbside Zone after these clearances are accounted for. The Trading Zone will vary in area from street to street depending on the overall width of the footpath, the Pedestrian Zone, the Kerbside Zone and any clearances from infrastructure that is located within the Trading Zone.

Approved items must remain within the Trading Zone at all times and must not intrude on the Pedestrian Zone.

A gap of 1 metre must be left between adjoining Trading Zones to ensure that adequate access is provided for pedestrian safety when crossing the road or alighting from vehicles.

Kerbside Zone

The Kerbside Zone is the area between the face of the kerb and the Trading Zone. This zone is important for the safety of pedestrians crossing the road and allowing passengers to gain access to parked vehicles. This zone must remain clear of any footpath items approved within a Trading Zone.

Parking spaces adjacent to a kerb help to protect footpath trading activity from moving traffic. Where there are no parking spaces next to a kerb, the footpath trading application will be considered in accordance with the relevant safety aspects of the site.

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

Table 2: Indicative Zone Widths

Pedestrian Zone	2000mm from the property line towards the kerb is preferred where possible, however 1800mm should be provided, as a minimum. A reduction in Pedestrian Zone may be considered in exceptional circumstances, but must not be less than 1500mm
Trading Zone	Remaining area once pedestrian and kerbside zones are identified

Kerbside Zone	Minimum 500mm from the face of the kerb Minimum 1500mm if a disabled parking space adjoins the footpath Minimum 700mm if a loading zone adjoins the footpath.
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Australian Standards

The *Disability Discrimination Act* 1992 refers to access to premises, which includes footpaths, for people with a disability.

Whilst there are no legislated standards, best practice has been defined in Australian Standard 1428 as providing an 1800mm minimum width in Pedestrian Zones to ensure footpaths are accessible.

Council acknowledges that achieving an 1800mm minimum width in Pedestrian Zones is not always possible due to the overall width of footpaths. Where this standard cannot be achieved, a minimum width of 1500mm may be considered in exceptional circumstances to the Pedestrian Zone to ensure accessibility is achievable.

Roadsides

This policy also applies to the sale of goods or services to people from roadsides.

A local law permit must be obtained from Council to trade from a roadside.

A local law permit to conduct roadside trading is not required by anyone who has a current lease or licence of the land where the trading occurs.

As per clause 62.01 of the Baw Baw Planning Scheme, a planning permit is not required for:

- The use of land in a road if the use is associated with the use of adjoining land and is authorised by the Council under a local law.
- The use of land in a road to trade from a stall, stand, motor vehicle, trailer, barrow or other similar device if the use is authorised by the Council under a local law.

Site Requirements

A trading location will only be approved if it:

- a) Is readily and safely accessible to customers;
- b) Provides adequate parking for customers;
- c) Does not present a traffic hazard or danger to the public;
- d) Does not breach any regulatory or signposted car parking restrictions;
- e) Takes place where the nature of the vehicle, stall or other structure used to sell goods and the gathering of customers will not impede pedestrians or vehicle movements or cause conflict with other activities; and
- f) Will not interfere with access to other facilities and/or businesses (including occupying car parking areas to the detriment of the public).

Where does this policy not apply?

- a) Private land (including leased land); and
- b) Public land not under the authority of Council; and
- c) Declared roads, which are under the authority and management of VicRoads (e.g. Freeways, Arterial Roads, and Non-Arterial State Roads). Information about the VicRoads register of public roads can be found online at: <https://www.vicroads.vic.gov.au/about-vicroads/acts-and-regulations/register-of-public-roads>

Trading Categories

Advertising Signs

Advertising in this policy includes moveable and real estate signs.

Moveable Advertising Signs

In relation to footpath trading, moveable advertising signs can only be placed within the Trading Zone and must not intrude onto either the Pedestrian or Kerbside Zones.

Moveable advertising signs are limited to 1200mm in height and 800mm in width and are different from the real estate signs mentioned below.

Only one moveable advertising sign can be displayed in front of the premises to which it relates and must not be displayed more than 20 metres from the relevant business. The moveable advertising sign must only be displayed whilst the trader is operating and open for business.

Where trading occurs from a roadside, two moveable advertising signs are permitted to advertise goods and display prices. Signs must not be displayed more than 20 metres from the location of the roadside trader's stall. These signs must be placed so that they do not impede traffic, create a hazard, or obstruct signage associated with any other trader.

Moveable advertising signs are to be soundly constructed and stable in the wind. Sign writing shall be of a professional standard and maintained in good condition.

Moveable advertising signs must not be fixed to any footpath, building asset, pole or other structure.

Real Estate Signs

All real estate signage must be erected, displayed and dismantled in accordance with the Real Estate Institute of Victoria (REIV) Rules of Practice.

Council may grant permits for real estate signs located in a public place which will have a maximum life of three months.

Permit applications will be considered for real estate signs to be located in public places where they appear directly in front of the property to which they relate and would not be clearly visible to passers-by if located within the boundaries of the property they represent, including on fence lines.

Unless a sign refers to a large rural property, only one real estate sign per frontage is allowed. Large rural properties may carry multiple signs provided they are a minimum of 300 metres apart.

Real estate signs in a public place are limited to 1.8 metres in height and 1.4 metres in width. They must be soundly constructed, securely attached to mounting posts sunk into the ground, bear professional sign writing and be maintained in good condition.

All real estate signs in a public place are to be removed within two days of selling or letting the property they represent.

Where real estate signs are erected in a public place, the land must be reinstated to its original condition, including the backfilling of any holes caused by the mounting posts.

Real estate signs located within or attached to private property do not require a permit.

Real Estate Pointer Signs

Real estate pointer signs are to be displayed and removed in accordance with the Real Estate Institute of Victoria (REIV) Rules of Practice.

Unless displayed on the date of a public auction, an 'open for inspection' sign shall only be displayed for 15 minutes before, for the duration of, and for 15 minutes after the times between which the property will be open for inspection.

On the day of a public auction, an agent may display 'open for inspection' or 'auction this day' signs for one hour preceding the advertised time of the auction. Such signage must be removed upon the agent leaving the auction site.

'Open for inspection' and 'auction this day' signs may be displayed in the following positions:

- One sign on a nature strip at each end of the road in which the property open for inspection is located; and
- One sign between the front boundary of the property open for inspection and the adjacent kerb.

In all instances, signs must only be placed in positions that do not jeopardise public safety.

Promotional Flags

Council acknowledges that bali or teardrop flags are a common promotional tool used by many businesses.

These types of flags may be used for roadside trading purposes, within the following parameters:

- A maximum of three flags may be displayed at the site at any one time;
- Flags must not be erected in the ground; instead they must be placed on the ground and secured with sandbags or a similar item;

- Flags must not be displayed more than 20 metres from the relevant business;
- Flags must only be displayed whilst the trader is operating and open for business;
- Flags must be placed so that they do not impede traffic or create a hazard in the opinion of an Authorised Officer; and
- Flags are to be soundly constructed and stable in the wind.

Temporary Event Signage

Temporary event signage falls into two general categories. These include large boards often sponsored by real estate agents or other businesses, and smaller signage including directional signage.

Large boards must not exceed 1.8 metres in height and 1.4 metres in width, and must be displayed within the following parameters:

- Boards must be supplied, erected, maintained and removed at the applicant's cost;
- Boards must be soundly constructed, securely attached to mounting posts sunk into the ground and be maintained in good condition;
- Where large boards are erected in a public place, the land must be reinstated to its original condition, including the backfilling of any holes caused by the mounting posts;
- Signs must be placed with a minimum clearance of 1000mm from the side of the road surface;
- Signs must not obstruct the vision or sight distances of any motorist;
- Signs must be professionally manufactured and worded in a legible manner;
- Signs must not contain commercial advertising except sponsors' logos, which may take up a maximum of 30 per cent of the total sign; and
- Signs must be displayed no earlier than two weeks before the commencement of the event and be removed no later than 48 hours after the event concludes.

Smaller signage must not exceed 900mm x 550mm, and must be displayed within the following parameters:

- Signs must be supplied, erected, maintained and removed at the applicant's cost;
- Signs must be placed with a minimum clearance of 500mm from the side of the road surface;
- Signs must be placed so that drivers have sufficient time to react;
- Signs must not obstruct the vision or sight distances of any motorist, including when being placed at intersections;
- Signs must not be attached to any existing signage;
- In the instance where wooden stakes will be used to a depth of greater than 300mm, event organisers must contact Dial Before You Dig to ensure that underground services will not be impacted;
- Signs must be professionally manufactured and worded in a legible manner;
- Signs must not contain commercial advertising except sponsors' logos, which may take up a maximum of 30 per cent of the total sign;
- Signs must not be erected within 1000mm of other assets (such as electricity or light poles) without the written permission from the appropriate authority; and

- Signs must be displayed no earlier than 24 hours before the commencement of the event and be removed no later than 24 hours after the event concludes.

Hazard Avoidance

All signage and flags must not:

- Create a traffic hazard by obstructing any motorist's view of intersections, traffic signals or signs;
- Be internally illuminated, reflective, animated or capable of being mistaken for a traffic sign; or
- Be erected on median strips, roadways or roundabouts.

Additionally, moveable advertising signs must not:

- Be attached to any tree, power pole or street furniture; or
- Bear text which is obscene, offensive or misleading in the opinion of an Authorised Officer.

Displays and Goods for Sale

A permit may be granted to place goods on a public footpath provided the following conditions are met:

- a) Goods displayed must be confined to the Trading Zone and not impede upon the Pedestrian or Kerbside Zones;
- b) Displays shall be positioned in front of the premises to which the goods relate during business hours and must be removed from the footpath by close of business each day;
- c) Access to and from shop premises shall be kept clear for pedestrians at all times;
- d) The maximum height of any display is 1500mm;
- e) The maximum width of any display is 700mm;
- f) Display stands must not be fixed to the footpath or to any street sign or pole;
- g) Goods displayed must be of stable construction and stable in the wind; and
- h) Goods must not detrimentally impact on the amenity of the area or cause offence in the opinion of an Authorised Officer.

Street Furniture

A person must obtain a permit to place any street furniture including tables, chairs and associated equipment, in a public place.

Traders may apply for a permit to place tables and chairs on footpaths to allow serving of food and or drinks provided the application is generally in accordance with the following guidelines:

- a) Chairs should not be placed so as to back into the Pedestrian Zone or the Kerbside Zone where vehicles adjoin the outdoor eating area;
- b) Tables, chairs and barriers must only be in place when the business is open and removed when closed;
- c) The permit holder must ensure that the Pedestrian Zone is kept clear at all times;
- d) The permit holder's staff shall give pedestrian movement priority over their own movements across the Pedestrian Zone;

- e) The use of barriers to delineate between the Trading and Kerbside Zones is preferred;
- f) All tables, chairs and barriers must be kept in good order and condition so as not to cause injury to a user or pedestrian; and
- g) All items on footpaths are to be removed on days when weather conditions create a higher risk of injury to people or property damage.

Council reserves the right to consider any other matter relevant to the circumstances of the application.

Permanent Infrastructure

Proposals to install permanent infrastructure will be assessed on a case-by-case basis in accordance with relevant legislation and Council policies.

In the instance where permanent infrastructure is approved, it will remain wholly the responsibility of the proprietor to maintain the infrastructure, including but not limited to removing graffiti and any advertising materials attached, retaining appropriate insurance and general maintenance and upkeep.

Council Infrastructure

Clearance from public infrastructure is required at all times, whether trading from a roadside or footpath, to ensure it is accessible for cleaning and repairs.

Public infrastructure will not generally be relocated at the request of traders (an important consideration in site selection), however, Council will consider written applications to remove and/or relocate infrastructure. Where these applications are approved, the cost of alteration/relocation will be borne by the applicant.

Where the infrastructure does not belong to Council, Council will act as the conduit between the business and the owner of the infrastructure.

Where infrastructure exists on the footpath, the following clearances are required:

Infrastructure	Minimum clearances from object
Litter bins Public seating Bicycle stands (from outer edges of stand) Fire hydrants Payphones Traffic lights Pedestrian-operated lights Way-finding signs	1000mm
Trees and tree pit edge Electricity boxes	500mm
Electricity poles Street light poles	0mm

Please note: In all cases, site requirements will be assessed on the basis of public safety and the amenity of the immediate area. Varied clearances or requirements may be stipulated in any permit for any form of trading.

Decision Guidelines

Where applications meet all elements of this policy, Council will normally grant a permit.

When assessing and determining an application for a roadside or footpath trading permit, Council will take into account the following:

- Any policy or guideline adopted by the Council relating to the subject matter of the application for the permit;
- Whether the proposal has the potential to compromise pedestrian or traffic safety, public amenity or impact negatively on the functionality of a footpath, roadway, car parking space, loading bay, public amenity and/or asset or the like;
- The potential amenity impacts of the proposal, including the cumulative impact of roadside trading on nearby occupancies;
- The impact, if any, that the proposal will have on the operation and trade of existing 'bricks and mortar' businesses near the proposed site;
- Whether a condition restricting trading or display hours is warranted, having regard to matters such as the use and development of surrounding land, the location of the proposed trading, the nature of the use of the footpath or other roadside area or asset, and any management conditions including the hours of operation of nearby commercial premises;
- The interaction between the proposed use of the roadside area, including the interaction between proposed structures and built form;
- The nature, design, layout and function of the proposed structures and associated land use;
- Any impacts on other public land or public infrastructure/assets having regard to the available roadside area and local conditions; and
- Any other relevant matter.

In cases where an application does not clearly meet the policy requirements or where there are special circumstances, the application will be referred to the Manager, Community Safety, or the Director, Planning & Development, for determination.

Related Policies and Legislation

- Baw Baw Shire Council Community Local Law 2016 (Amended 2021)
- Disability Discrimination Act 1992 (Commonwealth)
- Planning and Environment Act 1987
- Baw Baw Planning Scheme
- Road Safety Act 1986
- Food Act 1984
- National Competition Policy
- Real Estate Institute of Victoria (REIV) Rules of Practice

Appendices

Appendix A: Baw Baw Shire Council Community Local Law 2016 (extract)

Clause 4.9 – *Signage*

- (1) A person must not, without a permit, display or allow to be displayed a sign on any road.
- (2) A person must not, without a permit, do anything contrary to any sign erected by or on behalf of Council in or on any public place, reserve or road which prohibits such a thing.

Clause 4.10 – *Trading Activities*

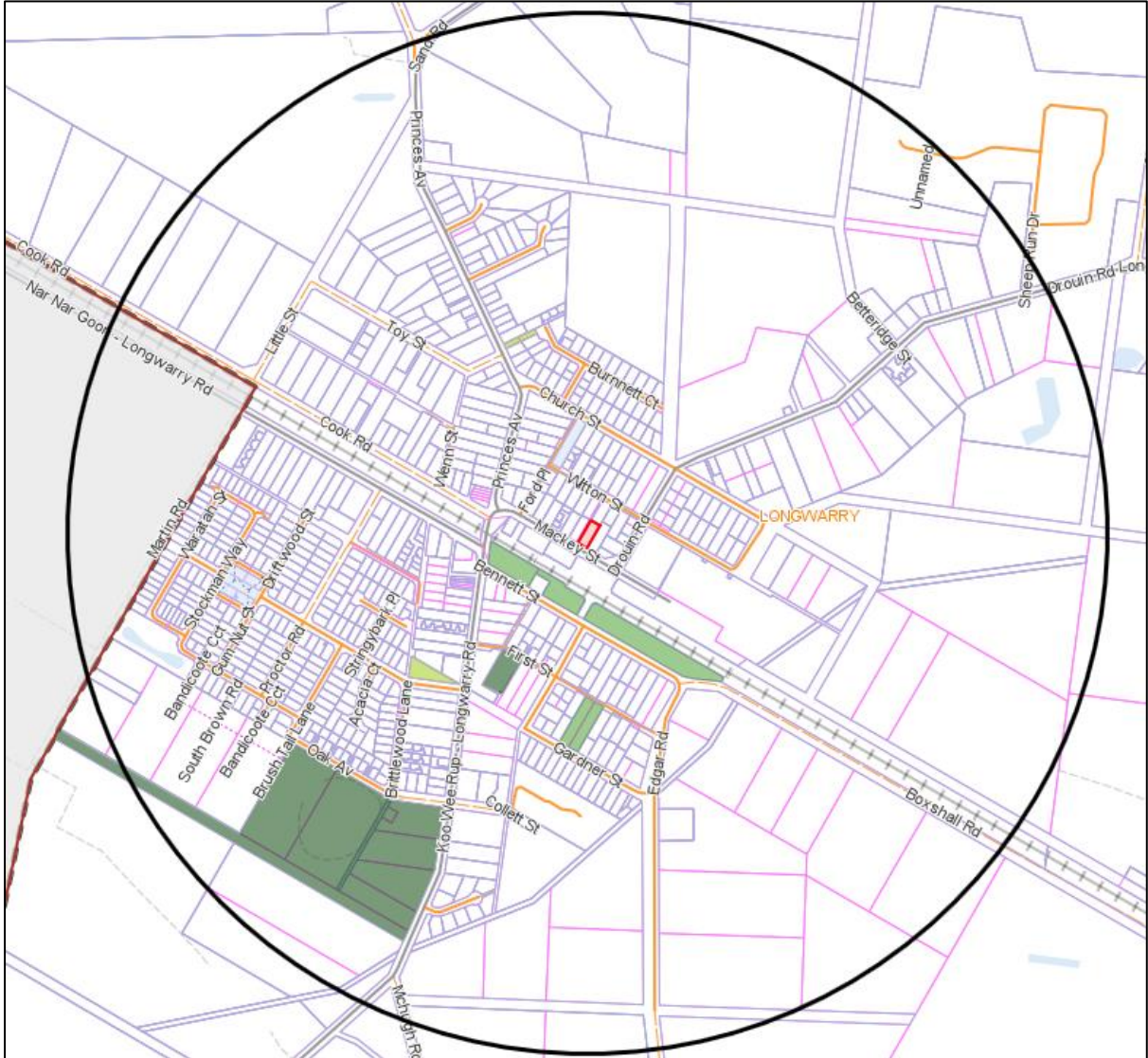
- (1) A person must not, without a permit, on a road, or on Council Land:
 - (a) place any advertising sign;
 - (b) display any goods;
 - (c) place any outdoor dining furniture or associated facilities;
 - (d) place any structure for the purpose of selling or offering to sell any goods or services;
 - (e) sell or offer for sale any goods or services carried about or placed on the person or any other movable thing;
 - (f) hold a promotion, or cause or authorise another person to do so.
- (2) A person must not, without a permit, sell goods or solicit or try to attract trade or business on vacant land or land which he or she does not ordinarily occupy.

Clause 4.11 – *Use of Public Places*

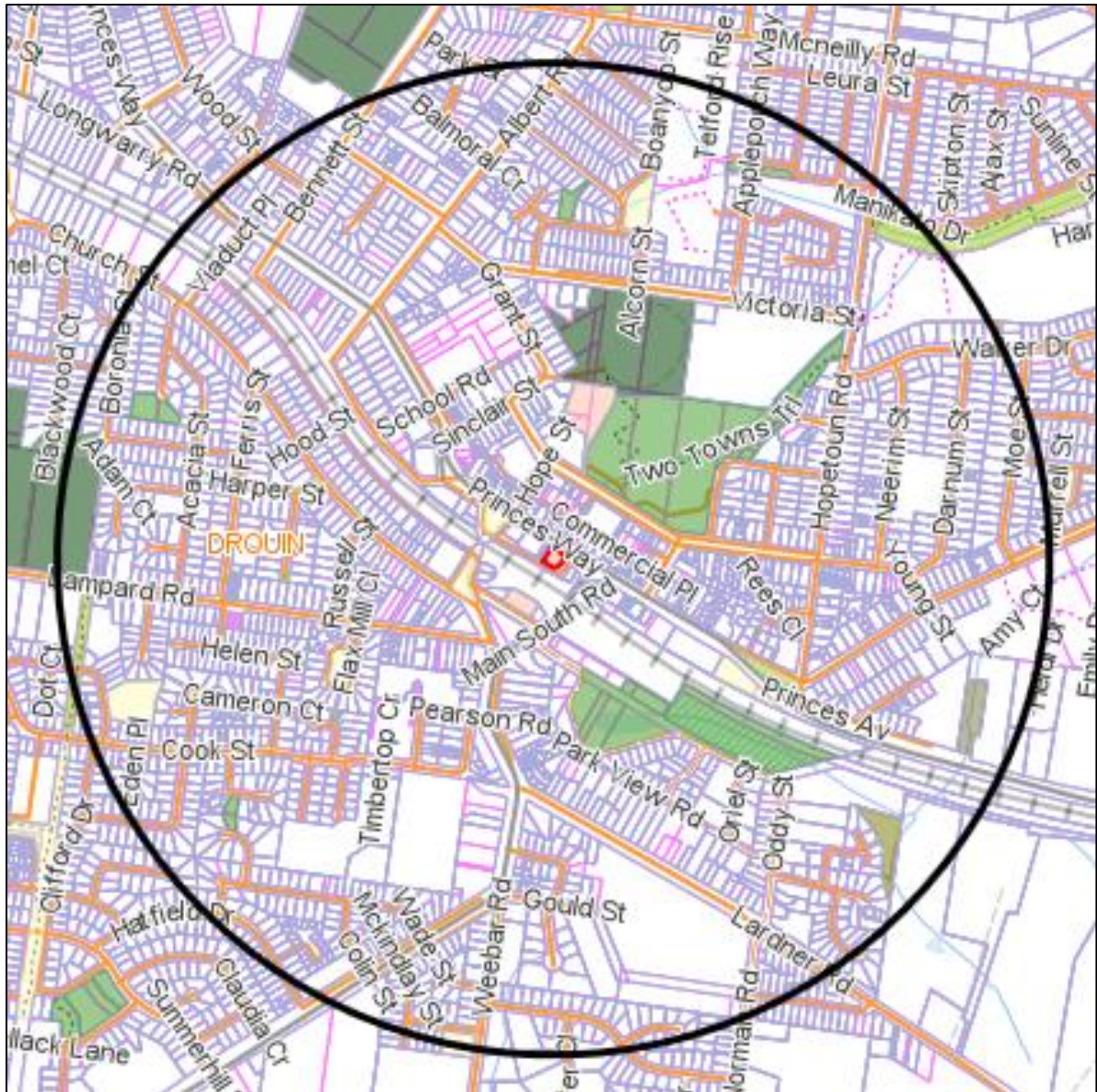
- (1) A person must not, without a permit or approval, use Council owned or managed land or facilities for the purposes of commercial gain or community events.
- (2) A person must not, without a permit, busk, fundraise or conduct a community awareness activity on any road or Council Land.

Appendix B: Township Maps – Designated Areas

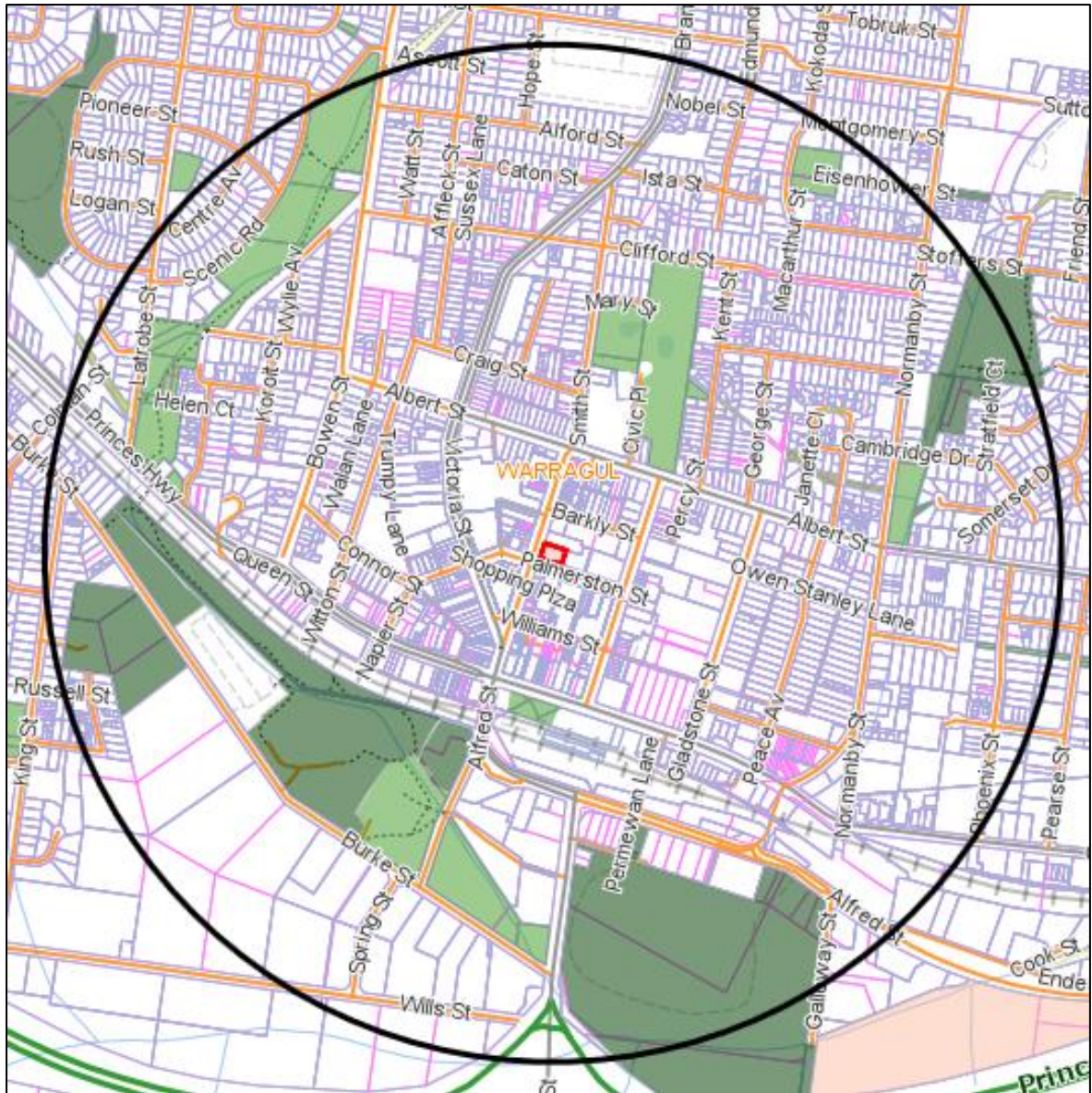
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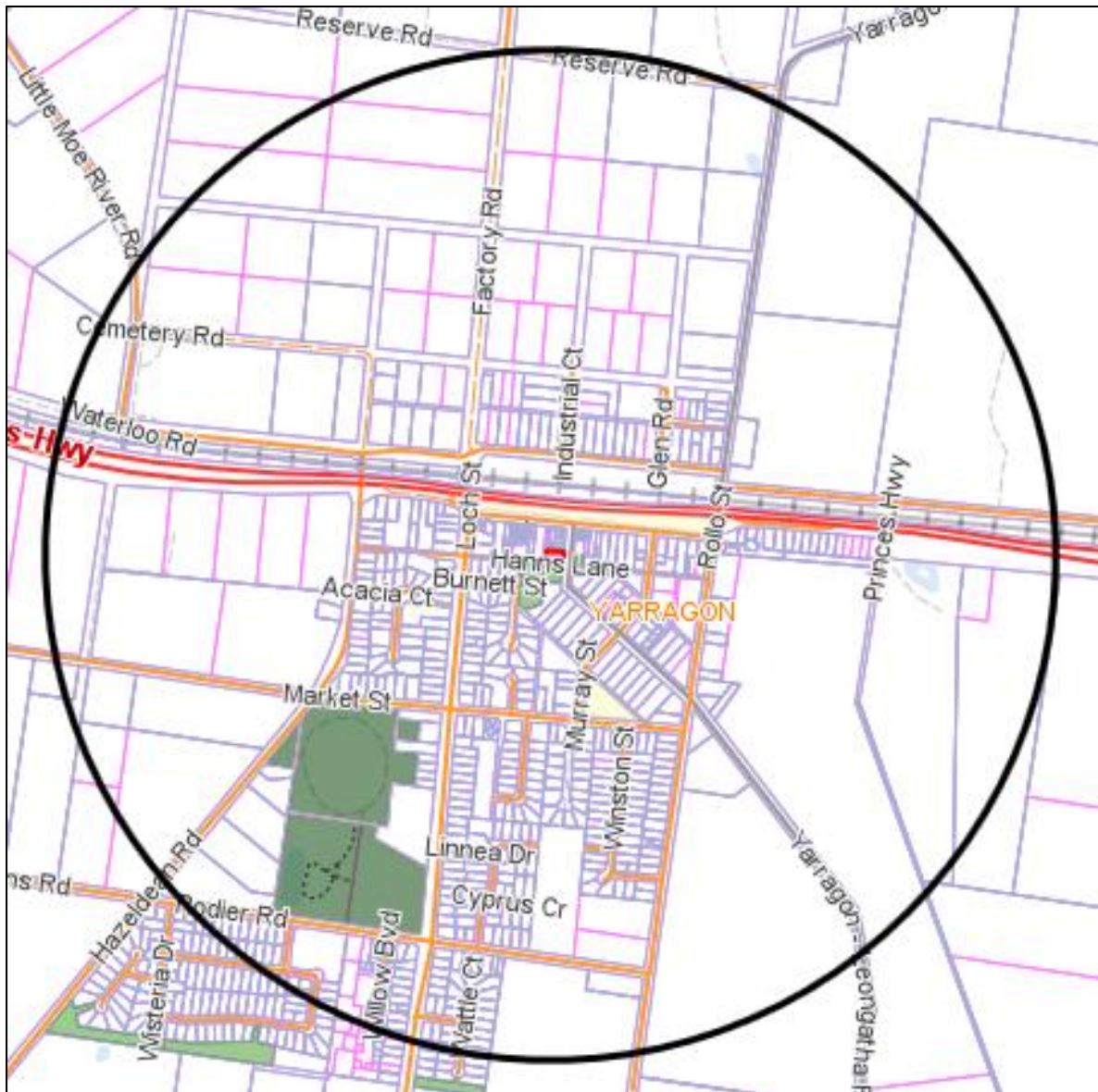
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WARRAGUL



YARRAGON



TRAFALGAR





Baw Baw Shire Council Roadside and Footpath Trading Policy

Approval date	24 November 2021
Approval authority	Council
Effective from	25 November 2021
Review term	Council term
Next review date	25 June 2025
Responsible position	Compliance Coordinator
Responsible Director	Planning and Development
Version	002