

Footpath Activities Policy



Bellingen
Shire Council





Footpath Activities Policy

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DISCLAIMER

Whilst every effort has been made to ensure the accuracy of the information within this publication, Bellingen Shire Council disclaims any liability to any person in respect of anything done or not done as a result of the contents of this Footpath Activities Policy.

The Footpath Activities Policy should be read in conjunction with relevant legislation, guidelines and codes of practice. Where inconsistencies exist the most recent legislation should prevail.

The Footpath Activities Policy does not constitute legal advice and should not be relied on. Legal advice should be sought in relation to particular circumstances, and liability will not be accepted by Bellingen Shire Council for losses incurred or damage suffered as a result of reliance on this Policy.

CONTENTS

- 1 PURPOSE4
- 2 SCOPE (Where this policy applies)4
- 3 DEFINITIONS.....4
- 4 POLICY STATEMENT.....4
- 5 ROLES AND RESPONSIBILITIES5
- 6 RELATED PROCEDURES.....5
- 7 LEGAL PARAMETERS5
- 8 ASSOCIATED DOCUMENTS6
- 9 **POLICY DETAIL7**
 - 9.1 Approval and Insurance Requirements for Footpath Activities7**
 - 9.2 Location Requirements for All Footpath Activities7**
 - 9.3 Location Requirements for Specific Footpath Activities 11**
 - 9.3.1 A-frame signs 11**
 - 9.3.2 Display of goods 13**
 - 9.3.3 Café furniture 13**
 - 9.3.4 Ancillary Items (umbrellas, heaters, planter boxes, screens/windbreaks) 14**
 - 9.3.5 Temporary community street stalls 14**
 - 9.4 Management Requirements for Footpath Activities..... 15**
 - 9.4.1 Conduct of Patrons – Outdoor Dining 15**
 - 9.4.2 Cleanliness and Litter Control 15**
 - 9.4.3 Alcohol, Noise and Entertainment..... 15**

1 PURPOSE

The purpose of this policy is to:

- Provide clear guidelines for commercial activities, such as outdoor dining, display of goods and use of A-frame signs, on Council's footpaths.
- Confirm Council's support for active footpaths that support the vitality of town centres and promote economic activity, while protecting the rights of pedestrians using footpaths for their principle purpose as a path of travel.
- Ensure that footpaths in Bellingen Shire are safe and accessible for everyone in the community to use including parents with prams, older persons and people with a disability.

2 SCOPE (WHERE THIS POLICY APPLIES)

This policy applies to the use of all Council-owned and managed footpaths within the Bellingen Shire for the following commercial purposes:

- outdoor dining and/or,
- the display of A-frame signage and/or
- the display of goods

This policy applies to commercial footpath activities undertaken by an organisation (including community organisations and not-for-profits), individual or business. It does not apply to busking activities.

This policy only applies to placement of temporary structures and does not include fixed outdoor furniture such as bike racks, fixed seating or awnings. Separate approval is necessary for permanent structures.

3 DEFINITIONS

A-frame sign: also known as a sandwich board, blackboard or footway signage means any portable, self-supporting sign.

Classified road: The Roads and Maritime Services (RS) exercise broad authority over some, or all, aspects of legally classified roads. The RMS is required to give consent to proposed outdoor restaurants on classified roads and associated footpaths. Applications for outdoor cafes will therefore be referred to the RMS if they are proposed on classified roads. Classified roads are mapped on the RMS website.

Trading Zone: The area available for commercial footpath activities (Trading Zone) can be calculated as the remaining area of footpath once the minimum 1.8 metre wide pedestrian path and kerb buffer area have been excluded. The size of the Trading Zone in each area will vary depending on the width of the footpath.

Walking Zone: The area of footpath kept clear and free from any obstructions, allowing people to walk along the footpath unimpeded. This policy requires at least 1.8m be kept clear for walking. Making it easier for people to walk around town is good for business.

4 POLICY STATEMENT

The principle purpose of footpaths is to provide for walking in a safe and comfortable environment. Footpaths also host a range of other activities, including providing for meeting,

sitting/resting on public furniture or in cafes, browsing shops and people watching. Footpath activities need to be managed so that footpaths remain safe and accessible for everyone, including people with a disability.

Council acknowledges that footpath activities associated with local businesses add to the liveliness and character of town centres. To support businesses and the local economy this policy aims to provide clear guidelines and simplify the process for obtaining approval for footpath activities. This policy aims to manage footpath activities so they do not unreasonably restrict pedestrian access (especially for people with a disability) along footpaths and into business premises.

Whilst most footpath activities no longer require development consent, other legislation still applies and businesses are required to obtain Council approval (under the *Roads Act 1993* and/or the *Local Government Act 1993*) to use the footpath. A Footpath Activity Approval will provide for the combined approval under the *Roads Act 1993* and *Local Government Act 1993* and will be required to be renewed every two years.

Council and business owners have legal responsibilities under the *Disability Discrimination Act 1992* to keep public areas including footpaths accessible for everyone, including people with a disability. If footpaths are unreasonably obstructed, complaints can be made to the Human Rights Commission and can be taken to the Federal Court of Australia.

5 ROLES AND RESPONSIBILITIES

Business operators have a legal responsibility to obtain relevant approvals to use the footpath for commercial activities and to ensure they do not obstruct the footpath.

Council is legally responsible for ensuring safe pedestrian walkways for people of all abilities and for regulating and managing commercial footpath activities.

6 RELATED PROCEDURES

Footpath Activities Policy - Procedures

7 LEGAL PARAMETERS

Disability Discrimination Act 1992

The *Disability Discrimination Act (DDA) 1992* makes it against the law for public places to be inaccessible to people with a disability. Council must ensure a clear and continuous path of travel along Council's footpaths and unobstructed access to premises and street furniture.

Roads Act 1993

The use of a footpath for outdoor dining requires approval to use public land under Section 125 of the *Roads Act 1993*. Where activities are proposed on classified roads, the concurrence of the Roads and Maritime Service is required. Consent to place structures over the road and public footpath is also required under Section 138 of the *Roads Act 1993*.

Local Government Act 1993

The use of a footpath for the display of any article (whether for sale or not, and including A-frame signs and goods displays) requires approval under Section 68 of the *Local Government Act 1993*.

State Environmental Planning Policy Exempt and Complying Development Codes

State planning laws have made most types of outdoor dining exempt development in NSW. This means if you are proposing outdoor dining associated with your approved food and drink premises (excluding pubs or small bars) then you may no longer need to lodge a development application with Council.

Bellingen Local Environmental Plan 2010

Council has decided to treat other commercial footpath activities such as goods displays and A-frame signs in the same way as outdoor dining. Council is proposing to amend the *Bellingen Local Environmental Plan 2010* to include 'display of goods' and 'A-frame signs' in Schedule 2 Exempt Development. This means goods displays and A-frame signs (maximum of 1 A-frame sign per business) will not require development consent if they are associated with a lawful use on adjoining land and if they are placed and managed in accordance with the requirements of this policy. A *Footpath Activity Approval* issued under the *Roads Act 1993 and Local Government Act 1993* will still be required.

8 ASSOCIATED DOCUMENTS

Information Sheet 'Use of public footpath for commercial purposes'

9 POLICY DETAIL

9.1 Approval and Insurance Requirements for Footpath Activities

Development consent (i.e. lodging a Development Application) is no longer required for most footpath activities.

The use of a footpath for commercial activity does however require approval from Council. This approval can be obtained by applying for a *Footpath Activity Approval*. In most cases, compliance with the standards set out in this policy will ensure approval.

For footpath activities on a classified road the concurrence of the RMS is required.

Footpath Activity Approvals will be required to be renewed every two years.

Public liability insurance is your protection if your business is found to be legally responsible for personal injury to a third party or damage to their property and is required when placing structures over Council's footpath.

Council strongly encourages operators with approval to trade on the footpath to obtain public liability insurance for \$20 million in the name of the operator (to cover public liability for injuries on the road reserve outside your business) and Council requests that Bellingen Shire Council be listed as an interested party on this policy. For businesses on classified roads, the NSW Roads and Maritime Services should also be listed as an interested party in the policy.

9.2 Location Requirements for All Footpath Activities

- a) A minimum 1.8 metre wide continuous path of travel along the footpath must be provided to allow for unobstructed pedestrian movement along the footpath.
- b) Items must not be placed within 400mm (40cm) of the kerb (this kerb buffer area keeps separation from the roadway and protects from opening of car doors etc.). This area cannot be included in the 1.8 metre wide clear path of travel.
- c) Narrow footpaths often cannot successfully accommodate both commercial footpath activities and adequate pedestrian access; therefore, footpaths less than 2.9 metres wide cannot be used for outdoor dining or display of an A-frame sign and footpaths less than 2.5 metres wide cannot be used for display of goods.
- d) Where a loading bay adjoins the footpath, a minimum buffer of 1 metre will need to be provided between the kerb and any structures/items in the Trading Zone. Where there is a parallel parking bay for people with a disability adjoining the footpath, the setback from the kerb to any items in the Trading Zone will need to be at least 1.5 metres.
- e) All footpath trading activities including the placement of café furniture, A-frame signs, and goods for sale/display should be placed a minimum 1.8 metres beyond the building line where possible, keeping the building line clear and free for people to walk alongside the front of the building (See Figure 1).

Note: This provides for a safe and predictable walkway especially for people who use vision aids such as canes and rely on the building line to safely navigate town centres.

This arrangement is considered best practice by the Australian Human Rights Commission, Vision Australia and Guide Dogs NSW/ACT. In addition, this configuration generally provides shelter from the weather for pedestrians, creating a more comfortable walking environment.

- f) Where it is not practical or safe to place items or structures on the kerbside of the footpath and where a continuous 1.8 metre wide (minimum) clear path of travel is provided for pedestrians, then structures placed along the building line are accepted. (See Figure 2).
- g) If the shopfront faces an intersection, the corner must be kept clear of any items and the Trading Zone must not extend past the property line (see Figure 3). In some circumstances, the non-trading zone on the corner may be extended if public safety is compromised – for example where outdoor trading will block sight lines from the intersection or where a continuous and clear 1.8m path of travel cannot be achieved.
- h) Furniture, signage or goods on the footpath must not be placed within 0.5 metres of the following public furniture: fire hydrants, poles/veranda posts, telecommunication pits and planter boxes. A-frame signs are permitted closer to veranda posts or planter boxes, however must be self-supporting and cannot lean against, nor be tied to, poles or posts for support.
- i) Furniture, signage or goods on the footpath must not be placed within 1.0 metre of any bus stop, payphone, post box, bike rack, rubbish bin or a public seat.
- j) Furniture, signage or goods on the footpath need to be located at least 2.0 metres from a pedestrian crossing or blister or island (e.g. any crossing area).
- k) Tables and chairs, other furniture, signage and goods are to be displayed directly outside the shopfront to which they relate only. However, permission may be granted to extend the placement of items on the footpath outside an adjoining premise provided Council has received written advice from the operator of the adjoining shop that they have no objections to the proposal. Outdoor trading must not block doorway access.
- l) The ground surface must be sufficiently level and safe to provide adequate stability for all items, structures and outdoor furniture. No items will be allowed within garden beds.
- m) In areas where there is no kerb and gutter and outdoor dining, signage or goods displays are proposed, sufficient buffers and barriers must be provided to the roadway to ensure safety and will be determined on a case-by-case basis. In these areas, approval of footpath activities is at the discretion of Council.
- n) All footpath trading activities including the placement of café furniture, A-Frame signs, goods and ancillary items on the footpath must be located wholly within, and remain in, the Trading Zone at all times and not extend into the walkway or roadway.

See Figure 3 for a summary of location requirements for footpath trading activities.

LOCATION REQUIREMENTS – FOOTPATH ACTIVITIES

FIGURE 1: BEST PRACTICE EXAMPLE

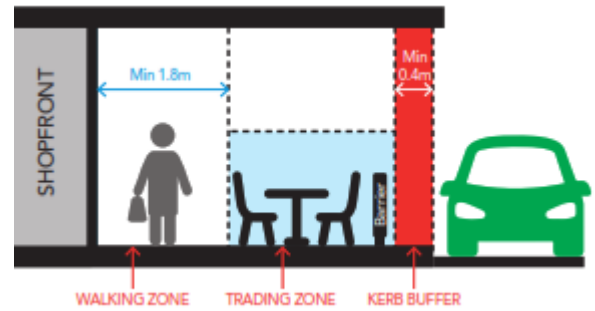
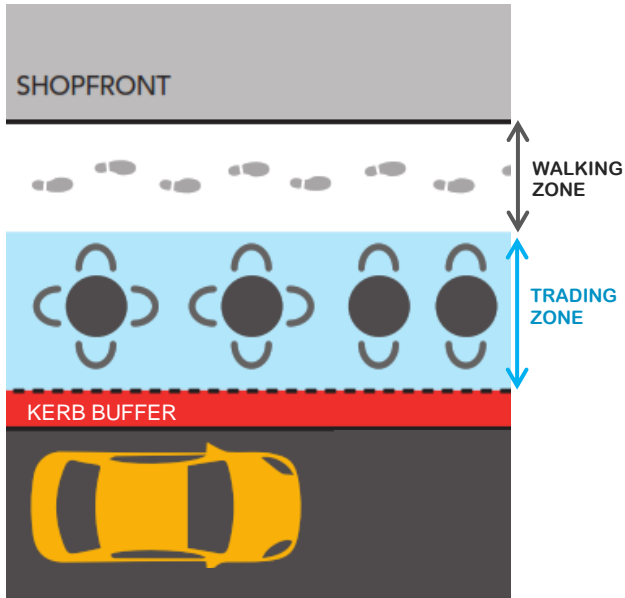


FIGURE 2: ALTERNATE ACCEPTABLE EXAMPLE

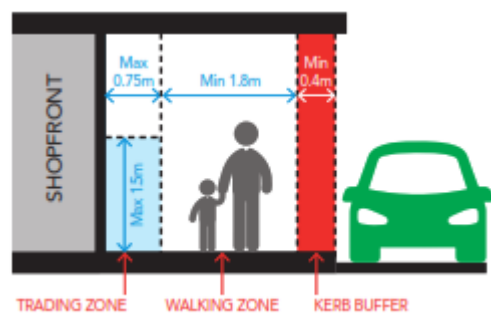
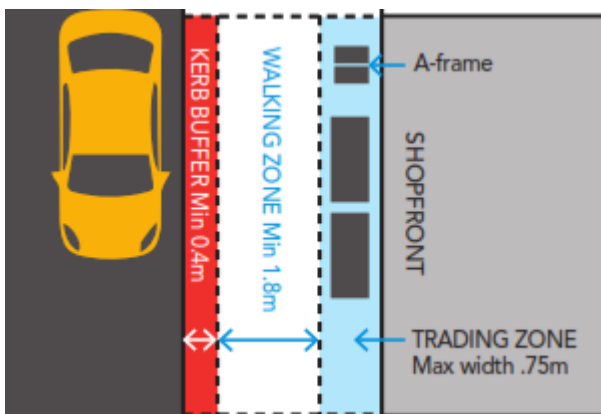
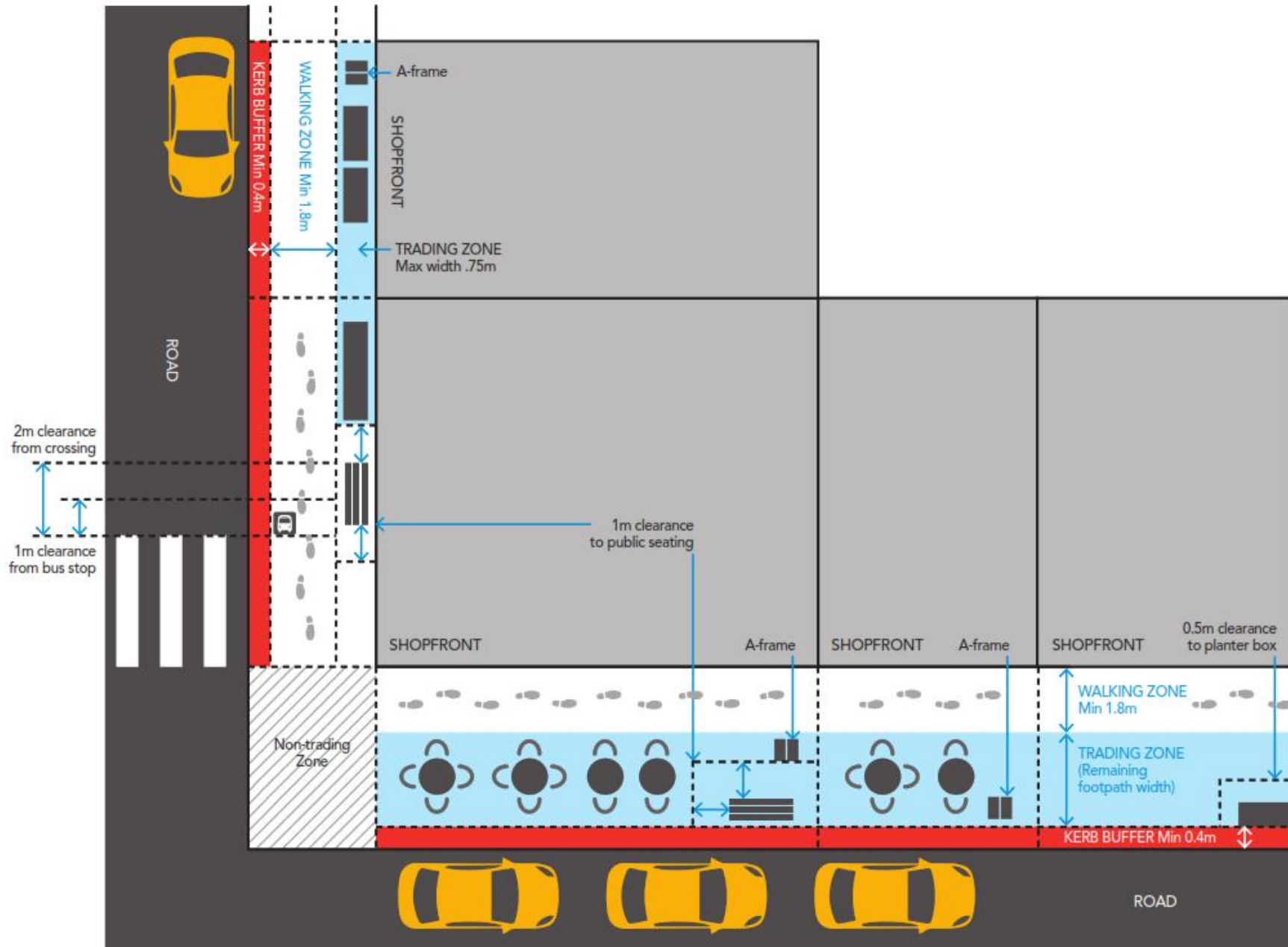


FIGURE 3: FOOTPATH ACTIVITIES DIAGRAM

PLAN VIEW



9.3 Location Requirements for Specific Footpath Activities

9.3.1 A-frame signs

- a) Restricted to one (1) A-frame sign per business only.

This does not mean businesses are entitled to one sign each, as an A-frame sign will only be permitted where it meets all the requirements of this policy – in some circumstances there may not be room on the footpath for everyone to have an A-frame sign and businesses should review their options and consider different types of signage (see Figure 4).

- b) A-frame signs must only be displayed directly in front of the building to which they relate, and not on street corners, in front of unrelated buildings or other vantage points.
- c) A-frames (except for A-frames containing joint signage) are strongly discouraged in front of arcades and in front of narrow buildings with multiple tenancies. In these situations there is not enough space for all tenants to display A-frame signage, creating inequity and visual and physical clutter. Alternate signage should be considered and examples are provided in Figure 4.
- d) Where there is sufficient interest from businesses and a demonstrated benefit for town centre businesses, Council will consider facilitating the erection of joint signage structures in certain key locations (e.g. laneways/arcades or street corners).
- e) A-frame signs must not exceed a height of 900mm and a width of 600mm. A-frame signs should be pedestrian-focused and not be oversized or visually intrusive for the sake of attracting the attention of, or distracting drivers.
- f) Illuminated A-frame signs are not permitted and the reflectivity of signs must not cause unsafe or unreasonable glare to vehicles and pedestrians.
- g) The text must relate to the business operations being conducted at the premises. This means the content of the A-frame must only identify the business, items sold, specials or menu items etc. and must not consist entirely of third-party advertising.
- h) A-frame signs are not to be tied to poles, trees or other street furniture.
- i) Where required, approval tags must be securely attached to A-frame signage and must remain displayed for the duration of the licence. If an approval tag is not displayed, an authorised officer of Council may remove the sign without notice.

A-FRAME SIGN ALTERNATIVES

The following signage types should be considered as an alternative to A-frame signs, especially where there are multiple tenants in a building.

The Shire is lucky to have retained many of its historic buildings and excessive signage reflects poorly on the streetscape and advertiser.

Some business identification signs do not require Council approval, provided they meet certain state planning requirements. To check whether your signage ideas require approval, contact the Duty Planner on 6655 7300.

For example, some window signs, fascia signs and internal signs can be exempt from approvals. Under-awning signs can be exempt but require Roads Act approval for overhanging footpaths. Top hamper (doorway) signs may be exempt if they are not installed on a heritage or draft heritage item and wall signs may be exempt if they are not installed on a heritage or draft heritage item or within a conservation area.

Note: There are limits to the size, type and numbers of signs that can be classified as not requiring approval.

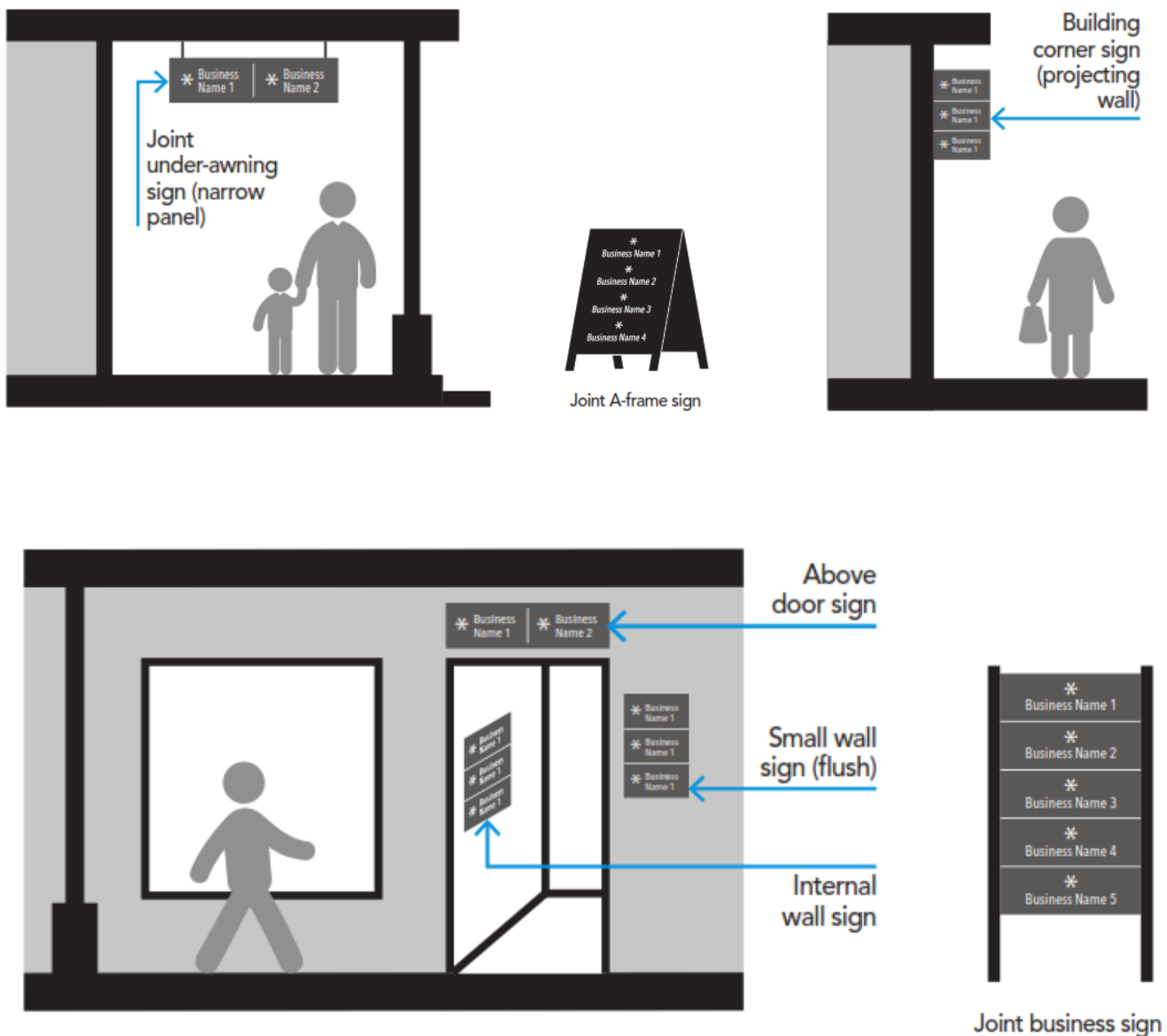


Figure 4: Alternatives to A-frame Signs

With signage, less is often more. Too many signs on shopfronts and on the footpath can actually do the opposite of attracting customers, and instead overwhelm people with choice.

9.3.2 Display of goods

- a) Goods displays must not exceed a height of 1.5 metres and depth of 0.75 metres.
- b) A 1 metre clear access will be required for every 3.0 continuous metres of stands/goods displayed to ensure that pedestrian access from the roadway is maintained.
- c) If it is not safe or practical to place items away from the building line, placement of items must remain consistent over time (provide a predictable pathway) for people using vision aids. In addition, displays must have a solid base or a solid structure (furniture, planter box, screen) must be placed at either end of the display as a guide for people using vision aids (canes).
- d) Display of goods will be discouraged where they diminish the amenity, safety and/or appearance of an area.
- e) All goods stands must be stable and secured so they are not displaced by winds or able to be easily knocked over.

9.3.3 Café furniture

- a) Public street furniture is to remain available for use by the general public. Use of Council's street furniture for the exclusive use of café patrons or placement of tableware, tablecloths or umbrellas on or above a Council owned table is not permitted.
- b) For safety reasons, barrier screens or other suitable barriers will need to be provided where any tables and chairs are proposed kerbside. The arrangement of barriers will depend on the site specific traffic and footpath conditions. Where traffic speeds are higher than 40km/h or where the footpath is adjacent to reverse parking spaces, café furniture must be suitably protected from vehicles and Council or the RMS may require specific barrier types.
- c) Café chairs placed with their backs to the walkway zone must have sufficient clearance to ensure that when they are pulled out they will not obstruct the minimum 1.8m wide walkway zone.
- d) It is important that predictable pathways be provided for people who are blind or have low vision. Café furniture must not be moved into the walkway zone at any time, including during wet weather. Any café furniture placed along the building line should have a solid base or be protected by a structure with a solid base and must be placed in the same position every day to ensure a predictable pathway is maintained.
- e) Café furniture must be durable, stable and high quality in appearance.
- f) A separate cash register is not permitted on the footpath, nor may food or drink be prepared, cooked or heated in the Trading Zone unless specific approval is granted.
- g) Any outdoor café that proposes to operate outside of daylight hours is required to provide lighting to the Council's satisfaction, to ensure the safety and amenity of patrons and the general public. Operation of the outdoor café/restaurant must be in accordance with the approved hours of operation for the food and drink premises.

9.3.4 Ancillary Items (umbrellas, heaters, planter boxes, screens/windbreaks)

- a) In general, an approval will not be issued to allow ancillary items unless café furniture has also been approved. In order to place any such items on the footpath (even where permission has been granted for café furniture), they must be shown on the endorsed plan under the approval.
- b) All ancillary items must be removed from the footpath during periods of high winds and at the close of each business day.
- c) Portable outdoor gas heaters must be erected on stable, level ground and kept clear from overhead coverings including awnings, shade sails, umbrellas and other combustible materials that can be ignited by radiant heat. Portable outdoor gas heaters must comply with *Australian Standard AS 1596*, be certified by the Australian Gas Association and installed according to the specifications of the manufacturer.
- d) Umbrellas must be a minimum (at the lowest point) of 2.0 metres high above the level of the footpath, of robust design, secured at all times, and easily removable.
- e) Planter boxes must provide a positive contribution to the visual amenity of the street and be maintained with healthy plants or else permission will be revoked and the boxes required to be removed. Planter boxes must be kept free from cigarette butts and other rubbish.
- f) Temporary canvas/barrier screens must be placed so that they are stable and secured or weighted so they will not be moved by patrons or weather conditions and shall not exceed a height of 1.2 metres above the footpath.
- g) Signage on barrier screens and umbrellas is permitted provided the name or logo of a business does not cover more than 33% of the total surface area and commercial advertising for a product sold at the business does not cover more than 20% of the total surface area of the item.

9.3.5 Temporary community street stalls

- a) Community street stalls are temporary charitable stalls run by not-for-profit organisations, but do not include those activities associated with market days or special events which are covered by other policies and may require separate development approval.
- b) Not-for-profit organisations may apply to operate a temporary street stall in designated areas on designated days. These designations are as follows (or in alternate locations as authorised by Council for special circumstances):

TOWN	DAY	LOCATION (outside of)
Bellingen	Friday & Saturday	IGA & Bellingen Newsagent
Dorrigo	Wednesday & Friday	Hickory Street (Mural)
Urunga	Thursday & Saturday	Michelle Harding Lawyers; Urunga Physiotherapy & Sports Injury Clinic; Bananacoast Credit Union

- c) Each organisation is restricted to three (3) street stalls per year.
- d) Only one street stall is permitted on any of the above days for each town.
- e) Street stalls which involve the sale of food must comply with relevant food safety legislation and policies.

- f) An authority to fundraise may be required and can be obtained from the NSW Fair Trading. The running of community lotteries or competitions may require a competition permit from the NSW Office of Liquor Gaming and Racing.
- g) Priority will be shown to local and regional organisations wishing to host a temporary community street stall and hosting of stalls for out-of-area organisations (e.g. international organisations) can be refused at the discretion of Council.
- h) Political parties are not permitted to host a community street stall on Council's footpath.

9.4 Management Requirements for Footpath Activities

9.4.1 Conduct of Patrons – Outdoor Dining

- a) The licensee is responsible for the conduct of patrons at tables and chairs in the outdoor seating area and must ensure that patrons do not move tables and chairs into the walkway or kerb buffer areas or allow pets, prams, bicycles or any other personal items to obstruct the walkway or kerbside zones.

9.4.2 Cleanliness and Litter Control

- a) Each approval holder is responsible for maintaining the area within and around the Trading Zone in a clean and safe condition.
- b) Smoking will not be permitted at any outdoor table or seat approved under this policy.
- c) Items and structures on the footpath must only be placed on the footpath during the operating hours of the business.
- d) The use of disposable tableware (plates/bowls, plastic straws, cutlery and containers) in outdoor cafes (other than for takeaways or special events) is strongly discouraged.

9.4.3 Alcohol, Noise and Entertainment

- a) Prior to the service or consumption of alcohol within the Trading Zone, an applicant must obtain and provide Council with a copy of a liquor licence that includes the relevant part of the footpath as part of the licensed area. Many of Council's footpaths are alcohol-free zones therefore; the licensed area must be delineated in some way so patrons are notified that they cannot take alcohol beyond the licensed area.
- b) No outdoor speakers, sound amplification equipment or jukeboxes are permitted on any footpath, except with the specific approval of Council. No live entertainment is permitted to be associated with a commercial footpath activity without the written permission of Council (excluding busking activities).