

9.5 FOOTPATH TRADING ZONE POLICY

Date Adopted	Next Review	Officer Responsible
1 July 2015	1 November 2016	Strategy Development Manager, District Revitalisation

Policy purpose:

This footpath trading policy has been developed to provide a framework for the sustainable use and management of Rotorua’s inner city footpath trading areas. It sets out conditions that apply for using a footpath for outdoor dining or trading goods and where necessary how to apply for a permit.

Rotorua Lakes Council aims to regulate all commercial activity on the footpath and provide information on the following:

1. The part of the footpath that may be used for footpath trading of goods and services provided by the business fronting the footpath space.
2. Permit requirements for footpath trading in specific areas.
3. General requirements for street cleaning, safety, public infrastructure, work by service authorities, special events, and emergencies.
4. Administration of the footpath trading policy including how to apply for a permit where necessary, public liability insurance, screens and planter boxes, transitional and enforcement arrangements.
5. Some specific areas, due to their special nature, will require a permit and a fee to be paid.

The council wants to ensure all members of the community can move safely along our footpaths, support the growth of local business and enhance the streetscape through vibrant activity.

Policy:

1. INTRODUCTION

1.1 Background

Street trading has become a popular part of the shopping culture in Rotorua. Chairs and tables, umbrella, signs and bins of displayed goods are familiar sights on main shopping footpaths, adding to the appeal and character of the city centre precinct. Council has a strong commitment to the continued development of the inner city as the 'heart' of the city through implementation of the Inner City Revitalisation Strategy.

Pedestrians, especially those with disabilities, need to be able to move safely along footpaths, free of obstruction and potential hazards. The footpath trading policy is designed to enhance the inner city, and support the vibrancy of the area while promoting activity that will improve safety.

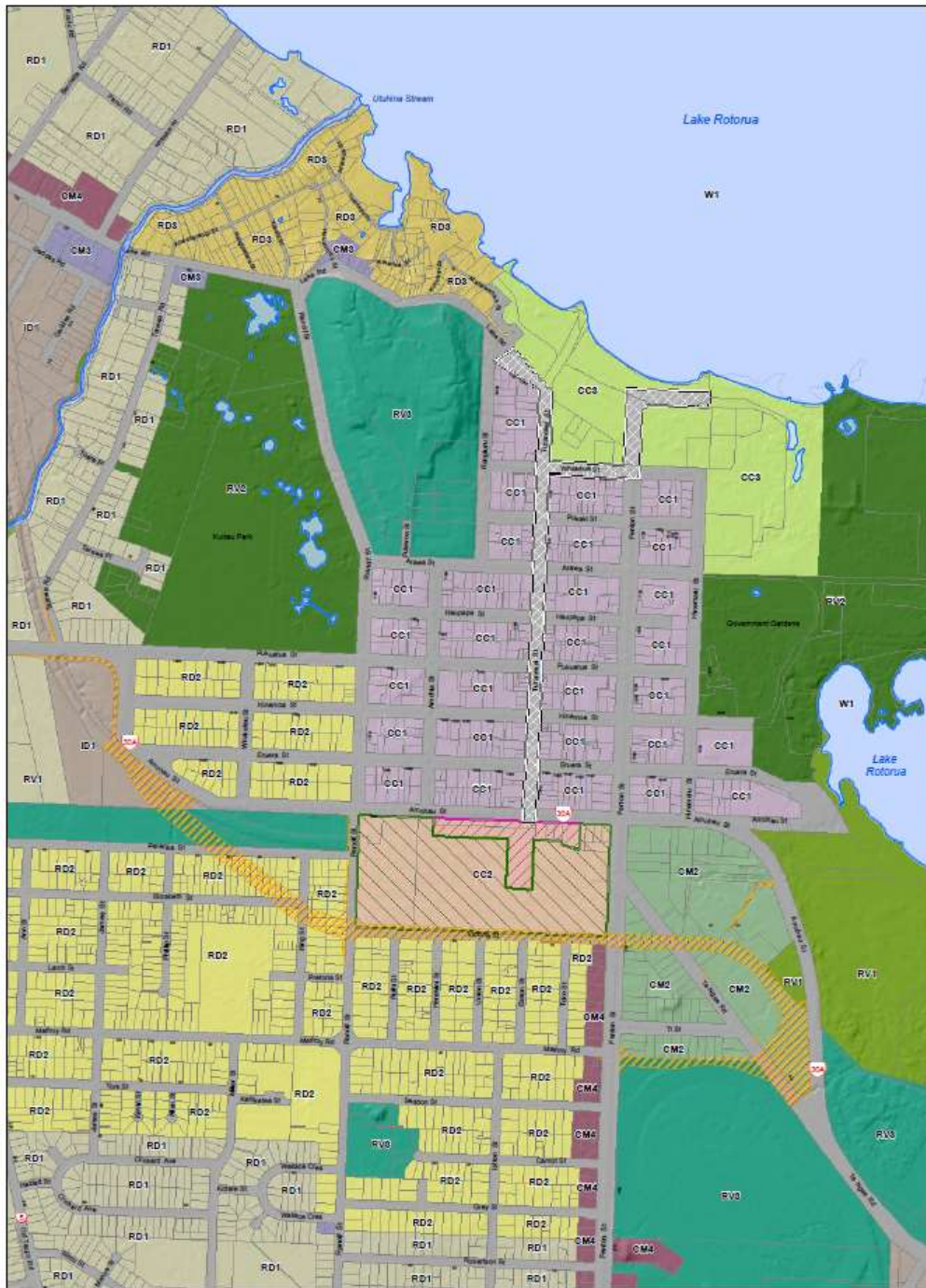
1.2 Objectives

- To maintain clear safe access for pedestrians of all abilities and for local business activities.
- To encourage footpath trading that contributes to the vibrancy of commercial areas within the inner city.
- To provide clarity for traders about appropriate use of local footpaths.
- To support the long term viability and sustainability of retail strips.
- To enhance the safety of the inner city through increased activity.
- To prevent a proliferation of footpath traders in areas where it is not suitable or unsafe for trading

1.3 Scope

The footpath trading policy applies to the use of all footpaths within the Rotorua city centre. (City centre areas 1 to 3 as defined by the District Plan).

Please note that State Highway 30A / Amohau Street runs through the City Centre. The Amohau footpath is currently vested in the Crown as part of the designation for which the NZ Transport Agency is the Requiring Authority. Applications for Footpath Trading Zone permit for this street will require NZTA consideration.



Proposed Rotorua District Plan 2012

800 Meters
600
400
200
0

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- Area A
- Area B
- Pedestrian Focused Streets
- Roads
- City Centre 1
- City Centre 2
- City Centre 3
- Commercial 2
- Commercial 3
- Commercial 4
- Industrial 1
- Reserve 1
- Reserve 2
- Reserve 3
- Residential 1
- Residential 2
- Residential 3
- Water 1
- Victoria Street Arterial



District Plan City Centre Zones - 204

2. **GENERAL CONDITIONS AND GUIDELINES**

2.1 **Footpath zones**

Three zones have been introduced to the footpath area in the inner city to ensure that sustainable footpath management standards are met. The need to consistently maintain a clear and unobstructed footpath has influenced the creation of the following three zones.

2.1.1 The pedestrian zone

Pedestrian zone requirements

- a minimum clearway of 2m consistently along footpath
- maintain access to building entrances and street furniture
- maintain access to parking (including meters or pay & display units)

2.1.2 The trading zone

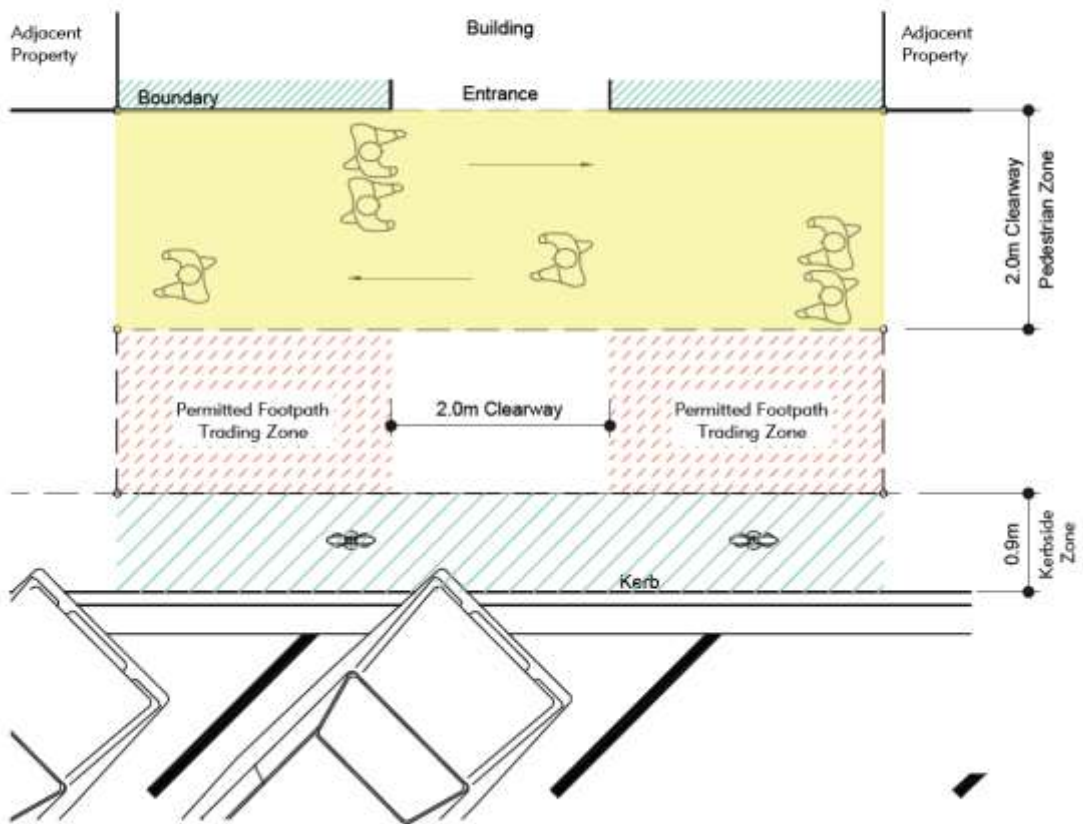
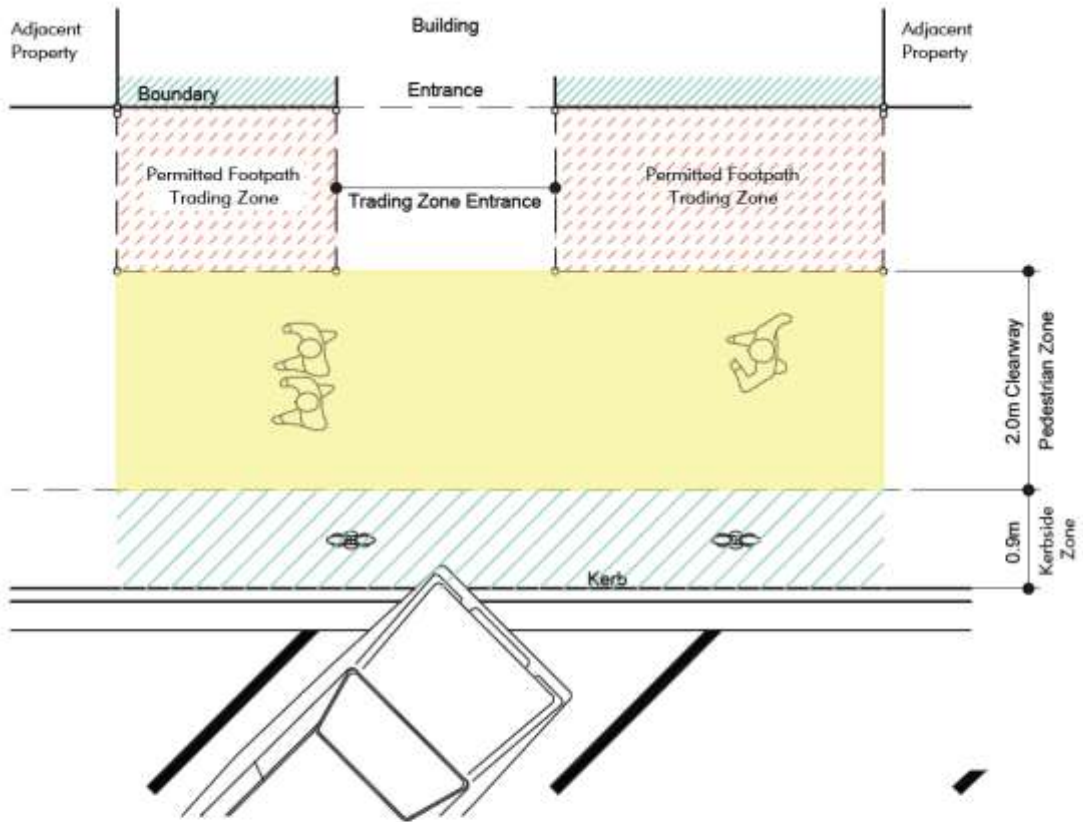
Trading zone requirements

- length defined by building property boundary along footpath frontage
- maintain entrance(s) to building

2.1.3 The kerbside zone

Kerbside Zone requirements

- minimum of 0.9m from curb
- maintain access to vehicle parking (including meters or pay & display units) and pedestrian zone from street



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2.2 Street sign boards and display items

Sign boards and display items are permitted on streets in the central business district where they meet the following conditions:

- Premises on corner sites, or with a frontage length exceeding 27 metres, shall be permitted a maximum of two (2) signs.
- Sign boards and displays shall be positioned in such a way so as not to obstruct the free flow of pedestrian traffic along the footpath or doorways (pedestrian zone).
- The maximum size of sign boards or displays shall be no greater than 1 metre in height x 600 mm in width and a 600 mm base spread, except that in the case of displays some deviation from these size limitations may be allowed at the discretion of Council.
- Any material displayed or the advertising matter on any sign board shall relate only to the business carried on in the premises.
- All displays and sign boards shall be removed from the pavement each day after the expiry of normal trading hours of the business concerned.
- All sign boards and displays must be maintained to a standard acceptable to the council.

2.3 Public liability

The business owner must hold a certificate of currency for a minimum of one million dollars (\$1,000,000) Public Liability Insurance, specifically covering the area occupied on the footpath and indemnifying the Rotorua Lakes Council against all claims in a form and with an insurer, to the satisfaction of Rotorua Lakes Council.

(see Appendix B)

2.4 Letter of consent

Where a business owner seeks to occupy a footpath trading zone immediately adjacent to their premises, written permission from the occupier (if any) and owner of adjacent buildings must be attained and available on request from Rotorua Lakes Council.

3. GENERAL REQUIREMENTS

It is the responsibility of the business owner and their employees or agents to comply with these terms and conditions at all times.

3.1 General

- Businesses must have a street frontage in the inner city and cannot be used by a third-party.
- The business owner must at all times comply with the requirements and obligations described in the Rotorua Lakes Council Footpath Trading Zone Policy and as amended from time to time. Any breach of a requirement or obligation as described constitutes a breach of this policy.
- The business owner will only be permitted to trade in the goods and services directly related to the business activities carried out on the primary premises of the business owner.
- The business owner must not offer to sell goods, solicit, try to attract trade or business, tout or spruik on public space outside of their permitted trading zone area.
- Trading zone hours must be directly related to permitted business operating hours.
- Trading Zone must be cleared at the conclusion of normal trading hours.

3.2 Safety

The business owner is at all times responsible for the good order, conduct and behaviour of patrons using the permitted area.

3.3 Street cleaning

The business owner must ensure that the area and surrounding pathway and locality is kept free from rubbish and spillages, and that waste is placed in proper containers when cleaning. The business owner must dispose of rubbish/litter in their own bins.

The business owner is not permitted to dispose of rubbish/litter in Council's street litter bins or sweep or wash cigarette butts and litter from the outdoor seating area onto the footpath, street kerb and channel, stormwater sump or street. Business owners are required to continually monitor and maintain the outdoor area to the Council's satisfaction.

3.4 Alfresco dining

Continual, vigilant cleaning of the approved seating area is required throughout opening hours ensuring that when customers vacate the area, tables and surrounds are cleared and cleaned immediately.

3.5 Trading outdoor furniture specifications

All outdoor furniture are to be durable, waterproof and weather resistant, designed for outdoor use, well maintained and comply with NZS 4121.

Business owners are required to continually monitor and maintain the outdoor seating area to the Council's satisfaction.

This includes:

- ensuring that outdoor furniture and patrons stay within the trading zone area.
- maintaining outdoor furniture to a high aesthetic standard.
- providing ashtrays for tables if smoking is allowed in the area.
- ensuring that all street furniture, including gas heaters, are free standing (Council does not permit any street furniture that penetrates or damages the surface of council's footpaths).
- all street furniture being removed in extreme weather conditions, especially high wind, so as not to cause a hazard.

The following may be used as a guide for maintaining a high standard of presentation for all footpath dining furniture and fittings:

Maintenance problem	Action required by permit holder
Screens damaged or broken, torn etc	Remove or repair within 24 hours
Graffiti	Remove immediately or before 7.30am the next day
Furniture in disrepair or broken	Remove or repair within 24 hours
Furniture does not meet permit requirements	Remove and replace with Council approved furniture
Furniture and fittings in an unclean condition	Remove or clean within 24 hours
Planter boxes damaged or plants dead or wilted	Remove, repair or replace within 7 days

Maintenance problem	Action required by permit holder
Umbrellas damaged or canvas torn	Remove and replace within 24 hours
Footpath area within permitted area soiled or unclean	Clean immediately

3.6 **Special events / Council maintenance**

There may from time to time be interruptions to the use of the footpath trading zone as a result of road works, maintenance or other activities on nearby roads. Council may require all furniture, planters and other items to be removed at any time (including during permitted hours of use) to allow road works or other activities to occur. Council will not be liable for any loss of business or other costs caused by any interruption to the business owner's use of the area, regardless of the cause of the interruption or its duration, including emergencies.

3.7 **Compliance with the District Plan and other council policies**

It is the responsibility of the business owner to comply with the District Plan, all council policies and all other legal requirements relevant to the operation of the footpath trading zone, and to ensure that employees and agents also comply. The business owner must, at its own expense, comply with all other legal requirements regarding the area and all activities upon it, and obtain and keep in force all necessary licences, permits and authorities which may be required for use of the permitted area for footpath trading/alfresco type dining.

- a) Liquor Licence - The business owner must not allow the consumption of liquor within the trading zone unless the business owner holds a valid liquor licence covering this area.

Business owner should apply separately for the liquor licence (see Sale of Liquor Act 1989 regarding 'definition' of licensed premises). Information can be provided by City Services, see contact page 16.

- b) Provision of additional tables and chairs for premises becomes a compliance matter under the Food Hygiene Regulations 1974 (and Building Act 2004). It may be necessary for the business to apply for an exemption from the Food Hygiene Regulations 1974 with registration of New Zealand Food Safety Authority Template Food Safety Programme.

4. **FEE AND PERMITS FOR EAT STREET PREMISES**

As there are costs associated with the ongoing maintenance and renewal as well as operation of the Eat Street footpath and structure, a permit will be required for those business owners within the street wanting to trade on the footpath and a fee incurred.

4.1 **Permit specific requirements**

Rotorua District Council requires the following information from the applicant when submitting an application for a permit:

4.2 **Application form**

Fully completed application form including contact details and signatures (refer Appendix A) including the public liability certificate.

4.3 Site plan

Showing existing conditions: a plan at scale 1:100 accurately showing existing conditions adjacent to the premises, including:

- The width of the building frontage and the footpath from the outside face of the kerb to the building line;
- The location of building lines; and
- Accurate location and type of abutting properties, existing trees, litter bins, light poles, signs, existing street furniture, pits, fire hydrants, parking meters or other parking control devices, telephone/ post boxes, bicycle stands, car parking and other features.

(See Appendix D for example.)

4.4 Site layout plan

- Showing proposed footpath trading zone layout: a plan at scale 1:100 accurately showing the area of the proposed layout of all proposed screens, tables, chairs, umbrellas etc.
- All dimensions associated with the zone should be shown including the required clearances from existing infrastructure, such as tree plots, litter bins etc.
- Photograph of the site: clearly showing the proposed trading area relative to buildings and existing features in the footpath.
- Details of furniture: colour photographs and/or detailed architectural drawings of proposed furniture.

4.5 Administration of the permit

The council reserves the right, at its sole discretion, to over-ride factors relating to the principles of this footpath trading zone policy, including pedestrian safety, density and flow requirements. Where all necessary conditions may be met but is still to be declined, officers will endeavour to work with applicants to explore suitable alternatives.

The applicant must comply with the conditions as detailed in these guidelines.

The council may revoke the footpath trading permit at any time if the conditions of the approval (permit) are not being sufficiently met.

Any repeat breach of the permit may result in the immediate suspension or cancellation of the footpath trading zone permit, or the council on the expiry of the current permit may refuse to issue any further permit for a period of at least 12 months.

The restitution of public space is the responsibility of the permit holder.

Within fourteen (14) days, or such further period as agreed in writing by the council, of the expiry, termination or cancellation of this permit, the permit holder must remove all relevant furniture and reinstate the public space to its pre-development condition.

Should the permit holder fail to comply with this condition, the council may carry out the necessary works and the permit holder will be liable to reimburse the council for all expenses incurred in carrying out such works.

The council reserves the right to vary the footpath permit at any time if it is in the public interest to do so, including in response to factors such as changes in pedestrian patterns and central city revitalisation programmes. Reasonable notice will be provided in writing to the permit holder.

Council reserves the right to suspend or cancel the permit if there is a breach of permit conditions. Any one or all of the following procedures may be applied, not necessarily in the order shown:

- Verbal warning issued. Details documented on file.
- Notice to comply issued.
- Specific conditions may be applied to the permit.
- Notice served to terminate permit if permit holder has failed to act after Notice to Comply.
- Permit will be terminated.
- Seizure of all street furniture.

4.6 Permit to occupy only

This permits the right of occupation only for the term of the footpath trading zone permit and has no interest in the area. The legal right to possession and control over the area/land remains vested in Rotorua Lakes Council.

Permits will be given for a 5 year period, upon which reapplication will be required.

4.7 Transfer of business ownership

A Footpath Trading Zone Permit issued by the Rotorua Lakes Council is not transferable.

In the case of business transfer, a new owner / operator must apply for a permit on taking over the business etc. The Rotorua Lakes Council may offer a new permit under the same conditions and terms as the previous permit.

4.8 Fees associated with the policy

Council has engaged a suitably qualified and registered valuation specialist to review options for the application of charges associated with this policy. The review included an assessment of other models in place around NZ, information from other local authorities and discussions with independent consultant valuation companies. This process identified a number of diverging methods adopted by local authorities with the conclusion that, while it is common practice to charge for the use of the footpath zones, there does not appear to be a common single approach which suits all circumstances.

4.9 Approach for applying charges

Following consideration of all options the following approach to charging for use of the footpath zone for trading will be applied. For the area of footpath occupied a fee based on the averaged, tri-annual updated rating value, as assessed by Council's valuation contractor will be applied.

4.10 Valuation methodology

To ensure robustness and equity in the valuation methodology the following process has been applied.

In the process of analysing 'averaged' land value figures from the rating roll a check has been completed around the relationship between recorded pedestrian count numbers and the 'averaged' land values (gathered on an annual basis by PINZ) to ensure no obvious inconsistent results. This process identified that for the more preferred pedestrian locations analysed 'averaged' land values provide a reasonably fair comparison while in the less popular pedestrian locations there is some inconsistency in 'averaged' land values. It has been necessary in those circumstances to make some adjustments to the \$/pm² rates to reflect a more consistency between locations.

Once ‘averaged’ land value rates per square metre have been assessed in their appropriate inner city block groupings, the next step in the process is to determine a fair rental.

The policy is to transpose the ‘averaged’ land value rate per square metre from sites adjoining the footpath and apply to that amount a rental return, not dissimilar to the process used in determining annual rentals under ground lease arrangements.

In Rotorua ground lease rentals have generally been settled in the range of 5.75% to 8% of their equivalent land value. While there are variations to this, by and large the returns fall within these parameters.

Before applying adjustments to these ground rental return rates on footpath values, it is necessary to compare the differing terms and conditions of occupancy applicable to the ground lease and the footpath permit.

Briefly, these may be summarised as:

Ground Lease	Footpath Permit
Lessee enjoys more or less exclusive use of the leased area	Non exclusive use – shared with pedestrians
24 hr occupancy	Restricted hours of use
Generally an ability to develop permanent structural improvements on the leased site	No ability to create permanent improvements
Responsible for outgoings levied against the site (e.g. local authority rates)	No outgoings charged other than possibly an initial administration set-up fee
Lessee has a saleable asset for the remaining term of lease	No saleable value
Ground leases obligate tenant to long term commitments	Permit is relatively short-term and readily terminated, with limited obligations
	Occupier has an ability to achieve a return from footpath area with minimal capital investment only (e.g. advertising hoardings/tables and chairs)

Having regard to these differences between ground leases and footpath permits the policy sets a rental equivalent to 8% per annum of the ‘averaged’ land value rate applicable to the area occupied, fairly reflecting the ongoing annual rental charge.

4.11 Area exempt from charges

One key purpose of this policy is to encourage footpath trading that contributes to the vibrancy of commercial areas within the inner city. All inner city properties except for the Eat Street premises are exempt from charges. For the Eat Street premises, the policy will allow for a tenant to utilise 1m depth along the length of their tenancy frontage, free of charge. The use of this area will need still need to comply with all other terms of this policy.

By way of example and assuming compliance with other terms of this policy, if a tenant wished to use an area of 3m in depth along the frontage of their tenancy which was 20m in frontage, then the calculation would be:

Tenancy frontage	Depth of requirement	Total area required	Less area exempt of charges	Total area charged
20m	3m	60m ²	1*20 = 20m ²	40m ²

Appendices

Appendix A – Application for a footpath trading zone permit

Please tick appropriate box

New application
 Amend existing permit
 Change of owner/proprietor

Part 1: Application details

Mr / Mrs / Miss / Ms	Given name:	Surname:
Company name (if applicable):		
Trading name:		Hours of operation:
Property street address:		Mailing address:
Daytime telephone number/s:		Emergency/after hours telephone:

Part 2: Description of proposed operation

Please tick the appropriate box/es for the furniture you propose to include. (Please attach details overleaf). All street furniture to meet Council's approval.

<input type="checkbox"/> Tables (number of)	<input type="checkbox"/> Chairs (number of)
<input type="checkbox"/> Screens	<input type="checkbox"/> Planted boxes
<input type="checkbox"/> Umbrellas	<input type="checkbox"/> Gas heaters (refer Council's policy)
<input type="checkbox"/> Merchandise Stands	<input type="checkbox"/> Other

Other:

.....

.....

Part 3: Other approvals / Information

Are the premises registered? Yes No

Have all building and resource consent approvals been obtained? Yes No

Liquor licence required? Yes No

Number of Toilet Bowls: Female Male Unisex Disabled

Urinal

(each toilet can only be counted once - urinals must be separately accessible from toilet bowls to be counted)

Maximum Patron capacity: (for dining applications) Inside Outside

Part 4: Letter of consent from adjoining premises

Where an applicant seeks to occupy a public place immediately adjacent to the premises, consent from the occupier and owner of the adjacent building is required. Should the owner and/or occupier wish to withhold their consent, Council must be notified in writing.

I, _____ Owner
(Print name) (Signature)

and;

(Print name) (Signature) Occupier

of _____
(Adjoining premises address)

Contact Details;

Email: _____

Phone: _____

have been asked to consent to the use of the footpath in front of these premises for the purpose of Footpath trading by; _____.

I understand that this unconditional consent will be valid for the duration of the permit if granted by the Rotorua District Council.

Although consent cannot be withdrawn during the permit period, unless action has been taken by the Rotorua District Council for breach of permit conditions by the permit holder, the footpath trading zone permit holder must obtain consent from me every 12 months.

I hereby give ongoing consent to:

_____ at _____
(Trading name) (Premises address)

Part 5: Application requirements

<input type="checkbox"/> Details of furniture Colour photographs and/or detailed architectural drawings of chairs, tables, screens, merchandising stands, umbrellas, planter boxes and other furniture proposed for the trading zone area	<input type="checkbox"/> Details of advertising / signage Colour photograph and/or a detailed graphic design drawing of the proposed signage and a clear indication of size and location
<input type="checkbox"/>	<input type="checkbox"/> Gas heaters Full NZ Standard and ratings of heaters to be used (if any)
<input type="checkbox"/> Site plan of existing conditions A plan at scale 1:100 accurately showing the existing conditions adjacent to the proposed zone including the: width of the building; location of building lines, existing trees, light poles, street furniture, pits, fire hydrants and other features. any dimensions affecting the layout of the zone are to be indicated on the plan, including width of the footpath from the outside face of kerb to the building line, and the length of the building frontage associated with the premises. Please clearly indicate on the plan the side boundary and the address of the adjoining properties on each side of your premises in relation to your proposed zone.	<input type="checkbox"/> Site plan of proposed kerbside layout A plan at scale 1:100 accurately showing the area of the proposed layout including: Length, height and width of all proposed furniture as placed within the trading zone. Please clearly show on the plan, with dimensions, if any part of the trading zone is to be sited in front of the adjoining premises.
<input type="checkbox"/> Photographs of the site Clearly show the proposed café area relative to buildings and other existing features in the footpath	
See Appendix D for examples of sites	

Part 6: Declaration

I/We would like to apply for a footpath trading zone permit and agree to abide by the conditions of the Rotorua District Council Footpath Trading Zone Policy, and I/we hereby consent to the disclosure of any information and publication of any document or part of any document as may be required by the Rotorua District Council with respect to my/our application to operate a footpath trading zone permit within the Rotorua District.

I/We declare that all the above details are true and correct.

If granted a trading zone permit I/we agree to comply with all terms and conditions of the permit.

(Signature/s of registered proprietor/s)

Part 7: Fee

An annual fee and application for occupying a trading zone is required. Fees are nominal and based on the land value of the applicant’s precinct and reviewed every three years by the Council.

The Trading Zone permit application can provide for signage within the application; however, if an applicant is only applying for a sign board/pavement display sign, then there is a separate application form available.

Fees are based on a square metre rate;

Tenancy frontage	Depth of requirement	Total Area required	Less area exempt of charges	Total Area charged

Block reference; _____ Block Fee Rate: _____ (per m²)

Block Valuation		Total area		Annual fee
	x 8% x		=	

See Appendix E for CBD calculated frontage valuations

Cash payments can only be made at the Rotorua Lakes Council Civic Centre, 1061 Haupapa Street, Rotorua.

Cheques are to be made payable to ‘Rotorua Lakes Council’.

Enquiries: ph (07) 351 8326 – Inner City Operations

Appendix B – Certificate of currency (public liability insurance)

The following is an example of a certificate of currency:

SAMPLE ONLY	
CERTIFICATE OF CURRENCY	
DETAILS OF INSURANCE BROKERS	Contact name/s Address Phone numbers etc
NAME OF INSURED	Business location
DETAILS OF CLASS OF INSURANCE	Public Liability Insurance. Covering all sums that the insured is legally liable to pay in connection with their business or from products manufactured Limit \$1,000,000 per claim.
DETAILS OF INSURANCE UNDERWRITER	Contact name/s Address Phone numbers etc
PERIOD OF INSURANCE	Date/s
POLICY NUMBER
DATE PREMIUM PAID	Date/s
DETAILS OF OTHER INTERESTED PARTIES	The interest of the District of Rotorua has been noted on this policy
DETAILS OF POLICY EXCLUSIONS
DETAILS OF POLICY DEDUCTIBLE/S
DETAILS OF SPECIAL CONDITIONS
DETAILS DISCLOSED TO UNDERWRITERS IN RELATION TO THE INTEREST OF THE ROTORUA DISTRICT	Indemnity and cross liability clauses
CLAIMS PROCEDURES	Contact name/s Claim form/s

Appendix C – Footpath trading zone permit notice example

ROTORUA DISTRICT COUNCIL

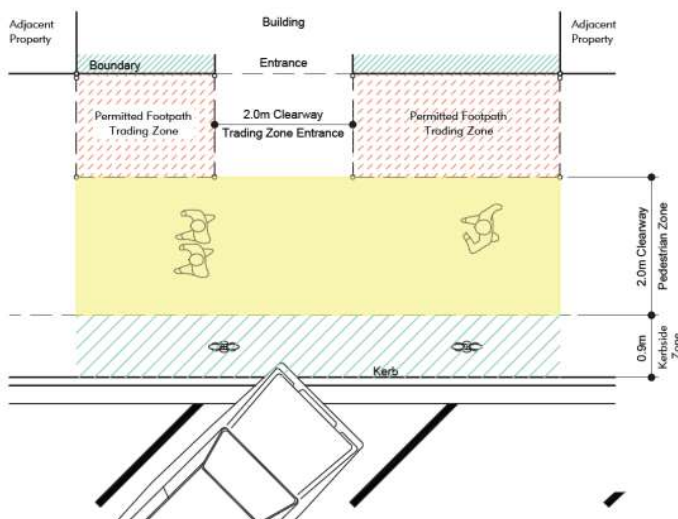
PERMIT FOR FOOTPATH TRADING ZONE

Applicant's name: Mr and Mrs Smith

Applicant's premises name and address: Smithy's Book Store
1 Tutanekai Street
Rotorua

Permission is granted to use the footpath area as follows:

Area and location: Outside above premises, see plan below for permitted area



Date Permit Issues: 1 July 2008

Expiry date of permit: 30 June 2009

Council records show that under the Sale of Liquor Act 1993:

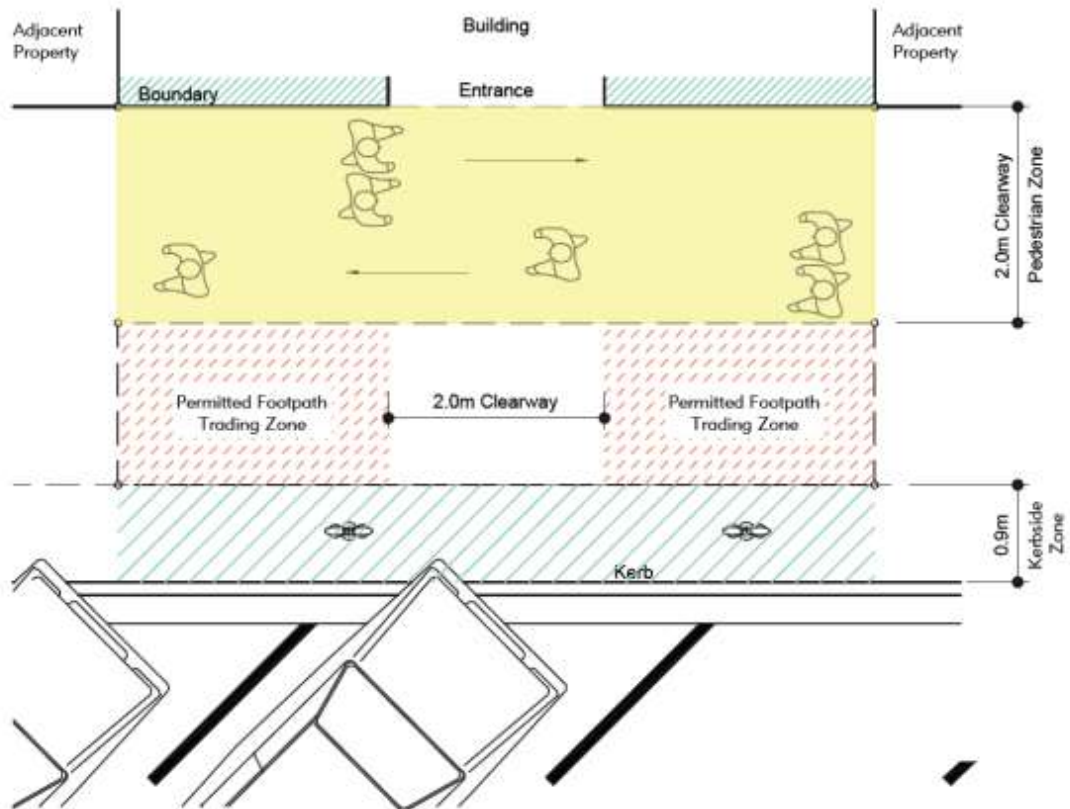
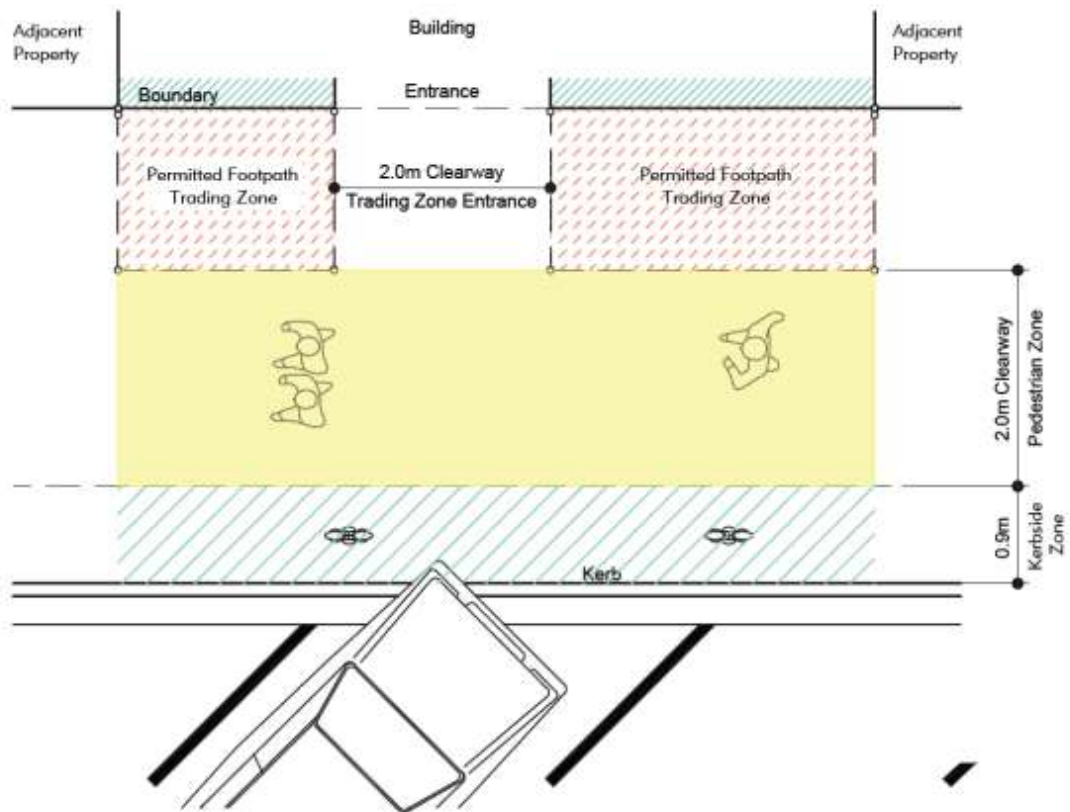
(strike through not applicable)

- A. ~~The area is licensed and liquor is permitted to be consumed in the permitted area during the permitted hours of use – see license displayed~~
B. The area is NOT licensed.

Conditions:

1. This permit is to be displayed at all times.
2. Tables, chairs and other furniture may be located only within the area marked on the map attached. All other areas to be kept clear at all times.

Appendix D – Footpath trading furniture layout examples



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Appendix E – ‘Averaged’ street frontage land value rates map.

