**The Highland Council**

**Transport, Environment and Community Services**

**Consultation on Managing Obstructions within the Adopted Road**

**Background**

Obstructions within the road, which includes the footway and verge, can occur for a variety of reasons, some of which may be acceptable whilst others are not. In some instances there can be a conflict between those using the road as pedestrians, cyclists or motorists and those whose wish to use the road space for advertising or to carry out a trade or business.

Objects deliberately placed within the road boundary, usually on the verge or footway, normally fall within the following categories.

* Advertising signs, either in the form of “A” boards, otherwise known as sandwich boards, or on posts driven into grass verges.
* Stones placed on verges to deter vehicles from over-running the verges.
* The display of goods for sale, usually directly outside a shop but occasionally on verges outside farms.
* The display of high level banners or bunting.
* Street Cafes.
* Street Markets.

It should be noted that the placing of any of the above on or over the road is an offence under the Roads (Scotland) Act 1984 (the Act) unless written permission is obtained from the Roads Authority.

Highland Council has a number of policies currently in place which deal with different aspects of obstructions on the road, some of which are applicable Highland-wide and some of which only apply in Inverness. There is at present no policy on advertising signs on verges.

Disabled persons with mobility issues, those with restricted vision and pedestrians with pushchairs are particularly affected by obstructions and a balance has to be found which caters for both the needs of the travelling public and the promotion of commercial and community interests for the economic benefit of the area.

There is also the issue of “sign clutter” with the use of multiple signs, often of different and competing designs, and this can have a detrimental impact on both the built environment and the natural landscape of the area.

With regard to the above this document seeks to consult on the management of four causes of obstructions on the road and footway. These are:-

* Signs on footways and footpaths.
* Signs in roadside verges.
* Display of goods for sale.
* Street Cafes.

**Previous Reports & Policies**

In the past various reports and policies have been approved covering aspects of the management of obstructions in the road. These include:-

* 30th September 1999, the Roads and Transport Committee approved the policy on “Roadside Hazards caused by Adjacent Land Owners/Occupiers”. This concerned the placement of large stones or other objects in the roadside verge. There is no intention to modify this policy
* 8th June 2009, the Inverness City Committee noted a report from the Director of Planning and Development on the proposed policy for Street Cafes, Street Markets and Banners within Inverness City Centre which would require approval by the Planning and Transport, Environmental and Community Services (TECs) Committees.
* 19th November 2009 the TECs Committee approved the introduction of fees for the approval of Street Markets, Street Cafes and Banners, these fees to be reviewed annually in line with the Retail Price Index (RPI).
* 4th October 2010 the Inverness City Committee considered a report from the Director of TECs on the proposed policy for Street Scene Control within Inverness City Centre. At this meeting it was agreed to pilot the proposed guidance for the Display of Wares on Public Footpaths (Footways) in Inverness City Centre. It was also agreed the guidance be placed before the TECs Committee to be considered for future implementation throughout the Highland area.

It is now appropriate to consider applying a Highland-wide policy for the control of obstruction of the road by advertising signs. The policies governing Street Markets, Street Cafes and Banners and the fees associated with these, as well as the policy covering obstruction by marker stones on verges are already in place for use across the Highland area. However, further guidance has subsequently been developed in these areas for Inverness and it is now considered appropriate to extend the application of this guidance throughout the Highland area. For the avoidance of doubt, it is considered that there should be a single policy covering the placement of any approved obstruction within the adopted road boundary which will apply to the whole of the Highland area.

Currently there is only a mechanism for dealing with the approval of advertising signage and the placement of commercial goods within the adopted road boundary within Inverness City. As there has been an increase in the placement of uncontrolled advertising signage the status quo cannot be allowed to continue and a Highland wide policy is now required to provide clear guidance to businesses and the public. The Council is committed to supporting businesses and commerce within the Highland area wherever practicable.

**Legislative Background**

The Highland Council, as Roads Authority under the terms of the Act, has powers of control over the adopted road. The adopted road will generally include the carriageway, adjacent footway and verges, and may also include remote footpaths. There are some locations where the rear section of a footway will not be included within the adoption and in this instance the legislation does not apply unless the land owner has provided the Roads Authority with written consent. It should be noted that ownership of the solum of the road does not necessarily rest with the Council and this does not affect the Council’s powers under the terms of the Act. Obstructions placed within the adopted road can physically impede vehicular and pedestrian traffic and may interfere with a road user’s view thereby constituting a safety hazard.

Three sections of the Act specifically cover the placement of obstructions within the adopted road. These are:-

* Section 59 states that it is an offence to place anything within the adopted road boundary that would cause an obstruction to pedestrians or vehicles without the written consent of the Roads Authority.
* Section 87 permits the Roads Authority to remove unapproved structures placed within the adopted road; a structure includes any object capable of causing an obstruction and may be mounted on wheels.
* Section 129 states that it is an offence to display any goods either on or over a footway or footpath other than newspapers, street traders goods traded under a street traders licence, goods for sale in connection with a market traders licence or any activity for which a certificate under the 1871 Pedlars Act has been granted.

In addition there exists a scheme for tourist signs, known as “Thistle Signs”. These are brown background signs which conform to the Traffic Signs and General Directions legislation and provide a way for tourist businesses to erect legitimate and recognisable signage within the road boundary. Tourist related businesses are encouraged to use this scheme in preference to unauthorised signs.

**Options for Advertising Signs**

The preferred method of advertising should always be the use of fascia or projecting signs fixed to buildings above head height and for rural areas the use of approved signage out with the adopted road boundary. Such signage is controlled through the Planning Permission process. There are also options in pedestrian areas for the erection of a single information/direction board containing a range of information about the businesses in the vicinity.

As signs and displays placed within the adopted footway can present a danger for pedestrians; especially the blind and partially sighted, those with disabilities, wheelchair users and those with prams and pushchairs, it is necessary to ensure that they are located so as to present no or minimal risk to the public. Also the uncontrolled proliferation of signage and other obstructions, within both town centres and rural area, can have a significant negative impact on the visual environment, especially in tourist area. Therefore the Council requires to have in place a policy to govern the placement of any form of obstruction within the adopted road and the application of any conditions it chooses to impose in relation to such a placement.

There are three options which can be considered:-

1. Maintain the status quo.
2. Zero tolerance of all obstructions.
3. Authorise certain types of obstructions in controlled circumstances and subject to defined conditions.

From the perspective of road maintenance operations the preferred option would be Option B which provides a clear and simple position. However, in the present economic climate it is recognised that businesses need to advertise in order to maximise their custom and “A” frame signs serve a useful purpose in this regard, and this would tend towards the adoption of Option C.

**Draft Proposals for Consultation**

The proposals for mechanisms to permit certain obstructions in a controlled manner are set out in Appendices A, B, C and D.

* Appendix A refers to signs on footways and footpaths.
* Appendix B refers to signs on verges.
* Appendix C refers to the display of goods for sale.
* Appendix D refers to street cafes.

Appendices C and D are based on the current Notes for Guidance previously adopted by the Council.

It is not currently proposed to charge a fee for permissions for signs, however if the volume of applications proves to be excessive it may be necessary to consider this in future. Fees for street markets and cafes have already been set and no change is proposed. For information the current charge for a street café is a one off administration fee of £120 and an annual fee of £17 per square metre of occupation.

**Appendix A**

**DRAFT POLICY FOR SIGNS (AND OBSTRUCTIONS) ON FOOTWAYS AND FOOTPATHS**

Obstructions on footways can cause great difficulty for some sections of our
communities, especially the blind and partially sighted, those with disabilities, wheelchair users and those with prams and pushchairs.

Any obstruction placed on the footway without written authorisation from the Roads Authority constitutes an offence. Authorisation will not be given for any obstruction which, in the opinion of the Roads Authority, creates or has the potential to create a hazard.

Notwithstanding the above, on the basis that such obstructions will be transitory, advertising on public footways by means of “sandwich boards”, “A-frames” etc will be permitted by The Highland Council with prior written approval from the Area Roads and Community Works Managers in accordance with the following conditions:

1. In seeking approval the owner of the sign must indemnify the Council against any third party claims so that the sign owner takes full liability for any damage or personal injury caused by placing the sign in the footway.
**It is recommended that sign owners have adequate indemnity insurance against such claims**.
2. All boards/advertising etc must:
* be placed at the rear of the footway i.e. adjacent to the building line.
* present no hazard to pedestrians or wheelchair users
* have no sharp edges, protruding nails or rotating parts
* be no more than **750mm** wide and **1m** in height
* Be capable of detection by the visually impaired using a stick
* be sufficiently stable to withstand being easily knocked or blown over
* be removed when premises are closed
* not reduce visibility for road users at a junction, access or bend
* not obscure any road sign
* not be fixed to street furniture or railings
* not reduce the remaining available footway width between carriageway and front of display/sign below **1.8m**
* for streets with high pedestrian usage - not reduce the remaining available footway width between carriageway and front of display/sign below 2**.75m**
* for Pedestrianised Areas - **4.5m** clear width must be available for permitted traffic (eg emergency and delivery vehicles) between the fronts of the displays (or cafes) on either side of the road
* Not be contrary to planning, conservation area or listed building policies.
1. Only one such object will be permitted for each business at a premises and must be located within the frontage of the premises or at a location as agreed by the approving officer.
2. Permission will be granted for a period of 12 months, after which a reapplication can be made. All permissions will be subsequently reviewed annually.

All obstructions which do not comply with these conditions will be treated as unauthorised and the owner asked to remove them within 24 hours, unless the signage presents a safety hazard when removal will be immediate. Failure to comply with this request will mean the signs will be dealt with as detailed in the procedures for unauthorised signs in accordance with the Road (Scotland) Act 1984.

The granting of permission under Section 59 of the Act only relates to occupation of the road and applicants will need to ensure that they obtain all other necessary permits and permissions eg planning consent, alcohol licensing etc. The granting of other relevant permits/consents should not be taken as an indication that occupation of the road will be permitted.

**Appendix B
DRAFT POLICY FOR SIGNS IN ROADSIDE VERGES**

1. **COMMUNITY EVENT SIGNAGE**
* Only signs promoting a short duration event (for example, Highland Games) organised by a properly constituted community group or charity will be authorised.
* In seeking approval the owner of the sign must indemnify the Council against any third party claims so that the sign owner takes full liability for any damage or personal injury caused by placing the sign in the footway.
**It is recommended that sign owners have adequate indemnity insurance against such claims**.
* Contact details must be provided on the back of any signage
* Signs and locations to be approved by the Area Roads and Community Works Managers
* Signage for annually recurring events may be approved for 3 years at a time.
* Signage will be permitted up to 7 days prior to an event.
* Signage must be removed within 2 days of an event.
* Large events which would generate high vehicular volumes would be expected to apply for temporary direction signs such as “AA” signing.
* No signs will be permitted to be fixed to any street furniture, including railings and street lighting columns.
* The granting of permission under Section 59 of the Act only relates to occupation of the road and applicants will need to ensure that they obtain all other necessary permits and permissions eg planning consent, alcohol licensing etc. The granting of other relevant permits/consents should not be taken as an indication that occupation of the road will be permitted.
1. **COMMERCIAL SIGNS**

No non prescribed signs shall be permitted. Qualifying businesses should be encouraged to apply for prescribed “Thistle” signage or to apply for planning consent for signs outwith the road boundary.

**Appendix C**

**DRAFT POLICY FOR DISPLAY OF GOODS FOR SALE**

**NOTES FOR GUIDANCE AND CONDITIONS FOR GRANTING OF PERMISSION**

1. **Introduction**

Displays or goods for sale on public footpaths can add vitality, colour, life and interest to the street scene and they can also be good for business.

However, it is also important that they are properly administered and managed to ensure that they meet the high standards expected in the Highlands. They should not obstruct the footway or create a hazard for pedestrians, especially for blind, visually impaired and other disabled people.

The purpose of the following guidelines is to ensure that goods displayed for sale are done so in a safe manner and are attractive additions which enhance the quality of the area.

1. **Legislative Requirements**

Permission to use any part of the adopted road, including the footway, for the display of goods or wares for sale is granted by the issue of a permit by the Highland Council as the Roads Authority under Section 59 of the Roads (Scotland) Act 1984. Any racking, shelving stalls or barriers and associated signage (referred to below as furniture) placed on any part of the adopted road or footway without permission constitute an obstruction and the Council will take enforcement action in such cases.

The granting of permission under Section 59 of the Act only relates to occupation of the road and applicants will need to ensure that they obtain all other necessary permits and permissions eg planning consent, alcohol licensing etc. The granting of other relevant permits/consents should not be taken as an indication that occupation of the road will be permitted.

1. **Access Requirements - General**

Display of goods will be considered on footways, carriageways and other areas where there is public access. The minimum width of unobstructed space between the carriageway and the front of the display must be maintained at no less than 1.8m. On streets with high pedestrian usage, and in pedestrianised areas, the minimum width will be greater, as shown in the table below. Each application will be judged on its merits and the unobstructed space will be set according to the street type and frequency of pedestrian usage. If the street café or display is directly in front of the applicant’s premises then a 1.5 metre wide unobstructed access corridor to the premise’s entrance must be maintained at all times.

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| Minimum Standard | 1.8m clear width between the carriageway and the front of the display |
| Streets with high pedestrian usage | 2.75m clear width between the carriageway and the front of the display |
| Pedestrianised areas | 4.5m clear width must be available for permitted traffic (eg emergency and delivery vehicles) between the fronts of the displays (or cafes) on either side of the road |

1. **Facilities for the Disabled**

The display must be surrounded by a physical barrier of not less than 0.6m in height to guide people with disabilities around the area and this should include a low level kick board or similar which can be detected by the visually impaired using a stick. Gaps in barriers are permissible where customers are able to penetrate eg between racks of goods. These barriers must not be fixed to the ground and must be of a design agreed by the Council. There should be no free standing signs or other impediments placed out with this barrier. Furniture and associated barriers must be removed from the area promptly after trading hours.

 **5. Access for Streetworks**

It is a condition of consent that applicants agree to the removal, at short notice, of all furniture at any time that they are requested to so do by the Council, any Statutory Undertaker or by the emergency services. Applicants should also note that consent may be suspended by the Council at any time to allow for street works or for any other competent reason. If consent is suspended for a continuous period of greater than 4 weeks then a refund of fees may be considered.

**6. Duration of Permission**

Permission for a street café or display will normally be granted for a 12 month period to allow the Council to monitor the operation of the facility and to ensure that these guidelines and conditions are being adhered to. Applicants should reapply on an annual basis confirming that the area to be occupied has not changed.

**7. Insurance**

**Applicants will be required to provide proof of indemnification against all claims, injuries or accidents with cover up to £5 million for any one event prior to placement of any furniture or associated structures on the footway and this proof should also be provided with any application to renew.**

**8. Fees**

Initial administration fee of £60.00 plus an annual charge of £6.00 per square metre of occupation. For annual renewal there is no administration fee providing the trading conditions remain unaltered. These fees will increase in line with inflation annually from the 1st April.

**Appendix D**

**DRAFT POLICY FOR STREET CAFES**

**NOTES FOR GUIDANCE AND CONDITIONS FOR GRANTING OF PERMISSION**

1. **Introduction**

Street Cafes on public footpaths can add vitality, colour, life and interest to the street scene and they can also be good for business.

However, it is also important that they are properly administered and managed to ensure that they meet the high standards expected in the Highlands. They should not obstruct the footway or create a hazard for pedestrians, especially for blind, visually impaired and other disabled people.

The purpose of the following guidelines is to ensure that street cafes are created in a safe manner and are attractive additions which enhance the quality of the area.

1. **Legislative Requirements**

Permission to use any part of the adopted road, including the footway, for the street cafes is granted by the issue of a permit by the Highland Council as the Roads Authority under Section 59 of the Roads (Scotland) Act 1984. Any tables and chairs or barriers and associated signage (referred to below as furniture) placed on any part of the adopted road or footway without permission constitute an obstruction and the Council will take enforcement action in such cases.

The granting of permission under Section 59 of the Act only relates to occupation of the road and applicants will need to ensure that they obtain all other necessary permits and permissions eg planning consent, alcohol licensing etc. The granting of other relevant permits/consents should not be taken as an indication that occupation of the road will be permitted.

Planning permission will also be required if the pavement café is to be in use for more than 28 days in any calendar year. Permanent fixtures such as canopies will also require planning permission.

**3. Access Requirements - General**

Street Cafes will be considered on footways, carriageways and other areas where there is public access. The minimum width of unobstructed space between the carriageway and the front of the cafe must be maintained at no less than 1.8m. On streets with high pedestrian usage, and in pedestrianised areas, the minimum width will be greater, as shown in the table below. Each application will be judged on its merits and the unobstructed space will be set according to the street type and frequency of pedestrian usage. If the street café or display is directly in front of the applicant’s premises then a 1.5 metre wide unobstructed access corridor to the premise’s entrance must be maintained at all times.

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| Minimum Standard | 1.8m clear width between the carriageway and the front of the street cafe |
| Streets with high pedestrian usage | 2.75m clear width between the carriageway and the front of the street cafe |
| Pedestrianised areas | 4.5m clear width must be available for permitted traffic (eg emergency and delivery vehicles) between the fronts of the cafes (or displays) on either side of the road |

**4. Facilities for the Disabled**

The street cafe must be surrounded by a physical barrier of not less than 0.6m in height to guide people with disabilities around the area and this should include a low level kick board or similar which can be detected by the visually impaired using a stick. Gaps in barriers are permissible where customers are able to enter the cafe. These barriers must not be fixed to the ground and must be of a design agreed by the Council. There should be no free standing signs or other impediments placed out with this barrier. Furniture and associated barriers must be removed from the area promptly after trading hours.

**5. Access for Streetworks**

It is a condition of consent that applicants agree to the removal, at short notice, of all furniture at any time that they are requested to so do by the Council, any Statutory Undertaker or by the emergency services. Applicants should also note that consent may be suspended by the Council at any time to allow for street works or for any other competent reason. If consent is suspended for a continuous period of greater than 4 weeks then a refund of fees may be considered.

**6. Customer Health and Safety**

Pigeons, seagulls and other birds could be a potential health hazard in some areas of the city centre. Table-umbrellas or canopies may be used to minimise this risk. Staff and customers should be actively discouraged from feeding the birds.

It is also important to keep an outdoor café looking neat and tidy to attract customers. Tables, chairs and the outdoor café area must be cleaned regularly and food debris and other waste removed immediately.

Food and drink must be transferred from indoor premises to the outdoor area by waitress or waiter service.

Noise disturbance, litter or smells, which are a nuisance to other premises, are not acceptable and amplified music will not be permitted.

All tables, chairs and structures relating to the pavement cafés must be of a high standard and suitable for commercial outdoor use.

**7. Duration of Permission**

Permission for a street café will normally be granted for a 12 month period to allow the Council to monitor the operation of the facility and to ensure that these guidelines and conditions are being adhered to. Applicants should reapply on an annual basis confirming that the area to be occupied has not changed. **Applicants will be required to provide proof of indemnification against all claims, injuries or accidents with cover up to £5 million for any one event prior to placement of any furniture or associated structures on the footway and this proof should also be provided with any application to renew.**

**8. Fees**

Initial administration fee of £120.00 plus an annual charge of £17.00 per square metre of occupation. For annual renewal there is no administration fee providing the trading conditions remain unaltered. These fees will increase in line with inflation annually from the 1st April.