

11.2 Business Use of the Footpath Policy Review

REPORT BY THE MANAGER, CUSTOMER SERVICES & GOVERNANCE
TO 20 JULY 2022 ORDINARY MEETING
GOV400098, A0420120

RECOMMENDATION

That Council:

1. **receive the report by the Manager, Customer Services & Governance on the Business Use of the Footpath Policy Review;**
2. **note that no submissions were received during the exhibition period; and**
3. **adopt the revised Business Use of the Footpath Policy.**

Executive summary

Council currently has 86 active Business Use of Footpath permits consisting of businesses promoting goods for sale with footpath displays, cafes serving meals into defined seating arrangements on the footpath and licenced premises also extending their licence to access the footpath space.

Short term permits are also issued for busking and community charities conducting fundraising activities.

Disclosure of Interest

Nil

Detailed report

The key policy changes recommended for adoption include;

1. Maps defining the streets where the Policy applies are annexures to the policy
2. Streets with parallel parking will have the pedestrian clearway 1.8 metres from the gutter and goods/table & chairs against the building
3. Fees and Charges amended to remove the annual renewal fee and be replaced with an application fee that provides a permit lasting 5yrs. This would be payable at time of application.
4. Barricades are required to define dining areas of the footpath, in the same way licenced areas are barricaded.
5. Temporary use permits for community engagement events are now permissible.
6. Advertising signage is permitted on a-frame, barriers and umbrellas only. No other signage will be permitted on any other structure on the footpath/nature strip.
7. Amplified music will be approved using mobile amplifiers (no power cables) up to a maximum of 72dB

Note in April 2022 Council resolved to place the draft Business Use of Footpaths Policy on public exhibition for 28 days and to return to Council with any submissions received on this draft policy.

Note no submissions were received during the exhibition period.

Community Plan implications

Theme	Looking After Our Community
Goal	Vibrant towns and villages
Strategy	Maintain and promote the aesthetic appeal of the towns and villages within the Region

Strategic implications

Council Strategies

Community Plan

Council Policies

Mobile Vending & Street Trading Policy

Public Seating and Footpaths Policy

Disability Inclusion Action Plan

Pedestrian Access & Mobility Plan

Legislation

Roads Act 1993

Financial implications

Not applicable

Associated Risks

Public Liability risks arising from business use of footpaths are addressed by the policy.

RICHARD CUSHWAY
MANAGER, CUSTOMER SERVICES &
GOVERNANCE

SIMON JONES
DIRECTOR COMMUNITY

4 July 2022

Attachments: 1. Reviewed Business Use of the Footpath Policy.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



POLICY

Business Use of the Footpath

*A prosperous
and progressive
community.*

REVIEW		VERSION NO	5.2
MEETING MIN NO		REVIEW DATE	
DATE		FILE NUMBER	A0420120

1 Purpose

The purpose of this policy is to facilitate businesses, community groups and entertainers use of the footpaths for either commercial or community activities, through the issue of an approval under the Roads Act 1993.

This policy aims to enhance and promote a vibrant and welcoming atmosphere in the Mid-Western Regional Council local government area (MWRC LGA).

The policy will ensure a pleasant and safe environment for shoppers and patrons, without compromising the safety or amenity of the public domain for pedestrians using the public footpath and adjoining public spaces and for motorists parking or alighting from their vehicles.

The policy will allow the approval of business use of footpath areas within the central business districts of Gulgong, Kandos, Mudgee and Rylstone, adjacent to businesses where there is adequate road reserve/footpath width for safe pedestrian and traffic circulation.

The permits available are:

- Advertising signs
- Display of goods for sale
- Dining
- Dining/Liquor licensed area (NB. Pubs and small bars also require development consent under the Environmental Planning and Assessment Act 1979)

Temporary Use Permits include:

- Displays and promotions
- Community groups fundraising (not for profit)
- Busking
- Community engagement activities (conducted by Council)

Businesses should not utilise a footpath without a permit from the Council.

Community groups or the general public wanting to utilise a footpath for promotions, fundraising or entertainment activities should lodge an application with the Council before undertaking such activities.

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2 Objective

The objectives of this policy are as follows:

2.1 Access and Equity

- To ensure safety and convenient passage of all pedestrians and customers when using public footpaths;
- To ensure the maintenance of clear view lines for both pedestrians and motorists, particularly near pedestrian crossings, street corners and key intersections; and
- To ensure adjoining premises are not adversely affected by any business use of footpath areas.

2.2 Council and Community Protection

- To protect Council and CBD businesses permitted to extend their business onto the footpath from liability claims, while permitting effective use of public footpaths for business purposes; and
- To ensure that the amenity of the general public will not be compromised by the provision of business use to footpath areas; and
- To ensure that any signage, displays or activities will not offend, intimidate or harass the general public and any reports of this will be investigated by Council.

2.3 Economic

- To enhance the economic viability of our local businesses by offering permits to use public footpaths for business purposes;
- To ensure trading and enhance our central business districts by providing a more vibrant and colourful atmosphere for shoppers.
- To provide for an active and integrated street front; and
- To maintain visibility and exposure of shopfronts.

3 Legislative requirements

The Roads Act 1993 and the Local Government Act 1993 generally require that a person shall not carry out any activity on a public road or place without approval of Council.

Sections 125 and 126 and in some cases Sections 137A-139F of the Roads Act 1993 allow Council to approve the use of a footpath as long as using the footpath for that purpose is not taken to constitute a public nuisance and does not give rise to an offence against the Roads Act or any other relevant legislation.

Sections 137A-139F of the Roads Act 1993, address legislative requirements for Street Vending activities.

Section 68 Part E (2) of the Local Government Act 1993 allows Council to approve the hanging of articles beneath an awning or to overhang the footpath.

Approvals for overhanging articles and street vending are not applicable to this policy. Such enquiries can be directed to Council's Planning department for overhanging articles and Council's Health and Building department for street vending.

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Footpath dining that is not exempt development will require development consent under the *Environmental Planning and Assessment Act 1979*. To be an exempt development, pursuant to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, the use of the footway must:

- (a) not be associated with a pub or a small bar, and
- (b) be carried out in accordance with an approval granted under Section 125 of the *Roads Act 1993* (if applicable), including in accordance with any hours of operation to which the approval is subject, and
- (c) be carried out in accordance with any approval granted under section 68 of the *Local Government Act 1993* (if applicable).

If the outdoor dining area is associated with a pub or small bar, development consent is required under the Environmental Planning and Assessment Act 1979

NSW Liquor Act 2007 and Liquor Regulation 2018 apply for the purpose of the service of alcohol.

4 Related policies and plans

- Mobile Vending and Street Trading policy
- Public Seating on Footpaths policy
- Disability Inclusion Action plan
- Pedestrian Access & Mobility Plan

5 Areas to which this Policy applies

The policy applies to all footpath areas in the central business districts of Gulgong, Kandos, Mudgee and Rylstone.

Refer to the annexures for a map of these areas.

6 Applying to use the Footpath

Applications must be made on the Business Use of the Footpath Application forms (Permanent or Temporary use) which are available on Council's website or at Council's offices. Applications must be accompanied by a diagram showing how the footpath is proposed to be used with particular reference to the area of the proposed use and other supporting documentation as stated within the application.

Applications relating to footpaths along State Roads will also be referred to Traffic NSW seeking their consent of the proposed use. Businesses wishing to use a footpath location outside of the CBD zones (as indicated in the annexure maps) may still lodge an application, with these applications to be determined by the Duty Town Planner.

7 Footpath area that can and cannot be used

Businesses, community groups and entertainers use of footpath areas is permitted, with the approval of Council, generally on footpaths immediately adjacent to a shop front and in locations that do not cause an impediment to other footpath users.

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The use of footpath areas maybe either prohibited or restricted, in locations where they obstruct the clear view line of pedestrians or motorists. Clear view lines allow pedestrians to view on-coming traffic and for motorists to observe pedestrians movements.

To ensure access and equity there will generally be a minimum width retained for pedestrian circulation of at least 1.8 metres immediately adjacent to the property boundaries (generally the building line), for the clear passage of footpath users.

Setbacks of 1.2 metres for angled parking zones and 0.8 metres for parallel parking zones from the kerb edge is generally required for the safety of pedestrians and patrons from contact with moving motor vehicles.

Council may, on the merit of a particular situation and application, consider variation to this standard where the applicant can show that the proposal is consistent with the surrounding environment, adequate pedestrian circulation and parking safely is maintained or that agreement has been obtained from the relevant Access Committee.

Any use of footpaths will be conditional upon the safety of potential users. These setback conditions may result in there being only small areas of footpath available for use. Applications should make this assessment before applying and paying any fees and charges.

See the annexures to this document for examples of how the footpaths may be used for each of the CBD areas.

8 Public liability Insurance

A copy of the current Public Liability insurance to the value of \$10 million for the display of goods and/or signs and \$20 million for dining and licenced areas with endorsement noting Midwestern Regional Council's respective rights and interests and indemnifying Midwestern Regional Council for the permitted area of the footpath is to be provided to the Council. It is the responsibility of the permit holder to provide a copy of any and all renewed Public Liability insurance as required in this clause. Failure to do so will be grounds to void the Permit

9 The Permit

Council will issue a Permit to those who receive approval to use the footpath for business purposes. The issue of permits to use the footpath for business purposes will be at the sole discretion of the General Manager as delegated. This Permit must be prominently displayed in the front window of the business of which the Permit refers.

The General Manager has delegated the function of issuing a business a permit for the use of the footpath as an extension of the business to the Manager Customer Services & Governance and the Governance Coordinator.

10 General Conditions

All business / persons being issued with a permit shall be required to comply with the following general conditions:

10.1 Term

Holders of Permits that are lapsing after 5 years will receive a letter in July informing the business requesting they re-apply in August to ensure continuity of Permit.

10.2 Fees

Council reserves the right to charge a fee for the administration process of determining, approving and issuing permits.

Permits are subject to an application/area fees outlined in Mid-Western Regional Councils Schedule of Fees and Charges.

10.3 Hours of operation

The hours of operation for any approved area must be the same as or less than the approved hours of operation of the associated business unless specified in the permit. The hours of operation for the approved area may be limited if it is considered that the amenity of the surrounding area or the safety of pedestrians or footpath diners may be adversely affected. Businesses seeking approval for the service of alcohol with meals will have hours of alcohol service defined, refer section 10.4 below

10.4 Maintenance of approved area

The permitted area of footpath used by the business and areas between the shop premises and the permitted area shall be kept clean at all times and any spills or other material likely to cause injury or accident for pedestrians shall be removed immediately by the applicant/operator.

10.5 Smoking

Smoking is not permitted in any area used for dining or any other area as provided under the Smoke-free Environment Act 2000.

10.6 Business or financial Transactions

No business or financial transactions shall be carried out on the approved area. Such activities shall be carried out wholly within the confines of the premises. This does not include the giving and taking of bills, and associated tips and charges.

10.7 Lighting

Any proposed lighting must be included in the application for approval by Council and be in accordance with the relevant Australian Standards.

10.8 Noise

Amplified music will be accepted using portable amplifiers only (no power cables) being used at less than 72dB.

10.9 Safety

The approved area shall not in any form reduce the safe egress of people from the business premises.

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10.10 Access

- The applicant should provide access in accordance with AS1428 for people with disabilities.
- No business use of the footpath will be permitted where the use would create access problems for people with disabilities.
- In heritage areas with narrower footpaths, consideration will still be given to applications which take account of the needs of all persons who require clear lines of access past footpath obstacles.

10.11 Public Assets

- The removal/relocation of any Council assets, such as rubbish bins and existing street furniture, shall be subject to Council approval and will be at the applicant's cost.
- The removal/relocation of any public utilities/infrastructure shall not be permitted unless justification on public benefit can be made to Council and approvals have been obtained from the relevant authorities. Works will be carried out at the applicant's cost.

10.12 Breaches of Conditions

- If a business permitted to use the footpath in accordance with this Policies conditions breach any of the conditions that apply to their permit will in the first instance be warned. The warning of the breach will be placed in writing.
- Businesses that have been warned of a breach and are found to have again breached will have the permit withdrawn. Notice of withdrawal of the permit will be in writing.
- Businesses who have the service of alcohol condition 10.4 contained in their permit and have been found to have breached condition 10.4 will have the notice of permit being withdrawn notified to the Liquor Licensing Authority.

10.13 Permit not transferable

The Permit cannot be transferred from one user to another. Should a business be sold, the new business operator must make a new application to Council for permission to use the footpath.

10.14 Termination of a permit

A Permit can be terminated at any time by either party with one week's notice.

The Council may enter the approved area and terminate the approval, without notice if:

- The operator breaches the approval and does not remedy the breach within the specified time included in the written notice from the Council (this includes non-payment of fees);
- In the Council's opinion, the road safety or pedestrian circumstances in regard to the approved area substantially change; or
- Council's approval granted pursuant to section 68 of the Local Government Act 1993 and section 125 of the Roads Act 1993 is either revoked by Council, or lapses.

10.15 Enforcement and Compliance.

Enforcement can be taken under the Roads (General) Regulation 2000 in relation to the placement of obstructions on the footpath, or Section 125(1) and 121B of the environmental Planning and Assessment Act 1979. Failure to comply with the conduct of business set out herein or with the enforcement order may result in receiving a fine or cancellation of the Permit. These offences incur penalties set by State legislation.

11 Specific Conditions

11.1 Advertising Signs

The following controls apply to all signage/advertising to be displayed on the approved area:

- Large portable advertising signs or fixed structures will be referred to Councils Planning department for determination of the need for a Development Application to be lodged with the Council.
- Signage/advertising can be permitted on A-frames, barriers and umbrellas. (Umbrellas must be of non-reflective material, signage on each umbrella must be consistent with all other umbrellas on the approved area).
- No other signage will be permitted on any other structure on the footpath/nature strip.
- All signage must be placed to avoid obstruction to pedestrian movement (in accordance with Section 6)
- A-Frames must be a maximum height of 1.2 metres and maximum width of 0.6 metres
- A-Frames must only be displayed during business hours
- A-Frames are to be generally located directly in front of the premises to which they relate
- Signage must be of colour (or marked) so that it is distinguishable
- Signage must not have any sharp edges or protruding parts
- Signage must directly relate to your business

11.2 Display of goods for sale

- Separate approval under Section 68 of the Local Government Act 1993 is also required to sell articles on the footpath. Sales transactions must only occur within the businesses premises not on the footpath
- Display stands must be stable or firmly secured. Display stands should be a minimum height of 1.0 metres and a maximum height of 1.2 metres and width of 0.75 metres. All display stands should be of high quality design.
- No part of the footpath is to be used for storage.

11.3 Dining

- Footpath dining areas associated with pubs or small bars require development consent under the *Environmental Planning and Assessment Act 1979* in addition to a permit under Section 125 of the *Roads Act 1993*.
- Separate approval under Section 68 of the Local Government Act 1993 may also be required if

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temporary shade structures overhang the road.

- Barricades are required to physically define the side boundaries or perimeters of an outdoor dining area, barricades must not contain parts that are likely to cause damage to the pavement, or sharp edges, hinges and other moving parts that may present a hazard to patrons or pedestrians
- Any proposed transparent solid barrier (such as Perspex) should comply with AS 1428.1 Access and Mobility, and should be clearly marked for the full width with a highly visible contrasting line.
- Outdoor dining areas must be easily accessible from the public footway and should as far as possible present an open and inviting image to entice participation. Planter boxes may be used to physically define the side boundaries or perimeters of an outdoor dining area.
- Planter boxes may be considered in open areas, where there is sufficient room and pedestrian movement is not impeded. The planter boxes must be well-maintained by the applicant. Council reserves the right to order the removal of planter boxes that are not properly maintained including the consistent provision of approved high-quality flowers or vegetation. Permanent planter boxes will only be considered on footpath areas where the footpath has sufficient uninterrupted pedestrian access 1800 wide.
- Approved planters shall be terra cotta, concrete or reconstituted stone in natural, sandstone or terra cotta colour, or powder coated, brushed stainless steel or timber.
- Outdoor furniture should be strong, durable, waterproof and weather resistant designed for commercial outdoor use. Tables and chairs should fold or stack for storage.
- Outdoor furniture may be powder coated or polished aluminium, brushed or stainless steel, natural or painted timber, or canvass. Under no circumstances shall outdoor furniture consist of “cheap” bulk manufactured plastic chairs. Surfaces such as table tops should be non- reflective. All outdoor furniture will be subject to the approval of Council.
- Outdoor furniture is not to be placed outside the approved area under any circumstances.
- Each business should adopt a single colour and style for tables and chairs in its particular area to provide consistency and identity.
- All outdoor furniture must be temporary and must be able to be removed in extreme weather conditions.
- Umbrella’s must be securely mounted at all times and in the advent of high winds must be managed so that they do not cause harm to patrons and pedestrians.
- Where the use of a heating device is proposed, details of the type, location and design must be included in the application. Heating devices must be designed in a manner which minimises risk and as such shall turn off automatically if overturned to prevent injury to patrons and property. Heating devices must be removed when not in use and suitably screened from public view. All outdoor heaters must comply with the relevant Australian Standards.
- Food and drink must be served on non-disposable crockery and cutlery. Food and drink must not be prepared in the area approved for outdoor eating.
- Paper, foam or plastic plates, cups and cutlery shall not be used for footpath outdoor dining areas.
- Appropriate footpath service shall be provided which includes as a minimum the removal of any dirty plates, cups, cutlery, footpath staining, and rubbish on a regular basis during each operating day.

11.4 Dining / Liquor Licensing area

- Footpath dining areas associated with pubs or small bars require development consent under the Environmental Planning and Assessment Act 1979 in addition to a permit under Section 125 of the Roads Act 1993.
- Separate approval under Section 68 of the Local Government Act 1993 may also be required if temporary shade structures overhang the road
- All applications for a dining / liquor licenced area permit will be referred to NSW Police Mudgee Local Area Command. Local Police can make representations to the Office of Liquor Gaming & Racing as part of the consideration of the liquor license boundary extension application and; comment directly to the Council on the proposed local permit being issued.
- Council will issue to applicants a letter outlining the local conditions of the permit, this letter may be used by businesses when applying to the Office of Liquor Gaming & Racing to extend their liquor licence boundary to include the designated area of footpath.

Conditions may include:

- Barricades 1 metre in height clearly defining the boundaries of the licenced area will be approved in consultation with the council. The barricades must be linked together and constructed so that they cannot be easily moved by patrons and can tolerate wind events.
 - The maximum capacity of patrons to be seated at tables in the permitted footpath dining area will be limited by the available square meters of footpath divided by 3 multiplied by 4 which equates to the maximum number of patrons at one time in the designated area (4 persons per 3 square metres).
 - Seated table service of alcohol with meals by authorised staff of the licenced premises only will be permitted Service of alcohol with meals is restricted to be undertaken between the hours 12 noon and 10 pm, and;
 - no more than one alcoholic drink may be supplied to any one person at any one time and;
 - the following drinks must not be sold or supplied;
 - any drink (commonly referred to as a 'shot') that contains more than 30 ml
 - of spirits or liqueur and that is designated to be consumed rapidly and;
 - any drink containing more than 50% spirits or liqueur and;
 - any ready to drink (RTD) beverage with an alcohol by volume content more than 5% and;
 - any drink prepared on the premises that contains more than one 30ml nil nip of spirits or liqueur
 - Wine and beer sold by the glass cannot exceed the following individual serve quantities; wine not exceeding 150 ml and beer not exceeding 425mls
 - Liquor must only be sold or supplied in vessels opened by authorised staff of the licenced premises
 - No liquor may be taken out of the footpath defined licenced area
- NB: in this condition, ready to drink (RTD) beverage means an alcoholic mixed beverage that is prepared by the manufacturer.
- In the case of BYO the proprietor shall serve and store the alcohol provided by patrons within the premises (not the footpath area) as single drinks as above.
 - Signposting of the licenced area will be displayed on the outside panels of the barricades to inform the public of the licenced area.
 - Signposting of the Alcohol Free Zone will be displayed on the inside of the barricades informing

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patrons that as they leave the licenced area they are entering an alcohol free zone.

- Outdoor furniture should be strong, durable, waterproof and weather resistant designed for commercial outdoor use. Tables and chairs should fold or stack for storage.
- Outdoor furniture may be powder coated or polished aluminum, brushed or stainless steel, natural or painted timber, or canvass. Under no circumstances shall outdoor furniture consist of “cheap” bulk manufactured plastic chairs. Surfaces such as table tops should be non-reflective. All outdoor furniture will be subject to the approval of Council.

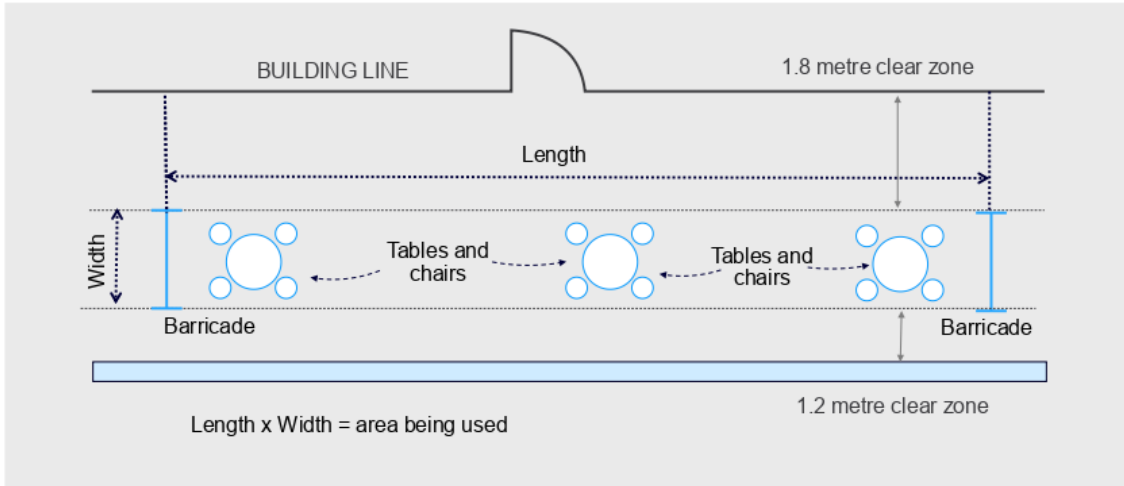
11.5 Temporary Use Permits

- Temporary use permits are required by businesses, community organisations and individuals wanting to access the footpath/nature strip for once off / occasional activities including advertising, promotions, fundraising, entertainment and busking or community engagement events. Applications must contain the following;
 - A description of the activity to be conducted e.g. fashion parade, sale of raffle tickets, busking, promotion, advertising, choir etc.
 - The date and times of the activity including setup and takedown e.g. 10.30 am to 12.30 pm. Busking permits will only be approved for daylight hours.
 - A description of furniture and fittings to be placed on the footpath / nature strip
 - A letter/email of consent from the business that is supporting the activity to be conducted on the footpath in front of their shop
 - A certificate of currency (refer to item 7 above)
- Temporary use permits issued by council will be dated and state the permitted activity. Permits must be made available upon request by a council employee. Businesses must display permits in the front window, as per section 8..
- For businesses requesting a temporary permit to use the footpath;
 - A maximum of two (2) Temporary Business Use of Footpath applications can be submitted during any one calendar year, and
 - Such an application cannot exceed more than four (4) weeks at any one time.
- Businesses requesting to use the footpath in excess of the above restrictions will be required to submit a Permanent Business Use of Footpath form and pay the appropriate fees and charges.

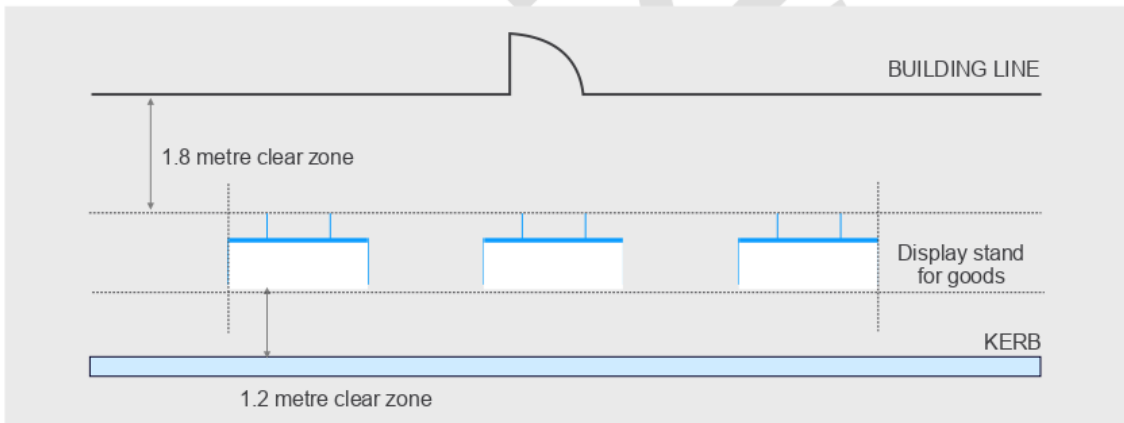
POLICY: BUSINESS USE OF THE FOOTPATH | 5.2,

Examples of how the CBD footpaths may be used by businesses where there is angled parking:

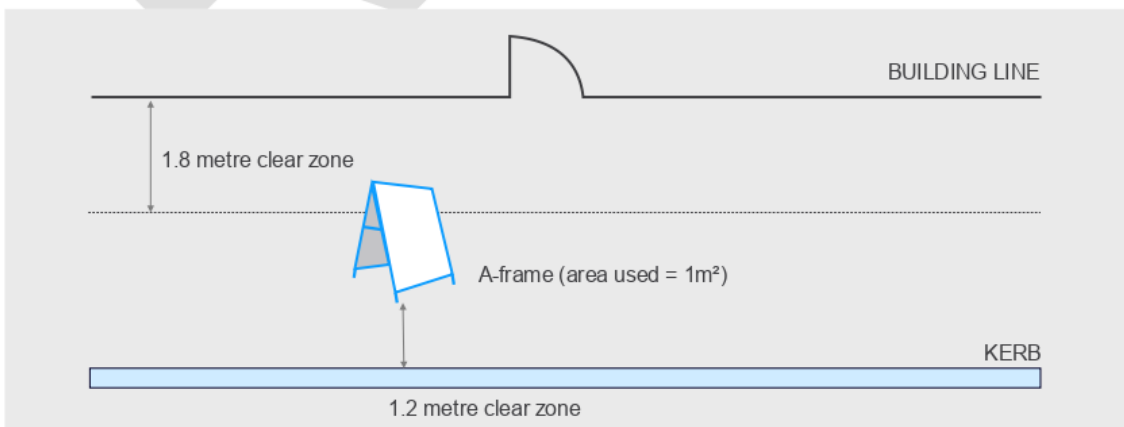
FOOTPATH DINING



DISPLAY OF GOODS FOR SALE



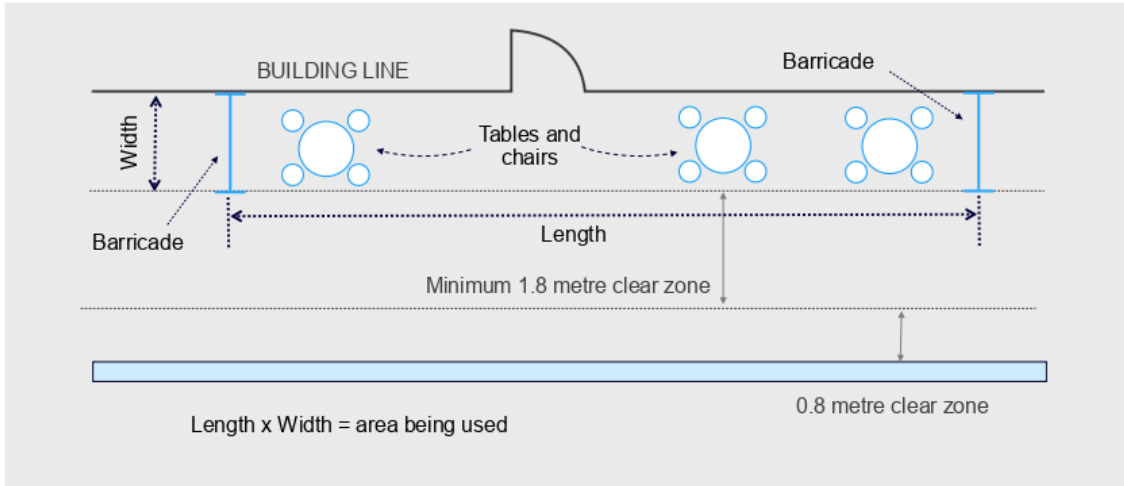
ADVERTISING OF BUSINESS



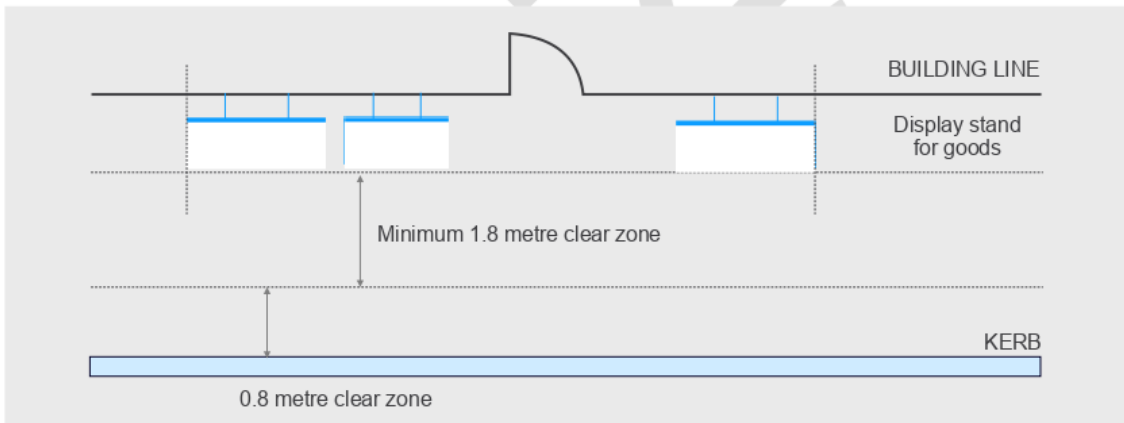
POLICY: BUSINESS USE OF THE FOOTPATH | 5.2,

Examples of how the CBD footpaths may be used by businesses where there is parallel parking:

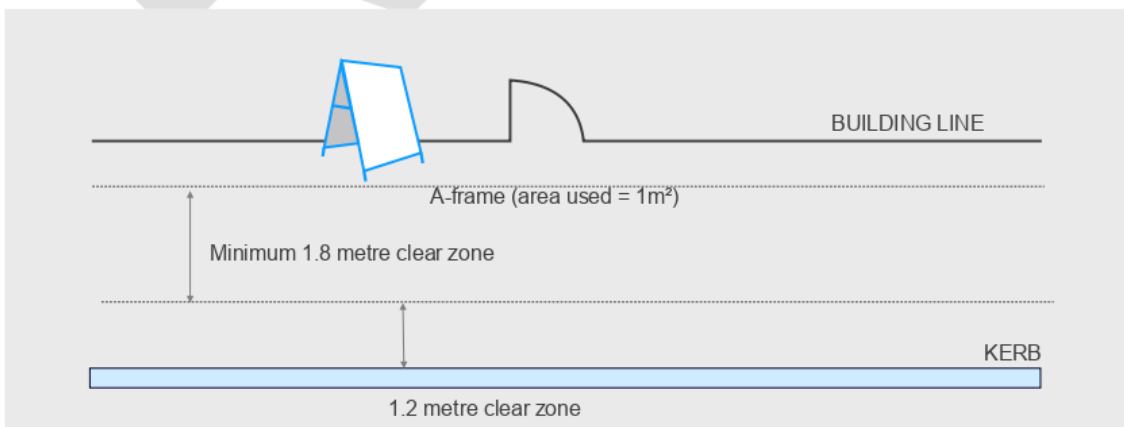
FOOTPATH DINING



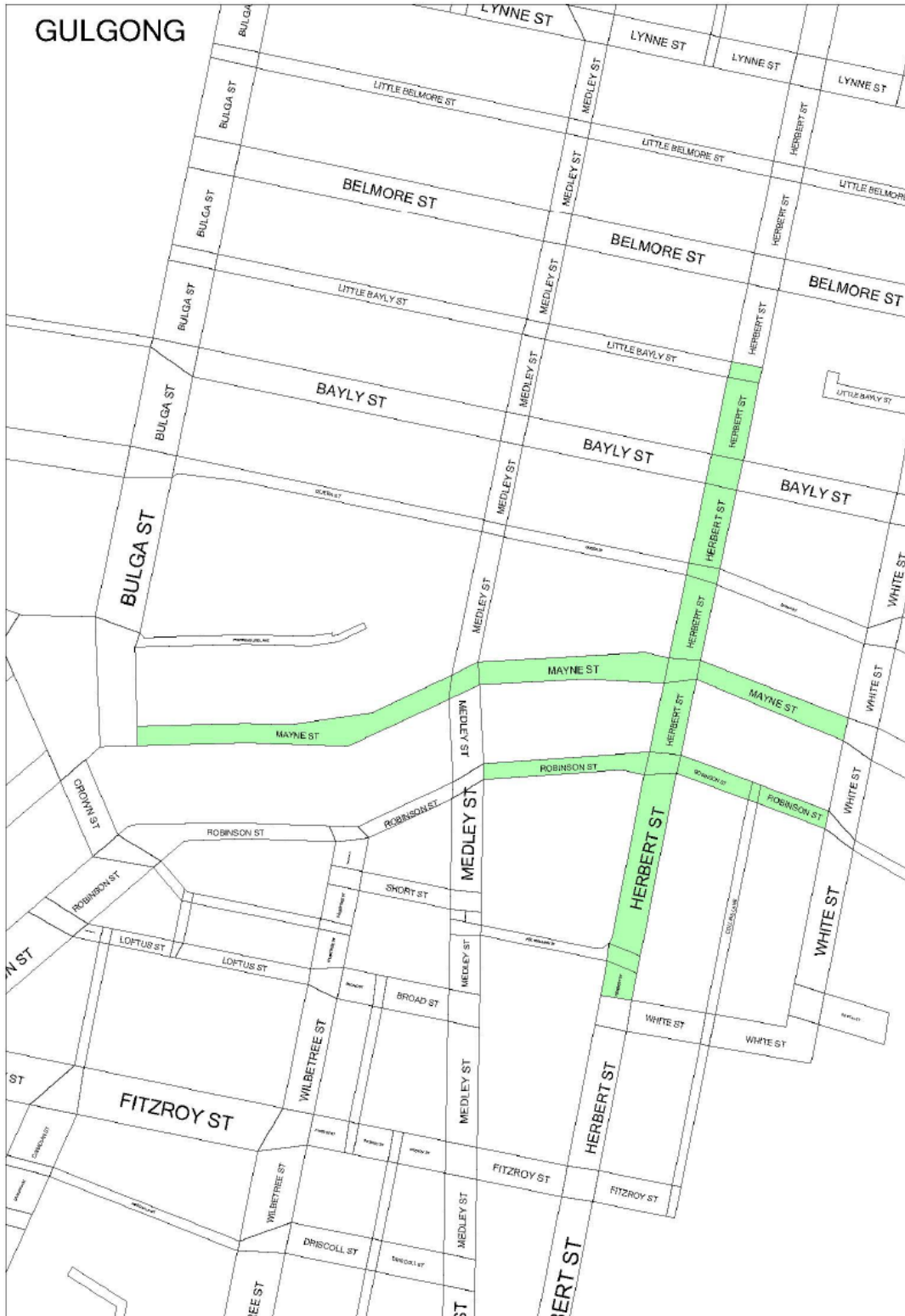
DISPLAY OF GOODS FOR SALE



ADVERTISING OF BUSINESS



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