

DOCUMENT ON EXHIBITION

Policy Review – Business Use of Footpath

**Exhibition Period: 42 Days
21 March – 2 May 2025**

Please address any queries to:
Governance Coordinator

**Please submit your feedback in writing
addressed to the General Manager**

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ADOPTED	
MEETING MIN NO	TBA
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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 Local Government Act or the Roads Act 1993 as appropriate.

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:

- A-Frame advertising signs
- Display of goods for sale
- Dining
- Dining/Liquor licensed area (NB. Registered Clubs 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 Council.

Anyone wanting to utilise a footpath for promotions, fundraising or entertainment activities should lodge an application with Council before undertaking such activities.

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 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 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.
- To maintain visibility and exposure of shopfronts.

3 Legislative requirements

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

Sections 125 and 126 of the Roads Act 1993 allow Council to approve the use of a footpath for dining 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 Local Government Act or any other relevant legislation.

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 s.40C(2), the use of the footway must not:

- (a) be carried out on land—
- (i) in an environmental zone, or
- (ii) in a place of Aboriginal heritage significance identified in a local environmental plan, or
- (b) be associated with a registered club. 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 Temporary Stalls in a Public Place 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 as well as the Moufarrige Mall Walkway and the Council owned section of the Town Hall Arcade in Mudgee.

Refer to the annexures for a map of these areas.* (*update map to reflect above additions)

6 Applying to use the Footpath

Applications must be made on Council's website and 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 the use of footpaths and road reserve outside the CBD or along state roads are not considered under this policy.

For signage outside of the road reserve please contact Council's Duty 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.

The use of footpath areas may be 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 pedestrian's 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 safety is maintained.

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

It is the responsibility of the permit holder to provide Council with a copy of their public liability insurance certificate of currency. For the display of goods and/or signs public liability insurance must be to the value of \$10M. For outdoor dining/liquor areas public liability insurance must be to the value of \$20M. Public liability insurance should note Mid-Western Regional Council as an interested party.

It is the responsibility of the permit holder to provide a copy of all renewed public liability insurance certificates of currency as required in this clause. Failure to do so will be grounds to void the permit.

9 Permits

Council will issue a permit to those who receive approval to use the footpath for business purposes. The issue of permits be at the discretion of the Manager Customer Services and Governance or the Governance Coordinator as delegated by the General Manager. This permit must be available for staff of a business to produce when request by an authorised Council officer.

10 General Conditions

All applicants 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 the three months prior informing that they must re-apply to ensure continuity of the 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 fee as outlined in the Mid-Western Regional Council's 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 as per 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 as provided under the Smoke-free Environment Act 2000.

10.6 Business or Financial Transactions

No business or financial transactions shall be carried out in 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). Noise levels must not exceed 72dB within any CBD areas. .

10.9 Safety

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

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

- Where a business breaches the conditions of their permit, they will receive a writing warning advising them of the breach and given a timeframe of which to comply.
- Businesses that have not rectified a breach or are found to have breached again may have their permit cancelled.
- Council will notify Liquor and Gaming NSW of the cancellation of any permits for outdoor dining with liquor.

10.13 Transfer of Permits

Permits may only be transferred from one user to another where a business has been sold and the new business operator continues to use the current trading name and retains the same furniture in the same position as previously approved. It is the responsibility of the original permit holder to provide the new operator with a copy of the permit and the terms and conditions of the permit. The new operator must contact Council to have the permit details updated as well as provide a copy of their public liability insurance certificate of currency

Permits may not be transferred to a new operator where the trading name of a business is changed, or furniture and layout is altered from what was originally approved. The new business operator must make a new application to Council for permission to use the footpath.

Dining Liquor permits cannot be transferred from one permit holder to another.

10.14 Cancellation of a permit

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

Council may enter the approved area and cancel 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 Council (this includes non-payment of fees);
- In 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 or 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 Local Government Act, S626(3) and Section 9.34(1)(a)(1) and 9.37(1) of the Environmental Planning and Assessment Act 1979.

Failure to comply may result in receiving a fine or cancellation of the permit. These offences incur penalties set by State legislation.

Council will conduct regular compliance checks to identify businesses utilising the footpath for business purposes without a permit, or not complying with the conditions of their current permit.

Businesses not previously identified will be sent a letter advising them of the policy and the need to apply for a permit.

Businesses who have previously been identified as not having a permit and have been contacted will be sent a letter advising them to apply for a permit or risk enforcement action.

Businesses who continue to be non-compliant will be given notice to remove all articles from the footpath. Failure to do so will result in a penalty infringement notice being issued.

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 7)
- 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
- □-Frames will be considered 1m² for the purpose of the charged area fee

11.2 Display of goods for sale

- Sales transactions must only occur within the business' premises and not on the footpath
- Display stands and articles must be stable or firmly secured. Display stands and articles should be a minimum height of 1metre 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 Registered Clubs 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.
- 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 AS1428.1 Access and Mobility and should be clearly marked for the full width with a solid and non-transparent contrasting line. The contrasting line should not be less than 75mm wide.
- 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 tabletops 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.
- Umbrellas 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 including 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 Licencing area

- Footpath dining areas associated with Registered Clubs 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 licence 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 Liquor and Gaming NSW 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 must be accompanied with a meal and served by an authorised staff member of the licenced premises
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- The licenced area will be signposted on the outside panels of the barricades to inform the public.
- Signposting of the alcohol-free zone will be displayed on the inside of the barricades informing 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.

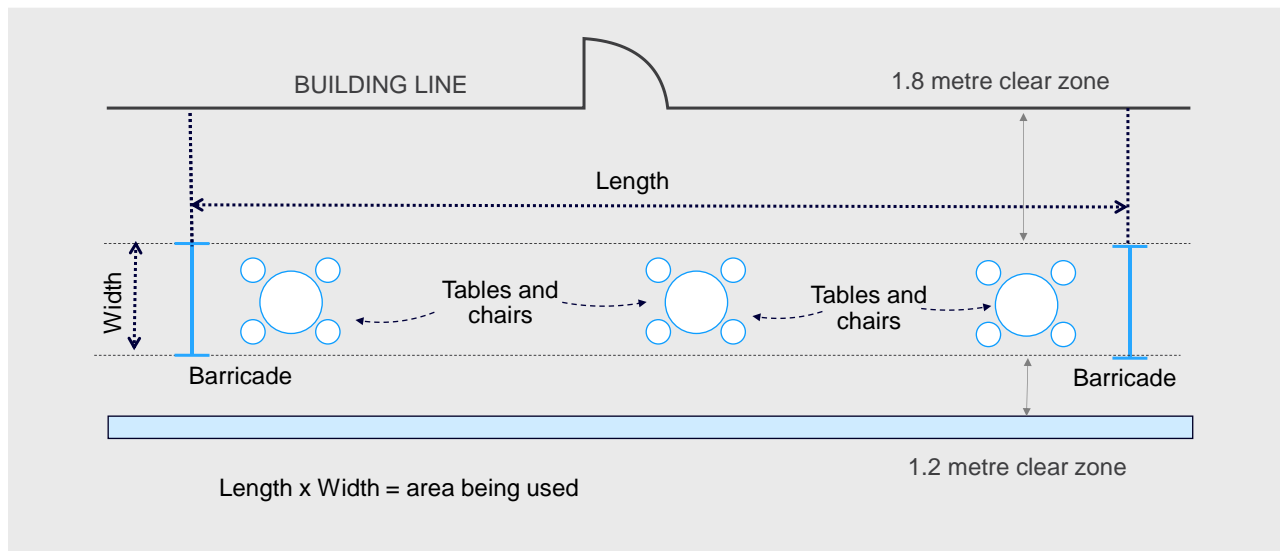
11.5 Temporary Use Permits

- Temporary use permits are required by businesses, community organisations and individuals wanting to access the footpath/nature strip for one off/occasional activities including advertising, promotions, fundraising, entertainment and busking or community engagement events. Applications must contain the following;

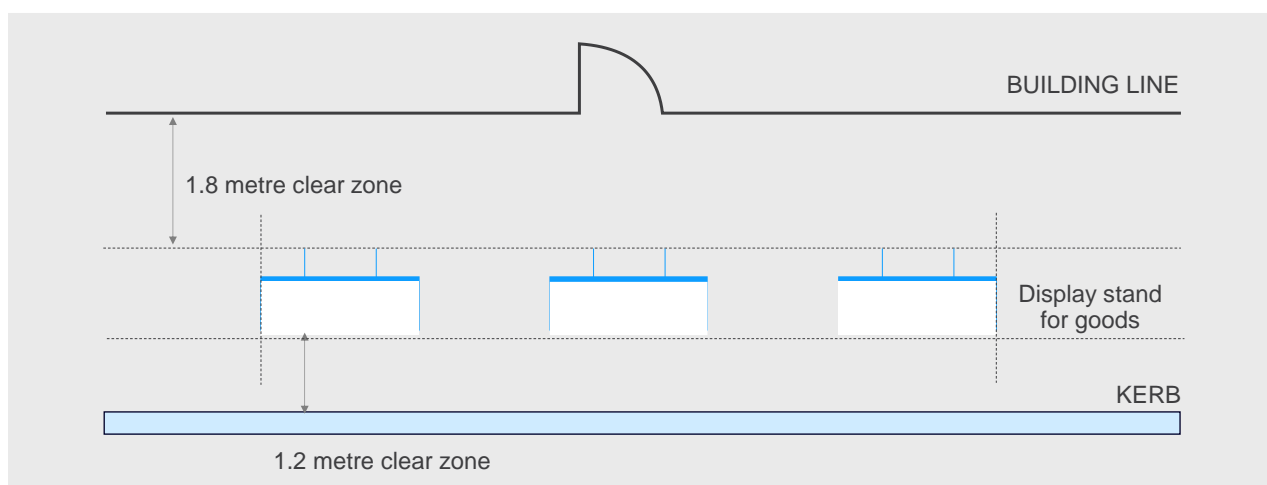
- A description of the activity to be conducted e.g. fashion parade, sale of raffle tickets, busking, promotion, advertising, choir etc.
- The date and times of the activity including setup and takedown e.g. 10.30 am to 12.30pm. Busking permits will only be approved for daylight hours.
- A description 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 8 above). Minors under the age of 18 participating in busking activities do not require public liability insurance
- 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.
- 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.

Examples of how the CBD footpaths may be used by businesses where there is angled parking (**excludes** the Eastern end of Market Street between Church and Lewis Streets):

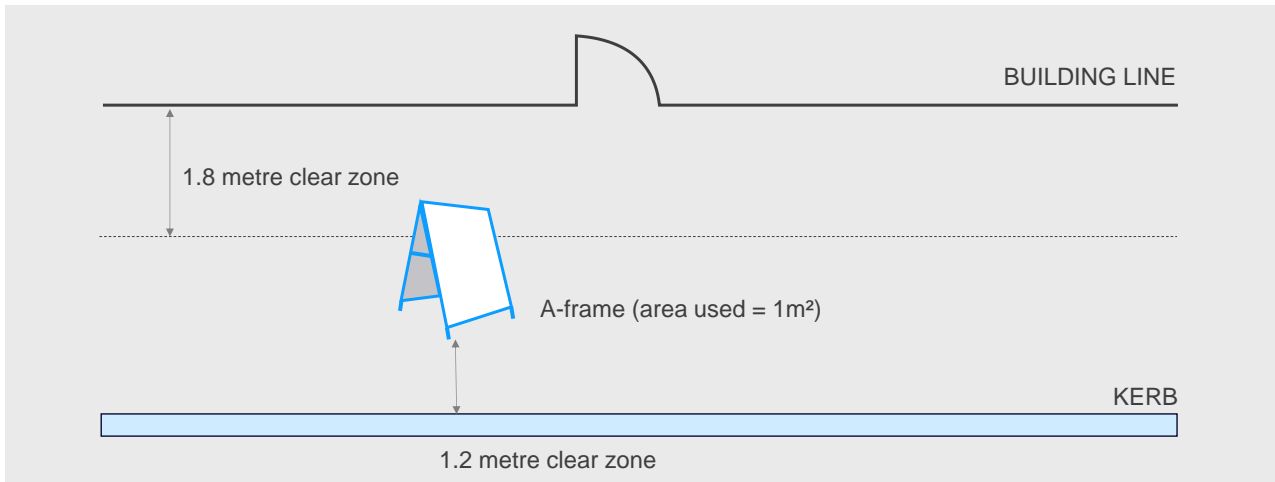
FOOTPATH DINING



DISPLAY OF GOODS FOR SALE

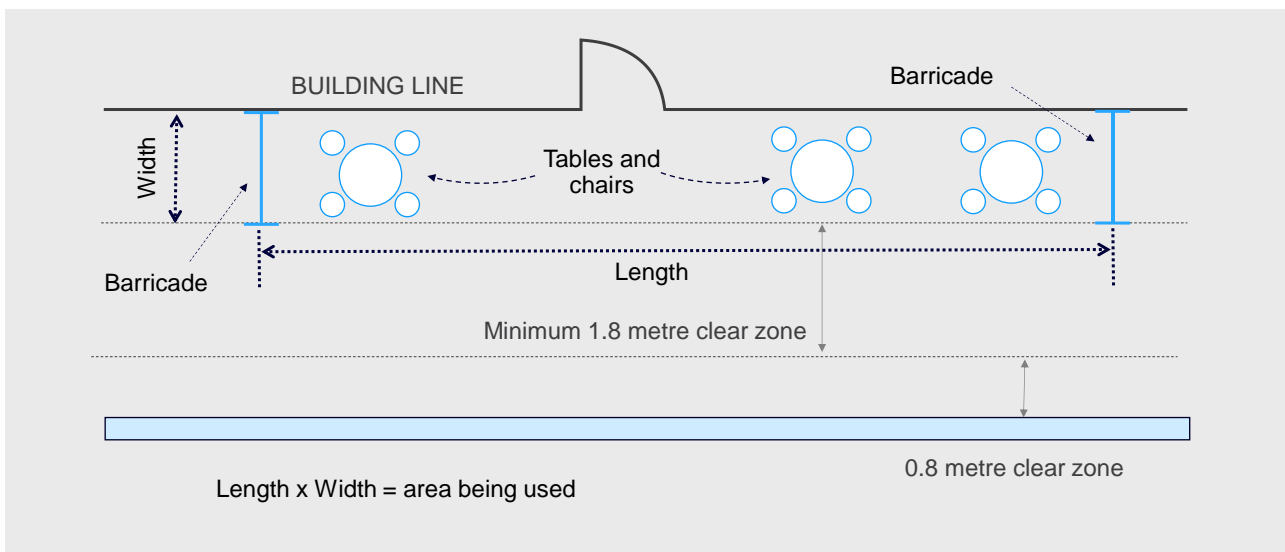


ADVERTISING OF BUSINESS

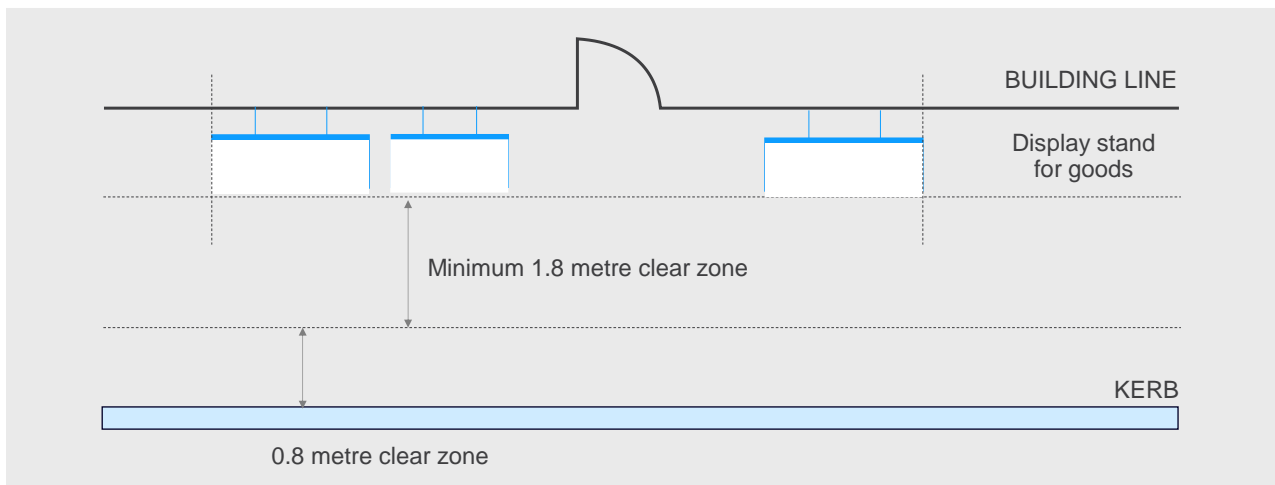


Examples of how the CBD footpaths may be used where there is parallel parking (**including** the Eastern end of Market Street, between Church and Lewis Streets):

FOOTPATH DINING



DISPLAY OF GOODS FOR SALE



ADVERTISING OF BUSINESS

