

Footpath Trading Policy and Guidelines

November 2015

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1. Introduction

This Policy and Guidelines must be read in conjunction with the requirements applying to a particular use or activity in the Wyndham City's Community Amenity Local Law (2015). Failure to comply with the requirements may be an offence and may incur a penalty under the Local Law.

This Policy and the supporting Guidelines have been developed to facilitate and manage the items placed on footpaths outside business premises by the proprietor of that business with a view to ensuring the unobstructed and safe flow of pedestrian traffic to meet the requirements of the Disability Discrimination Act 1992

The Policy and Guidelines also allow retailers to advertise their services, encourage outdoor dining and enhance the vitality of local shopping precincts.

2. Footpath Trading Policy

Wyndham City Wyndham City supports the conduct of footpath activity associated with established businesses throughout shopping centres and other business activity areas. This activity adds to the vibrancy, diversity and cosmopolitan nature of our City and its streetscapes. Such activity brings economic benefits to individual traders and the City. It encourages and attracts shoppers, tourists, visitors and increases social interaction within our community.

Wyndham City recognises that a form of control over footpath activities needs to be in place to achieve equity in the treatment of business proprietors and to ensure that footpaths, irrespective of the activities permitted on them, are community and not individual assets.

Wyndham City also recognises that adequate controls need to be established and enforced to ensure that public safety and disability access are not compromised and that pedestrians can move freely along the footpath.

3. Permits to use the footpath for trading

Wyndham City's Community Amenity Local Law (2015) prohibits items being placed on the footpath unless a permit has been granted. A permit will allow for items to be placed on the footpath provided business operators comply with the conditions of use.

Applicants will be required to submit an application, the permit fee, a site plan detailing the proposal, evidence of current public liability insurance and any building or town planning permits that may be required.

If the business is a bona fide non profit or charitable organisation, on provision of documentation verifying this status, all applicable fees will be waived.

A permit will grant limited rights to business operators to place items on the footpath such as tables and chairs, A-frame signs and screens, and to use that public space for business and commercial purposes. A permit is not a tenancy arrangement and the permit may specify conditions such as hours of use, the duration of the permit and types of items permitted. The Wyndham City reserves the right to revoke the permit should the public space be required for any other purposes or if the conditions of use are not being complied with.

It is anticipated that in some circumstances e.g. narrow footpaths, Wyndham City may not issue a permit.

A permit will normally be for twelve months. The issue of a permit does not guarantee the issue of a further permit at expiry of the existing permit.

4. Guidelines

The Guidelines are intended to assist business operators to make an application to place items on the footpath and will be the basis of any approval by Wyndham City's Authorised Officer to grant a permit or to exempt a person from the requirement to obtain a permit.

Section 5 outlines the objectives and performance standards that will be taken into account and the remaining sections specify the mandatory requirements that will need to be met for Wyndham City officers to issue a permit.

The overall aim of the Guidelines is to:-

- manage footpath activity in co-operation with local traders and business;
- improve management of community assets and reduce risks associated with the use of public space;
- balance the needs of pedestrians, residents, visitors and local business operators;
- encourage diversity and help promote Wyndham's strip shopping precincts as vibrant commercial and community centres;
- establish controls which ensure pedestrian access and public safety is not compromised; and
- achieve a fair financial return to the community for the use of public space for commercial purposes.
- ensure compliance with the Disability Discrimination Act 1992

5. OBJECTIVES AND STANDARDS

5.1 General

Where items are placed on the footpath and the use of the public space may be influenced by local conditions including the width of footpaths, proximity to major roads, loading zones, clearways, disability parking bays, traffic lights, pedestrian crossings, pram crossings, location

of other existing or proposed street furniture and the volume of pedestrians using footpaths at particular times then all activities must operate within the boundaries that are determined by the authorised officer.

Both Wyndham City and individual traders have a duty of care to footpath users so it is essential that any items are placed in such a way that all footpath users, especially people with disabilities and those with prams or trolleys can move easily along the footpath in both directions at the same time.

5.2 Physical Safety

The safety of all pedestrians, motorists, cyclists and other footpath or road users must be protected. This is one of Wyndham City's major obligations. Pedestrians crossing the street should not be faced with a continuous row of tables and chairs or screens that prevent access to the footpath. Sightlines for road users need to be considered in each situation, and particularly at intersections.

Where the requirements of these Guidelines cannot be satisfactorily complied with and an authorised officer considers that the proposal will create a hazard to pedestrians, motorists or cyclists, a permit will not be issued.

5.3 Advertising

The opportunity to place items on the footpath (other than A frame signs) is not intended to provide for additional advertising space. Excessive advertising on outdoor structures such as chairs, umbrellas and the like will be considered contrary to the spirit and intent of this Policy. Applicants should contact Wyndham City's Town Planning Department for advice on requirements regarding advertising.

5.4 Community Safety

Increased activity, such as that provided by kerbside cafés, adds to community safety - the sense of seeing and being seen. A diverse streetscape also encourages increased usage of public spaces and has the potential to strengthen our sense of community with strip shopping centres being seen as important meeting places.

5.5 Food Safety

The preparation, handling and serving of food and drinks to patrons at tables and chairs or food displays is to be conducted in accordance with the relevant legislation, Codes of Practice and Standards, and any other requirements determined by Wyndham City's Environmental Health Unit.

5.6 Amenity

Proposals should not detract from the overall streetscape and image of the area, eg bulky furniture, excessive signage or screens may add unnecessary clutter that detracts from the image of a particular street or shopping precinct and creates a hazard to the visually impaired.

The design of furniture and items should have regard to safety with features such as rounded edges on tables and ability to withstand windy or other adverse weather conditions.

Traders must comply with other relevant standards, including the noise controls of the Environment Protection Authority and ensure that noise or other disturbances do not cause a nuisance to others or cause detriment to the amenity of the neighbourhood.

Traders must clear away any litter, food scraps and any other rubbish left on the footpath and deposit it within their own bins that are kept inside the premises.

5.7 Urban Design

It is not proposed to define or specify the particular design or colour scheme of items placed on the footpath. When selecting furniture, traders will need to consider heritage overlays and existing streetscapes and also any design or colour themes that may be agreed amongst traders or through traders' associations.

5.8 Emergency Services and Special Events

Emergency services or service authorities may require access to respond to an emergency or work on underground services, or it may be necessary to remove items for annual parades, festivals or special events. Reasonable notice will be given where possible. Goods displays on footpaths may be approved for special events.

6. OUTDOOR DINING

6.1 Tables and chairs - Location and Siting

1. Tables and chairs are not permitted along the building line of the premises as this must be kept free for disabled access. An unobstructed minimum 1.8 metre wide pedestrian corridor is required along the footpath parallel to the premise's building line. (See *diagram 17.1*).
2. Tables and chairs are to be setback a minimum of 0.75 metres from the kerb (See *diagram 17.1*). Setbacks greater than 0.75 metres may be required under some circumstances.
3. Tables and chairs may only be placed outside the premises to which they relate and must be confined within the property boundary lines, except where permission has been granted pursuant to Item 6 below. (See *diagram 17.1*).
4. Where premises are located on corner sites, footpath furniture can be placed on both street frontages, however this must be placed a minimum of 2 metres from the corner of the building (See *diagram 17.2*). This ensures unobstructed vision for motorists.
5. A maximum of four (4) chairs may be approved with each table. In some circumstances approval may only be given for a lesser number (See *diagram 17.3*).
6. Permission may be granted to extend the placement of tables and chairs beyond the immediate boundary of the trader's premises. An application will need to be accompanied by written permission from the proprietor of the premises that fronts the footpath on which the items are intended to be placed.
7. Where existing street furniture in front of a property is an obstacle to outdoor dining, the applicant may apply for it to be moved at the applicant's cost. Movement of street furniture is at the discretion of Wyndham City.
8. In determining whether to approve such an application, the authorised officer will need to be satisfied that the intent of the Policy and the requirements of these Guidelines can be complied with. The approval may be withdrawn at any time.

6.2 Advertising

1. Wyndham City encourages innovation in design; however, the opportunity of footpath trading should not be used as a basis for creating increased advertising space.
2. Operators may feature the name of their business premises or relevant product names on umbrellas or screens.

3. Details of any proposed signage on furniture must be submitted with applications for approval.

6.3 Screens/Umbrellas

1. The maximum height for screens is 1.2 metres. Screens must not extend beyond the width of the seating area. Each screen must not exceed a length of 1.8 metres, and those parallel to the kerb must have a spacing of 0.75 metres between them (*See diagram 17.4*).
2. The installation of permanent screens may be considered in some circumstances. These installations will be subject to specific conditions that ensure the protection of community assets, ongoing maintenance and ensure no increased costs to the community.
3. Umbrellas may be provided for each table provided there is a minimum of 2.2 metres clearance from the underside of the umbrella to the footpath and they are securely weighted or fastened. The umbrella must not extend into the pedestrian corridor or protrude over the kerb so as to cause a hazard (*See diagram 17.5*).

6.4 Hours of Operation

1. The footpath may be used for trading in accordance with the hours of business currently allowed under the trader's planning permit or where applicable, the liquor permit, provided that the lesser of these requirements will apply in instances where such conditions are in conflict. After closing, all items must be removed from the footpath.
2. All tables, chairs and ancillary items must be removed and the footpath kept clear for street cleaning when required. Normal street cleaning operations occur between 11:00pm and 8:00am the following day and an Authorised Officer may direct the removal of items at particular times or on particular days to accommodate this activity.
3. If the premises have a liquor permit, the tables and chairs on the footpath must be shown as part of the 'licensed area' on such permit.

6.5 Food Safety

1. No food or drink is to be prepared, cooked or heated at the outdoor tables and chairs.
2. The preparation, handling and serving of food and drinks to patrons at tables and chairs must comply with the relevant legislation, Codes of Practice and Standards and any requirements as specified by Wyndham City's Environmental Health Unit.

6.6 Amenity

1. The trader must take all necessary steps to ensure that noise or other disturbances coming from outdoor dining do not, in the opinion of the authorised officer, cause a nuisance to others or cause detriment to the amenity of the neighbourhood.
2. Sound amplification equipment, juke boxes or loud speakers may not be used in the outdoor dining area
3. Live entertainment is not permitted without the written permission of an Authorised Officer.
4. Because of safety and management risks, the placement of heaters on the footpath will only be considered where the applicant has a safety management plan in place that meets the requirements of Energy Safe Victoria.
5. The trader is responsible for:
 - the conduct of patrons at tables and chairs; and
 - ensuring patrons do not rearrange the tables and chairs and obstruct the footpath.

6.7 Liquor Licensing

Liquor is not to be sold, consumed or served at tables and chairs unless approved by the Wyndham City and the Liquor Licensing Commission under relevant legislation.

6.8 Tobacco Act requirements

Outdoor dining area must comply with the requirements of the Tobacco Act 1987.

No smoking permitted within a 4 metre buffer of food being served of adjoining premises.

If smoking tobacco is permitted under the Tobacco Act, in an outdoor drinking area, an ash tray must be provided.

7. Advertising Signs ('A' FRAME SIGNS AND POINTER SIGNS) on Footpaths and associated areas

Permits will not be granted to any premises in any area zoned residential under the Wyndham City Wyndham City Planning Scheme.

1. Advertising signs are not permitted along the building line of the premises. They may only be displayed setback a minimum of 0.75 metres from the kerb (*See diagram 17.6*). Setbacks greater than 0.75 metres may be required under some circumstances.
2. An unobstructed minimum 1.8 metre wide pedestrian corridor is required along the footpath parallel to the premise's building line (*See diagram 17.6*).
3. An advertising sign must not exceed 0.7 metres in width or 1 metre in height.
4. Portable electric, illuminated, revolving, spinning flags, banners, streamers or flashing signs and inflatable signs are prohibited.
5. Advertising signs may only be displayed outside the premises to which they relate and only at times during which those premises are open to the public.

In locations where a footpath does not exist, the advertising sign may be placed on the nature strip area immediately adjacent to the premises.

6. Only one sign is permitted for each premise.
7. Traders wanting to place advertising signs relating to premises that do not have a street frontage may be granted a permit to place an advertising sign on a nearby footpath.
8. Permits will not be granted to place advertising signs in, on or near median / dividing strips, traffic control devices, intersections or any other location deemed unsuitable by an Authorised Officer of Wyndham City
9. Real estate agent pointer boards may be granted a blanket permit for the Municipality under the following conditions:
 - Pointer signs must not exceed 0.7 metres in width or height
 - Pointer signs may be displayed no more than 2 hours before an Auction or Open House time commences and must be removed no later than 1 hour after the event ends.
 - Pointer signs are not to be placed on Traffic control items such as roundabouts, traffic islands, median and centre road strips, poles or any other structure.

8. Goods Displays

1. Goods must be displayed on stands or contained by screens and are not permitted along the building line of the premises. They may only be displayed setback a minimum of 0.75 metres from the kerb (*See diagram 17.7*). More than 0.75 metres may be required under some circumstances.
2. An unobstructed minimum 1.8 metre wide pedestrian corridor is required along the footpath parallel to the premise's building line (*See diagram 17.7*).
3. Goods may only be placed outside the premises to which they relate and only at times during which those premises are open to the public.
4. Food displays must comply with the relevant legislation, Codes of Practice and Standards, and any requirements as specified by Council's Environmental Health Unit.
5. Goods displayed and/or stands must not exceed the following dimensions:
 - Maximum height including goods – 1.5 metres
 - Maximum length – 1.8 metres
 - Maximum width – 0.75 metres
 - Minimum spacing of 0.75 metres between goods displays/stands (*See diagram 17.7*).

Stands must be of safe and sturdy construction, and be of a high quality finish

Heavy goods that could potentially fall from a stand that may cause injury to a person or animal such as tinned items, detergent bottles etc, must not be displayed or stacked on display stands. Stable stacking of light items such as clothing and towels will be permitted.

6. Display stands must be "fit for purpose" and be able to be easily moved in or out each day, be securely fixed in place at the kerbside and securely hold displayed goods.
7. Display stands will be inspected as part of the permit consideration process. If the stands are not constructed when the application is made, detailed design plans must be provided. If a permit is issued, it will be conditional on an inspection of the built stand.

9. Conditions applicable to all Permits

Permits must be affixed to the front window of the business, so as to be readily visible at all times

1. All items placed on the footpath must allow for free access to public transport stops, Taxi ranks, water hydrants, pedestrian crossings, post boxes and all other facilities provided within the footpath reserve.
2. The Wyndham City Wyndham City may set markers into the footpath to indicate the maximum space furniture and items may occupy.
3. The trader must maintain the area in a clean condition and regularly clear away any litter, food scraps, cigarette butts and any other rubbish left on the site and deposit it within the trader's own bins that are kept inside the premises. Private bins cannot be stored on the footpath and public litter bins are not to be used by the trader for depositing litter.
4. The trader must not sweep, wash or dispose of any liquid or deposit any dirt, litter (including cigarette butts), food scraps or any other rubbish into the gutter and must provide ashtrays for patrons and regularly remove cigarette butts and deposit them within bins kept inside the premises.
5. The feet of all items placed on the footpath must be covered and maintained with a suitable rubber stopper or other device to protect the footpath, to the satisfaction of the authorised officer. It is the responsibility of the trader to ensure any items placed on the footpath do not cause damage to Wyndham City assets.
6. All outdoor furniture and items should be safe, structurally sound and of a design and construction so as to be able to withstand windy conditions. Safety should always be the first consideration. Advertising signs must be properly constructed, stable and erected to prevent them being moved by the wind. Items must not be permanently affixed to any footpath, building, street furniture, pole or other structure.
7. Advertising signs, chairs, tables and screens should have a contrasting colour to their background to assist the vision impaired.
8. To deter theft or accidental loss of furniture, it is recommended that identification be marked on the underside of all items.
9. Loose chains or the like must not be used to secure any items.
10. **Weather Conditions**
The permit holder is required to monitor weather conditions and take appropriate action to secure or remove items in response to the prevailing weather conditions

10. Service Authority Works and Special Events

Service authorities or Wyndham City may require the use of a site to undertake works. When this, or any parade, festival or special event is scheduled, it will be normal practice to give at least seven days notice in advance. In an emergency, sites may need to be cleared immediately. Traders will be responsible for moving all items and any associated costs. The trader will not be eligible for any compensation due to such events.

11. Public Liability Insurance and Indemnity

1. A person applying for a permit must indemnify the Wyndham City against any suit, action, proceeding, judgement, claim, demand, cost, expense, loss or damage for which Wyndham City becomes or may become liable in relation to the death or injury to any person or the damage to any property caused by a an item authorised under the Local Law or this Policy.
2. Where a permit has been granted, the permit holder must maintain a public liability policy of insurance for an amount not less than **\$10 million**. The policy must be able to meet any possible claim which may be sustained against the permit holder or Wyndham City in relation to the death or injury to any person or the damage to any property arising out of the item/s authorised by the Permit.
3. Wyndham City requires that a “Principal’s Indemnity” Extension shall be provided to Wyndham City under the permit holders Public Liability insurance policy.

12. Applying for a Permit

To obtain a permit, applicants need to:

- complete and sign the application for a permit;
- provide a site plan that shows dimensions of the proposed outdoor dining area and/or “A frame” sign.
- indicate setbacks from shop frontage, kerb and site boundaries and any existing elements, for example, tree, garden bed, light pole, rubbish bin, etc;
- provide a Certificate of Currency in relation to a public liability insurance, insuring against liability for the death of or injury to any person or damage to any property arising out of the display that will be authorised by the Permit;

- forward the application, the required information and permit fees (cheques payable to “Wyndham City”) to:

Legislative Services Unit
 Wyndham City Wyndham City
 P.O. Box 197
WERRBEE VIC 3030

13. Decision Making

1. Local conditions will influence where items may be placed. The Wyndham City cannot permit activity where it would compromise pedestrian, diner or traffic safety. Relevant local conditions include the width of the footpath, proximity to major roads, loading zones, trees, angle parking and the number of pedestrians at particular times of day.
2. Each permit application will be assessed on a case by case basis and will consider all relevant factors including the following:
 - Width of footpath,
 - Speed of traffic adjacent to the area,
 - Proximity of the area to the traffic lane,
 - Proximity of the area to intersections,
 - Parking permitted adjacent to the area,
 - Type of parking permitted adjacent to the area (i.e. parallel, angle),
 - Accident history of the area,
 - Presence of street furniture, safety barriers or bollards, trees etc.
 - Clearance requirements from street furniture,
 - Distance from Bus Zones, Taxi Ranks, Loading Zones,
 - Access requirements of pedestrians,
 - Positioning of bicycle paths.

Depending on the outcome of the suitability assessment, Wyndham City may decide to grant or refuse a permit or, alternatively, grant a permit on condition that certain safety measures are installed.

3. Where existing street furniture in front of a property is an obstacle to footpath trading, the applicant may apply for it to be moved at the applicant’s cost. Movement of street furniture is at the discretion of Wyndham City.
4. An authorised officer may consent to an application with or without modifications and with or without conditions.
5. An authorised officer may also reject an application or revoke a permit if:

1. it does not meet the requirements of this policy and guidelines.
2. the sight of pedestrians crossing at an intersection or crossing is interfered with so as to obscure oncoming traffic;
3. the sight of the driver of a vehicle is interfered with so as to not properly see pedestrians, signals or signs;
4. permit requirements have not been met and there is continuing failure to comply with directions;
5. the permit holder fails to maintain public liability insurance; and
6. under any other circumstances that the authorised officer considers will create a safety hazard to pedestrians, motorists or cyclists or cause detriment to the amenity of the area.

14. Permit Fee and Period of Permit

1. The current applicable fees are noted on the application form.
2. All permits will have a common expiry date of the 31st of August each year, with new applications having a pro-rata fee applied.
3. If an application is refused, the permit fee may be refunded less administration costs.
4. Permits are **not** transferable. A new permit must be obtained if the proprietorship of a business changes.
5. A permit also expires if:
 1. the permit holder ceases to be the proprietor of the business; or
 2. the permit holder ceases to maintain public liability insurance.

15. Enforcement

1. This Policy will be enforced in accordance with the Community Amenity Local Law (2015).
2. Any items that are placed on the footpath without a permit may be impounded. Alternatively, an authorised officer may direct that items be removed from the footpath.

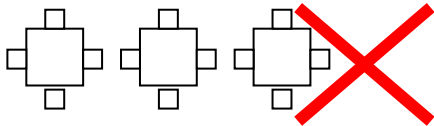
3. Any person who places item on Wyndham City controlled land without a permit may be issued with an infringement notice and the items may be seized. If the offence continues, second and subsequent fines may be issued.
4. Non or obscured display of the permit will be considered to be a breach of the Local Law.
5. Real estate agents must ensure the permit number is clearly displayed on all pointer board signs. Failure to do so will be considered a breach of the Local Law.

16. Enquiries

If you have any queries concerning this policy, or need further assistance, please contact **Wyndham City's Legislative Services Unit on 9742 0777**.

17. STREET FURNITURE PLACEMENT DIAGRAMS

17.1 Placement of Tables

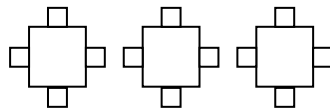


↑
Not Permitted

PEDESTRIAN CORRIDOR (MINIMUM 1.8 METRES)



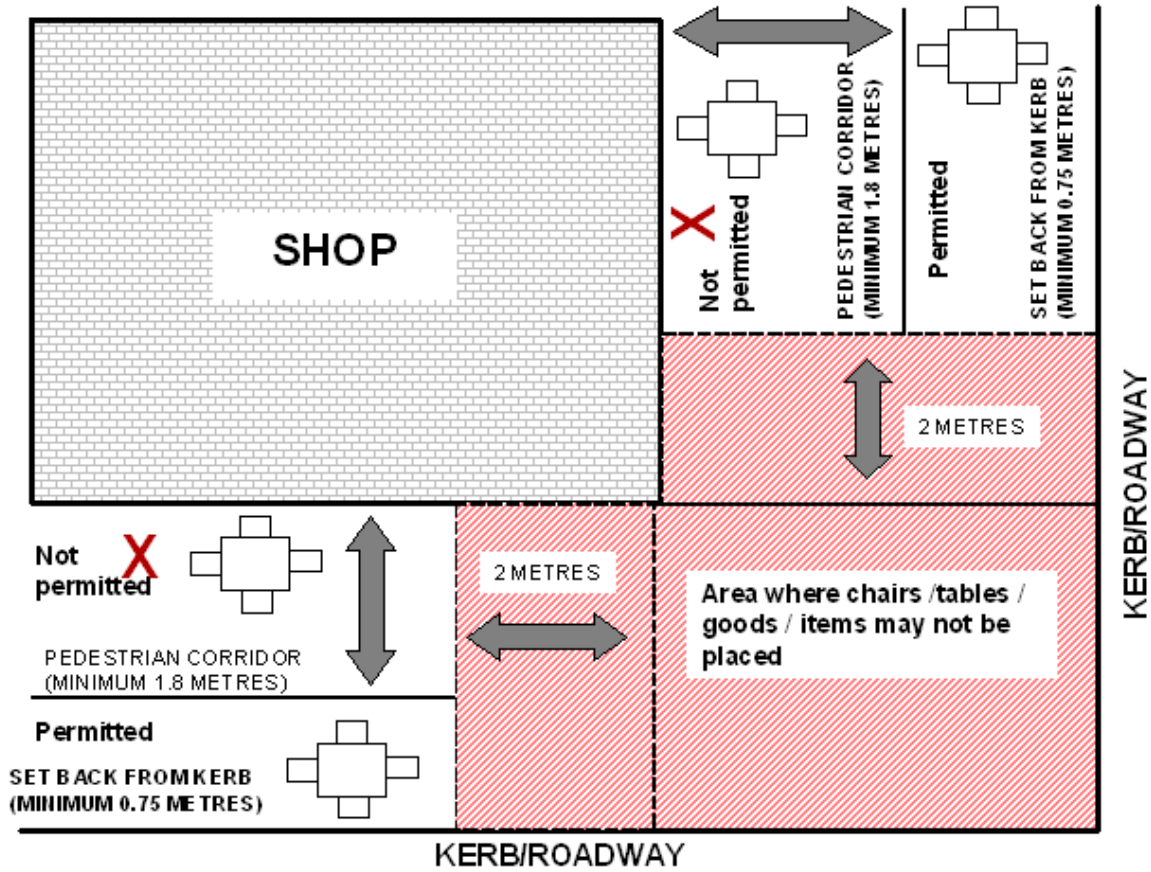
Permitted



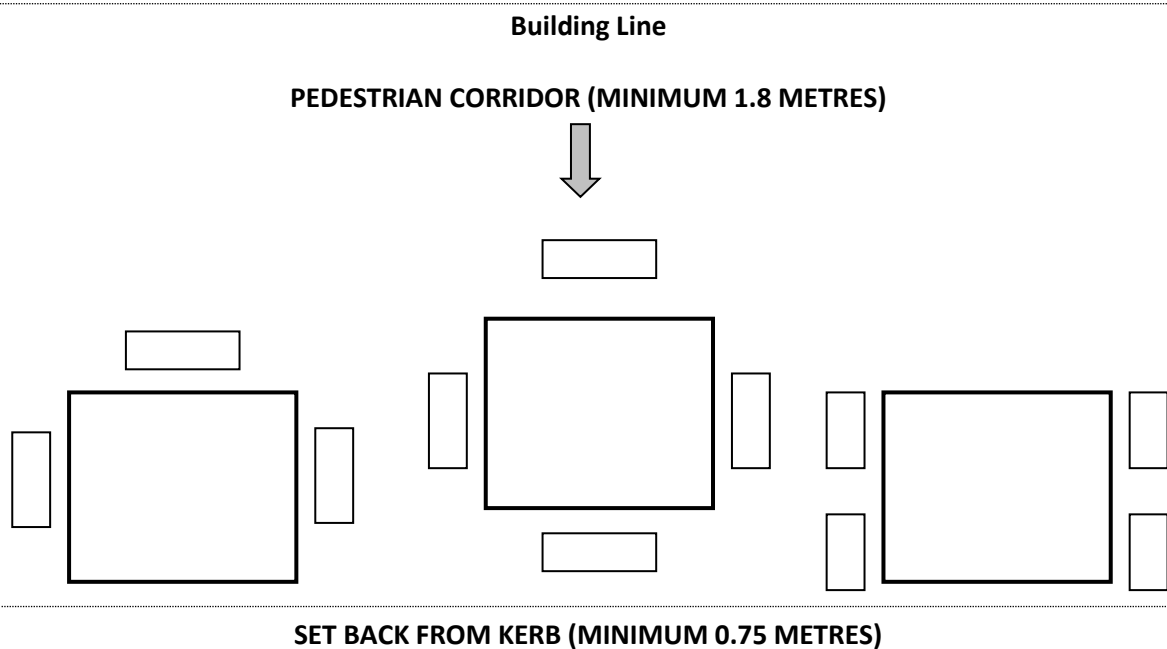
SET BACK FROM KERB (MINIMUM 0.75 METRES)

KERB / ROADWAY

17.2 Placement of Tables – 2 street frontages

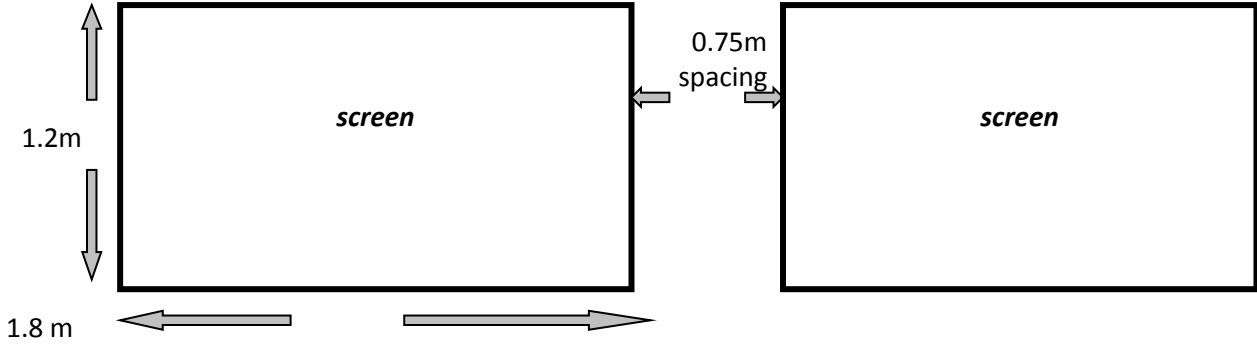


17.3 Placement of Chairs



KERB / ROADWAY

17.4. Placement of Screens

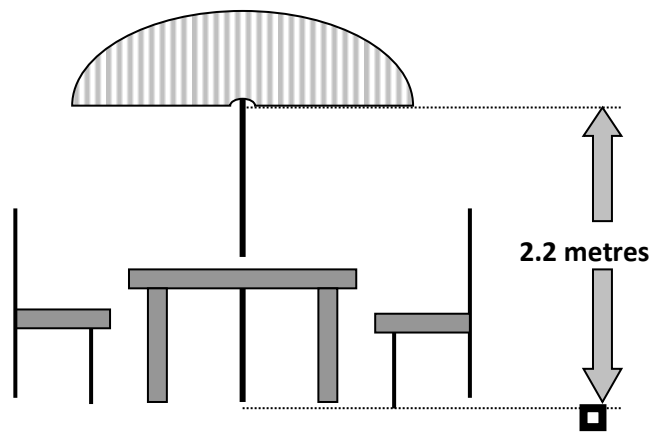


- Maximum height: 1.2 metres
- Maximum length: 1.8 metres
- Minimum spacing between screens: 0.75 metres

SET BACK FROM KERB MINIMUM 0.75 METRES

KERB / ROADWAY

17.5. Placement of Umbrellas

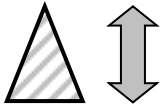
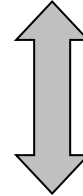


17.6 Placement of A-frame Signs



Not Permitted

PEDESTRIAN CORRIDOR (MINIMUM 1.8 METRES)



maximum width: 0.7 metres
Permitted

SET BACK FROM KERB (MINIMUM 0.75 METRES)

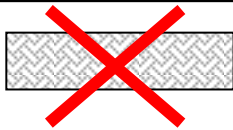
KERB / ROADWAY

Sign dimensions:

Maximum width: 0.7 metres

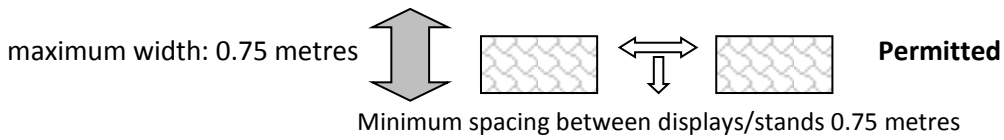
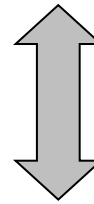
Maximum height: 1 metre

17.7 Placement of Goods Displays



NOT PERMITTED

PEDESTRIAN CORRIDOR (MINIMUM 1.8 METRES)



SET BACK FROM KERB (MINIMUM 0.75 METRES)

KERB / ROADWAY