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GUIDELINES TO COMMERCIAL USE OF FOOTPATHS

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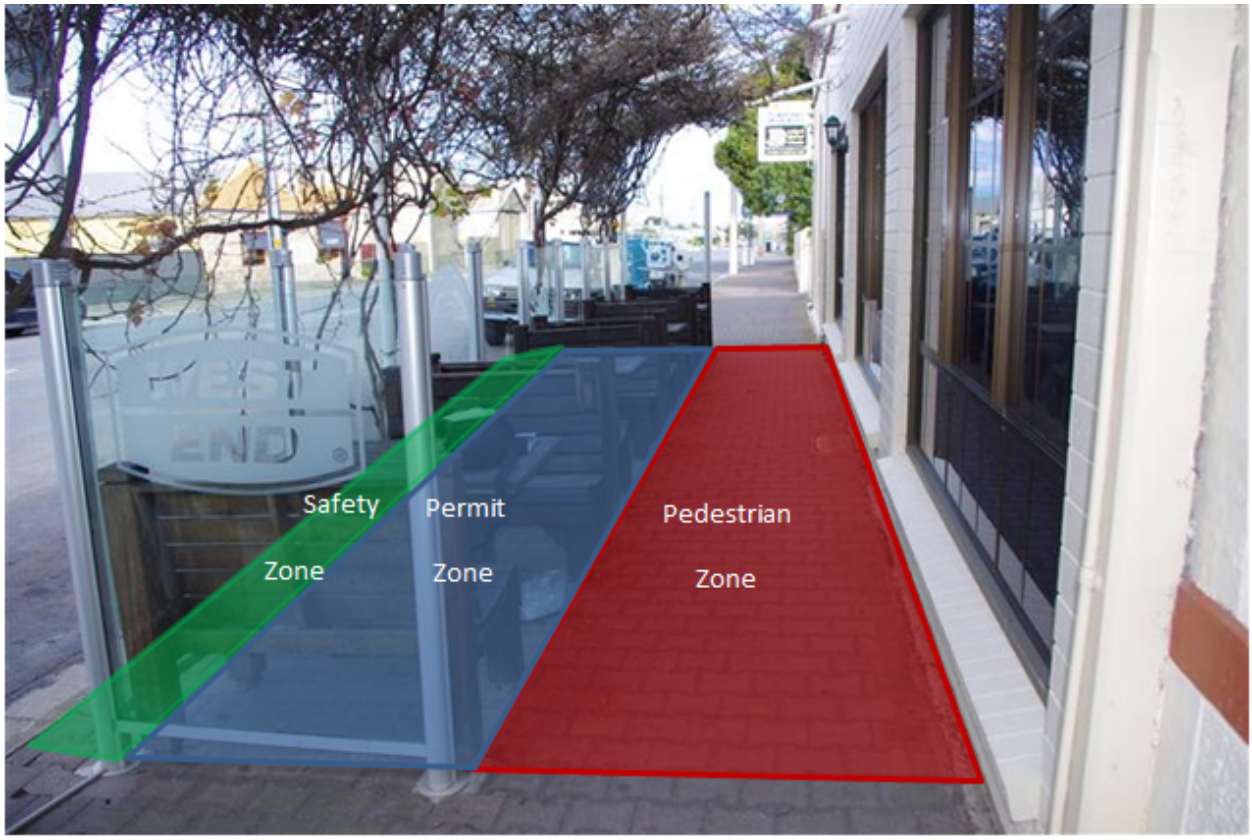
Approval for the Commercial use of Footpaths is based on a number of considerations.

To achieve and ensure a balanced use of the footpath area, the management of the footpath is divided into three sections:-



1.1 Pedestrian Access Zone

The preferred location for this is an area adjacent to the shop front (property line) that must be clear of goods/furniture/moveable signs at all times to allow safe pedestrian movement. In many cases this location will not be practicable and the pedestrian access zone will be near the centre of the footpath.

The minimum width of the Pedestrian Access Zone shall be 1.5 metres.

Furthermore, there can be no encroachment, from the building façade or the verandah, over the public footpath below a height of 2.5 metres above the footpath.

1.2 Section for Commercial Use (Permit Zone)

Only the footpath in front of a business may be used by that business. Permit Holders will only be permitted to use the footpath directly adjacent to the business address. The width of the footpath will determine the width of any Permit Zone.

1.3 Safety Zone

Is the area which is a minimum 400 mm from the kerb face and must be clear of all goods at all times. (This distance may be increased depending on conditions of permit).

Nothing is allowed to protrude across the Safety Zone. This section is required for persons to access and egress parked vehicles.

A defined area for use will be approved by Council only if it allows for safe pedestrian circulation and access, improves or maintains the existing amenity of the area, provides for convenient use, and does not compromise or restrict the sight lines for motorists.

1.4 General Information for applicants

The commercial use of a footpath without Council approval is not permitted and may result in the issuing of an expiation notice.

The character and amenity of a street can be enhanced by the commercial use of a footpath. Street elements, such as existing street furniture, street trees, garden beds, street light poles, fire hydrants, building entrances, service pits and roadside signage should be considered in the application.

It is the responsibility of the Permit Holder to ensure an issued permit remains current.

A licence will only be issued or renewed after receipt of a completed Application for Renewal Form (SF196) including the required current insurance details.

The fees payable for a Permit for commercial use of a footpath will be reviewed annually through the Council's review of the Fees and Charges Register.

A Permit may be temporarily placed on hold or suspended indefinitely should ;

- Council or any other Service Authority require access to the area for the purpose of servicing infrastructure.
- Permit fees remain unpaid.
- Proof of current Insurance is not provided to Council.
- Complaints or non-compliance with the guidelines.

1.5 Safety

In some locations the width of the footpath and the availability for the public to access public facilities including litter bins, public seats, pedestrian footpath access points, bus zones, loading zones, disabled parking and passenger loading/unloading zones and the like, may restrict the area that is available, therefore making the footpath unavailable for commercial use.

Permit areas remain public spaces; operators and their patrons do not have exclusive use of the area. Pedestrians are still permitted to use the footpath.

Commercial use of the footpath must not pose a hazard or obstruction to pedestrians**.**

Items that will generally not be permitted on the footpath include:

- Sharp / protruding items.
- Items with oscillating / moving parts including fans, banners or bunting.
- Items that have illuminated or flashing lights.
- Reflective items that pose a risk to vehicular traffic.
- Items that are unstable.
- Any other items that Council may declare inappropriate.

1.6 Location and Siting

A Permit Zone will be restricted to the front of the business premises and must not extend across a neighbouring premise, unless written approval is obtained from the adjoining landlords.

The location and design of all street elements shall be considered in a manner that complements or improves the existing streetscape.

The Yorke Peninsula Council is under no obligation to remove any street fixtures to allow the commercial use of a footpath. Council may consider a request to relocate fixtures, on the understanding that any relocation costs are to be borne by the applicant.

Where the area is located on a protuberance, additional protection must be provided to the public by the placement of pedestrian bollards. Any application to place bollards will require a separate application to Council's Director of Assets and Infrastructure Services for approval.

More complex applications involving public infrastructure alterations and or use of public car parking space(s) may be referred to Council for consideration.

Council may seek a comment in relation to the application from the local Progress Association or Town Committee.

2. Obtaining a Permit

2.1 Application

Applicants will complete Council's SF196, (Application for Commercial Use of a Footpath) which will also become the permit upon authorisation.

Comment may be sought from Council's Development Services Department to determine if further approvals are required. An application for a change of use or for the approval of structures may need to be lodged pursuant to the Planning, Development and Infrastructure Act 2016 .

For an application for the Commercial Use of Footpaths to be considered, applicants must provide Council with the following:

- a fully completed Application Form (SF196 Application for Commercial Use of a Council Footpath)
- Evidence of a minimum of $20 million public liability insurance; which must include written confirmation that cover extends to cover commercial use of footpath, and nominates Council as an interested party.
- a scaled (1:100 minimum) dimensioned plan showing the proposed location of the tables and chairs, including photographs of the proposed fixtures.
- Details of associated signage or third party advertising must also be submitted to and approved by Council.
- Risk Assessment may be needed a discretion of Council's Authorised Officer

The Yorke Peninsula Council's Outdoor Dining Compliance Checklist will be utilised to assess risk and ensure consistency when considering and determining applications specific for an Outdoor Dining Area.

2.2 Issuing and Renewal

All Permits will attract a fee and will have an expiry date of 31 July, with initial permits valid for a period of 2 full years and part thereof until 31 July. Permit renewals will be issued for a 3 year period.

For a permit to remain in force, the permit holder needs to ensure Council is provided with a current public liability insurance policy document. The policy document shall be provided to council after each insurance renewal for the period of the permit.

If there are no changes to the expiring permit it may be renewed for a further 3 years.

If there are proposed significant changes to the permit it may need to be treated as a new application.

2.3 Cancellation of Permit

A permit for the Commercial Use of a Footpath may be cancelled if the permit holder fails to comply with the permit conditions. Council's Authorised Officers will investigate complaints regarding the approved commercial use of a footpath which may result in the cancellation of a permit (See 4.2 for further information).

Permits may also be cancelled if there is a change in conditions in the vicinity of the permit area that has increased the risk to health or safety of road users. The permit may also be changed if there are changes to the streetscape.

A permit is not transferable to another party. If the ownership of the business changes, the new owner must complete and new application form and apply for a new permit in their name.

3. Layout, Design and Appearance

3.1 General

The layout, design and appearance of the commercial use of the footpath should contribute to the desired character and amenity of the streetscape. Furniture should enhance the amenity of an area and provide a well- designed practical suite that is durable, attractive and fits within the existing street character. **Furniture type is to be approved by Council**.

In relation to the displaying of goods on the footpath they must be contained within the permit zone at all times. The goods (except furniture) must be displayed on stable stands unless otherwise approved by Council. The display of goods should not exceed a height of 1.8 metres measured from the pavement and should have a minimum height of 750mm.

All furniture placed in the Permit Zone should be sturdy and windproof and without any sharp edges or other features that are likely to cause injury. The furniture should also be of quality construction so as to be attractive, durable and safe for users.

The placement of the furniture and/or goods must be in accordance with the approved plan. The contents placed in the permit zone must not obstruct views of the street activity and the sight lines for other users.

Screens/ blinds, planter boxers must not be placed where they present a barrier and a possible danger to pedestrians.

A minimum width of one (1.0) metre is required to accommodate table and chairs. (See diagrams 5.1, 5.2 and 5.3 re possible configurations).

3.2 Additional Layout and set back Criteria

Approval will not be given adjacent to a bus zone/stop.

If there is a loading zone, disabled parking zone or passenger loading zone in front of the proposed commercial use of the footpath, a minimum of 1.2 metres parallel to the footpath must be provided for footpath access at all times.

The commercial use of a footpath should not exceed an 8 metre span (may include adjoining permit holder) without allowing sufficient pedestrian access between the footpath and the road.

Goods/furniture is prohibited within 3 metres of an intersection.

Goods/furniture is prohibited within 1.2 metres of a pedestrian footpath access also allowing access to the pedestrian access.

Goods must not exceed a total height of 1.8 metres and be no lower than 750mm measured from the footpath.

Goods/furniture is prohibited within 1.2 metres of a rubbish bin or other fixed object, for example a bench or seat.

Overhanging objects must have a minimum clearance of 2.5 metres measured from the footpath.

3.3 Plastic Blinds

May be permitted if:

- Installed under a verandah or balcony
- Must be clear plastic with a contrasting colour strip at approximately 1.4 metres above the footpath
- Must be rolled up or removed outside trading hours or when the weather does not warrant their use.

If Council considers them to have a detrimental impact on the streetscape or if they believe they are a nuisance or a safety hazard their installation will not be approved.

3.4 Removable Umbrellas

Umbrellas may be used to provide shade from sun, and shelter from wind and rain, however, they;

- must be securely fixed and stable.
- must achieve a minimum of 2.5 metres height clearance from the pavement when in use.
- are not to be used under verandas.
- Should be placed with regard to existing infrastructure such as trees and canopies.
- Umbrellas that are installed into a permanent socket or sleeve in the footpath are preferred to umbrellas with stands. Details of the permanent socket need to be submitted to Council prior to their installation.
- Stands are not to remain in place outside of permit hours.

3.5 Permanent Umbrellas and Retractable awnings

Development Approval under the Planning, Development and Infrastructure Act 2016 may be required for Permanent Umbrellas and retractable awnings. They may be appropriate if they meet the following;

- Footpath is of adequate width to allow free flow of pedestrian movement.
- Do not create an obstacle to pedestrian movement or obstruct motorists sight lines.
- Designed to not detract from the general amenity of the area.
- Minimum clearance of 2.5m above the footpath and maximum height of 3.5m.
- Retractable awnings may be approved subject to an individual assessment.

3.6 Enclosures/Screens

The following principals apply to the use of enclosures/screens

- Enclosures must be removed outside trading hours.
- Enclosures will only be allowed where they do not present a safety risk in relation to pedestrian and vehicular movement.
- Clearance from the ground is required to allow stormwater runoff.
- A 1.5 metre gap may be required for every 8m of enclosures. (length can include enclosures of adjoining permit holder).

Permanent enclosures are permitted only in the form of glass screens subject to the following:

- The form and structural strength of screens must be adequate to meet functional requirements including wind loads, resistance to vandalism and impact from pedestrians and be in accordance with relevant Australian Standards, (certification document required).
- The construction and installation of glazed safety barriers is a specialised area and Council will require a Certificate of Compliance from the manufacturer/installer to ensure compliance with relevant Australian Standards, (Glazing and Loading Codes 1288 and 1170(1)).
- Safety glass and perspex screens should be in accordance with Australian Standard AS1288.
- May incorporate treatment such as etching, details of which need to be approved by Council.
- Must have a maximum height of 1.5m and a minimum clearance from the ground of 0.3m.
- If the screen is clear glass it must be marked with a clearly visible horizontal strip at approximate 100mm from the top of the glass.

- The design reinforces the character of the streetscape.

Location and Placement

Screen placement depends on:

- Distance from kerb line, (minimum 400 mm)
- Spacing with regard to buildings, trees and other elements of public street furniture,
- Positioning which allows for pedestrian amenity, including refuge from traffic,
- Existing kerbside use. (i.e. car parking, loading zones, etc)

Screens must not be placed where they present a hazard and subsequent danger to pedestrians crossing the street.

The length of any single screen along the street frontage should not exceed 6 metres.

Where adjacent screens are up to the maximum of 6 metres along the street frontage, the gap between screens should be a minimum of 600 mm.

Screens must not be placed on top of service covers or where they interfere with existing services.

Permit holders must remove screens at their own cost within three weeks of notification if the Council notifies its intention to repave the footpath.

Approval for any particular screen will be site specific.

3.7 Bollards

As part of the outdoor dining assessment Council will determine if Energy Absorbing Bollards (EAB's) are required to enable the patrons to use the outdoor dining area safely. If EAB's are required they will be installed at the outdoor dining permit applicants expense, as per the specifications approved by Council.

3.8 Outdoor Heaters

Fixed heating appliances require further consideration and require a Certificate of Compliance from the installer to ensure compliance with regulatory standards.

Gas heaters may be temporarily located within the designated permit area to provide additional comfort for patrons subject to the following requirements;

- Installation and operation of gas heaters should be in accordance with AS 4565-2001 (AG 405) Radiant Gas Heaters,
- Must be securely fixed and stable and not pose a safety or fire risk,
- Must be contained in the Permit Zone,
- To be removed outside of trading hours.

3.9 Planter Boxes

Based on a risk assessment planter boxes may be used to provide further definition to outdoor dining areas as well as variety and colour to the street.

Approval must be obtained for installation of planter boxes, including their design and placement, at the time of applying for an outdoor dining licence.

The design and placement of planter boxes must comply with the following principles:

- The form and structural strength of planter boxes must be adequate to meet functional requirements including resistance to vandalism and impact from pedestrians,
- Permit Holders are responsible for the repair of any damage or vandalism to the planter boxes,
- Planter boxes must not have sharp corners or edges,

- Trellis will only be approved for use when it is able to be fixed to an existing approved permanent structure,
- The physical appearance of planter boxes, including materials and style, must be consistent with the streetscape character including other street elements,
- To maintain their appearance and structural integrity, durable materials able to withstand harsh use should be used,
- Logos and other forms of advertising are not permitted on planter boxes,
- Plant material may either be planted directly into planter boxes or contained within plastic pots for ease of replacement. Overflow from irrigation systems or hand watering must not stain pavements or cause a safety hazard for pedestrians and must not flow into the street's stormwater system,
- Hand irrigation and maintenance is the responsibility of the permit holder.

Planter boxes may be of a variety of sizes, although a minimum width of 500mm is recommended.

Planter boxes should not exceed 1200mm in length in any one unit.

Planter boxes may be placed adjacent to each other for a maximum distance of 6 metres.

Plant Material

- Plant species must be suitable in terms of form, shape, hardiness and ability to be maintained.
- A list of plant species proposed to be used must be submitted at the time of applying for a licence.
- All dead plants must be removed and replaced with healthy specimens.

Location and Placement

The placement of planter boxes depends on;

- Distance from kerb line, (ideally 600 mm)
- Spacing with regard to buildings, trees and other elements of public street furniture,
- Positioning which allows for pedestrian amenity, including refuge from traffic,
- Existing kerbside use. (i.e. car parking, loading zones, etc)

Planter boxes must not be placed where they present a barrier and subsequent danger to pedestrians crossing the street. Where a number of planter boxes are proposed, a minimum gap of 600mm must be provided between units.

Planter boxes must not be placed on top of service covers or where they interfere with existing services. Permit Holders must remove planter boxes at their own cost within three weeks of notification if the Council notifies its intention to repave the footpath.

3.10 Advertising/Signage

Advertising and signage is controlled under the Planning, Development and Infrastructure Act 2016 and is subject to development approval.

Furniture used in outdoor dining areas can only have the name or logo of the premises or product supplier placed on items of furniture. Markings should be a minor element in the design.

A-frame signs must be positioned in accordance with Council's Moveable Signs By-Law No 4 of 2020.

3.11 Animals

Animals are to be managed effectively within any permit area. Dogs must be on a leash at all times.

The State Government has exempted approved outdoor dining areas from Food Safety Standard Clause 3.2.2, sub-clause 24(1)(b) in dining areas providing the area is not enclosed.

Animals must be under the control of their owners and must not cause a nuisance to other diners or pedestrians in accordance with the Dog and Cat Management Act 1995.

- A Permit holder may deny the entry of animals to a permitted outdoor dining area under his/her control at their discretion. The public has access to the 1.5m zone at all times.
- Animals must not be provided with food or permitted to seek and take food anywhere in or near to outdoor dining areas. One water dish may be provided for animals, providing it is on the perimeter of the designated dining area and is at least 1 metre away from patrons seated at tables.

4 Management of the Permit Area

4.1 General Management

Use of the area, including the placement of fixtures, is to remain strictly within the approved boundaries of the permit area.

The permit area must be regularly cleaned to present a well cared for image as specified in the permit.

Any street furniture, including plantings in planter boxes, belonging to a permit area must be kept in a safe and well maintained condition.

Permit holders are responsible for cleaning any furniture, the permit area pavement and the adjacent footpath.

Waste and sweepings must be disposed of in the appropriate manner and must not be disposed of into the street gutter, or public litter bins. Blowers or similar devices must not be used.

Failure to maintain and clean the permit area to the satisfaction of the Council may lead to revocation of the permit.

All moveable fixtures (excluding planter boxes) must be removed from the footpath at the close of business each day.

Items may only be permanently fixed to the footpath with the approval of Council.

Adequate lighting must be provided where approval has been given to permanently fix furniture to the footpath or where trading occurs outside daylight hours to ensure safety and amenity for pedestrians and patrons. It is the responsibility of the permit holder to provide additional lighting if necessary.

The design of lighting must ensure neither a distraction nor disturbance to adjoining road carriageways to compromise safe vehicle movements.

4.2 Breach of Permit Conditions

Council's Authorised Officers will monitor permit areas and permit holders are required to comply with any direction provided by such an Officer. Any deviations from the Guidelines or the terms and conditions under the permit will be negotiated with each applicant.

The following process represents what will happen if there is a breach of permit conditions;

- First breach - verbal warning issued, (with note on operators file)
- Second breach - written warning regarding non – compliance,
- Third breach – Expiation Notice and written warning,
- Fourth breach – Issue of an Expiation Notice and cancellation of the permit for a period of 14 days,
- Fifth breach – Report prepared for Council with regard to permanent cancellation of the permit.

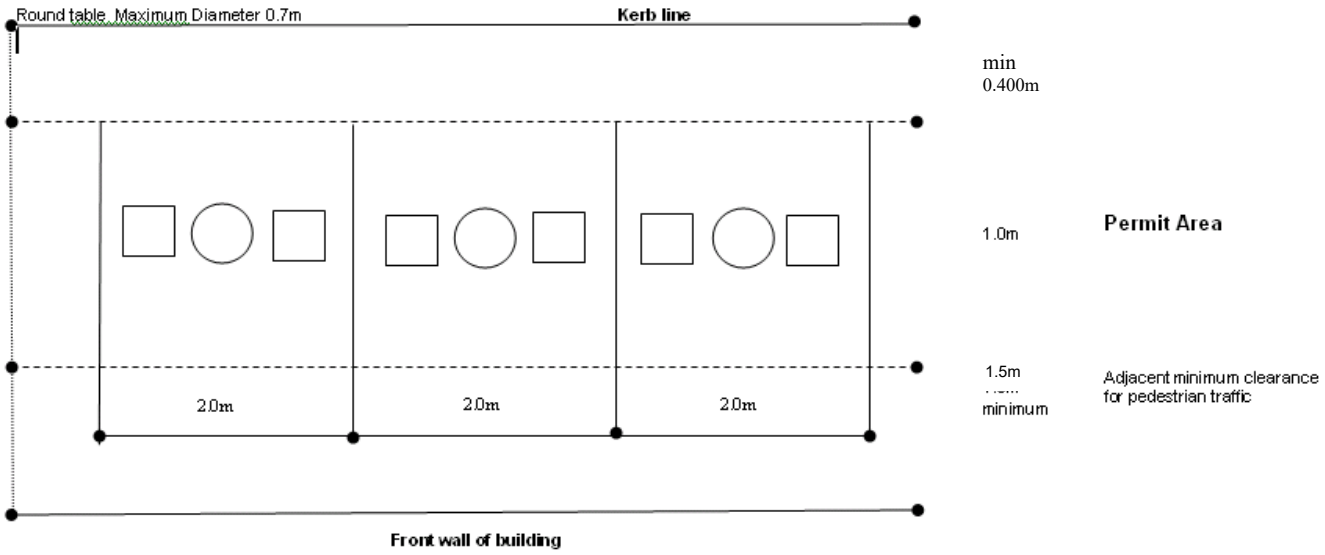
Before Council cancels a permit for a breach of condition(s), the permit holder will be advised in writing, stating the grounds on which the Council proposes to act.

Council will allow the Permit holder a reasonable period, being not less than 28 days, to make written representations to the Yorke Peninsula Council (Director Development Services) on the proposed cancellation.

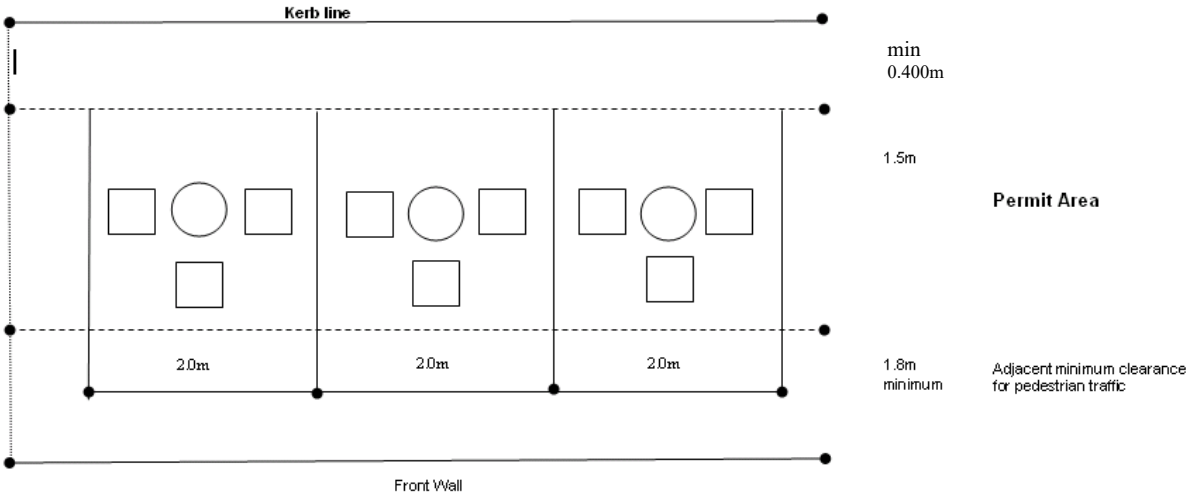
Council may give less than 28 days notice should it be determined that the grounds for cancellation are to protect the health and safety of the public, or otherwise to protect the public interest.

5. Placement diagrams specific to Outdoor Dining Permit Areas

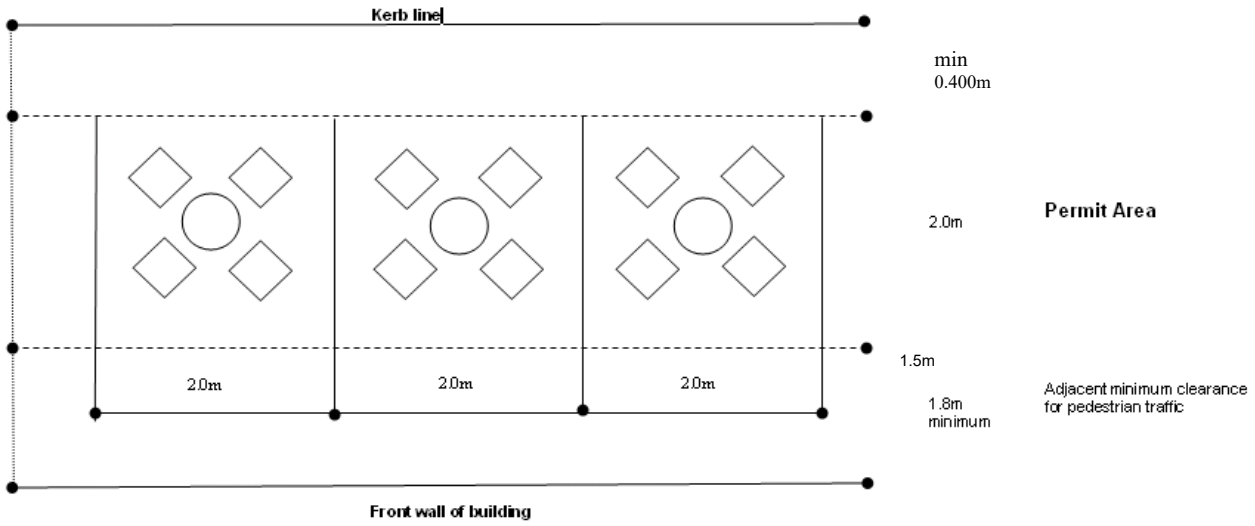
Defined Areas – Diagram 5.1
Indicative layout for furniture with two chairs per table
Chairs must not back kerb

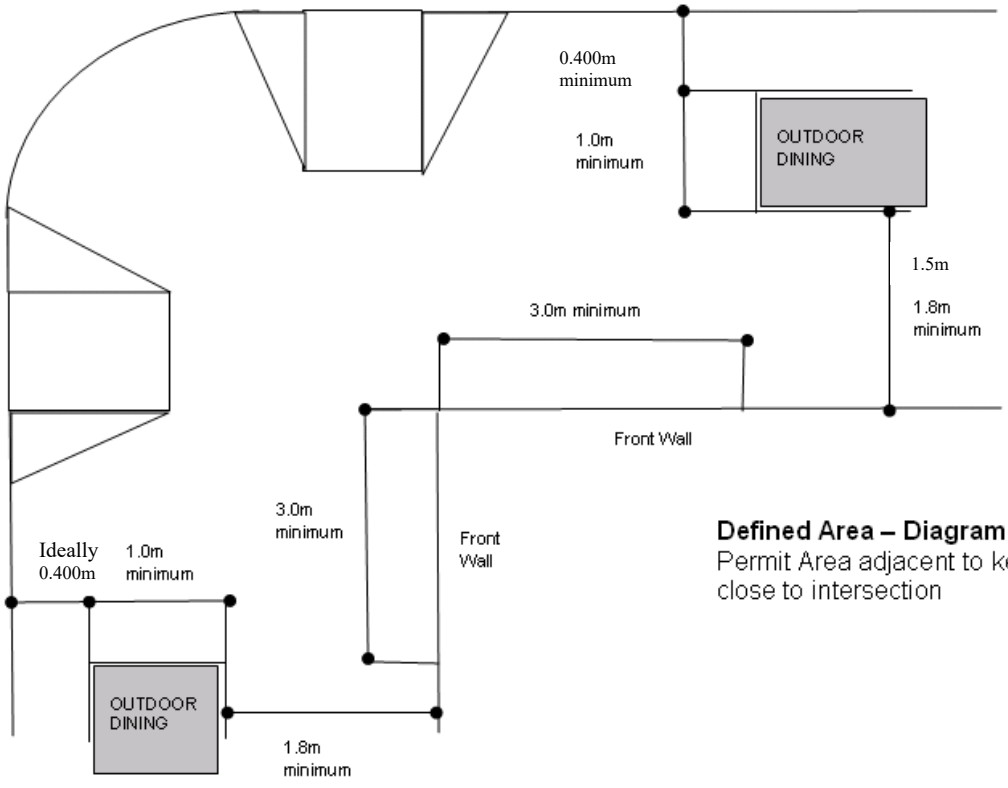


Defined Areas – Diagram 5.2
Indicative layout for furniture with three chairs per table
Chairs must not back kerb



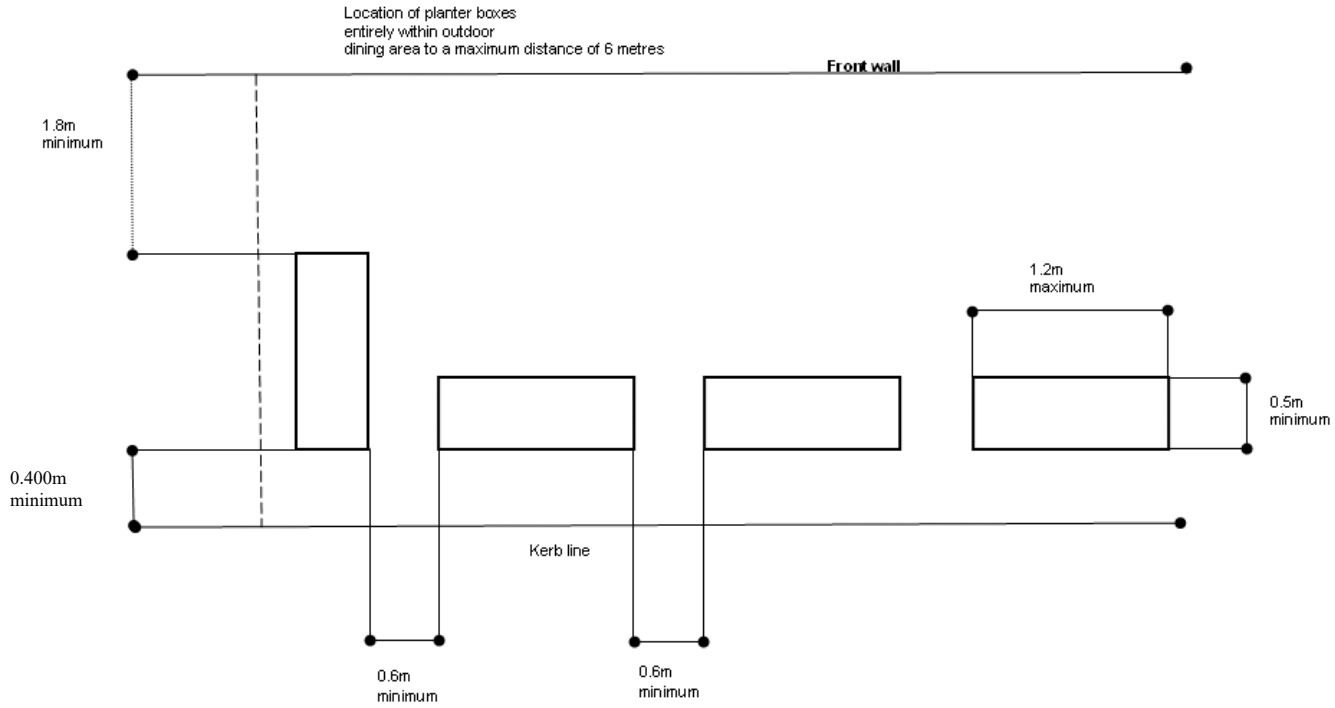
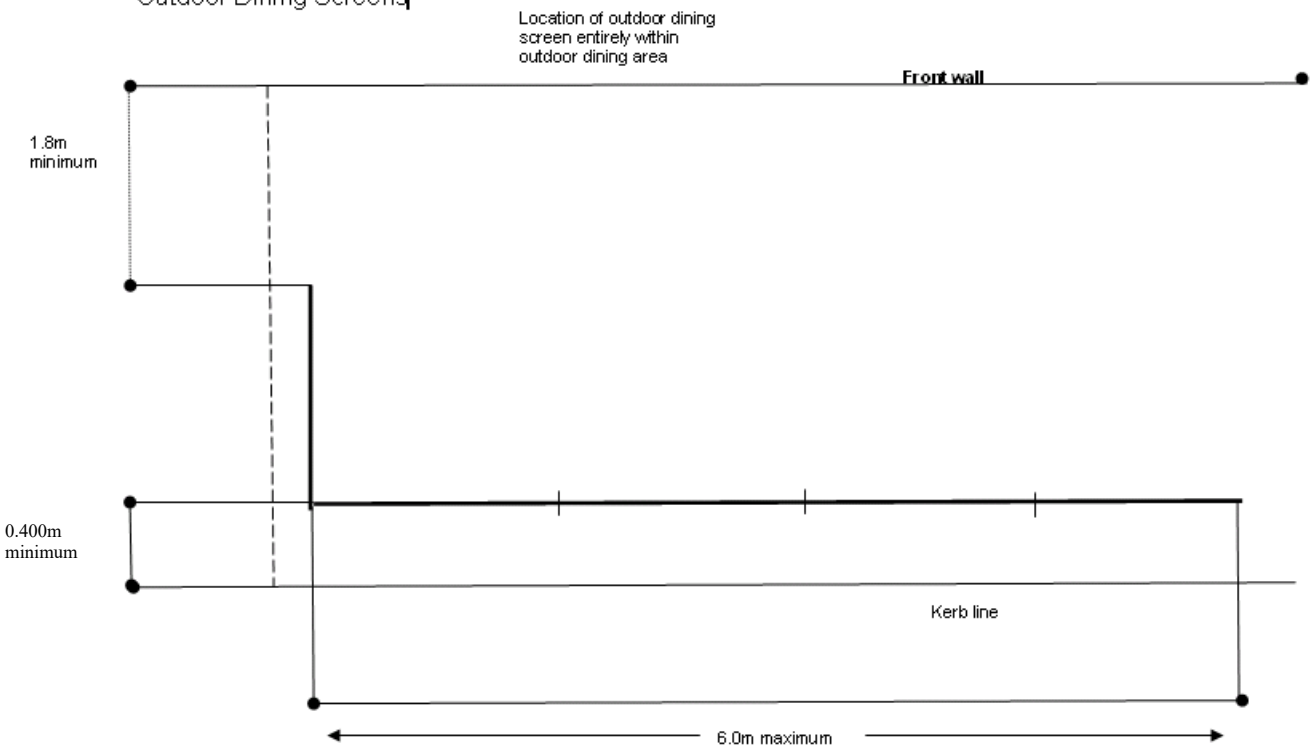
Defined Areas – Diagram 5.3
Indicative layout for furniture with four chairs per table
Chairs must not back kerb





Defined Area – Diagram 5.4
Permit Area adjacent to kerb and close to intersection

Defined Area – Diagram 5.5
Planter Boxes



Defined Area - Diagram 5.6
Outdoor Dining Screens