

# Guidelines for outdoor dining areas on footpaths

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## 1. Introduction

Well-planned and maintained outdoor dining areas can add to the amenity and safety of City precincts by encouraging increased social and cultural life.

Council has established these Guidelines to ensure that outdoor dining within the City of West Torrens benefits traders, residents and visitors, while protecting the safety of patrons and pedestrians and maintaining or enhancing the character of the streetscapes.

The Guidelines set out the conditions for outdoor dining areas and provide a framework for applications for outdoor dining for permits to be assessed and for outdoor dining areas to be managed.

## 2. Statutory requirements

### 2.1 Local Government Act, 1999

Under Section 222 of the Local Government Act 1999 any person wanting to place tables and chairs or any other furniture on the footpath area of any road, street or public place under the care and control of Council, for the purpose of providing to the public food or drink for consumption, is required to obtain a permit from Council.

Under Section 224 of the Act Council may attach conditions to the granting of such a permit and under Section 225 Council may, by notice in writing, cancel a permit for breach of a condition.

Under Section 242 an application for the Council's authorisation to use a road for a business purpose must be decided within two months after the relevant date and, if not decided in this time, will be taken to have been refused.

### 2.2 Development Act, 1993

In some instances outdoor dining may represent 'development' under the Development Act 1993 and require development approval. Items that require development approval are those defined as 'building work' in the Development Act 1993, including:

- fixed screens
- full height enclosures (eg. plastic screens)
- permanent structures (eg. shade structures) and
- signage.

Outdoor dining areas of a significantly large (not typical) scale may be considered 'change of use' of the footpath and are also subject to development approval.

### 2.3 Liquor Licensing Act 1997

Where a Licensee wants to serve alcoholic beverages in an outdoor dining area, a separate application must be made to the Licensing Court for a licence.

## 2.4 Disability Discrimination Act 1992

The Disability Discrimination Act (D.D.A.) makes it an offence for providers of goods, services and facilities to discriminate against a person because of his or her disability. The Act also makes it an offence for public places to be inaccessible to people with a disability.

## 2.5 Environment Protection Act 1993

Section 25 of the Environment Protection Act 1993 imposes the general environmental duty on all persons undertaking an activity that might cause pollution, to take all reasonable and practical measures to prevent or minimise the resultant environmental harm.

### **3. Definitions**

'Council' includes Council members, employees and agents.

'Applicant' means all persons named in the application form for a permit, all of whom will be bound by the conditions of the permit. All references to persons include a corporation.

'Outdoor dining' means the use of the public footpath for the purpose of extending the services of premises whose main function is the provision of food and beverages to the public. These premises include cafes, restaurants, delicatessens and other food premises.

'Permit' means a permit for the placement of outdoor dining furniture on the footpath within the City of West Torrens.

'Road' extends from the property boundary to property boundary and includes the carriageway, footpaths and verges owned or under care and control of Council.

### **4. The permit**

#### 4.1 The permit

A permit for outdoor dining entitles the permit holder to place approved furniture and accessories on the footpath in front of their food premises. The permit does not, however, grant exclusive rights over the relevant public space and the permit cannot exclude the general public from using tables and chairs provided for the purpose of outdoor dining.

An outdoor dining permit will be:

- issued in the name of the applicant
- transferable at Council discretion
- valid only for the times and dates on the permit\
- valid only for the area stipulated on the permit
- valid only for the activity described on the permit
- subject to fees and charges set out in the City of West Torrens Fees and Charges Schedule, as endorsed by Council
- subject to the conditions set out in these Guidelines
- subject to any other directions made by Council.

The City of West Torrens is under no obligation to remove any Council owned property (eg litter bin, public seat) to allow commercial use of the footpath. If the Council agrees to relocate or remove Council property, the business that makes the request will cover all costs.

Council may amend the permit conditions at any time with or without the consultation of the permit holder and add or remove directions to the permit in addition to conditions at any time.

Council reserves the right to cancel or suspend a permit at any time. For instance, may cancel or suspend the Outdoor Dining Permit to ensure public safety during adjacent major construction projects.

## 4.2 Permit applications

An application for a permit must be made on the approved Council application form.

Applications will be considered on their merits and assessed against conditions in the guidelines.

An application for a permit which includes fixtures such as screens, enclosures, canopies or other permanent shade structures and signage may constitute building work for the purpose of the Development Act 1993 and will require development approval from Council.

Permits will be issued for one year and expire on the anniversary of issue. Applications for renewal of the permit must be returned to Council one month prior to expiry.

## 4.3 Activation of a permit

The permit will not commence to operate and no furniture, fixtures or other accessories are to be placed in the defined area until:

- all approvals have been granted including development approval where required
- payment is received of all fees
- a Certificate of Currency showing the required level of Public Liability Insurance is returned to the Council endorsed by the permit holder's insurer
- the boundaries of the area are marked on the footpath.

## 4.4 Permit holder responsibilities

The permit holder will ensure that the outdoor dining activity authorised by the permit is undertaken in accordance with the plans and details accompanying the application, complies with the conditions of these guidelines and with Council policy and by-laws.

Permit holders will be responsible for meeting the following standard conditions for the term of the permit.

- To comply with all applicable industry standards, health or safety standards, current standards of Standards Australia or any applicable codes of practice.
- To comply with relevant Council by-laws, Policy and with the Guidelines for Outdoor Dining Areas on Footpaths.
- To comply with State and Federal legislation. The issue of the permit does not absolve the permit holder or their agents from any overriding legislation.
- To maintain in good condition and to recognised standards all structures erected or installed on or over the road. Such structures remain the property of the applicant pursuant to Section 209 of the Local Government Act, 1999.
- To indemnify and to keep indemnified the Council its employees, servants and agents and each of them from and against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against them or any of them arising out of or in relation to the issuing and granting of the permit.
- To maintain a current public risk insurance policy in the name of the permit holder insuring the permit holder for the minimum sum of TWENTY MILLION DOLLARS (\$20,000,000) in the terms set out below.
- To accept total responsibility to make good any damage that occurs to Council roads or to public infrastructure as a result of the erection or installation of structures by the permit holder.
- To provide proof, upon the request of Council, of current public liability insurance at any time.

- To not assign or otherwise transfer this permit without first obtaining the consent of the Council in writing.
- To notify Council and obtain prior approval for any changes to the approved activity contained in the permit. (Changes to the activity may cause conditions to the permit to be altered. If this is the case a new permit will be issued).
- To notify Council within 14 days of any changes to circumstances that would affect the validity of the permit (e.g. change of ownership of a company).
- To make the permit available for inspection upon request by an authorised officer or police officer.
- At the expiration or earlier termination of this permit to remove, if so directed by the Council, any structure or object erected or installed on the road and to reinstate the road to the satisfaction of the Council.
- To maintain outdoor furniture, maintain the cleanliness of the outdoor dining area, ensure that any associated structures such as heating/cooling units and lighting are maintained in good working order.
- To ensure that outdoor dining activities do not cause a nuisance or impact adversely on the amenity or safety of other road users or neighbouring properties.

In the event that the permit holder has failed to comply with any of the conditions of the permit or for any other justifiable circumstance, including reinstatement, maintenance, repair or removal, the Council may revoke the permit.

A permit does not confer on the applicant any exclusive right, entitlement or interest in the road (unless specifically provided pursuant to Section 223 of the Local Government Act, 1999) and does not derogate from the Council's powers arising under the Act.

#### 4.5 Change of ownership

A permit is issued in the name of the applicant and cannot be transferred to another person. Where there is a change of ownership, the new operator will complete a Change of Ownership form and forwarded it to Council with the appropriate fee for a new authorisation to be drawn up.

A Change of Ownership form is only to be completed where the new owner/operator has not changed the defined area and the number and type of tables and chairs on application to Council. If any of the above differs, then a new application must be submitted with the appropriate fee.

#### 4.6 Insurance

The permit holder will agree to indemnify and to keep indemnified the Council, its employees, servants and agents and each of them from and against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against them or any of them arising out of or in relation to the issuing and granting of the permit.

Notwithstanding the above, the Permit Holder shall not be rendered liable for personal injury to or the death of any person or loss of or damage to any property resulting from any breach by the Council of any provision of this Permit or any negligent act or omission of the Council or its employees, servants and agents.

The permit holder will maintain a current public risk insurance policy in the name of the permit holder insuring the permit holder for the minimum sum of TWENTY MILLION DOLLARS (\$20,000,000) against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against the permit holder in relation to the activity.

The permit holder will provide confirmation of insurance to Council in the form of a Certificate of Currency. Such a Certificate will bear the endorsement of the Insurer indicating that the Insurer accepts the indemnity given by the permit holder and any excess payable for each claim.

The permit holder, where appropriate, will ensure that it is licensed or registered to carry out the activity authorised by the issuing of this permit.

The permit will become immediately invalid if the permit holder ceases to have current public liability insurance as set out above.

## **5. Special conditions of permits**

### **5.1 Location**

- 5.1.1 Outdoor dining may be allowed where the space is not required for public street furniture or infrastructure, such as seats, litter bins, telephone boxes, fire hydrants, taxi and bus stops, and loading zones, which will be given priority.
- 5.1.2 In determining whether a location is appropriate for outdoor dining, access to the area for pedestrians and vehicles, safety, and the relationship between the associated food preparation and outdoor dining area will be considered. A decision on the appropriateness of a location will be at the total discretion of Council.
- 5.1.1 Generally, outdoor dining areas can only be established outside the premises to which they relate (not encroach across neighbouring property lines) and on footpaths with a width of at least 3.4 metres.
- 5.1.5 To maintain public access and circulation, a defined outdoor dining area must:
- be located within the building alignments of the primary food premises
  - be at least 1 metre wide
  - allow a minimum of 1.8 metres of footpath to be kept clear for pedestrians
  - allow a minimum space of 60cm between the defined area and the kerb face.
- Approved layouts for outdoor dining are illustrated in the attached diagrams. Diagram A is the preferred layout. Diagram B requires the installation of tactile indicator direction warnings to meet the requirements of the Disability Discrimination Act 1992.
- 5.1.6 Any planter boxes installed as part of an outdoor dining area must:
- be positioned 60cm back from the back of the kerb alignment
  - remain in the outdoor eating area
  - when placed horizontal to the kerb, maintain a 90cm gap between each unit or other structure to maximise access for pedestrians crossing the road.
- 5.1.5 Outdoor dining areas must provide for diner's safety:
- sites that have been associated with loss-of-control crashes are unsuitable
  - some sites may require the installation of safety barriers (see 5.2)
  - installation of safety barriers will meet Road Dining Protection Guidelines issued by Department of Transport and Infrastructure
  - installation of safety barriers will meet any directions issued by Council
  - structures, tables and chairs must be at least of 60cm from a safety barrier.
- 5.1.6 Outdoor dining areas must not impact on traffic safety and vehicular sightlines:
- areas located near intersections will be set back from the corner to a minimum of the existing building alignments
  - areas that are perpendicular to the line of the kerb will be similarly set back
  - in all other cases motorists' sightlines will be maintained in accordance with AustRoads Part V, Guide to Traffic Engineering Practice, Intersection at Grade.

- 5.1.7 Outdoor dining areas must not obstruct public access in other ways:
- fire exits must not be impeded
  - wheelchair access to pedestrian ramps must not be compromised
  - access to parking, taxis, loading and bus zones must be maintained.

## 5.2 Safety assessment

- 5.2.1 Proposed outdoor dining locations will need to meet relevant Australian standards in terms of safety eg some sites may require the installation of barriers (Energy Absorbing Bollards).
- 5.2.1 Applicants will provide Council with an independent risk assessment of the proposed outdoor dining area undertaken by an accredited Road Safety Auditor. (This assessment will apply to new applications for outdoor dining areas and the first renewal of an existing outdoor dining permit following the commencement date of these Guidelines).

A list of accredited Auditors is available from the DPTI website -

[http://www.dpti.sa.gov.au/\\_data/assets/pdf\\_file/0004/76207/REGISTER\\_Road\\_Safety\\_Auditors1.pdf](http://www.dpti.sa.gov.au/_data/assets/pdf_file/0004/76207/REGISTER_Road_Safety_Auditors1.pdf)

## 5.3 Design

- 5.3.1 Council will approve furniture style and materials. Street furniture should be selected for its durability and style to ensure that it complements the streetscape area and can be easily maintained in good condition.
- 5.3.2 Planter boxes are to be to a design approved by Council. Planter boxes must be constructed of durable materials and the physical appearance must complement the streetscape character of the area, including colours.

Discharge from the planter boxes must not to enter into the stormwater system and watering and discharge is not to stain the pavement area or create a hazard for pedestrians.

- 5.3.3 Umbrellas are permitted provided they:
- have a clearance of a minimum of 2.1 metres above the footpath level
  - are secured against the effects of adverse weather, and are closed or removed during extremely windy conditions
  - are maintained in good condition at all times
  - removed from the footpath area when not in use
  - do not include side curtains.

Advertising on umbrellas is to be a minor element and restricted to one company, product or dining name.

- 5.3.4 Heating and cooling units may be installed with the permission of the Council. The units should be specifically designed for outdoor operation and should be equipped with emergency shut off valves.

If gas heaters are used, the permit holder must comply with safety requirements recommended by the South Australian Metropolitan Fire Service for gas bottles, gas lines and fire fighting equipment.

- 5.3.5 Signage to advertise the business (business name or logo) or advertise goods sold on the premises is only permitted on umbrellas and glass or canvas screens. No third party advertising is allowed on any outdoor dining item.

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

- 5.3.6 Only one moveable sign may be used in conjunction with an outdoor dining area and must be placed within the defined area.

- 5.3.7 Where outdoor dining occurs has been approved outside of daylight hours, adequate lighting must be provided by the permit holder in order to ensure safety of pedestrians and maintain the amenity of the area. Lighting should not create unreasonable spill into neighbouring properties.
- 5.3.8 Where an applicant needs to provide safety barriers (energy absorbing bollards) to protect patrons from the risk of impacting vehicles, the applicant must organise and bear all costs associated with the purchase and installation of the barriers.

Bollard casing must complement the streetscape in terms of its design and colour. Bollards should be painted in a contrasting colour to buildings and the footpath to maximise visibility for sight-impaired persons.

5.3.9 Blinds should be:

- constructed of a transparent and durable material
- affixed to the underside of the canopy
- rolled up when not in use.
- not to be installed in conjunction with canopies or verandahs above 4 (four) metres in height.

5.3.10 Screens must be:

- a maximum of 1.5 metres in height
- not fully enclose the vertical space between the footpath and a building canopy
- not obscure visibility.

Screens greater than 90cm in height should be safety glass or some similar durable and transparent material.

Portable screens must be appropriately secured at all times to maintain safety in adverse weather conditions.

- 5.3.11 litter containers will be installed and be of a design approved by Council. The number of litter containers to be installed will be determined by Council.

## 5.4 Management of the area

- 5.4.1 The area approved by Council as a defined area for outdoor dining will be marked out on the ground and the permit holder will ensure that all furniture, fixtures and other accessories are retained in that area at all times and do not encroach onto other areas of the footpath.

- 5.4.2 The permit holder will ensure that any other objects associated with the outdoor dining area do not encroach beyond the defined area so that a footpath width of not less than 1.8 metres is maintained at all times for direct and free travel free of any obstructions.

- 5.4.3 The hours of operation of the outdoor dining area will be limited to the hours of operation of the adjacent premises and where licensed to serve alcoholic beverages, limited to the hours during which the licensed premises are permitted;

- 5.4.4 The permit holder will maintain furniture and fixtures in a good state of repair at all times, that any heaters and cooling units are serviced and maintained regularly and that any lighting is maintained in good working order.

- 5.4.5 The permit holder will maintain the outdoor dining area, including the footpath, in a clean, hygienic and tidy state at all times, including:
- frequent sweeping and spot mopping during trading hours to ensure that spillage of food and beverages does not cause staining to the footpath and litter does not escape within or outside the designated dining area
  - cleaning the area at the close of the business day
  - prevention of waste and sweepings from entering the gutter and stormwater system
  - appropriate disposal of waste within the proprietor's rubbish bin and not into public litter bins.

If the Council has to undertake cleaning and/or tidying of the area, the permit holder will be liable to reimburse the Council for all costs incurred by the Council in relation to the cleaning and/or tidying of the area.

5.4.6 The permit holder will maintain food safety standards by:

- taking all reasonable precautions to prevent food and liquid refreshments being contaminated when conveyed to an outdoor dining area
- only laying out cutlery, crockery and glassware when a meal is ordered
- only preparing food and liquid refreshment within the food premises and not on the footpath
- disposing of meal remnants and waste in the proprietor's rubbish bins and not within public litter bins.

5.4.7 Permit holders considering a 'dog friendly' outdoor dining area will:

- refer to clause 24(1)(a) of the Food Safety Standard 3.2.2 (which prohibits live animals in areas in which food is handled) and to the exemption granted under the Food Regulations 2002 (which permits the presence of dogs in an outdoor dining area that is not enclosed)
- be aware that dogs will need to be kept under effective control by means of a physical restraint by the owner or person responsible for the animal
- ensure that patrons understand that dogs are not allowed to be a nuisance or fed within the outdoor dining area.

5.4.8 Where smoking is permitted, permit holders will provide ashtrays. The ashtrays will be wind proof to prevent cigarette butts from falling or being deposited onto the footpath or entering the gutter and stormwater system.

Ashtrays will be emptied and replaced on a regular basis and ash and cigarette butts are not allowed to litter the area including the footpath.

5.4.9 Where outdoor dining is conducted in conjunction with licensed premises under the Licensing Act and the Licensee desires to serve alcoholic beverages in the outdoor dining area, a separate application will be made to the Licensing Court.

All conditions set by the Licensing Court are to be complied with and a copy of any such liquor licence will be supplied to the Council upon request.

5.4.10 All outdoor dining furniture will be removed from the footpath at the close of business each day unless specific approval to fix the furniture to the footpath has been given in writing by the Council. If the furniture forming part of the outdoor dining area is intended to remain on the footpath during hours of darkness, illumination of the obstructions shall be provided by the permit holder and is to be approved by Council (see 5.2.7).

5.4.11 The permit holder will ensure the orderly conduct of members of the public within the area and will not cause any disturbance or nuisance to users of land adjacent to the area or to vehicles or pedestrians travelling along the area.

5.4.12 Amplification and/or live entertainment is not permitted in outdoor dining areas without Council approval.

5.4.13 The operation of an outdoor dining area is not to result in damage to private property and the operator is responsible for ensuring that patron behaviour does not lead to damage. If property damage does occur the operator is responsible for notifying the owner of the property and causing for the damage to be fixed at the operator's cost.

## 5.5 Other

The permit conditions may be amended at any time by Council. Permit holders will be notified in writing of the changes



Council may add or remove directions in addition to conditions at any time. Failure to comply with directions will be taken as failing to comply with a condition of the permit.

## 6. Documents to be submitted to Council

Applications for permits will be accompanied with documentation to enable Council to assess whether the conditions of issue have been met. This documentation will include:

- Certificate of Currency of public liability insurance, as specified in 4.4 above.
- A site plan of the proposed area (to a scale of not less than 1:100) showing:
  - the front of the building immediately abutting the area to be used
  - the width of the footpath showing the area to be used for the placing of tables and seating and the area that is to be used for pedestrian traffic
  - the location, layout and dimensions of tables and chairs and whether such furniture is to be fixed or removable
  - the location and dimensions of any screens, lighting or heating structures
  - the location and dimensions of any other obstructions, i.e. flower boxes, litter containers, trees, verandah posts, lights, service pits etc;
  - the location and style of any safety barriers;
- Graphic design drawings and / or photographs depicting the site and the design and quantity of furniture, fixtures and other accessories such as umbrellas.
- An independent risk assessment of the proposed outdoor dining area undertaken by an accredited road safety auditor, as specified in 5.2 above.
- Application form for a S221 authorisation (required where a business requires alteration of the road or footpath).
- Liquor licence where alcohol is to be served from the outdoor dining area.

## 7. Compliance

### 7.1 Monitoring

Authorised Officers (of Council) will monitor outdoor dining areas and operators are required to comply with any direction provided by such an officer.

### 7.2 Placement of furniture without a permit

Where a premises places outdoor dining furniture on the footpath without a permit, Council will require the business owner or employee to remove the goods immediately from the footpath. Failure to do so (or subsequent reinstatement of the furniture without a permit) may result in the issue of an expiation notice and Council may impound the furniture.

Businesses will ensure that permits are renewed promptly to avoid such action being taken.

### 7.3 Breaches of permit

If the permit holder breaches a provision of this permit, the Council may give the permit holder written notice to remedy the breach which has occurred.

Repeated breaches of authorisation will result in the cancellation of the permit without refund.

- First breach of the authorisation – verbal warning issued with compliance to be achieved within 28 days
- Second breach of the authorisation – written notice with compliance to be achieved within 28 days
- Third Breach - cancellation of the permit.

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.

#### 7.4 Permanent removal of furniture

On termination or expiration of a permit, the permit holder will remove all furniture, fixtures or other accessories from the footpath within 28 days calculated from the date of service of written notice of termination. Where such furniture, fixtures or other accessories are not removed within 28 clear days, the Council will be entitled to remove the furniture.

#### 7.5 Revocation or suspension of a permit

Should a permit be revoked or suspended, any furniture, fixtures or other accessories affixed to the footpath following the expiration of 28 clear days, calculated from the date of service of the written notice of termination, will be removed by the City of West Torrens and will be disposed of as it deems fit.

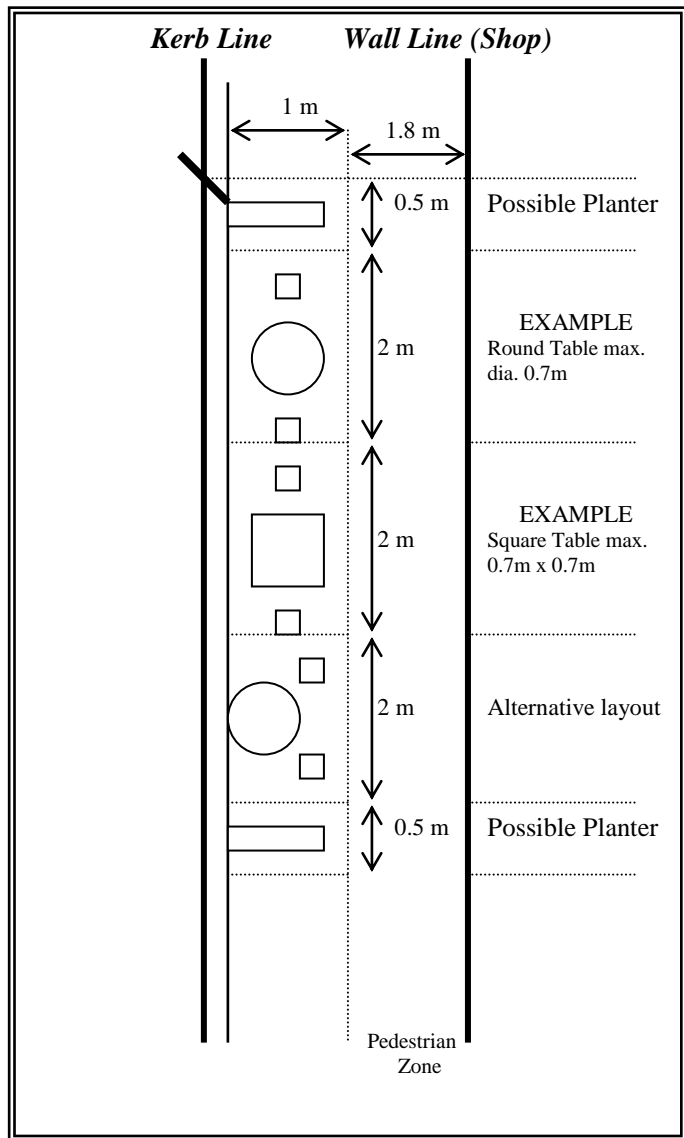
The permit may be revoked or suspended by the Council at any time by written notice to the Permit Holder under Section 225 of the Local Government Act 1999. The revocation or suspension of the permit by the Council will not give rise to any claim for damages on any basis by the permit holder.

#### 7.6 Damage to the footpath

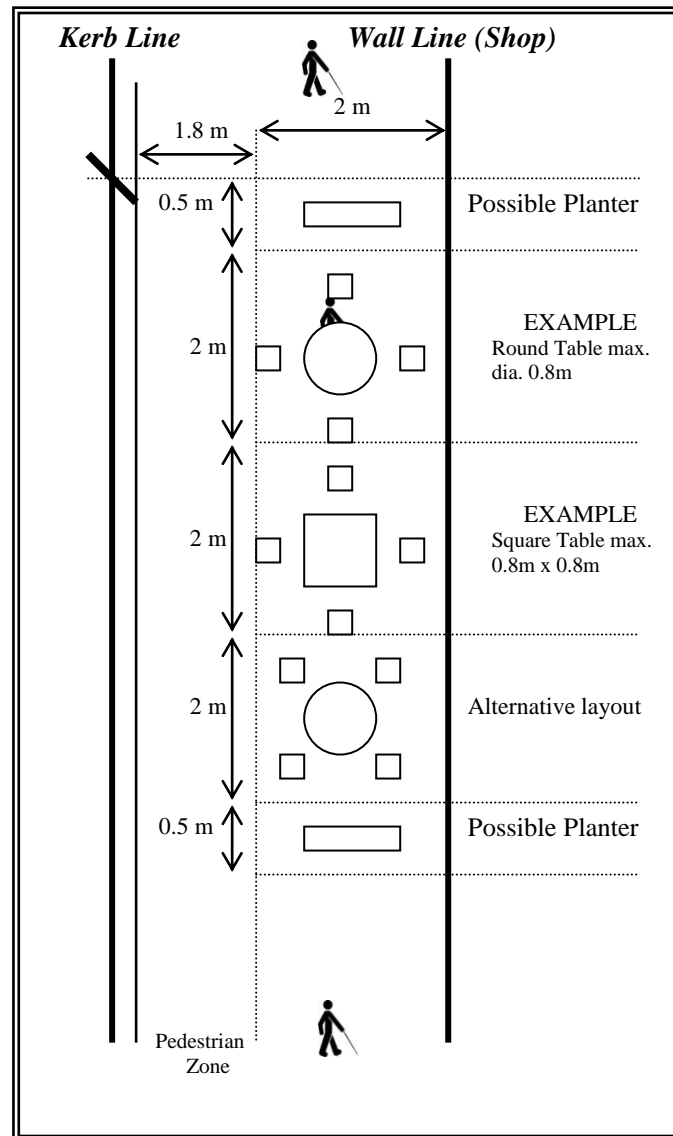
Any damage whether unintentionally or negligently resulting from the placement of outdoor dining furniture on footpaths will be recovered under the provisions of Section 233 of the Local Government Act 1999.


Where damage is caused to the footpath and reinstatement work is necessary, Council will carry out the reinstatement work at the permit holder's expense.

**Diagram A-1:** Preferred layout of outdoor dining areas.



**Diagram B:** Alternative Layout (tactile indication direction warnings required).



 Tactile indicator direction warning