

Outdoor Dining Policy



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Responsible Officer	Director - Development and Community Services
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1. Purpose

- 1.1 Outdoor dining contributes to the amenity of the District's streets and other public places. Outdoor dining areas provide a place to eat, but also a venue for meeting, a place to watch passers by and to engage actively in the social and cultural life of the Mid Murray Council.
- 1.2 The purpose of this Policy is to provide guidelines that facilitate outdoor dining in the Mid Murray Council. It is consistent with an integrated approach to the design and management of the Council's public realm that is aimed at improving its quality and image.

2. Definitions

- 2.1 **Enclosed** or place means an area that is, except for doorways, passageways and internal wall openings, completely or substantially enclosed by a solid permanent ceiling or roof and solid permanent walls or windows, whether the ceiling, roof, walls or windows are fixed or movable and open or closed.
- 2.2 **Outdoor Dining** is defined as tables and chairs placed on public land for the purpose of increasing the capacity of the café, delicatessen, dining or similar option for the proprietor and customers.
- 2.3 A **Road** is as defined by the *Local Government Act 1999*.

3. Policy

3.1 Principles

Council's policies are guided by principles of 'sustainability', good governance, advocacy, regulations and service provision. More guidance is provided in Council, Corporate, Procedural Policies, Council's Strategic Plan, Business Plan and other relevant documents.

3.2 Statement

3.2.1 Application

Approval for an outdoor dining licence is based on a number of considerations.

3.2.2 Circulation and Access

A defined area for outdoor dining 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.

A clear distance of at least 1.5 metres must be maintained for pedestrian circulation along the footpath between the building frontage and an outdoor dining area. A variation to this minimum distance may be considered depending on site specific circumstances. Areas defined for outdoor dining must be in accordance with the diagrams in Section 5 Defined Areas – Footpaths Dining Area.

Ideally the dining area must be set back at least 0.6 metres from the face of the kerb. The dining area should also be set back a minimum of 3.0 metres from an intersection.

3.2.3 Streetscape Character

The character and amenity of a street can be enhanced by the addition of outdoor dining where the placement and selection of outdoor furniture considers other street elements, such as existing street furniture, street trees, garden beds, street light poles, fire hydrants, building entrances, service pits and roadside signage.

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

3.2.4 Protuberances

Where outdoor dining is located on a protuberance, additional protection must be provided to diners by the placement of either pedestrian bollards or a fixed safety glass/plastic screen.

Approval must be obtained for installation of bollards and fixed safety glass/plastic screens at the time of applying for an outdoor dining license. Details of associated signage or third party advertising must also be submitted to and approved by Council.

3.3 Street Furniture

3.3.1 Introduction

The selection and placement of street furniture must comply with Council Policy and Guidelines.

3.3.2 Enclosure

An outdoor dining area must be clearly defined to provide a safe environment for patrons and pedestrians. This can be achieved through appropriate placement of tables, seats, safety glass/plastic screens, bollards and/or planter boxes, while still maintaining an open, accessible environment that enhances the amenity of the street.

Umbrellas may be used to provide shade from sun, and shelter from wind and rain. Umbrellas must be securely fixed to prevent blowing over in strong winds - the fixing must be into a concrete footing underneath the footpath pavement. No part of the umbrella stand should protrude above the pavement level so as to present a hazard to pedestrians when the umbrella is removed. Umbrellas must achieve a minimum of 2 metres height clearance from the pavement when in use and not protrude over the kerb into any adjacent car parking spaces.

Development Approval under the *Planning, Development and Infrastructure Act 2016* is required for awnings and shade structures. These elements must be designed to fit in with the existing buildings and street character, and must be connected to the public stormwater system, in accordance with approval from Council.

3.3.3 Fixed Safety Glass/Plastic Screens and Plastic Blinds

Fixed safety glass/plastic screens and plastic blinds provide protection from noise and wind, and may assist in definition of the area to be used for outdoor dining. Fixed glass screens, blinds and awnings will require Development Approval under the *Planning, Development and Infrastructure Act 2016*.

The design and placement of fixed safety glass/plastic screens must comply with the following principles:

3.3.3.1 Design

The form and structural strength of screens - must be adequate to meet functional requirements including wind loads, resistance to vandalism and impact from pedestrians.

- To avoid clutter in the street, screens must be simple in design and not appear as a decorative element in the street.
- Logos and other decorative elements are not permitted on screens.
- Screens may be laid out in a variety of configurations.

3.3.3.2 Location and Placement

Screen placement depends on:

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

Screens must not be placed where they present a barrier and subsequent danger to pedestrians crossing the street. The length of any single screen along the street frontage must not exceed 10 metres. Where adjacent screens are up to the maximum of 10 metres along the street frontage, the gap between screens must be a minimum of 1.5 metres.

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

3.3.4 Bollards

Based on a risk assessment, bollards may be required where outdoor dining is located on a protuberance, or where additional definition of the area is necessary. This must be determined by Council's Director - Infrastructure & Field Services. The bollards used are designed to protect outdoor dining areas from withstanding an impact from a slow moving vehicle.

Bollard placement depends on:

- Distance from kerb line (minimum 600mm)
- Spacing with regard to buildings, trees and other elements of public street furniture.

The applicant will be required to install (at their own cost) safety devices.

3.3.5 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 license and will be assessed on a case by case basis.

3.3.6 Street Furniture Style

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 to be approved by Council.

3.3.7 Materials and Colours

To maintain the appearance and structural integrity of outdoor furniture, durable materials and colours able to withstand harsh use should be used.

3.3.8 Advertising and Signage

Advertising and signage is controlled under *the Planning, Development and Infrastructure Act 2016* and the Planning and Design Code and is subject to Development Approval.

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

Moveable signs are not permitted within the outdoor dining area or the 1.8 metre clear pedestrian zone adjacent to the dining area.

3.4 Management

3.4.1 Licenced Area

Use of the area, including placement of outdoor furniture, plants and planters, is strictly within the boundaries of the licenced area.

3.4.2 Maintenance and Cleaning

The street furniture, including planting in planter boxes, belonging to an outdoor dining area must be kept in a safe and well maintained condition. The area must be regularly cleaned to present a well cared for image as specified in the license.

Licensees are responsible for cleaning furniture, the outdoor dining area ,pavement and the adjacent footpath. Waste and sweepings must not be disposed of into the street gutter, and must be disposed of in the appropriate manner. Blowers or similar devices must not be used.

Refuse matter is not to be deposited into public litter bins.

Failure to maintain and clean the outdoor dining area to the satisfaction of the Council may lead to cancellation of the license.

3.4.3 Removal of Furniture

All tables, chairs and umbrellas must be removed from the footpath at the close of business each day. Tables may be permanently fixed to the footpath with the approval of Council.

3.4.4 Consumption of Alcohol

An application for the consumption of alcohol at an outdoor dining area must be made initially to Consumer and Business Services. Council needs to endorse the application prior to being endorsed by Consumer and Business Services. Alcohol must only be served and consumed in the area designated in any approval that is granted.

3.4.5 Toilets

Toilet facilities should be made available for patrons wherever possible, and must be provided where alcohol is served.

3.4.6 Lighting

Adequate lighting must be provided where outdoor dining occurs outside daylight hours to ensure safety and amenity for pedestrians and patrons. It is the responsibility of the licensee to provide additional lighting if necessary, this may be subject to additional approval.

Flashing or chasing lights are not permitted and lights must not create unreasonable "spill" into properties. The design of lighting must ensure neither a distraction or disturbance to adjoining road carriageways to compromise safe vehicle movements.

3.4.7 Animals

Animals are to be managed effectively within outdoor dining areas. 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(3) in outdoor dining areas providing the area is not enclosed.

Nevertheless, 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*.

An Outdoor Dining Permit Holder may deny the entry of animals to a defined outdoor dining area under his/her control, in sections containing furniture, but may not prevent animals from passing by on public footpath space.

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.

3.4.8 Breaches

Any deviations from this Policy or the terms and conditions under the permit and/or authorisation will be negotiated with each applicant based on procedural fairness by way of the opportunity to put submissions to Council upon what the term and conditions of the permit and/or application should be, prior to the permit and/or authorisation being granted.

Authorised Officers (of the Council) will monitor outdoor dining areas and operators are required to comply with any direction provided by such an Officer. Repeated breaches of the permit and/or authorisation will result in the cancellation of the permit and authorisation.

The following represents a guideline as to what will happen if there is a breach of a permit and/or authorisation or this Policy:

- **First breach** - verbal warning issued (with note on operator's file), compliance to be achieved within 10 days
- **Second breach** - written notice regarding non-compliance and consideration given to the issuing of an Expiation Notice, compliance must be achieved within 14 days
- **Third breach** – Expiation Notice issued and cancellation of the permit and/or authorisation in accordance with permit and/or authorisation.

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 21 days, to make written representations to the Council on the proposed cancellation.

Council may give less than 21 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.

3.4.9 Development Approval

The use of the outdoor dining area must be consistent with the Development Approval of the business. Any permanent structure proposed to be placed on the Council footpath, (verandah, permanent furniture etc.), must receive Council approval as the landholder prior to a development application being lodged. Council's planning section should be contacted at the time of lodging an application for an outdoor dining permit, to ensure further approval is not first required.

3.5 Application Process

3.5.1 Application

Outdoor dining requires an operating license and may, in some cases, require Development Approval. Application forms are available from all offices of the Mid Murray Council and on Council's website www.mid-murray.sa.gov.au.

For an outdoor dining area to serve alcohol, application must be made to Consumer and Business Services and subsequently to the Council's Health Department..

3.5.2 Documentation

An application for an outdoor dining license consists of:

- a fully completed Application Form
- evidence of a Certificate of Currency for public liability insurance (minimum of \$20,000,000) which must include written confirmation that cover extends to cover outdoor dining

- photographs/photocopies of the proposed furniture
- a scaled (1:100 minimum) dimensioned plan showing the proposed location of the tables and chairs
- fees in accordance with the Council's Schedule of Fees and Charges
- Risk Assessment.

3.5.3 Non Complying Applications

Any applicant who lodges an Application Outdoor Dining on Council Footpaths, which does not comply with Council's Policy, may request the application be considered by Council.

3.5.4 Notification and Approval

Where Development Approval is required, the Council will issue an operating license once Development Approval has been granted. An outdoor dining license is valid when the Council has:

- issued a duly executed license to the proprietor; and
- received an endorsed public liability insurance certificate.

3.5.5 Licence Fee

The use of a public footpath as an outdoor dining area attracts an annual license fee calculated on the number of seats the outdoor dining area seats.

The fees payable for a Permit to erect an outdoor dining area on a road will be reviewed annually through the Council's Review of Fees and Charges.

A license may be transferred by application and payment as per the Council's set Fees and Charges.

Where changes to the existing layout are proposed, an amended application is required.

Where the approval of the State Department for Infrastructure and Transport is obtained, the fee payable will be paid by Council and the applicant/developer will pay an annual fee to Council over a 5 year period.

3.5.6 Period of Licence

All licenses will expire on 30 September each year. An application form (renewal) will be sent to all License Holders during the month of September.

3.5.7 Renewal of Licence

A license will only be renewed after a review and risk assessment by Council of the operations, health and safety conditions relating to the outdoor dining area.

3.5.8 Cancellation or Amendment of Licence

A license may be cancelled or amended if:

- The proprietor fails to comply with the conditions of the license - or there are changed conditions affecting the outdoor dining area in its particular location, such as increased risk to health or safety.
- Council or Service Authorities require access to the area for the purpose of servicing infrastructure.

Licensee will be given a minimum of three (3) calendar months' notice if the permit is to be cancelled.

3.5.9 Public Liability Insurance

Licensees are required to hold public liability insurance with a minimum cover of \$20,000,000.

A Certificate of Currency for the policy must accompany the application form, and renewal of, an outdoor dining license.

3.5.10 Public Use

Outdoor dining areas remain public spaces. Outdoor dining operators and their patrons do not have exclusive use of the area.

3.5.11 Public Infrastructure

In some locations the existing area may require alterations for appropriate use as an outdoor dining area. In these instances the Council may approve alterations to the surface of the public infrastructure after the following has occurred:

- The application is in accordance with this Policy.
- A Council Permit has been completed in accordance with Section 221 of *the Local Government Act 1999* and approved by Council's Director - Infrastructure & Field Services.
- Engineering plans of the proposed alterations are provided at the cost of the applicant.

Any alterations to the public infrastructure are to be paid by the applicant.

3.5.12 Public Car Parking

In special circumstances outdoor dining areas may be established on public car parking spaces. Where there is insufficient space within the existing footpath, and taking into account streetscape strategy and in consultation with local town committee (e.g. Progress Association), there may be an opportunity to remove car parking spaces subject to construction and annual lease fee. This space is recognised as a valuable community asset and a further fee will be charged for the use of this area for the purpose of outdoor dining. Approval must be granted by a resolution of Council.

3.5.13 Risk Assessment

The Mid Murray Council's Outdoor Dining Checklist (attached) will be utilised to assess risk and ensure consistency when considering and determining applications received.

3.5.14 Approvals/Delegations

Approvals issued in accordance with Council's Delegation Register.

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

3.6 Attachments

Annexure 1

Defined Areas Diagrams:

- Diagram 1 – Footpath Dining Area – table two chairs
- Diagram 2 – Footpath Dining Area – table three chairs
- Diagram 3 – Footpath Dining Area – table four chairs
- Diagram 4 – Footpath Dining Area – adjacent to kerb and close to intersection
- Diagram 5 – Planter boxes
- Diagram 6 – Outdoor Dining Screens

4. Responsibility

The Director - Development & Community Services is responsible for ensuring the proper operation of this Policy.

5. Availability/Accessibility

5.1 This Policy and Council's Fees and Charges Register are available to be downloaded free of charge from Council's website: www.mid-murray.sa.gov.au.

- 5.2 This Policy is available for inspection at Council's principal office during ordinary business hours. Hard copies, for a fee in accordance with Council's schedule of Fees and Charges, can be provided upon request.

6. Legislative Framework / Other References

6.1 *Local Government Act 1999*

6.2 *Planning and Design Code and the Planning, Development and Infrastructure Act 2016*

6.3 *Disability Discrimination Act 1992*

6.4 *South Australian Public Health Act 2011*, the *Food Act 2001*, and any other legislation governing health and hygiene in the associated premises

6.5 The Council is involved in the approval of outdoor dining on a road in two ways:

- as the development assessment authority administering the *Planning, Development Act and Infrastructure Act 2016*; and
- as the custodian of public land under the *Local Government Act 1999*.

Outdoor dining areas, whether temporary or permanent, require approval under the *Planning, Development and Infrastructure Act 2016* and associated Regulations. Such proposals may constitute a change in land use and require to be assessed against the Planning and Design Code. The placement of some fixtures may also constitute building work, and therefore will require Building Consent.

Sections 222 to 225 of the *Local Government Act 1999* prescribe the powers, conditions and processes under which the Council may issue and cancel permits for business purposes such as outdoor dining. Section 224 enables the Council to grant authorisations or permits "on conditions the Council considers appropriate". The installation of some structures is governed by Section 221 of the same Act, which deals with alterations associated with roads.

In accordance with Section 223 of the *Local Government Act 1999*, before granting an authorisation or Permit as defined in Section 222, the Council may be required to consult the community in accordance with its Public & Community Consultation Policy, where part of a road is to be enclosed or partitioned to a material degree.

The *Disability Discrimination Act 1992* requires equality for people with disabilities. The following Sections have relevance to the issue and operation of a permit to place an outdoor dining area on a road:

- Section 5 Disability Discrimination
- Section 23(1) Access to Premises
- Section 24(1) Goods, Services and Facilities
- Section 44 Advertisements.

7. Document History

This Policy shall be reviewed at least every four (4) years or more frequently if legislation or Council requires.

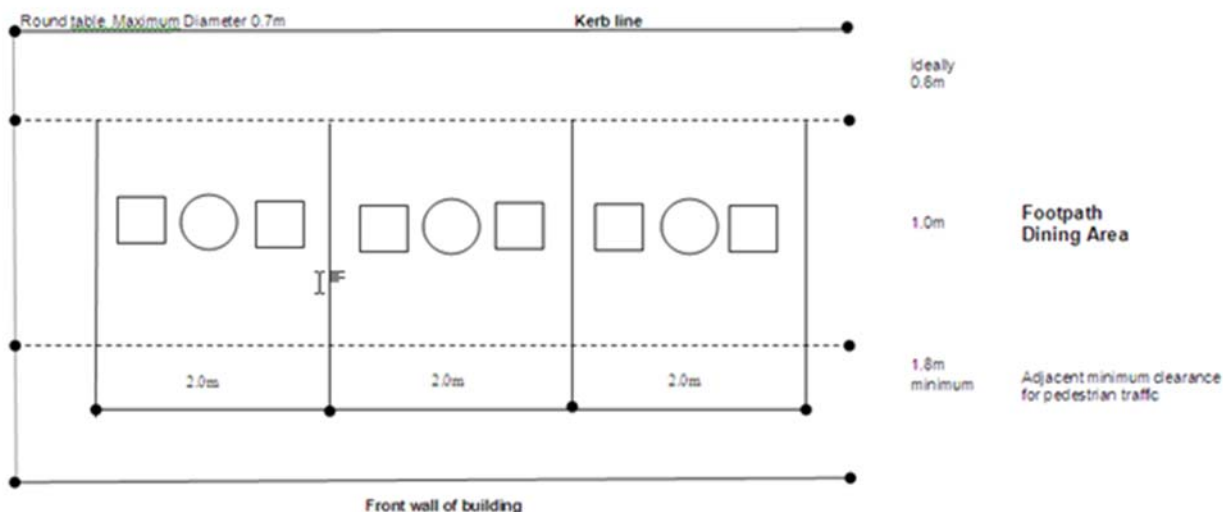
Version	Adopted	Minute	Description of Change
1	10 March 2009	11069/3	Policy adopted

2	8 April 2013	14274/2	Policy reviewed and amended - Following wording added under License Fee heading - Where the approval of the State Department of Planning Transport and Infrastructure is obtained, the fee payable will be paid by Council and the applicant/developer will pay an annual fee to Council over a 5 year period.
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Annexure 1

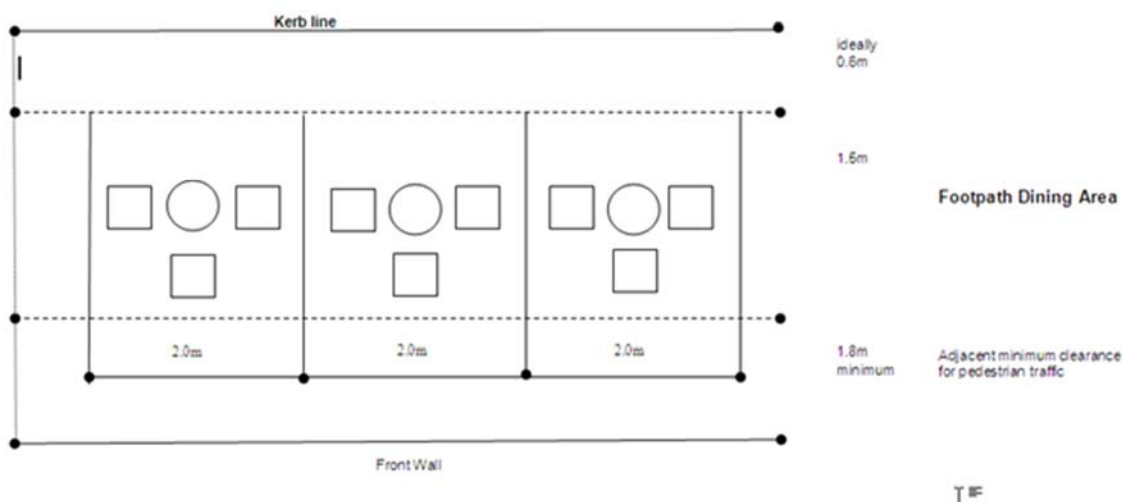
Defined Areas – Diagram 1

Indicative layout for furniture with two chairs per table
Chairs must not back kerb



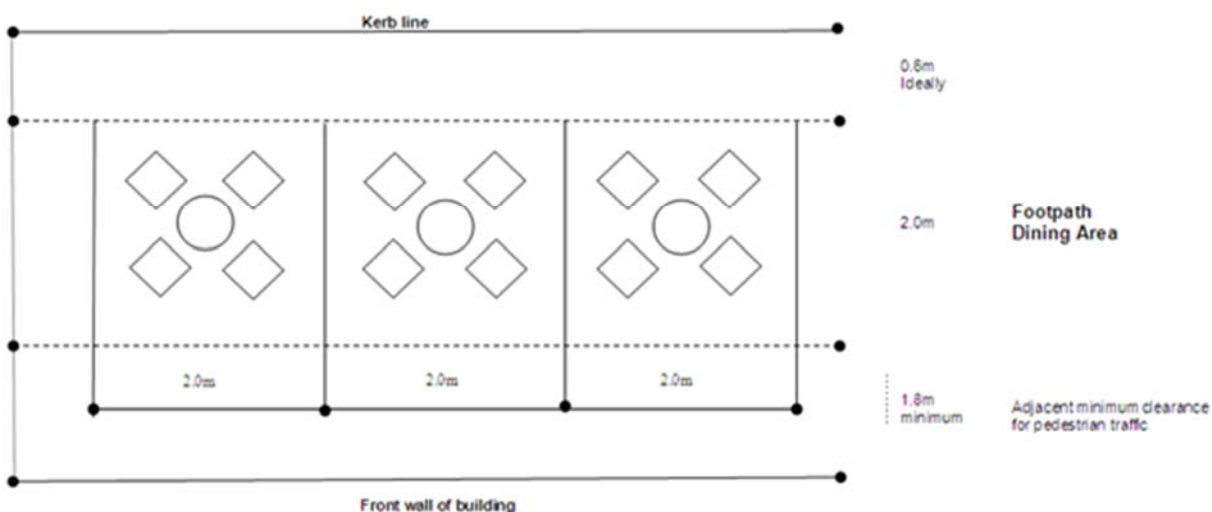
Defined Areas – Diagram 2

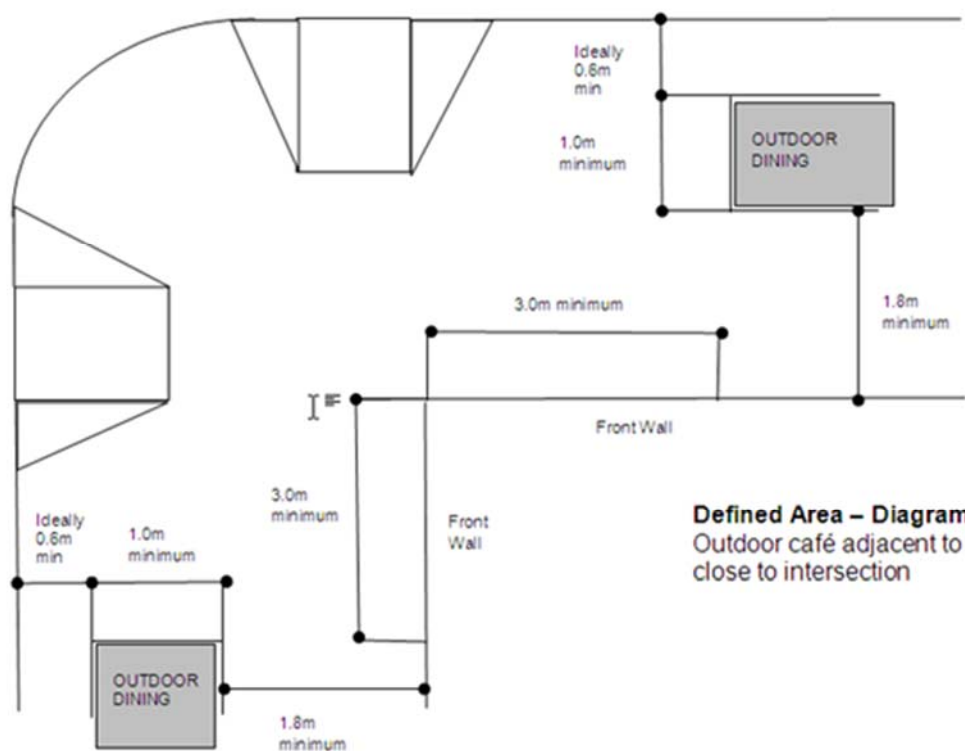
Indicative layout for furniture with three chairs per table
Chairs must not back kerb



Defined Areas – Diagram 3

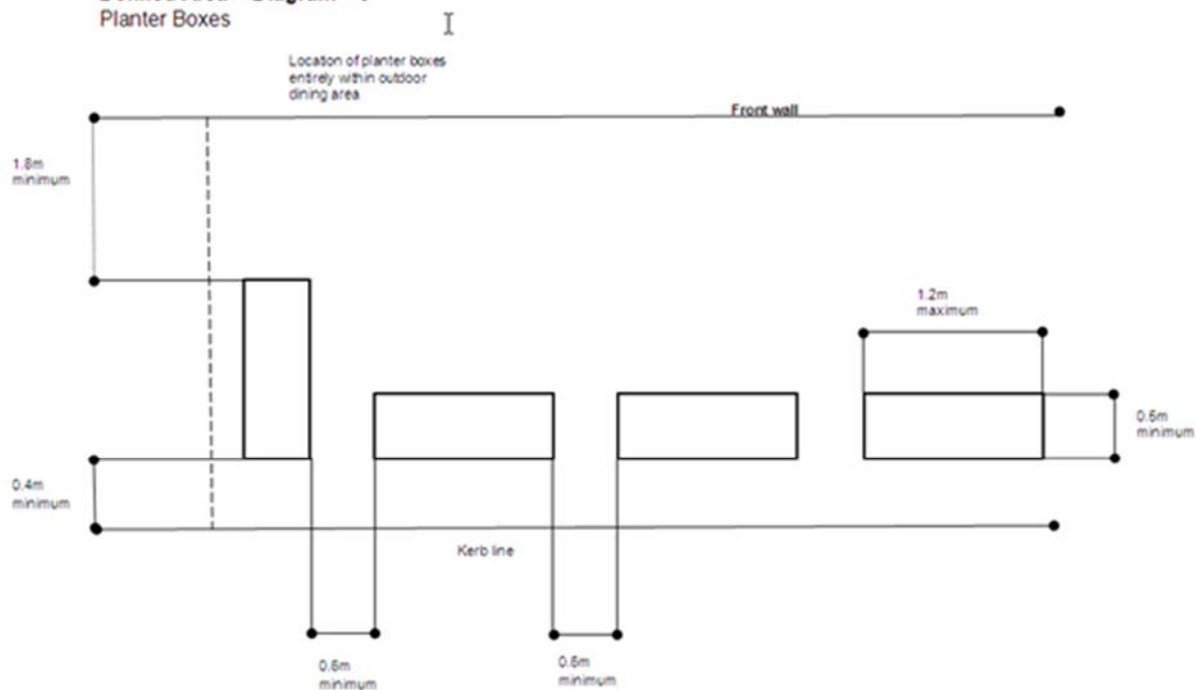
Indicative layout for furniture with four chairs per table
Chairs must not back kerb





Defined Area – Diagram 4
Outdoor café adjacent to kerb and close to intersection

Defined Area – Diagram 5
Planter Boxes



Defined Area - Diagram 6
Outdoor Dining Screens

