



# OUTDOOR DINING GUIDELINES

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# INTRODUCTION

Penrith City Council recognises the social and economic benefits outdoor dining can bring. We encourage outdoor dining where appropriate to help create vibrant local communities and provide additional opportunities for food-based businesses to thrive.

However, Council needs to balance the competing needs of different users of our footpaths and other public areas. Safe access for pedestrians, including those who have vision impairment, mobility challenges or may be pushing strollers (for example) is important, as is the safety of customers and staff using the area.

Our Outdoor Dining Policy and Guidelines try to achieve the right balance.

## WHAT APPROVALS ARE REQUIRED

To be eligible for an outdoor dining permit your business must operate in conjunction with an approved food or drink premises including hours of operation and meet all four permit requirements outlined in these guidelines.

All outdoor dining on public land requires Council approval. This approval is sought through the completion of an Outdoor Dining Application.

Where outdoor dining is proposed in association with a hotel, pub or small bar, a development application must also be submitted before lodging the outdoor dining application form.

If you are not sure which approvals you require, please contact Council's Property Development Department before submitting your application.

If the outdoor dining area is located on the footway adjoining a state road, the application will be referred to the Roads and Maritime Service (RMS) as part of the assessment process.

## WHERE THESE GUIDELINES APPLY

These guidelines apply to all land within the Penrith City Council Local Government Area that is used as a public footpath, space or park;

These guidelines do not apply to the following land types:

- Outdoor dining on Crown Land requires approval under the Crown Lands Act 1989.
- Outdoor dining that is located on private land requires approval under the Environmental Planning and Assessment Act 1979.

## HOW TO USE THESE GUIDELINES

This document contains useful guidelines that will help business owners of restaurants to decide whether outdoor dining is an appropriate and feasible addition to their business.

These guidelines:

- are to be read in conjunction with Council's Outdoor Dining Policy
- provide information for the public and applicants seeking to use footway for the purpose of outdoor dining under the Roads Act 1993 or the Local Government Act 1993 for other public spaces, and
- provide guidance for Council in determining applications for use of public land for outdoor dining.

# SECTION 1 - PERMIT REQUIREMENTS

Outdoor Dining Applications will be assessed against four permit requirements outlined in these guidelines. Applications must demonstrate and meet all four permit requirements before approval will be granted.

<b>Four Permit Requirements</b>		
<b>1</b>	<p><b>Location</b> Ensure the location is appropriate for outdoor dining while maintaining an equitable and safe thoroughfare for all users of the street or public area</p>	<ul style="list-style-type: none"> <li>• Location</li> <li>• Minimum clearances</li> <li>• Location plan</li> <li>• Neighbouring expansion</li> <li>• Boundary markers</li> <li>• Public asset</li> <li>• Special places</li> <li>• Consultation and notification</li> </ul>
<b>2</b>	<p><b>Design and Functionality</b> Ensure the design of the outdoor dining space, furniture, fixtures and day-to-day requirements facilitate improvement to the local character, street vitality, amenity and economic viability.</p>	<ul style="list-style-type: none"> <li>• Furniture</li> <li>• Barriers</li> <li>• Weather protection</li> <li>• Heating</li> <li>• Signage and branding</li> </ul>
<b>3</b>	<p><b>Neighbourhood Amenity</b> Ensure outdoor dining activities avoid nuisance, endangerment or inconvenience and residents can continue to enjoy the amenity of their neighbourhood.</p>	<ul style="list-style-type: none"> <li>• Music</li> <li>• Waste</li> <li>• Hours of operation</li> </ul>
<b>4</b>	<p><b>Legal &amp; Compliance</b> Ensure compliance with relevant legislation, Council's Policy and Guidelines and insurance requirements.</p>	<ul style="list-style-type: none"> <li>• Legislation</li> <li>• Standards</li> <li>• Insurance</li> <li>• Enforcement</li> <li>• Operating without approval</li> <li>• Smoke-free environments</li> <li>• Liquor licensing</li> </ul>

Further details on the four permit requirements and their objectives are detailed below.

## LOCATION

Objective: Ensure the location is appropriate for outdoor dining while maintaining an equitable and safe thoroughfare for all users of the street or public area.

### PERMIT REQUIREMENTS

An outdoor dining area is only permitted where:

- the outdoor dining area directly relates to the operation of an existing approved adjoining food business and operates on the same basis
- the applicant is the owner of the business
- the public space is wide enough to accommodate the outdoor dining area while still maintaining a clear pathway of travel for all pedestrians
- the outdoor dining area is not located in the middle of the footpath or public space
- the outdoor dining area does not obstruct pedestrian movement, the function of the public domain, access into buildings or maintenance operations
- the outdoor dining area does not obstruct designated fire exits and fire hydrants or emergency access areas/routes
- the outdoor dining area does not appear to privatise the public domain
- the outdoor dining area is integrated with the existing streetscape, pedestrian circulation and traffic safety
- an equitable and safe thoroughway is maintained for all users, and
- the safety and convenience of road users are not compromised.

### OUTDOOR DINING LOCATION

Outdoor dining areas are to provide a safe and enjoyable dining experience for customers, while keeping footways and public spaces safe and accessible for all users.

In considering the size and location of an outdoor dining area, first consideration will be the safe, dignified and equitable movement of pedestrians.

The location and size of an outdoor dining area will depend on:

- the location of adjacent outdoor dining areas
- the space required for outdoor dining furniture and the circulation of customers, and
- nearby infrastructure such as public seats, bins, trees etc.

To meet the requirements of the Australian Standards and the Disability Discrimination Act, the preferred location for seating in an outdoor dining area is along the kerbside, away from the building shoreline to provide unobstructed continuous clearance along the building shoreline.

Building shorelines should be clear of obstructions or projections to provide the best possible guidance line for safe and dignified travel for all users. People who are blind or vision impaired often rely on what is known as 'shorelining,' using a white cane to detect tactile surfaces and features to maintain a direction of travel and identify hazards.

The most safe and effective location for the shoreline is along the building line for a number of reasons, including that:

- building lines are frequently used to provide a line of direction to access street crossing points at intersections
- kerbsides have obstacles including street signs, rubbish bins, bus stops and bicycle racks
- kerb edges are difficult for even the most skilled cane user to follow and are often interrupted by cuts for access ramps, and
- a straight line of travel in the centre of the footway is difficult to maintain for people who are blind or have significantly low vision.

In circumstances where there is insufficient width to accommodate kerbside dining, Council may consider alternative configurations based on their merit and the principles contained in the Outdoor Dining Policy and Guidelines. The merit assessment will take into consideration access and safety for all users of the space (including pedestrians, employees and customers) and other relevant site constraints.

Should an applicant wish to apply for outdoor dining along the building shoreline, they are required to demonstrate they have provided adequate access and safety for all users by supplying an independent access report with their application.

An outdoor dining area may be restricted where it obstructs the ability for pedestrians to see oncoming traffic and/or the ability of motorists to observe pedestrian movements.

Sufficient space is required around each table to reduce potential congestion, allow safe movement and prevent diners or furniture encroaching into the pedestrian or kerb clearances. Minimum circulation space to cater for diners, tables and chairs is generally set at one square metre per person.

Table 1: Minimum circulation space

	Min. width	Min. length	Min. area
2-person table and 2 chairs	1m	2m	2m <sup>2</sup>
3-person table and 3 chairs	1.5m	2m	3m <sup>2</sup>
4-person table and 4 chairs	2m	2m	4m <sup>2</sup>

## MINIMUM CLEARANCES

Table 2: Minimum footway width for outdoor dining (building shoreline to face of the kerb)

Minimum footway width
3.4 metres

Table 3: Minimum pedestrian clearances from outdoor dining area

Footway width	Pedestrian clearance
Less than 4 metres	1.8 metres
Between 4 and 6 metres	2 metres
Above 6 metres	3 metres

Table 4: Minimum clearances from existing street infrastructure

Object	Minimum clearance
Tree	0.5 metres
Public seat	
Phone Box	
Essential service	
Rubbish bin	
Other similar objects	
Fire hydrant	1 metre
Emergency exit door	
Bicycle rack	
Post Box	1.5 metres
Bus stop/ zone	
Taxi stand	

When applying for outdoor dining along the kerbside of the footway, it is important to consider the safety of customers from traffic and to allow room for access to cars parked along the kerb.

Table 5: Minimum distance from the face of the kerb

Object	Minimum setback
When next to normal parking conditions, or next to traffic moving at 20km/hour or less	0.6 metres
When next to a loading zone	0.9 metres
When next to an accessible parking bay	1.6 metres
When next to an RMS classified road, or traffic moving at 20km/hour or more	2 metres
When next to an emergency vehicle bay	2.5 metres

Table 6: Maintaining line of sight at intersections

Corner Alignment	Minimum setback
Minimum distance from the building corner at an intersection	2 metres

Table 7: Minimum pedestrian crossing clearances

Pedestrian Facility	Minimum setback
Adjacent to a pedestrian crossing	2 metres from the face of the kerb
Within 7.5m of an approach to a marked pedestrian crossing (including zebra crossings and pedestrian refuges)	2 metres from the crossing point
Within 2m of an approach to a signalised pedestrian crossing	2 metres from the crossing point

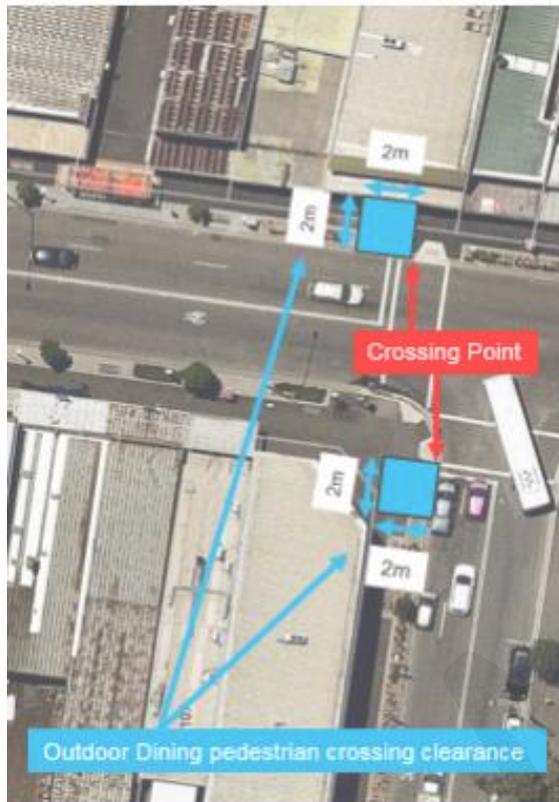
Figure 1: Minimum pedestrian crossing clearances when approaching an unsignalled/ zebra pedestrian crossing with a kerb extension.



Figure 2: Minimum pedestrian crossing clearances when approaching an unsignalled/ zebra pedestrian crossing without a kerb extension.



Figure 3: Minimum pedestrian crossing clearances when approaching a signalised pedestrian crossing

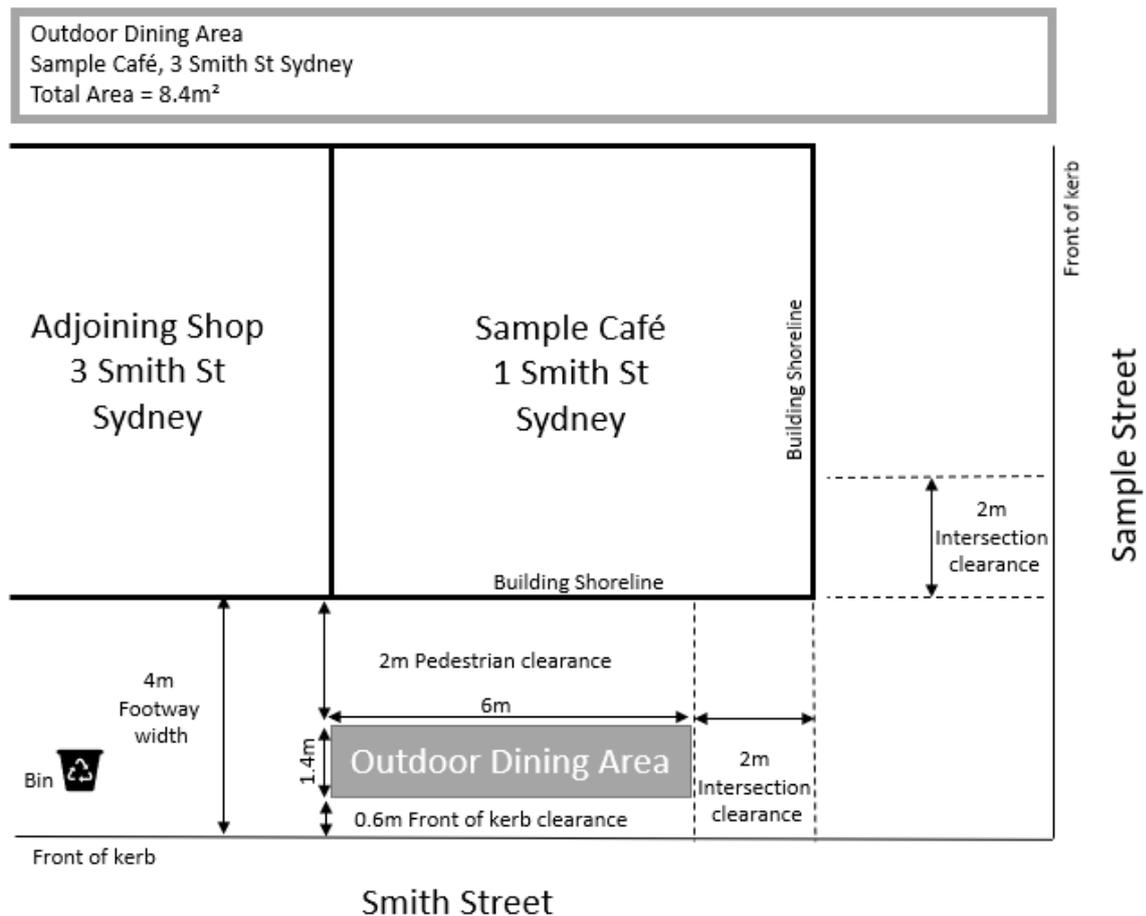


### LOCATION PLAN

Applicants must provide a plan to a scale of either 1:100 or 1:200 on A4 paper. The plan must include:

- the address of the premises
- the boundary line of the premises and the adjoining premises
- the location of doorways and service openings
- the location of the proposed outdoor dining area including the width and length of the area and total square metres
- clearances around the outdoor dining area including from the face of the kerb and the pedestrian clearance
- the total width of the footpath/site
- any existing street infrastructure labelled, including trees, bench seats, bins, street signage or any other fixed structures
- location of taxi and bus stops, parking areas, loading zones, pedestrian crossings and street intersections (if any), and
- demonstrated adherence to the minimum clearances, property boundaries and line of sight outlined in these guidelines.

Figure 4: Sample location plan



### EXPANSION ONTO NEIGHBOURING AREAS

Expansion onto the public footway of the adjoining premises frontage is permitted if approval is obtained from the adjoining business owner and Council, unless the applicant has an on-premises liquor licence and serves liquor outdoors, in which case the outdoor dining must remain within the business frontage.

### BOUNDARY MARKERS

Boundary markers create a visual aid to clearly define the approved outdoor dining area. They assist with easy setup of furniture for business owners and staff and assist Council's Rangers, who proactively monitor outdoor dining areas.

Council will supply and install boundary markers along the footway to identify the boundary of the approved outdoor dining area. The markers must not be removed, or their position altered without Council's prior written consent.

### **PUBLIC ASSETS**

The removal or relocation of any Council asset such as rubbish bins or existing street furniture is subject to Council approval and will be at the applicant's cost.

The removal/relocation of any other asset, such as RMS Traffic control boxes, Sydney Water drainage/sewage pits and Telstra telephone boxes, will not be permitted unless justification of public benefit can be made, and approvals obtained from the relevant authorities. Works will be at the applicant's cost.

### **SPECIAL PLACES**

Some places have special characteristics that require more detailed guidelines. Applications for outdoor dining in a nominated special precinct are to be consistent with the detailed guidelines supplied in section 3.

### **CONSULTATION AND NOTIFICATION**

Public consultation can help identify problems that could arise during operation of an outdoor dining area.

All Outdoor Dining applications made for use of Community Land will be notified and exhibited as per section 47A of the Local Government Act 1993.

Applications will not be notified or exhibited when they are located on public footway.

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## DESIGN AND FUNCTIONALITY

Objective: Ensure the design of the outdoor dining space, furniture, fixtures and day-to-day requirements facilitate improvement to the local character, street vitality, amenity and economic viability.

### PERMIT REQUIREMENTS

An outdoor dining area is only permitted where:

- a high standard of public safety and amenity is established and maintained
- it is attractive, inviting and contributes to the amenity of the locality
- the outdoor dining area has regard to the existing urban character, cultural significance and street quality
- furniture is of high quality, durable, suitable for outdoor use and satisfies relevant Australian Design Standards
- outdoor furniture makes a positive contribution to the street environment and integrates well within the surrounding streetscape
- the business ensures the area is cleaned and maintained on a regular basis. This includes ensuring tables are promptly cleared and all waste generated by the business and its customers is picked up and disposed of properly, and
- furniture and fixtures are easy to clean and maintain.

### FURNITURE

Seating and tables are to:

- be safe for users and not have any sharp edges, hinges or other moving parts that could cause a hazard to users
- allow access for all users, including those who use wheelchairs or mobility aids
- be non-reflective
- be strong, durable, weather resistant and designed for commercial outdoor use
- not damage the footway or Council's property
- be able to be readily removed and stored within the associated premises, and
- be capable of being easily stacked or folded for storage (unless otherwise permitted).

Applicants should select a colour scheme for outdoor furniture that complements the streetscape character. The use of mismatched tables and chairs is not permitted. Furniture must be of the same "family group" to ensure visual unity and enhancement of the surrounds. Domestic style plastic furniture is not permitted.

All structures including tables, chairs, umbrellas, barriers etc, under these guidelines must be temporary and removed and stored inside the premises at the end of each day. No temporary furniture is to be left outside when the premises is closed.

To install permanent structures in a public space (including but not limited to barriers, planter boxes, shade structures or an anchoring system), the applicant must obtain further approval from Council under section 126 of the Roads Act 1993. For enquiries, contact Council's Property Development Department.

Council's street furniture is provided for community use and shall not be used as part of an outdoor dining area.

## BARRIERS

The outdoor dining area must be defined by a vertical barrier. Examples of barriers include temporary café style barriers and planter boxes. Barriers must:

- be temporary and of sturdy construction
- be strong, durable, weather resistant and designed for commercial outdoor use
- have a minimum height of 0.6m and a maximum height of 1.0m (this includes plants contained in planter boxes)
- have a maximum gap of 150mm from the pavement top the underside of the barrier
- have no sharp edges or protruding feet that may cause a trip hazard
- be uniform in appearance where there is more than one barrier or planter proposed
- be used horizontally along the kerbside and at each end of the approved area (see figure 5), and
- not be a rope or chain.

Road safety barriers may be permitted where required for safety reasons. Such barriers must meet the Australian Standard AS/NZS3845:1999 – Road Safety Barrier Systems. This may include barricades, safety rails or bollards. The applicant must obtain further approval from Council under section 126 of the Roads Act 1993. For enquiries, contact Council's Property Development Department.

Figure 5: Location of barriers



## WEATHER PROTECTION

Outdoor dining should enrich the pedestrian experience and public life. It is therefore important that the area presents an open, inviting image, which is easily accessible by the public.

Overhead structures for weather protection may be placed in the outdoor dining area as long as they:

- have a minimum clearance height of 2 metres from the ground for pedestrian movement and safety
- have vents at the highest point to reduce wind loading
- are collapsed or removed during high winds to ensure public safety
- are set back a minimum of 0.6m from the face of the kerb
- are uniform in appearance, where there is more than one umbrella
- do not obstruct sight to street signs including regulatory and warning signage
- do not obstruct sight to signal lanterns, and
- are located within the approved outdoor dining area and do not either overhang the boundary or in any way encroach upon adjacent pedestrian or traffic thoroughfares.

Umbrella bases should be safe, simple and compact to avoid causing a trip hazard for pedestrians.

Drop down blinds are permitted on overhead structures as long as they:

- are made of clear, transparent and colourless vinyl panels
- are of a contemporary design, using high quality products
- do not fully enclose the area
- are located on a maximum of three sides of the outdoor dining area
- are installed in accordance with the requirements of the manufacturer
- are only used during bad weather (to avoid rain, cold or wind)
- are replaced if torn or damaged
- are maintained in a clean and clear condition, and
- are raised or removed during fine weather and out of business hours.

If blinds are to be secured to the footway at the base during use, further approval is required by Council under section 126 of the Roads Act 1993. For enquiries, contact Council's Property Development Department.

## HEATING

Outdoor heaters will only be permitted where the safety of people and property is not compromised. Outdoor heaters must:

- comply with the laws and requirements relating to them (including, without limitation, AS 4565-2004 (r2017) radiant gas heaters for outdoor and non-residential indoor use and AS/NZS 1596:2014, the storage and handling of LP gas)
- be certified by the Australian Gas Association
- be used in accordance with the manufacturer's instructions
- be placed clear of all combustible materials and not placed under fabric umbrellas or a fixed canopy unless there is a clear distance above and to the sides of the heater of a minimum of 0.5m or the manufacturer's specified distance, whichever is the greater
- be placed in the centre of the umbrella (highest point)

- turn off automatically if overturned to prevent injury to people and damage to property
- be turned off when the outdoor dining area is not in use, and
- be stored safely within the premises when not in use.

Table top heaters and open flames are not permitted.

### **SIGNAGE AND BRANDING**

The name, logo and other branding of the food or drink premises or an associated product may be placed on an umbrella or barrier only if it:

- involves only one business name or product which is a core part of the business and is supplied by the restaurant to its customers being advertised in each seating area, and
- is a minor and ancillary element of the design, comprising no more than one third of the surface area and does not have an adverse impact on the appearance of the seating area or the streetscape.

No other incidental advertising including banners, a-frame signs or menu boards are permitted. Signage and branding is not permitted on other items of furniture.

For further information regarding signage requirements, see Penrith Development Control Plan 2014, State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and State Environmental Planning Policy No 64—Advertising and Signage.

## NEIGHBOURHOOD AMENITY

Objective: Ensure outdoor dining activities avoid nuisance, endangerment or inconvenience and residents can continue to enjoy the amenity of their neighbourhood.

### PERMIT REQUIREMENTS

An outdoor dining area is only permitted where:

- noise is appropriately managed and is not a nuisance to customers, surrounding businesses, pedestrians, motorists and residents and complies with relevant noise pollution regulations.

### MUSIC

While premises want to ensure their venue has a vibrant ambience, it is important to make sure that noise is appropriately managed.

Entertainment and amplified music are not permitted in outdoor dining areas.

### WASTE

Dining venues generate a lot of rubbish. Not only does cleanliness help with environmental sustainability, it contributes to the overall aesthetic of a business and an inviting environment is always more likely to attract customers.

Waste and litter is to be well managed by:

- removing waste promptly from the outdoor dining area
- disposing of any waste properly (public litter bins are not to be used for the disposal of waste from outdoor dining areas), and
- not using disposable tableware in the outdoor dining area.

### HOURS OF OPERATION

The hours of operation for an outdoor dining area cannot exceed the hours permitted under the Development Consent for the operation of the associated business. The hours of operation may be limited, if it is considered that the amenity of the surrounding area or the safety of pedestrians or outdoor diners may be adversely affected.

## LEGAL & COMPLIANCE

Objective: Ensure compliance with relevant legislation, Council's Policy and Guidelines and insurance requirements.

### PERMIT REQUIREMENTS

An outdoor dining area is only permitted where:

- the business owner complies with the conditions of Council's policy, guidelines and all other relevant local, state and federal requirements for food-based businesses.

### LEGISLATION

These guidelines have been developed under the following legislation:

- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 – Subdivision 20A Footpaths – outdoor dining
- Sections 125 and 126 of the Roads Act 1993
- Local Government Act 1993
- Penrith Local Environmental Plan 2010
- Disability Discrimination Act 1992
- Smoke-free Environment Act 2000

### STANDARDS

These guidelines have been developed under the following standards:

- Disability (Access to Premises — Buildings) Standards 2010
- Australian Standards 2009
  - AS 1428.1 and AS 1428.2 Design for access and mobility
  - AS/NZS 2890.6 Off-street parking for people with disabilities
  - AS 1742.10 Pedestrian control and protection

### INSURANCE

The business owner is required to obtain and maintain a public liability insurance policy at all times to indemnify Council against any claims, suits, charges, or whatsoever, for damages or injury in any way arising out of or in connection with the use of the land by the permit holder.

The Public Liability Insurance Policy must have a minimum of \$20 million cover and have Penrith City Council listed as an Interested Party.

The policy is to be kept current at all times by the permit holder and produced to Council within 2 business days of a written request.

The operator will need to provide Council with a certificate of currency:

- with their outdoor dining application, and
- at each annual policy renewal.

### ENFORCEMENT

In order to ensure a safe and attractive outdoor dining environment, permit holders must comply with all requirements set out in the Outdoor Dining Policy and Guidelines.

Compliance checks will be carried out to ensure businesses are:

- keeping all outdoor furniture within the nominated site area and meeting the location requirements of their approval

- managing the flow of customers, staff and the general public to ensure there are no obstructions of the footway or roadway
- fulfilling the requirements of the permit and ensuring the outdoor dining area makes a positive contribution to the amenity of the surrounding area
- maintaining outdoor dining furniture to ensure it is in safe working order, including chairs, tables, umbrellas, barriers and heating.
- minimising noise at all times, and
- maintaining a current public liability insurance policy.

Authorised Council Officers may order the removal of any items on the footway that are not part of the outdoor dining permit, or otherwise permitted under another approval or policy of Council.

### **OPERATING WITHOUT APPROVAL**

The use of an outdoor dining area without approval, or not in accordance with an approval is an offence and may result in the issue of an infringement notice or other regulatory action.

### **SMOKE-FREE ENVIRONMENTS**

The Smoke-free Environment Act 2000 makes a number of outdoor public places smoke-free. Smoking is not permitted in a commercial outdoor dining area, being:

- a seated dining area, or
- within 4 metres of a seated dining area on licensed premises, restaurants or cafés

Customers are to be able to consume food and drink in the outdoor dining area at all times. Designated smoking areas are not permitted.

Failure to comply with these requirements may lead to the termination of an outdoor dining permit.

### **LIQUOR LICENSING**

Where outdoor dining is proposed in association with a hotel, pub or small bar, a development application must also be submitted before lodging the outdoor dining application form.

If the outdoor dining area relates to an existing licensed premises, an application must be made with Liquor & Gaming NSW to change the licensed boundaries to include the outdoor dining area within the overall licensed boundaries.

It is the applicant/ licensee's responsibility to hold the appropriate licence to be able to sell and supply liquor in the outdoor dining area as required by Liquor & Gaming NSW.

If the approved outdoor dining area is located within an Alcohol-Free Zone the applicant must demonstrate clear delineation and control of the licensed area from the alcohol-free zone.

## SECTION 2 - CONDITIONS OF APPROVAL

Council encourages outdoor dining where appropriate to help create a vibrant city with thriving local businesses. However, we have to consider public safety and the competing needs of different users of our footpaths and public areas. Conditions of approval try to achieve the right balance and make sure that outdoor dining areas are well managed and add to the appeal of the area they are in.

### APPLICATION REQUIREMENTS

Submitting the correct documents with the outdoor dining application helps Council assess the application properly and efficiently.

The following documents must be submitted for assessment:

- a completed Outdoor Dining Application Form (available from Council's website)
- a copy of the Public Liability Insurance Policy for the business with a minimum of \$20 million cover and with Penrith City Council listed as an Interested Party
- a location plan (see Section 1 of these guidelines)
- details and images showing any furniture, umbrellas, heaters, barriers etc.
- Outdoor Dining Adjoining Business Permission (If applicable).

### OUTDOOR DINING PERMIT

A permit will be issued to each applicant if they satisfy the requirements as detailed in Council's Policy and Guidelines. The permit will detail additional conditions of approval that apply to the business, its location and the outdoor dining activities.

The permit holder will be responsible for ensuring the outdoor dining area is operated in accordance with the requirements outlined in the Policy, Guidelines and Permit, and complies with the details submitted as part of the application.

Council has absolute discretion to approve or refuse outdoor dining permits on land owned or controlled by Council.

### PERMIT PERIOD

An Outdoor Dining Permit is valid for five years from the date of issue, with an option for it to be renewed, subject to negotiation with Council and on completion of a new Outdoor Dining Application Form. If renewal is not made by this date, outdoor dining is to cease until a valid permit is obtained.

In some circumstances Council may grant a trial period of up to 12 months to help determine a location's suitability for an outdoor dining permit. Following the trial period, Council may vary design, operations and conditions of an approved permit on renewal or revoke the permit if it is deemed by Council to be an unsuitable site.

### PERMIT FEE

Relevant fees and charges are outlined in Council's Schedule of Fees and Charges available on our website. These fees and charges are reviewed each year and the annual permit fee will depend on the location and size of the outdoor dining area.

### **PERMIT DISPLAY**

Permit holders must display their permit sticker in a prominent position on the front window and a copy of the Outdoor Dining Permit and approved location plan must be kept at the business address and made available to authorised Council Officers on request.

### **CHANGE OF BUSINESS OWNER**

Permits are granted to the owner of the business and not the business or property. This means, when the owner of a business with approval for outdoor dining changes, the permit is no longer valid.

The new business owner must apply for a new outdoor dining permit by completing an Outdoor Dining Application Form and submitting it to Council for review.

### **TERMINATING, SUSPENDING, OR AMENDING AN OUTDOOR DINING PERMIT**

The permit holder should be aware that Council can terminate, suspend or amend a permit for outdoor dining if:

- the conditions of the approval/permit are breached
- the use of the area for outdoor dining is causing public safety or public access to be compromised
- the area is needed for works
- the area is needed for a special event, or
- the area is needed to manage an increase in pedestrians.

Where Council needs to terminate, suspend or amend a permit for outdoor dining, the permit holder will be given a minimum of 14 days' notice of Council's intention.

If the suspension is temporary due to works or a special event, Council will advise the permit holder of the expected timeframe of the proposed works/event and reduce the outdoor dining permit fee on a pro rata basis during the planned period of works/ event.

### **BAD WEATHER**

Council will not compensate permit holders in instances where an outdoor dining area cannot be used due to bad weather.

Businesses are not permitted to move the outdoor dining furniture out of an approved outdoor dining area into another area, even during bad weather. This is to ensure that pedestrian access and safety is maintained on the footway at all times.

### **FAILING TO REMOVE AND REINSTATE**

If the permit holder fails to remove furniture and/ or reinstate the footway to its original condition within 14 days from the date of expiration or cancellation of the outdoor dining permit, Council may carry out the works at the permit holder's expense.

If the permit holder fails to remove furniture or other property from the outdoor dining area following the expiration or cancellation of their permit, Council may remove and dispose of such property, at its discretion, if not claimed within 28 days of notification.

## SECTION 3 - SPECIAL PLACES

Some public areas in the centres of Penrith and St Marys are considered 'Special Places'. Council recognises the special role these areas play in bringing our night-time economy to life and encouraging people to keep coming back.

More specific guidelines may apply to these areas over and above the general Outdoor Dining Guidelines. The general Guidelines also apply to the Special Place areas except where specifically noted below.

The following guidelines detail the requirements for outdoor dining in Triangle Park and the Linear Plazas in High St, Penrith.

While outdoor dining areas are fixed within the 'Special Places', there is a degree of flexibility in the other public spaces between and around the dining areas in the 'Special Places'. These public spaces may also be programmed to include street vendors, community events, performances etc.

### TRIANGLE PARK

Triangle Park is a pedestrian thoroughfare, and outdoor dining should not compromise pedestrian safety, accessibility and comfort. Figure 6 shows indicative maximum areas permitted for outdoor dining within Triangle Park. Business operators may obtain permits to operate in an area less than the maximum. Operating beyond the boundaries into public open space as noted on the map is not permitted. This is to ensure there is an appropriate mix of public use areas within Triangle Park.

#### COUNCIL OWNED UMBRELLA AND CANOPY REQUIREMENTS

Council has provided one umbrella and a canopy (equivalent to seven umbrellas) in Triangle Park as part of the 2018 High Street upgrade. These are for use by the adjacent businesses for outdoor dining purposes only. They may be used by the general community when outdoor dining is not in operation.

Damage caused to the canopy or umbrellas due to negligence of the business owner or its customers, is to be reimbursed to Council for the full expense of the repair and/or replacement.

The addition of other elements (e.g. fairy lights) or other improvements to the Council owned canopy or umbrella must be assessed and approved by Council, before installation. The business operator is responsible for tagging and testing of the electrical elements. All requests are to be sent in writing to Council's Property Development Department.

#### BARRIERS

Barriers are required at the eastern and western edges of all dining areas. Barriers are optional internally when adjacent to other outdoor dining areas however are not permitted along the northern edge of dining areas.

## REPAIR AND MAINTENANCE

Council is responsible for the repair and maintenance of the umbrella, canopy structure, associated lighting and blinds detailed below. Business owners are not permitted to carry out any maintenance or repairs. All damages, repair and maintenance requests must be promptly reported to Council's City Presentation team.

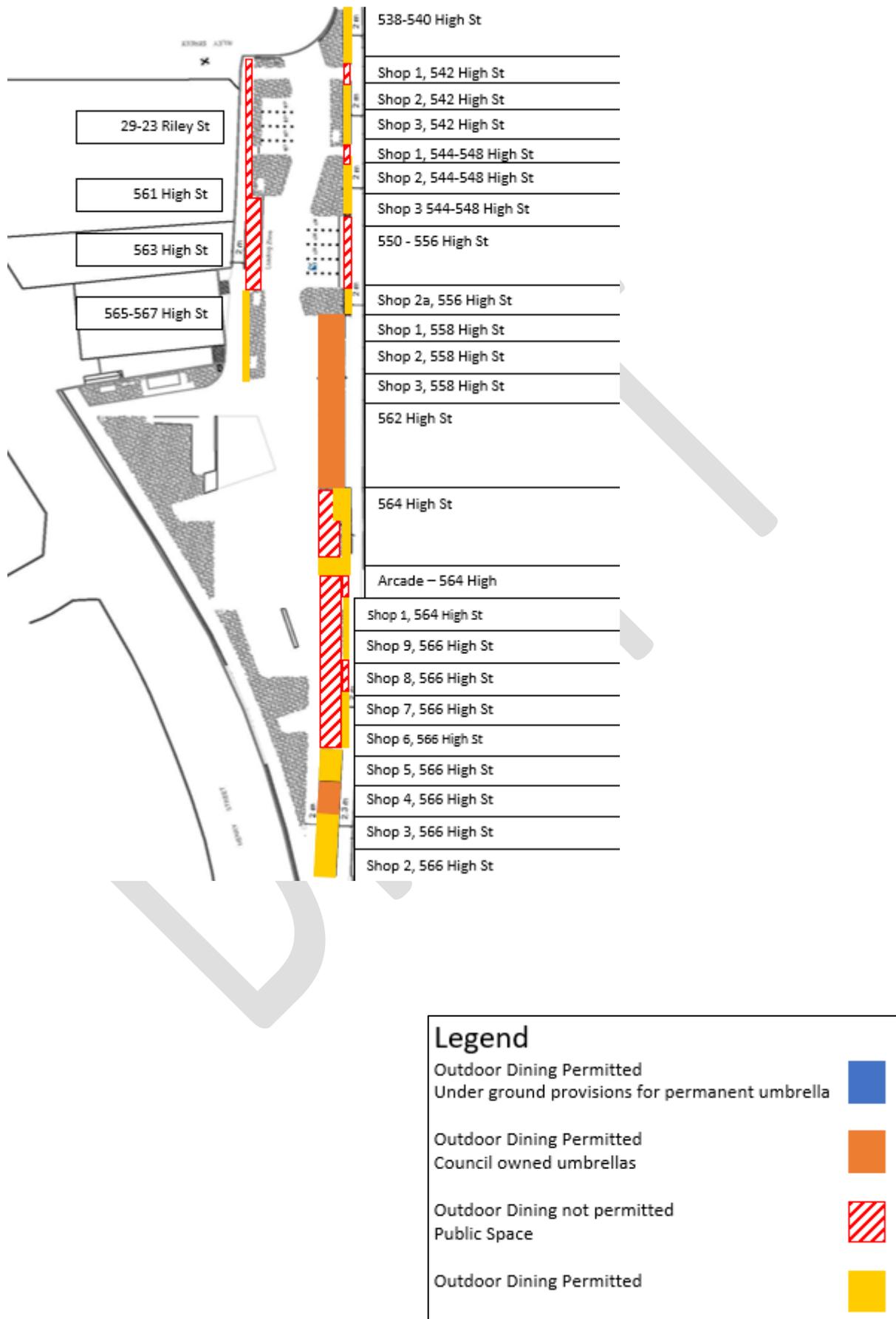
Table 8: Additional requirements

Item	Supply	Details of product:	Business operator information/ use
<b>1.0 Umbrella structure and canopy</b>	Supplied by Council	Street Umbrellas Australia:  Umbrella and Modular canopy	Drilling of holes into the structure of the canopy/ umbrellas is not allowed.  No attachments are to be placed on the umbrella/canopy, structure without Council's written consent.  No advertising to be placed on the umbrella, canopy or structure
<b>2.0 Umbrella lighting</b>	Supplied by Council & privately connected	2 x LED floodlights per post, mounted to underside of umbrellas.  Rated IP66 (waterproof); 80 degree wide beam, warm LED.	Council owned lights are to be turned on at night time only and must be switched off every day at close of business.  The business operator is responsible for all power costs.
<b>4.0 Blinds</b>	Supplied by Council to the canopy structure only.	Clear PVC roll down blinds	It is the responsibility of the business operator to ensure blinds remain clean and presentable to allow clear vision through them at all times.

## PERMISSIBLE OUTDOOR DINING OPERATING AREA

Figure 6 shows indicative maximum areas permitted for outdoor dining within Triangle Park. Operating beyond the boundaries into public open space is not permitted. This is to ensure there is an appropriate balance of public use areas within the Triangle Park.

Figure 6: Approved outdoor dining areas in Triangle Park



## LINEAR PLAZAS

There are two Linear Plazas located on the south side of High Street, between Memory Park and Triangle Park, Penrith. One is referred to as 'West' and the other is 'East'.

Located in the retail core, the Linear Plazas are a central point of interest as well as a destination, and they help connect other destinations in the city centre. They are public spaces that encourage people to stay longer in the city centre, building a sense of community and local ownership, and increase diversity of experiences attracting visitors from further afield.

The Linear Plazas are areas of footpath extended into the roadway, in which outdoor dining can occur. They are also spaces for use by the public for sitting, resting, socialising etc.

Key characteristics/ aims of the Linear Plazas include:

- accessible for all
- reinforce the café and restaurant precinct to provide a strong draw for customers
- attract new business and development and foster a night time economy
- green the street and city centre
- consistent high quality and well-designed unique place
- expand outdoor dining to nominated areas, while maintaining spaces with a sense of flexibility and openness for community and public use.

Key elements of Linear Plazas to contribute to the busy, high quality and attractive atmosphere of the street include:

- umbrellas with lighting – for outdoor dining areas
- high quality granite paving – robust and hard wearing, locally derived 'Juxtapoems' engraved into the stone at key locations
- trees, hedges and garden beds – deciduous trees provide shade in summer, sun in winter; greening and cooling of the city; separate customers from the roadway and create attractive and comfortable conditions
- public art – artist designed poles with feature lighting incorporating stylised motifs contribute to the unique identity of these special places in the city centre
- seats and bins – located appropriately
- pedestrian crossings – well lit, highlighted with trees and garden beds.

### COUNCIL OWNED UMBRELLA REQUIREMENTS

Council has provided umbrella structures with up-lights in Linear Plaza for businesses trading with outdoor dining approvals at the time of the 2018 street upgrade. Umbrellas are to be used for approved outdoor dining purposes and the space beneath the umbrella canopies may be used by the general community when outdoor dining is not in operation.

Damage caused to the umbrellas due to negligence of the business owner or its customers, including but not limited to, is to be reimbursed to Council for the full expense of the repair and/or replacement.

The addition of other elements (e.g. fairy lights) or other improvements to Council owned umbrellas must be assessed and approved by Council, before installation. The business

operator is responsible for tagging and testing of the electrical elements. All requests are to be sent in writing to Council's Property Development Department.

### PRIVATELY OWNED UMBRELLAS

Temporary umbrellas are suitable in permissible outdoor dining areas where permanent umbrellas have not been supplied. The umbrellas must not compromise the form or growth of any of the trees. Umbrellas must match the colour of the existing Council umbrella.

### REPAIR AND MAINTENANCE

Council is responsible for the repair and maintenance of the umbrellas and associated lighting detailed below. Business owners are not permitted to carry out any maintenance or repairs. All damages, repair and maintenance requests must be promptly reported to Council's City Presentation team.

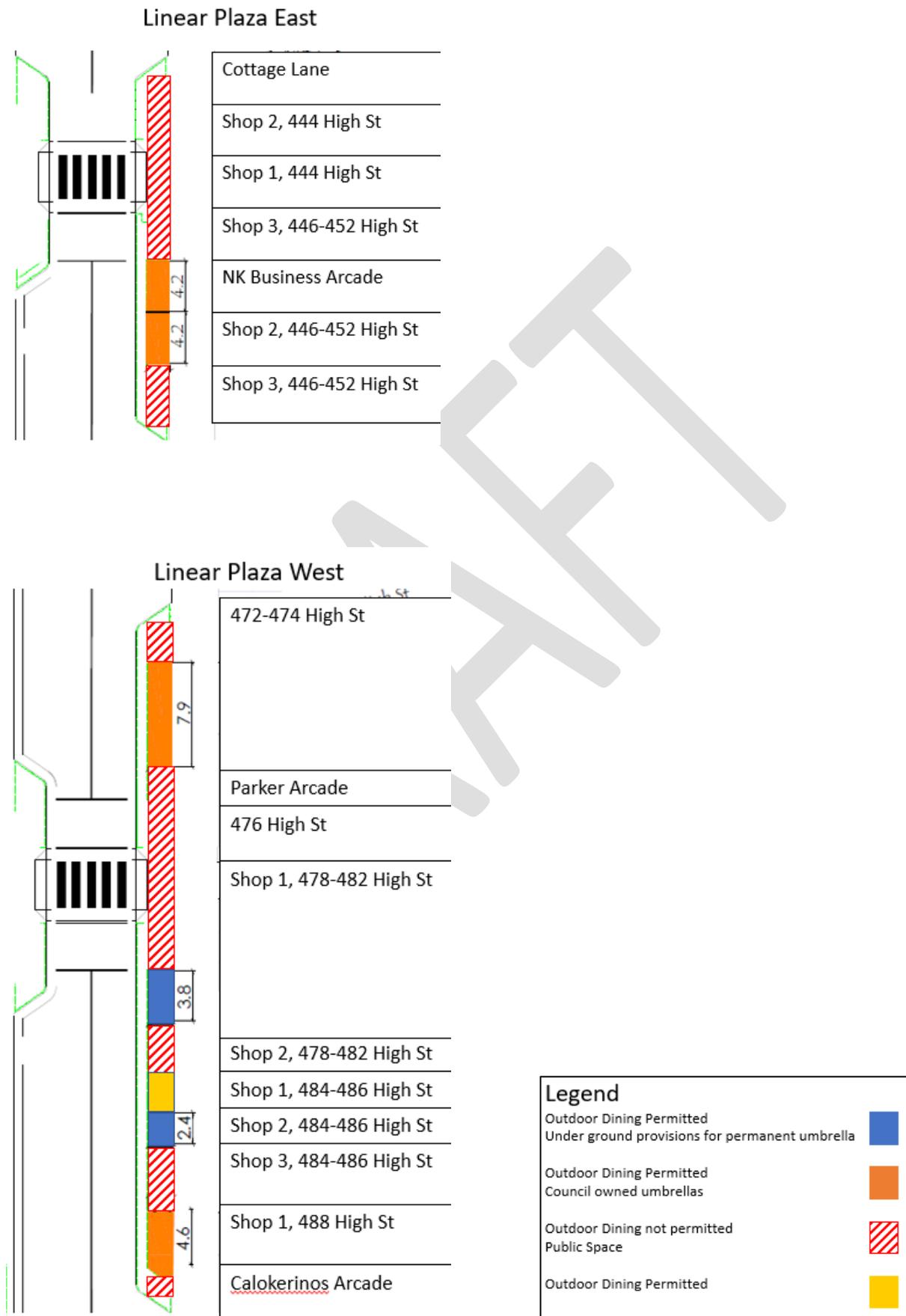
Table 9: Additional requirements

Item	Supply	Details of product:	Business operator information/ use
<b>1.0</b> <b>Umbrella structure and canopy</b>	Supplied by Council	Street Umbrellas Australia (Mak Max Australia):  Monaco Linear (4m x 3m) and Linked Monaco Linear (8m x 3m)	Drilling of holes into the structure of the canopy/ umbrellas is not allowed.  No attachments are to be placed on the umbrella/canopy, structure without Council's written consent.  No advertising to be placed on the umbrella, canopy or structure
<b>2.0</b> <b>Umbrella lighting</b>	Supplied by Council & privately connected	2 x LED floodlights per post, mounted to underside of umbrellas.  Rated IP66 (waterproof); 80-degree wide beam, warm LED.	Council owned lights are to be turned on at night time only and must be switched off every day at close of business.  The business operator is responsible for all power costs.
<b>4.0</b> <b>Blinds</b>	Optional - supplied by business operator	Approval to be obtained from Council before installation	Blinds must match the dimensions of the umbrella and be fixed such that they do not damage or compromise the structural or visual integrity of the umbrella.  Blinds must not interfere with garden beds and trees.

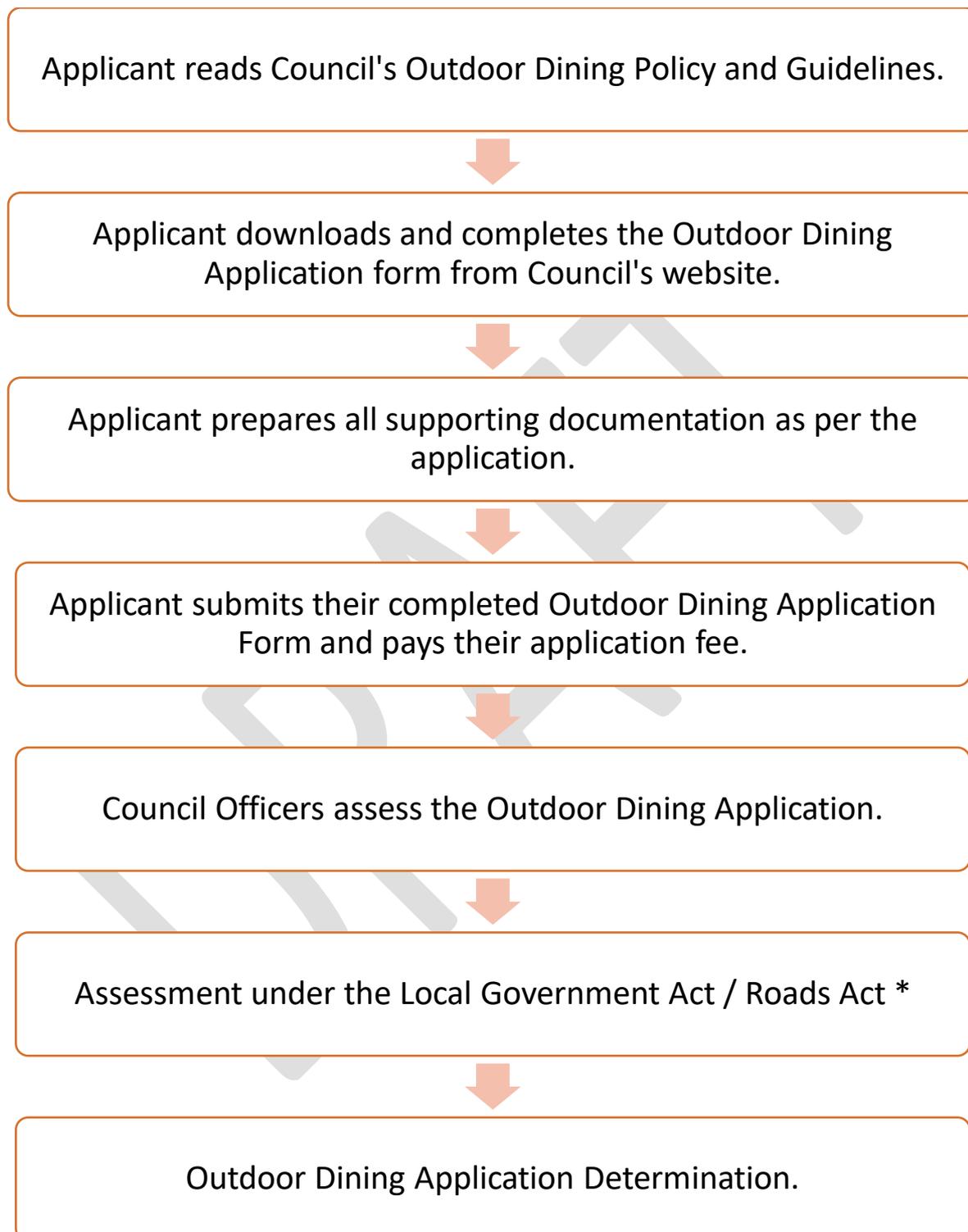
### PERMISSIBLE OUTDOOR DINING OPERATING AREA

Figure 7 shows indicative maximum areas permitted for outdoor dining within the Linear Plazas. Operating beyond the boundaries into public open space as noted on the map is not permitted. This is to ensure there is an appropriate balance of public use areas within the Linear Plazas.

Figure 7: Approved outdoor dining areas in the Linear Plazas



## SECTION 4 - APPLICATION PROCESS



*\* If the outdoor dining area is located on a State road, the application will be referred to the RMS as part of the assessment process.*

## KEY TERMS

Term	Meaning
<b>Applicant</b>	The owner of the business.
<b>Application</b>	An application made under section 68 of the Local Government Act 1993 or section 125 of the Roads Act 1993.
<b>Approval</b>	An approval issued under section 68 of the Local Government Act 1993 or section 125 of the Roads Act 1993.
<b>Building Shoreline</b>	The property or natural building line where the building recedes.
<b>Exempt Development</b>	Development that does not need development consent under the Environmental Planning and Assessment Act 1979, but which may still need some other approval. At the time of adoption, the State Environmental Planning Policy (Exempt and Complying Codes) 2008 makes footway dining exempt development if it is: <ol style="list-style-type: none"> <li>a) not associated with a pub or a small bar, and</li> <li>b) carried out in accordance with an approval granted under section 125 of the Roads Act 1993, including in accordance with any hours of operation to which the approval is subject, and</li> <li>c) carried out in accordance with any approval granted under section 68 of the Local Government Act 1993.</li> </ol>
<b>Footway</b>	That part of a road that is set aside or formed as a path or way for pedestrian traffic, whether or not it may also be used by bicycle traffic.
<b>Outdoor dining</b>	The provision of suitable seating and tables and the performance of other activities directed at the consumption of food and beverages in an outdoor dining area.
<b>Pedestrians</b>	a person who goes or travels on foot; walker.
<b>Permanent structures</b>	Any outdoor structure fixed to the footway.
<b>Permit holder</b>	Means the owner of the business who holds Outdoor Dining Approval.
<b>Permit</b>	a document giving the holder approval for outdoor dining.
<b>Public Road</b>	Public road means: <ol style="list-style-type: none"> <li>a. any road that is opened or dedicated as a public road, whether under the Roads Act 1993 or any other Act or law, and</li> <li>b. any road that is declared to be a public road for the purposes of the Roads Act 1993.</li> </ol>
<b>Restaurant</b>	Restaurant means premises in which food is regularly supplied on sale to the public for consumption on the premises.
<b>Shorelining</b>	The process of using a long white cane to sweep in a sideways arc to detect tactile surfaces and features to maintain a direction of travel and/or to identify hazards.
<b>State Roads</b>	State Roads are the major arterial links throughout NSW and within major urban areas.
<b>Temporary structures</b>	Any outdoor structures which is removed from an outdoor dining area when the area is not in use.

# AMENDMENTS

The Outdoor Dining Guidelines will be reviewed bi-annually or as required, and variations will be at the Property Development Manager's discretion.

## VERSION HISTORY

Version	Date	Amended by	Summary of changes made
1.0	TBC	Nathan Ritchie	Original adoption

DRAFT