



Dubbo Regional Council

Outdoor Dining Policy
2019

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Introduction

Dubbo Regional Council (The Council) Outdoor Dining Policy

The objective of the Outdoor Dining Policy (The Policy) is to encourage and activate public domain areas of Macquarie Street.

Macquarie Street is an established street with good visual quality and heritage features. The Policy aims to allow for the placement of street furniture on footpaths outside cafes and restaurants to support building a dynamic, vibrant and growing city.

The policy provides guidance for cafes and food premises and assists food premises (Operators) in obtaining approvals for outdoor dining.

It provides details on the application requirements, assessment processes and criteria that must be satisfied before on-street dining can be undertaken.



Dubbo Eat Street

Policy Statement

The Outdoor Dining Policy 2019

The purpose of the policy and user guideline is to provide:

- clear management principles to determine the suitability of on-street dining opportunities on Macquarie Street
- define public safety with clear guidance to maintain heritage and appeal of the area
- meet ongoing operational requirements of Council in delivering services to the street
- provide strong decision making criteria for internal decision making
- develop best practice standards for outdoor cafes now and in the foreseeable future

Key Principles of the User Guidelines

The principles contained in this guide provide a set of best practice design requirements and guidelines for establishing and managing outdoor dining areas.

They are also intended to promote awareness and understanding about the key responsibilities and requirements of café owners, managers and designers.

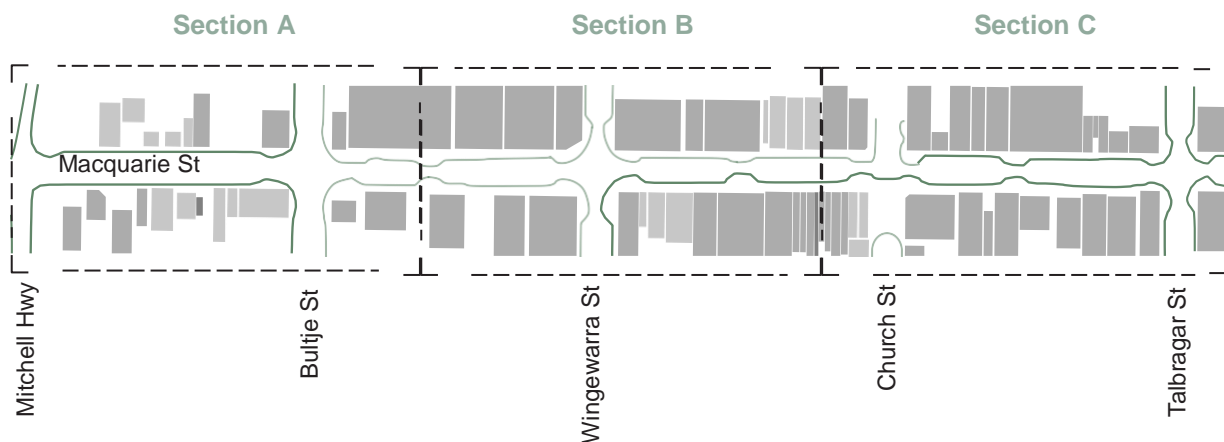


Figure 1: Overview of area to which the policy applies on Macquarie Street

Who is Eligible to Apply

The policy applies to business use of the footpath for outdoor dining. NSW legislation allows Council to approve the use of the footpath for dining when the request is made by a cafe, restaurant or food premise.

Macquarie Street cafes and food premises are eligible to apply for an approval for outdoor dining, given they satisfy the requirements outlined in this policy.

Where the Policy Applies

The Policy applies to all footpath areas on Macquarie Street from the Mitchell Highway to Talbragar Street.

Refer to Appendices N, O and P for the areas considered permissible for the purpose of footpath dining. These should be read together with the user guidelines, which provide information on suitable locations and sizes of outdoor areas.

This Policy introduces Category A and Category B outdoor dining.

Category A outdoor dining allows a permanent structure subject to approval from Council. The type of structure and area for Category A dining is further discussed in the Policy.

Category B outdoor dining allows a café or restaurant owner to have their chairs, tables and associated items on the street, without any permanent structures. Category B is further discussed in this Policy.



Macquarie Street (source realestateview.com.au)

Approvals under NSW Legislation

NSW Legislation & Approvals

NSW Government legislation sets out that the following approvals are required for outdoor dining by food premises:

- All outdoor dining on the footpath requires an approval under the *Roads Act 1993*.
- Outdoor dining on community land, such as a park or reserve, requires an approval under the *Local Government Act 1993*.
- Outdoor dining that is not exempt development will require a development consent under the *Environmental Planning and Assessment Act 1979*.
- Outdoor dining that is on Crown land requires an approval under the *Crown Lands Act 1989*.
- Construction of a permanent structure that will be used for the purposes of outdoor dining will require a Development Application to be lodged with and approved by Council. In addition, a Construction Certificate will also be required to erect the structure.

Roads Act 1993

An 'Operator' for the purpose of this Policy is defined as a 'restaurant' under the *Roads Act 1993*. A restaurant is a "premises in which food is regularly supplied on sale to the public for consumption on the premises".

Section 125 of the *Roads Act 1993* clarifies that approval may be granted by the Council for use of footpaths 'restaurants', erection of structures, maintenance and their location. Under the Act, Council is also entitled to nominate associated payments.

Local Government Act 1993

Section 68 defines activities that require the approval of Council. If footpath dining is undertaken on community land, approval under Section 68 of the *Local Government Act 1993* is required.

Crown Land Management Act 2016

Crown land that is managed by local government (as dedicated or reserved land) allows for Council to also manage in accordance with the *Local Government Act*.

Where footpath dining is requested on land that is owned by the Crown and is managed by Council it follows that footpath dining would require Council approval.

Environmental Planning and Assessment Act 1979

Footpath or outdoor dining is classified within the State Environmental Planning Policy (Exempt and Complying Codes) 2008, s20A.

Use of footpath dining is classified as exempt development when dining is associated with a food premise and can satisfy that it is:

- (a) *not associated with a pub or a small bar, and*
- (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*
- (c) *carried out in accordance with any approval granted under section 68 of the Local Government Act 1993.*

However, this does not include the provision of permanent outdoor structures, which require separate Development Approval from Council.

Other Supporting Policy

Small Business Commissioners Interim Outdoor Dining Policy

The Small Business Commissioner has trialed a method to allow cafés, restaurants and food-based businesses to more easily expand their operations on local footpaths. The intention is to encourage more business for local hospitality venues, more local jobs, and a more vibrant setting for local streets, stimulating local economies.

Key to the interim policy is the use of an online assessment and approval system.

Other Local Government Precedent and Experience

Other council areas have experienced positive impacts of outdoor dining.

The City of Melbourne reports that over 15 years it has:

... Promoted development of a wide range of street trading as a means of enhancing the vitality of street and visitors precincts.

During this time the City reports a boom in alfresco dining from less than 50 to over 600 in the 15 year time frame. (Source: City of Melbourne website).



Dining Alfresco in Melbourne

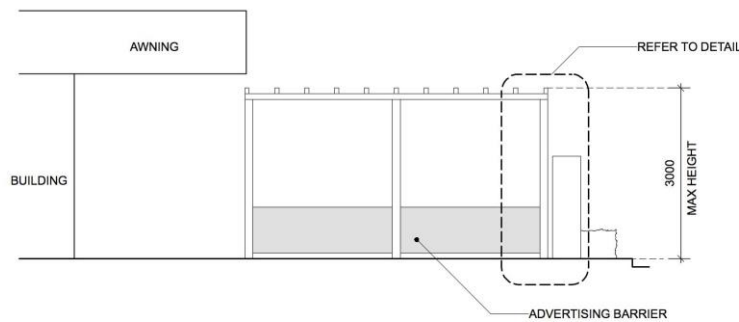
Outdoor Dining Categories

Category A

Category A provides for outdoor dining opportunities which are considered appropriate to accommodate permanent structures subject to approval from Council.

An example of Category A outdoor dining is provided below.

Note: further details of the structure are contained in Appendix F.



Category B

Category B provides café or restaurant owners the opportunity to have their chairs, tables and associated items on the street, without any permanent structures and is subject to approval from Council.

Examples of Category B outdoor dining are provided below.



Approval Process

Council Application

A proprietor of a café or restaurant is required to apply to Council to undertake outdoor dining

Council assesses all applications and monitors the operation of outdoor dining areas.

A Category A approval is issued for a three (3) year period with opportunity to extend to five (5) years at Council's discretion.

Existing approval holders are required to re-apply every three (3) years or five (5) years depending on the approval period.

A Category B approval is issued for a two (2) year period. Existing approval holders are required to re-apply every two (2) years.

All outdoor cafe approval holders must comply with all conditions of an approval and the guidelines set out within this policy.

Any proprietor of a café or restaurant seeking to undertake outdoor dining with the provision of a permanent outdoor dining area is required to lodge a development application with Council to both approve the use and the outdoor dining structures.

General Conditions

When applying be aware that:

- The predominant activity of the outdoor dining area must be for the service of meals for consumption to seated patrons.
- Only one outdoor dining approval may be obtained per operator and is applicable to its respective adjoining café or restaurant premises.
- A copy of all approvals must be retained on the premises at all times. The approval is required to be provided on request to any Authorised Officer of the Council.
- The approval holder must at all times comply with the requirements and obligations described in the Policy.

- It is the responsibility of the approval holder to comply with all laws including local laws and all other legal requirements relevant to the operation of the outdoor cafe and to ensure that employees and agents also comply.
- The approval holder must at its own expense comply with all other legal requirements concerning the outdoor cafe area and all activities upon it, and obtain and keep in force all necessary licences, approvals and authorities which may be required to use the outdoor cafe area for an outdoor cafe.
- The approval holder must not allow the consumption of liquor within the outdoor cafe area unless the approval holder holds a valid liquor license issued by Liquor & Gaming NSW. The license issued by Liquor and Gaming NSW will need to be extended to include the footpath.
- The approval holder may only conduct the outdoor cafe within the hours specified on the approval. Outside of those hours, no unfixed outdoor cafe furniture including but not limited to chairs, tables, umbrellas, canvas screens and gas heaters may remain in the public place nor be fixed without the prior written consent of the Council.
- The approval holder is at all times responsible for the good order, conduct and behaviour of patrons using the outdoor cafe area.

- The approval holder must ensure the outdoor café area is smoke free as per The Smoke-free Environment Act 2000.
- The approval holder must ensure that the outdoor café area and surrounding pathway and locality is kept free from rubbish and waste and is disposed of in accordance with waste management standards.
- Outdoor freestanding gas heaters must be maintained in a proper state of repair and damage free.
- To prevent damage to footpaths, all chair and table legs must have flat surfaces with a minimum bearing area of no less than 700 mm² (e.g. 30 mm pad). All approved canvas screens placed within the outdoor cafe area must be suitably weighted
- The approval holder must not offer to sell goods, solicit, try to attract trade or business, tout or spruik on public space adjacent to or within the outdoor cafe area other than the selling of goods in accordance with the permitted use.
- The approval holder occupies and uses the outdoor cafe area at the approval holder's own risk.
- The approval holder indemnifies and releases the Council from all liability arising from the use or occupation of the outdoor cafe area or the conduct of the approval holder's business by the approval holder or any of the approval holder's agents, including:
 - any claim made by any person for injury, loss or damage arising in any manner
 - any loss or damage to any property belonging to the approval holder or other persons located in the vicinity of the outdoor cafe area caused by the approval holder or the approval holder's agents
 - any loss, damage, injury or illness sustained or incurred by the approval holder or any of the approval holder's agents.
- The approval holder must maintain a comprehensive public risk insurance policy for a minimum of twenty million dollars (\$20,000,000) cover, with an insurer approved by the Australian Prudential Regulation Authority ("APRA") (www.apra.gov.au) and as approved by the Council

Outdoor Dining Fees

Fees will apply as part of the approval application and approval process.

The relevant fee structures are as follows;

1. Category A

- On-street dining application fee
- Annual lease fee
- Bond deposit
- Development Application fee
- Construction Certificate fee
- Section 138 Application fee

**Additional fees and charges may apply and are subject to the individual application.*

2. Category B

- On-street dining application fee

Appendix A also includes a table including the relevant fee structures.

Approval Holder Bond

For applications that include permanent fixtures such as pergolas, Council will require a bond to be paid.

The full repair of the public place/footpath is the responsibility of the approval holder. The approval holder is the person to whom the approval is granted and therefore responsible for the outdoor cafe.

The Bond is calculated by Council as a one off payment to be made at 10% of the overall value of the works to be undertaken in accordance with the standard work schedule.

The Bond amount will increase with the consumer price index (CPI).

This can be in the form of an unconditional bank guarantee.

Within fourteen (14) days or such further period as agreed in writing by the Council of the expiry, termination or cancellation of the approval, the approval holder must remove all relevant furniture and reinstate the public place to its pre/development condition. Should the approval holder fail to reinstate the public place to the satisfaction of the Council, the Council may carry out the necessary works and the approval holder' bond will not be released.

Reinstatement of public place includes the removal of furniture and any fittings in the pavement.

User Guidelines for Operators

Footpath Access

A well-managed footpath promotes both equitable access and supports local businesses by creating places and streets that are amenable and attractive to all visitors.

Council must manage the footpath and other public spaces to provide safe and equal access for all people around the City. This includes pedestrians with a pram or mobility aid, or who are blind, have low vision or use a wheel chair and require a clear path of travel to be maintained at all times.

Stakeholders who are blind or have low vision prefer that the location for the clear path of travel is along the building side of the footpath to allow for best-practice in safe and dignified wayfinding.

This policy reinforces the requirement that a clear path of travel be maintained at all times, while also allowing opportunities for beneficial uses on the public footpath.

Appendix B and C illustrates the organisation of the pedestrian movement zone at the footpath.

To be eligible for outdoor dining the area:

- is directly related to operation of an existing food business.
- has minimum public space allowances including clear pedestrian zone of 2.5m.
- is located on level ground so that unreasonable hazard to pedestrians are avoided.

Location

Users guidance on location of the dining zone is to give consideration to neighbours as well as amenity. Appendix B and C illustrate consideration of the dining zone where other public uses occur.

The user application should illustrate that consideration has been given to the existing streetscape, pedestrian circulation and traffic in locations where there may be:

- driveways
- bus and taxi stops
- existing trees
- other street furniture
- pram ramps
- access to intersections or crossings
- heritage interpretive elements.

Outdoor dining is most appropriate in areas with a width of at least 4.5m, in order to allow for minimum pedestrian access.

Appendix G and H illustrate equitable use of the footpath and indicates space to enable access to the street.

Furniture and associated structures need allowance for the convenience of all users, including cyclists to access the road and footpath.

It is possible to have an outdoor dining area larger than the frontage of the premise. This application is at the discretion of the Council. Council may consider extension of dining activities to operate outside of an adjoining owners business if they provide consent.

Line of Sight

The line of sight at intersection is important for all users and ensures clear visibility for turning vehicles.

Applications for outdoor dining must be set back 45° angle from the corner of buildings. This may be further offset by kerb extensions, planting and safe access to crossing.

The outdoor dining area may be reduced or removed completely due to these considerations. Appendix I and J show this configuration along Macquarie Street.

Clearance

Dining Zone areas are a minimum of 0.5m from the edge of a kerb in a parallel parking area.

Kerb Side Seating

It is the preference of Council to offer dining on the kerb side in locations that have enough width of footpath available.



Intersection of Church Street & Macquarie Street

Furniture guidelines

Outdoor dining furniture should be sensitive towards the existing character and cultural significance of Macquarie St. Cafe furniture is to consist of temporary fixtures and permanent structures are not permitted.

All furniture selected must not impede on pedestrian access, compromise visual amenity and must consist of suitable materials and finishes.

Barriers

Barriers which fully enclose the outdoor dining area, or which separate it from the pedestrian footpath, are not permitted.

Barriers are permitted where there is a license to serve alcohol in the outdoor seating area and it is in a designated Alcohol Free Zone.

Barriers used to show clear demarcation between adjoining outdoor dining areas are permitted.

Max. 900mm high café barriers may be used.

Barriers which enclose the outdoor dining area on three (3) sides are permissible if they are:

- The barrier/walls are transparent
- The barrier/walls can be raised or removed at any time
- Must be open/raised when outdoor dining area is not in use.

Refer to appendix K and L for required breaks in outdoor dining zones.

Outdoor Heaters

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

Outdoor heaters should turn off automatically if overturned to prevent injury to patrons and damage to property.

Outdoor heaters should generally not be permanently fixed. Fixed outdoor heaters may be considered in the situation that heating is strip heating and hung from the roof structure.

Lighting

Council may consider the installation of private lighting for outdoor seating areas that are approved to operate outside daylight hours, provided:

- the safety and amenity of patrons, the general public and road users is maintained
- it does not reduce the amenity or safety of other uses in the area
- it is to be located wholly within the outdoor seating area
- electrical cabling is discreet and does not create trip hazards.

Shade

Shade structures in the form of umbrellas, sails or freestanding awnings should be used only where existing building awnings, verandahs or trees are not present.

Shade furniture is not permitted where canopies exist at typical ground floor height (2800-3800mm from the ground) and cover most of the footpath to 1000mm setback behind the kerblines.

Shade structures must be properly secured and should be set back appropriately from existing furniture, trees and buildings.

Signage, Branding and Advertising

Signage on umbrellas and barriers must relate to the business and may include the business name, an associated logo or product.

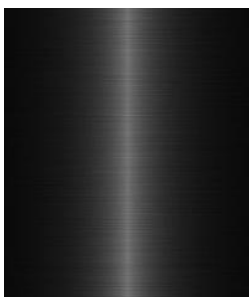
Signage and branding must not detract from the character of the street or create visual clutter. Advertising may be displayed on every alternative panel of café screens and umbrellas. The size of the café name, logo or commercial advertising should cover no more than 33 per cent of the panel surface.

Council will consider quality of furniture and suitability as part of an application.

In selecting furniture the following is relevant:

- Is the furniture durable and able to be cleaned?
- Can the furniture cope with seasonal changes?
- Will there be advertising on umbrellas and barriers. How will they be fixed to ensure safety?

Examples of suitable furniture materiality selections include timber and steel. Plastic frames are not suitable.



Outdoor Dining Furniture

Consistency with the Existing Streetscape

Heritage Considerations

Macquarie Street has many heritage elements to the streetscape. It is essential that the proposal for outdoor dining is consistent and sensitive to the existing urban character.

Outdoor cafés should complement and enhance the streetscape and other significant street elements such as trees, public art and city decorations. These, and elements such as heritage pavements, should not be removed, relocated or modified as a result of an outdoor café installation and operation.

Outdoor cafés should be unobtrusive in style, appearance, materials, finishes and colours. Suitable styles and colours must not detract from the integrity and character of significant buildings, landscape features and structures in the street.

Furniture such as umbrellas and screens should not obstruct views of main areas of street activity and significant sight lines to important landmarks such as the Old Dubbo Gaol.

Design of café furniture is to be of a high standard in appearance and style, made of quality materials, with finishes that are attractive and durable.

In all circumstances, furniture must be approved by Council before use.

Preferred Materials and Colours

Outdoor cafés proposed along Macquarie Street and adjoining heritage buildings should have high quality furniture with more traditional materials and simple colours such as black, grey or metallic paint and with natural finishes such as stone and wrought iron metal.

Responsibilities of the Operator

Maintenance

Dubbo encourages a well-managed outdoor dining experience for local and tourism purposes.

It is the responsibility of the Operator to ensure that outdoor dining areas are maintained to a high standard of cleanliness.

Maintaining a clear and safe area includes a clear pedestrian access.

Use of public space, including the footpath, brings responsibilities for the operator.

Conditions of the Footpath Approval Will Include Protection of Council Property.

- Protection of Council-owned property

An Operator will be required to lodge a bond with the Council, to pay for any necessary repairs resulting from damage to the footpath caused by the operation of an outdoor seating area. The bond will be equal to 10 percent of the value of the Category A permanent outdoor structure.

- Public liability insurance

An operator will be required to obtain and maintain a public liability insurance policy with an insurer acceptable to the Council, to cover any legal liability of property damage and personal injury to the public.

- Display of approval

A copy of the approval and plan is to be kept on premises, displayed in a prominent position and be produced on request to authorised Council officers.

Management Requirements

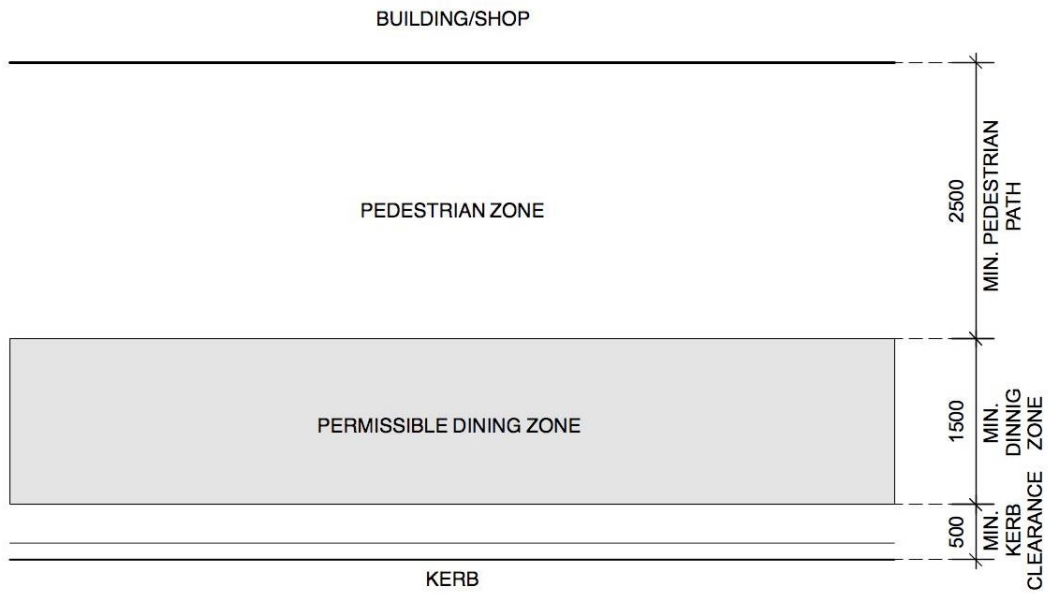
An outdoor seating area is to operate in accordance with the conditions of the approval.

- Outdoor seating areas can only be used by seated patrons consuming food or drink. Patrons are not permitted to eat or drink whilst standing in the approved outdoor seating area.
- For Category A permanent outdoor structures, the Proponent is responsible for lodging with and seeking from Council a Development Application and Construction Certificate. Council is not responsible for any costs incurred by the Proponent or the results of the Development Approvals Process.
- For Category A permanent outdoor structures located within the road reserve, the Proponent is responsible for seeking approval under Section 138 of the Roads Act 1993.
- The Proponent is responsible for attaining any required approvals in order to legally undertake the proposed development activity.

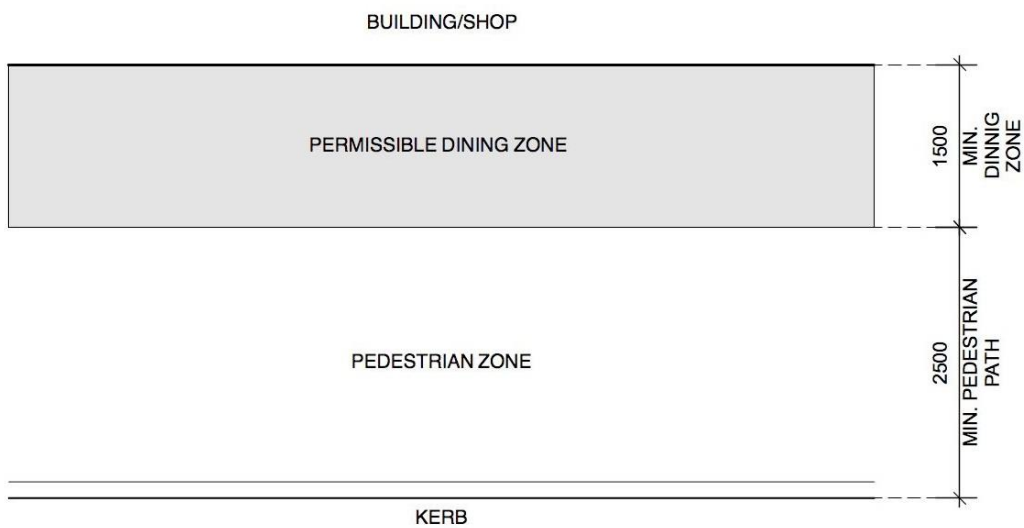
Appendices

Appendix A: Obligations Schedule

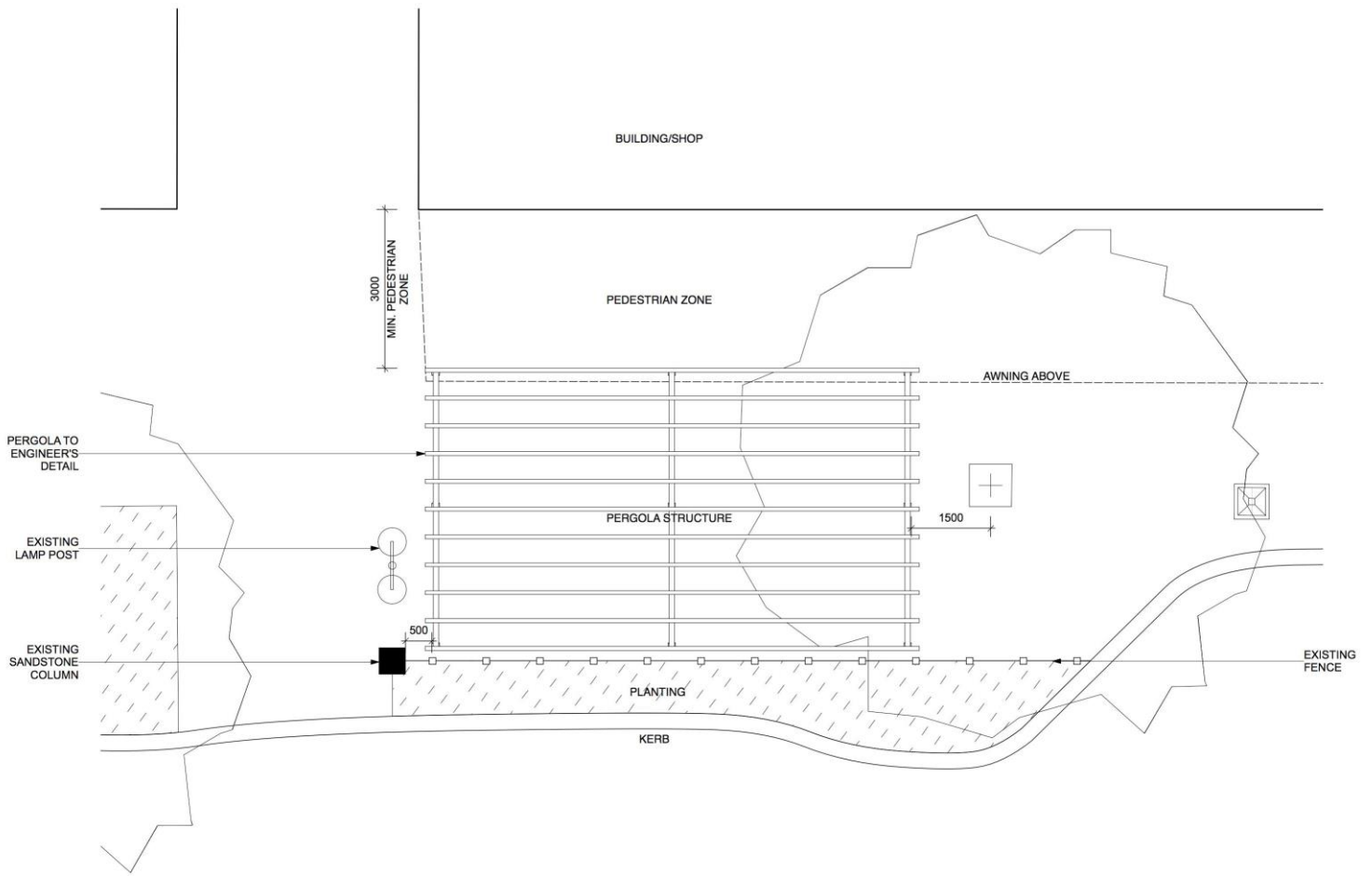
Item	Description	Unit	Year 19/20 Fee (incl. GST)
Category A Outdoor Dining			
Application fee	Assessment of footpath dining	\$	\$130.00
Section 138 Application fee	Assessment of erection of structures in road reserve	\$	\$110.00 (compulsory application fee); and \$120.00 (working in the road reserve)
Annual rent	Rent of external dining space	\$ per m ²	Nil
Bond deposit	Removal of structures	%	10% of cost of works (increases with CPI)
Insurance	Public liability	\$	\$20 million
Development Application fee	Assessment of Development Application	\$	Based on cost of works
Construction Certificate Application fee	Assessment of Construction Certificate Application	\$	Based on cost of works
<i>* Additional fees and charges may apply and are subject to the individual application.</i>			
Category B Outdoor Dining			
Application fee	Assessment of footpath dining	\$	\$130.00
Insurance	Public liability	\$	\$20 million



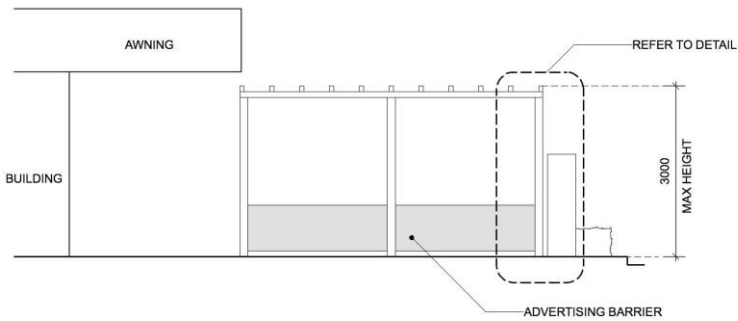
Appendix B: Category B Outdoor Dining Zones Minimum (Kerbside)



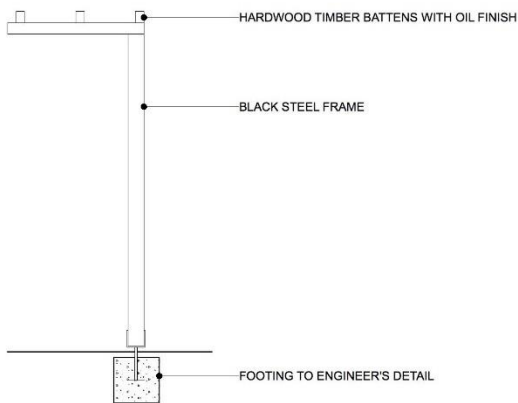
Appendix C: Category A Outdoor Dining Zones Minimum (Adjoining Buildings)



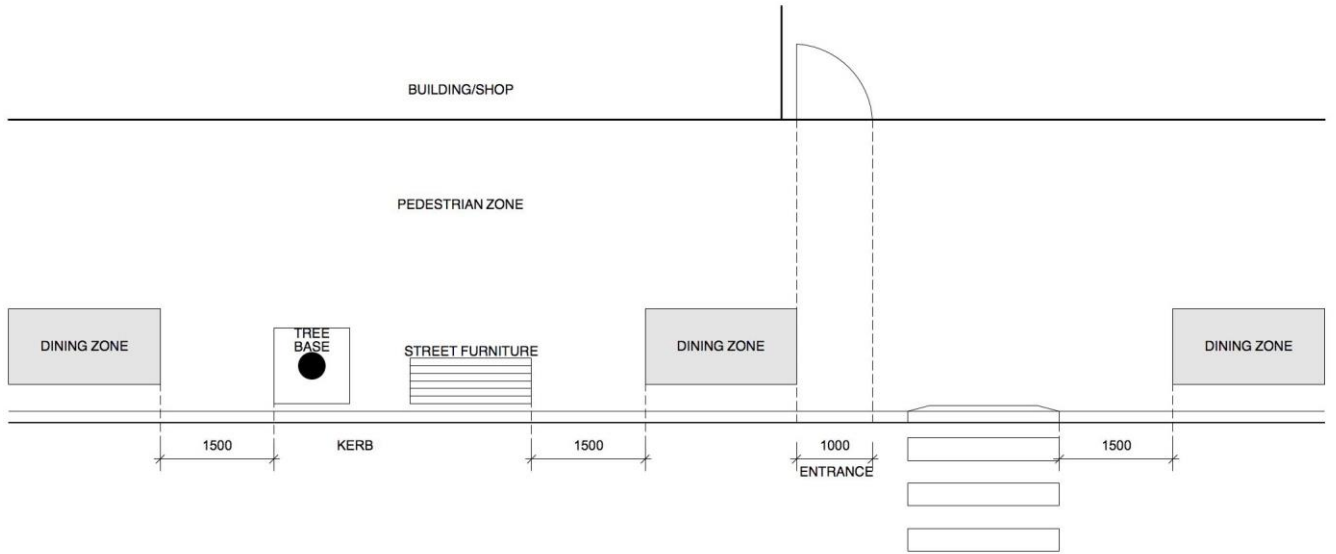
Appendix D: Example of Category A Permanent Pergola Structure



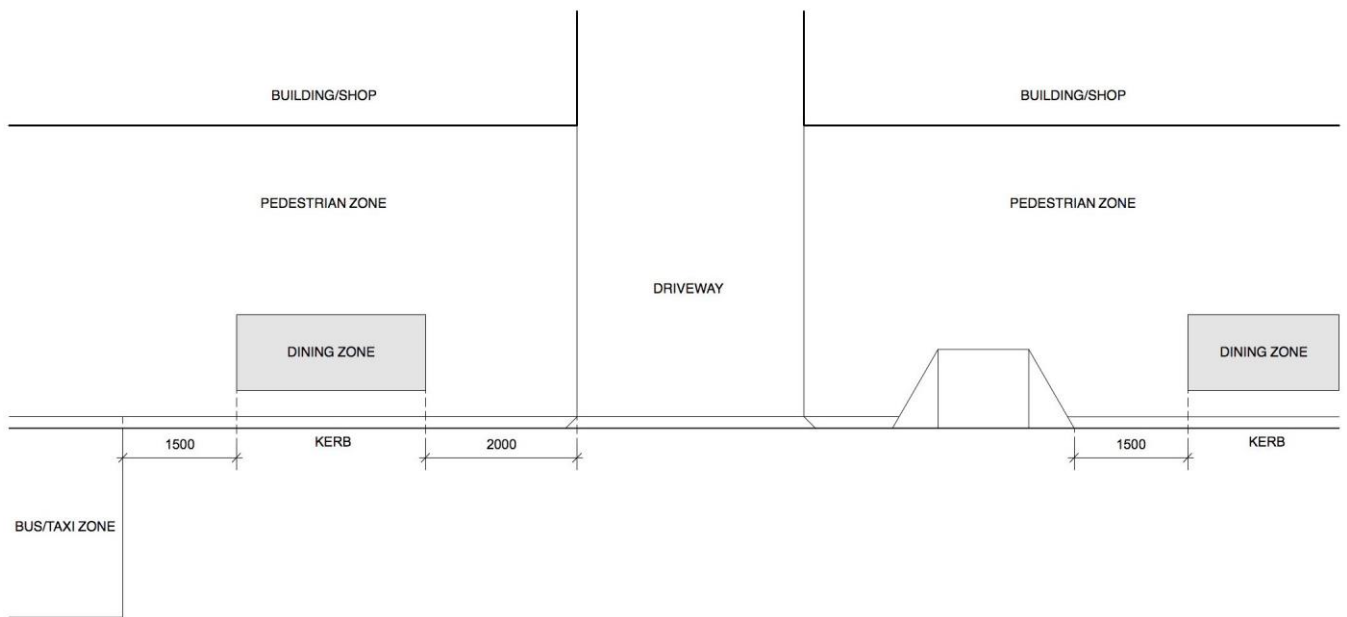
Appendix E: Example of Permanent Pergola Structure Section



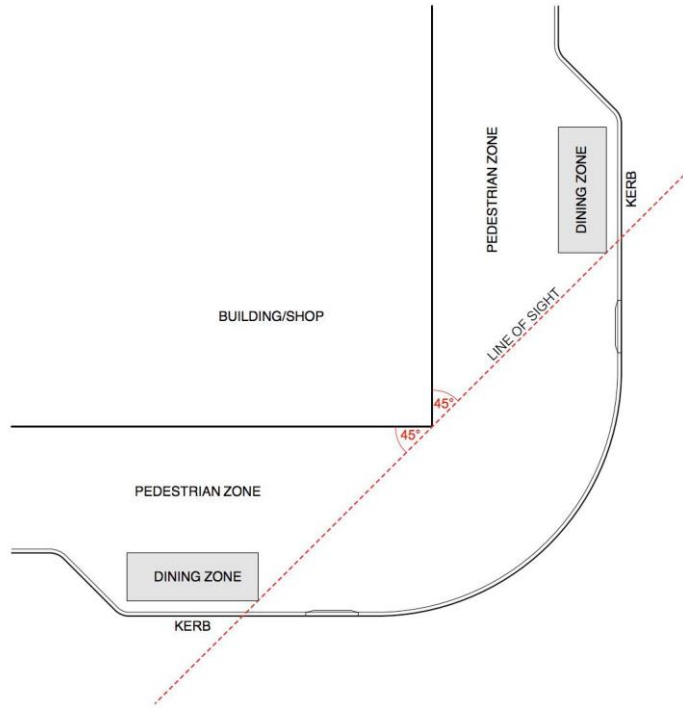
Appendix F: Example of Permanent Pergola Structure Detail Section



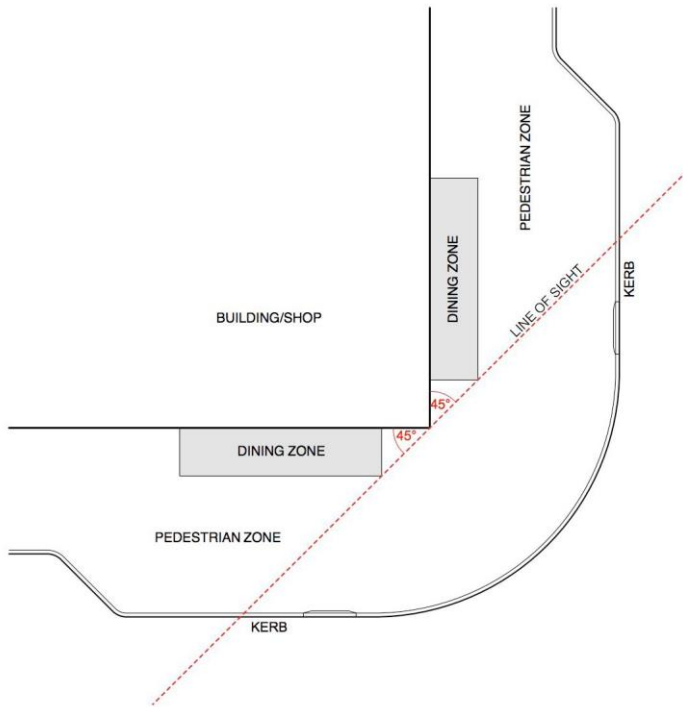
Appendix G: Outdoor Dining Zones Minimum Clearances



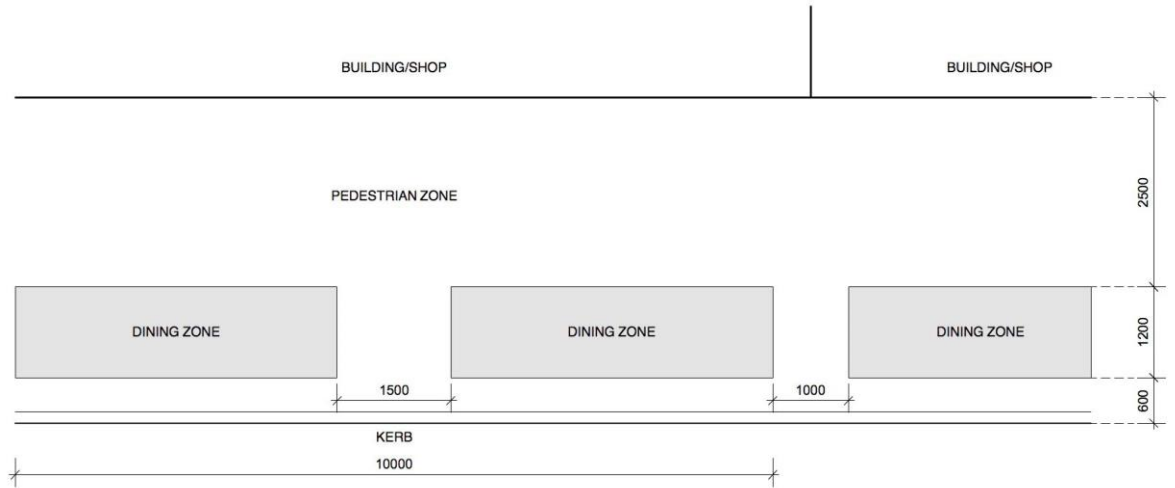
Appendix H: Outdoor Dining Zones Minimum Clearances



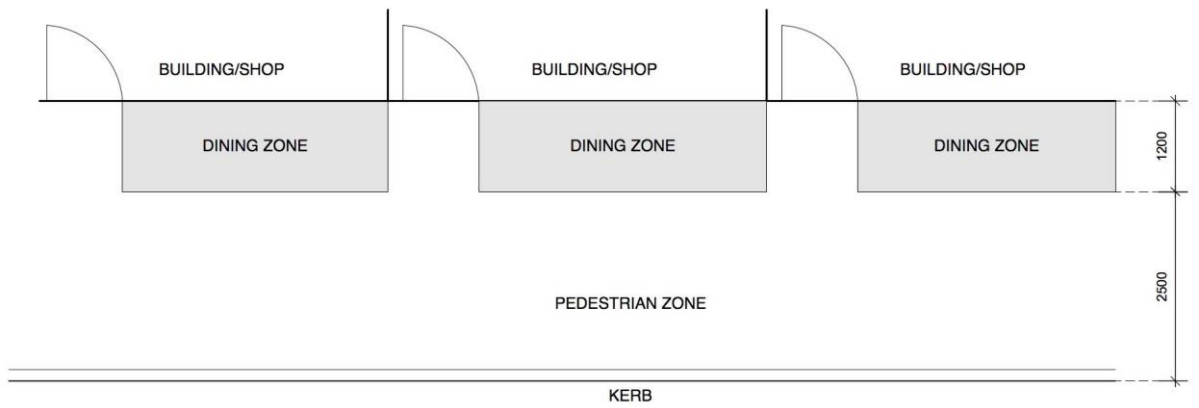
Appendix I: Corner Sight Lines



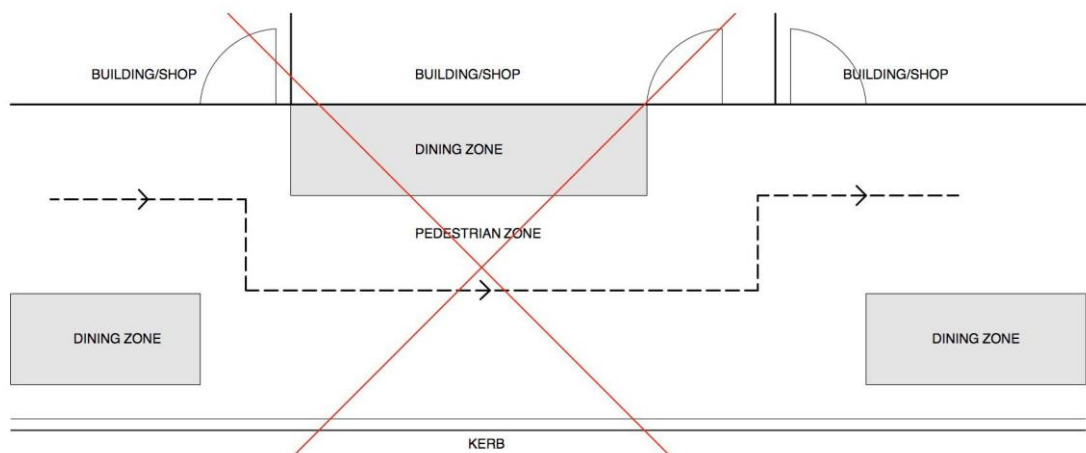
Appendix J: Corner Sight Lines



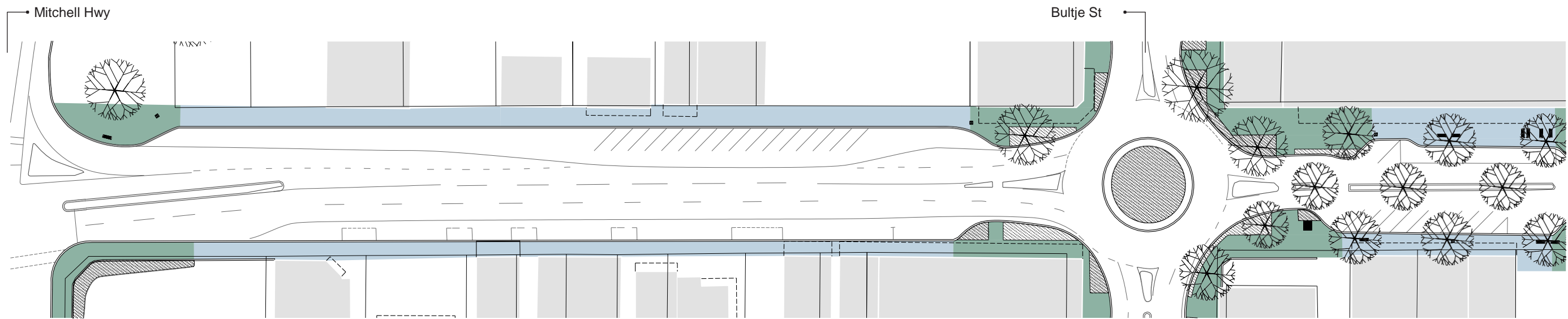
Appendix K: Outdoor Dining Zones Offset From Kerbside



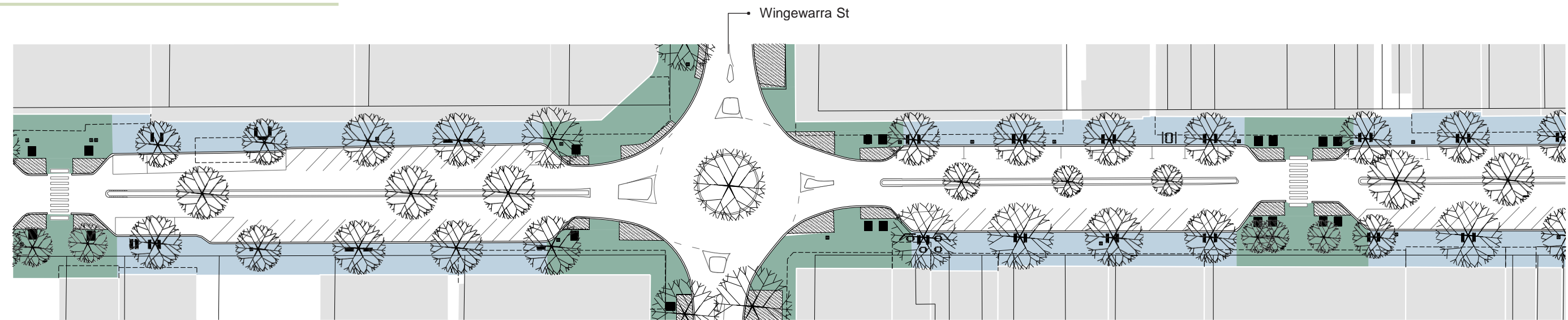
Appendix L: Outdoor Dining Zones Adjacent Buildings



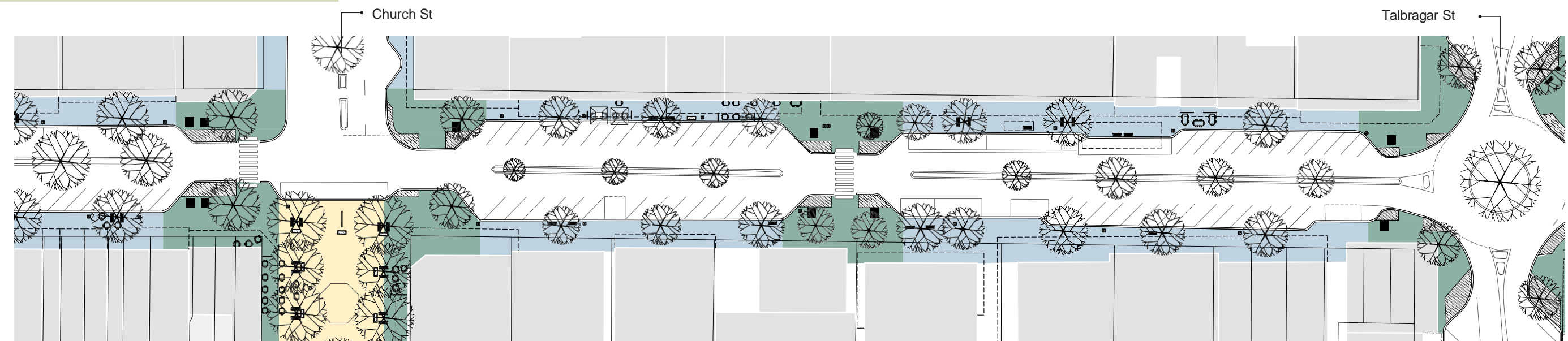
Appendix M: Unclear Path and Inconsistency Along Street



Appendix N: Macquarie Street Section A



Appendix O: Macquarie Street Section B



Appendix P: Macquarie Street Section C

LEGEND	
	Boundary
	Overhang
	Building
	Planting Category A
	Planting Category B

0 2 6 10 14 18 M