

Footpath Dining Guidelines

Footpath dining areas provide a significant contribution to the quality of public spaces and community life by providing an active street frontage that is alive and ever-changing.

Introduction

Who can have footpath dining?

Council supports local restaurants and cafes by allowing footpath dining to supplement their business. To be eligible, you must be an approved restaurant or café.

Where these guidelines apply

These guidelines apply to all applications for footpath dining on Council owned or operated road reserves or footpaths within the town centres.

Council may approve picnic tables and/or benches located outside general stores not within a town centre, where it is of the opinion that it would provide genuine community benefit. No licence agreement or fee is required.



How to use these guidelines

These guidelines:

- Are to be read alongside Council's [Commercial Use of Road Reserves Policy](#);
- Provide information for the public and proprietors seeking to use the footpath for dining purposes under the Roads Act for footpaths; or the Local Government Act 1993 for other public spaces; and
- Provide guidance for Council in determining applications for use of the footpath and other public spaces for footpath dining.

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Key terms

Term	Meaning
Authorised Officer	Means a person appointed as such by the General Manager of Council.
Exempt development	<p>Development that does not need development consent under the <i>Environmental Planning and Assessment Act 1979</i>, but which may need some other approval. At the time of adoption the State <i>Environmental Planning Policy (Exempt and Complying Codes) 2008</i> makes footpath dining exempt development if it is:</p> <ul style="list-style-type: none"> 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, and d) not under an awning, unless the awning complies with the requirements set out in BP1.1 and BP1.2 of Volume 1 of the Building Code of Australia.
Food and drinks premises	Means a restaurant, café, a pub and a small bar as per the Byron Local Environmental Plan 2014.
Footpath dining	Dining on the public footpath, associated with an approved food and drink premises.
Health Officer	Means a suitably qualified person appointed by the General Manager of Council to undertake health duties within the Byron Shire
Licensed area	Means the area an operator is licensed by Council to operate on/in.
Operator	Means the entity that has obtained a licence under this Policy.
Pedestrian corridor	The area of the footpath maintained for safe and equitable pedestrian circulation that is free from obstructions and assists in wayfinding and navigation. Also referred to as the continuous assessable path of travel as defined by the Australian Human Rights Commission.
Public footpath	The part of the road reserve 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.

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Footpath Dining Approvals

In assessing footpath dining applications, Council must ensure:

- the proposed use is consistent with the amenity of the area,
- the safe movement of pedestrians,
- the convenience to surrounding businesses; and
- the safe and equitable access for persons with access disabilities.

An appropriate approval process that protects the interest of Council and the community is a requirement.

What approvals are required?

All footpath dining requires approval to use the public land. Within the Byron Shire this is known as a Footpath Dining Approval.

Most footpath dining will not need development consent. It will be exempt development (see Key Terms) and will only require footpath dining approval from Council.

Footpath dining approval is issued under Section 125 of the Roads Act 1993.

If civil construction works are required a separate approval under Section 138 of the Roads Act 1993 may be required.

Approvals are valid for **five** years, subject to compliance with any conditions imposed. Including payment of licence fees for the duration of the approval.

If you are unsure which approvals you need, contact Council's Development Support Officers on 02 6626 7025 or email DSO@byron.nsw.gov.au.

Change of operator

Legislation requires approvals for footpath dining to be given to the operator of the business, and not to the business or the property.

This means, that when the operator of a business with approvals for footpath dining changes, the approval is no longer valid. The new operator will need to get a new approval to continue using the footpath dining area.

Compliance with footpath dining approval

Operators must display the approval notice for a footpath dining area in a prominent position, and make it available to authorised Council officers on request. It must clearly show the approved hours of operation and approved footpath dining area.

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

Revoking, suspending, or amending an footpath dining approval

Applicants should be aware that Council can revoke, suspend or amend an approval for footpath dining if:

- the conditions of the approval are breached, including non-payment of licence fees;
- the use of the footpath area for dining is causing public safety or public access to be compromised;
- the footpath is needed for public works;
- the footpath is needed for a special even;

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- the footpath is needed to manage an increase in pedestrians.
- the owner or the tenant/proprietor of the adjoining premises withdraws consent to the extension for any reason.

Where Council needs to revoke, suspend or amend an approval for footpath dining the approval holder will be given notice of Council's intention and will be given opportunity to make representations to Council.

Application requirements

To submit an application go to the website www.byron.nsw.gov.au/footpathdining.

Including the correct documents with a footpath dining application will support an efficient application assessment. The following documents are required:

- Completed the online application form.
- Owner's consent from the property owner of the subject premises.
- Council's landowner consent – to submit an application go to the website [Request for approval to use or occupy Council owned land - Byron Shire Council \(nsw.gov.au\)](http://www.byron.nsw.gov.au/footpathdining).
- Colour images of the site and the surrounding area.
- Colour images or a manufacturer's brochure showing furniture, umbrellas, etc.
- A suitable plan of the footpath dining area.
- Certificate of Currency for Broadform Public Liability Insurance, with a minimum \$20,000,000 noting 'Byron Shire Council as an interested party.
- A copy of the liquor licence (where relevant).

- Certification from a structural engineer stating the awning above the footpath dining area complies with the requirements of the Building Code of Australia (where relevant).
- Certification from a structural engineer stating any proposed in-ground structures are compliant (where relevant).

Footpath dining area plan

A footpath dining plan is to be easily understood and allow Council officers to assess the footpath dining application efficiently and effectively. A sample plan is shown at [Annexure 1](#).

A footpath dining area plan should be to scale and with clearly marked dimensions, showing:

- the width of the pavement and the proposed footpath dining area;
- the location of the seating area on the footpath, along with the associated premises, and neighbouring premises;
- layout of the footpath dining area, including its width, and also umbrellas, barriers and the like;
- clearances around the footpath seating area from trees, the kerb, street furniture, street signs and the like;
- location of all existing street fixtures, including benches, parking meters, trees, poles, bike parking rings, bins and the like;
- location of transport stops, taxi ranks, parking areas, loading zones, pedestrian crossings and street intersections (if any); and
- location of all doorways and service openings.
- A blank grid is shown at [Annexure 4](#).

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Operating Requirements

Layout, circulation, safety and convenience

Footpath dining areas are to provide a safe and enjoyable dining experience for customers, while keeping footpaths safe and accessible for all pedestrians.

Provisions:

1. The ground surface must be sufficiently level to support an orderly layout and safe use of the required furniture. The policy shows different opportunities for locating and aligning footpath dining areas in typical urban situations.
2. Approval will only be issued if pedestrians can clearly and easily negotiate the footpath when table and chairs are in place. A clear distance of at least 2.0 metres must be maintained adjacent to the licensed area for pedestrian circulation, subject to the following exemption:
 - For town centres, excluding precincts 1 and 2 in Byron Bay, the clear distance requirement may be reduced to 1.8 metres. This can only occur where the operator can demonstrate to the satisfaction of Council that there will be no increased impact on pedestrian access when the tables and chairs are in place. Precincts 1 and 2 in Byron Bay have been excluded due to high traffic pedestrian volumes. Refer to [Annexure 2](#) for Byron Bay Precincts.
3. The pedestrian corridor must be continuous with the front of the subject property and the adjoining properties, within a reasonably distinctive section, or portion, of the street/lane. The prime consideration of Council is to maintain a constant pedestrian corridor along the footpath.
4. The visually impaired normally use the continuous line of the shop frontages for direction with their guidance sticks. Where the building frontage is not continuous, tactile directional tiles for the visually impaired must be provided, at the operator's cost. The tiles (in accordance with AS1428.1) should be placed on the property boundary/frontage and also on the edge of the dining areas. Pavement hazard markings should be provided at the ends of dining areas to provide delineation to the dining areas for the visually impaired and to assist in defining the leased area.
5. The available depth of a footpath dining area depends on the width of the footpath. The minimum practical depth for a footpath dining area is 1.0 metre, which will allow for two chairs per table.
6. If the proposed footpath area extends outside the confines of the associated premises, approval of the adjoining shop owner is required. Details are to be supplied indicating that normal trading of the adjoining premises will not be adversely affected (i.e., advertising, display areas and public access.)

Delineation of footpath dining areas

To distinguish between the footpath dining area and the pedestrian corridor.

Provisions:

1. The boundaries of the footpath dining area as approved are to be marked. In most cases corner markers will suffice. In complex locations, it may be necessary to use additional markers along the boundary alignment.
2. In paved areas, pavement markers, e.g. self adhesive tactile tiles, metal studs or stone inserts installed flush with the paved surface can be used. Where it is necessary to consider people with visual

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impairment the delineation of boundaries must be by the use of self adhesive tactile tiles.

3. In areas with a grass, gravel or similar surface, pavement markers are not feasible, and existing or new landscape elements such as trees, light poles, bollards, etc. can be used instead.
4. The markers must remain in place throughout the duration of the license, and all furniture, including umbrellas, planters and plants must be kept strictly within the boundaries of the licensed area.
5. Subject to Council's approval, planters may be used to physically define the perimeter of a footpath dining area to prevent pedestrian conflict and ensure the patron's safety. The planter boxes must be removed from the area outside the hours of operation, unless it can be demonstrated that they will not interfere with the flow of pedestrian traffic.
6. The area may be delineated by the use of approved temporary screen barriers. Barriers are to be no more than 1m high, extend to a minimum clearance of 100mm above ground level, not be of a solid structure and include a fabric infill. They must be removed from the area outside the hours of operation. All in-ground structures will require an engineer's certificate.

	Minimum clearances
Pedestrian corridor	2.0m (<i>may be reduced to 1.8 in some circumstances</i>)
Footpath dining area	1.0m wide
Intersections	10m from opposing kerbs
Bollard distance from kerb	0.6m OR 0.9m where angle parking
Bollard distance from patrons	0.8m OR 1.1m where angle parking
Bollard spacing	<1.2m

Footpath dining and the kerbside

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

Provisions:

If safety rails, bollards or similar permanent elements are required, their location, selection and design will be subject to Council's approval.

1. At street intersections, a setback of at least 10.0 metres from the kerb in the opposing street applies. The dining area will only be approved where the defined seating area is more than 10 metres from the approach side and more than 5 metres from the exit side of a pedestrian crossing.
2. Safety for kerbside diners from vehicle impacts must be provided by the use of bollards set into the footpath pavement or other methods to achieve the same level of safety.
3. Bollard spacing is not to exceed 1200mm, and they must be located 600mm clear of the kerb and gutter (900 mm where there is angle parking) to allow sufficient space for people to alight from parked vehicles.
4. Diners should be clear of the bollards such that deflections in the bollards, as a result of vehicle collisions, would not impact on the people seated adjacent.
5. A minimum clearance of 200mm should be provided between diners and bollards (essentially equating to 800mm or 1100mm setback from the kerb for actual diners.)
6. Where a dining area is located adjacent to the kerb a walk through area (a minimum width of 1.0m) must be provided for motorists that may park adjacent to this

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area and wish to access the footpath. Walk through areas should be provided at minimum spacing of 6.0 metres (average vehicle length 5-6m), such that on average a person alighting from a vehicle only needs to travel a distance of 3.0 metres before an access way through the seating area is available.

7. Where existing street furniture, planter boxes, utility poles etc. restricts pedestrian traffic adjacent to the building the pedestrian corridor is to be located away from the building/property alignment.
8. The use of the footpath is not to inhibit access to public utilities such as fire hydrants, access holes, inspection chambers, telephone and electricity underground cables, water service pipes and the like.

Enclosures

Footpath dining areas should enrich the pedestrian experience and public life. It is important that they present an open inviting image and are easily accessible.

Provisions:

1. Subject to Council's approval, planters may be used to physically define the perimeters of a footpath dining area to prevent pedestrian conflict and ensure the patrons' safety. Enclosures should be kept to a minimum.
2. Planters are recommended in terra cotta, concrete, or reconstituted stone in natural, sandstone or terra cotta colour, or powder coated, brushed, or stainless steel or timber in natural earth colours.
3. Retractable awnings will be considered subject to a minimum clearance distance of 2.6 metres from the pavement. Drop blinds are not permitted.
4. Umbrellas are permitted to provide for shade and shelter in exposed locations. Umbrellas and other shade structures must be adequately secured against the effects of wind. Umbrellas must not project beyond the table and seated area if less than 2.6 metres above the footpath.

Furniture – management, style, materials and colour

Furniture should be strong, durable, waterproof and weather resistant, designed for commercial outdoor use. The design must not contain parts that are likely to cause damage to the pavement.

Provisions

1. The operator is responsible for the provision of all required furniture to Council's satisfaction.
2. Furniture and plantings within a footpath dining area must at all times be maintained in a physically sound and aesthetically acceptable condition to Council's satisfaction.
3. All outdoor furniture not permanently fastened to the footpath is to be removed from the licenced area upon the completion of each day of trading. It should be noted that no outdoor furniture, barrier or structure is to be permanently fastened to the footpath without the prior approval of Council. Any holes made in the pavement, as approved by Council, must be stoppered when not in use.
4. Unless the operator's licence is renewed the operator must restore the licenced area to its condition immediately before the grant of the licence and not later than one month after the expiration of the licence.
5. The style, layout, and orientation of furniture should be chosen according to the extent and shape of the available space so

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as not to tempt patrons to move furniture beyond the boundaries of the licensed area.

6. Footpath furniture should make a positive contribution to the street environment. A furniture style that is practical and elegant and integrates well with the surroundings is encouraged. All furniture items will be subject to Council's approval.
7. Tables, chairs, and umbrellas may be powder coated, or polished aluminium, brushed, or stainless steel, natural or painted timber, or canvas. Suitable colours include natural, camel, terra cotta, brunswick green, blue or black. Surfaces such as tabletops must minimise reflective glare.

Health considerations, table service and consumption of alcohol

1. All food must be stored and prepared within the approved food preparation area of the approved café or restaurant.
2. All outdoor furniture, other facilities and the pavement shall be kept clean at all times. The operator is to steam clean the footpath at his/her expense when deemed necessary by Council.
3. Table service is mandatory.
4. Where a footpath dining area is approved in association with licensed premises, liquor may not be supplied or consumed in the open air without approval from the [Liquor & Gaming NSW](#). Where it is intended to serve alcohol and the area requiring approval forms part of an Alcohol Free Zone, an adjustment to the Alcohol Free Zone is required through a formal procedure including public advertising and an additional fee for service will be charged.

5. Animals are permitted within the footpath dining area under the *Companion Animals Act 1998*. All requirements of the *Companion Animals act 1998* must be met including:
 - a. The dog must be under effective control by way of chain, cord or leash;
 - b. The person does not feed the dog or permit the dog to be fed; and
 - c. The dog is kept on the ground.
6. Notwithstanding the above, the operator of the premises reserves the right to refuse animals with the approved area.
7. The *Smoke Free Environment Act 2000* bans smoking in commercial footpath dining areas from 6 July 2015 being a seated footpath dining area; or within 4.0 metres of a seated footpath dining area on premises that are licensed premises under the *Liquor Act 2007* or the premises of a restaurant as defined in that Act.

Lighting

1. Any footpath dining area licensed to operate outside daylight hours must provide adequate lighting, to Council's satisfaction, to ensure the safety and amenity of patrons and the general public.

Toilet facilities

1. The application should demonstrate that acceptable toilet facilities are available in the premises to which the footpath dining approval relates.

Trade waste disposal

1. The application should demonstrate that the capacity within the existing trade waste disposal system is suitably sized for the customer's numbers within the food and

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drink premises and within the proposed footpath dining area.

use of such furniture as it is located on a public road.

Advertising and signs

1. Only the name or logo of the footpath dining area may be placed on any item of furniture. It must appear only once on each item and be a minor element of the furniture design, to Council's satisfaction.
2. No other advertising on any outdoor furniture or the licensed area is permitted without specific approval by Council.

Purpose built dining areas

1. In some cases the operator may wish to undertake streetscape works to accommodate a footpath dining area. Such works may include footpath widening, paving, street tree planting, pedestrian lighting, etc.
2. Works for a purpose built dining area require a specific development approval by Council. Any car parking spaces lost must be compensated for by the payment of developer contributions.

Exclusions outside town centres

1. Council may approve picnic style tables, and or benches, located outside general stores not within a town centre, where Council is of the opinion that the facility will provide a genuine community benefit.
2. No licence agreement or fee will be payable, however this approval is at the absolute discretion of Council and subject to the proprietor of the general store providing written agreement to maintain the furniture.
3. Any such approval is not an approval within the meaning of Section 125 of the Roads Act 1993 and does not give the proprietor of the general store any rights to exclusive

Footpath storage and display of goods

1. Refer to Council's Footpath Usage Guidelines.

Fees to occupy the public space

Approval will be subject to a condition that a licence fee will be paid for the use of the footpath.

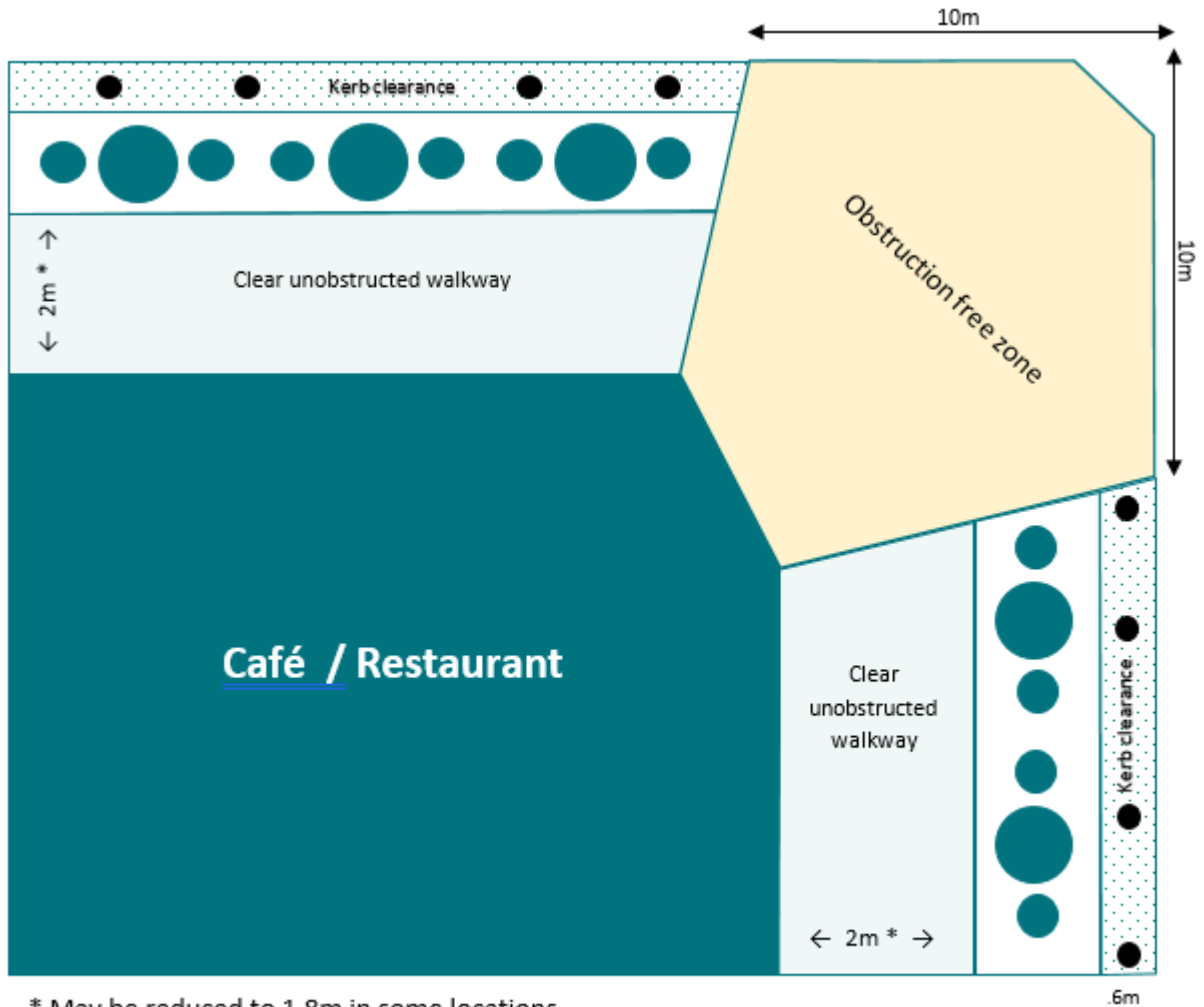
The fee due is set out in Council's fees and charges, and will be due annually at the rate applicable for that year. Fees will be invoiced quarterly.

Where fees are unpaid, approval to use the footpath will be revoked or suspended until such time as the fees are paid.

The application and licence fees for footpath dining are outlined in Council's Fees & Charges. The rates can change each financial year. The latest schedule is included in [Annexure 3](#).

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Annexure 1 - Sample Footpath Dining Plan

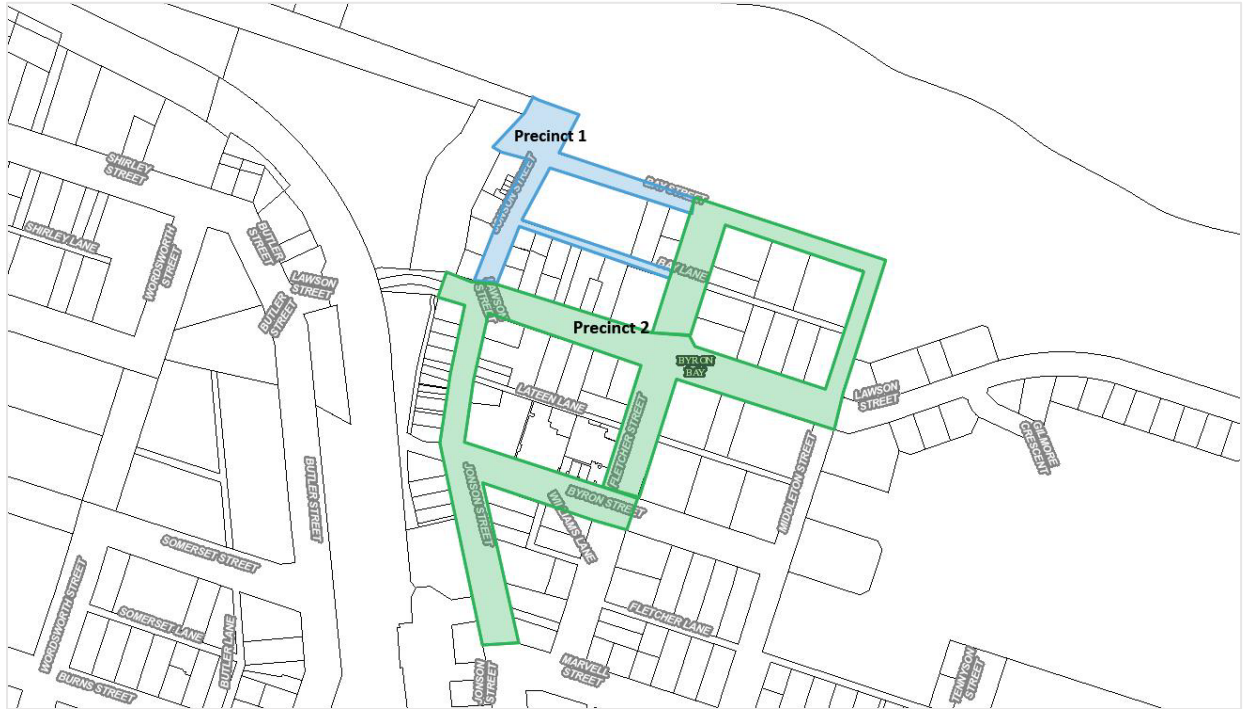


* May be reduced to 1.8m in some locations.

● Bollards to be provided at 1.2m centres.

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Annexure 2 – Byron Bay Precincts



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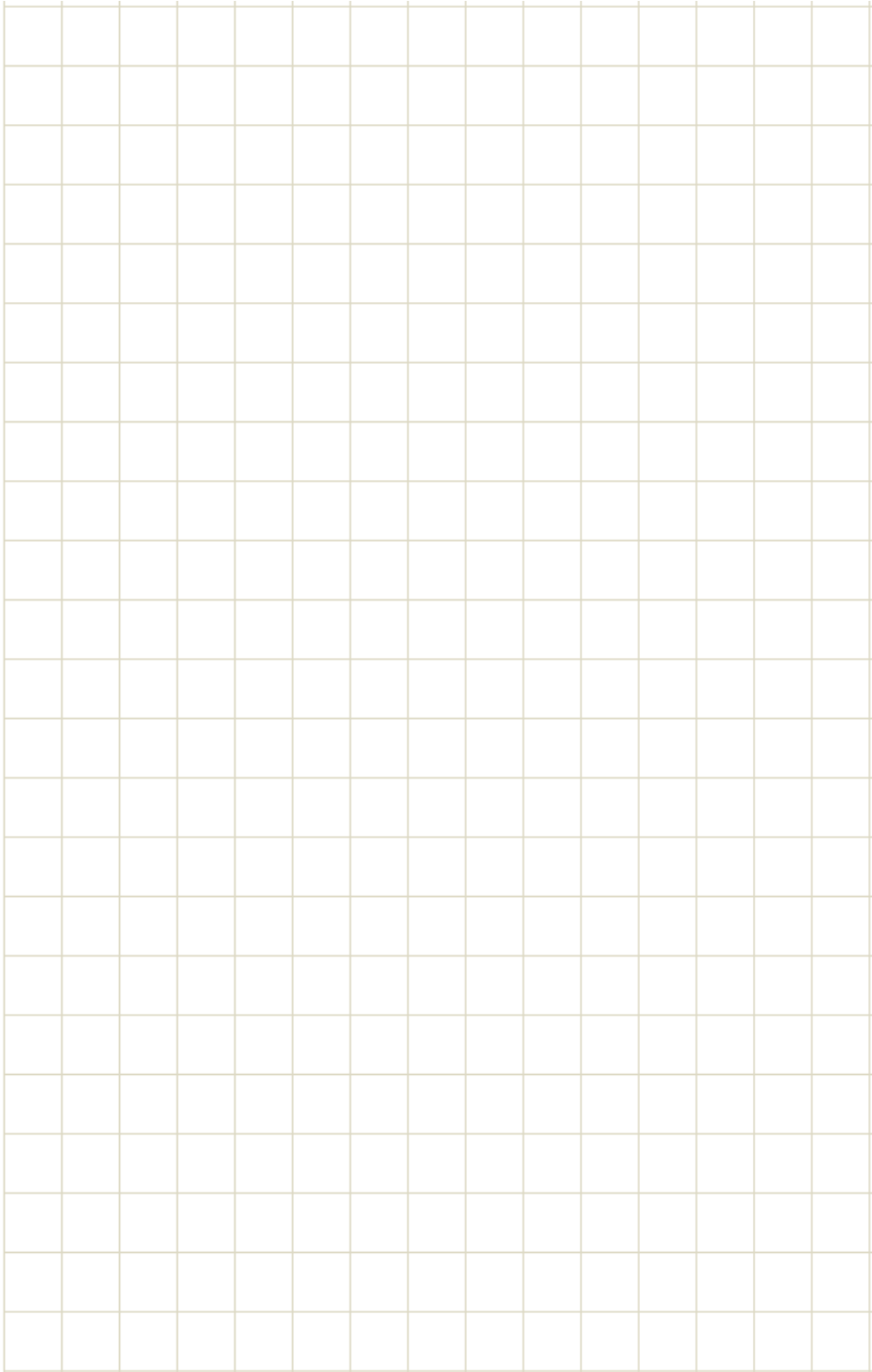
Annexure 3 - 2024/25 Fee Schedule

Application fees	Price
Application fee for footpath dining	\$679.00
Renewal of existing approval (based upon previously approved layout, where not changes are proposed)	\$339.00
<i>Based upon previously approved layout. Any changes will require a new approval. Includes one inspection.</i>	

Footpath Usage Licence fees	Annual price per m ²
Bangalow	\$274.00
Brunswick Heads <i>(Brunswick Terrace, Fingal, Park and Mullumbimbi Streets block)</i>	\$232.00
Byron Bay – Precinct 1 and 2 <i>(Jonson Street from Lawson Street to Bay Street, Bay Street from Jonson Street to Middleton Street, Fletcher Street from Bay Lane to Bay Street, Lawson Street from railway line to Middleton Street, Byron Street from Jonson Street to Fletcher Street, Jonson Street from Marvell Street to Lawson Street, Fletcher Street from Byron Street to Bay Lane, Middleton Street from Lawson Street to Bay Street)</i>	\$622.00
Byron Bay – remaining properties	\$389.00
Mullumbimby	\$187.00
Remainder of Shire	\$187.00

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Annexure 4 – Site Plan Drawing



Scale: 1:100 Example: 1cm = 1m (Each square is 1cm x 1cm)