Use of Footpath for Alfresco Dining Policy

2017

Ashburton District Council is making changes to the Use of Footpath for Alfresco Dining Policy which may affect you. The main change to the policy includes a requirement for alfresco dining areas located on Council owned land or footpaths to be smokefree. The policy is intended to be ‘self-policing’ with no enforcement measures in place.

This booklet includes a copy of the proposed new Use of Footpath for Alfresco Dining Policy, and a submission form, so you can have your say.

We are inviting comments until 24 March 2017.
Introduction

The Use of Footpath for Alfresco Dining Policy sets out conditions for the business use of footpath areas for alfresco dining. Alfresco dining areas are where businesses use Council owned land or the footpath for dining, having drinks, or socialising outside. Council recognises the benefits of alfresco dining, such as increased business opportunities and a more vibrant commercial sector. This policy aims to ensure pedestrian and motorist safety, as well as providing a pleasant environment for businesses and the community.

Council is proposing to amend the Use of Footpath for Alfresco Dining Policy.

The consultation process will provide the opportunity for the wider community to assess the draft Use of Footpath for Alfresco Dining Policy. Council has the ability to make changes to the draft policy as a result of submissions received.

What is proposed?

Council believe that many of the issues addressed by the previous Use of Footpath for Alfresco Dining Policy 2014 remain current and appropriate for the district today.

The main change from the previous policy and the proposed policy is the inclusion of a smokefree clause for businesses utilising alfresco dining. The clause is intended to be ‘self-policing’ with no regulatory or enforcement measures. This means there will not be any penalties for patrons who still choose to smoke in alfresco dining areas. However, businesses could choose to adopt their own internal smokefree policies that restrict patrons from smoking in alfresco dining areas.

It is important to note that the smokefree clause is designed to be an educational tool.

In 2016, Council endorsed the government initiative of Smokefree Aotearoa 2025. At this time, Council also adopted the Smokefree Outdoor Areas Policy 2016. The goal of the smokefree policy is to de-normalise tobacco smoking, and to allow smokefree access to community public spaces. If alfresco dining areas are included as smokefree as a result of this policy review, Council will also amend the Smokefree Outdoor Areas Policy 2016 to ensure consistency between the two documents. Consultation will not be required for this amendment as Council will have already sought community feedback on smoking in alfresco dining areas.
Bylaw and Policy Options Considered

Smokefree Bylaw
Council could choose to adopt a Smokefree Bylaw. However, Council would need to prove there was a determined need for a bylaw (as per section 155, Local Government Act 2002). There is lack of evidence to suggest smoking in alfresco dining areas is a problem in Ashburton District. Smoking rates in Ashburton District are declining at a similar rate to national trends. Developing a bylaw is time consuming and would require legal advice, meaning it can be an expensive process. During the review of this policy, Council officers determined a bylaw would not be an appropriate tool. The option for a bylaw will be revisited when the policy is reviewed again in 2022.

Include a smokefree clause (recommended)
Council could choose to include a smokefree clause. This is the recommended option and is reflected in the draft policy included in this document. The main benefit of this option is that it shows support for Smokefree Aotearoa 2025. Smoking will still be permitted outside bars and restaurants in Ashburton, but will not be permitted in alfresco dining areas. However, it is still up to individual businesses to adopt their own smokefree policies, and for patrons to abide by the Council policy and/or the policy of the bar or restaurant they are visiting.

Do not include a smokefree clause
Council could choose to proceed with no smokefree clause. This is the status quo option and would mean that patrons using alfresco dining could continue to smoke in these areas.
Policy Objective

This policy sets out the conditions that are to be met when a business within the Ashburton District wishes to make use of the footpath area in front of their premises to allow patrons to dine with or without alcohol.

This policy aims to ensure pedestrian and motorist safety, as well as providing a pleasant environment for businesses and the community.

Definitions

COUNCIL: means Ashburton District Council.

LICENCE TO OCCUPY (THE FOOTPATH): means a formal approval document that details terms and conditions under which a business is authorised to occupy an area of the footpath.

OCCUPIED AREA: means the area approved for alfresco dining and identified on the Licence to Occupy the footpath.

PS1 CERTIFICATE: means a producer statement prepared by a Chartered Professional Engineer covering the design of a structure.

Policy Statement

1. Introduction

1.1 Council recognises the benefits of alfresco dining such as increased business opportunities, and a more vibrant commercial sector.

1.2 Council aims to provide a safe environment for people who move through the community by providing a clear path free from obstruction.

1.3 This policy applies to the entire Ashburton District

2. Licence to occupy the footpath

2.1 Businesses owners seeking a licence to occupy the footpath must apply to Council.

2.2 The area applied for can only be the area fronting the applicant’s premises.

2.3 Additional consents (such as resource consents) may be required, depending on the location of the footpath. It is the responsibility of the applicant to contact Council to determine if additional consents are required (note: within the central business area of Ashburton, roads that are zoned for business allow for commercial activity (e.g. outdoor dining associated with a restaurant and bar) on the footpath as a permitted activity).

2.4 Applications will not be approved until the applicant has determined that no additional consents are required.

2.5 Applications shall include all relevant information on the nature of the proposal, including intended use, hours of operations, and table layout.

2.6 A licence to occupy the footpath will initially be issued for a one year period. Following this period, the licence to occupy the footpath may be extended at Council’s discretion.

2.7 It is the responsibility of the licence holder to apply for an extension for a licence to occupy the footpath.

2.8 A licence to occupy the footpath is non-transferable between business owners.

2.9 A licence to occupy the footpath will terminate with the sale of a business.

2.10 Where the licence to occupy has ended, the holder of the licence shall be solely responsible for all costs associated with reinstatement of the area to its original form.

2.11 Repair of any damage to persons or property (both private and public) arising from the licence to occupy the footpath shall be the responsibility of the licence holder.

3. Smoking in alfresco dining areas

3.1 Smoking is not permitted at any time in the area used for alfresco dining.
1.2 Signage requirements will be discussed with the licence holder and Council officers.

1.3 No ash trays, or other objects used for the collection of cigarettes, shall be displayed in alfresco dining areas.

1.4 Council acknowledges that policy 3.1 is ‘self-policing’. This means that no regulatory enforcement will be provided by Council, or any other agency.

1.5 There will be no active enforcement of policy 3.1, but it is up to the licence to occupy the footpath holder to abide by the conditions as per the licence agreement.

4. Revocation of licence to occupy the footpath

4.1 Council, or an appropriate delegated committee, may revoke the licence to occupy the footpath at any time.

4.2 In such cases, a notice will be issued to the licence holder. The notice will include the reasons for revocation and timeframe for vacating the area.

4.3 The licence holder will have the right to request a review of the decision to revoke a licence to occupy the footpath. Requests must be made within 7 calendar days of the date the revocation notice is issued. The notice will be suspended until the review request is considered by Council, or an appropriate delegated committee.

5. Minimum site requirements

5.1 A clear passage of two metres wide in a generally straight alignment must be available to allow movement of pedestrians:

- From the edge of the existing building to the proposed occupied area, or
- From the edge of the proposed occupied area to the kerb, or
- Between two occupied areas.

5.2 A wind/safety barrier is required where an occupied area is situated adjacent to the carriageway or kerb. The form and construction must be suitable for functional requirements, including prevailing weather conditions. Barrier design should normally include provision of a PS1 certificate for the design of the structure. Barrier screens:

- Must be associated with the use of the footpath for an outdoor eating facility;
- Must be made of high quality material such as canvas
- May only be placed in the alfresco dining zone.
- Must be installed by an approved contractor;
- Must be approved by Council prior to installation;
- Must be transparent and of an appropriate type of material;
- Must not obstruct driver or pedestrian visibility of roading systems;
- May only be in place during normal trading hours, unless approved by Council;
- Must be positioned to allow for pedestrian access;
- Should not exceed the width of the alfresco dining zone.

5.3 Any outdoor heater used in alfresco dining zones:

- Must only be placed in the alfresco dining zone
- Must comply with all relevant safety standards
- May not be placed beneath umbrellas.

5.4 Any umbrellas used in alfresco dining areas:

- Must be made of high quality material such as canvas
- May only be placed in the alfresco dining zone.

5.5 The use of car parks directly in front of the applicant’s business, for the use of alfresco dining, will be considered by Council on the location and merit of each proposal.

6. Site operation

6.1 The use of the occupied area shall be on the basis that a clear passage is maintained at all times in accordance with the minimum site requirements specified in policy 5.1-5.3.

6.2 If the occupied area is to be used to consume alcohol, the applicant must comply with the Ashburton District Council Local Alcohol Policy and the Sale and Supply of Alcohol Act 2012.

6.3 The occupied area will require to be licensed and an application to extend the licensed area should be made to the Secretary of the Ashburton District Licensing Committee.

6.4 The occupied area is to be used in accordance with the liquor licence for the premises.
Have your say!

You can make a submission on any part of the proposed policy. Anyone can make a submission. We have prepared some questions to make things easier. You do not have to fill out this section if you do not want to. There is a blank section at the end of this form for any comments that you would like to make. You can also fill this form out online at ashburtondc.govt.nz.

We are inviting comments until 26 March 2017.

Alternatively, you can provide feedback by filling in the attached submission form and getting it back to us using one of the following methods:

- **Freepost to:** Bylaw Reviews
  Freepost 230444
  PO Box 94
  Ashburton 7740

- **Email to:** communityplanning@adc.govt.nz

- **Drop in box at:** Council reception, Ashburton Museum, Ashburton Public Library and the EA Networks Centre.

- **Submit online at:** ashburtondc.govt.nz

What happens next?

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<thead>
<tr>
<th>BYLAW DEVELOPMENT PROCESS</th>
<th>DATE</th>
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<tbody>
<tr>
<td>Community consultation</td>
<td>24 February – 26 March 2017</td>
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<tr>
<td><strong>Submission hearings</strong></td>
<td>27 April 2017</td>
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<tr>
<td>Submitters can present their submission to Council in person at a hearing.</td>
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<tr>
<td><strong>Policy finalisation</strong></td>
<td>28 - 30 April 2017</td>
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<tr>
<td>Council will consider and deliberate on submissions, making the necessary changes to the draft policy as a result of submissions.</td>
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<td><strong>Policy adopted by Council</strong></td>
<td>18 May 2017</td>
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<td>The new policy is expected to be adopted by Council at this meeting.</td>
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<td><strong>Communication</strong></td>
<td>By 31 May 2017</td>
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<td>If you make a submission, we will write to you to inform you of the outcome of your submission and to advise of adoption and commencement of the policy.</td>
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Who
First name: ____________________________ Last name: ____________________________
Organisation (if appropriate): ______________________________________________________
Street number: ______________________ Street name: _________________________________
Suburb / Town / RD: ___________________________ Postcode: ___________________________
Phone: ______________________________ Email: ________________________________________

Do you wish to speak in support of your submission at the hearing?
(If no boxes are ticked, it will be considered that you do not wish to be heard)
☐ Yes: Hearings are expected to be held in the Council Chamber, 2 Baring Square East on 27 April 2017.
☐ No: I do not wish to speak in support of my submission and ask that the following written submission be fully considered.

1. Do you agree with the proposal for alfresco dining areas in Ashburton District to be smokefree?
☐ Yes
☐ No
Comments:
______________________________________________________________________________
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2. What aspects of the proposed policy do you agree with and why? (please specify the topic and/or clause numbers)
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3. **What aspects of the proposed policy do you disagree with and why?** (please specify the topic and/or clause numbers)

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4. **Do you have any further comments?**

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Signature: ___________________________ Date: ___________________________