

Policy

USE OF FOOTPATH FOR ALFRESCO DINING

TEAM:	Commercial Property
RESPONSIBILITY:	Property Manager, in consultation with Roading Manager
ADOPTED:	21 December 2022
REVIEW:	5 years or as required
CONSULTATION:	Consultation undertaken as per s82, Local Government Act 2002
RELATED DOCUMENTS:	Building Act 2004, Ashburton District Council District Plan, Sale and Supply of Alcohol Act 2012, Ashburton District Council Local Alcohol Policy, Ashburton District Council Public Places Bylaw.

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 Business owners seeking a licence to occupy the footpath must apply to Council, and submit the application accompanied by the relevant fee.

Explanatory note

Council's fees and charges are updated annually, and are available to view on Council's website here: <https://www.ashburtondc.govt.nz/services/fees-and-charges>

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 Building consent or building consent exemption is required for certain works such as wind/safety barriers, awnings etc. as mentioned in section 6 of this policy.

2.5 Licence to occupy applications will not be approved until the applicant has determined that no additional consents are required.

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

2.7 A licence to occupy the footpath will initially be issued for a three-year period, with annual rent reviews. Following this period, the licence to occupy the footpath may be extended at Council officer's discretion.

2.8 Council may, either upon the issue of any licence to occupy, or at any time by notice in writing:

2.8.1 Prescribe any condition or conditions that the licence holder must comply with.

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

2.10 Where the licence holder sells their business, or the property to which the licence to occupy relates, the licence holder shall seek Council's prior written consent to assign the licence to occupy to the new business or property owner. Council may request further information from the proposed licence holder before deciding whether to assign the licence to occupy.

2.11 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.

2.12 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. Structures

3.1 Any structure that a business installs on the footpath subject to a licence to occupy remains the property of that business, licence to occupy holder or building owner.

3.2 Any footpath subject to a licence to occupy remains the property of the Council.

3.3 In the event that access to the footpath is required (e.g. for repairs), any structure may be required to be moved, at the cost of the business, licence to occupy holder or building owner.

4. Smoking in alfresco dining area

4.1 For the avoidance of doubt, smoking includes the use of e-cigarettes and vapes, and smokefree means free from the smoking of tobacco and e-cigarettes and vapes.

4.2 Smoking is not permitted at any time in the area used for alfresco dining.

4.3 Signage requirements will be discussed with the licence holder and Council officers.

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

4.5 Council acknowledges that policy 4.2 is 'self-policing', and that it is up to the licence to occupy holder to abide by the conditions as per the licence agreement.

5. Revocation of licence to occupy the footpath

5.1 Council may revoke a licence to occupy the footpath:

5.1.1 where the licensee continually breaches the conditions of the licence;

5.1.2 where there is a public safety concern;

5.1.3 where the use of the footpath becomes inappropriate for the location; or

5.1.4 for any other reason which is listed in the licence to occupy.

5.2 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.

6. Minimum site requirements

Zone 1 requirements

6.1 The following requirements apply to businesses within Zone 1, as set out in Schedule 1 of this policy.

6.2 A clear passage of 2.0 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.

6.3 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 screens:

- Must be associated with the use of the footpath for an outdoor eating facility;
- May only be placed in the alfresco dining zone;
- Must include provision of a PS1 certificate for the design of the structure and be installed by a contractor approved for that barrier;
- Must be approved by Council officers prior to installation;
- Must be transparent and of an appropriate type of material;
- Must not obstruct driver or pedestrian visibility of roading systems;
- Must be positioned to allow for pedestrian access;
- Should not exceed the length of the alfresco dining zone, or a maximum of 9 metres parallel to the road, whichever is the lesser; and
- Must comply with the Building Code.

Zone 2 requirements

6.4 The following requirements apply to businesses in Zone 2, as set out in Schedule 1 of this policy.

6.5 A clear passage of 2.0 metres is not required, provided that:

- It complies with the building code; and
- Allows for safe and convenient pedestrian movement with a passage of at least 1.5 metres.

6.6 Occupied areas are preferred to be directly against the building.

6.7 When parts of the occupied area are not directly against the building, whether a wind/safety barrier is required will be at officer's discretion. Any wind/safety barrier that is required shall comply with the requirements of clause 6.3.

6.8 Where a business in Zone 2 would like to occupy the footpath on the kerbside of the footpath, officers will assess these on a case-by-case basis, with the applicant responsible for seeking approval from Waka Kotahi if the road is part of the State Highway network.

Other requirements (for Zones 1 and 2)

6.9 The following requirements apply to all businesses within the district.

6.10 Any **outdoor heater** used in alfresco dining zones:

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

6.11 Any **umbrellas** used in alfresco dining areas:

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

6.12 The use of **car parks** directly in front of the applicant's business, for the use of alfresco dining during one-off events, will be considered by Council officers on the location and merit of each proposal.

6.13 Council officers may exercise discretion in regards to site requirements, on a case-by-case basis.

7. Site operation

7.1 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 6.2-6.3.

8. Alcohol licensing

8.1 If the occupied area is to be used to consume alcohol:

- 8.1.1 the applicant must comply with the Ashburton District Council Local Alcohol Policy and the Sale and Supply of Alcohol Act 2012, and
- 8.1.2 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, and
- 8.1.3 the occupied area is to be used in accordance with the liquor licence for the premises, and
- 8.1.4 a licence to occupy the footpath is required to be granted prior to applying for an extension to the premises liquor licence, and
- 8.1.5 should the licence to occupy the footpath expire, be revoked or suspended, the area will cease to be licenced under the liquor licence for the premises and may not be used until the licence to occupy the footpath is reinstated.

9. Right to request a review of decision

9.1 The licence holder will have the right to request a review of the decision not to grant, or to revoke a licence to occupy the footpath.

Revocations

9.2 Requests for a review must be made within 10 working days of the date the revocation notice is issued.

9.3 The notice will be suspended until the review request is considered by Council, or an appropriate delegated committee.

Unsuccessful applications

9.4 Requests for a review must be made within 10 working days of the date the applicant was advised that the application was unsuccessful.

9.5 The area in relation to the application is still considered to be under the control of the Council while the decision is being reviewed.

9.6 The decision shall be reviewed by Council, or an appropriate delegated committee.

Schedule 1

Zone 1

Zone 1 (as shown in the map) includes the area encompassed between:

- East Street, Cass Street, Havelock Street and Moore Street.
- West Street, Park Street, Tancred Street, and Burnett Street.



Zone 2

Zone 2 includes all other areas within the Ashburton District, that are outside Zone 1 and that Council has authority over.