



*Have your*  
**Say!**

# Draft Use of Footpaths for Alfresco Dining Policy

## *Our Place: Our District*

We are reviewing our Use of Footpaths for Alfresco Dining Policy.

This booklet includes a summary of the major changes to the policy, the full draft policy itself, and a submission form for your feedback.

**We are accepting feedback until 5 pm, Sunday 23 October 2022.**



# Introduction

**We are reviewing our Use of Footpaths for Alfresco Dining Policy and we want to hear what you think about the proposed changes.**

The full draft policy is included in this consultation document from page 7.

Tell us what you think of our proposed changes at [ashburtondc.govt.nz/haveyoursay](https://ashburtondc.govt.nz/haveyoursay)

*Have your*  
**Say!**



***We want  
to hear  
from YOU!***

**Tell us what you think of  
our proposed changes at**

**[ashburtondc.govt.nz/haveyoursay](https://ashburtondc.govt.nz/haveyoursay)**

# The details

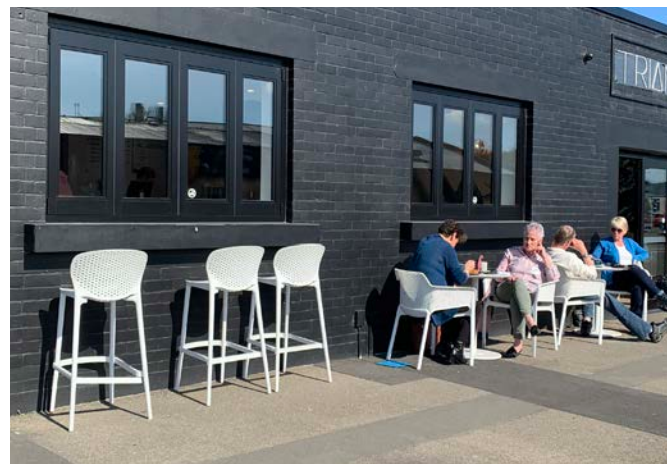
## Why do we need a policy?

This policy sets out conditions that need to be met when a business wishes to make use of an area of footpath to allow patrons to dine, with or without alcohol.

It aims to ensure that pedestrians and motorists are safe, while also providing a pleasant environment for businesses and the community.

We acknowledge that alfresco dining can bring vibrancy to an area and we want to ensure these areas are properly managed for the safety and enjoyment of the community.

It's not a requirement for us to have a policy, but having one will clearly set out what is expected from those who occupy or wish to occupy the footpath for alfresco dining.



## What are we proposing?

The changes we are proposing to the policy include:

- The introduction of a tiered policy allowing for a different level of requirements within different areas of the district
- Updates to the section about smoking in alfresco areas
- A new section outlining the ownership of structures and footpaths, and whose responsibility it is to remove a structure (if required)
- New clauses reflecting the law regarding alcohol licences for alfresco dining areas
- A new clause clarifying that a building consent or exemption is required for certain works such as wind/safety barriers
- A new section outlining the right to request a review of a decision
- Updated wording regarding the use of car parks
- Increased clarity on which decisions are made by Council and which are made by council officers
- Updated requirements regarding a wind/safety barrier (including the length of the barrier)
- A reference to fees and charges
- A new clause stating that Council may prescribe conditions to a licence to occupy.

***Read on to find out more about the key changes and why we are proposing to make them.***

# Proposed changes to the policy

## Key matter one

## Site requirements

Under section 6 of the policy, we are proposing to introduce ‘tiered’ site requirements, by assigning two zones within the district.

Zone One includes the Ashburton CBD and other areas within the Ashburton Township, and Zone Two includes all other areas within the district that are under Council’s authority.

See Schedule 1 of the draft policy for maps outlining Zone One (page 13 of this document).

### ZONE ONE

Requirements for Zone One are very similar to our current policy, however we propose to increase the two metre passage required for pedestrians to 2.4 metres, as this is considered best practice by Waka Kotahi.

The only other change to requirements for Zone One is a proposed maximum length for wind/safety barriers. This is proposed to be either the length of the alfresco dining zone, or a maximum of 9 metres (whichever is less), and must comply with the building code for fire escape requirements.

### ZONE TWO

Zone Two will need to comply with the building code and allow for safe and convenient pedestrian movement with a passage of at least 1.5 metres.

Wind/safety barriers are not required for Zone Two, because occupied areas are required to be directly against the building.

## Why are we proposing this change and why is it important?

There are some businesses in the district that currently use the footpaths for alfresco dining but do not have a licence to occupy because they don’t meet the requirements of the current policy. Under the proposed policy, these businesses should meet the requirements of Zone Two, and therefore will need to apply for a licence to occupy, agree to the conditions, and pay the prescribed fee. This will ensure that the use of public footpaths is consistent across the District, fire escape requirements are met, and accessibility for pedestrians is protected.

## Key matter two

### Smokefree clauses

Section 4 of the policy outlines that smoking is not permitted in alfresco dining areas. This was already the case, however we are proposing to:

- Add a clause clarifying what is meant by smoking and smoke free; and
- Remove the clauses in our current policy that state that there will be no active regulatory enforcement by Council or any other agency

#### Why are we proposing this change and why is it important?

We believe it's counter-productive to designate these areas as smoke free, but also state that there will be no active enforcement. As with our current policy and licence conditions, the responsibility of enforcement remains with the holder of the licence to occupy.

## Key matter three

### Ownership of structures

We are proposing to introduce section 3 to the policy. This section states that:

- A structure installed on a footpath remains the property of the person / business who installed it; and
- The footpath subject to the licence to occupy remains the property of Council; and
- In the event that a structure is required to be moved (e.g. for footpath repairs etc.), the cost is to fall on the owner of the structure.

#### Why are we proposing this change and why is it important?

These points already considered to be the case, however including them in the policy will provide further clarity.



# Options considered

## OPTION ONE

### Adopt the proposed policy

#### Advantages

- This option achieves the objectives set out in the policy
- Incorporates improvements that were identified during the review

#### Disadvantages

- There are no disadvantages to this option

**PREFERRED  
OPTION**

## OPTION TWO

### Rollover the current policy

#### Advantages

- This option retains the current policy provisions

#### Disadvantages

- Does not incorporate any of the improvements that were identified during the review

## OPTION THREE

### Remove the policy

#### Advantages

- There are no advantages to this option

#### Disadvantages

- This option removes clarity regarding conditions and requirements for those who currently occupy and those who wish to occupy the footpath for the purposes of alfresco dining

Our draft policy has been prepared to ensure consistency with current practices and other Council documents, to ensure it's both relevant for the district today and fit for the future.

**We are accepting feedback until  
5pm, Sunday 23 October 2022.**



# Draft Policy Use of Footpaths for Alfresco Dining



# Draft Policy Use of Footpaths for Alfresco Dining

## 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
- 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.



## Draft Policy Use of Footpaths for Alfresco Dining

- 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 A licence to occupy the footpath is non-transferable between business owners.
- 2.11 A licence to occupy the footpath will terminate with the sale of a business.
- 2.12 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.
- 2.13 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 smoke-free 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.

## Draft Policy Use of Footpaths for Alfresco Dining

### 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 2.4 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 2.4 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 required to be directly against the building, therefore a wind/safety barrier is not required.

#### Other requirements (for Zones 1 and 2)

- 6.7 The following requirements apply to all businesses within the district.
- 6.8 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.
- 6.9 Any umbrellas used in alfresco dining areas:
- Must be made of high quality material
  - May only be placed in the alfresco dining zone.

## Draft Policy Use of Footpaths for Alfresco Dining

- 6.10 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.
- 6.11 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 section 6.

### 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 7 calendar 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 7 calendar 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.

**We are accepting feedback until  
5pm, Sunday 23 October 2022.**





## Schedule 1

## Schedule 1

# Zones

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

# What happens next?

## Project Timeline



**We are accepting feedback until 5pm, Sunday 23 October 2022.**

***We want to hear from YOU!***

**The easiest way to provide your feedback is to complete the form online at [ashburtondc.govt.nz](https://ashburtondc.govt.nz)**

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**

Ashburton District Council  
Freepost 230444  
PO Box 94  
Ashburton 7740



**ONLINE AT**

[ashburtondc.govt.nz/haveyoursay](https://ashburtondc.govt.nz/haveyoursay)



**IN PERSON**

Dropping it off at:  
Ashburton District Council reception –  
5 Baring Square West



**EMAIL TO**

[submissions@adc.govt.nz](mailto:submissions@adc.govt.nz)



# Your feedback

Have your  
**Say!**

## Draft Use of Footpaths for Alfresco Dining Policy

### Consultation Document

You can submit on any or all of the questions below. You don't have to complete every question.

- 1** Do you agree with our proposal to introduce tiered site requirements for different areas within the district?

☐

Yes

☐

No

Comments:

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- 2** Do you agree with our proposal to update the smoke free clauses?

☐

Yes

☐

No

Comments:

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### Your details

FOLD HERE

Name: 

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Organisation (if appropriate): 

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Address: 

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Phone: 

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 Email: 

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### 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:** The hearing is expected to be held in the Council Chamber on **Wednesday 23 November 2022**. Please note that hearings are live-streamed to our online channels.

☐

**No:** I do not wish to speak in support of my submission and ask that my written submission be fully considered.

If yes, do you wish to present: ☐ In Person ☐ Virtually

# Draft Use of Footpaths for Alfresco Dining Policy

[ashburtondc.govt.nz/haveyoursay](http://ashburtondc.govt.nz/haveyoursay)

You can submit on any or all of the questions below. You don't have to complete every question.

**3 Do you agree with our proposal to introduce a section on the ownership of structures?**

☐

Yes

☐

No

Comments:

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**4 Do you have any other comments on the draft policy?**

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*Submissions must be received by 5pm, Sunday 23 October 2022.*

*Please note all submissions are public documents and will be made available on Council's website with the names of submitters included. Submissions presented in the form of a petition or accompanied by multiple signatures will be processed as a single submission.*

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**Ashburton**  
DISTRICT COUNCIL  
FreePost Authority 230444

**Free**



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