

# Grant of Easement for arbor beams in Chesser Street

Tuesday, 18 July 2023  
Infrastructure and Public Works Committee

Strategic Alignment - Enabling Priorities

**Program Contact:**  
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Public

**Approving Officer:**  
Tom McCready, Director City Services

## EXECUTIVE SUMMARY

On Tuesday 27 June 2023, the City of Adelaide took ownership of a newly-replaced arbor in the northern portion of Chesser Street (between French Street and Grenfell Street).

The arbor is comprised of 17 steel beams that span across Chesser Street and attach to the buildings either side.

This report requests that Council accept the granting of two easements that will entitle the City of Adelaide to attach the beams (and other infrastructure) to those buildings.

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## RECOMMENDATION

The following recommendation will be presented to Council on 25 July 2023 for consideration

### THAT THE INFRASTRUCTURE AND PUBLIC WORKS COMMITTEE RECOMMENDS TO COUNCIL THAT COUNCIL

1. Approves, pursuant to section 190 of the *Local Government Act 1999 (SA)* and section 96 of the *Real Property Act 1886 (SA)*, accepting:
  - 1.1 The Grant of Easement shown as Attachment A to Item 5.1 on the Agenda for the meeting of the Council held on 25 July 2023 (or a Grant of Easement substantially in accordance with that easement) the terms of which will entitle the City of Adelaide to affix, maintain and replace:
    - 1.1.1 Arbor beams
    - 1.1.2 Public lighting infrastructure
    - 1.1.3 Wi-fi infrastructure
    - 1.1.4 CCTV infrastructureon portions of the land numbered '1' on Attachment B to Item 5.1 on the Agenda for the meeting of the Council held on 25 July 2023.
  - 1.2 The Grant of Easement shown as Attachment C to Item 5.1 on the Agenda for the meeting of the Council held on 25 July 2023 (or a Grant of Easement substantially in accordance with that easement), the terms of which will entitle the City of Adelaide to affix, maintain and replace arbor beams on portions of the land numbered '2' on Attachment B to Item 5.1 on the Agenda for the meeting of the Council held on 25 July 2023
2. Authorises the Chief Executive Officer to finalise the terms of the grants of easement if necessary.
3. Authorises the Chief Executive Officer and Lord Mayor to execute and affix the Common Seal to grant of easement documents and any other documents to give effect to Council's resolution.

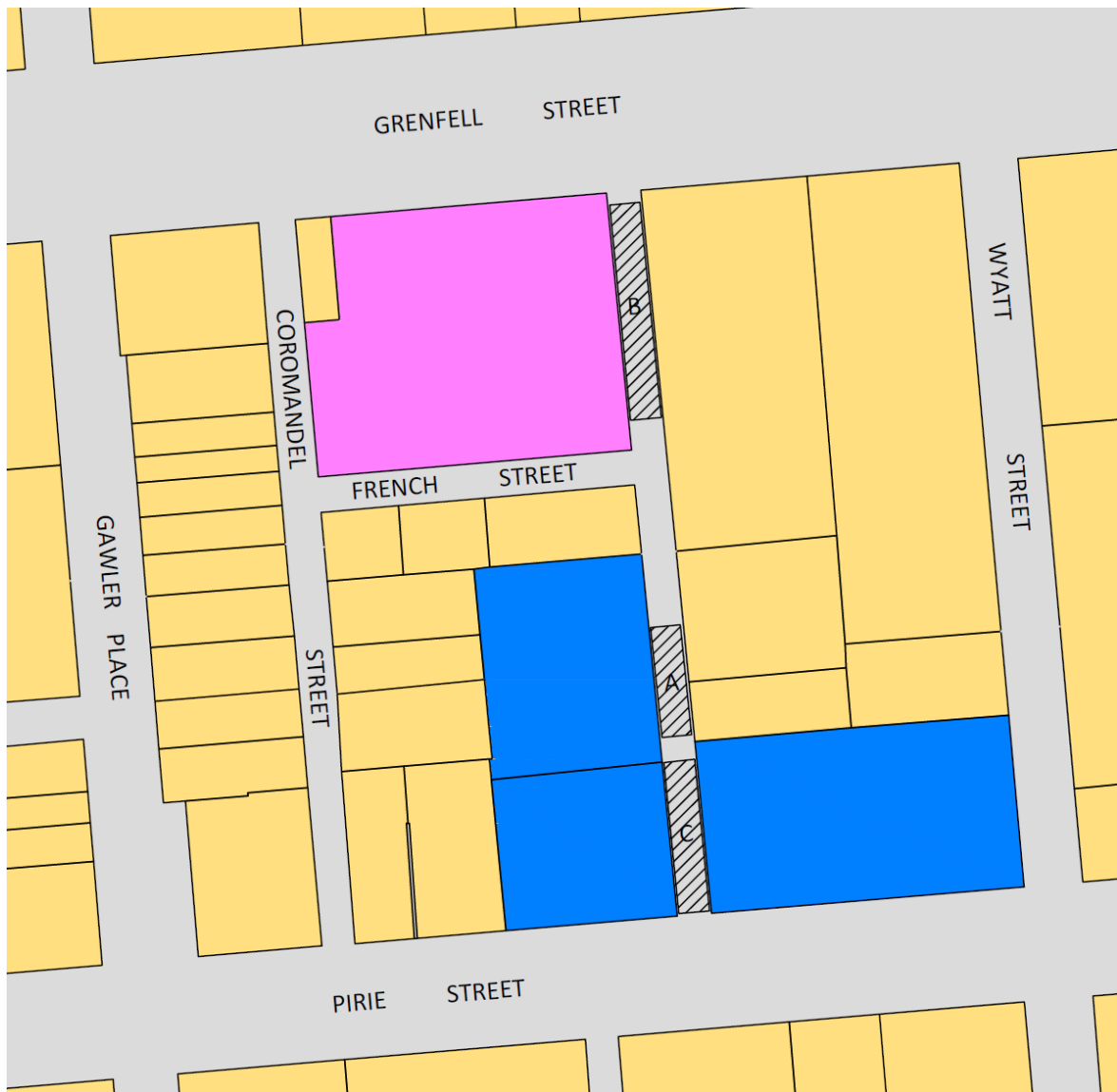
## IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	<b>Strategic Alignment – Enabling Priorities</b> If Council accepts the grants of easement, it will give long-term certainty to the City of Adelaide with respect to its right to affix, maintain and replace various infrastructure (arbor beams, public lighting, Wifi and CCTV) to certain buildings in Chesser Street.
Policy	Not as a result of this report
Consultation	Not as a result of this report
Resource	Internal staff resources to consider the proposal and legal costs to prepare and register the grants of easement.
Risk / Legal / Legislative	The grants of easement have been prepared by lawyers representing the City of Adelaide. Council may accept the granting of an easement pursuant to its powers under section 190 of the <i>Local Government Act 1999 (SA)</i> and section 96 of the <i>Real Property Act 1886 (SA)</i> . If Council accept the Grant of Easement, it will provide the City of Adelaide with ongoing certainty to affix the beams (and other infrastructure) to the adjoining buildings. If Council chooses not to accept the Grant of Easement, CoA will be provided with the same protections as the Easement, but by way of a Licence instead. However, an Easement is better protection for Council as it binds future owners of the buildings and is a public record.
Opportunities	If Council accepts the grants of easement, it will give long-term certainty to the City of Adelaide with respect to its right to affix, maintain and replace various infrastructure (arbor beams, public lighting, Wifi and CCTV) to certain buildings in Chesser Street.
23/24 Budget Allocation	Not as a result of this report
Proposed 24/25 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	The grants of easement are permanent and can only be extinguished with the consent of the grantor and grantee.
23/24 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	The grants of easement will require CoA to maintain the arbor beams (and other infrastructure) in good repair. The costs of doing so are unknown at this stage.
Other Funding Sources	Not as a result of this report

# DISCUSSION

## Background

1. Chesser Street has 35 steel beams spanning across it. The beams are fixed to the buildings either side of Chesser Street and steel cables are strung between the beams. Vines cover the beams and cables to create arbors.
2. The 35 steel beams were installed in three 'batches' between 1977 and 1984.
  - 2.1 The first batch of beams ('Batch A' – comprising 9 beams) was installed in 1977 by The Wyatt Benevolent Institution Incorporated over the portion of Chesser Street lettered 'A' on the map below. The Wyatt Benevolent Institution Incorporated was, at that time, the owner of the land coloured blue on the map. The beams in 'Batch A' were installed immediately adjacent to 'The Chesser Cellar', a popular Adelaide restaurant at that time.
  - 2.2 The second batch of beams ('Batch B' – comprising 17 beams) were installed in 1982 by Emanuel Constructions Pty Ltd over the portion of Chesser Street lettered 'B' on the map below. Emanuel Constructions Pty Ltd was, at that time, the owner of the land coloured pink on the map.
  - 2.3 The third batch of beams ('Batch C' – comprising 9 beams) were installed in 1984 by The Wyatt Benevolent Institution Incorporated over the portion of Chesser Street lettered 'C' on the map below. As discussed above, The Wyatt Benevolent Institution Incorporated was, at that time, the owner of the land coloured blue on the map.



3. Each batch of beams was authorised by Council via legal instruments that were, essentially, licenses to make alterations to a public road. If the same request were received today, the beams would be authorised by Council pursuant to section 221 of the *Local Government Act 1999 (SA)*.

### Upgrade of Chesser Street (north)

4. The property numbered '1' on **Attachment B** is owned by WIN IPG Adelaide Pty Ltd (WIN IPG).
5. The property numbered '2' on **Attachment B** is owned by The Trust Company Ltd (Trust Co). Trust Co acquired the property from Chesser Properties Pty Ltd (Chesser Properties) on 6 April 2022.
6. In March 2021, Chesser Properties (as owner of the property numbered '2' on **Attachment B** at that time) approached the City of Adelaide (CoA) with a proposal to upgrade, at their cost, the portion of Chesser Street adjacent to their property (i.e. between French Street and Grenfell Street). The purpose of the upgrade was to create a space that their tenants could use, including for outdoor dining. Under the proposal:
  - 6.1 Chesser Properties would regrade and resurface the portion of Chesser Street between French Street and Grenfell Street in order to create a flush surface (by removing the kerbs and constructing a central strip drain).
  - 6.2 Chesser Properties would upgrade the arbor in that section of Chesser Street.
  - 6.3 Council would remove the Loading Zones in that portion of Chesser Street and close it to traffic (pursuant to section 32 of the *Road Traffic Act 1961 (SA)*).
7. On 4 May 2021 'The Committee' considered a report recommending that Council close to traffic the portion of Chesser Street between French Street and Grenfell Street (pursuant to section 32 of the *Road Traffic Act 1961 (SA)*). Whilst the Report was ostensibly about the closure of Chesser Street, some Elected Members were concerned about potential changes to the arbor resulting from its upgrade by Chesser Properties. Accordingly, the Administration gave the following undertaking:

*"... an undertaking was given that if there was a material change to the arbour from what is currently proposed, that a report would be brought back to Council."*
8. On 11 May 2021 Council resolved to close to traffic the portion of Chesser Street between French Street and Grenfell Street (Link 1 view [here](#)).

### Ownership of the 'Batch B' arbor

9. The arbor identified as 'Batch B' in paragraph 2.2 has been authorised (to exist over Chesser Street) by CoA via at least three agreements since 1982, the most recent of which was a 'Permit' that was issued to a previous owner of the property numbered '1' on **Attachment B** (Brentwood (Australis) Limited) on 22 December 1993.
10. Under the proposal put forward by Chesser Properties, CoA would own the arbor after it had been upgraded (replaced) by Chesser Properties. Any residual legal responsibility by the current owner of the property numbered '1' on **Attachment B** (WIN IPG) for the original arbor (under the terms of the 'Permit' issued to Brentwood (Australis) Limited) would end once that arbor was removed.
11. In October 2022, CoA entered into an 'Infrastructure Agreement' with Chesser Properties that required Chesser Properties to upgrade Chesser Street to CoA's satisfaction. The 'Infrastructure Agreement' provided that ownership of the newly-constructed arbor would transfer to CoA upon 'Final Completion' of the upgrade works. 'Final Completion' occurred on Tuesday 27 June 2023.
12. With respect to the Administration's undertaking outlined in paragraph 7, the arbor was, for all intents and purposes, replaced like-for-like. The vine covering the original arbor was lifted whilst the old arbor was removed and the new arbor was erected. The vine appears to be in good health. The upgrade works can be seen in (Link 2 view [here](#)).

### Easement and Licence Agreement

13. In November 2022, CoA entered into an 'Easement and Licence Agreement' (the Agreement) with the owners of the properties to which the new (replaced) arbor beams are attached – WIN IPG and Trust Co.
14. The purpose of the Agreement was to give CoA the ongoing right to attach arbor beams to the buildings either side of Chesser Street (owned by WIN IPG and Trust Co) after 'Final Completion' had occurred (i.e. when CoA became the owner of the arbor).
15. The Agreement provides CoA with the ongoing right to attach the arbor beams to the buildings via two mechanisms:
  - 15.1 Licences
  - 15.2 Easements

16. The licences give CoA the right to attach the arbor beams to the buildings either side of the beams during the following periods:
  - 16.1. From 'Final Completion' (when CoA took ownership of the arbor beams) until such time as WIN IPG and Trust Co grant easements to CoA (that entitle us to attach the arbor beams to their buildings); and Council accepts the grants of easement (the recommendation of this Report); OR
  - 16.2. For a term of 50 years (from 'Final Completion') in the event that WIN IPG or Trust Co are unable to register the easements or if Council does not accept the grants of easement (i.e. resolves not to adopt the recommendation of this Report).
17. This Report recommends Council accept the grants of easement. Whilst the terms of the easements are the same as the licences, a licence is only enforceable with the current owner of the land – not future owners. Conversely, an easement is registered on the certificate of title for the land and binds future owners – thereby providing better protection to CoA.
18. The terms of the grants of easement have already been negotiated and form part of the Agreement. Notwithstanding this, it is a recommendation of this Report that Council authorise the Chief Executive Officer to finalise the terms of the easements should there be an unforeseen circumstance that requires minor amendments to the grants of easement.
19. The proposed Grant of Easement from WIN IPG (**Attachment A**) also includes the right for CoA to affix, maintain and replace public lighting, Wifi and CCTV infrastructure on the WIN IPG building.

**Council's legislative powers relating to easements**

20. Council may acquire land, including a legal interest in land (which includes easements), pursuant to section 190 of the *Local Government Act 1999 (SA)*. Council may accept the grant of an easement pursuant to section 96 of the *Real Property Act 1886 (SA)*. These powers have not been delegated by Council.

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## DATA AND SUPPORTING INFORMATION

**Link 1** - Council resolution 11 May 2021

**Link 2** – Photo of the recently completed upgrade of Chesser Street (between French Street and Grenfell Street)

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## ATTACHMENTS

**Attachment A** – Grant of Easement from WIN IPG Adelaide Pty Ltd

**Attachment B** – Site map

**Attachment C** – Grant of Easement from The Trust Company Ltd

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- END OF REPORT -