

Encroachment Policy Review

Strategic Alignment - Thriving Communities

Public

Tuesday, 7 November 2023
**City Planning, Development
and Business Affairs
Committee**

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Approving Officer:
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Shaping

EXECUTIVE SUMMARY

This report summarises a review of Council's Encroachment Policy dated 11 February 2020 and seeks Council endorsement to consult on an amended draft Encroachment Policy.

The Encroachment Policy provides criteria for managing different forms of encroachments in the public realm to ensure they contribute positively to public safety and amenity. The Policy provides the basis for Council's assessment and decision making on encroachments as land custodian of public roads. Encroachments over parks, reserves or private land are not covered by the Policy.

The Policy has been reviewed as being largely effective. Refinements are proposed as it relates to the assessment of, and fees charged for, temporary ground anchors. Other minor amendments for policy clarity are proposed.

The Policy amendments seek to improve the effectiveness and provide further clarity regarding acceptable and unacceptable encroachments into the public realm.

RECOMMENDATION

The following recommendation will be presented to Council on 14 November 2023 for consideration

THAT THE CITY PLANNING, DEVELOPMENT AND BUSINESS AFFAIRS COMMITTEE RECOMMENDS TO COUNCIL

THAT COUNCIL:

1. Endorses the Draft Encroachment Policy contained in Attachment A to Item 7.3 on the Agenda for the meeting of the City Planning, Development and Business Affairs Committee held on 7 November 2023, for the purposes of public consultation.
 2. Receives the proposed amendments to the fees and charges structure for the Draft Encroachment Policy contained in Attachment B to Item 7.3 on the Agenda for the meeting of the City Planning, Development and Business Affairs Committee held on 7 November 2023 to be considered in the 2024/25 annual fee review process.
 3. Authorises the Chief Executive Officer to make editorial and technical changes if needed to the Draft Encroachment Policy for Consultation contained in Attachment A and Attachment B, to Item 7.3 on the Agenda for the meeting of the City Planning, Development and Business Affairs Committee held on 7 November 2023, for the purposes of finalising the documents for public consultation.
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	<p>Strategic Alignment – Thriving Communities</p> <p>The Encroachment Policy is intended to support a public realm that is welcoming and user friendly, cultivating a positive relationship between the public and private realms and strengthens the character and identity of the Capital City.</p>
Policy	<p>This report proposes amendments to Council’s Encroachment Policy dated 11 February 2020.</p> <p>The draft Encroachment Policy for consultation aligns with:</p> <ul style="list-style-type: none"> • Temporary Use of Public Space Policy • Objects on Footpaths Guidelines • Outdoor Dining Guidelines • Lighting Policy and Operating Guideline • Undergrounding (Overhead Electricity and Telecommunication Cables) Policy • Cabling and Communication Policy • City Works Operating Guidelines • National Heritage Listing of the Adelaide Park Lands and City Layout • Adelaide Design Manual.
Consultation	<p>Internal consultation on amendments to the Encroachment Policy is complete. This report presents a draft Encroachment Policy for community consultation which will be undertaken in accordance with Council’s Community Consultation Policy dated 16 July 2019.</p>
Resource	<p>Not as a result of this report</p>
Risk / Legal / Legislative	<p>The Encroachment Policy seeks amendments that provide policy currency, address risk and protect Council against future liability.</p> <p>The review has had regard to relevant legislation, including:</p> <ul style="list-style-type: none"> • Planning and Design Code • <i>Local Government Act, 1999 (SA)</i> • <i>Planning, Development and Infrastructure Act, 2016 (SA)</i> • <i>Encroachments Act, 1944 (SA)</i>
Opportunities	<p>The Policy review has identified opportunities to clarify policy as it relates to unacceptable encroachments, including to enable adaptive reuse, and as it relates to signage and ground anchors</p>
23/24 Budget Allocation	<p>The review was undertaken with existing resources.</p>
Proposed 24/25 Budget Allocation	<p>Not as result of this report</p>
Life of Project, Service, Initiative or (Expectancy of) Asset	<p>Consultation will be finalised in February 2024 and an amended Policy will be put to Council in March 2024.</p>
23/24 Budget Reconsideration (if applicable)	<p>Not as a result of this report</p>
Ongoing Costs (eg maintenance cost)	<p>The ongoing administration, monitoring and review of the Policy will be undertaken with existing resources</p>
Other Funding Sources	<p>Not as a result of this report</p>

DISCUSSION

Background

1. The Encroachment Policy seeks to protect the character of the City and streets by managing development encroaching over public space.
2. The current Policy objectives are to enable design flexibility that also yields public benefit including:
 - 2.1. Creating a public realm that is welcoming and user friendly.
 - 2.2. Cultivating a positive relationship between the private and public realms.
 - 2.3. Strengthening the character and identity of our Capital City.
3. The Policy sets out the conditions that are specific to managing encroachments over public roads by:
 - 3.1. Providing a clear framework for managing encroachments.
 - 3.2. Providing for consistent decision making.
 - 3.3. Ensuring encroachments do not create public safety risks.
 - 3.4. Reinforcing the importance of retaining the City's distinctive urban form.
 - 3.5. Supporting the provision of pedestrian-friendly streetscapes accessible to all users.
 - 3.6. Supporting verandahs and first floor level balconies that provide shelter.
 - 3.7. Supporting green infrastructure measures that contribute to a more liveable City.
 - 3.8. Preventing above first floor balconies and floor area encroachments, other than in limited specified circumstances.

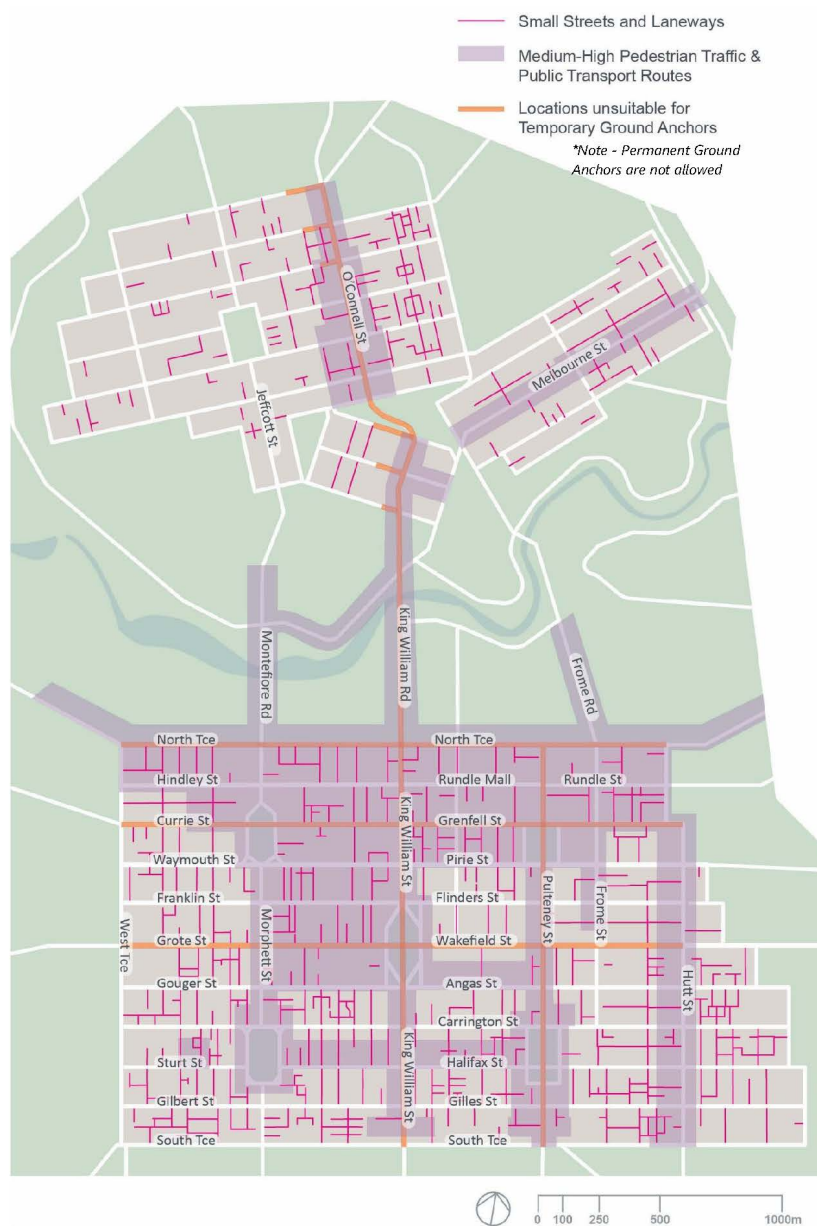
Review Findings

4. The Encroachment Policy was last amended in February 2020 with a positive effect on Council's ability to maintain the amenity and safety of the public realm.
5. The Encroachment Policy is assessed as:
 - 5.1. Providing sufficient policy clarity and certainty on what is permitted in the City.
 - 5.2. Ensuring encroachments facilitate a public benefit.
 - 5.3. Effective in maintaining Adelaide's strong urban form and well-defined street edges by identifying:
 - 5.3.1. "Acceptable" encroachments such as verandahs, green walls and balconies at first floor level
 - 5.3.2. "Unacceptable" encroachments such as permanent tensioned ground anchors, building floor area and above first floor level balconies.

Ground Anchors

6. Permanent and temporary ground anchors are commonly used in city environments as an alternative footing to provide structural support when a site is excavated for construction along a site boundary. A structural element is installed into rock or soil to provide stability of structures.
7. Temporary ground anchors are designed to last until the building can support the excavation and then when no longer required are destressed, unloaded or cut so that the anchor no longer provides support and can be removed if required. Temporary de-tensioned ground anchors generally remain in-situ on Council land.
8. The current Policy lists permanent ground anchors as unacceptable and restricts temporary ground anchors in locations based on State Government future transport infrastructure planning (Figure 1).
9. Three of four applications for temporary ground anchors received in restricted locations since 2020 have been supported by State Government and the restriction is no longer required.

FIGURE 1 - Pedestrian and Future Infrastructure Map



10. An increase in City of Adelaide fees for temporary ground anchors is proposed to better reflect the average time required to process the application and compensate for the use of public space that does not provide a public benefit.

Recommended Policy Changes

11. The draft Encroachment Policy for consultation is contained in **Attachment A**. In summary, the draft Policy proposes to:
 - 11.1. Update exceptions to Unacceptable Encroachments which relate to heritage listed properties, significant public buildings and adaptive reuse buildings where no alternative access options are available.
 - 11.2. Allow for temporary ground anchors to support construction.
 - 11.3. Reference new legislation and Council policies.

- 11.4. Reinforce the importance of maintaining the built form edge as an attribute of the National Heritage listing of the Adelaide Park Lands and City Layout
- 11.5. Ensure canopy columns or pillars are not fixed to footpaths.
- 11.6. Ensure encroachments are a minimum of 1 metre away from a trunk and/or major limb of a street tree.
- 11.7. Ensure CCTV's do not extend beyond the fascia line of a verandah or balcony.
- 11.8. Include criteria for above awning projecting signage.

2024/25 Annual Fee Review Process

12. The review supports an increase in fees for temporary ground anchors that can be considered through the 2024/25 annual fee review process. The proposed changes are included in **Attachment B** and summarised as:
 - 12.1. Increasing the application fee from \$131 to \$250.
 - 12.2. Increase the once-off ground anchor fee for interference with the road from \$750 to \$1000 per ground anchor.
 - 12.3. Introduction of an inspection fee of \$380 for temporary ground anchors once ground anchors have been destressed and any damage has been rectified.
 - 12.4. The refundable bond to remain at \$5,000 per ground anchor however increase maximum bond value from \$500K to \$600K.
 - 12.5. Retain the bond in full by Council until 6 months after the de-stressing and when the applicant's Structural Engineer or Geotechnical Engineer has provided certification that the ground anchors have been cut at the boundary and removed or appropriately de-stressed (made inactive) and any damage to public land including infrastructure has been rectified to the satisfaction of Council.
13. The proposed application fee will cover some of the administrative cost of assessing an application. The once-off temporary ground anchor fee is to manage the transfer of liability to Council.
14. The proposed revisions to the fee structure continue to ensure that the fee schedule is simple and provides certainty to developers.

Next Steps

15. Pending decision by Council about the proposed amendments to the Encroachment Policy, community consultation on the draft Policy amendments will be undertaken.
16. Community consultation can commence in mid to late January 2024 for a 4-week period and will involve the following as per Council's community consultation policy and legislative requirements for policy development:
 - 16.1. Public notice in the Advertiser.
 - 16.2. Letter to Department for Infrastructure and Transport.
 - 16.3. Website available to the community for viewing and input through YourSay.
 - 16.4. Information sheets and the Draft Encroachment Policy available online and at the Customer Centre, Libraries and Community Centres.
 - 16.5. Open invitation to meet with a member of Administration to discuss the content of the Draft Encroachment Policy.
17. On completion of the consultation period all submissions will be collated and summarised to inform Council's finalisation of the Policy. This is intended to be complete between February 2024 and March 2024.

ATTACHMENTS

Attachment A – Proposed Encroachment Policy

Attachment B – Proposed 2024/25 Encroachment Fee Schedule

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