

# **REVIEW OF ENCROACHMENT POLICY**

## **SUMMARY OF SUBMISSIONS AND RESPONSE**

APRIL 2024

## Background

The City of Adelaide's Encroachment Policy was previously amended in February 2020.

As part of the current review, a series of changes are proposed that will provide the basis for the City of Adelaide to manage encroachments on, over and under public land.

The Encroachment Policy supports a public realm that is welcoming and user friendly, cultivating a positive relationship between the public and private realms and strengthening the character and identity of our Nationally listed city.

The **goals and methodology of engagement** were:

- Inform the community about the proposed changes to the Encroachment Policy.
- Provide an opportunity for community and key stakeholders to provide feedback on the draft revised Policy through Your Say Adelaide and written submissions.

## Public Consultation

The consultation opened on 29 January 2024 to 26 February 2024.

Submissions were invited from the community, and external stakeholders, including the following State Government agencies and industry associations:

- Department for Infrastructure and Transport
- Urban Development Institute of Australia
- Planning and Land Use Services
- Urban Development Institute of Australia SA
- Property Council of Australia SA
- The Office for Design and Architecture
- Australian Institute of Architect

## Submissions

A total of 8 submissions were received. A high-level summary of written submissions and Administration's response is provided in Table 1 below. Feedback was received from:

- Department for Infrastructure and Transport
- Office for Design and Architecture
- Planning and Land Use Services (PLUS)
- Five (5) Your Say submissions.

## YourSay Activity

Online engagement was undertaken through YourSay and promoted through various City of Adelaide social media and online platforms. The engagement response was as follows:

- **121 'Aware' visitors:** These are unique visitors, which could be individuals or individuals visiting on behalf of organisations. There were 144 visits to the Your Say Adelaide page, which means some people visited your page more than once.
- **45 'Informed' visitors** These are visitors that explored the available consultation materials more closely to learn more about your project e.g. viewed the draft Encroachment Policy, FAQs. etc.
- **5 'Engaged' visitors/participants:** These are people who have submitted feedback through the online survey.

Table 1 – High-level summary of written submissions and Administration’s response

	Stakeholder	Summary of Submission	Administrative Response
<b>State Government</b>			
1	<b>Office for Design and Architecture</b>	Support the proposed amendments to the Encroachment Policy.	Noted. General comment that does not request a change to the Encroachment Policy.
2	<b>Department for Infrastructure and Transport</b>	Supportive of Council’s approach to the Encroachment Policy that seeks to ensure encroachments do not impact on the safe operation of Council’s road network.	Noted. General comment that does not request a change to the Encroachment Policy.
		Recommend consideration be given to ensuring that encroachments do not impact on existing and future State Transport Infrastructure, including tram, train and bus infrastructure such as stops, stations, catenary wires, poles and other similar facilities.	To ensure encroachments do not impact on existing and future local and State infrastructure the following provision has been included in the Encroachment Policy and applies to all forms of encroachments:  <i>They do not hinder, damage or interfere with existing or future City of Adelaide or State Government infrastructure</i>
		Recommend where encroachments may impact on infrastructure facilities, the Department is given the opportunity to provide comment. This will ensure that encroachments do not detrimentally impact on the safe and effective operation of State transport Infrastructure and services.	Noted. Although there are not any formal mechanisms under the <i>Planning Development and Infrastructure Act 2016</i> or the <i>Local Government Act 1999</i> to notify the Department for Infrastructure and Transport of encroachment proposals that could potentially impact on infrastructure, it is common practice for the Development Assessment Team within the City of Adelaide to inform the Department.
3	<b>Planning &amp; Land Use Services (PLUS)</b>	Welcomes changes to update terminology and reference to the Encroachment Policy to reference the <i>Planning, Development and Infrastructure Act 2016</i> (the Act) and the Planning and Design Code (the Code).	Noted. Terminology is updated.
		Note that the Encroachment Policy makes allowance for the encroachment of balconies in specific circumstances. Allowances of this nature are important to provide additional flexibility in building design to	Noted. The Encroachment Policy allows for encroachment of balconies in specific circumstances.

	Stakeholder	Summary of Submission	Administrative Response
		<p>respond to site context and achieve a balanced design outcome. Flexibility of this nature can contribute to the viability of development.</p>	
		<p>Encourage council to strive to identify appropriate allowances for encroachments in light of the current housing crisis, to aid the provision of housing and accommodation whilst acknowledging the National Heritage values of the Adelaide City Layout.</p>	<p>Noted. Section 4.2.6 has identified appropriate allowances for balcony encroachments is provided in certain instances. This is subject to further discussion with PLUS through an intention for a State-led Code Amendment into apartment design.</p>
		<p>I note that a new Code Amendment is intended to be progressed by the State Planning Commission in 2024 to review policy in the Code to, amongst other things, ensure it provides contemporary guidance to apartment-type accommodation (be this of a conventional nature, for accommodation of students or supported accommodation). Investigations to inform the Code Amendment will consider provision of additional flexibility for apartment accommodation, while achieving quality design and apartment amenity outcomes.</p>	<p>Noted. Administration is in dialogue with PLUS on apartment design and housing diversity as part of Council's recommendations to the Planning System Implementation Review.</p>
		<p>Recognising the influence that council's Encroachment Policy can have on apartment accommodation design in the City of Adelaide, and the fact that most apartment accommodation development in our state occurs in the City of Adelaide, my team and the Executive Director have commenced a dialogue and collaboration with your administration aimed at aligning, to the extent possible, the Code Amendment with your updated Encroachment Policy. I would encourage council to enable this collaboration to continue. The State Planning Commission has a view to a final draft of its Code Amendment being prepared for community engagement this calendar year.</p>	<p>Noted. Administration is in dialogue with PLUS on apartment design and housing diversity as part of Council's recommendations to the Planning System Implementation Review.</p>

	Stakeholder	Summary of Submission	Administrative Response
		Reference is made on page 11 of the draft policy document to the City grid layout on the National Heritage Listing being detailed in Attachment C. This appears to be incorrect. If this is intended to be Attachment A as shown in the draft provided, then this information should be updated to clearly reflect that all grid streets are not subject to the encroachment policy and that this policy only relates to laneways and secondary streets.	References are updated as 'Figure 2' on pages 6 & 11 of the draft policy. Revisions were made to the draft policy to reflect that the City Grid streets in the National Heritage Listing will not be considered for above first floor balcony encroachments.
		The Code's deemed-to-satisfy criteria generally requires a setback of 2 metres or more from the base of the trunk of a street tree, unless consent is provided from the tree owner for a lesser distance. PLUS raises no objection to the lesser distance of 1 metre specified in the Encroachment Policy, as the City of Adelaide would be the tree owner, but consideration could be given to whether a greater setback is desired which could benefit larger trees with more expansive root systems.	Noted. The City of Adelaide is seeking to balance opportunities for greening with development.
		Clarification is sought as to whether the requirement for canopies (e.g., external shading devices / verandahs / awnings and pergolas / balconies etc) to be set back from street furniture at ground level means that any street seating / benches cannot be covered as they are subject to the 1 metre setback.	Section 4.2.3 – 4.2.6 has been updated to clarify that street furniture can be covered by canopies if it is less than 3 metres in height.
<b>YourSay Summary</b>			
<b>4</b>	<b>YourSay Submission</b>	Supports changes that will allow for temporary ground anchors to support construction however concerned that these changes will lead to more closures of footpaths and bicycle paths.	Noted. General comment that does not request a change to the Encroachment Policy.

	Stakeholder	Summary of Submission	Administrative Response
		Supports encroachments that allow for the adaptive re-use of heritage buildings.	Noted. General comment that does not request a change to the Encroachment Policy.
		Pedestrian movement where outdoor dining is permitted is difficult in particular, Rundle Street, East Terrace, Gouger Street, and in city laneways.	Noted, outdoor dining is outside the scope of the Encroachment Policy however, this is addressed by the Outdoor Dining Policy.
5	YourSay Submission	Support is noted for temporary ground anchors to support construction but further definitions are required to define 'temporary'.	The Policy includes a definition for temporary ground anchors. The definition specifies that temporary ground anchors are permitted for a limited period (up to 2 years) as a site is excavated.
		Encroachments onto public land should only be allowed to facilitate equitable access for the adaptive re-use of heritage and significant public buildings.	Encroachments for the adaptive reuse of heritage buildings will only be considered in limited situations such as providing equitable access where there are no alternative access options and other alternatives would result in the loss of fabric of the original building.
		Smoking and vaping should not be allowed in outdoor dining areas and other public areas.	Noted, however, this is outside the scope of the Encroachment Policy as smoking is governed by the <i>Tobacco Products Regulation Act 1997</i> .  Since 1 July 2016, smoking is no longer permitted in public outdoor dining areas under section 52 of the <i>Tobacco Products Regulation Act 1997</i> . Outdoor dining areas must be smoke-free at all times when food is offered or provided.
6	YourSay Submission	Temporary ground anchor encroachment needs to be restricted. Construction work and associated Encroachment Policy results in additional traffic, air pollution, disruption to pedestrians and damage to footpaths.	A City Works Permit (CWP) is issued by the City of Adelaide for works undertaken in the public realm. Conditions are attached to the CWP that address damages, outline requirements for setup and how works must be conducted.  When issuing CWPs, an assessment is undertaken to ensure the impact on pedestrians and traffic is minimised.  For any major impacts, the permit holder is advised to contact impacted residents and businesses and provide their contact details. Major worksites have the contact details for the builders

	Stakeholder	Summary of Submission	Administrative Response
			noted on their fencing for the public to report any issues / concerns. In addition, the City of Adelaide can be contacted if there are concerns.
		Encroachments onto public land for the adaptive reuse of historic and/or significant public buildings need to be extremely limited.	Encroachments for the adaptive reuse of heritage buildings will only be considered in limited situations such as providing equitable access where there are no alternative access options and other alternatives would result in the loss of fabric of the original building.
		Encroachments onto public land for special events do not consider the wider needs of the city.	Encroachments required specifically for special events are considered against the following City of Adelaide policies and guidelines that provide the management framework for hosting events in the city: <ul style="list-style-type: none"> <li>• Adelaide Event Guidelines</li> <li>• Adelaide Park Lands Event Guidelines</li> <li>• Adelaide Park Lands Events Policy</li> </ul> Encroachments over parks and reserves are not covered by the Encroachment Policy.
7	<b>YourSay Submission</b>	The current and proposed policy lack a solid foundation in terms of measurement standards. For instance, the requirement of "a minimum vertical clearance of 2.5 metres above the footpath level" should be tethered to specific performance criteria outlined in recognised standards or guidelines such as the Austroads Guide to Road Design Part 6A: Paths for Walking and Cycling, Section 5.5.2, or alternatively AS 1742.2:2009 Clause D2.3.5. By establishing clear links to industry standards, the policy can adapt to evolving community standards, ensuring its relevance over time.	The measurements and policies specified in the Encroachment Policy are consistent with the relevant Australian Standards. For instance, the minimum vertical clearance height of 2.5m above the footpath level is in accordance with AS 1742.2:2022 Clause D2.3.5 and Austroads Guide to Road Design Part 6A 2021 Section 5.5.  To ensure relevance and consistency with appropriate standards the Encroachment Policy is reviewed regularly.
		Permissions granted under this Policy hold commercial value for property owners or tenants, and it's imperative that this information is accessible to the	The City of Adelaide maintains an internal register of permits. Whilst converting this register to a public interfacing platform is

	Stakeholder	Summary of Submission	Administrative Response
		<p>public. A public register, accessible on the City of Adelaide's website, where permissions are openly documented enhances transparency but also enables the community to ascertain whether encroachments are authorised by the Council.</p>	<p>not anticipated, members of the public are welcome to direct enquiries regarding encroachments to the Administration.</p>
		<p>The policy currently lacks explicit guidance on how breaches will be addressed. In the absence of a clear enforcement mechanism, conflicts between non-compliant property owners and the wider community may persist. I recommend incorporating explicit provisions within the policy outlining the procedures for addressing encroachments. This could involve issuing orders for the removal of prohibited encroachments, specifying timeframes for compliance, and detailing the consequences of non-compliance. Establishing a robust enforcement framework will contribute to a harmonious coexistence between property owners and the community.</p>	<p><i>The Local Government Act 1999, Planning, Development and Infrastructure Act 2016 and Planning, Development and Infrastructure (General) Regulations 2017</i> detail enforcement action that can be undertaken in regard to development that is not built in accordance with approved documentation/conditions or without development approval.</p> <p>The City of Adelaide undertakes enforcement action in accordance with relevant legislation.</p> <p>Encroachment Permits also impose a series of conditions to ensure the requirements of the Policy are upheld and action that will be undertaken should a breach occur.</p>
8	YourSay Submission	<p>Encroachments onto public land should only be permissible in some cases, subject to stringent examination of the effect on public use of the public realm and aesthetic results (particularly buildings that are heritage listed or of historic interest) and imposition of appropriate conditions.</p>	<p>The Policy criteria has been developed with the intent of creating a public realm that is welcoming, user friendly, cultivates a positive relationship between the private and public realms, contributes positively to Adelaide's identifiable built form character and strengthens the character and identity of our National Heritage listed city.</p> <p>Encroachment Permits seek to impose conditions such that a permit holder maintains the encroachment in a good, safe and presentable condition, and does not allow it to fall into disrepair, or become ruinous, dilapidated or dangerous or in such a state as to detract from the amenity of the area in which it is situated.</p>