

Public Land Encroachment Policy

Approval Date	15/02/2021
Classification	Council Policy
Responsible Officer	Group Manager Assets & Infrastructure
Relevant Legislation	Local Government Act 1999 Development Act 1993 Planning, Development & Infrastructure Act 2016 Local Government Land By-Law 2015
Related Policies	Tree Management Policy
Related Corporate Documents	Urban Forest Strategy
Associated Forms	
Record Number	POL202146383
Council Resolution Number	CNC282/20-21
Last Reviewed 19/10/2015	Next Review 30/11/2023

1. Introduction	2
2. Scope	2
3. Definition	5
4. Policy Statement	5
5. Availability of Policy	14
6. Review	14



1. Introduction

- 1.1. In general, the Council supports and encourages the use of public footpaths and public spaces for business purposes, and may permit persons to alter, encroach upon a road within the framework provided by this policy.

With due consideration given to factors including legislative compliance, public safety, anti-discrimination, and amenity, Council will, through the implementation of this policy, ensure that both roads and other public spaces are operated at a high standard throughout the Town of Walkerville.

The purpose of this policy is to establish guidelines for the approval and management of third party alterations/encroachments onto Public Land that is under the care or control of Council (this includes the footpath or verge areas, or similar, that are outside of the road carriageway but in Council ownership including Community Land).

The existence of this policy will assist in limiting Council's liability (risk, maintenance, replacement etc.) against any future claims arising due to alterations/encroachments within the road reserve, and set clear guidelines for persons that intend to seek permission for such encroachments.

2. Scope

For the purpose of interpretation of this policy, the term Alternation / Encroachment shall relate to, but be not limited to:

- Altering the construction or arrangement of a road or Public Land to permit or facilitate access from an adjacent property;
- Structures, (including pipes, wires, cables, fixtures, fittings, verandas, signage and other objects) in, on, across, under or over a road or Public Land;
- Changes to the construction, arrangement or materials of the road; and
- Suitable verge treatments.

2.1 *Local Government Act (1999)*

Section 200 of the Act provides that Council can issue a permit for the use of community land for business purposes.

Before the Council authorises the permit for the use of community land for business purposes, Council must give consideration to the following:

- A person must not use community land for a business purpose unless the use is approved by the Council;
- The Council cannot approve the use of community land for a business purpose contrary to the provisions of a management plan; and

- The Council's approval may be given on conditions the Council considers appropriate.

A person must not:

- use community land for a business purpose in contravention of subsection (1); or
- contravene a condition of an approval for the use of community land for a business purpose.

Section 217 of the *Local Government Act 1999* ("the Act") provides that Council may, by order in writing to the owner of a structure or equipment (including pipes, wires, cables, fittings and other objects) installed in, on, across, under or over a road, require the owner:

- To carry out specified work by way of maintenance or repair; or
- To move the structure or equipment in order to allow the Council to carry out roadwork.

Section 218 of the Act provides that Council may, by order in writing to the owner of land adjoining a road, require the owner to carry out specified work to construct, remove or repair a crossing place from the road to the land.

Pursuant to Section 221 of the Act, a person (other than Council or a person acting under some other statutory authority) must not make an alteration to a public road unless authorised to do so by Council.

Section 221 (5) of the Act states that "Council is not liable for injury, damage or loss resulting from anything done under the authority of an authorisation under section 221 (2) (b).

Section 222 of the Act provides that Council can issue a permit for the use of a road for business purposes for periods of up to 5 years. Further, and in accordance with Section 224 of the Act, such a permit may be subject to conditions, including, for example, a requirement for the payment of rent to the Council.

Section 223 of the Act provides that under certain circumstances Council must undertake public consultation prior to issuing a permit under Section 221 or 222 in certain circumstances.

Before the Council authorises the installation of a structure on a road, Council must give consideration to whether the structure will:

- Unduly obstruct the use of the road;
- Unduly interfere with the construction of the road; or
- Have an adverse effect on road safety.

Prior to Council planting vegetation or authorising or permitting the planting of vegetation on a road, section 232 of the Act requires Council to consider the following:

- Whether the vegetation is appropriate to the proposed site, taking into account:

- Environment and aesthetic issues;
- The use and construction of the road (including the potential for interference with the construction of the road or with structures (including pipes, wires, cables, fixtures, fittings or other objects) in the road);
- Road safety matters;
- Other matters (if any) considered relevant by Council; and
- If the vegetation may have a significant impact on residents, the proprietors of nearby businesses or advertisers in the area, follow the relevant steps set out in Council's "Public Consultation Policy".

Section 234 of the Act provides that Council has the power to remove objects etc. from a road if:

- It has been erected, placed or deposited on the road without the authorisation or permit required under this Part; or
- An authorisation or permit has been granted but has later expired or been cancelled.

The Council may recover the cost of acting under this section as a debt from the person who erected, placed or deposited the structure, object or substance on the road.

If, as a result of any accident involving a vehicle or vehicles, any wreckage, objects or materials are left on a road, the Council may clear the area and may recover the cost from the driver of the vehicle or, if more than one vehicle was involved, the driver of any one of the vehicles.

2.2 *Development Act (1993)*

Section 4 of the *Development Act (1993)* and Schedule 2 of the Development Regulations (2008) depict acts and activities that constitute Development.

In the event that any work that may constitute a road alteration or the use of public land for business purposes also constitutes 'Development', the Development Act mandates that Development Approval is required in addition to any permit or authorisation issued in accordance with the provisions of the *Local Government Act (1999)*.

2.3 Discretion

Notwithstanding any provision or guideline outlined in this Policy against which Council will assess applications for encroachments, it is inherent in the provisions of the *Local Government Act (1999)* that Council has discretion to refuse applications notwithstanding circumstance on each and every occasion.

3 Definition

Authorisation	For the purpose of interpretation of this policy the term “authorisation” shall relate to an approval issued providing consent for the alteration of a road pursuant to Section 221 of the <i>Local Government Act (1999)</i> . Any such authorisation may only be issued for a term not exceeding 42 years.
Council	Is a comprehensive term and is to be read, as necessary, as encompassing officers, employees and Elected Members of the Town of Walkerville.
Crossing Place	The section of land that connects a private driveway (from the property boundary) to the public carriageway.
Permit	For the purpose of interpretation of this policy the term “permit” shall relate to a permit issued providing consent for the use of a public road for business purposes pursuant to Section 222 of the <i>Local Government Act (1999)</i> . Any such permit may only be issued for a term not exceeding 5 years.
Public Land (including a street or road)	Public Land refers to any land under the care or control of Council. The <i>Local Government Act (1999)</i> provides that a road extends from property boundary to property boundary and includes the carriageway, footpaths, verges and Community Land.
Vegetation	Any species of plant or plants (including all trees and vines), whether alive or dead.

3. Policy Statement

3.1 Alteration of a Road

Private alterations/encroachments can pose problems such as poor drainage, street obstructions and long term safety risks. They can also diminish Council’s ability for good governance and increase liability risks for Council and the public.

3.2 Identification of an Alteration / Encroachment

Alteration/encroachment: as defined in the policy “Scope”

On identifying the existence of an alteration/encroachment it will be necessary for Council to determine whether the alteration/encroachment is of such a nature that it poses a risk to other users of the public street or road in which it is located.

Factors must be taken into account in determining whether an alteration/encroachment poses a risk to the users of the public street or road include but are not limited to whether the structure will:

- Unduly obstruct the use of the road;
- Unduly interfere with the construction of the road;
- Have an adverse effect on road safety; and
- Any other factors Council determines to take into consideration.

3.3 Alterations / Encroachments Identified as a Public Risk

Where it is deemed that an alteration/encroachment is a risk to the public, the following principles shall apply

- The owner of the adjoining land or person responsible for any relevant alteration/encroachment shall be advised that the alteration/encroachment must be removed within a specified time, at the adjoining owners' expense; and
- If the alteration/encroachment is not removed within the specified time, action may be instigated to remove the structure/vegetation and Council may recover the costs of removal from the owner of the adjoining land or person responsible for any relevant alteration/encroachment. Action may include an order being served on the adjoining land owner (refer to Section 217 and 218 of the Act).

3.4 Alterations / Encroachments that do not pose a Significant Risk to the Public

Where Council deems that an alteration/encroachment does not pose a significant risk to the public, the following principles shall apply:

- The alteration/encroachment is to be removed; and
- A permit may be issued to the owner of the adjoining land or person responsible for any relevant alteration/encroachment, which allows the alteration/encroachment to remain on the public street or road (with conditions).

3.5 Classification of Alterations / Encroachments

All alterations/encroachments, for the purpose of this Policy, should be classified according to the following four types:

Type 1 - Minor

Type 2 - Services

Type 3 - Intermediate

Type 4 – Major (significant alterations)

Alterations/Encroachments that generate significant benefit to the applicant or remove public access, including (but not limited to):

- Fenced areas;

- Hardstand areas greater than 5 square metres, which may include parking for vehicles;
- Alterations/Encroachments that require approval under the *Development Act 1993*;
- Private parking bays (more than 2 car spaces) for commercial purposes, or for residential purposes (resident funded);
- Extensions of private businesses onto public roads that require alterations to the road
- Retaining walls 600mm (or greater than) in height; and
- Permanent verandas, balconies or signage over road reserves or public land.

If approval is granted for such alterations/encroachments, the applicant must enter into a formal agreement with Council (generally drafted by Council's solicitors) with the cost to be covered by the applicant. As a minimum, this agreement will stipulate public liability insurance and maintenance requirements.

3.6 Authorisations for Alterations / Encroachments

From time to time, Council may receive applications for alterations/encroachments from an adjoining land owner/occupier. Appropriate delegations will be established in order for Council to be able to consider applications and respond to them in accordance with this policy in a timely and efficient manner.

In granting approval/permit for an alteration/encroachment, consideration will be given to:

- The nature and dimensions of the structure(s) or item(s) that will encroach;
- The impact of the encroachment on the streetscape (i.e. suitability of colours and materials);
- Potential effects on pedestrian or vehicular access;
- The potential of the encroachment to generate a financial risk (e.g. maintenance, replacement etc.) or public liability risk for Council;
- Whether the encroachment will unduly restrict public space;
- Whether the encroachment will unduly obstruct the use of the road;
- Whether the encroachment will unduly interfere with the construction of the road; and
- Whether the encroachment will have an adverse effect on road safety.

Council may grant approval/permits for alterations/encroachments subject to general conditions that would mandate the following:

- The adjoining land owner/occupier must complete any required and relevant application form/s (available from Council), and pay any relevant application fee/s in accordance with Council's Fees and Charges Register;
- Depending on the nature of the encroachment, Council may insist that applicants must enter into an appropriate legally binding agreement with Council that stipulates owners' responsibilities, and maintenance regimes;
- Council, on every occasion, will insist that all costs associated with the installation and maintenance of the approved works shall be borne by the applicant;

- In the event of changes to property ownership, the approved alteration/encroachment will be brought to the attention of the future owners of the property. This will be achieved via noting the existence of any such permit in the property search information provided by Council in accordance with Section 7 of the Land and Business (Sales and Conveyancing) Act (1994). Further, all alterations/encroachments must be of a nature that can be demolished or removed if so required. All costs related to any instruction to demolish or remove an alteration/encroachment shall also be borne by the applicant;
- That the permit holder agrees to indemnify and to keep indemnified Council, its servants and agents and each of them from and against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against them or any of them arising out of or in relation to the issuing of the permit; and
- Council retains the rights over the area and no reimbursement will be made for the removal of any structure, objects etc. if these have to be disturbed or removed in the future.

If the permit holder wishes to alter the approved alteration/encroachment at any time, a new application will need to be made. Regardless of any condition of approval, it is noted that from time to time Council or other service authorities responsible for public infrastructure, including, but not limited to, water supply, effluent disposal, telecommunications, gas supply and electricity supply may need to work on the public land developed by the adjoining owner under approval by Council. These authorities may interfere with the approved work and have no legal obligation to reinstate the area.

3.7 Permits for Type 1 Alterations / Encroachments

3.7.1 Vegetation

Pursuant to Section 221 of the *Local Government Act 1999* (“the Act”) Council has the power to issue a permit which authorises the owner or occupier of any land abutting any public street or road to plant vegetation in the street or road.

Council will not issue such a permit unless it is satisfied that the proposed vegetation will not have an adverse effect on safety for users of the road.

Council cannot issue a permit pursuant to Section 221 of the Act in respect of any street or road that is maintained by the Commissioner of Highways unless the Commissioner gives written approval for the granting of the permit. In these instances, the applicant will seek approval from the Minister and provide proof of consent prior to Council considering the application.

The Commissioner of Highways may, at any time, revoke the approval and Council will be required to revoke the permit.

Generally, the following principles will apply in the assessment of an application and the determination of conditions of approval for an authorisation pursuant to Section 221 of the Act in respect of vegetation:

Existing verges developed with artificial turf will need to have an area clear of the artificial turf of two metres (2m) from the base of the tree in all directions.

- Any proposed planting must not compromise the health of any existing street trees or other Council plantings;
- From 1 March 2021, no further artificial turf is permitted;
- Any landscape work must not have any raised edges or tripping hazards;
- Trees and shrubs with potential large branches should not be planted close to fences or other infrastructure so as to cause future damage;
- Plants should not be located as to create restricted lines of sight, which could be hazardous to pedestrians or motorists;
- Corner properties may require special consideration;
- An area (minimum width 1.5m from the kerb) to serve as a pedestrian refuge area is to be left clear for passengers to enter and exit from parked vehicles and for general pedestrian access. This area can be a rubble surface, levelled grass or lawn, or sealed by paving, concrete or bitumen depending on the adjacent environment. Mulch, scoria or bark is not considered an appropriate treatment of this area;
- Prior to commencing any digging on the road verge area that underground service locations are identified. This can be achieved by contacting “Dial Before You Dig” on telephone number 1100 or their website at www.dialbeforeyoudig.com.au;
- Any existing street tree must not be removed or pruned without approval;
- Any plants, which become diseased or die, must be replaced by suitable species (excluding any vegetation that is considered to be a significant tree under the Development Act 1993, which will require formal planning approval before work can commence);
- Any planted areas are to be kept free of weeds;
- Overhanging vegetation is to be maintained and is not to encroach into any walkways or road carriageway areas;

Public Land Encroachment Policy

- There are to be no raised edges to avoid tripping hazards;
- Any pavers used must be 60mm thick, made from concrete or clay and have a non-slip surface;
- The pavers must be laid on a base of 100mm quarry rubble by a tradesperson who has adequate Public Liability insurance Policy with a minimum value of \$20,000,000;
- Any rubble surface must be excavated to a depth of 100mm and replaced with compacted;
- 7 – 20mm dolomite or quartzite quarry rubble. All dust must be suppressed after compaction;
- Parking of vehicles is not permitted on any paved, rubble or dolomite areas, unless approval has been granted to allow this activity; and
- Council retains all rights over the area to be landscaped and no reimbursement will be made for the removal of any plants or material if these have to be disturbed or removed in the future.

3.7.2 Private Parking Bays

Generally, the following principles will apply in the assessment of an application and the determination of conditions of approval for an authorisation pursuant to Section 221 of the Act in respect of private parking bays:

- The parking of a vehicle in the allocated parking bay does not impair sight distance on bends or intersections;
- The approved parking bay is maintained at the applicant's expense in accordance with Council specifications (appropriate Australian Standards and Codes);
- Any parking bay on a road verge is available for public use and is not an exclusive parking bay for the permit holder; and
- Community requests for Council installed parking bays will be assessed against Council's standard budget and capital works criteria and considerations.

3.8 Permits for Type 2 Alterations / Encroachments

Generally, and unless good cause is demonstrated, Council will consider the following in respect of Type 2 Alterations/Encroachments:

- Approval will be sought by the applicant from the Department of Planning, Transport, and Infrastructure (DPTI) prior to Council issuing any approval

for a license on a main road under the authority of DPTI under these classifications; and

- Prior to any approval being granted Council will consider and consult where necessary with any relevant authorities relating to the delivery of services including water, gas, electricity or telecommunication.

3.8.1 Crossing Places

As a general rule, Council will seek to minimise the number of crossing places within the Township, particularly within the Neighbourhood Centre and on Walkerville Terrace. A consistent and organised pattern of crossing places should prevail, and property owners seeking to create additional crossing places should only do so where they will not unreasonably impact upon the amenity of a locality or streetscape and where they will not cause a traffic hazard.

Further, staff assessing applications for crossing places will seek to ensure that the design satisfies the requirements of the Disability Discrimination Act, and, in particular, will seek to ensure that footpaths and walkways have a maximum gradient of 1 in 40.

- Generally, Council will seek to impose the following conditions on authorisations to construct or alter a crossing place;
- The construction of crossing places shall meet the minimum requirements set out in Council's "Specification and Procedures for the Construction of Crossing Places". This document will be prepared, implemented and maintained to current standards by the relevant staff;
- Where the distance between the kerb and property boundary exceeds 4.0 metres, the requirement for a hard surface crossing place in accordance with the specification may be reduced to the distance between the edge of the carriageway and the back of the footpath alignment;
- Where an existing crossing place is constructed with a compacted rubble or earth surface, the requirement for a hard surface crossing place in accordance with the specification will be enforced where:
 - Council inspection of the crossing place reveals that the condition exceeds the standard maintenance intervention levels for crossing places and exposes a public risk liability for Council and/or the property owner, or
 - The property owner, having been advised of the repairs required has failed to undertake such repairs or has subsequently failed to maintain the crossing place within the maintenance service levels stipulated.

Public Land Encroachment Policy

- It shall be the responsibility of the owner of the adjoining land to arrange for the removal of any redundant crossing places and accept all associated costs;
- Should development require a driveway or service connection to the street, designs will avoid or minimise impacts on existing trees that are to be retained in accordance with Council's Strategic Directions and Council's Tree Management Policy;
- A crossing place shall not be approved or installed within 1 metre or 2.5 times the tree's diameter at breast height (whichever is the greater) of any Council tree, unless essential to provide primary access;
- A crossing place shall not be constructed or installed within 1 metre of a side entry pit; and
- If approval is granted for tree removal to allow a crossing place, Council will recover the cost of tree removal, planting and establishment of a suitable replacement tree from the applicant.

3.8.2 Stormwater Pipes (Connection to Kerb)

Stormwater pipes incorrectly installed across the road verge present a risk to Council and to pedestrians and other road users alike. As such, and as a general rule, Council will seek to ensure the following upon assessment of applications to connect stormwater pipes to the street water table:

- Stormwater shall not be concentrated to discharge from the adjoining property across the surface of a verge, footpath or crossing place;
- The installation of a stormwater pipe shall meet the minimum requirements set out in Councils 'Specification & Procedures for the installation of Stormwater pipes'. This document will be prepared, implemented and maintained to current standards by the relevant staff;
- It shall be the responsibility of the owner of the adjoining land to arrange for the removal of any redundant stormwater pipes and accept all associated costs; and
- Installation or maintenance of underground services beneath established trees will utilise work methods, which minimise root impacts.

3.8.3 Underground Electrical Services

Public Land Encroachment Policy

All new electrical services (from main supply to private property) are to be constructed underground in accordance with Council's Strategic Direction for the Town. This will assist to improve the visual aesthetics of the Town and enhance the development of tree growth over areas that previously may have been restricted due to the presence of overhead telecommunication lines.

The electrical service shall be installed in accordance with relevant engineering and electrical standards, including AS/NZS 3000 – Wiring Rules and SAPN Utilities Service and Installation Rules, and installation or maintenance of underground services beneath established trees will utilise work methods, which minimise root impacts.

3.9 Permits for Type 3 and 4 Alterations / Encroachments

The following considerations will apply to assessment of applications for permits for Type 3 and 4 Alterations/Encroachments:

- Approval will be sought by the applicant from the Department of Transport, Energy and Infrastructure (DTEI) prior to Council issuing any approval for a license on a main road under the authority of DTEI under these classifications. This approval will be sought by the applicant;
- Prior to any approval being granted Council will consider and consult where necessary with any relevant authorities relating to the delivery of services including water, gas, electricity or telecommunication;
- Whether the structure will unduly obstruct the use of the road;
- Whether the structure will unduly interfere with the construction of the road; and
- Whether the structure will have an adverse effect on road safety (and this must be evidenced in the appropriate approval documentation).

In the event that the permit is issued, standard conditions must include at least the following:

- Appropriate indemnity and insurance to protect the interests of Council (usually Council will request the applicant to provide proof of a policy that stipulates a minimum of \$10,000,000 cover for public liability insurance and \$2,000,000 for professional indemnity insurance);
- the structure be maintained to the satisfaction of Council;
- If the fee is not paid or the conditions not met, Council will have the right to cancel the permit; and

Public Land Encroachment Policy

- Removal of the structure be at the applicants cost at the end of the term.

4 Availability of Policy

This Policy will be available for inspection at Council's principal office during ordinary business hours and on Council's website www.walkerville.sa.gov.au

Copies will also be provided to interested members of the community upon request and payment of associated fees in accordance with Council's schedule of fees and charges.

5 Review

This Policy will be reviewed by the Corporation of the Town of Walkerville within 12 months of each Council general election.