

5.3 ADVERTISING OF PROPOSED REVOCATION - LOCAL PLANNING POLICY NO. 7.4.9 - ENCROACHMENTS OVER CROWN LANDS

- Attachments:
1. Local Planning Policy No. 7.4.9 - Encroachments Over Crown Lands
 2. Local Planning Policy No. 7.4.9 - Encroachments Over Crown Lands - Comparison Table

RECOMMENDATION**That Council:**

1. **PREPARES** a notice of revocation of Local Planning Policy No. 7.4.9 – Encroachments Over Crown Lands, included in Attachment 1, for the purpose of community consultation, pursuant to Schedule 2, Part 3, Clause 6(b)(i) of the *Planning and Development (Local Planning Schemes) Regulations 2015*;
2. **AUTHORISES** the Chief Executive Officer to carry out community consultation on the proposed revocation in accordance with Schedule 2, Part 3, Clause 6(b)(ii) of the *Planning and Development (Local Planning Schemes) Regulations 2015*;
3. **PUBLISHES** the notice of revocation in accordance with Schedule 2, Part 3, Clause 6(b)(ii) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, if no submissions are received during the community consultation period; and
4. **NOTES** that if any submissions are received during the community consultation period, that these would be presented to Council for consideration.

PURPOSE OF REPORT:

For Council to consider revoking Local Planning Policy No. 7.4.9 – Encroachments Over Crown Lands, included in **Attachment 1**, for the purpose of undertaking community consultation on the proposed revocation.

BACKGROUND:

[Local Planning Policy No. 7.4.9 – Encroachments Over Crown Lands](#) (Policy) was developed in February 2008 in response to an absence of guidance available at that time in the consideration of development proposed to encroach over Crown land.

Crown land is all land that is not privately owned freehold lots. Crown land includes local government property, public places and thoroughfares such as footpaths and alfresco areas along streets where encroachment is most common.

The Policy was adopted in April 2009.

This is the first review of the Policy.

DETAILS:

The Policy provides guidance and standards at the planning stage on developments proposed to encroach over Crown land.

The City's planning policy framework has developed since the Policy's adoption in 2009. This includes the following policies that are either new or have been reviewed. These policies provide planning guidance and standards for various types of development proposed to encroach over Crown land.

- [Vibrant Public Spaces Policy](#) – street furniture and outdoor eating areas.
- [Policy No. 7.1.1 Built Form](#) – building awnings over footpaths.
- [Local Planning Policy: Signs and Advertising](#) – signage located in public spaces.
- [Local Planning Policy: Planning Exemptions](#) – exempt types of street furniture, outdoor eating areas and signage located in public places.

The City's [Local Government Property Local Law 2021](#) separately provides the regulation, control and management of local government property, thoroughfares and public places within the district. This Local Law was amended in 2021 and replaced the former Local Law from 2008.

The City's policies suitably provide guidance for development over Crown lands, making the Local Planning Policy No. 7.4.9 – Encroachments Over Crown Lands an unnecessary component of the City's planning framework.

Attachment 2 provides a review of the Policy against relevant local planning policies and demonstrates that there would be no impact with the removal of the Policy from the planning framework.

CONSULTATION/ADVERTISING:

Community consultation on the proposed revocation of this Policy would be undertaken in accordance with the City's Community and Stakeholder Engagement Policy.

The notice of revocation would be provided in the following ways, notice:

- published on the City's website;
- published in the local newspapers; and
- exhibited on the notice board at the City's Administration and Library and Local History Centre.

The Policy would be rescinded where no submissions are received.

LEGAL/POLICY:

Section 2.7(2)(b) of the *Local Government Act 1995* provides Council with the power to determine policies.

Schedule 2, Part 3, Clause 6(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015* provides the provisions for the revocation of a local planning policy.

The City's [Policy Development and Review Policy](#) sets out the process for the development and review of the City's policy documents.

RISK MANAGEMENT IMPLICATIONS

Low: It is low risk for Council to undertake community consultation of the proposed revocation of the Policy.

STRATEGIC IMPLICATIONS:

This is in keeping with the City's *Strategic Community Plan 2022-2032*:

Thriving Places

Our town centres and gathering spaces are safe, easy to use and attractive places where pedestrians have priority.

Sensitive Design

Our planning framework supports quality design, sustainable urban built form and is responsive to our community and local context.

SUSTAINABILITY IMPLICATIONS:

This does not contribute to any environmental sustainability outcomes. This action/activity is environmentally neutral.

PUBLIC HEALTH IMPLICATIONS:

This is in keeping with the following priority health outcomes of the City's *Public Health Plan 2020-2025*:

Reduced injuries and a safer community

FINANCIAL/BUDGET IMPLICATIONS:

The advertising of the revocation of the Policy will be met through the City's operating budget.

COMMENTS:

It is no longer necessary to have a local planning policy specific to encroachments over Crown land. This is because the City has developed a more refined and robust suite of policies that adequately provide planning guidance in the consideration of encroachment over Crown land, supplemented by a Local Law.

It is recommended that the Policy is revoked to simplify the local planning policy framework, and that an information sheet is prepared to present the information in a clear and user-friendly format.

CITY OF VINCENT PLANNING AND BUILDING POLICY MANUAL
RESIDENTIAL DEVELOPMENT
POLICY NO: 7.4.9
ENCROACHMENTS OVER CROWN LANDS

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ENCROACHMENTS OVER CROWN LANDS

OBJECTIVES

1. To detail guidelines for developments that encroach over Crown Lands.
2. To provide guidance for applicants and the City's Officers in designing and assessing buildings with structures that may encroach over Crown Lands.
3. To minimize the impact that structures encroaching over Crown Lands have on the public and Crown Land.
4. To ensure that developments that encroach over Crown Lands do not contradict the State Land Service's Policy Customer Information Bulletin No. 6 (November 2008) which requests that Local Governments comply with Planning Bulletin No. 52 and Government Land Bulletin No. 5.

POLICY STATEMENT

1. For the purposes of this Policy Crown Land is defined as:
 - (i) public roads (excluding Primary Regional Roads);
 - (ii) ways vested in the Crown, whether Crown or freehold land;
 - (iii) unmanaged reserves;
 - (iv) managed reserves, where the management body consents to the airspace encroachment;
 - (v) Crown land subject to a tenure, provided the tenure holder consents to the airspace encroachment; and
 - (vi) unallocated Crown land.
2. For the purposes of this Policy an encroachment into Crown airspace is defined as being any part of a building or structure associated with a building that horizontally projects from the building, such as a balcony verandah or lesser intrusion, beyond the lot boundaries over one of the abovementioned parcels of land.
3. The City of Vincent can support minor encroachments into Crown airspace, which are defined as:
 - (i) A building that has string courses, cornices, copings, eaves or window sills that project not more than 230mm into airspace over Crown land; but excluding bay windows at street level forming part of a building under the Strata Titles Act 1985 (see s. 400 (1a) of the Local Government (Miscellaneous Provisions) Act 1960);

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- (ii) Awnings or verandahs, whether supported by posts or otherwise, a minimum of 2.75m above the footpath of a public road, way, other public place or Crown land generally, and providing weather protection to the public using roads beneath, or otherwise; provided the verandah does not form a balcony which increases floor space or is used for commercial purposes (see s.400 (2) (a) of the Local Government (Miscellaneous Provisions) Act 1960);
 - (iii) Plinths, flowerpots, lightfittings, flagpoles, sunscreens (for the purposes of this Policy defined as similar devices/structures as depicted in clause (v) below), and signs; provided such signs are related purely to the building and/or businesses located in that building, and are not of a general advertising nature;
 - (iv) Mouldings and minor ornamental features intruding no more than 12mm at street level; or (for example, where the intruding structure is of an ornamental nature, and does not form a permanent, load-bearing, original part of the relevant building) – such further depth as may be determined by a DLI Regional Manager as appropriate under those particular circumstances (see Reg 33 of the Building Regulations 1989); and
 - (v) Curtains or other similar temporary apparatus designed to provide weather protection to clients using alfresco dining facilities in roads, ways or other public places.
4. Any encroachments into Crown airspace greater than the above will require consent and tenure from the Minister for Lands in accordance with the State Land Services Policies and Bulletins relating to Balconies Over Crown Lands.
5. The City 's Technical Services Department have the discretion to refuse encroachments over Crown Land of which the City has vested care, control and management regardless of whether the encroachment/s comply with the requirements specified in clause 3, as such encroachments may be deemed inappropriate by the City in certain locations.

Local Planning Policy No. 7.4.9: Encroachments Over Crown Lands and the Impact of Policy Revocation

Local Planning Policy 7.4.9 Encroachments Over Crown Lands	Impact of Policy Revocation
<p>1. For the purposes of this Policy Crown Land is defined as:</p> <ul style="list-style-type: none"> (i) public roads (excluding Primary Regional Roads); (ii) ways vested in the Crown, whether Crown or freehold land; (iii) unmanaged reserves; (iv) managed reserves, where the management body consents to the airspace encroachment; (v) Crown land subject to a tenure, provided the tenure holder consents to the airspace encroachment; and (vi) unallocated Crown land. <p>2. For the purposes of this Policy an encroachment into Crown airspace is defined as being any part of a building or structure associated with a building that horizontally projects from the building, such as a balcony verandah or lesser intrusion, beyond the lot boundaries over one of the abovementioned parcels of land.</p>	<p>No impact.</p> <p>The <i>Land Administration Act 1997</i> defines Crown Land.</p> <p>The City's Vibrant Public Spaces Policy also elaborates on this by providing definitions for City owned and managed land relating to City freehold land, Crown reserve and road reserve.</p>
<p>3. The City of Vincent can support minor encroachments into Crown airspace, which are defined as:</p> <ul style="list-style-type: none"> (i) A building that has string courses, cornices, copings, eaves or window sills that project not more than 230mm into airspace over Crown land; but excluding bay 	<p>No impact.</p> <p>The City's existing policies establish acceptable development types and standards for encroaching onto Crown land.</p>

Local Planning Policy No. 7.4.9: Encroachments Over Crown Lands and the Impact of Policy Revocation

Local Planning Policy 7.4.9 Encroachments Over Crown Lands	Impact of Policy Revocation
<p>windows at street level forming part of a building under the Strata Titles Act 1985 (see s. 400 (1a) of the Local Government (Miscellaneous Provisions) Act 1960);</p> <p>(ii) Awnings or verandahs, whether supported by posts or otherwise, a minimum of 2.75m above the footpath of a public road, way, other public place or Crown land generally, and providing weather protection to the public using roads beneath, or otherwise; provided the verandah does not form a balcony which increases floor space or is used for commercial purposes (see s.400 (2) (a) of the Local Government (Miscellaneous Provisions) Act 1960);</p> <p>(iii) Plinths, flowerpots, lightfittings, flagpoles, sunscreens (for the purposes of this Policy defined as similar devices/structures as depicted in clause (v) below), and signs; provided such signs are related purely to the building and/or businesses located in that building, and are not of a general advertising nature;</p> <p>(iv) Mouldings and minor ornamental features intruding no more than 12mm at street level; or (for example, where the intruding structure is of an ornamental nature, and does not form a permanent, loadbearing, original part of the relevant building) – such further depth as may be determined by a DLI Regional Manager as appropriate under those particular circumstances (see Reg 33 of the Building Regulations 1989); and</p> <p>(v) Curtains or other similar temporary apparatus designed to provide weather protection to clients using alfresco dining facilities in roads, ways or other public places.</p>	<p>The following policies of the City prescribe standards to guide development types encroaching onto Crown land:</p> <ol style="list-style-type: none"> 1. Policy No. 7.1.1 Built Form – awnings over the pedestrian footpath. 2. Vibrant Public Spaces Policy – street furniture, affixed eating area furniture, pop-up parklet and pop-up eatlet, and permanent parklet and eatlet. 3. Local Planning Policy: Signs and Advertising – awning and verandah signs, and portable signs. 4. Local Planning Policy: Planning Exemptions – exempts the need to obtain development approval on Crown land for certain signs, street furniture, affixed eating area furniture, pop-up parklet and pop-up eatlet, and permanent parklet and eatlet. <p>Proposed developments that do not meet these standards would be assessed against the objectives of these policies and due regard matters contained in the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>. This is assessment process is required under these Regulations.</p>

Local Planning Policy No. 7.4.9: Encroachments Over Crown Lands and the Impact of Policy Revocation

Local Planning Policy 7.4.9 Encroachments Over Crown Lands	Impact of Policy Revocation
<p>4. Any encroachments into Crown airspace greater than the above will require consent and tenure from the Minister for Lands in accordance with the State Land Services Policies and Bulletins relating to Balconies Over Crown Lands.</p>	<p>No impact.</p> <p>The State Land Services Policies and Bulletins referred to in the Policy no longer exist.</p> <p>Consent for encroachments over Crown lands is not a planning policy matter. This because the City provides consent for encroachments over public places and public thoroughfares that is local government property pursuant to the <i>Local Government Regulations 1996</i>. Consent from the Minister for Lands would be required for other Crown land, pursuant to the <i>Land Administration Act 1997</i>.</p>
<p>5. The City's Technical Services Department have the discretion to refuse encroachments over Crown Land of which the City has vested care, control and management regardless of whether the encroachment/s comply with the requirements specified in clause 3, as such encroachments may be deemed inappropriate by the City in certain locations.</p>	<p>No impact. The provision in the Policy is superfluous, as this power exists under the planning framework.</p> <p>Prescribed standards in the City's existing policies relating to development into Crown land provide acceptable development outcomes, as well as outcomes that would not be supported.</p> <p>The City's existing policies guide the exercise of discretion in decision making. Power exists under the planning framework for the decision maker to refuse proposals.</p>