

## Notice of Meeting:

I hereby give notice that an ordinary Meeting of the Council will be held on:

**Date:** Thursday 18 April 2019  
**Time:** 9.30am  
**Meeting Room:** Council Chamber  
**Venue:** Municipal Building, Garden Place, Hamilton

Richard Briggs  
Chief Executive

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## Council OPEN LATE AGENDA

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### Membership

Chairperson	Mayor A King
Deputy Chairperson	Deputy Mayor M Gallagher
Members	Cr M Bunting
	Cr J R Casson
	Cr S Henry
	Cr D Macpherson
	Cr G Mallett
	Cr A O'Leary
	Cr R Pascoe
	Cr P Southgate
	Cr G Taylor
	Cr L Tooman
	Cr R Hamilton

**Quorum:** A majority of members (including vacancies)

**Meeting Frequency:** Monthly – or as required

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Governance Manager

**16 April 2019**

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# Council Report

Item 16

**Committee:** Council **Date:** 18 April 2019  
**Author:** Robyn Denton **Authoriser:** Eeva-Liisa Wright  
**Position:** Network Operations and Use Manager **Position:** General Manager Infrastructure Operations  
**Report Name:** Request for Encroachment Licence for 103 London Street

<b>Report Status</b>	<i>Open</i>
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## Purpose

1. To inform the Committee on a request for encroachment that has been received for 103 London Street.
2. To recommend to the Council that the request for the additional encroachments not be granted.

## Staff Recommendation

3. That the Council:
  - a) notes that an encroachment policy report will be considered at the 7 May 2019 Growth and Infrastructure Committee;
  - b) notes that an application has been received from Urban Homes for the redevelopment of 103 London Street which staff intend to grant an encroachment/air space licence for the cladding on the existing building footprint; and
  - c) declines the application for additional encroachments (by either a sign or building structure) at 103 London Street.

## Executive Summary

4. The 23 October 2018 Growth and Infrastructure Committee meeting resolved to request staff report back to the Growth and Infrastructure Committee on an Encroachment Policy. This will be reported to the 7 May 2019 Growth and Infrastructure Committee meeting.
5. Encroachment licences enable a party to have exclusive use of an area of public space that would otherwise be able to be used by the public or a utility operator. The encroachment can occur via a structure on, below or above (airspace) the ground.
6. A resource consent received for the redevelopment of the building on the corner of Anglesea Street and London Street (103 London Street) has been received.
7. Staff have indicated to the applicant that an encroachment licence will be granted for the existing encroachment where the cladding of the existing building extends into the road reserve. Granting of the licences is the only pragmatic decision available that would not require major structural changes to the building.

8. An additional two encroachment proposals have been received for the development for this site. Both encroachment proposals are optional and alternatives exist that alleviate the need for an encroachment to occur.
9. The draft principles for the proposed Encroachment Policy have been developed and will be reported to the 7 May 2019 Growth and Infrastructure Committee meeting. These draft principles have been used to form the basis of the staff recommendation for the requested additional encroachment.
10. Staff are recommending that the application for an additional encroachment(s) beyond that of the existing cladding be declined for this site based upon the following principles:
  - The Council will decline all requests for encroachment on public land unless such encroachment provides a benefit to the public for use of the public land;
  - Public space should be provided primarily for community benefit and not for exclusive use by private or commercial users.
11. Staff consider the decision in this report have high significance if the staff recommendation is not accepted and that the recommendations comply with the Council's legal requirements.

## Background

12. The [23 October 2018 Growth and Infrastructure Committee](#) meeting considered an encroachment licence for 2 Anglesea Street.
13. In considering this matter it was noted that requests for encroachment licences were being brought to committee in an ad-hoc manner. There was action noted for staff to consider a policy for future encroachment licences and to provide Committee Members with an overview of previously approved encroachment licences.
14. The meeting also resolved to request staff report back to the Growth and Infrastructure Committee on an Encroachment Policy by March 2019.
15. Encroachment licences enable a party to have exclusive use of an area of public space (either road or stormwater reserve) that would otherwise be able to be used by the public or a utility operator. The encroachment can occur via a structure on, below of above (airspace) the ground.
16. The encroaching structures range from fences, retaining structures, signs, letterboxes and garages through to veranda and architectural features such as building facades and balconies/decks.
17. Utility services such as gas, power, and telecommunications are legally entitled to be placed within the road reserve under the provisions of the Utilities Act 2010.
18. As reported at the February and March 2019 Growth and Infrastructure Committee meetings, there was a delay in the staff report with an agreement to bring it to the 7 May 2019 Growth and Infrastructure Committee meeting instead.
19. Staff will be recommending that an internal management policy be developed for dealing with requests for encroachment licences and the delegation be given to the relevant General Manager to approve these.
20. The management policy would provide a consistent approach for Council to consider any encroachments and ensure that timely decisions are able to be made to minimise delays to the consent process.

21. The following draft principles have been developed for the proposed Encroachment Policy for the General Manager to use when considering applications for encroachment into the road reserve:
- Council will decline all requests for encroachment on public land unless such encroachment provides a benefit to the public for use of the public land.
  - Public space should be provided primarily for community benefit and not for exclusive use by private or commercial users.
  - Encroachments with greater public benefits than detriments should generally be accepted; those with greater public detriments than benefits generally should not.
  - The structure over the road or encroaching should not cause any safety issues to other road or reserve users.
  - People who are materially affected by a proposed encroachment should be consulted and their views considered when decisions are made.
  - Encroachment does not interfere with the maintenance or utility carrying needs of the road reserve.
22. It is intended to seek approval for these principles in the Encroachment Policy report to the 7 May 2019 Growth and Infrastructure Committee meeting.
23. In the absence of an approved Encroachment Policy, requests for encroachment licence are to be considered by Council.

## Discussion

24. An application for resource consent for the upgrade of the building on the corner of Anglesea Street and London Street (103 London Street) was received by Council on 12 February 2019. An earlier application was received for the billboard on 23 November 2018, the initial application did not have the billboard encroaching into the road reserve.
25. At the time of developing the proposed upgrade details, the applicant determined that the cladding of the existing building encroached into the road reserve by varying amounts at ground level and the three levels above.
26. Staff advised the applicant that the Growth and Infrastructure Committee had requested the development of a policy to provide a consistent approach to dealing with encroachments and that this was to be presented to the committee later in 2019.
27. To facilitate the consent proceeding staff advised that, pending the outcome of the policy development, they were happy for the applicant to proceed with the proposal and would grant both an encroachment and airspace licence for the existing encroachment. This advice was on the basis that it was the only pragmatic decision available that would not require major structural changes to the building.
28. Changes to the location of street light columns and veranda's will also be required and are all able to be dealt with through existing, tested processes and will be paid for by the applicant.
29. The pictures below show the existing building and its varying encroachments into the road reserve, along with the proposed upgrade based on the existing shape of the building:

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*Current 103 London Street building on the corner of Anglesea/London corner*

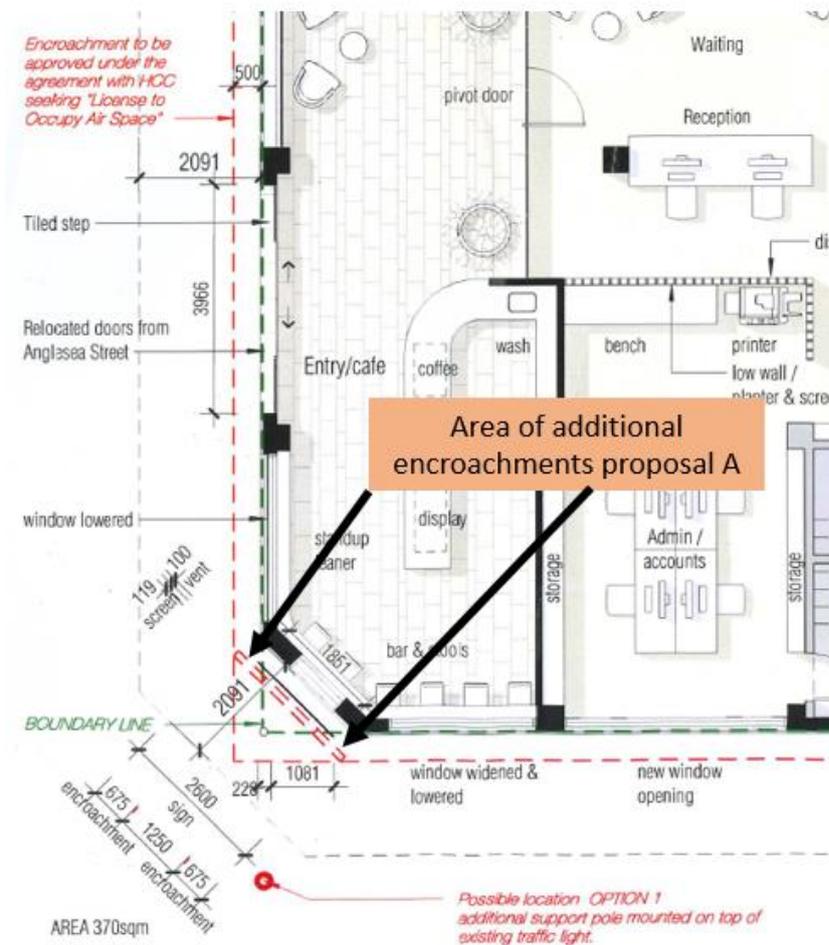


Original proposal for 103 London Street reflecting existing shape on Anglesea/London corner

30. Subsequent discussions with the developer during March 2019 have resulted in requests for approval for further encroachments:
  - Additional Encroachment Proposal A – installation of a digital billboard on the angled face of the building
  - Additional Encroachment Proposal B – installation of a corner for the upper three levels of the building to reflect the legal boundary for the site.
31. **Additional Encroachment Proposal A** results in two encroachments occurring – either side of the proposed sign. This is because the sign proposed covers the full width of the angled section of the building corner on the upper three floors.
32. A picture of the proposed sign and the extent of the two encroachments is shown in the pictures below:



**Additional Encroachment proposal A - digital billboard**



**Areas of encroachment A**

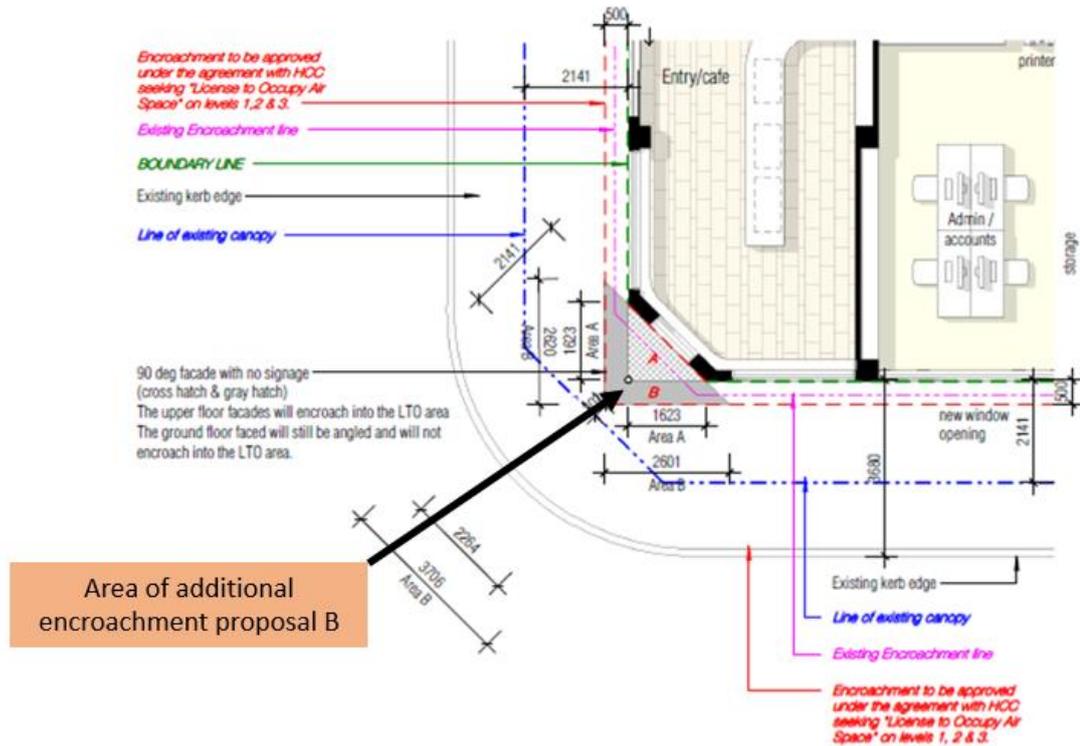
33. The approval of the digital billboard and its operation at this location would be dealt with via the District Plan provisions, and it is only the issue of the encroachment that requires a decision of this Committee.

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- 34. **Additional Encroachment Proposal B** requires approval of an additional encroachment for the upper three levels of the cladding for the new corner. While the building would reflect the legal boundary, to achieve a smooth front surface the additional cladding in that section would have to encroach into the road reserve.
- 35. A picture of the proposed building and the extent of encroachment is shown in the pictures below:



***Additional encroachment proposal B – installation of a corner on the building***



**Proposed area of encroachment proposal B.**

36. The applicant prefers Additional Encroachment Proposal A.
37. In reviewing both Additional Encroachment Proposals staff applied the draft principles of the Encroachment Policy as set out in Paragraph 21.
38. Based on the draft principles of the Encroachment Policy, staff have determined that the encroachment licence for Additional Encroachment Proposal A and Additional Encroachment Proposal B be declined as both require giving up access and use of public land for no public benefit.

**Financial Considerations**

39. The costs associated with preparation and legal services required for the completion of an encroachment licence (or air space lease) are borne by the applicant.

**Legal and Policy Considerations**

40. Staff confirm that the staff recommendation complies with the Council’s legal and policy requirements:
  - Local Government Act 1974
  - Local Government Act 2002
  - Utilities Act 2010

**Cultural Considerations**

41. No cultural assessment has been made for this report on the basis that staff have only recommended approval of the existing encroachments for the buildings cladding.

### **Sustainability Considerations**

42. There are no sustainability considerations associated with this manner.

### **Risks**

43. There are no known risks associated with the staff recommendation for this matter.
44. There is a risk of setting a precedent for future encroachment applications if approval for either of the additional encroachment proposals is made.

### **Significance & Engagement Policy**

#### **Significance**

45. Staff have considered the key consideration under the Significance and Engagement Policy and have assess that the recommendations in this report have a high level of significance.
46. If additional encroachments were to be approved, they would:
- Result in a minor transfer of control over the road reserve,
  - Be difficult/almost impossible to reverse the decision,
  - Set a precedent that is contrary to the proposed principles of the Encroachment Policy

#### **Engagement**

47. Given the low level of significance for the existing encroachment, the engagement level requirements are considered low.
48. No community engagement has been undertaken for either of the additional encroachment proposals, but it is recommended that engagement would be required if either proposal was to be considered for approval.

### **Attachments**

There are no attachments for this report.