



# COUNCIL POLICY

 <p><b>Adelaide Hills</b> COUNCIL</p>	<b>ALTERATION &amp; OCCUPATION OF PUBLIC ROADS</b>
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<b>Policy Number:</b>	INF-06
<b>Responsible Department(s):</b>	Property Services
<b>Other Relevant Policies:</b>	Outdoor Dining, Roadside Trading,
<b>Relevant Procedure(s):</b>	Road Rent Procedure Manual 2005 Alteration of Road Procedure 2021
<b>Relevant Legislation:</b>	Section 221, 222 & 223 – <i>Local Government Act 1999</i>
<b>Policies and Procedures Superseded by this policy on its Adoption:</b>	Road Rents, 24/4/2018, 12.5
<b>Adoption Authority:</b>	Council
<b>Date of Adoption:</b>	22 February 2022
<b>Effective From:</b>	08 March 2022
<b>Minute Reference for Adoption:</b>	Item 12.8, Res 33/22
<b>Next Review:</b>	No later than March 2025 or as required by legislation or changed circumstances

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## Version Control

<b>Version No.</b>	<b>Date of Effect</b>	<b>Description of Change(s)</b>	<b>Approval</b>
1.0	4/12/2007	Initial Policy for adoption	Council - Res B326
2.0	24/4/2018	Policy Review	Council - Res 91/18
3.0	22/02/2022	Policy Review	Council - Res 33/22

## **ALTERATION AND OCCUPATION OF PUBLIC ROADS (Previously Road Rent Policy)**

### **1. INTRODUCTION**

- 1.1. Adelaide Hills Council is responsible for the upkeep and management of the majority of the roads within its council boundaries. Whilst most roads are used by the general public and carry a large amount of traffic daily, there are a number of smaller less used roads that provide access to individual properties, as well as roads that have been planned, with titles created, but have not been built. These roads are referred to as unmade public roads. In addition to these, there are road reserves which generally comprise the area of reserve between the actual sealed roadway and the boundary of properties that adjoin the roadway.
- 1.2. The Council's Property, Biodiversity and Infrastructure and Operations teams issue and administer all road use permits in accordance with Division 6 – Control of work on roads of the Local Government Act 1999.

### **2. OBJECTIVES**

The main purpose of issuing road rent permit is to provide statutory authorisation to property owners allowing them to use council road reserves for private and business uses. The permit provides clear terms and conditions about the type of activity that may occur on specific sections of council road reserves. The permit also requires the holder to obtain adequate Public Liability Insurance for activities undertaken pursuant to the permit.

### **3. DEFINITIONS**

<b><i>Alteration</i></b>	<p>Under Section 221 of the <i>Local Government Act (SA) 1999</i>:</p> <ul style="list-style-type: none"> <li>• altering the construction or arrangement of the road to permit or facilitate access from an adjacent property; or</li> <li>• erecting or installing a structure (including pipes, wires, cables, fixtures, fittings and other objects) in, on, across, under or over the road; or</li> <li>• changing or interfering with the construction, arrangement or materials of the road; or</li> <li>• changing, interfering with or removing a structure (including pipes, wires, cables, fixtures, fittings or other objects) associated with the road; or</li> <li>• planting a tree or other vegetation on the road, interfering with vegetation on the road, or removing vegetation from the road.</li> </ul>
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<b>Term</b>	Permit term may be issued for up to a five (5) year period, in accordance with this Policy.
<b>Non-Exclusive Permit</b>	The permit holder has a right to use the road reserve for specific purpose but the right does not entitle the holder to exclusive use or possession. The permit holder must make adequate provision for other users to have free, safe and unrestricted access over the area to which a permit may pertain. The road reserve may be fenced but must allow for an unlocked gate, and if required by Council, signage to confirm that the land is publicly accessible.
<b>Exclusive Permit</b>	The permit holder has a right to exclusive use of the road or road reserve, but Council and or any other person authorised by or through Council may use or access the road.
<b>Commercial/Special Purpose Permit</b>	This permit is used when a road reserve or part of a road reserve is authorised for one- off special use such as café sidewalk/outdoor seating or commercial uses such as roadside petrol outlet that are not appropriate to issue as either a non-exclusive or exclusive permit.
<b>Road</b>	Under the <i>Local Government Act 1999</i> , means a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicle or pedestrians or both and includes a bridge, viaduct, subway, alley, laneway or walkway.

#### 4. POLICY STATEMENT

Section 221 of the Local Government Act 1999 states that a person must not make an alteration to a public road unless authorised to do so by the Council,

The main purpose of issuing a permit is to provide statutory authorisation to property owners allowing them to use council road reserves for private and business uses. The permit provides clear terms and conditions about the type of activity that may occur on specific sections of unmade roads and road reserves. The permit also requires the holder to obtain adequate Public Liability Insurance for activities undertaken pursuant to the permit.

These permits allow adjoining property owners to make alterations to roads, unmade roads and road reserves for such activities as fencing to enclose stock for grazing purposes, fire hazard reduction, horticultural activities and general use in conjunction with the adjoining property.

#### 5. ROAD ALTERATION EXAMPLES

Below are common alterations to public roads, which require the authorisation of Council, but is not a comprehensive list:

- Construction of a new property access
- Widening a driveway crossover
- Building a second driveway crossover
- Erecting a fence on the verge
- Installing new kerb
- Excavating within the carriageway
- Verge planting
- Indirect water service works
- Installation of advertising signage
- Installation of fixed signage on road reserve
- Installation of fixed bollards/tables or other built structures on the road reserve
- Physical construction of a track/path
- Grazing/fire hazard reduction of unmade public road (UPR)
- Use of public road for parking
- Installation of a mailbox on road reserve
- Temporary installation of skip bin/shipping container/temporary fence on road/road reserve

## 6. TYPES OF PERMITS

There are three types of permits: Non Exclusive, Exclusive, and Special Purpose/Commercial.

### 6.1 **Non Exclusive Permits**

The permit holder has a right to use the road reserve for specific purpose but the right does not entitle the holder to exclusive use or possession. The permit holder must make adequate provision for other users to have free, safe and unrestricted access over the area to which a permit may pertain.

The road reserve may be fenced but must allow for an unlocked gate, and if required by Council, signage to confirm that the land is publicly accessible.

### 6.2 **Exclusive Permits**

The permit holder has a right to exclusive use of the road or road reserve, but Council and or any other person authorised by or through Council may still use or access the road.

### 6.3 **Commercial/Special Purpose Permits**

This permit is used when a road reserve or part of a road reserve is authorised for one-off special use such as café sidewalk/outdoor seating or commercial uses such as roadside petrol outlet that are not appropriate to issue as either a non-exclusive or exclusive permit.

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**7. TERM**

- 7.1 Council issues permits for up to a five (5) year period. Permits will expire at 30 June or upon the change in ownership of the adjoining land holding.
- 7.2 A permit may be cancelled by the permit holder in the nominated year by providing three (3) months written notice to Council.
- 7.3 Requests for longer terms, in line with legislation (up to 42 years) for exclusive or commercial/special purpose permits will be assessed on a case by case basis. These requests will be brought to Council for a resolution prior to the permit being issued.

**8. ANNUAL REVIEW**

- 8.1 Permits are subject to an annual review to determine compliance with the permit.
- 8.2 If the Permit holder is in breach of the terms and condition of the permit, then the Council is entitled to terminate the permit by providing three (3) months written notice to the permit holder.

**9. PUBLIC CONSULTATION****9.1 Non Exclusive Permits**

No consultation is required for Non Exclusive Permits.

**9.2 Exclusive Permits and Commercial/Special Purpose Permits**

In accordance with Section 223(1)(c) of the *Local Government Act 1999* and Section 25(1) of the *Local Government Act (General) Regulations 2013*, public consultation is required only in the event of:

- (a) the permit resulting in any part of a road being fenced, enclosed or partitioned so as to impede the passage of traffic to a material degree; or
- (b) to authorise the use of a road for cultivation purposes when any part of the road is to be fenced.

**10. INSURANCES**

- 10.1 Public Liability insurance must be maintained by the permit holder for an amount not less than \$20,000,000 per event or such other amount as the Council may from time to time require, and

10.2 Permit holders must provide a copy of the certificate of currency for Public Liability Insurance on an annual basis.

10.3 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, charge 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 Permit as determined by the Council.

## **11. EXPIRATION OR TERMINATION OR THE PERMIT**

11.1 At either the expiration or termination of the permit, the Council may require the permit holder to make good the land, or to make good the land or compensate the Council for the cost required to make good the land, i.e. damages to fencing or erosion issues.

11.2 If the permit holder is in breach of the terms and conditions of the permit, then the Council is entitled to terminate the permit by providing written notice to the permit holder.

## **12. SALE/TRANSFER OF ADJOINING LAND**

12.1 Upon the sale of the adjoining land:

12.1.1 Council will reissue the road rent permit in the name of the purchaser of the adjoining land,

12.1.2 If the road rent of that financial year is not adjusted between the Vendor and Purchaser at settlement, the Council will provide a pro-rata refund to the Vendor and will charge the Purchaser with a road rent permit fee on a pro-rata basis for the balance of the financial year.

## **13. MAINTENANCE**

13.1 The permit holder must keep the permit land in a state appropriate for its situation including management of vegetation to reduce fire risk.

13.2 The permit land must be kept free of rubbish. Accumulation of waste on the permit land is prohibited and Council will remove at the permit holder's expense.



**14. FEES**

Permit fees (Road Rents) are reviewed and set annually by Council as at 1 July each year. In the event that a permit commences after 1 July, the annual fee will be adjusted on a pro-rata basis.

Please refer to Council's Fees and Charges Register on the Council's website ([www.ahc.sa.gov.au](http://www.ahc.sa.gov.au)) for permit costs.

**15. NATURAL RESOURCES AND REMNANT VEGETATION**

Remnant vegetation may exist on many road reserves, closed roads and unmade roads. These road areas are often maintained by local bush care groups. In obvious cases where vegetation and understorey exists, grazing and other uses that can damage the environment are not permitted. The Biodiversity Management Team is consulted prior to any permit being granted.

**16. STATUTORY AUTHORITIES AND SERVICES**

Quite often, statutory authorities run electrical, communications, drains and sewers through road reserves. These authorities are protected by statutory easements, which are not generally registered. Care must be taken to protect these authorities' interests and no digging or major alteration is allowed. Furthermore, no construction of structures is allowed on road reserve without the prior consent of Council.

**17. DELEGATION**

17.1 The Chief Executive Officer has the delegation to:

- Approve, amend and review any procedures that shall be consistent with this Policy; and
- Make any legislative, formatting, nomenclature or other minor changes to the Policy during the period of its currency.

**18. AVAILABILITY OF THE POLICY**

This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website [www.ahc.sa.gov.au](http://www.ahc.sa.gov.au).