

ENCROACHMENTS

Policy Type	Council Policy
Responsible Department	Economic Development and Planning
Responsible Officer	General Manager Economic Development and Planning
Legislation	Local Government Act 1999
Relevant Delegations	Refer to Delegations Register
Related Policies and Procedures	Nil
Community Goal	5.3 Good Governance and legislative framework
Date Adopted	C995, 9 December 2013
Last Reviewed	C 35, 27 January 2015
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1. POLICY STATEMENT

For the purpose of the Encroachments Policy, encroachments comprise any structure erected or installed in, on, across, under or over Council land. This includes structures that straddle the title boundary from private land on to public land (including roads and Community Land).

2. PRINCIPLES

In relation to the assessment of encroachments, the Council has two roles: firstly to assess an application as the land owner and secondly, in most cases, as the relevant planning authority.

The Encroachments Policy provides the basis for the Council's assessment and decision making on encroachments as land owner. The Policy sets out both the criteria to guide the assessment and the processes for applying for a permit.

Where an encroachment constitutes development for the purposes of the Development Act, 1993, a development application and assessment will also be required. The development assessment will look more closely at the design, appearance and structural aspects of the encroachment.

3. POLICY OBJECTIVES

Council has obligations under Section 221 of the Local Government Act, 1999 in relation to control of work on roads, and in particular to ensure those works are appropriately authorised.

All permit applications will be assessed on merit. The fact that a proposed encroachment meets the criteria should not lead to an assumption that the encroachment will be approved. The overall impact on the amenity of the area if the permit is approved, and the impact on the proposed development if the permit is refused, will also be considered.

4. DEFINITIONS

4.1 Cornices, sunscreens, hoods and other such projections

- Encroach no more than 1500mm into public space with a width not exceeding beyond 10 metres of site frontage;
- Have a minimum height of 3 metres above the level of the footpath and a minimum clearance of 600mm from the kerb or a minimum height of 5.0 metres above the level of a vehicular carriageway;
- Are not considered to pose a hazard, particularly to pedestrians or other users of public space, for example is not below head height, is not at risk of detaching from the building;
- Are replacing an existing encroachment of the same dimensions;
- Are constructed so as to prevent water dripping or discharging onto Council land;
- Do not preclude street tree planting in a location previously designated for such a purpose;
- Do not narrow the width of a footpath or public space;
- Do not interrupt pedestrian movement or public space; and
- Do not cause any interference to public services.

4.2 Awnings, verandahs, pergolas and freestanding shade structures

- Have a minimum height of 3 metres and not more than 3.7 metres above the level of the footpath measured to the underside of the awning, verandah or pergola, except in the case of retractable awnings which, when fully lowered, shall be at a height above the level of the footpath to provide a clearance of not less than 2.5 metres measured to the lowest part of the awning and a clearance of not less than 3 metres when fully retracted;
- Have a minimum setback of 600mm from the kerb face;
- Not restrict pedestrian access to less than 1.8 m (or greater if in a high pedestrian area) on any side other than that adjacent the kerb (*new*);
- Be constructed so as to prevent water from dripping or discharging onto a footpath;
- Except where existing character precludes it, verandah encroachments should be of the cantilevered type, rather than being a verandah requiring the support of posts or columns. The street number of the relevant property must be displayed on the verandah in a font size and type approved by the permit issuing officer.

4.3 Signs

- Be at a height above the level of the footpath of not less than 2.5 metres for permanent and rigid material advertisements and 2.3 metres for temporary

advertisements made of a flexible or yielding material measured to the lowest part of the sign (*new*); and

- Be located such that no part is set back less than 600mm from the kerb face (*new*).

4.4 Infrastructure

- Cables, communications and other services (*new*);
- Access Pits and Hatches (*new*);
- Electricity Service connections (*new*);
- Mechanical and Plant equipment (*new*);
- Pipes and Services (*new*) and
- Flagpoles (*new*).

4.5 Non-Minor

- Balconies (*new*);
- Freestanding signs (*new*);
- Underground car parking (*new*);
- Fully or predominantly enclosed parts of any building which encroach over public space (e.g. increased leasable floor area at, below or above ground level) (*new*); and
- Enclosed balconies and any structures that exclude access to areas of public space (*new*).

Where a post is erected on Council property, by virtue of an encroachment permit, for the purposes of displaying a sign (or other reasons) Council reserves the right to install its own information signage on these posts. Such information signage may include direction signs for car parking or other relevant community information. Council may also require the street number of the adjacent property to be displayed on the sign or the supporting post in a font size and type approved by the permit issuing officer.

5. REFERENCES

Local Government Act (s221 -225 particularly)
City of Holdfast Bay Policy

6. PROCEDURES

6.1 Where to Apply

All encroachments require a permit unless they are deemed to be minor and excluded from this requirement. Completed applications can be lodged at the Civic Centre.

6.2 How to Apply For a New Permit

The following information is required as part of an application for an Encroachments Permit:

- A completed Application Form;
- A public liability insurance Certificate of Currency to a minimum value of \$20 million;
- A copy of the Title for the subject land that the encroachment will extend from;
- A receipt for payment of application fees in accordance with the Council's Schedule of Fees and Charges; and

- Supporting information including:
- A site plan of existing conditions indicating the relevant property line boundaries;
- A graphic representation to a professional standard of the proposed encroachment, including accurate dimensions (including the proposed height and clearance above or below the footpath or carriageway, if relevant).

6.3 Who Can Apply For a New Permit?

Only the owner, the occupier with the owner's permission, or the applicant with the owner's permission may apply for an Encroachment Permit. Where the property is not Torrens Title, permission of all the relevant parties must be obtained. For example, in the case of a Community Title or Strata Title, a permit will only be issued to the Body Corporate and not the individual. In the case of new residential developments involving balcony encroachments, the developer must be the applicant and the permits will be issued to the developer, and then transferred to the Body Corporate when it is established. A single permit can be issued to cover multiple residential balcony encroachments from the one structure.

6.4 Approval Process

The authority to assess and issue an Encroachment Permit will be delegated to the Chief Executive Officer, who in turn will sub-delegate the responsibility for the assessment of applications for encroachments and the issue of permits. Authority to allow minor variance from the Policy or Operating Guidelines will be delegated to the General Manager, Assets and Infrastructure. For a proposal that exhibits major variations to the Policy and Operating Guidelines, the General Manager may determine that the proposal is sufficiently in accordance with the intent of the Policy and Operating Guidelines to refer it to Council for a decision. Where a Development Approval is also required for an encroachment, the actual Encroachment Permit will not be issued until such Development Approval is granted.

6.5 Is Development Approval Required?

Encroachments generally involve building work, which constitutes 'development' under the Development Act, 1993. As a result, a proposed encroachment will generally require both an Encroachment Permit (under the Local Government Act, 1999) and a Development Approval (under the Development Act, 1999) before construction can commence. 'In principle' support for an Encroachment Permit is a requirement prior to a development application proceeding to assessment. If a development application is received that includes an encroachment that does not have 'in principle' support for an Encroachment Permit, the development application will be considered hypothetical and will be put on hold until an 'in principle' decision on the Encroachment Permit is made. If an Encroachment Permit is refused, the development application should be:

- modified to meet the requirements of the Policy;
- withdrawn; or
- refused on the basis that it does not have approval of the Council in its role as landlord for the elements that encroach.

Once an encroachment has both an Encroachment Permit and Development Approval, these will be issued and construction can commence. Applicants should contact the Development Assessment staff to discuss the requirements for lodging a development application.

6.6 Fees

Fees associated with an Encroachment Permit are detailed and set in the Council's Schedule of Fees and Charges and replicated in the table below, which is reviewed annually. The fees should vary according to the type of encroachment and be set according to the following principles:

- reflecting the extent and impact of the encroachment on public space;
- reflecting the potential for public benefit to be gained from the encroachment; and
- reflecting the potential for private benefit and/or commercial gain, unless of major public benefit.

For all applications there is an application fee of \$50.00 (GST incl). This fee is to cover processing costs of the application and is subject to adjustment with the Adelaide Consumer price Index. If the Encroachment is approved, the following fees apply in relation to the issue of a Permit for the first year.

A Renewal Fee of an existing permit is set at \$100 (GST incl) for all types of encroachments and is subject to adjustment with the Adelaide Consumer price Index.

Type of Encroachment	Initial Fee (All GST incl)
1. Verandah, cornice, awning, hood, sign (non freestanding), pergola, or covered way projecting from <i>non-residential</i> premises and being used directly for any commercial purpose or activity.	15% of the Gross Rental Value of one square metre of the Relevant Adjacent Property multiplied by the area of the verandah, pediment, cornice, awning, hood, sign, pergola, or covered way, expressed in square metres.** <i>Minimum fee: \$150.00 (paid per annum and adjusted with Adelaide Consumer Price Index).</i>
2. Any balcony projecting from <i>non-residential</i> premises and being used directly for any commercial purpose or activity.	20% of the Gross Rental Value of one square metre of the Relevant Adjacent Property multiplied by the area of the balcony, expressed in square metres.* + <i>Minimum fee: \$150.00 (paid per annum and adjusted with Adelaide Consumer Price Index).</i>
3. Verandah, pediment, cornice, awning, hood, sign, pergola, or covered way projecting from <i>residential</i> premises and being used directly for any commercial purpose or activity.	3% of the Gross Rental Value of one square metre of the Relevant Adjacent Property multiplied by the area of the verandah, pediment, cornice, awning, hood, sign, pergola, or covered way, expressed in square metres.* + <i>Minimum fee: \$150.00 (paid per annum and adjusted with Adelaide Consumer Price Index).</i>
4. Any balcony projecting from residential premises (except as in paragraph 5)	A one-off fee to be paid by the developer. The fee will be determined by independent valuation based on the value added to the site by the encroachment. <i>Minimum fee: \$100.00 (adjusted with</i>

Type of Encroachment	Initial Fee (All GST incl)
	<i>Adelaide Consumer Price Index).</i>
5. Any balcony projecting from residential premises and being used directly for any commercial purpose or activity.	3% of the Gross Rental Value of one square metre of the Relevant Adjacent Property multiplied by the area of the balcony, expressed in square metres.* + <i>Minimum fee: \$150.00 (paid per annum and adjusted with Adelaide Consumer Price Index).</i>
6. Any overpass, sky bridge, or other structure, not being a balcony, verandah, pediment, cornice, awning, hood, sign, pergola, or covered way.	20% of the Gross Rental Value of one square metre of the Relevant Adjacent Property multiplied by the area of the overpass, bridge or other structure expressed in square metres.* + <i>Minimum fee: \$150.00 (paid per annum and adjusted with Adelaide Consumer Price Index).</i>
7. Any footing or other structure including any tunnel, duct, underpass, lift or escalator pit, lift or escalator footing or lift overrun.	1% above the annualised last published Consumer Price Index for Adelaide of the value of the area on or under the public street or public place occupied by the encroachment.* + <i>Minimum fee: \$150.00 (paid per annum and adjusted with Adelaide Consumer Price Index).</i>
8. Signs and/or advertisements which are not in the form of an applied finish to the encroachment (i.e. painted or stencilled)	\$200.00 per square metre of total surface area.* <i>Minimum fee: \$200.00 (paid per annum and adjusted with Adelaide Consumer Price Index).</i>

* A fee at 50% of the standard rate described in Parts 1 to 6 above to encroachments applies as follows:

- Where a property is State or local heritage listed (or on an interim/provisional list) as contained in the Unley (City) Development Plan or on the State Heritage Register, or contained as a proposed heritage place within a draft Development Plan Amendment; or
- Where the property owner demonstrates that the encroachment was constructed prior to 1945, and/or contributes to the historic character of the building (as determined by Council's Heritage Advisory Service provider).

+ An additional fee of \$100 per annum is applicable where the encroachment also incorporates signs in the form of applied finishes (i.e. painted or stencilled) which are not limited to the name and/or logo of the business conducted on the site and/or constitutes third part advertising.

6.7 Permit Renewal and Cancellation

An Encroachment Permit is valid for 12 months upon approval unless a longer term is approved by an appropriate delegate, and may be cancelled or amended if:
The owner/occupier fails to comply with the permit conditions (including payment of fees); or

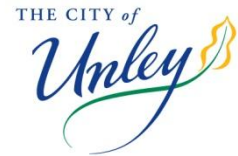
- There are changed conditions affecting the encroachment, such as increased risk to health or safety; or
- Other valid reasons require cancellation, such as streetscape upgrades or refurbishment.

Council will issue annual renewal notices to permit holders. It is the responsibility of the permit holder to ensure the permit is renewed annually, including the payment of fees and the currency of public liability insurance. If a permit lapses or is cancelled (for example due to non-payment of fees), Council should require the land owner to renew the permit or remove the encroachment and reinstate the public realm and any adjacent structure to Council's satisfaction. Council should advise recipients of an Encroachment Permit that it may review the health and safety of the encroachment, its compliance with any conditions and / or request a copy of the owner/occupiers public liability Certificate of Currency at any time.

7. PUBLIC LIABILITY INSURANCE

Permit holders must take out and keep current a public liability insurance policy noting specifically the interest of the Council as an insured party. The policy must insure for the amount of at least twenty million dollars (\$20,000,000), unless otherwise negotiated by Council, and must cover injury, loss or damage to persons or property arising out of the activity carried out under this Permit or the granting of this Permit by the Council. A Certificate of Currency for the policy must accompany the application or the annual renewal of an Encroachment Permit or be presented to Council upon request.

Road Alteration Permit
 Local Government Act 1999
 Section 221



Permit Holder	Name: [Insert Name] Address [Insert Address] [Insert Address]
Permitted Alteration	[Insert Description] <input type="checkbox"/> Plan/s attached
Part of Road to be Altered	The part of the public road named [Insert] within the suburb of [Insert] as shown below/attached: [insert GIS image of road with red box denoting area to be altered]
Granted For	<input type="checkbox"/> Term <input type="checkbox"/> Act <input type="checkbox"/> Occasion [Insert Details]
Fee	\${[Insert Fee]} (GST incl)
Additional Conditions	[Insert Details (if any)]
Authorised by City of Unley	<p>..... Signature of delegate</p> <p>..... Name and Position of delegate</p> <p>..... Date</p>

This permit is subject to the conditions stated on the permit (see reverse/following pages). This permit may be cancelled at any time for breach of condition.

If this permit expires or is cancelled, the Council may remove and dispose of any structure, object or substance erected, placed or installed on the road by virtue of this permit and may recover the costs of undertaking those works from the permit holder.

See Part 2 of Chapter 11 of the *Local Government Act 1999*.

Permit Conditions

1. The rights conferred by this permit do not create or confer upon the permit holder any tenancy, estate or interest in, over or under the road.
2. The permit holder must maintain the permitted alteration in good repair and safe condition at all times while it remains on, over or under the road.
3. The permit holder must ensure that the permitted alteration does not interfere with or cause damage to or affect in any way:
 - 3.1 any adjoining property (except with the consent of the owner and occupier of such);
 - 3.2 any wire, post, cable, pipe or other property or infrastructure belonging to the Council, a service provider (including but not limited to Telstra, SA Water, United Water, Boral, SA Power Networks, Origin Energy Limited or any federal, state or local government department or authority) or any adjoining property owner;
 - 3.3 the use of the road or adjoining area by the public or any person legally entitled to use the road or other adjoining area.
4. If the permit holder causes or contributes to any damage or interference described in clause 3, without limiting the provisions contained in clauses 8-11, the permit holder indemnifies the Council to the full extent permitted by law against any claim made against the Council for such damage or interference and the permit holder must, at the Council's election, make good any damage or reimburse the Council for any cost or expense it incurs in making good the damage.
5. The permit holder must effect and maintain at all times while the permitted alteration remains on, over or under the road, a public risk insurance policy in the amount of **TWENTY MILLION DOLLARS (\$20,000,000.00)** per claim or such other amount as the Council may reasonably require from time to time and such policy must:
 - 5.1 be with an insurer and on terms approved by the Council;
 - 5.2 be in the name of the permit holder and note the interest of the Council;
 - 5.3 have no limit on the number of claims that can be made under it;
 - 5.4 cover events occurring during the policy's currency regardless of when claims are made;
 - 5.5 note that despite any similar policies of the Council, the permit holder's policy will be the primary policy; and
 - 5.6 require the insurer to notify the Council if the policy is varied or allowed to lapse.
6. The permit holder must not undertake the alteration to the road until the permit holder has provided to the Council a copy of the public risk insurance policy specified in clause 5.
7. Evidence of the public risk insurance policy specified in clause 5 must be provided to the Council each time that the policy is required to be, and is, renewed.
8. The permit holder uses and alters the road at its own risk.
9. The permit holder acknowledges that the Council does not warrant that the road will, at any time, be structurally or otherwise suitable for the permitted alteration.
10. The permit holder indemnifies the Council from and against all actions, costs, claims and damages, which may be brought or claimed against the Council or incurred by the Council arising out of or in relation to the granting of this permit and the permitted alteration.
11. The permit holder releases the Council from any liability or claim resulting directly or indirectly from any accident, damage, loss or injury occurring or arising from the permitted alteration, the permit holder's use and alteration of the road or any damage caused to the permitted alteration.
12. The permit holder must remove any structure, object or substance erected, placed or installed under the authorisation of this permit at the expiry or cancellation of the permit.
13. Council may, at the permit holder's cost, do anything which the permit holder should have done under this permit but which the permit holder has not done or which the Council reasonably considers the permit holder has not done properly.