

## ENCROACHMENTS POLICY

<b>Policy Type:</b>	Council
<b>Responsible Department:</b>	City Services
<b>Responsible Officer:</b>	Manager Development & Regulatory
<b>Related Policies and Procedures</b>	<ul style="list-style-type: none"> <li>• Construction of Crossing Places &amp; Stormwater Pipes to Properties</li> <li>• Footpath trading</li> </ul>
<b>Community Plan Link</b>	<p><i>Community Living</i> 1.3 – Our City meets the needs of all generations. 1.5 – Our city is connected and accessible.</p> <p><i>Economic Prosperity</i> 3.1 – Unley is recognised as an easy place to do business. 3.2 – Thriving main streets and other business activities operate across our City.</p> <p><i>Civic Leadership</i> 4.2 – Council provides best value services to the community.</p>
<b>Date Originally Adopted</b>	9 December 2013: C995/13
<b>Last Review Date</b>	26 February 2024
<b>Next Review Date</b>	February 2027
<b>ECM Document No</b>	2133643

### 1. PREAMBLE

- 1.1. In relation to the assessment of encroachments, the Council has two roles:
  - 1.1.1. To assess an application as the land owner; and
  - 1.1.2. As the relevant planning authority.
- 1.2. 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 under Section 221 of the *Local Government Act 1999* (the Act) to alter a public road.
- 1.3. Where an encroachment constitutes development for the purposes of the *Planning, Development and Infrastructure Act 2016* (PDI Act), 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.
- 1.4. Assessment under each process will be separate and distinct where both approvals are required.

1.5. Where an assessment for an encroachment is required under both the PDI Act and Section 221 of the Act, the applicant must obtain “in-principle” support for their works to ensure that there is no conflict in decisions issued by Council under either Act.

## 2. SCOPE

2.1. The policy applies to all applications for building work in, on or under public land.

2.2. This policy is applicable under Section 221 of the Act.

## 3. PURPOSE/OBJECTIVES

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

3.2. All permit applications will be assessed on merit against the criteria set out in the supporting Operating Guideline. 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.

3.3. Encroachments will generally be supported where there is a public good or benefit in doing so. This includes situations where an encroachment will enhance the walkability, safety or built form amenity of the public realm.

## 4. DEFINITIONS

<u>Applicant</u>	Means the person who is responsible for requesting a permit and they must be one of the following: <ul style="list-style-type: none"> <li>a. The owner of the property</li> <li>b. The body corporate of the property</li> <li>c. An occupier or applicant who has obtained the owners consent</li> </ul>
<u>Authorised Person</u>	Means any person delegated by council to determine permit applications in accordance with this Policy
<u>Road</u>	Means a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes— <ul style="list-style-type: none"> <li>(a) a bridge, viaduct or subway; or</li> <li>(b) an alley, laneway or walkway.</li> </ul>
<u>Property</u>	Means the location of the property where the application for a permit relates

## 5. PRINCIPLES

### 5.1. Access

- 5.1.1. Any encroachment must ensure that access for pedestrians or other users are not compromised.
- 5.1.2. Any requirements of the *Disability Discrimination Act 1992* shall not be compromised by any encroachment.

### 5.2. Safety

- 5.2.1. Any encroachment shall be required to be maintained to a suitable standard, such that it does not create a safety hazard to the road users.

### 5.3. Design and Heritage

- 5.3.1. Structures should be of a high quality design and improve the appearance of the public realm. Areas of historic, social and architectural interest, which contribute to the significance, character and appearance of the streetscape, should be conserved.

### 5.4. Alterations to the Council Infrastructure

- 5.4.1. Any application that seeks to alter the existing Council infrastructure shall only be undertaken at the discretion of Council. Assessment of any such application shall be done on a “case by case” basis at the sole discretion of the Council.
- 5.4.2. Any costs associated with changes to Council infrastructure shall be borne by the applicant.

### 5.5. Non-Minor

- 5.5.1. The following structures cannot be considered “minor” for the purposes of this Policy:
  - 5.5.1.1. Balconies (*new*);
  - 5.5.1.2. Freestanding signs (*new*);
  - 5.5.1.3. Underground car parking (*new*);
  - 5.5.1.4. 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
  - 5.5.1.5. Enclosed balconies and any structures that exclude access to areas of public space (*new*).

### 5.6. Council use of Encroachments

- 5.6.1. 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.

## 6. ROLES AND RESPONSIBILITIES

- 6.1. The officers listed below have a primary role in applying the policy:
  - General Manager City Services

- Coordinator, Property & Facilities
- Manager Development and Regulatory

## 7. STATEMENT

### 7.1. Where to Apply

- 7.1.1. All encroachments require a permit unless they are assessed as being excluded from this requirement. Completed applications can be lodged at the Civic Centre.

### 7.2. How to Apply for a New Permit

- 7.2.1. An application for an Encroachment Permit must include a completed application form accompanied by any relevant information specified within the application form.

### 7.3. Who Can Apply for a New Permit

- 7.3.1. Only the owner or body Corporate can be the recipient of a Permit, 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.

### 7.4. Approval Process

- 7.4.1. The authority to assess and issue an Encroachment Permit is delegated to the Chief Executive Officer, who in turn may sub-delegate the responsibility for the assessment of applications for encroachments and the issue of permits. Authority to approve permits that are at minor variance to the Policy or Operating Guidelines is delegated to the General Manager, City Services, or the Manager Development and Regulatory. For a proposal that exhibits major variations to the Policy and Operating Guidelines, the General Manager or 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.

### 7.5. When Development Approval is Required

- 7.5.1. Encroachments generally involve building work, which constitutes 'development' under the *Planning, Development and Infrastructure Act 2016*. As a result, a proposed encroachment will generally require both an Encroachment Permit (under the Act) and a Development Approval (under the *Planning, Development and Infrastructure Act 2016*) 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.

## **7.6. Encroachment Permit Fees**

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

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

## **7.7. Permit Renewal and Cancellation**

7.7.1. An Encroachment Permit is valid for 12 months upon approval unless a longer term is approved, 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.

7.7.2. 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/occupier's public liability Certificate of Currency at any time.

## **7.8. Public Liability Insurance**

7.8.1. 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 and the annual renewal of an Encroachment Permit or be presented to Council upon request.

## **8. DELEGATIONS**

The General Manager City Services or Manager Development and Regulatory is delegated authority to approve Encroachment Permits that are at minor variance with the Policy or Operating Guidelines.

## 9. LEGISLATION

- *Local Government Act 1999*
- *Planning, Development and Infrastructure Act 2016*
- *Disability Discrimination Act 1992*

## 10. AVAILABILITY OF POLICY

**10.1.** The Policy is available for public inspection during normal office hours at:

The Civic Centre,  
181 Unley Road, Unley SA 5061.

A copy may be purchased for a fee as determined annually by Council.

It is also available for viewing, download and printing free of charge from the Council's website [www.unley.sa.gov.au](http://www.unley.sa.gov.au).

## 11. DOCUMENT HISTORY

Date	Version No.	Comment
9 December 2013	C995/13: V1	
27 January 2015	C35/2015: V2	
27 January 2021	C<00>/21: V3	Changes made to reflect minor administrative alterations to document and removal of fees and charges in Policy
26 February 2024	C1224/24	

# Road Alteration Permit

Local Government Act 1999



Section 221

<b>Permit Holder</b>	Name: [Insert Name] Address [Insert Address] [Insert Address]				
<b>Permitted Alteration</b>	[Insert Description]  <div style="text-align: right;"><input type="checkbox"/> Plan/s attached</div>				
<b>Part of Road to be Altered</b>	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]				
<b>Granted For</b>	<input type="checkbox"/> Term <input type="checkbox"/> Act <input type="checkbox"/> Occasion [Insert Details]				
<b>Fee</b>	\$[Insert Fee] (GST incl)				
<b>Additional Conditions</b>	[Insert Details (if any)]				
<b>Authorised by City of Unley</b>	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">                     .....                      Signature of delegate                 </td> <td style="width: 50%; border: none;">                     .....                      .....                 </td> </tr> <tr> <td style="border: none;">                     .....                      Date                 </td> <td style="border: none;">                     Name and Position of delegate                 </td> </tr> </table>	..... Signature of delegate	..... .....	..... Date	Name and Position of delegate
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..... Date	Name and Position of delegate				

**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 permit holder 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.