



COUNCIL POLICY

Encroachments Policy

Approved by: Council – 8 November 1993

Subsequent Amendments:

28/01/97 - Council, notice boards and sign boxes
10/02/97 - Council, for encroaching air conditioners
27/08/07 - City Strategy and Policy Committee - reviewed
11/08/08 – City Strategy and Policy Committee - reviewed

Next Review Date: July 2011

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1. INTRODUCTION

Background

- 1.1 In relation to the assessment of encroachments, Council has two roles: firstly to assess an application as the land owner (under the Local Government Act, 1999) and secondly, in most cases, as the relevant planning authority (under the Development Act, 1993). This Policy and the associated Operating Guidelines provide the basis for the Council's assessment and decision making on encroachments as land owner.
- 1.2 This Policy and the accompanying Operating Guidelines provide criteria for managing the different types of encroachments to ensure that they contribute positively but do not impinge on public safety or amenity. In so doing it seeks to provide a fair and balanced approach to the use of public space.
- 1.3 In those cases where a development application is required, the encroachment permit assessment will provide an initial assessment (as the "threshold" or "in principle" test), while the development assessment will look more closely at the design, appearance, detail and structural aspects of the encroachment.
- 1.4 The Encroachments Policy sits within Council's Policy Framework. It is guided by Council's Strategic Directions, as set out in Council's Strategic Management Plan 2004 – 2007, and the relevant Council Strategies, in particular 'Streets, Squares and Park Lands: Adelaide's Public Realm'.

Council's Strategic Management Plan

- 1.5 Council's Strategic Management Plan 2004 – 2007 sets out Council's vision that: "The City of Adelaide, as the Capital City of South Australia, will be a vibrant and populous central place for work, study, leisure and living invigorating the cultural, commercial, education and community life of the State".
- 1.6 As the Plan states, increasing the number and mix of people in the City is essential to achieving this vision. The Council's Primary Strategy is therefore to: "Increase the number of people living, visiting, working and learning in the City to an optimum sustainable level". To create the conditions for sustainable activity and quality of life, the Council has identified in the Plan a number of principles that the Council will be guided by. Namely, that the City must be:
 - Culturally vibrant;
 - Socially just;
 - Environmentally sustainable;
 - Economically viable;
 - Outward looking.

Streets, Squares and Park Lands: Adelaide's Public Realm

- 1.7 Streets, Squares and Park Lands: Adelaide's Public Realm outlines that good urban design is one means by which Council can consciously improve the quality of the City. This in turn brings economic, environmental, social and functional benefits. The document guides development of the City's public realm. A primary aim is to strengthen the City's unique identity and sense of place by reinforcing and building on its existing urban structure, site and plan.

Achieving a balanced approach

- 1.8 The Local Government Act 1999 provides that a person must not make an alteration to a public place unless authorised to do so by Council.

- 1.9 The Development Act 1993 sets out that a development is only an approved development if a relevant authority has assessed it and granted a consent, where relevant, in relation to a range of matters. These matters specifically include any encroachment of a building over, under, across or on a public place.
- 1.10 Capital Cities make a key contribution to the welfare of the State as a whole. The role they play in attracting both people and investment should be acknowledged through the provision of a city environment which provides a high degree of presentation and amenity based on core values such as inclusiveness, safety, vitality and innovation.
- 1.11 Considerations of encroachments over the public realm need to be balanced between short term and long term gains. In addition, encroachments need to be considered in relation to what benefits they offer to the public.
- 1.12 Encroachments can add visual interest to the streetscape and improve pedestrian amenity by providing shade, shelter and informal surveillance. However, inappropriate encroachments can have the effect of eroding the City's strong visual edge of built form and confusing the boundary between public and private space. Encroachments can also affect pedestrian movement, stormwater drainage and create safety risks.
- 1.13 In order to maintain strong urban form and well defined street edges while allowing some encroachments that offer significant public benefit, it is important that the number and type of encroachments are balanced and controlled.

2. POLICY OBJECTIVE(S)

- 2.1 One of the key urban design elements of Adelaide is the City Plan. Defining features of the original City Plan that should be retained and enhanced to reinforce Adelaide's sense of place include its grid layout, street network, Squares, Park Lands and views and vistas. Council aims to reinforce the special and unique character of Adelaide by maintaining and building on the City's strong built form and street edges.

The objectives of the Policy are to:

- 2.2 Maintain a strong urban form and well defined street edges.
- 2.3 Ensure that all approved encroachments provide a balance of public and private benefits and do not create safety risks.
- 2.4 Provide a framework for the control of encroachments.

3. POLICY STATEMENTS

- 3.1 Encroachments are considered to comprise any structure (including pipes, wires, cables, fixtures, fittings or other objects) erected or installed in, on, across, under or over Council Land;
- 3.2 Council recognises the potential benefits of some encroachments, including:
 - the provision of shade, shelter, informal surveillance and / or services to allow a modern city to function;
 - increasing the visual interest of buildings; and
 - the reinstatement of heritage features
- 3.3 Council recognises the importance of maintaining a strong urban form and well defined street edges based on the legacy of Colonel Light's visionary plan for the City;

- 3.4 Council recognises that public roads, footpaths and spaces are in the public domain and are to be managed for the benefit of all users;
- 3.5 Council supports the provision of a pedestrian-friendly streetscape, sheltered and safe footpaths in the City centre, and high quality, consistent and accessible public space for all users;
- 3.6 Council promotes a high quality urban environment commensurate with 'Capital City' standards and the desired character of a local precinct.
- 3.7 Council will not issue a Certificate of Title for an encroachment.
- 3.8 Council's policy for calculating fees for different types of encroachments is detailed in **Attachment A**.

4. LEGISLATIVE REQUIREMENTS AND CORPORATE POLICY CONTEXT

- 4.1 In adopting this policy, it is recognised that there are specific legislative requirements to be met as well as other corporate goals.
- 4.2 Relevant legislation and statutory documents include:
 - Local Government Act 1999;
 - Development Act 1993;
 - Disability Discrimination Act 1992;
 - Australian Standards;
 - Adelaide (City) Development Plan;
 - Electricity Act and Regulations;
 - Telecommunications Act and Regulations
- 4.3 This Policy and the associated Operating Guidelines are to be implemented in conjunction with other relevant Council Policies, Operating Guidelines and Strategies including:

- Strategic Management Plan;
- Streets, Squares and Park Lands: Adelaide's Public Realm;
- Crime Prevention Through Environmental Design Policy and Operating Guidelines;
- Objects on Public Footpaths Policy and Operating Guidelines;
- Cabling and Communications Policy;
- Outdoor Dining Policy and Operating Guidelines;
- Lighting Policy and Operating Guidelines;
- Public Art Policy;
- Undergrounding Policy (draft);
- City Works Guidelines;
- Urban Elements Design Catalogue.

5. MONITORING AND REVIEW

- 5.1 The performance measures for monitoring the effectiveness of the Encroachments Policy in relation to new encroachments are:
 - (i) The number of new encroachments deemed to be 'minor' in accordance with section 3.1 of the Operating Guidelines.

- (ii) The number of new encroachments that comply with the prescribed requirements of section 3.2 of the Operating Guidelines.
- (iii) The number of encroachments approved as a 'minor variation' under section 4.4 of the Operating Guidelines.
- (iv) The number of encroachments approved as a 'major variation' under section 4.4 of the Operating Guidelines.
- (v) The number of encroachments that were not approved.

The majority of all new encroachments (at least 80%) are expected to be either a 'minor encroachment' or an encroachment that complies with the prescribed standards of the Operating Guidelines (i & ii above). Only a small number of new encroachments (20% or less) are expected to require an approval through the minor or major variation approval process under section 4.4 of the Operating Guidelines (iii & iv above).

- 5.2 Review against these measures as part of a regular monitoring program undertaken at least bi-annually. This will provide two sets of data for the review of this policy in four years time.

**ATTACHMENT A - POLICY FOR CALCULATING ENCROACHMENT FEES
AND WHICH TYPES OF ENCROACHMENT ATTRACT
A FEE**

1. A permit may have such conditions attached thereto including the payment of a fee, as the Council thinks fit.
2. The holder of such permit shall at all times comply with all conditions applying to the encroachment authorised by the permit.
3. Any fee for the permit shall be paid on the issue thereof and shall be calculated at the rate indicated in Schedule 1 hereto for the number of weeks remaining until the 30th day of November next ensuing, and thereafter shall be paid on the 30th day of November in each year at the rate as aforesaid until such time as the encroachment must be removed or the maximum period for which any permit may be issued has expired.
4. If any permit fee is not paid as aforesaid the Council may recover the fee summarily and may cancel the permit.
5. Where a permit is cancelled or expires, the holder of the permit to which the encroachment relates shall undertake that such encroachment shall be removed within twenty eight (28) days and that all affected surfaces shall be made good to the satisfaction of the Corporation unless otherwise approved by Council.

SCHEDULE 1

Encroachment Permit Fees

<u>Column 1</u>	<u>Column 2</u>
<u>Type of Encroachment</u>	<u>Annual Fee</u>
1. Any balcony projecting from non-residential premises and being used directly for any commercial purpose or activity	Subject to the provisos contained in Column 2 (Annual Fee) of Encroachment Type 4, 15 per centum 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. Minimum fee: \$50.00.
2. Any overpass, bridge, or other structure, not being a balcony, verandah, pediment, cornice, awning, hood, sign, pergola, covered way, or structure to which clause 4 of Schedule 1 relates	Subject to the provisos contained in Column 2 (Annual Fee) of Encroachment Type 4, 15 per centum 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 as defined in Column 1 expressed in square metres. Minimum fee: \$50.00

Column 1

Type of Encroachment

3. Any pergola or covered way not being an overpass, bridge, awning or verandah, across or along any public street.

4. Any footing or other structure including any tunnel, duct, underpass, lift of escalator pit, lift or escalator footing or lift overrun.

Column 2

Annual Fee

Subject to the provisos contained in Column 2 (Annual Fee) of Encroachment Type 4, where less than 70% of the frontage or frontages of the buildings to which the care, control and management of the pergola or covered way relates are utilized for retail purposes, 10% of the non-retail Gross Rental Value of one square metre of the Relevant Adjacent Property multiplied by the area of the pergola or covered way expressed in square metres. Minimum fee: \$50.00.

OR

Subject to the provisos contained in Column 2 (Annual Fee) of Encroachment Type 4, where at least 70% of the frontage or frontages of the buildings to which the care, control and management of the pergola or covered way relates are utilized for retail purposes, 3% of the retail Gross Rental Value of one square metre of the Relevant Adjacent Property multiplied by the area of the pergola or covered way expressed in square metres. Minimum fee: \$50.00.

A percentage of the value of the area on or under the public street or public place occupied by the encroachment being 4 per centum above the annualised last published Consumer Price Index for Adelaide all groups as at the time 3 months prior to the due date for payment of the fee PROVIDING THAT any fee calculated on:

- (a) This basis shall be in respect of such part or parts of any encroachment or encroachments which are directly above or below the encroachment to which a fee calculated on this basis applies and so long as any such encroachment or encroachments are under the care, control and management of the same permit holder as the holder of a permit subject to the above fee. Minimum fee: \$50.00

Column 1

Column 2

Type of Encroachment

Annual Fee

- (b) A fee at 50% of the standard rate to encroachments applies as follows:
- (i) Where a property is State or local heritage listed (or on an interim/provisional list) as contained in the Adelaide (City) Development Plan or on the State Heritage Register, or contained as a proposed heritage place within a draft Development Plan Amendment; or
 - (ii) Where the property owner demonstrates that the encroachment was constructed prior to 1945, and/or contributes to the historic character of the building; or
 - (iii) Where the property owner has entered into a Land Management Agreement pursuant to Section 57 of the Development Act 1993 so as to conserve building elements in a manner similar to State or local heritage listing.

A fee of 50% of the standard rate shall NOT apply where plastic blinds are installed on the upper floor balcony. In such a case, the full fee applies.

5. Any verandah, balcony, awning or structure and encroachments other than those described in Column 1 (Types of Encroachment) and numbered 1 to 4 hereof.

Nil.

For the purpose of Schedule 1:-

- (1) "Gross Rental Value" shall mean the gross annual rental that the Relevant Adjacent Property might reasonably be expected to realise if leased upon condition that the landlord were liable for all rates, taxes and other imposts thereon and the insurance and other outgoings necessary to maintain the value of the Relevant Adjacent Property and as used to assess the annual value of one square metre of the Relevant Adjacent Property EITHER as last adopted by a meeting of the Council (but subject to any amendment by way of objection, review or appeal to such annual value), OR where no annual value

was put before and adopted by the meeting of the Council at the time it last adopted the assessment of annual values, then at a gross rental amount which would have been used to determine an annual value for submission to and adoption by the Council at such meeting had the Relevant Adjacent Property been assessed.

2.1 “Relevant Adjacent Property” except in the case of pergolas and covered ways shall mean EITHER the adjacent hereditament or part thereof with which the balcony, bridge, overpass or other structure referred to under Column 1 (Types of Encroachment) numbered 1, 2 and 3 (The Structure) is directly or indirectly connected and which is located on or services the same level of the relevant premises as The Structure OR if The Structure joins two hereditaments the use of which is or are, in the opinion of a licensed valuer employed or engaged by the Corporation, the highest and best of such adjacent hereditaments on such level OR if the Relevant Adjacent Property contains a number of hereditaments at the same level as The Structure, then the average Gross Rental Value of such hereditaments.

2.2 “Relevant Adjacent Property” in the case of pergolas and covered ways shall mean:-

- (a) If such pergola or covered way is connected to only one building or is under the care, control and management of the owner of only one of the buildings providing support for such pergola or covered way, then the Relevant Adjacent Property shall be deemed to be the building providing support for The Structure belonging to the owner under whose care, control and management The Structure resides.
- (b) In all other cases the Relevant Adjacent Property shall be as defined under 2.1. In the case of pergolas and covered ways, the level connected shall be deemed to be the ground floor.
- (3) “Value” of an area for the purposes of paragraph 4 of Schedule 1 shall mean EITHER the site value of that area as most recently determined by the Valuer General OR if such site value is not available to the Corporation, then the site value as determined by a licensed valuer employed or engaged by the Corporation, based on the definition of site value in the Valuation of Land Act or such other legislation as may from time to time apply in accordance with site values prevailing as at the 1st day of July immediately preceding the date upon which the licence fee is due to be paid.

Notwithstanding the foregoing definition contained in this clause (3), such site value shall be modified or determined on the basis that the area encroached upon forms part of the land abutting that area but not part of the relevant public street or public place and as if such abutting land had a single street frontage and a depth of 30 metres from its frontage to the public street or public place encroached upon.



OPERATING GUIDELINES

Encroachments

Approved by: City Strategy and Policy Committee on 27/8/2007

Next Review Date: July 2011

Document Owner

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1 INTRODUCTION

1.1 Scope

For the purpose of the Encroachments Policy and Operating Guidelines, 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).

The Encroachments Policy and these accompanying Operating Guidelines provide criteria for managing the different types of encroachments over public land to ensure that they contribute positively but do not impinge on public safety or amenity. In so doing they seek to provide a fair and balanced approach to the use of public space.

All encroachments will be assessed against the Encroachments Policy and Operating Guidelines.

Outdoor dining (including self-contained dining structures), Objects on Footpaths and Cabling and Communications (including underground cabling) are dealt with in their respective Council Policy and Operating Guidelines documents.

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 and Operating Guidelines provide the basis for the Council's assessment and decision making on encroachments as land owner. These Operating Guidelines set 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.

1.2 Corporate Context

The Encroachments Policy sits within Council's Policy Framework. It is guided by Council's Strategic Directions, as set out in Council's Strategic Management Plan 2004 – 2007, and the relevant Council Strategies, in particular the Urban Design Strategy (Streets, Squares and Park Lands: Adelaide's Public Realm).

Strategic Management Plan

Council's Strategic Management Plan 2004 – 2007 sets out Council's vision that: "The City of Adelaide, as the Capital City of South Australia, will be a vibrant and populous central place for work, study, leisure and living invigorating the cultural, commercial, education and community life of the State".

As the Plan states, increasing the number and mix of people in the City is essential to achieving this vision. The Council's Primary Strategy is therefore to: "Increase the number of people living, visiting, working and learning in the

City to an optimum sustainable level". To create the conditions for sustainable activity and quality of life, the Council has identified in the Plan a number of principles that the Council will be guided by. Namely, that the City must be:

- Culturally vibrant;
- Socially just;
- Environmentally sustainable;
- Economically viable;
- Outward looking.

Streets, Squares and Park Lands

Streets, Squares and Park Lands: Adelaide's Public Realm outlines that good urban design is one means by which Council can consciously improve the quality of the City. This in turn brings economic, environmental, social and functional benefits. The document guides development of the City's public realm. A primary aim is to strengthen the City's unique identity and sense of place by reinforcing and building on its existing urban structure, site and plan.

One of the key urban design elements of the city is the City Plan. Defining features of the original City Plan that should be retained and enhanced to reinforce Adelaide's sense of place include its grid layout, street network, Squares, Park Lands and views and vistas. Council aims to reinforce the special and unique character of Adelaide by maintaining and building on the City's strong built form and street edges.

1.3 Assessment Context

Capital Cities make a key contribution to the welfare of the State as a whole. The role they play in attracting both people and investment should be acknowledged through the provision of a city environment which provides a high degree of presentation and amenity based on core values such as inclusiveness, safety, vitality and innovation.

Considerations of encroachments over the public realm need to be balanced between short term and long term gains. In addition, encroachments need to be considered in relation to what benefits they offer to the public.

Encroachments can add visual interest to the streetscape and individual buildings and improve pedestrian amenity by providing shade, shelter and informal surveillance. However, inappropriate encroachments can have the effect of eroding the City's strong visual edge of built form and confusing the boundary between public and private space. Encroachments can also affect pedestrian movement, stormwater drainage and create safety risks.

In order to maintain strong urban form and well defined street edges while allowing some encroachments that offer significant public benefit, it is important that the number and type of encroachments are balanced and controlled.

1.4 Legislative and Corporate requirements

Any relevant legal requirements, where applicable, will have precedence over these Operating Guidelines.

Relevant legislation includes:

- Local Government Act 1999;
- Development Act 1993;
- Disability Discrimination Act 1992;
- Australian Standards;
- Adelaide (City) Development Plan;
- Electricity Act and Regulations;
- Telecommunications Act and Regulations.

The Encroachments Policy and Operating Guidelines are to be implemented in conjunction with other relevant Council Policies, Operating Guidelines and Strategies including:

- Strategic Management Plan;
- Streets, Squares and Park Lands: Adelaide's Public Realm;
- Crime Prevention Through Environmental Design Policy and Operating Guidelines;
- Objects on Public Footpaths Policy and Operating Guidelines;
- Cabling and Communications Policy;
- Outdoor Dining Policy and Operating Guidelines;
- Lighting Policy and Operating Guidelines;
- Public Art Policy;
- Undergrounding Policy (draft);
- City Works Guidelines;
- Urban Elements Design Catalogue.

2 ADMINISTRATIVE POLICY

2.1 Relevant Policy.

These Operating Guidelines relate to the implementation of Council's Encroachments Policy, adopted by the City Strategy and Policy Committee of Council on 27/8/07.

3 GUIDELINES FOR EFFECTIVE IMPLEMENTATION

No building or structure (including pipes, wires, cables, fixtures, fittings or other objects) shall be erected or installed in, on, across, under or over Council land unless permission has been issued by Council in writing and in accordance with the Local Government Act, 1999 and the Development Act, 1993 and the appropriate conditions determined by Council are complied with.

Unless otherwise permitted by the Council, encroachments shall comply with the following requirements:-

3.1 Minor Encroachments

Encroachments may be deemed to be minor and exempted from the requirement to obtain an encroachment permit if they meet all of the following (where relevant):

- encroach no more than 150mm into public space and have a combined lateral width not exceeding 300mm for each 20 metres of site frontage;
- do not encroach into public space between ground / footpath level and 1.0m above ground / footpath level;
- do not narrow the width of a footpath or public space to (or that is already) less than 1.8 metres wide;
- do not encroach over a vehicular carriageway and have a minimum setback of 600mm from the kerb face;
- are not considered to pose a hazard, particularly to pedestrians or other users of public space, for example is not below hip height or between shoulder and head height, is not at risk of detaching from the building;
- cannot be incorporated within the private property boundary;
- are designed to limit the extent of the encroachment;
- do not interrupt pedestrian movement or public space;
- are constructed so as to prevent water dripping or discharging onto Council land;
- do not cause any interference to public services;
- are constructed in accordance with the requirements of the Building Code of Australia; and
- Council has not deemed that an encroachment permit is required for any other reason.

Examples of encroachments that may be deemed to be minor include projections of a decorative nature (such as cornices, eaves, sills, mullions and architraves), pipes and services on existing buildings where they cannot be incorporated within the property boundary, butt-out bins and 'Electricity Service Connections' to private properties that are located under footpaths (refer section 3.2.2).

Encroachments that do not meet the above criteria require an Encroachment Permit.

3.2 Above Ground Encroachments

3.2.1 Building Floor Area

No fully or predominantly enclosed part of any building may encroach over public space.

Examples of enclosed floor space include leasable floor area (at or above ground level), enclosed balconies and any structures that exclude access to areas of public space (e.g. large load bearing pillars or columns).

3.2.2 Cornices, sunscreens and hoods

Cornices, sunscreens, hoods and other such projections should:

- 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;
- have a maximum projection of 1.2 metres over a public space which exceeds 10 metres in width and a maximum of 600mm over a public space which is 10 metres or less in width;
- be constructed so as to prevent water from dripping or discharging onto a footpath; and
- be constructed in accordance with the requirements of the Building Code of Australia.

Refer to Figure 1 below for a sunshade example.

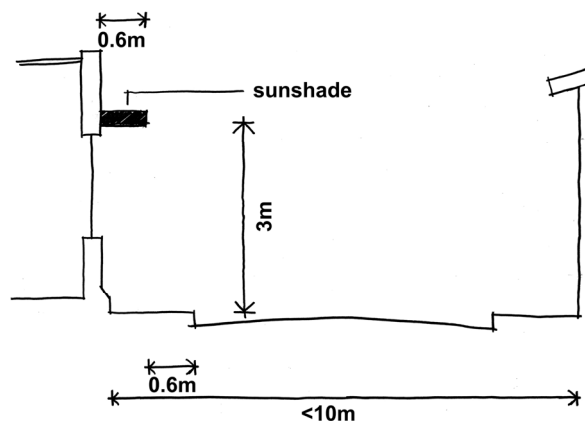


Figure 1: Sunscreen

3.2.3 Balconies

Balconies should:

- have a minimum setback of 600mm from the kerb face;
- have a minimum height of 3 metres above the level of a footpath;

- be designed to give shelter to the footpath or public space at ground floor level;
- have a total length of less than 30 percent of the building façade width at any one level above ground level;
- have at least 50 percent of all the balcony floor area behind the property boundary line above ground level;
- be predominantly transparent or visually permeable;
- not be enclosed;
- not incorporate the use of PVC blinds (as these are not considered to meet the transparency or enclosure requirements above);
- not restrict pedestrian access (for example by posts) to less than 1.8 m wide (or greater if in a high pedestrian area) on any side other than that adjacent the kerb;
- be constructed so as to prevent water from dripping or discharging onto a footpath;
- incorporate and operate lighting underneath the canopy at ground level for all balconies in Rundle Mall to illuminate the footpath to Council standards (as set out in Council's Lighting Policy and Operating Guidelines); and
- incorporate and operate lighting underneath the canopy at ground level for balconies where they will block street lighting in other locations, particularly in main streets and key after hours pedestrian and public transport routes, to illuminate the public footpath to Council standards (as set out in Council's Lighting Policy and Operating Guidelines).

Refer to Figure 2 below for an example.

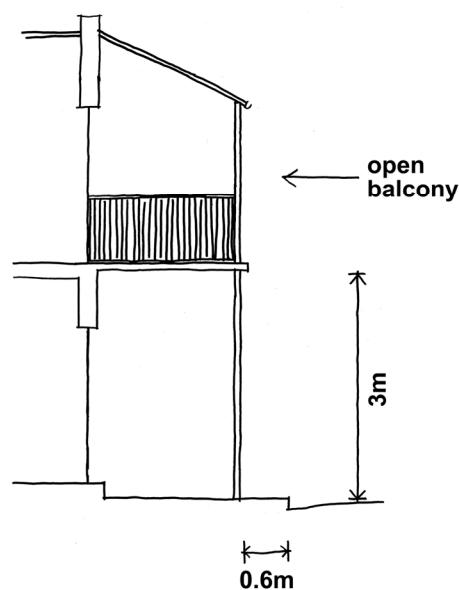


Figure 2: Balcony

3.2.4 Awnings, verandahs, pergolas and freestanding shade structures

Awnings, verandahs and pergolas should:

- 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;
- be constructed so as to prevent water from dripping or discharging onto a footpath;
- incorporate and operate lighting (on an all night basis) underneath the canopy at ground level for all verandahs and awnings in Rundle Mall to illuminate the footpath to Council standards (as set out in Council's Lighting Policy and Operating Guidelines); and
- incorporate and operate lighting underneath the canopy at ground level for verandahs and awnings where they will block street lighting in other locations, particularly in main streets and key after hours pedestrian and public transport routes, to illuminate the public footpath to Council standards (as set out in Council's Lighting Policy and Operating Guidelines).

Freestanding shade structures are only permitted where they provide shade for pedestrians or in accordance with the Outdoor Dining Policy and Operating Guidelines.

Refer to Figures 3 and 4 below for a verandah and retractable awning example respectively.

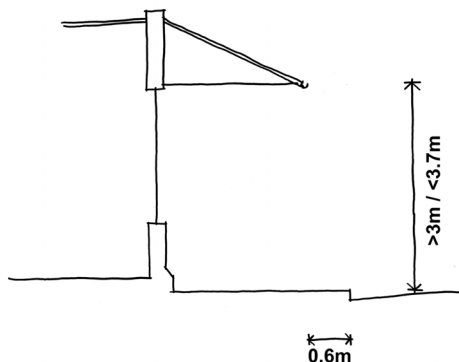


Figure 3: Verandah

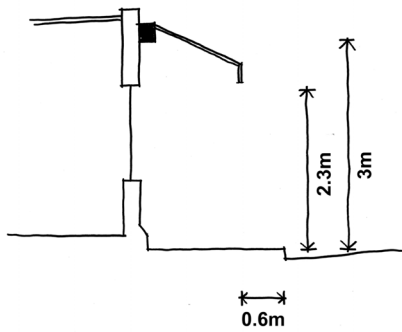


Figure 4: Retractable Awning

3.2.5 Flagpoles

Flagpoles should:

- have a minimum height of 3 metres above the level of the footpath, with flags having a minimum clearance of 2.3 metres, or have a total minimum clearance of 5.0 metres above the level of a vehicular carriageway; and
- have a minimum setback of 600mm from the face of the kerb.

Refer to Figure 5 below for an example.

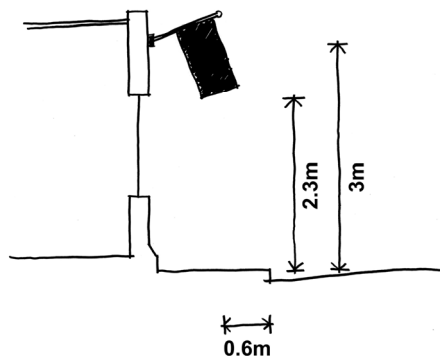


Figure 5: Flagpole

Banners and other related promotional flags proposed for display outside a property are addressed in the Objects on Footpaths Policy and Operating Guidelines and through the process of the Development Act, 1993.

3.2.6 Pipes and Services

Pipes and services for new buildings must be incorporated within the building line and should not encroach.

Pipes and services for existing buildings should be incorporated within the building line and not encroach wherever possible. Where it can be demonstrated that there is no viable alternative and the service is a necessary one, the pipe or service must meet the criteria outlined under 'Minor Encroachments'.

3.2.7 Advertisements / signs

Advertisements and signs should:

- 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;
- be located such that no part is set back less than 600mm from the kerb face; and

Advertisements and signs must also comply with the requirements of the Elevated Intrusions section of the Objects on Footpaths Policy and Operating Guidelines and through the process of the Development Act, 1993.

Refer to Figure 6 below for an example.

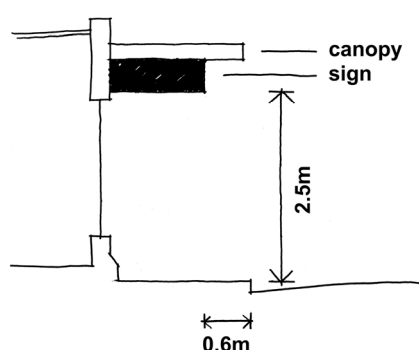


Figure 6: Sign

3.2.8 Mechanical and plant equipment

Mechanical and plant equipment may not encroach over public space.

Mechanical and plant equipment includes air conditioning units, ladders, electrical plant equipment etc.

In particular, individual evaporative air conditioning units should not encroach as they pose a potential hazard may result in dripping in to the public space and negatively impact on the amenity of public space.

3.2.9 Bridges and Overpasses

Bridges and overpasses are strongly discouraged because they comprise privatisation of public space, weaken the boundaries between the public and private realm, interrupt views / vistas, take people off the street and weaken the strength of Adelaide's grid layout.

They will only be considered in exceptional circumstances, such as where:

- there is a requirement for pedestrian access between two adjacent buildings above ground;
- there is no viable alternative, such as via street level;

- there is no loss of a view or vista; and
- there is no unreasonable impact on sunlight access to that street.

Where such exceptional circumstances exist the bridge or overpass should:

- have a minimum height of 3 metres above the level of the footpath and 5.0 metres above the level of the vehicular carriageway measured to the underside of the bridge or overpass;
- be constructed so as to drain water to a legal point of discharge;
- have walls / balustrades that are constructed of transparent materials to maintain views through the structure and that are of at least 1.6 metres height for safety;
- only be used for pedestrian movement;
- not result in a significant loss of pedestrian activity at street level;
- not incorporate any form of advertising visible from the street; and
- not exceed 6 metres in width.

3.2.10 Any other above ground encroachments

Any other above ground encroachments will be assessed against the criteria for 'Minor Encroachments' and other parts of the Policy and Operating Guidelines considered relevant.

3.3 Below Ground Encroachments

Below ground encroachments should not impact on street trees or services.

3.3.1 Tunnels / underpasses

Tunnels and underpasses are discouraged, particularly where they take people and activity off the streets, however, they are preferable to bridges and overpasses.

Tunnels and underpasses shall be subject to individual technical assessment by the General Manager, City Places & Projects and shall require consideration by Council.

3.3.2 Electricity service connections

Underground electricity service connections to private properties shall be subject to individual technical assessment and at the discretion of the General Manager, City Places & Projects.

An underground electricity service connection installed in the footpath from an ETSA service point to a private property for the purpose of providing electricity supply is in general considered to be a minor encroachment. However, the works are to comply with Council standards/ guidelines and each installation will require separate Council approval.

3.3.3 Cables, communications and other services

Cables, communications and other services to be installed shall be subject to individual technical assessment and at the discretion of the General Manager, City Places & Projects.

Private use of Council conduit and infrastructure is to be in accordance with Council's Cabling and Communications Policy.

3.3.4 Access pits / hatches

Access pits shall be subject to individual assessment and at the discretion of the General Manager, City Places & Projects.

3.3.5 Underground car parking

Underground car parking shall be subject to individual technical assessment and at the discretion of the General Manager, City Places & Projects.

3.3.6 Footings and piling

Footings and piling should be catered for on site wherever possible. Where it can be demonstrated that the encroachment is necessary and there is not a viable alternative and the encroachment is considered reasonable, it should:

- be at a depth of not less than 1 metre below the level of the footpath or carriageway;
- not encroach more than 300mm onto a public street or public place when less than 4 metres below the level of the footpath or carriageway; and
- not encroach more than 1.2 metres onto a public street or public place when 4 metres or more below the level of the footpath or carriageway.

4 PROCEDURES FOR EFFECTIVE IMPLEMENTATION

4.1 Where to Apply

All encroachments require a permit unless they are deemed to be minor and excluded from this requirement.

A Permit application form is available from Council's Customer Centre, 25 Pirie Street, Adelaide SA 5000 or can be downloaded from Council's website (www.adelaidecitycouncil.com)

Completed applications can be lodged at the Customer Centre.

4.2 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).

4.3 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.

4.4 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. A City Works permit can only be granted by the Team Leader, Approvals for applications that comply with the Encroachments Policy and Operating Guidelines.

Authority to allow minor variance from the Policy or Operating Guidelines will be delegated to the General Manager, City Places and Projects.

For a proposal that exhibits major variations to the Policy and Operating Guidelines, in exceptional circumstances, the General Manager, City Places and Projects (following input from the City Strategy and City Services Divisions) may determine that the proposal is sufficiently in accordance with the intent of the Policy and Operating Guidelines to refer it to Council or a Committee of Council for a decision.

In the case of horizontal kerb clearances and vertical carriageway clearances, installation of private underground ducts and cables for electricity and telecommunications or the leasing of Council ducts for private use or to licensed telecommunications carriers must only be with the approval of the Manager, Engineering and Environmental Services.

Where a Development Approval is also required for an encroachment, the actual Encroachment Permit will not be issued until such Development Approval is granted.

4.5 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 and Operating Guidelines;
- 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 Business Unit to discuss the requirements for lodging a development application.

4.6 Permit Fees

Fees associated with an Encroachment Permit are detailed and set in Council's Schedule of Fees and Charges, 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.

4.7 Alterations to an existing permit

Minor changes to an Encroachment Permit may be added to the existing permit. Significant changes will require a new permit application.

A development application will also be required to amend an existing Development Authorisation. As per the process outlined above, an Encroachment Permit or 'in principle' support for the Permit is a pre-requisite for a development application to proceed.

Once the proposed change has both an Encroachment Permit and Development Approval, these will be issued and the development can proceed once the relevant conditions are met.

To apply for alterations, the applicant should initially submit the following information to the Customer Centre:

- A written statement outlining the address, current permit number and the proposed changes ('before' and 'after');
- A plan indicating the location of the existing encroachment; and
- A plan indicating the proposed encroachment.

4.8 Permit Renewal and Cancellation

An Encroachment Permit is valid for 12 months upon approval, 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.

4.9 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.

4.10 Policy Phasing In Period

The Encroachment Policy takes effect from the date of endorsement by Council as stated on the Policy document cover.

All applications for an Encroachment Permit received after that date will be assessed against the Policy and Operating Guidelines.

A review of existing encroachments will also be undertaken. Existing encroachments without a Permit will be required to apply for a Permit. With the exception of those that are considered dangerous and/or hazardous, land

owners will have a reasonable period to apply for a Permit and a set period from a decision on the application to meet the Permit conditions or remove the encroachment to Council's satisfaction. Existing encroachments sought to be regularised through issuing of a valid Encroachments Permit (and any seeking Development Approval) will not be charged retrospective fees.

Encroachments approved under the previous (1993) policy will be allowed to remain provided the Permit holder continues to meet the conditions of the Permit. If the previously approved encroachment is removed however, any new encroachment installed in its place would have to meet the requirements of the new policy.

4.11 Contacts in Adelaide City Council

Adelaide City Council Customer Service Centre 25 Pirie Street, Adelaide	Ph (08) 8203 7203
Customer Service Business Unit (Approvals)	Ph (08) 8203 7358
Development Assessment Business Unit (Development applications)	Ph (08) 8203 7185
Engineering and Environmental Services (technical assessment of cables & communications)	Ph (08) 8203 7819

5 ROLES AND RESPONSIBILITIES

5.1 Policy

The City Strategy Division of Council (Development Policy Unit) is responsible for development and review of the Encroachments Policy and Operating Guidelines.

5.2 Permit Assessment and Issue

The City Services Division of Council (Approvals Team) is responsible for permit assessment and issue under the Local Government Act, 1999.

5.3 Encroachment Consent Assessment and Issue

The City Strategy Division of Council (Development Assessment Unit) is responsible for the assessment and issue of consents under the Development Act, 1993.

5.4 Technical Assessment

The City Assets Division of Council (Engineering and Environmental Services) is responsible for all technical assessments of underground electricity service connections, cables and communications.

5.5 Fees

The City Services Division of Council (Approvals Team) is responsible for administration of annual fees.

5.6 Enforcement

The City Services Division (Regulatory Services Business Unit) of Council is responsible for enforcement of this policy and permit conditions.

5.7 Monitoring

The City Services Division (Approvals Team and Regulatory Services Business Unit) of Council is responsible for maintaining and reporting on data in relation to the performance measures.

6 MONITORING AND REVIEW

6.1 Indicators of effectiveness

The performance measures for monitoring the effectiveness of the Encroachments Policy and Operating Guidelines in relation to new encroachments are:

- (i) The number of new encroachments deemed to be 'minor' in accordance with section 3.1 of the Operating Guidelines.
- (ii) The number of new encroachments that comply with the prescribed requirements of section 3.2 of the Operating Guidelines.
- (iii) The number of encroachments approved as a 'minor variation' under section 4.4 of the Operating Guidelines.
- (iv) The number of encroachments approved as a 'major variation' under section 4.4 of the Operating Guidelines.
- (v) The number of encroachments that were not approved.

The majority of all new encroachments (at least 80%) are expected to be either a 'minor encroachment' or an encroachment that complies with the prescribed standards of the Operating Guidelines (i & ii above). Only a small number of new encroachments (20% or less) are expected to require an approval under section 4.4 of the Operating Guidelines (iii & iv above).

6.2 Procedures / timelines for review

Review against these measures as part of a regular monitoring program undertaken at least bi-annually. This will provide two sets of data for the review of this policy in four years time.

ATTACHMENT 1: IMPLEMENTATION PLAN FOR ENCROACHMENTS POLICY & OPERATING GUIDELINES

The overall program for implementing the Encroachments Policy and Operating Guidelines is:

Actions	Responsibilities	Completion Date
Adopt the Encroachment Policy	Council	August 2007
Training for Council staff (Development Assessment, Approvals, Regulatory Services, Customer Service Centre)	Development Policy	September 2007
Release Policy and Operating Guidelines on Council's website	IT Web Author	August 2007
Communicate the release of the Policy and Operating Guidelines; including by letter to key stakeholders (e.g. Property Council, RAIA etc), by media release and by a summary brochure for the public	Development Policy; and Strategic Communications	September 2007
Assess, issue and collect fees for Encroachment Permits	Approvals	From September 2007
Assess and issue Encroachment Consents	Development Assessment	From September 2007
Implement Compliance Plan	Regulatory Services	June 2008
Develop, maintain and report on monitoring of encroachments performance measures	Approvals / Regulatory Services	From September 2007. Report at least every 2 years.

A7TTACHMENT 2: PROCEDURES

The following standard operating procedures relate to the assessment of encroachment permit applications.

1. **APPLICATION** – an application for an Encroachments Permit is received (if a development application is lodged prior to an Encroachment Permit application, the encroachment should be identified during the initial planning assessment and the application referred to Approvals);
2. **PRELIMINARY ASSESSMENT** – the application is assessed to determine whether the encroachment proposal is in accordance with the Encroachments Policy and Operating Guidelines and whether a permit should be issued. ‘In principle’ approval or refusal of an Encroachment Permit is indicated to the applicant and Development Assessment;
3. **DEVELOPMENT ASSESSMENT** – the development application is assessed against the Adelaide (City) Development Plan and a decision made in relation to whether all of the relevant consents can be granted (including Provisional Development Plan Consent, Encroachment Consent, Building Rules Consent and Development Approval);
4. **PERMIT ISSUE** – if an Encroachments Permit can still be supported, the Permit (including conditions and fees) is generated and then issued with the Development Approval;
5. **ENFORCEMENT** – ensuring that all encroachments have the necessary permit, and that the encroachment is maintained in accordance with the permit conditions;
6. **MAINTENANCE** – administration of renewal of, changes in, or cancellation of permits and collection of annual fees.