

Trim Container	FOL/17/1000
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1. PREAMBLE

This policy provides a set of principles to be used when Council considers whether it will permit activity to occur on land over which it has responsibility.

1.1 Background

The use of public footpaths and the like for urban activities including for the purposes of outdoor dining, cafes, retailing has become increasingly popular in the City of Holdfast Bay. From time to time structures built on private land need to encroach on public land. In recognition of these events, Council has adopted a policy according to which it will assess and consider the use of public land for these activities. Councils have the authority under Sections 202 and 221 of the *Local Government Act 1999* to seek a permit and associated fee for any structure located over, under or across public land.

1.2 Purpose

The Encroachments Policy provides 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 doing the Policy seeks to provide a fair and balanced approach to the use of public space.

1.3 Scope

The policy covers 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 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.

1.4 Definitions

Encroachment – means 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).

1.5 Strategic Reference

Placemaking: Creating vibrant and safe places

ENCROACHMENTS – SECTION 202 & 221 LOCAL GOVERNMENT ACT 1999

Culture: Supporting excellent, efficient operations

2. PRINCIPLES

2.1 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.
- Do not narrow the width of a footpath or public space
- Do not preclude street tree planting in a location previously designated for such a purpose
- 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
- Do not interrupt pedestrian movement or public space
- Are constructed so as to prevent water dripping or discharging onto Council land and
- Do not cause any interference to public services

2.2 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 1.8m (or greater if in a high pedestrian area) on any side other than that adjacent to the kerb; and
- be constructed so as to prevent water from dripping or discharging onto a footpath

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

2.4 Sundry and Minor

- Applied finishes (i.e. painted or stencilled) no more than 50mm onto the surface of the public space.

ENCROACHMENTS – SECTION 202 & 221 LOCAL GOVERNMENT ACT 1999

2.5 Infrastructure

- cables, communications and other services
- access pits and hatches
- electricity service connections
- mechanical and plant equipment
- pipes and services
- flagpoles.

2.6 Non-Minor

- balconies
- freestanding signs
- underground car parking
- 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) and
- enclosed balconies and any structures that exclude access to areas of public space.

2.7 Development Approval

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 1993) 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' decision on the Encroachment Permit is made. If an Encroachment Permit is refused, the development application will be:

- modified to meet the requirements of the Policy
- withdrawn
- 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 a Development Approval, these will be issued and construction can commence. Applicants should contact Development Assessment Unit to discuss the requirements for lodging a development application.

ENCROACHMENTS – SECTION 202 & 221 LOCAL GOVERNMENT ACT 1999

2.8 Fees

Fees associated with an Encroachment Permit are detailed and set in the Council's schedule of Fees and Charges. The fees will 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 a major public benefit.

2.9 Permit Renewal and Cancellation

2.9.1 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 and safety; or
- other valid reasons require cancellation, such as streetscape upgrades or refurbishment

2.9.2 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.

2.9.3 If a permit lapses or is cancelled (for example due to non-payment of fees), Council will 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.

2.9.4 Council will 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.

2.10 Public Liability Insurance

2.10.1 Permit holders must take out and keep current a public liability insurance policy noting specifically the interest of the Council as an insured party.

2.10.2 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 granting of the Permit by the Council.

ENCROACHMENTS – SECTION 202 & 221 LOCAL GOVERNMENT ACT 1999

- 2.10.3 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.

3. REFERENCES

3.1 Legislation

- *Local Government Act 1999*
- *Development Act 1993*

3.2 Other References

Nil