

ENCROACHMENT PERMIT

Section 221, Local Government Act, 1990

APPLICATION FORM

For a permit for an encroachment over, under or on a public street or public place

Applicant's Name: _____

Applicant's Address: _____

Address for which encroachment permit is sought: _____

Type of encroachment – tick one type

Verandah

Balcony (non-commercial)

Awning

Sign

Pergola

Covered way

Balcony (commercial)

Footing

Other (describe)

APPLICATION FEE – TYPE 1:

\$150.00

APPLICATION FEE – TYPE 2:

TO BE ADVISED

Applicant's signature: _____

Date: _____

OFFICE USE

- Permit No:

ENC /

Development Application No: 110/

1. INTRODUCTION

1.1 Scope

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).

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.

1.2 Corporate Context

The Encroachment Policy is guided by the pillars in council's 'Our Place 2030 Strategic Plan', including Placemaking: Creating vibrant and safe places and Culture: Supporting excellent, efficient operations.

2. CATEGORIES OF ENCROACHMENT

2.1 Cornices, sunscreens, hoods and other such projections

- Encroach no more than 1,500mm into public space with a width not exceeding beyond ten (10) metres of site frontage;
- Have a minimum height of three (3) metres above the level of the footpath and a minimum clearance of 600mm from the kerb or a minimum height of five (5.0) metres above the level of a vehicular carriageway;
- Do not narrow the width of a footpath or public space or obstruct pedestrian movement;
- 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;
- 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 three (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 three (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 the kerb (*new*); 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 (*new*); and
- Be located such that no part is set back less than 600mm from the kerb face (*new*).

2.4 Sundry and Minor

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

2.5 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*).

Note: Council is the relevant decision making authority for all other encroachments which fall outside the abovementioned criteria, including all encroachments which fall within the following category:

2.6 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*).

3 IMPLEMENTATION

3.1 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 Civic Centre, 24 Jetty Road, Brighton or can be downloaded from Council's website (www.holdfast.sa.gov.au). Completed applications can be lodged at the Civic Centre.

3.2 How to Apply for a New Permit

The following information is required as part of an application for an Encroachment 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).

3.3 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.

3.4 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 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.

3.5 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 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 Business Unit to discuss the requirements for lodging a development application.

4. 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.

Type of Encroachment	Annual Fee
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>

Type of Encroachment	Annual Fee
3. Verandah, pediment, cornice, awning, hood, sign, pergola, or covered way projecting from 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 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>
5. 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>
6. Any footing or other structure including any tunnel, duct, underpass, lift of 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>
7. 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 Holdfast Bay (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 \$100.00 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.

5. 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 may review the health and safety to the encroachment, its compliance with any conditions and/or request a copy of the owner/occupiers public liability Certificate of Currency at any time.

6. 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.

Further Information:

Contact the Development Services Unit on

Telephone: 8229 9999

Fax: 8298 4561

Email: mail@holdfast.sa.gov.au