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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 or retailing has become increasingly popular in the City of Holdfast Bay. There are also circumstances where structures built primarily on private land need to encroach on public land, protruding into the air space located above otherwise public land, but not necessarily occupying physical space at ground level. 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**

This 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 use, safety or amenity. In doing so, this 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, including the air space above land in the ownership of Council. This includes structures that straddle the title boundary, whether in the form of a cantilevered protuberance or as a grounded structure, 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.

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## 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, whether in the form of a cantilevered protuberance or as a grounded structure, from private land on to public land (including roads and Community Land).

*Structure* – includes any fence, wall, fixture or fitting, whether temporary or permanent, moveable or immovable.

## 1.5 Strategic Reference

Placemaking: Creating vibrant and safe places

Culture: Supporting excellent, efficient operations

## 2. PRINCIPLES

The following principles shall apply to assessments:

### 2.1 Cornices, sunscreens, hoods and other such protuberances that occupy air space above Council owned land

- Encroach no more than 1500mm into public space and not extend along more than 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 and/ or 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

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- 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 lines or stencilled areas) shall extend no further than 50mm onto the surface of the public space.

### 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* or *Planning, Development and Infrastructure Act 2016*. 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* or *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, and that encroachment does not have ‘in principle’ support, then the development assessment cannot proceed until a

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decision on the Encroachment Permit is made. If an Encroachment Permit is refused, the development application must 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 a Development Approval, these will be issued and construction can commence. Applicants should contact Council's Development Services Unit to discuss the requirements for lodging a development application.

## 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 may at its discretion, review the health and safety of the encroachment, whether the encroachment complies with any conditions, and/or request a copy of the owner/occupiers public liability Certificate of Currency at any time. Council will advise recipients of an

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Encroachment Permit review in writing if it proposes to undertake any review.

## 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 any Permit or the granting of the Permit by the Council.
- 2.10.3 A certificate of Currency for the policy must accompany the application for the annual renewal of an Encroachment Permit or be presented to Council upon request.

## 3. REFERENCES

### Legislation

- *Development Act 1993*
- *Local Government Act 1999*
- *Planning, Development and Infrastructure Act 2016*

### Other References

- Hoarding Permits and Builder Damage Policy
- Outdoor Dining Policy
- Verge Management Policy