

Warringah Council Policy

Policy No. GOV-PL 825

Encroachments/Constructions and Road Reserve Lease Policy

1 Purpose of Policy

To create a process for recording encroachments/constructions within Council's Road Reserve and specifying responsibilities (including maintenance, replacement etc) to limit potential liability for Council.

To advise of the formal processes established to manage encroachments/ constructions within Council's Road Reserve including Deed of Consent or Leases pursuant to the Roads Act 1993.

2 Policy Statement

- Encroachments/constructions will be effectively controlled and managed by classification and application of appropriate controls based on this classification. This may include the issuing of a letter of approval, or Road Reserve Deed of Agreement or Road Reserve Lease pursuant to Sections 107, 138, 139, 142 and 153 of the Roads Act 1993.
- To ensure that the footway and the Road Reserve are accessible to pedestrians and other users of the road.
- To provide a better streetscape environment by effectively controlling encroachments/constructions.
- To present clear and precise information to the public who may have encroachments/construction or require a lease within the Road Reserve.
- To limit Council's liability (risk, maintenance, replacement etc) against any future claims arising due to encroachments/constructions within the Road Reserve.
- To provide procedures to authorise encroachments/constructions and procedures for the removal of encroachments/constructions from within the Road Reserve.
- Provide income to Council through the issuing of such Deeds and Leases and ensuring all costs incurred by Council such as advertising, administration cost and legal fees are paid by applicant.
- The application form is attached at the end of this policy.

3 Principles

3.1 General

- No structures shall be erected on the Road Reserve unless approved by Council.
- An application must be made to allow encroachments/constructions within Council's Road Reserve.
- Successful applicants must enter into an appropriate agreement with Council.



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- Applications must be made pursuant to Section 138 of the Roads Act 1993 to seek permission to allow minor encroachments/constructions within Council's Road Reserve.
- All encroachments/constructions proposed or existing will be inspected/investigated by Council's Team Leader Works in the Project Services. Recommendations of approval/approval to progress/refusal are at their discretion.

In recommending approval of an encroachment/construction consideration will be given to its:

- Extent and/or
- Type and/or
- Potential effect on pedestrian or vehicular access
- Potential to generate a financial risk (eg maintenance, replacement etc) or public liability risk for Council and/or
- Alienation of public space.
- Safety Risk
- Any initial application/inspection fee(s) must be paid before an application can proceed and/or be approved. The amount of the fees will be as per the current Schedule of Fees and Charges.
- If successful the applicant is responsible for ensuring the encroachment/construction is
- Built to appropriate standards of all relevant authorities
- Responsible for all maintenance/renewal/removal cost
- Always safe.
- Any encroachments/constructions not approved must be removed from Council's Road Reserve within 28 days of refusal or at the discretion of the Council, ie: some time may be given to bring an encroachment/ construction up to minimum requirements of relevant authorities. Failure to remove or rectify may result in further action being undertaken by Council's Compliance Branch.
- Applications must be accompanied by a suitable sketch plan identifying property boundaries, improvements and area of Road Reserve required including all dimensions etc to allow the application to be assessed. The applicant is responsible for all associated costs.
- Unless otherwise noted, an encroachment/construction has no specified length of time and can be revoked by Council in accordance with the Roads Act 1993.
- Nothing within this policy or referred to in associated documentation confers upon the applicant exclusive rights or title of that part of the Road Reserve.



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- All encroachments/construction must be of a nature that can be demolished or removed if so required. All cost relating to any instruction to demolish or remove an encroachment/construction shall be borne by the applicant.
- Council and any other public utility/authority retain the right to undertake work within the consented area. Council is not liable to make good any damage to the consented area.
- Applicants must obtain all necessary approvals prior to undertaking any construction within the Road Reserve. The cost of any such approvals is to be borne by the applicant.
- Any other direction of Council, pursuant to the Local Government Act 1993 and Roads Act 1993, or contained within Council's documentation, must be complied with.

3.2 Road Reserve Leases

This policy does not generally apply to encroachments/constructions:

- On Crown Roads
- Defined under Council's Kerbing & Guttering Policy LAP PL 413 eg driveways or multiple vehicle access ways
- Temporary nature approved as part the Development Approvals process eg Hoardings, site sheds, temporary fencing etc
- Created by parties that have specific authority to create such encroachment/constructions under State or Federal Legislation. Examples – driveway accesses and associated structures (e.g. retaining walls created to support driveway) pursuant to the Roads Act, post boxes (Australia Post) and power poles/cables (Energy Australia), telecommunications cables/infrastructure pursuant to the Telecommunications (Optus, Telstra etc), service mains (AGL, Sydney Water etc)

3.3 Classification of Encroachments/Construction

All encroachments/constructions will classified according the following:

Type 1 – encroachments/construction that are of a minor nature and is unlikely to result in a significant risk (financial or public liability) for Council.

Examples include:

- Standard in ground concrete access ways to premises (not driveways)
- Landscaped areas and garden beds
- Retaining walls with a height less than 600 mm and not more than 600 mm encroachment into the Road Reserve
- At ground level access stairs ie stairs that follow the ground line or built into the ground
- Handrails
- Hardstand areas up to 1 sq metre



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- Decorative accessways (excludes driveways)

Type 2 - encroachments/constructions that are of a significant nature which may result in a significant risk (financial or public liability) for Council, or that generate a significant benefit to the applicant, or which restricts public access.

Examples include:

- Above ground access stairs
- Hardstand areas 1 - 5 square metres, not requiring a Development Application and not for parking vehicles
- Retaining walls with a height greater than 600mm and or more than 600 mm encroachment into the road reserve
- Encroachment/construction requiring a Development Application/Construction Certificate

Type 3 – encroachments on Road Reserve which generate significant benefit to the applicant or remove public access and are permitted to be leased on a short-term basis pursuant to Sect 153 and 157 of the Roads Act 1993.

Examples include:

- Fenced areas
- Hardstand areas greater than 5 square metres, not requiring a Development Application and may include parking for vehicles

3.4 Application, Documentation and Procedures

3.4.1 Type 1 Encroachments/Constructions

All Type 1 encroachments must be through a letter of approval conforming to the following:

- Application must be made pursuant to Section 138 of the Roads Act 1993
- Application must be forwarded to the Council's Team Leader Works
- The application must include sufficient details to allow assessment. This could include locations sketches etc
- No fees are involved.
- Council's Team Leader Works to notify the applicant, in writing, if the application is approved or refused.
- Any letter of approval will include all appropriate details including maintenance responsibilities.
- All approvals will be recorded by the s Work in the Works Asset Database
- The applicant must notify the existence of any letter of approval to any potential purchaser of their property.



3.4.2 Type 2 Encroachments/Constructions

All Type 2 encroachments/constructions must be via a Deed of Consent to Encroachment registered by a Positive Covenant on the applicant's property conforming to the following:

- The applicant must pay Council appropriate compensation for the benefit obtained by the encroachment to be assessed by an independent qualified valuer.
- Application must be made pursuant to Section 138 of the Roads Act 1993
- Application must be forwarded to the Council's Team Leader Works after paying application fees.
- The application must include sufficient details to allow assessment. This must include locations sketches, plans, engineering details and certification, details of approvals for the work (Development Application or Construction Certificate) etc.
- Council's Team Leader Works will review the application and either refuse or recommend the application to proceed. If an application is refused, Council's Team Leader Works will advise the applicant in writing.
- All applications to proceed will be referred to Council's Property Management Services for notification.
- Council must give Notice prior to granting a Deed of Consent to Encroachment pursuant to Clause 154 of the Roads Act 1993. Such notice includes:
 - Published in a local newspaper
 - Served on the owner of each parcel of land adjoining the length of public road concerned.
 - Identify the public road concerned
 - State that any person is entitled to make a submission to Council
 - Indicate that submissions are to be in writing and will be accepted within 28 days of publication of the notice.
- All submissions received will be reviewed by Council's Property Management Services and at their discretion recommend approval / refusal any application as it sees fit.
- Council's Property Management Services will notify the applicant, in writing, if an application refused
- Council's Property Management Services will submit all applications recommended for approval to Council's Property Management Panel for approval and notification to the applicant
- Council's Property Management Services will record all approved applications
- An application/advertising fee is payable. The amount of such fee is as per the current Schedule of Fees and Charges.



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- Council's Property Management Services will be responsible for preparing and executing the Deed of Consent and positive covenant including all appropriate details ie maintenance and insurance requirements.
- The applicant must fund all costs associated with the Deed of Consent for Encroachment/Construction including registration and legal fees. Formal Council approval to the Deed of Consent to Encroachment/Construction is required.

3.4.3 Type 3 – Temporary Encroachments

- A Type 3 Application must be made pursuant to Section 153 of the Roads Act 1993 to seek permission to enter into a short term lease for public road adjoining the applicant's property.
- Application must be made pursuant to Section 138 of the Roads Act 1993
- Application must be forwarded to the Council's Team Leader Works after paying application fees.
- The application must include sufficient details to allow assessment. This must include location sketches, plans, engineering details and certification , details of approvals for the work (Development Application or Construction Certificate) etc.
- Council's Team Leader Works will review the application and either refuse or recommend the application to proceed. If an application is refused, Council's Team Leader Works will advise the applicant in writing.
- All applications to proceed will be referred to Council's Property Management Services for notification.
- Council must give Notice prior to granting a lease. Such Notice must be:
 - Published in a local newspaper
 - Served on the owner of each parcel of land adjoining the length of public road concerned.
 - identify the public road concerned
 - state that any person is entitled to make a submission to Council
 - indicate that submissions are to be in writing and will be accepted within 28 days of publication of the notice
- All submissions received will be reviewed by Council's Property Management Services and at their discretion recommend approval / refusal any application as it sees fit.
- Council's Property Management Services will notify the applicant, in writing, if an application is refused
- Council's Property Management Services will submit all applications recommended for approval to Council's Property Management Panel for approval and notification to the applicant
- Council's Property Management Services will record all approved applications



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- The term of any lease, together with any options, must not exceed 5 years other than in accordance with Section 157(1)(b) of the Roads Act 1993.
- No structures shall be erected on the land unless otherwise consented to by Council. Council must be satisfied that any road reserve lease granted for an area, including a structure, must be of a temporary nature ie: can be easily demolished or removed.
- An application/advertising fee is payable. The amount of such fee is as per the current Schedule of Fees and Charges.
- Council's Property Management Services will be responsible for preparing and executing the Lease including all appropriate details i.e. maintenance and insurance requirements.
- The initial rental is established per square metre per annum basis or a minimum annual rental, whichever is the greatest. The amount of rental or minimum annual rental are as per the amounts detailed in the Schedule of Fees and Charges.
- A new application must be submitted at each renewal date, i.e: at the end of each lease term.
- Lessees must notify any potential purchaser of their property of the existence of any lease and a written application to assign the lease must be made.
- Any application to assign a lease must be accompanied by an assignment fee. The fee shall be as detailed in the current Schedule of Fees and Charges.
- The initial yearly rent must be paid in advance upon signing the lease agreement. Subsequent yearly rental must be paid annually in advance.
- A Road Reserve Lease confers exclusive use to the lessee of the defined area.

4 Amendments

Council amended this policy on 27 July 2004.

This policy was amended 7 August 2006 under delegation to the General Manager (minor amendment).

5 Authorisation

This Policy was authorised by Council on Tuesday 26 November 2002.

This policy hereby rescinds and supersedes policy 6.4.05.

It is due for review on 7 August 2008.

6 Who is responsible for implementing this Policy?

Manager Assets

Manager Project Services

7 Document owner

Director Customer and Community Services

Director Corporate Services



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8 Legislation and references

- a) Local Government Act 1993
- b) Roads Act 1993

9 Definitions

[Explain technical terms, local terminology, acronyms, etc.].

Minor Encroachments/Constructions

This relates to areas that encroach onto or construction upon a Council road reserve. An encroachment/construction may include, but is not limited to:

garden bed, minor building overhang, retaining wall, path, steps, rail, hard stand area etc.

Deed of Agreement (Encroachments/Constructions)

Formal document which provides consent for an encroachment/ construction to remain in the Road Reserve under certain conditions. Does not confer exclusive use of the area of encroachment/construction.

Road Reserve Lease

Formal 5 year agreement between Council and an adjoining owner to exclusively lease areas of Road Reserve. May include but is not limited to:

Carports, hardstand area, landscaped areas, garages or any other temporary structure that can be demolished or removed to the satisfaction of Council.

Deed of Assignment

Formal document between Council, the lessee and proposed lessee which transfers the rights under an existing lease to the new owner of the property.



**MINOR ENCROACHMENTS/CONSTRUCTIONS
WITHIN ROAD RESERVE**
Application issued under the Roads Act 1993 (Section 138)

July 2014

Contact us	
The General Manager, 725 Pittwater Road Dee Why NSW 2099	
Email	council@warringah.nsw.gov.au
Fax	9942 2606
If you need more help or information call customer Service on (02)9942 2111 or come in and talk to us at the Civic Centre, Dee Why.	

Office use only												
Application number												
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Please note, the applicant should read Council’s Road Reserve Encroachments/Constructions Policy prior to completing this application form. A survey identifying property boundaries, improvements and area of Road Reserve required is to be submitted with this application. The survey plan should be drawn at an appropriate scale and clearly distinguish the encroachment or lease area. Suitable drawings and specifications are required to allow consideration of the application. Appropriate Engineering certification and appropriate approvals (such as Development Application) are to be included.

It is important that we are able to contact you if we need more information. Please give us as much information as possible.

If the application is made on the owner’s behalf, a written authority from the owner is required.

Other relevant information in support of the application should be provided on the reverse side of this form, or attached.

PART 1 Applicant’s Details

	Full family name or Company (no initials)			
	Full given name or ACN (no initials)			
	Postal address We will post all letters to this address			
	Phone number		Alternate	
	Mobile number		Facsimile	
	Email address			

PART 2 Application details

	Description of proposed encroachment:		
	Purpose of proposal		
	Applicant’s signature		
	Name		
Date			

