

 City of Mount Gambier	E135 ENCROACHMENTS/PROTECTION OF PUBLIC DURING BUILDING/ MAINTENANCE WORK OVER PUBLIC PLACES	Version No:	4.0
		Issued:	19 September 2023
		Next Review:	September 2027

1. INTRODUCTION

This document sets out the policy of the City of Mount Gambier (“Council”) for encroachments over public places for building works and maintenance purposes. This document also sets out the policy of Council in relation to the protection of the public during building works and maintenance occurring over a footway or public place.

For the purpose of this Policy ‘footway’ refers to the area of Council land located between a property boundary and the road kerb.

2. BUILDING WORK ADJACENT TO OR OVER FOOTWAYS

- (a) Any person undertaking building work adjacent to or over any footway and/or road, is required to provide protection for the public. The following minimum protection is to be provided, unless otherwise approved by the General Manager City Infrastructure or Manager Operations Engineering and is subject to a written authorisation pursuant to Section 221 of the Local Government Act 1999:
- (i) A hoarding of solid, rigid material well supported, with a minimum height of 1.8 metres. The hoarding must be provided to such frontage of the building site as may be required or approved by the General Manager City Infrastructure or Manager Operations Engineering. The hoarding must be well lit at night.
 - (ii) A clear passageway must be maintained for the public:
 1. The passageway is to be at least 1.8 metres wide and have a head clearance of at least 2.5 metres;
 2. The passageway may be on the footpath, or on the portion of the carriageway usually set aside for the parking of cars.
 3. If the passageway is in the parking lane, the carriageway side is to be delineated in accordance with current standards.
 - (iii) If any building work subject to this policy, or equipment associated with it, exceeds a single storey in height, well supported overhead protection shall be provided over the required passageway.
- (b) Any person undertaking work adjacent to or over any footpath and/or road, must complete an "Alterations to or Works Impacting on a Public Road or Footpath" form (provided in Schedule A) for any works or barricading that requires use of a footpath or roadway (including parking lane).
- (c) The person undertaking the building work, is to ensure that measures are taken to contain any mists, liquids, fumes or other materials which are hazardous to health, which may cause harm to persons, animals or property.
- (d) The licence to erect the hoarding is to contain conditions in accordance with the Local Government Association Mutual Liability Scheme "Local Government Leases, Licences and Permit" requiring the licensee to indemnify Council and carry \$20 million public liability cover.

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3. MAINTENANCE WORKS ADJACENT TO OR ON FOOTWAYS

- (a) For the purpose of this Policy 'maintenance' includes but it is not restricted to: repair, decorating, minor building work (i.e. building work not requiring approval), sign writing, fixing a sign or other attachment or cleaning.
- (b) Public protection is to be in the form of appropriate barricading around the work area and during working hours unless, the General Manager City Infrastructure or Manager Operations Engineering determines that a more substantial form of public protection is required. Any scaffolding, work platform, ladder or similar that is to be left in place at night or outside of working hours, must have a solid security fence around its perimeter.
- (c) A clear passageway of the dimensions as set out in Part 1 of this Policy 'Building work adjacent to or over footways' shall be delineated and kept clear for the use of the public during the maintenance period.
- (d) If any maintenance is to take place over the passageway, as referred to in paragraph 4 above, well supported overhead public protection must be provided over the passageway.
- (e) The person undertaking the maintenance is to ensure that all reasonable measures are taken to contain any mists, liquids, fumes or other materials which are hazardous to health, which may cause harm to persons, animals or property.
- (f) During the maintenance period:
 - (i) Drop sheets must be used where it is necessary to protect the pavement from paints and other material liable to stain it;
 - (ii) The road, including the footpath, must be left in a clean condition;
 - (iii) Any damage to Council property, incidental to the work, is to be repaired at the expense of the person undertaking the work, and/or the owner/occupier of the premises (Refer the provisions of the Local Government Act 1999).
- (g) Any licence to erect public protection in accordance with this policy is to contain conditions in accordance with the Local Government Association Mutual Liability Scheme "Local Government Leases, Licences and Permits" requiring the licensee to indemnify Council and carry \$20 million public liability cover.

4. ENCROACHMENTS OVER PUBLIC PLACES

- (a) Council encourages building owners in the retail section of the City Centre Zone to provide verandahs or similar over footpaths abutting their premises.
- (b) Council Officers, dealing with Development Applications involving encroachments under, over or upon a public place, make themselves familiar with the requirements for such encroachments and ensure that any such encroachments, approved by Council meet all legal requirements.

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- (c) When issuing a licence for an encroachment over a public place, the provisions of Section 221 of the Local Government Act 1999 are to be used.
- (d) The owner of the premises from which the approved encroachment projects must:
 - (i) Maintain the encroachment and any attachment incidental thereto in a condition which ensures public safety;
 - (ii) Keep the encroachments clean and watertight;
 - (iii) Not attach anything, whether temporarily or permanently, to the approved encroachment without any further necessary consents/approvals.
- (e) Council's Development and Regulatory department monitor existing encroachments over public places and take any necessary and appropriate action to ensure public safety.
- (f) Where any building work is being proposed to an existing verandah, which is closer than 450mm to the kerb, then the verandah should be modified so that is at least 450mm from the kerb.
- (g) Where Council receives an application for an attachment to or an alteration to an existing encroachment over a public place, (which has not been formally approved) the application should not be determined until such time as the applicant has made application to maintain the encroachment over the public place in accordance with the provisions of the Local Government Act 1999. If an application to maintain the encroachment over the public place is not made the application for attachment or alteration should be refused at the discretion of the General Manager City Infrastructure.
- (h) Any proposed verandah, awning, balcony, or like projection over a public place may have posts provided:
 - (i) The posts are setback a minimum distance of 450 mm to the kerb alignment;
 - (ii) The width of the remaining footpath between the posts near the street, road or public place and the adjoining private property boundary is not less than 2.5metres;
 - (iii) Such posts should be non-load bearing and the verandah, awning, canopy or balcony cantilevered, except as provided in sub-paragraph (d);
 - (iv) Where an old building is being restored, load bearing posts may be approved if such posts are required for the integrity of the restored building, and such integrity cannot otherwise be achieved.

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SCHEDULE A



Application for Works on a Public Road or Footpath

Authorisation to alter and use a public road (includes the footpath and verges)
Authorisation to make an Alteration to a Public Road, Section 221, *Local Government Act 1999*

Applications must be lodged and approved prior to the activity taking place, allow at least a minimum of 5 business day for application to be assessed

Authorisation Holder

Company Name:			
Contact Name:			
Postal Address:			
Email:			
Phone Number:		Mobile Number:	

Type of Alteration ("the Alterations")

Industrial Bins / Containers / Skip Bin	Fencing / Hoarding	Mobile Scaffolding
Crane Truck / Elevated Platform	Trenching / Excavation	Scissor Lift
Construction / Maintenance	Other _____	

Work Details

Details of proposed work (including equipment used)			
Site Location:			
Commencement Date:		Completion Date:	
Weekend Work:		Asphalt supplier / Asphalt mix:	

Traffic Control at the worksite is to be undertaken in accordance with AS 1742 Manual of Uniform Traffic Control Devices Part 3: Traffic Control at Works on Roads *Figure Number:* _____

Temporary Traffic Signals? (portable):	Yes	No	Speed limit restrictions:	Km/h will be used
Impact on Transport SA Assets?	Yes	No	Details of impact:	

The Accredited person responsible for worksite traffic management is: _____

Mobile No: _____ who is **accredited** in signing at roadworks.

DIT Roads: Bay Road, Sutton Avenue, Jubilee Highway, Penola Road White Avenue, Pick Avenue

Does this application relate to a Development Application Yes No DA Number: _____

Dial Before you Dig

The applicant is responsible for obtaining information on the location of underground pipes and cables from communications, gas, water and electricity providers. Plan can be requested via the Dial Before You Dig website www.dialbeforeyoudig.com.au or phone enquiries to 1100.

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Special Conditions

I acknowledge that I have read and understand the terms and conditions and any special conditions that the Council may determine, provided to me as contained in this Permit, and agree to abide by them:

Name: _____ Position: _____

Signature: _____ Date: _____

What you need to return with this application

- Copy of Public Liability Certificate of Currency for the amount of \$20million
- Detailed Traffic Management Plan / Pedestrian Management Plan (if works affect pedestrian or vehicular traffic, must include all signage)
- Plan showing proposed works

Office Use Only:

Checklist :	Completed Form	Public Liability Insurance	Detailed Traffic Management Plan
Authorisation Approved by: Approved Declined reason:			
Officer's Name:		Title:	
Signature:		Date:	
Application Fee:	No Yes \$ _____	Receipt:	
Inspection Assessed by Authorised Officer:			

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General Terms & Conditions

All public roads in the Council area are vested in the Council.

The Council, having complied with all relevant consultation obligations under the *Local Government Act 1999*, grants this Authorisation to authorise the Authorisation Holder to make alterations to a public road subject to the general and any special conditions stipulated below.

1. Alteration Works

The Authorisation authorises the Authorisation Holder to undertake alterations to a public road as described in "**Type of Alteration**" above ("the **Alterations**"), subject to these general conditions and any special conditions that may be notified to the Authorisation Holder.

2. Authorisation Area

The Authorisation applies only in relation to the portion of public road adjacent to the Land described in "**Site Location**" of the permit.

3. The Authorisation Holder

Where the Authorisation Holder is two or more persons, the Authorisation Holder's liability and obligations hereunder shall be joint and several and the conditions of this Authorisation shall be construed accordingly.

4. Nature Of Authorisation

This Authorisation does not take effect until:

- the Authorisation Holder has paid the Authorisation Fee stipulated (if any);
- a copy has been signed by the Council and issued to the Authorisation Holder; and
- the Authorisation Holder has provided the Council with a copy of the Authorisation Holder's certificate of insurance evidencing compliance with the Authorisation Holder's obligations under clause 7.

For the avoidance of doubt, nothing in this Authorisation:

- confers any proprietary interest in or exclusive right to occupy the Road; or
- restricts the Council from accessing the Road at any time or operates to fetter the exercise by the Council of any other regulatory or other function or power.

This Authorisation is personal to the Authorisation Holder and is not transferrable.

The Council may vary the general and/or special conditions that attach to this Authorisation by notice in writing to the Authorisation Holder.

5. Term, Expiry & Renewal

This Authorisation continues in force the period set out in "**Work Details**" above and expires on the earlier of the date:

- that the Authorisation Holder ceases to hold an insurance policy as required by General Condition 7; or

- that the Authorisation Holder, by notice in writing to the Council, surrenders this Authorisation.

In the event that this Authorisation is cancelled or surrendered prior to its expiration, there shall be no adjustment, reduction or refund by the Council of the fees paid by the Authorisation Holder in connection with the Authorisation.

There is no automatic right of renewal of this Authorisation. Upon expiration of this Authorisation the Authorisation Holder may make application for a new Authorisation, which may be granted at the Council's absolute discretion, subject to compliance with the public consultation requirements under the Act.

6. Indemnity & Release

As a continuing obligation and except to the extent caused by the Council's negligence, the Authorisation Holder indemnifies and will keep indemnified the Council from and against all actions, costs, claims, damages, charges and expenses whatsoever that may be brought, made or claimed against or otherwise incurred by the Council arising out of or in connection with:

- a breach of this Authorisation by the Authorisation Holder;
- the Authorisation Holder's use and occupation of the Road; and/or
- the granting of this Authorisation by the Council.

The indemnity is in addition to any statutory immunity in favour of the Council, including under section 221(5) of the *Local Government Act 1999*.

The Authorisation Holder releases the Council and its employees, agents and contractors from all and any claims, demands, actions, suits, proceedings, losses and damages of any kind resulting from any loss, accident, damage, injury or death occurring as a result of the Alterations or the granting of this Authorisation except to the extent caused by the Council's negligence.

7. Public Liability Insurance

The Authorisation Holder must take out and maintain during the term of the Authorisation a public liability insurance policy for a minimum amount of twenty million dollars (\$20,000,000.00) per claim or any other amount as may be directed by the Council.

The policy will be in respect of injury, loss or damage occurring in connection with the Alterations and the Authorisation Holder's use of the Road and must note the Council's rights and interest as owner of the Road and the indemnities provided by the Authorisation Holder in favour of the Council.

8. Authorisation Holder's Obligations

The Authorisation Holder must, at the Authorisation Holder's cost and expense in all things, comply with all applicable laws and all

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General Terms & Conditions

reasonable directions of the Council in relation to the Alterations and the Authorisation Holder's use of the Road.

Whilst in occupation of the Road, the Authorisation Holder must:

- take all reasonable measures to protect any utility services, adjacent properties, existing structures (including, as relevant, kerb, gutter, paving, manhole lid, irrigation system, drainage infrastructure) from damage;
- keep the Area reasonably free of rubbish;
- not create or cause any unreasonable nuisance or disturbance (as determined by the Council) either for the Council or for the occupiers of adjoining lands;

The Authorisation Holder must make good any damage that the Authorisation Holder causes to the Road or Council property in connection with the Alterations and/or the Authorisation Holder's use of the Road and, in the event the Authorisation Holder fails to do so, the Authorisation Holder is liable to pay the Council the costs of making good any such damage, which costs the Council may recover from the Authorisation Holder as a debt.

9. Ownership of Alterations

The Alterations are the property of, and belong to the Authorisation Holder pursuant to Section 209 of the *Local Government Act 1999*.

10. Maintenance of Alterations

The Authorisation Holder is solely responsible for the upkeep and maintenance of the Alterations and must keep the Alterations in good and substantial repair, order and condition at all times, safe and free from danger to persons on or using the Road.

If the Authorisation Holder desires to carry out maintenance or repairs in respect of the Alterations which will require interference with the free passage of traffic (pedestrian or vehicular) along the Road, then the Authorisation Holder must:

- not (except in the case of an emergency) commence such maintenance or repairs without the prior written approval of the Council; and
- undertake such repairs or maintenance in strict accordance with the approval of the Council and as expeditiously as is reasonably possible, with as little inconvenience as possible to persons and/or vehicles using the Road and

without interference to public utilities which may be in or below the surface of the Road; and

- ensure that maintenance or repairs are carried out by competent and (where applicable) licensed and duly qualified contractors and workers; and
- upon being presented with an invoice from the Council, pay the Council's reasonable costs of reinstating any damage caused to the Road in undertaking the maintenance or repair works.

11. Cancellation

The Council may cancel this Authorisation for any breach of these conditions pursuant to section 225 of the *Local Government Act 1999*, by giving not less than one month's notice in writing to the Authorisation Holder (unless the Council determines that a shorter period should apply to protect the health or safety of the public, or otherwise to protect the public interest).

12. Consequences Of Cancellation Or Expiration

On the cancellation or expiration of the Authorisation or if the Authorisation is surrendered, the Authorisation Holder must, to the Council's satisfaction, reinstate the Road to at least the same condition the Road was in before the Alterations were made. This includes but is not limited to the Authorisation Holder removing all of the Alterations unless otherwise directed by the Council.

Reinstatement works must be undertaken within 28 days of the cancellation, expiration or surrender of the Authorisation.

The Authorisation Holder is responsible for repairing, at its own cost, any damage caused in removing the Alterations.

In the event the Authorisation Holder fails to comply with the Authorisation Holder's obligations under this General Condition 12, the Council may undertake the works required and recover the associated costs from the Authorisation Holder as a debt in a Court of competent jurisdiction.

13. Special Conditions

The Authorisation Holder must comply with all special conditions contained (if any) which special conditions prevail in the extent of any inconsistency with the general conditions stipulated herein.

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5. REVIEW & EVALUATION

This Policy is scheduled for review by Council in September 2027; however, will be reviewed as required by any legislative changes which may occur.

6. AVAILABILITY OF POLICY

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.mountgambier.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

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File Reference:	AF18/47
Applicable Legislation:	Local Government Act 1999
Reference: Community Plan	Goal 2: Our Location
Related Policies:	
Related Procedures:	
Related Documents:	Council By-Laws

DOCUMENT DETAILS

Responsibility:	General Manager City Infrastructure
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