

ENCROACHMENT ON PUBLIC LAND POLICY

ADMINISTRATIVE POLICY



1 Scope

This policy applies to encroachments on Rockhampton Regional Council owned land or trust land under Rockhampton Regional Council's control.

This policy does not apply to:

- (a) Matters covered under existing legislation, Local Law or policy; including outdoor eating areas, shopfront displays and advertising structures;
- (b) Structures of a temporary nature approved or required as part of a development application process; and
- (c) Authorities, corporations or other parties that have a statutory right to create such encroachments (for example power poles/boxes, post boxes, telephone lines, etc).

2 Purpose

The purpose of this policy is to guide the determination of how an encroachment is dealt with in a practical and equitable manner and in accordance with legislation.

3 Related Documents

3.1 Primary

Nil

3.2 Secondary

Land Act 1994

Local Government Act 2009

Local Government Regulation 2012

Local Law No. 1 (Administration) 2011

Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2011

Property Law Act 1974

Encroachment on Public Land Procedure

Rockhampton Region Planning Scheme

LEGAL AND GOVERNANCE USE ONLY

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4 Definitions

To assist in interpretation, the following definitions apply:

CEO	Chief Executive Officer A person who holds an appointment under section 194 of the <i>Local Government Act 2009</i> . This includes a person acting in this position.
Council	Rockhampton Regional Council
Delegated Officer	An employee appointed to a position with the relevant legislative delegation and/or administrative powers.
Employee	Local government employee: (a) The CEO; or (b) A person holding an appointment under section 196 of the <i>Local Government Act 2009</i> .
Encroacher	The owner or registered lessee of the land responsible for the encroachment on public land.
Encroachment	A situation where an adjoining property owner or permitted occupant(s) violates the property rights of a neighbour (Council) by making improvements or erecting structures on or over the neighbour's land.
Freehold Land	Council owned freehold land provided as open space under the Rockhampton Region Planning Scheme.
Public Land	Freehold land and various categories of trust land and road under Council's control (for example parks, reserves and footpaths).
Road	As defined in the <i>Land Act 1994</i> , an area of land, whether surveyed or unsurveyed: (a) Dedicated, notified or declared to be a road for public use; or (b) Taken under an Act, for the purpose of a road for public use. The term includes: (a) A street, esplanade, reserve for esplanade, highway, pathway, thoroughfare, track or stock route; and (b) A bridge, causeway, culvert or other works in, on, over or under a road; and (c) Any part of a road.
Trust Land	As defined in <i>the Land Act 1994</i> , the land comprising a reserve or deed of grant in trust, with Council as the appointed trustee.

5 Policy Statement

It is widely accepted that roads, footpaths and public land are in the public domain and are to be managed for the benefit of all users. Encroachments may be as simple as a mowing strip and as complex as unapproved building structures installed in, on, across, under or over public land.

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5.1 Encroachment Categories

Council recognises that encroachments on public land do not always impose a constraint on the community use or effective operation of the public land and in some cases may enhance its use.

In assessing the impact or constraint of the various instances of encroachments on the community or Council, the following categories have been adopted.

5.1.1 Minor

Encroachments or structures of a minor nature considered unlikely to result in significant risk (financially or public liability) for the community or Council.

For example: extended lawn areas, mowing strips, letter boxes, access stairs, hand rails and small retaining walls.

5.1.2 Restrictive

Encroachments or structures of this nature are considered quite significant as they restrict public access and generate considerable benefit to the encroacher. There may also be public liability issues for Council.

For example: gardens, medium to large retaining walls and large hardstands.

5.1.3 Exclusive

Encroachments and structures that provide exclusive benefit to the encroacher and/or prevent any public access. There may also be increased public liability issues for Council.

For example: fenced areas, shed/garage structures and pools.

5.2 Possible Actions to Remedy Encroachments

Some possible actions to remedy encroachments on public land may include:

- (a) Permit or licence (agreement) to use land, subject to Council conditions (restrictive encroachment);
- (b) Compliance notice to remove encroaching structures/materials by Council's Local Laws; or
- (c) Commence action to sell encroached land to the encroacher.

Council may consider approval of an encroachment on public land with due consideration of a range of criteria including, but not limited to, safety, commercial gain, personal gain, community impact and any legislative constraints.

5.3 Approval for Encroachment Action

The following actions to remedy encroachments under this policy must be adopted by the passing of a resolution of Council:

- (a) Permit or licence (agreement) to use land, subject to Council conditions (restrictive encroachment); or
- (b) Commence action to sell encroached land to the encroacher.

The appropriate delegated officer will sign any tenure agreement for use of encroached land.

A compliance notice to remove encroaching structures/materials by Council's Local Laws must be approved by the appropriate delegated officer.

6 Review Timelines

This policy is reviewed when any of the following occur:

- (a) The related information is amended or replaced; or
- (b) Other circumstances as determined from time to time by Council.

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7 Document Management

Sponsor	Chief Executive Officer
Business Owner	Deputy Chief Executive Officer
Policy Owner	Manager Corporate and Technology Services
Policy Quality Control	Legal and Governance



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