



Footpath Encroachment

(For Awnings, Verandas and Pergolas)

Terms and Conditions

1. Preamble

- a. This Permit is issued under Section 221 of the Local Government Act where a person must not make an alteration to a public road unless authorised to do so by the Council. The maximum penalty is \$5,000;
- b. The Council does not confer on the Applicant any exclusive right, entitlement or interest in the public road reserve;
- c. Reference to “we” or “us” means the City of Charles Sturt, its employees and agents and each of them;
- d. An Authorised Officer is a person authorised by the City of Charles Sturt by delegation to control works on a road;
- e. Reference to “you” or “your” means the person to whom this Permit is issued, namely the Applicant and anyone undertaking actions on your behalf in relation to the approved work, maintenance, or demolition;
- f. The issue of this Permit does not infer any approval under the Development Act and you should ensure that you comply with the provisions of that Act prior to proceeding with construction of the encroachment structure.

2. Design Conditions

- a. No specific wording is used to advertise your business (e.g. business name or logo) or that could be construed to advertise your business, otherwise the artwork is subject to the Development Act and will require a Development Application;
- b. Unless the building is of historical significance and its construction requires special consideration, the encroachment shall comply with the following conditions:
 1. Height clearance: between 3.0 and 3.7 metres above the constructed footpath, with the exception of retractable awnings which shall not be less than 2.5 metres above the constructed footpath when fully extended and not less than 3.0 metres when fully retracted;
 2. Any trim along the kerbside face of the encroachment shall not be less than 2.5 metres above the constructed footpath;
 3. Kerbside setback: Not less than 600 mm horizontal distance measured from the kerb face;
 4. Shall not restrict pedestrian access to less than 1.8 metres in the direction of the footpath;
 5. Be constructed to collect stormwater so that it does not drip or discharge onto the constructed footpath;
 6. Where the structure directly obstructs public lighting on the footpath, include lighting attached to the encroachment structure which will operate on an all-night basis in accordance with the requirements of AS1158 and designed so that it is vandal resistant and glare free;
 7. All electrical work is to be undertaken by a Licensed Electrician.

- c. The encroachment structure shall not contain:
- Painting or artwork that is likely to be confused by a person as a traffic sign. For example, it must not contain strong red, yellow or green circles, or a mustard yellow background colour used in traffic advisory signs;
 - Should artwork be proposed on the encroachment structure, a coloured sketch including dimensions of the artwork is forwarded to us and approved prior to commencing the artwork;
 - We may seek the opinion of others as to whether the artwork may be obscene or offensive and could cause community objection to it.

3. Construction Conditions

- a. You have twelve (12) months to obtain building approvals and three (3) years to commence the encroachment structure construction;
- b. You must contact us at least 24-hours prior to commencing the encroachment construction. This is to allow related public enquiries about the works to be answered promptly and diligently;
- c. You are responsible for actions taken by you and any other person assisting you to undertake the construction of the encroachment structure;
- d. You must not interfere with or cause damage to or affect in any way any wire, post, cable, pipe or other item that is the property of ETSA, Telstra, SA Water, United Water, Origin Energy or other government department or authority or other infrastructure owner. The provisions that might apply in case of damage, injury, accident or interference to property under the control of service authorities for the supply of electricity, gas, telephone, water and sewerage shall be adhered to;
- e. You must take all precautions to avoid damage to any nearby public infrastructure. You must immediately notify us of any such damage. You are responsible to reimburse us for its cost to repair or rectify any such damage;
- f. You must take all safety and protective measures and to do all things necessary to prevent accidents or injury to persons, or damage to private property and public infrastructure;
- g. You must protect the safety of people using the footpath by ensuring the area is adequately lit at night and that all appropriate barriers, barricades, signage and warning devices are installed to protect the public during the construction of the encroachment structure;
- h. You must not work on or from the roadway (the part of road where vehicles travel or park) without adhering to the provisions of AS1742 and you must notify us of your intention to do so least 24-hours prior to commencing the construction of the encroachment structure;
- i. You must comply with all provisions of the Environmental Protection Act including those applying to disposal of materials, protection of stormwater drainage systems and permissible hours for using noisy work equipment;
- j. You must have the original Permit available on site during the construction of the encroachment structure and produce it to an Authorised Officer, if requested to do so.

4. Maintenance Conditions

- a. You are responsible for all repairs, damage, rectification, or removal of the encroachment structure;
- b. You undertake to remove any graffiti from the encroachment structure within five (5) working days at your cost;
- c. You maintain the encroachment structure in good condition so that it does not cause accidents or injury to persons, or damage to private property and public infrastructure, at your cost;

- d. Should we advise you that, in our opinion, the encroachment structure is not safe and may cause accidents or injury to persons, or damage to private property and public infrastructure, you undertake to immediately make it safe and keep it safe until you have repaired the encroachment structure within three (3) months at your cost;
- e. Where the building is being demolished you must remove the encroachment structure at your cost.

5. Liability Conditions

- a. We do not accept any liability for replacing or repairing the encroachment structure if it is vandalised, damaged, replaced or removed;
- b. You agree to indemnify and to keep us indemnified against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against us arising out of or in relation to the issuing of the Permit;
- c. You must abide by and are responsible for ensuring that the encroachment structure and its use comply with any applicable State and Federal legislation or standard and that non-compliance will be your sole responsibility;
- d. The issue of the Permit does not absolve you from any overriding legislation;
- e. You must provide a copy of this Permit to prospective purchasers or lessees so they are aware of their obligations prior to purchasing the land; and notify us within fourteen (14) days of any change.

6. Insurance Conditions

- a. You shall take out and keep current a Public Risk/Liability Insurance policy in your name insuring you for the minimum sum of **Twenty Million Dollars (\$20,000,000.00)** against all actions, costs, claims, damages arising from negligence, charges and expenses whatsoever which may be brought or made or claimed against you in relation to the encroachment;
- b. You shall not commence constructing the encroachment structure until evidence of Public Risk/Liability Insurance policy bearing the endorsement of the Insurer indicating the Insurer accepts the indemnity given by you is given to us;
- c. You must provide confirmation of Public Risk/Liability Insurance policy to us annually for the period of the Permit. Such a policy shall bear the endorsement of the Insurer indicating the Insurer accepts the indemnity given by you;
- d. This Permit becomes immediately invalid if your Public Risk/Liability Insurance bearing the endorsement of the Insurer ceases. You have five (5) working days to write to us stating your intention to rectify the condition and you have twenty eight (28) days to give us evidence indicating the Insurer accepts the indemnity given by you.

7. Validity, Revocation and Termination of Permit

- a. If you fail to comply with a condition of this Permit, it is revoked;
- b. This Permit is only valid for activity, times and dates, and area stipulated on it;
- c. This Permit is only valid when signed by "you" and signed, dated and given a Reference Number by us;
- d. This Permit is not transferable without our prior written approval, except where expressly provided in the conditions;
- e. The conditions of this Permit may be amended/added/removed at any time by us with or without consultation with you and may be subject to any fees and charges as set out in the City of Charles

Sturt Fees and Charges Register;

- f. Unless otherwise revoked, this Permit is valid for a period of forty two (42) years from the date it is signed by us and it may be renewed by us for a further period fixed by us, but not exceeding forty two (42) years;
- g. The revocation of this Permit will be without payment or compensation by us;
- h. Any reasonable cost incurred by us as a result of the revocation of this Permit will be recovered from you;
- i. You may terminate the Permit by writing to us;
- j. Where the Permit is revoked or you have terminated the Permit you must remove the encroachment and repair the constructed footpath and level any unmade verge affected by the removal within five (5) weeks during which you must hold public liability insurance cover required in the Insurance Conditions above;
- k. Nothing in this Permit prevents us from agreeing to alternative conditions.