

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:

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:

Primary

Nil

Secondary

Land Act 1994

Local Government Act 2009

Local Government Regulation 2012

Property Law Act 1974

Encroachment on Public Land Procedure

Local Law No. 1 (Administration) 2011

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

Rockhampton Region Planning Scheme

4 Definitions:

To assist in interpretation, the following definitions apply:

CEO	<i>Chief Executive Officer</i> 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
Encroachment	A situation in real estate where a property owner or permitted

Corporate Improvement and Strategy use only

	occupant(s) violates the property rights of a neighbour (Council) by making improvements or erecting structures on or over the neighbour's land.
Encroacher (Owner)	The owner or permitted occupant(s) of the land responsible for the encroachment on public land.
Freehold Land	Council owned freehold land provided as public open space under the Rockhampton Region Planning Scheme.
Public Land	Freehold land and various categories of trust land and roads under Council's control (for example footpaths).
Road	As per 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 per <i>the Land Act 1994</i> , the land comprising a reserve or deed of grant in trust.

5 Policy Statement:

It is widely accepted that public roads, footpaths and spaces are in the public domain and are to be managed for the benefit of all users. Encroachments onto public land are considered when a property owner or permitted occupant(s) advances a private land use activity from private land into the adjoining public land. These 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.

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: landscaped gardens, mowing strips, letter boxes, access stairs, hand rails and small retaining walls.

Corporate Improvement and Strategy use only

Adopted/Approved: Adopted, 10 September 2013
Version: 1
Reviewed Date: 1 December 2017

Department: Corporate Services
Section: Corporate and Technology Services
Page No.: Page 2 of 3

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: medium to large retaining walls and large hardstands.

5.1.3 Exclusive

Encroachments and structures that provide exclusive benefit to the encroacher and 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:

- Permit or licence (agreement) to use land, subject to Council conditions (minor or restrictive encroachment);
- Commence action to establish an agreement for use over the encroached land (minor or restrictive encroachment);
- Order to remove encroaching structures/materials; or
- Commence action to sell encroached land.

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 Actions

Any actions to remedy encroachments under this policy must be adopted by Council. The CEO has delegated authority to sign any agreement for use of encroached land.

6 Review Timelines:

This policy will be reviewed when any of the following occur:

- 6.1. The related information is amended or replaced; or
- 6.2. Other circumstances as determined from time to time by Council.

7 Responsibilities:

Sponsor	Chief Executive Officer
Business Owner	Deputy Chief Executive Officer
Policy Owner	Manager Corporate and Technology Services
Policy Quality Control	Corporate Improvement and Strategy

EVAN PARDON
CHIEF EXECUTIVE OFFICER

Corporate Improvement and Strategy use only

Adopted/Approved: Adopted, 10 September 2013
Version: 1
Reviewed Date: 1 December 2017

Department: Corporate Services
Section: Corporate and Technology Services
Page No.: Page 3 of 3