



ENCROACHMENTS ON COUNCIL LAND POLICY

Date Adopted:	May 2011
Council or Corporate Policy	Council Policy
Responsible Division:	Environment and Community Management
Supporting documents, procedures & forms of this policy:	Development Control Plan (DCP) Leasing Policy – Property Leasing Policy –Residential Property Leases of Airspace over Roads Policy
References & Legislation:	Roads Act 1993

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1 Introduction

The Leichhardt municipality is characterised by a rich diversity of architectural forms and features. The form and character of buildings are critical to how the built form interacts with and contributes to the public domain. Furthermore, the ways in which urban places look and function can profoundly affect the extent to which people feel connected to place, environmental performance, social interactions and property values.

As such, in developing a new, comprehensive Development Control Plan Council will promote planning and design which responds to:

- the form and character of existing buildings and spaces
- climate and predicted climate change
- social and cultural context
- innovations in design and technology

This document outlines the considerations and principles that will inform the relevant section of the new, comprehensive Development Control Plan (DCP) in relation to minor architectural features of buildings which are a minor encroachment onto or over roads and footways in all zones within the municipality. Prior to the adoption of the new Development Control Plan this document will be used to guide Council's assessment of development applications which propose minor architectural encroachments on, over or under Council roads and footpaths.

2 Purpose of Policy

- To establish principles in relation to the assessment of a Development Application that proposes *Minor architectural details* that will encroach onto Council land (including air space above a road).
- To ensure that *Minor encroachments* onto Council land (or airspace) do not result in any loss of public amenity or safety and do not compromise future plans for road realignment or footpaths and stormwater drainage.
- To ensure that where an *Encroachment* is created that there is an appropriate condition of consent, lease or other agreement with Council to ensure that public liability issues are addressed.
- To enable contemporary urban design to be responsive to the character of existing built forms and streetscapes.

3 Definitions

Word/Term	Definition (with examples if required)
DCP	Development Control Plan
Encroachment	Encroachment means encroachment by overhang of any part as well as encroachment by intrusion of any part in or upon the soil.
Footway	Footway means (as defined by the Roads Act 1993) that part of a road as is set aside or formed as a path or way for pedestrian

	traffic (whether or not it may also be used by bicycle traffic).
Minor architectural details	Minor architectural details means and includes, but is not necessarily limited to eaves, brackets, window sills and frames, cornices, plinths, balustrades, signs, rock bolts and light fixtures but does not include a wall.
Minor encroachment	Minor encroachment means encroachment by a minor architectural detail and includes encroachment by overhang of any part as well as encroachment by intrusion of any part in or upon the soil.
Road	Road means (as defined by the Roads Act 1993): (a) the airspace above the surface of the road, and (b) the soil beneath the surface of the road, and (c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of the road.

4 Principles

The following principles will inform the preparation of the provisions of the new Development Control Plan in relation to Minor encroachments on and in the airspace above Council land. Prior to the preparation of the new DCP these principles will inform decision making in relation to development applications which involve minor encroachments:

- Minor encroachments by a minor architectural detail on Council roads or footways or in the airspace over Council roads and footways may be supported by Council where that minor encroachment:
 - is limited to a minor architectural detail; and
 - is proposed as part of a restoration of an existing building which
 - is built to the property boundary or
 - is a proposed building where Council considers it is not appropriate to set the building in from the boundary; and
 - will be consistent with the urban character of the surrounding streetscape; and
 - will make a positive contribution to the streetscape and public domain; and
 - is otherwise in the public interest.

The following are not supported:

- Encroachment onto Council roads or footways or in the airspace over Council roads and footways by features such as entry stairs, platforms, ramps and footings which are proposed as part of a new building or where those elements currently do not exist.
- Encroachments onto or in the airspace over any part of a road (or lane) which is or may be used as a thoroughfare by vehicles.

- Proposed encroachments onto Council roads or footways or into the airspace over Council roads and footways by the wall of a building is not a Minor encroachment.
- Proposed encroachments onto Council roads or into the airspace that increases the floorspace of a building as a result of the construction, addition or reconstruction of a balcony, verandah, awning, window or upper level room. These are not Minor encroachments and will be assessed in accordance with:

Leichhardt Development Control Plan 2000 Part C1.7

Development Control Plan No. 48 Managing Activities on Footpaths and Street Verges

Leases of Airspace over Roads Policy adopted by Council Resolution C218/05.

5 Roles & Responsibilities

Scope of this policy

This Policy deals with:

- Development Applications that propose Minor encroachments on Council land or airspace, including roads and footways,



Example of minor architectural features which are dealt with by this document

This Policy does not deal with:

- balconies, verandahs and awnings over the footpath for existing or new buildings. Those structures are subject to the objectives and controls contained in *Leichhardt Development Control Plan 2000 Part C1.7-Protective structures in the public domain – Balconies, verandahs and awnings* and *Development Control Plan No. 48 – Managing Activities on Footpaths and Street Verges* and the Policy adopted by Council Resolution C218/05.
- *Encroachments* that increase the habitable or occupiable floorspace of a building as a result of the construction, addition or reconstruction of a balcony, verandah or awning. Reference should be made to DCP 2000 Part C1.7 and DCP No. 48 for the relevant objectives and controls and the policy adopted by Council Resolution C218/05.
- current *Encroachments* unless there is a Development Application to alter or add to the encroaching element.

6 Policy Implementation

Urban design considerations

The Leichhardt municipality has a rich cultural heritage expressed in its architecture. Many existing buildings incorporate minor architectural features such as cornices, pediments, window sills and steps as well as verandahs and balconies which encroach on or over roads, footpaths and lanes. In developing new places and spaces in the municipality its heritage should inform and inspire expression of contemporary society. As such, Council may wish to support Minor encroachments over public land where those Minor architectural details will enhance the existing character of the streetscape.

Streetscape

Leichhardt's streetscapes are some of the most visually diverse and interesting streetscapes in Sydney. The urban character of Leichhardt arises from the way in which different architectural styles, details and forms have developed as a response to place and time. The aesthetic and functional qualities of the municipality's streetscapes are important because they:

- enhance use of the public domain as a thoroughfare for pedestrians and cyclists and as a recreation space
- are the creative expression of individuals and the community generally through the use of architectural, spatial and landscape elements.

Each streetscape is made up of a number of components:

- the public footpath which may vary in width, layout, finishes, furniture and street tree planting
- the transition zone between the public and private domains which is generally the area between the footpath and adjacent built forms
- adjacent buildings
- the road and its characteristics which vary according to its use, the volume and type of traffic it carries.

Built form elements that contribute to the quality of streetscapes include:

- variations in the horizontal and vertical profiles of a buildings façade which contribute to a human scale, a fine grain built form and architectural interest
- articulation of building mass
- treatment and patterning of windows (called fenestration)
- materials

As such, Council may support Minor encroachments on or in the airspace over Council roads and footways where they will result in a positive contribution to the streetscape. This document addresses the ways in which the inclusion of Minor architectural details in buildings can be managed to achieve desirable urban design

outcomes, including the retention and enhancement of streetscapes and landscapes with heritage value. Buildings should generally be set back from the property boundary to avoid Minor encroachments of Council land.

7 Version Control and Change History

Version Control	Date Effective	Approved By	Amendment
1	May 2011	Council	

8 Supporting Documents

Adelaide City Council (2008) Encroachments Policy

Australia ICOMOS (1999) The Burra Charter

City of St Petersburg, Florida St Petersburg City Code, Streets, Sidewalks and Miscellaneous Public Places

English Heritage, viewed April 2011,
<http://www.englishheritage.org.uk/professional/advice/conservation-principles/constructiveconservation/constructive-conservation-in-practice/>

Singapore Government (2009) Revision to Urban Verandah and Façade Articulation Guidelines

Town of Vincent (2009) Residential Development Policy No. 3.4.9 Encroachments over Crown Land
Woollahra Municipal Council (2008) Managing Encroachments on Road Reserves