

Building in airspace over road reserves

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Objective	4.3 We will establish a healthy balance between development and the environment
Strategy	4.3.1 Retain open space and greenbelts that are accessible to everyone

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1. Purpose

To provide guidelines for the private use of the airspace above Council road reserves that:-

- clearly set out Council's policy on the private use of airspace above Council's road reserves
- take account of the current and future safety needs of road users, the community and the legal obligations of Council;
- take account of the current and future local amenity, rights of passage and other uses adjacent to the site;
- limit Council's exposure to potential road safety hazard and public liability risks arising from structures over its road reserves, and
- assist Council to manage the road assets under its care and control.

2. Definitions

Road Reserve means any road that is opened or dedicated as a public road under the Roads Act 1993 or any other Act or Law and includes:

- (a) the land adjoining a road commonly referred to as the road verge, shoulder, nature strip or road side reserve,
- (b) a bridge, culvert or causeway within a Road Reserve;
- (c) a laneway, footpath, walkway or cycleway, and
- (d) the airspace above the surface of the road,

but does not include a classified road under the control of NSW Roads and Maritime Services.

An encroachment into the road reserve airspace is defined as being any part of a building or structure associated with a building that projects from the building, such as an architectural feature, a pillar, balcony, verandah or awning or lesser intrusion, beyond the lot boundaries over the Council road reserve.

Awning includes any structure that provides shelter over the road reserve and may include blinds, canopies and sunshades.

Usable floor space includes any floor space on an awning that has the potential to be used for any purpose, whether commercial or otherwise.

3. Background/legislative requirements

Council has power under the Roads Act to approve the erection of a structure in, on or over a public road. Council also has the power to lease the air space above, or land below the surface of, any public road (other than a Crown road or a classified road) subject to obtaining the concurrence of the Director of Planning, and, subject to the term of the lease, together with any option to renew, not exceeding 99 years.

4. Policy statement

Council considers that developments should be confined within their own boundaries and therefore will not approve any structure, other than an awning, that encroaches into the airspace above a road reserve.

Council will permit awnings over the footpath, especially in its central business districts **are desirable** because they provide a public convenience. However, Council will not approve any awning that includes useable floor space.

5. Procedures

5.1 Awnings in business areas (Development Consent required)

Awnings are usually provided by building owners in shopping precincts to provide protection and comfort to pedestrians in adverse weather conditions.

This policy will continue to encourage and permit their replacement and the construction of awnings in association with new developments where appropriate.

A lease of the airspace for awnings is not required.

The awning, including any supports, remains the responsibility of the building owner throughout its lifetime and all maintenance costs remain the responsibility of the owner.

Council reserves the right to remove any awning that it considers poses a risk to the public at any time.

To reduce the risk of accidental damage by motor vehicles, the following will apply:-

- (a) An awning will only be permitted where there is a physical barrier between the awning and the carriageway (e.g. a kerb between building and the carriageway) and where there is a footpath.
- (b) An awning would normally be erected at a height of not less than 2.9 metres above the level of the footpath. It must extend from the supporting building to a distance of 500 millimetres inside a vertical line drawn from the face of the kerb to minimise the risk of the structure being damaged by high vehicles travelling close to the kerb.
- (c) If the awning is a solid structure, the design requirements are:-
 - (i) The fascia must not be less than 300 millimetres nor more than 450 millimetres in depth.
 - (ii) The roof covering must be of weather resistant material and be provided with gutters and down pipes.
 - (iii) The ceiling must be lined with material compatible with adjacent buildings - also in colouring.
 - (iv) A minimum lighting level of 5 lux under the awning will be required to provide a level of safety to pedestrians after dark.

- (d) Soft awnings are restricted to an area of less than 5m² where there is no appropriate stormwater disposal system.
- (e) Any supporting structure (such as an arm, bracket or hook) on a soft awning is to be mounted at a height so it has a clearance of not less than 2.4m above the finished footpath level.

5.2 Use of Air Space over Roads for other purposes

Council will not otherwise approve encroachments of buildings into the air space above road reserves for any purpose. This includes architectural features, balconies, oriel windows, egress facilities, building service plants or for increasing additional building floor space. The need for these encroachments should be met within the boundaries of the property. The reasons for this include:

- (a) public property should not as a rule be utilised for private purposes,
- (b) a lease of airspace requires the prior approval of the Director General of Planning, and
- (c) developments should be confined within their own boundaries.

5.3 Existing structures

This policy does not apply to existing structures that overhang Council road reserve, however:

- (a) if a building with an existing overhanging structure is to be renovated and that renovation includes the overhanging structure, then no increase in the usable floor space of that overhanging structure will be permitted, and
- (b) if a building with an existing overhanging structure is wholly or substantially demolished, then no overhanging structure will be permitted when either the existing building is rebuilt or a new building is built to replace it.