

Encroachments and Unit Title assessment reports

Encroachments

Recent changes to the Unit Titles Regulation 2001 list the additional documentation and actions required when a works assessor finds a structure that appears to encroach over a boundary during the compilation of a unit title assessment report.

This guide explains the changes and how the new implementation process works.

Clause 1: [Part 2 Division 2.1A Section 2E (j)]

This clause deals with structures not shown on the units plan that may encroach over the parcel, unit, unit subsidiary or common property boundary.

The clause covers structures that:

- have been constructed after the registered surveyor carries out the survey, or
- structures that have been omitted from the plan by the registered surveyor.

If a unit title works assessor identifies a 'questionable' structure he or she needs to request certification (in the form of a report) from the registered surveyor that none of the structures encroach.

If the unit title works assessor is satisfied that no structures fall into this category, there is no need for such a certified report.

Example 1a

There is a large brick structure housing over 20 letterboxes in the front of a Class A unit complex.

It **existed** at the date of survey, however in the process of carrying out the survey, the registered surveyor confirmed the structure is inside the parcel, but greater than one metre from the parcel boundary, and therefore elects not to show it on the units plan. When the unit title works assessor carries out their inspection, they are unsure if the bank of letterboxes are close to the front boundary and requests certification from the registered surveyor confirming that the structure does not encroach the parcel boundary. If satisfied the specific structure doesn't encroach, the registered surveyor responds with a certified report indicating "...the brick letterbox structure does not encroach...".

Example 1b

There is a large brick structure housing over 20 letterboxes in the front of a Class A unit complex. It **did not exist** at the date of survey and has not been shown on the units plan. When the unit title works assessor carries out their inspection they are unsure if the bank of letterboxes is close to the front boundary and requests certification from the registered surveyor confirming that the specific brick letterbox structure does not encroach the parcel boundary. The registered surveyor identifies the structure isn't on his field notes and carries out a survey to locate the structure.



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Required actions

The registered surveyor either:

- provides certification that structures identified by the works assessor and not shown on the units plan do not encroach/or
- amends the Units Plan to show the structure that had been omitted.

If no additional structures are identified by the works assessor no certification from the surveyor is required.

Clause 1 is a two stage process:

- Stage 1: Identification by the unit title works assessor that he or she has a concern regarding a specific structure.
- Stage 2: Confirmation by the registered surveyor with respect to that specific structure in the form of a certified report that is included in the UTAR.

Clause 2: [Part 2 Division 2.1A Section 2E (k)]

This clause is to ensure the unit title works assessor is satisfied that where an encroachment exists, action has been taken by:

- the registered surveyor to ensure clear title can be issued, and
- the lessee has received DA approval for the encroachment.

There are two categories to consider here:

- encroachments over **unleased land**
- encroachments over an adjoining **leased parcel**

Example 2a: An encroachment over **unleased land** (such as a public road, adjoining unleased Territory Land etc) AND deemed an authorised existing attachment.

In this case, an attachment was shown on a units plan that will be cancelled, where that 'old units plan' was registered before 1 January 2002 (see UTA Sec 20 (8)).

Required actions:

- the unit title works assessor must ensure the encroachment is an authorised existing encroachment and has DA approval; and
- the registered surveyor must show on the units plan the extent of the encroachment (i.e. offset dimensions beyond the parcel boundary) and a description of the encroachment.



Example 2b: An encroachment over **unleased land** (such as a public road, adjoining unleased Territory Land etc) that is permissible under the *Unit Titles Act 2001* as amended in April 2008 - *Unit Title Amendment Act 2008* (A2008-9).

In this case, the attachment was lawful when constructed. That is, it has DA approval to encroach over the lease boundary and is an eave, gutter, downpipe or awning (see UTA dictionary)

Required actions:

- The unit title works assessor must ensure the encroachment has DA approval; and
- The registered surveyor must show on the units plan the extent of the encroachment (i.e. offset dimensions beyond the parcel boundary) and a description of the encroachment.

Example 2c: An encroachment over an adjoining leased parcel.

The two lessees must come to an agreement to create an easement to accommodate the encroachment and resolve the matter prior to submitting the Unit Titles application. No involvement by ACTPLA.

Required actions:

- The lessee (dominant tenement) has carried out negotiations with adjoining lessee (servient tenement) and registered a transfer and grant of easement at Land Titles Office.
- The registered surveyor must show on the units plan the instrument number of the transfer and grant of easement as well as the extent of the encroachment (i.e. offset dimensions beyond the parcel boundary) and a description of the encroachment.

How the process works

Shopping centre example

The units plan, registered prior to 2002, included a number of encroachments that fail the 'new' criteria.

The registered surveyor shows the encroachments on the new units plan and signs the declaration sheet accordingly.

Design feature example (UP 3499)

The encroachment is a 'design feature' of the building (such as an awning to shelter pedestrians) and has DA approval to encroach. The registered surveyor shows the encroachment as well as the licence number provided by ACTPLA.

Guttering example (UP 3509)

The guttering attached to the building in a Class A units plan encroaches over the adjoining parcel. The lessee registers the transfer and grant of easement and the registered surveyor shows the extent of the easement and the instrument number (i.e. dealing number) on the units plan.



Non compliance

If an encroachment is identified by either the registered surveyor or the unit title works assessor that doesn't fall into the two categories outlined above, then:

- the registered surveyor will be unable to sign the surveyors declaration sheet (and should immediately notify their client); and
- the unit title works assessor will be unable to sign the UTAR (and should immediately notify their client).

Remedy for non compliance depends on the circumstances.

Where the encroachment is over **unleased land**:

- **remove the encroachment**, or
- lodge a DA amendment for approval of the encroachment provided it is a "permissible" attachment as defined in the *Unit Titles Act 2001*; or
- apply to purchase the additional unleased land from LDA, if successful lodge a DA to consolidate the additional land with the existing lease.

Where the encroachment is over **leased land**:

- **remove the encroachment**, or
- create an easement over the adjoining leased parcel, or
- lodge a DA to re-align the block boundary between the leased blocks.