



## FACT SHEET

October 2007

# CHANGES TO THE REGULATION OF TEMPORARY STRUCTURES AND PLACES OF PUBLIC ENTERTAINMENT

## Introduction

From 26 October 2007, regulation of the erection of temporary structures and the use of buildings or temporary structures as places of public entertainment (POPEs) will be transferred to the *Environmental Planning and Assessment Act 1979* (EP&A Act) from the *Local Government Act 1993* (LG Act).

The legislative changes streamline the approval requirements for these types of development while continuing to provide for public safety. The changes will promote opportunities for live entertainment and make it easier to stage some private functions and community events where temporary structures are to be erected.

## Transfer of the approval process

From 26 October 2007, regulation of the erection of temporary structures and the use of buildings or temporary structures as POPEs will be under the EP&A Act only. Previously, the use of a POPE (including by the Crown) has required approval under the LG Act. Similarly, the installation of a temporary structure has usually required LG Act approval. The transfer will occur when certain provisions in the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions Act) Act 2001* commence.

A new State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007 (the SEPP) and associated amendments to the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), gazetted on 28 September 2007, also come into force on 26 October 2007. The SEPP introduces regulatory requirements and other provisions relating to temporary structures and POPEs.

## Changes to the Environmental Planning and Assessment Act

New definitions are being inserted in the EP&A Act so that the use of a POPE or the erection of a temporary structure will be development under the EP&A Act:

- *places of public entertainment* will include theatres, cinemas and public halls used for public entertainment and licensed premises and registered clubs used for entertainment
- *temporary structures* will include tents, marquees, booths and other temporary enclosures, and mobile structures.

Also the definition of 'building' will be amended to include temporary structures.

## **Approvals under the new State environmental planning policy**

### *Permissibility of development*

State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007 provides that the erection of a temporary structure or the use of a building as a POPE requires development consent except as otherwise provided for in the Policy or where the use of a particular type of POPE or the erection of a particular type of temporary structure is identified as exempt or complying development, or is prohibited, in another environmental planning instrument such as a local environmental plan.

The new SEPP sets out the matters to be considered by the consent authority (in most instances the local council) when determining a development application for the use of a building as a POPE or the erection of temporary structure.

### *Exempt and complying development*

The SEPP identifies certain development as exempt or complying development. The SEPP sets standards for the use of a POPE or the erection of a temporary structure to qualify as exempt or complying development, and imposes conditions on complying development to cover matters of safety, amenity and protection of the environment.

Exempt development under the SEPP includes the erection and use of some temporary structures for certain private functions and community events. The SEPP also amends State Environmental Planning Policy No. 4—Development without Consent and Miscellaneous Complying Development to insert provisions relating to the use of certain temporary structures for filming.

Complying development under the SEPP also includes the erection and use of some temporary structures as POPEs and for community events, and the use of some existing buildings as POPEs.

## **Change to the Environmental Planning and Assessment Regulation**

Amendments to the EP&A Regulation include:

- specifying matters that a consent authority must, where relevant, take into consideration when determining a development application for the use of an existing building as a POPE, e.g. fire protection and structural capacity of the building. These matters are in addition to the matters specified in the SEPP
- setting development standards for complying development certificates for the use of existing buildings as POPEs, e.g. relating to fire protection, structural capacity, sanitary facilities and ventilation of the building
- imposing conditions for the use of a building as a POPE relating to safety matters, which will apply to existing as well as new POPEs
- limiting the use of a pub, nightclub, registered club or licensed restaurant as a POPE under a complying development certificate to a maximum of five years
- providing that a construction certificate will not be required to erect most temporary structures. This exemption applies until 26 October 2009
- providing that a final occupation certificate is not required for a temporary structure, except in the case of a tent or marquee over 100m<sup>2</sup> in floor area proposed to be used as a POPE.

## **Use of places of public entertainment by the Crown**

The Director-General of the Department of Planning was previously given delegation under the LG Act by the Minister for Local Government to approve use by the Crown of buildings as POPEs. This delegation will cease on 26 October 2007. From that date there will no longer be a requirement to refer applications by the Crown to use a building as a POPE to the Department of Planning for approval (as section 71 of the LG Act is repealed).

From 26 October 2007, Crown development for the use of a building as a POPE will be required to be certified by or on behalf of the Crown to comply with all relevant controls in force as at the day on which that development commences (section 116GA of the EP&A Act). However, at this time, there are no relevant controls prescribed for the purposes of section 116GA. Section 116G of the EP&A Act, which applies to the Crown, will apply to Crown building work associated with the Crown's use of a building as a POPE.

## **Existing Local Government Act applications and approvals**

Any application for approval to install a temporary structure or to use a building or temporary structure as a POPE lodged under the LG Act before 26 October 2007 but not determined by then, may be determined as if the LG Act had not been amended. However, applications for temporary structures or to use a place as a POPE can no longer be made under the LG Act on or after that date.

The use of a POPE or the erection of a temporary structure that is the subject of an existing approval will be able to continue although the LG Act provisions under which the approval was granted are repealed. The conditions applying to these existing approvals will be preserved until 26 October 2009 (even if the approval would have lapsed prior to then) under savings and transitional provisions in Schedule 6 to the EP&A Act. However, the use of these POPEs and temporary structures will also be subject to any applicable provisions in the EP&A Regulation. The requirements of the EP&A Regulation will override any conditions imposed under a LG Act approval, should there be an inconsistency.

## **Further information**

Copies of the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001*, the *Environmental Planning and Assessment Amendment (Temporary Structures and Places of Public Entertainment) Regulation 2007* and *State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007* are available from the NSW legislation website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au). Copies of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000* (as amended) are also available from the NSW legislation website.

If you have further enquiries, please phone the Department of Planning Information Centre on (02) 9228 6333 or email [information@planning.nsw.gov.au](mailto:information@planning.nsw.gov.au).