
PLANNING SYSTEM

Act and regulation changes

Circular	PS 08-012
Issued	18 December 2008
Related	

Entertainment in pubs, bars, cafes and restaurants

The purpose of this circular is to remind councils that since 26 October 2007 the regulation of the use of buildings or temporary structures as places of public entertainment was transferred to the *Environmental Planning and Assessment Act 1979* from the *Local Government Act 1993*.

Removal of POPE licences under section 68 of the Local Government Act

From 26 October 2007, the regulation of the use of buildings or temporary structures as a place of public entertainment (POPE) was transferred to the *Environmental Planning and Assessment Act 1979* (EP&A Act) from the *Local Government Act 1993* (LG Act). Previously the use of a POPE required both a development consent under the EP&A Act and an approval under the LG Act.

Despite this legislative amendment, some councils are continuing to advise restaurant, bar and pub operators that POPE licences are still required under the LG Act with application forms for POPE licences under the LG Act still on their websites. However this only applies to applications lodged before 26 October 2007.

Councils are requested to review their public information systems, in particular, the information displayed on their website regarding entertainment venues, and remove any references that indicate that the former system is still in operation.

The use of a POPE that is the subject of an existing POPE licence, except one that was granted after the 2007 amendments under the EP&A Act, continues despite the LG Act provisions under which the licence was granted being repealed. The conditions applying to existing approvals are preserved until 26 October 2009 under savings and transitional provisions in the EP&A Act. Arrangements for operation after 26 October 2009 are under review.

Entertainment in pubs, bars, cafes and restaurants

The principal purpose of pubs, bars, cafes and restaurants is to sell food and drinks to individuals who enter and consume the food and drinks on the premises. It is a common practice for these types of businesses to provide some form of entertainment while their patrons eat and drink. There may be recorded music or video, or television screens for the enjoyment of their customers; or other entertainment incidental to the primary use, including live music that does not have a character of its own.

The provision of these types of incidental entertainment does not change the principal purpose of the pub, bar, cafe or restaurant premises – the premises continue to be used for the principal purpose of eating and drinking.

The continued similar provision of incidental recorded or live music or video or television screens at pubs, bars, cafes and restaurants venues without changing the principal use of the premises, does not require further development consent as long as the premises continues to be used primarily for eating and drinking.

However, if the entertainment has a character of its own or it changes the principal use of the premises, then development consent will be required, unless that use is exempt or complying development. It may not be carried out though if it is prohibited under an environmental planning instrument.

The decision as to whether the entertainment has a character of its own is a matter of fact which must be determined on a case-by-case basis. When considering this, it is important to note that simply because some form of entertainment is provided in pubs, bars, cafes and restaurants it does not necessarily mean that development consent is required.

For example, an activity which provides live background music in a restaurant which is incidental to the main use of the premises, may not constitute a 'use for the purpose of providing entertainment' in its own right.

However if the entertainment has a character of its own or if a distinctly separate room in a pub is used for live music performances, that part of the pub may be properly described as being used 'for the purpose of entertainment' and thus that part of the pub would need to be approved for that use under the EP&A Act. In such a case, the development may be exempt or complying development.

Focus on safety and neighbourhood amenity

Whether the facility is considered to be a pub, bar, cafe or restaurant or any other form of entertainment venue, a key consideration is the safety of the occupants.

The numbers for which the place was designed or built should not be exceeded. Where the facility is old and may not have the numbers specified in the consent or permit, then the provisions in the Building Code of Australia (BCA) should apply as a general rule, for example:

- where there are tables in a pub, bar, café or restaurant there should be no more than 1 person per square metre
- where there are no tables, there should be no more than 2 people per square metre.

In addition, the number and width of exits provided should be as set out in the BCA.

Councils are reminded that if they are concerned regarding the inadequacy of the fire safety aspects of the premises, they can issue an order under section 121 of the EP&A Act.

Provisions exist under the *Liquor Act 2007* as well as the *Protection of the Environment Operations Act 1997* to control noise from the premises and from patrons coming to or going from the premises. Importantly, the *Liquor Act 2007* includes provisions for the management of drunken behaviour from patrons at or leaving licensed premises.

Current review of the SEPP and regulations, and change of definitions

The existing State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007 (SEPP) and the associated provisions in the Environmental Planning and Assessment Regulation 2000 relating to public entertainment are currently being reviewed. A further circular will be issued once this review is completed outlining the new system for regulating entertainment venues.

The new system will focus on a risk-based approach that takes into account recently implemented changes to the *Liquor Act 2007* and removes over regulation whilst ensuring the continued protection of public safety and community amenity.

Further information

If you have further enquiries, please phone the Planning Information Centre 02 9228 6333 or email information@planning.nsw.gov.au.

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.

Authorised by:

Sam Haddad
Director-General
NSW Department of Planning

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

© State of New South Wales through the Department of Planning
www.planning.nsw.gov.au

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.