

1995—No. 239

LOCAL GOVERNMENT ACT 1993—REGULATION

(Relating to approval applications and conditions, building standards, law revision and other matters)

NEW SOUTH WALES



[Published in Gazette No. 77 of 23 June 1995]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Local Government Act 1993, has been pleased to make the Regulation set forth hereunder.

ERNEST THOMAS PAGE, M.P.,
Minister for Local Government.

Commencement

1. This Regulation commences on 1 July 1995.

Amendments

2. The Local Government (Approvals) Regulation 1993 is amended:

(a) by inserting in clause 4 (l), in alphabetical order, the following definition:

classification of a building means the classification of the building as prescribed by Division 6 of Part 2;

(b) by inserting after clause 6A the following clause:

Limited application of Regulation to temporary buildings

6B. (1) This Regulation (except clause 35) does not apply to temporary buildings.

(2) In this clause, **temporary building** does not include:

(a) a building designed for use for residential purposes; or

(b) a building erected by way of alteration, addition or extension to an existing building; or

(c) a building more than 1 storey in height.

- (c) by omitting clause 7 (1) (b) and by inserting instead the following paragraphs:
 - (b) 2 copies of a plan and specification of any fences already erected or to be erected on the site on which it is proposed to erect the building or on the boundaries of that site;
 - (c) 2 copies of a plan showing the height and external configuration of the building in relation to the site on which it is proposed to erect the building.
- (d) by omitting clause 8 and by inserting instead the following clauses:

Alteration and change of use of existing buildings

7A. (1) An application for approval to erect a building which involves the carrying out of structural work on, or any alteration or addition to, an existing building, or an application for approval to change the use of a building to a use that is not consistent with the current classification of the building must be accompanied by a list of:

- (a) the essential services that are currently installed in the building; and
- (b) the essential services that are to be installed in the building in connection with the proposed structural work, alteration, addition or change of use.

(2) The list must describe the extent, capability and basis of design of each of those essential services.

(3) This clause does not apply to a class 1a or class 10 building.

Council may dispense with need for plan or specification

8. Despite clause 7, the council may dispense with the requirement to submit:

- (a) copies of a plan and copies of a specification of the fences; or
- (b) copies of a plan showing the height and external configuration of the building in relation to the site on which it is proposed to erect the building; or
- (c) copies of plans and copies of specifications of minor alterations to be made to an existing building; or

- (d) copies of plans and copies of specifications for the erection of a building to be used exclusively for the purpose of a green-house, conservatory, summer-house, private boat-house, fuel shed, tool shed, cycle shed, aviary, milking bail, hay shed, stable, fowl-house, pigsty, barn, verandah or similar building.
- (e) by omitting clause 9 (1) (d) and by inserting instead the following paragraph:
 - (d) a statement that specifies the period during which submissions may be made in relation to the application; and
- (f) by inserting after clause 9 the following clause:

Application may be made for approval for exempted activity

9A. A person may apply for approval under the Act for the carrying out of an activity, and the application may be determined, even though the person is exempted from the necessity to obtain approval by a local approvals policy.

- (g) by omitting from clause 11 the word “other” and by inserting instead the words “the same”;
- (h) by inserting after clause 11 the following clause:

No extra fees for certain functions

11A. A council must not charge, in addition to the application fee for an approval to erect a building, a separate fee for any of the following functions performed by the council:

- (a) receiving and registering the application for approval;
- (b) undertaking any inspection of the site of the proposed building before the determination of the application;
- (c) if the erection of the building comprises the alteration or rebuilding of an existing building, any inspection of the existing building before the determination of the application;
- (d) notifying any persons who may be detrimentally affected by the proposed building;
- (e) allowing inspections at the office of the council of such plans of the proposed building as show its height and its external configuration in relation to the site on which it is proposed to be erected;
- (f) considering submissions made in relation to the application for approval;

- (g) examining the application for approval and accompanying plans and specifications;
- (h) checking engineering drawings and other details that relate to the proposed building;
- (i) preparing any report in relation to the application for approval, processing and determining the application and giving any notice required by the Act in relation to the determination of the application;
- (i) issuing a certificate of classification to the person on whose behalf the building has been erected;
- (k) incidental administrative functions associated with the determination of the application for approval.
- (i) by omitting from clause 16 (1) (b) the word “building” and by inserting instead the word “structure”;
- (j) by omitting clause 22 and by inserting instead the following clause:

Schedule of essential services (except class 1a or class 10)

22. (1) A council must, when giving its approval to the erection of a building or to a change in the use of a building to a use that is not consistent with the current classification of the building, attach to the approval a schedule specifying:

- (a) the essential services that, under this Regulation or the Act or any condition of the approval, are permitted or required to be installed in the building so as to ensure the safety of persons in the building in the event of fire in the building; and
- (b) to the extent to which neither this Regulation nor the Building Code of Australia specifies a minimum standard of design, installation or maintenance for those essential services so as to ensure the safety of persons in the building in the event of fire in the building —that minimum standard.

(2) This clause does not apply to a class 1a or class 10 building.

- (k) by omitting from clause 25 (2) the matter “clause 22” and by inserting instead the matter “clause 23”;
- (l) by inserting in clause 26 after the words “the use of a building” the words “to a use that is not consistent with the current classification of the building”;

- (m) by inserting after clause 35 (2) the following subclause:
 - (3) In this clause, **temporary building** does not include:
 - (a) a building designed for use for residential purposes; or
 - (b) a building erected by way of alteration, addition or extension to an existing building; or
 - (c) a building more than 1 storey in height.
- (n) by omitting from clause 49 (2) the matter “clause 20” and by inserting instead the matter “clause 21”;
- (o) by omitting clause 52 (1) and by inserting instead the following subclause:
 - (1) The standards for activities that are approved and the standards that are to be met in order for activities to be approved are (apart from any standards set out in this Regulation) the standards set out in:
 - (a) the Building Code of Australia, in the case of the activities specified in items 1, 7 and 8 of Part A of the Table to section 68 of the Act (except the use, or permitting the use, of a temporary structure as a place of public entertainment); or
 - (b) clause B1.1 of the Building Code of Australia and the provisions of that Code entitled “NSW Part H102 Temporary Structures”, in the case of the activity specified in item 8 of Part A of the Table to section 68 of the Act (being the use, or permitting the use, of a temporary structure as a place of public entertainment).
- (p) by inserting after clause 53 (3) (c) the following paragraphs:
 - (d) Where the allotment was created by subdivision that was the subject of development consent under the Environmental Planning and Assessment Act 1979 and that consent was based on the assumption that a class 1 building would be erected on the allotment.
 - (e) Where the erection of the building on the allotment was the subject of development consent under the Environmental Planning and Assessment Act 1979.
- (q) by omitting clause 57 (2) (b)–(e) and by inserting instead the following paragraphs:
 - (b) the wall is a common wall or party wall that separates 2 or more dwellings (such as are commonly known as semi-detached or terrace buildings) attached to each other and erected on 2 or more parcels of land; or

- (c) in the case of a wall (or part of a wall) of a single class 1 building:
 - (i) the wall (or part) does not contain windows and the council is satisfied that compliance by the wall (or part) with this subclause would be impracticable because of the levels or width of the allotment or other exceptional conditions of the site; and
 - (ii) the wall is not less than such distance from the boundary line of the allotment as the council approves in the particular case; or
- (d) the wall (or part of the wall) does not contain windows and comprises an extension (permitted by the council) of an existing wall being an extension that is at such lesser distance from the boundary line as the council approves in the particular case; or
- (e) the wall consists of an existing wall that is to be veneered or refaced; or
- (f) building to the boundary line has been consented to in development consent under the Environmental Planning and Assessment Act 1979.
- (r) by omitting from clause 59 (1) the words “required by clause 57” and by inserting instead the words “required for a class 3 building by clause 58”;
- (s) by omitting from clause 59 (2) the words “required by clause 56” and by inserting instead the words “required for a class 3 building by clause 58”;
- (t) by omitting from clause 60 (4) the matter “or clause 57” and by inserting instead the matter “(in relation to a building of either class) or clause 58 (in relation to a class 3 building)”;
- (u) by omitting clause 62;
- (v) by omitting from clause 70 (f) (iii) the words “times which” and by inserting instead the words “times while”;
- (w) by omitting clauses 79 and 97;
- (x) by omitting from clause 99 the words “in accordance with a notice on that land permitting the activity.” and by inserting instead the words “done in accordance with a notice erected on that land by the council or if it is done in the circumstances specified, in relation to the setting up, operation or use (as the case may be) of a loudspeaker or sound amplifying device, in Part 1 of the local approvals policy applying to the land.”;

- (y) by inserting after clause 114 (g) the following paragraph:
 - (h) the Occupational Health and Safety Act 1983, and the regulations made under that Act, as regards the safety of persons who will be employed at the proposed car park or of persons who will go there.
- (z) by inserting after clause 147 the following clause:

Public notice of approval

147A. (1) For the purposes of section 675 of the Act, the prescribed manner of giving public notice of the granting of an approval is to publish the notice in at least one local newspaper circulating at least once weekly in the area of the council.

(2) For the purposes of section 675 of the Act, the prescribed form of public notice of the granting of an approval is a form which includes:

- (a) a precise indication of the location of any place in relation to which the approval is granted (for example, the address of the place and any other description to help a reader identify the place) and a brief description of the subject-matter of the approval; and
- (b) a statement to the effect that a record of the approval is available for inspection, without charge, at the office of the council during its ordinary office hours.
- (aa) by omitting clause 151 and by inserting instead the following clauses and Part:

Inspections by Director-General of New South Wales Fire Brigades

151. For the purposes of section 202 (1) (b) of the Act, the following provisions are prescribed:

- (a) Part 1 of Chapter 7 of the Act, and the provisions of this Regulation, in so far as they relate to a condition of an approval concerning the provision, maintenance or certification of essential services in a building;
- (b) sections 655, 656 and 657 of the Act.

Local approvals policies: performance standards

152. (1) If a person is exempt (because of a local approvals policy) from the requirement to obtain approval for an activity, the exemption is subject to the condition that the activity comply with the standards referred to in the following provisions:

1995—No. 239

- (a) clauses 25, 77, 102, 116, 130, 135, 138, 143 and 146;
- (b) clause 46 of the Local Government (Water, Sewerage and Drainage) Regulation 1993.

(2) However, the activity must so comply only to the extent that the provisions (and the standards to which they refer) would apply to the activity if the activity had not been the subject of an exemption under the local approvals policy.

(3) However, if the local approvals policy specifies, as the circumstances (or as part of the circumstances) for the exemption, that the activity is carried out in such part of an area, or such an area, as is specified in the policy, subclauses (1) and (2) do not apply to the activity.

(4) Subclause (3) does not prevent a local approvals policy from specifying compliance with one or more of the standards referred to in subclause (1) as part of the circumstances for an exemption under section 158 (3) of the Act.

PART 8—SAVINGS AND TRANSITIONAL PROVISIONS

Fire exit notices

153. An amendment of this Regulation as to the form or contents of the notice referred to in section 654 (Fire safety notices) of the Act does not apply to a notice first displayed before the amendment was made.

Applications for approval

154. An amendment to this Regulation as to the form of, or the material to accompany, an application for approval does not apply to an application made before the amendment was made.

- (ab) by omitting from Schedule 1 the matter “(C11. 3 (4), 45, 49, 66, 150)” and by inserting instead the matter “(C11. 4 (4), 46, 50, 67, 150)”;
- (ac) by omitting from Form 1 the following matter:

****CONDITIONS OF APPROVAL**

.....

- (ad) by omitting from Form 1 the words “***Applicable only to Class 3 boarding-houses and Class 9b places of public entertainment.*”;
- (ae) by omitting from Form 4 the matter “\$10,000” wherever occurring and by inserting instead the matter “\$1,000”.

- (af) by omitting clause 3 of Schedule 2 and by inserting instead the following clause:

Projection suites

3. (1) When a film is being screened at a place of public entertainment, at least one person trained in the operation of the projectors being used and in the use of the fire fighting equipment provided in the room where they are installed (the **projection room**) must be in attendance at the place of public entertainment.

(2) If the projection room is not fitted with automatic fire suppression equipment and a smoke detection system, in accordance with the Building Code of Australia, the person required by subclause (1) to be in attendance must actually be in the projection suite in which the projection room is located during the screening of a film.

(3) No member of the public is to be present in the projection suite during the screening of a film.

EXPLANATORY NOTE

The object of this Regulation is to make various amendments to the scheme of approvals set up under the Local Government Act 1993.

The amendments deal with the following matters:

- (a) inserting a definition of the classification of a building;
- (b) prescribing further material to accompany an application for council approval to erect a building, but enabling councils to dispense with that material in certain cases;
- (c) removing the overlap in provisions setting out conditions applying to temporary buildings;
- (d) the relaxation of minimum allotment sizes in certain cases;
- (e) the erection of walls closer to a boundary than is normally required;
- (f) making it clear that the relevant parts of the Building Code of Australia apply to the construction of a temporary structure to be used as a place of public entertainment;
- (g) omitting certain provisions from the Local Government (Approvals) Regulation 1993 dealing with drains, sewerage and disposal of trade waste (to the extent that those provisions appear in the amended Local Government (Water, Sewerage and Drainage) Regulation 1993);
- (h) requiring councils to take occupational health and safety laws into account when considering an application for approval to operate a public car park;
- (i) the form in which public notice of the grant of an approval can be given;

1995—No 239

- (i) enabling the inspection powers of fire brigades to be exercised for the purposes of checking whether approval conditions relating to essential services are being complied with;
- (k) enabling a person to apply for formal council approval of an activity even if it does not strictly require approval;
- (l) requiring an activity, even if exempt from the approval process because of a local approvals policy, to comply with the relevant performance standards set out in the Local Government (Approvals) Regulation 1993 and elsewhere;
- (m) making it clear that councils cannot charge separate fees for certain services in addition to an application fee for an approval;
- (n) fire safety where film projectors are in use at places of public entertainment;
- (o) other matters that are minor, including savings and transitional provisions and law revision.

This Regulation is made under the Local Government Act 1993, including section 748 (the general regulation making power) and various other sections referred to in the Regulation.
