

FACT SHEET: Places Of Public Entertainment

Introduction

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 & Assessment Act 1979 (EP&A Act) from the Local Government Act 1993 (LG Act). Previously the use of POPE required both a development consent under the EP&A Act and an approval under the LG Act.

The use of a POPE licence granted prior to October 2007, is permissible until the 16th October 2009 under the savings and transitional provisions in the EP&A Act. Arrangements for operation after 26th October 2009 are under review.

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

Entertainment in Pubs, Bars, Cafes & Restaurants

The principal purpose of pubs, bars, cafes and restaurants is to sell food and drinks to individuals who enter the premises. It is a common practice for these sorts of businesses to provide some sort of entertainment while their patrons eat and drink. The provision of these types of incidental entertainment do not change the principal use of the premises or require additional development consent so long as the premises continues to be used primarily for eating and drinking.

However, if the entertainment has a character of its own or changes the primary use of the premises, then development consent will be required. The decision as to whether or not the entertainment has a character of its own must be determined on case-by-case basis.

For example, if an activity which provides live background music in a restaurant 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 different area or separate room is used for live music or entertainment purposes, then that part of the venue would need to be approved for the entertainment use under the EP&A Act. In such a case, the development use may be exempt or complying development.

Focus on Safety & Neighbourhood Amenity

The key consideration of any venue is the safety of its occupants. The numbers for which the place was designed or built should not be exceeded. Where the facility is old, and the number of patrons is not specified in the permit or consent, the provisions in the Building Code of Australia (BCA) apply as a general rule:

- 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 per the BCA.

Provisions exist under the Liquor Act 2007 as well as the Protection of the Environment Operations Act to control noise from patrons entering or leaving the premises, and under the Liquor Act for drunken behaviour management.