

# Practice Note

## 2013-66

Issued July 2013

## Occupancy Permits for Places of Public Entertainment

### GENERAL REGULATORY REQUIREMENTS

#### 1) PURPOSE

The purpose of this Practice Note is to provide guidance concerning the places of public entertainment (POPE) requirements under the Building Act 1993 and their application to sporting, recreational and other activities and events conducted by community-based organisations in outdoor places greater than 500m<sup>2</sup>.

#### 2) BACKGROUND

Local councils, sporting clubs and other community groups have expressed uncertainty over POPE requirements. These uncertainties are especially prominent when the requirements apply to community use of council and other outdoor recreational facilities, leading to inconsistent application processes and standards. These regulations simplify POPE requirements in certain Circumstances

#### 3) POPE - LEGAL REQUIREMENTS

Recent amendments made to the Building Regulations 2006 (the Regulations) have clarified POPE requirements for community-based organisations.

The key legislative provisions concerning the use of POPE by community-based organisations are as follows:

Sections 49 and 50 of the Building Act prohibit the conducting of public entertainment in a

POPE unless an occupancy permit has been issued permitting the use of the POPE for that entertainment.

The meaning of “conduct a public entertainment” is set out in section 3 of the Building Act which provides that conduct, in relation to a public entertainment, means to have a direct pecuniary interest in the proceeds or profits of the entertainment.

The definitions under the Building Act and the Building Regulations 2006 operate to provide that the following are POPE:

- prescribed places (the Melbourne Cricket Ground and Kardinia Oval)
- a building in the prescribed classes of buildings (ie. Class 9b buildings having an area greater than 500m<sup>2</sup> and prescribed temporary structures) used or intended to be used for the purpose of providing public entertainment
- a place in the prescribed class of places:
  - which is enclosed or substantially enclosed, or
  - to which admission can be gained by payment of money or the giving of other consideration;

that is used or intended to be used for the purpose of providing public entertainment.

# Practice Note 2013-66

## 3.1 Prescribed class of places

The prescribed class of places is prescribed by regulation 1102 of the Regulations which now provides that:

“places having an area greater than 500m<sup>2</sup> are a prescribed class of places unless-

- I. the place is used for the purposes of conducting an event or activity which is organised and controlled by a community-based organisation; and
- II. the number of persons in the place at any one time during the event or activity does not exceed 5,000.”

Community-based organisation means a body whether incorporated or not that:

- is not established primarily for the purposes of profit or gain; and
- does not distribute any profit or gain made in the conduct of its activities to members; and
- operates in a community wholly for either:
  - a philanthropic or benevolent purpose (eg. A school council); or
  - any sporting or recreational purpose (eg. A football or netball club).

Under section 53 of the Building Act, an application for a POPE occupancy permit for a prescribed class of place may be made by or on behalf of the owner of the POPE concerned. Applications must be made to the Municipal Building Surveyor of the relevant council.

## 4) COMMUNITY-BASED ORGANISATIONS' USE OF OUTDOOR PLACES

### 4.1 Normal seasonal and/or weekly use of outdoor places

Most community-based organisations' use of outdoor recreational facilities is by member based not-for-profit organisations, established to facilitate and promote participation in competitive and recreational sport, or other shared interests and social activities.

Many groups have long standing arrangements with local councils or schools to use sports grounds, clubrooms, parks and other recreational facilities on a recurring seasonal basis. Other groups have regular access to a particular (often shared) facility at specified times and days each week.

Popular outdoor community sporting activities conducted on council owned parks and playing fields include football, netball, cricket, basketball, hockey and tennis.

Access to council facilities is generally provided under a lease, licence or permit from the local council which sets out detailed terms and conditions of use. These include requirements regarding the safety of users of the facility and members of the public. They also prohibit uses that are not permitted, such as use of the premises to run a business, or for private purposes.

Community groups are self-funded, and fundraising by means of small admission fees, clubroom canteens, sausage sizzles, car parking fees, reserved seating areas and like activities can be part of normal seasonal use by these groups.

The Regulations have now been amended to exempt community-based organisations using outdoor recreational facilities greater than 500m<sup>2</sup> (without temporary structures) from the requirement to obtain a POPE occupancy permit if the number of persons in the place at any one time during the event or activity does not exceed 5,000.

### 4.2 Casual use/one-off events in outdoor places

In addition to regular sporting or social activities, many community groups use parks, playing fields and other outdoor facilities to hold one-off events and activities.

These may include sporting activities, cultural festivals, fetes and community markets.

Where council facilities are used for these events, organisers must obtain a permit from the local council authorising and setting out the terms and conditions for the use of the facility.

In other cases, e.g. where these events are held at a school, permission must be obtained from the school council or principal.

Community-based organisations using outdoor recreational facilities greater than 500m<sup>2</sup> (without temporary structures) for these events are exempt from the requirement to obtain a POPE occupancy permit if the number of persons in the place at any one time during the event or activity does not exceed 5,000.

#### **4.3 Major events and attractions that require an occupancy permit**

In some instances community-based organisations conduct events that require a POPE occupancy permit.

These are larger scale events (i.e. the number of persons in the place at any one time during the event or activity exceeds 5,000 in a place larger than 500m<sup>2</sup>), where the event is conducted in an enclosed or semi enclosed place and entry to (and exit from) the event is controlled, or to which admission can be gained by payment of an admission fee or other consideration.

Examples of such events include football finals and grand finals run by the competition's association, open air concerts, and agricultural shows. A POPE occupancy permit is required for these events irrespective of whether they are conducted by a community-based organisation or a commercial business.

#### **4.4 Occupancy permit conditions**

Where an occupancy permit is required, the Regulations allow the permit to include

conditions concerning the use of the facility. The areas covered by the Regulations (eg. attendance of safety officers, fire safety equipment, evacuation procedures, safe storage of flammable materials and explosive items, etc) indicate that these conditions are intended for use in respect of activities that are a significant risk to public safety rather than standard application across all activities and events.

For this reason, conditions should only be included in POPE occupancy permits where the intended use of the facility is assessed to be within a "higher risk" category, and the conditions imposed will clearly reduce the level of risk associated with this use.

#### **4.5 Other issues to consider**

Most public events and activities in outdoor places will be subject to a range of other (ie. non-POPE) safety focused legislative and other requirements. Community-based organisations must ensure their events and activities comply with these requirements if applicable.

Community-based organisations conducting events and activities in outdoor places are also encouraged to address any risks associated with potential adverse weather conditions (e.g. extreme temperatures, storms, bushfire warnings), the nature of the event or activity being conducted and the number of participants involved.

## **5) BUILDINGS AND TEMPORARY STRUCTURES**

### **5.1 Buildings**

It should be noted that the use of buildings adjoining or within parks and recreational facilities, (eg. change rooms, grandstands, clubrooms, etc) is generally covered under the occupancy permit issued for the building to the owner.

Accordingly, if an occupancy permit has already been provided, an additional POPE occupancy

# Practice Note 2013-66

permit should not be required for the established use of these buildings. If an organisation holds an event that is greater than the scope of the existing occupancy permit, then a POPE occupancy permit will be required from the Municipal Building Surveyor of the relevant council.

## 5.2 Temporary structures

Where the use of a recreational facility for public entertainment will involve the erection of a prescribed temporary structure, separate occupancy permit requirements apply.

Section 3 of the Building Act defines prescribed temporary structure as including a temporary structure in a prescribed class of temporary structures. The Regulations provide that the following are prescribed classes of temporary structures:

- tents, marquees or booths with a floor area greater than 100m<sup>2</sup>
- seating stands for more than 20 persons
- stages or platforms (including sky borders and stage wings) exceeding 150m<sup>2</sup> in floor area
- prefabricated buildings exceeding 100m<sup>2</sup> other than ones placed directly on the ground.

Provided these structures do not form part of another building other than a temporary structure or temporary building.

Section 52 of the Building Act prohibits an owner, occupier, lessee or hirer of a prescribed temporary structure from using the structure for the purpose of providing public entertainment in contravention of the occupancy permit permitting its use for that entertainment.

Section 57 allows occupancy permits for prescribed temporary structures to be issued on the condition that:

- the siting of the temporary structure is subject to the approval of the municipal building surveyor of that district
- the erection of the temporary structure is carried out by registered building practitioners.

An application for an occupancy permit for a prescribed temporary structure must be made to the Victorian Building Authority.

If you have a technical enquiry please email: [technicalenquiry@vba.vic.gov.au](mailto:technicalenquiry@vba.vic.gov.au) or phone 1300 815 127

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