



Places of Public Entertainment Policy

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1. PURPOSE

1. To ensure that Council meets its responsibilities under the *Building Act* 1993 (“the Act”) and in particular:

- Part 5 Division 2 of the Act which requires, through the imposition of a fine for failure to do so, an occupancy permit to be issued in respect of using a place of public entertainment for the purpose of providing a public entertainment; and
- Part 11 of the *Building Regulations* 2006 (“the Regulations”) which allows conditions to be imposed in occupancy permits in respect of places of public entertainment; and

Part 12 of the Regulations which requires occupancy permits to include conditions listing all the necessary essential safety measures and the level of performance required with respect to a place of public entertainment.

2. OBJECTIVE

The objective of this policy is to reduce its exposure to risk and provide guidance to Council officers on how the requirements in respect of Places of Public Entertainment (“POPE”) are to be administered.

3 DEFINITIONS

Admission	A process, including an action or payment, required to be completed to obtain permission to enter a place. For example, the process of entering a public entertainment may require the purchase of a ticket, or entry in a particular manner.
Enclosed / Substantially enclosed	A controlled space (by fencing, structures or natural features) that a reasonable person would see as being an exclusive area
Public Entertainment	an entertainment or meeting to which admission may ordinarily be gained by members of the public.
POPE	Place or Public Entertainment
Place of Public Entertainment	1 A building greater in size than 500 square metres used or intended to be used for an entertainment or meeting for which admission may ordinarily be gained by members of the public OR 2 A place greater in size than 500 square metres which

- (a) is enclosed or substantially enclosed; or
- (b) to which admission can be gained by payment of money or other consideration –

which is used or intended to be used for an entertainment or meeting to which admission may be ordinarily gained by members of the public.

OR

3 Prescribed POPEs (Victorian Building Authority)

4. POLICY

The requirements in relation to places of public entertainment became part of the Act when the building regulatory framework was reformed in 1993 and 1994

Prior to the current scheme the *Health Act* 1958 regulated public buildings that were used for the “purposes of recreation, amusement entertainment or structure” but only appears to have covered buildings or venues that were specifically built for public entertainment.

Councils had limited involvement in the regulation of Public Buildings. If authorised by the Chief General Manager under the Health Act, a Council could approve the use of a public building and the number of persons to be accommodated. This however required the specific authorisation to do so. Council had no such authority in its own right.

Part 5 Division 2 of the Act now deals with occupancy permits for places of public entertainment. There is no overt requirement under the Act that an occupancy permit be obtained but any person conducting such an entertainment, or the owner or occupier of a place of public entertainment who allows the place to be used for a public entertainment may be subject to a penalty if an occupancy permit has not been issued.

Council and its Municipal Building Surveyor have responsibility for ensuring that known breaches of the Act and the Building Regulations that may cause a danger or be a risk to persons or property in the municipal district are treated so that the danger or risk is as far as possible, minimized or removed.

Council recognises that section 212 of the Building Act places a significant responsibility on Council to ensure that the community understands the requirements and implications of conducting a Public Entertainment.

4.1. A PROACTIVE POLICY

A proactive policy is one where Council actively seeks out non-compliances and takes appropriate enforcement action. The degree of ‘proactiveness’ may vary. To be proactive it is necessary to :

- a) Be aware of and identify upcoming public events in the municipality.
- b) Compile a database of sites in the municipality that would meet the criteria of a place of public entertainment should it be used for a public event.
- c) Be able to clearly determine which of these public events require occupancy permits and/or pose a possible risk to the public.

- d) Be able to provide to the people conducting an event clear information on safety measures.
- e) Have a programme of inspections of both the plans relating to the proposed event and the event itself to ensure compliance with the approved plans.
- f) Publicise that Council has a proactive policy and will be conducting inspections.
- g) Determine whether those inspections are to be random, selective or be systematic.
- h) Publicise that permits are required in certain circumstances.
- i) Publicise that emergency orders, building notices and prosecution proceedings will be utilised to ensure public safety where necessary.
- j) Have a subsequent follow up programme.
- k) Have suitable staff to conduct those inspections.

4.2. A REACTIVE POLICY

A reactive policy is one where Council only enforces the regulatory requirements when it becomes aware of a specific (or potential) non-compliance. The Court has determined in numerous cases (including the well known case of *Pyrenees Shire Council v Day*) that in circumstances where a Council becomes aware of a danger to persons or property and Council has the statutory ability to cause the danger to be abated, the community expects the Council to take such action. A failure to take action in those circumstances could result in a finding of negligence against the Council.

4.3. AN EDUCATION POLICY

An education policy is one where Council makes available to the community sufficient information for persons to understand the legal requirements and the reasons for those requirements. An education policy may be passive or active. A passive education policy is one where material is made available as handouts etc at Council offices whereas an active education policy will use the media and other resources to educate as many members of the community as possible. An education policy however must be used in combination with either a reactive or proactive enforcement policy.

5. POLICY CONFIGURATION

Having considered the content of this document, the strategy for risk mitigation will involve both a Reactive and Education Policy for the administration and enforcement of places of public entertainment within the municipality with the Act.

6. POLICY PROCEDURE

6.1. THE REACTIVE POLICY

Council and its Municipal Building Surveyor have responsibility for ensuring that known breaches of the Act and the Building Regulations that may cause a danger or be a risk to persons or property in the municipal district are treated so that the danger or risk is as far as possible, minimized or removed.

Under Pt 5 Div 2 of the Act persons who:

- “conduct” a public entertainment; or

- owners or occupiers of a place of public entertainment who, for fee or reward, permit a public entertainment to be held in that place or allow an existing occupancy permit to be contravened, risk having emergency orders being issued against them and/or being prosecuted if they fail to obtain and comply with any requisite occupancy permit.

Council recognises and accepts that the use of places for the purpose of public entertainment that are not suitable for such occupation are a danger to the public. Consequently, Council recognises and accepts that Council is required to take necessary action to remove or abate that danger.

Council officers, upon becoming aware of any place for public entertainment that does not have a required permit or that is being used in contravention of an existing occupancy permit, will utilise the procedures set out in the enforcement provisions as detailed in this Guide to bring about compliance.

6.2. THE EDUCATION POLICY

The following is not a detailed procedure in respect of educational steps. Rather the following sets out a variety of measures that may be taken to increase community awareness. Steps 1 to 4 however, identify some basic steps that Council will commence with.

1. A guide will be printed and made available to the public, it will contain:
 - a) Council's policies with respect of the implementation and enforcement Part 5 Div 2 of the Act;
 - b) a table to assist holders of public events to determine when an occupancy permit or siting approval is required (see flow chart in Part 12 of this Guide);
 - c) information, including a flowchart, on how to apply for an occupancy permit for a place of public entertainment;
 - d) a list of authorities that should be consulted;
 - e) An example of an event management plan which includes emergency and traffic management;
 - f) a guide to other relevant legislation;
 - g) a guide to identifying and engaging all relevant stakeholders.
2. A pamphlet will be prepared summarising the issues around the conduct of public events and advising of the availability of more substantial material from the Council and including a simple flow chart identifying the options available for those who conduct public events and the consequences of non compliance.
3. A direct mail out campaign of the pamphlet will take place following the establishment of a database of owners and occupiers of property that have been or could be used as a place of public entertainment.
4. A series of articles on safety at public events will be prepared for the local newspaper.
5. Enforcement action will be publicised to create greater public awareness of the consequences for non compliance.
6. Advertisements in local newspapers.
7. Information and appropriate links on Council's website including those identified in this guide.

7. ENFORCEMENT

Non-complying POPEs pose a serious risk to the life safety and health to the occupants of such facilities. Non-complying POPEs, where they are identified, shall be subject to enforcement action without undue delay.

A person who fails to comply with a building order, the matter can be prosecuted in the Magistrates Court.

9. RELEVANT LEGISLATION

- Building Act 1993
 1. Part 5 Division 2 of the Act
- Building Regulations 2006
 1. Part 11 of the Regulations 2006
 2. Part 12 of the Regulations

10. CROSS REFERENCES TO OTHER POLICIES/ DOCUMENTS

Powers of Entry Procedures Policy
Building Investigation and Enforcement Policy
Places of Public Entertainment Proceedure

13. FORMS AND ATTACHMENTS

Attachment 1 – Places of Public Entertainment Guidelines