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Illegal Camping

The purpose of this circular is to remind councils, event organisers, touring groups and others that, with limited exceptions, carrying out or providing for camping (eg. in caravans, campervans, motorhomes or tents) on council or other land requires council approval.

Introduction

The NSW planning and local government legislation both have a role in the regulation of camping. Compliance with the regulatory requirements for camping in that legislation promotes camping that is safe, enjoyable, equitable and sustainable.

Approvals required for caravan parks and camping grounds

Under *State Environmental Planning Policy No 21 – Caravan Parks* (SEPP 21), the use of land within a local government area for a caravan park or camping ground may, unless prohibited by another plan, be carried out only with the development consent of the council. However, SEPP 21 does not require development consent for a caravan park or camping ground on land dedicated or reserved under the *National Parks and Wildlife Act 1974* (NP&W Act).

In addition, operating a caravan park or camping ground is an activity requiring council approval under Section 68 of the *Local Government Act 1993* (LG Act) unless excepted by the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 (LG Regulation 2005), other legislation¹ or a local approvals policy².

Approval to operate a caravan park or camping ground is usually subject to a condition that the park or ground must be designed, constructed, maintained and operated in accordance with the relevant requirements of the LG Regulation 2005. It contains requirements for minimum size for a caravan park, dwelling site and camp site sizes, setbacks, roads, utility services, fire hose reels, shower and toilet facilities, laundry facilities, management and other matters.

Special provision is made in the LG Regulation 2005 for operating 'primitive camping grounds'. This type of camping ground is generally remote from urban areas, and under the Regulation is required to have only a limited range of facilities. Requirements include that the ground must be provided with a water supply, toilet and refuse disposal facilities as specified in the approval for the ground. Such fire fighting facilities as may be specified in the approval are also to be provided.

Normally the installation of caravans, campervans or tents in a caravan park or primitive camping ground, and the installation of campervans or tents in other camping grounds, does not require council approval. The installation of caravans, campervans, tents and annexes in caravan parks and camping grounds must, however, comply with the relevant requirements under the LG Regulation 2005 (eg. see clause 132 regarding primitive camping grounds and clauses 161-173 regarding other camping grounds and caravan parks). For example, certain separation distance requirements apply for reasons of safety and privacy.

Section 78A of the *Environmental Planning and Assessment Act 1979* allows an applicant (other than the Crown) in a single development application to apply to use land for a caravan park or camping ground, and operate a caravan park or camping ground.

¹ For example, an approval under Section 68 of the LG Act is not required for (and the LG Regulation 2005 does not apply to) a caravan park or camping ground on land dedicated or reserved under the NP&W Act 1974.

² A local approvals policy adopted under Part 3 of the LG Act may specify the following: the circumstances in which a person would be exempt from the need to obtain a particular approval of the Council for activities governed by the LG Act; the criteria which a Council must take into consideration in determining whether to give or refuse an approval under the LG Act; and other matters relating to approvals.

Temporary caravan parks and camping grounds

A temporary caravan park or camping ground requires development consent and approval to operate. As with permanent parks and grounds relevant requirements in the LG Regulation 2005 concerning tents, caravans and annexes in caravan parks and camping grounds must also to be complied with.

Before granting consent to a development application, or approving a LG Act application, for a temporary caravan park or camping ground, a council should be satisfied that for the duration of park's or ground's operation provision of a water supply and toilet and refuse facilities will be adequate. Councils should also assess whether fire-fighting facilities are needed and whether any other facility or measure may necessary to promote the health, safety and amenity of the occupiers.

Under the LG Regulation 2005, a temporary caravan park or camping ground operated for a period of 6 weeks or less, solely in connection with use of the land for a sporting, recreation or cultural event, does not have to be designed, constructed, maintained and operated in accordance with Subdivisions 1-8 of Division 3 of Part 3 of the Regulation (see clause 73(3)). This means, for example, that the park or ground may be excused from having permanent amenities.

Problems caused by illegal camping

Councils are encouraged to be proactive in preventing illegal camping. The reasons for this include:

- if inadequate facilities are provided or the standard of operation is unsatisfactory, the health and safety of campers will not be assured. This may be especially so in relation to fire safety;
- use of an illegal caravan park or camping ground may cause disturbance to adjoining land users, especially if there are adjoining residential areas. This disturbance may be associated with noise, scattering of rubbish, or inadequate toilet facilities or provision for greywater disposal. Environmental damage may also eventuate;
- illegal camping subjects commercial businesses running approved caravan parks and camping grounds to unfair competition, contrary to Competitive Neutrality Guidelines. This is the case even if the unauthorised camping is not provided free or with subsidisation. Under the local government regulations, caravan park approval holders are required to provide certain facilities and comply with an extensive range of standards related to health, safety and amenity considerations.

Examples of enforcement options

If development for a caravan park or camping ground occurs on land where that use is prohibited, or requires but does not have development consent, a

council may initiate the giving an order no 1 under section 121B of the EP&A Act to cease that use.

This order could be given to the owner of the premises or person using the premises for the purpose of a caravan park or camping ground (eg. the operator). Normally, before an order is given, the person who gives it must give a notice of intention in accordance with 121H.

Given the provisions in section 626 of the LG Act, if a person operates a caravan park or camping ground without required prior approval under Part 1 of Chapter 7 of the LG Act, that person is guilty of an offence. Court action could be taken in respect of this. The maximum penalty the court may impose for an offence of this type is 50 penalty units (\$5,500).

Council approval not required for certain exceptions

There are a number of circumstances in which camping in caravans, campervans or tents elsewhere than in a caravan park or camping ground does not require council approval under the LG Act.

1. Exceptions under LG Regulation 2005

For land elsewhere than in a caravan park or camping ground, the LG Regulation provides the following conditional and unconditional exemptions from the requirement for council approval.

Conditional exemptions

Under the LG Regulation 2005 council approval is not required for the installation of:

- up to two caravans, campervans or tents on any land (with the landowner's permission), provided they are not occupied for more than two days at a time and are not occupied for more than 60 days (in total) in any 12 month period
- one caravan or campervan on land on which there is a dwelling house, provided the caravan or campervan is occupied by the owner of the dwelling house or members of the household, and the caravan or campervan is maintained in a safe and healthy condition
- a caravan or campervan on agricultural land, provided the caravan or campervan is occupied by seasonal workers on the land.

Unconditional exemptions

The LG Regulation 2005 (clause 78) provides that installing a caravan, campervan or tent on a **Crown reserve** or in a **State forest** does not require LG Act approval. Instead, the *Crown Lands Act 1989* and the *Forestry Act 1916* apply respectively.

Information about camping in Crown reserves and where to find Crown land holiday parks is available from the NSW Land and Property Management Authority (see www.caravanandcampingnsw.com.au). Enquiries about camping in NSW state forests may be made to Forests NSW (T: 1300 655 687) or see www.dpi.nsw.gov.au/forests/recreation.

2. Other exceptions

National Parks

The use of caravan parks, campervans and tents on lands reserved or dedicated under the NP&W Act is regulated under that Act. Approval under the LG Act is not required for those uses on those lands.

Information on camping opportunities within lands subject to the NP&W Act may be obtained from the National Parks and Wildlife Service (see www.environment.nsw.gov.au and select Visiting a Park).

Roadside rest areas

Camping in a roadside rest area may be permitted, unless a 'no camping' or 'no overnight stays' sign has been placed there by a council or the Roads and Traffic Authority (RTA) (or other relevant authority). Enquiries about the use of rest areas along roads administered by the RTA may be made to that agency.

Further information

For further information on the regulation of caravan parks and camping grounds see the Department of Planning website at www.planning.nsw.gov.au

Copies of the *Environmental Planning and Assessment Act 1979*, the *Local Government Act 1993*, *State Environmental Planning Policy No 21 – Caravan Parks*, the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* and other State legislation are available on the NSW legislation website at <http://www.legislation.nsw.gov.au>.

If you have queries about this Planning Circular please contact the Department's Information Centre 02 9228 6333 or email information@planning.nsw.gov.au.

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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.

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