

Kyogle Council

TEMPORARY ACCOMMODATION Local Approvals Policy

under the Local Government Act 1993



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Kyogle Council Local Approvals Policy Temporary Accommodation

under the
Local Government Act 1993

Part 1 Introduction

1.1 Name of the Policy

This Policy is Kyogle Council Local Approvals Policy - Temporary Accommodation.

1.2 Aims of the Policy

- (1) The particular aims of this Policy are as follows:
 - (a) to provide a fair and reasonable framework dealing with applications for temporary accommodation under the *Local Government Act 1993*;
 - (b) to achieve consistency in the assessment of applications for approval by specifying the criteria upon which determinations for temporary accommodation are made;
 - (c) to assist Council in the execution of its statutory responsibilities;
 - (d) to make Council's policies and requirements for temporary accommodation readily accessible and understandable to the public; and
 - (e) to ensure that standards of hygiene, safety and amenity are achieved.

1.3 Land to which the Policy applies

This Policy applies to the Local Government Area of Kyogle.

1.4 Definitions

The Dictionary at the end of this Policy is provided as a guide to define words and expressions for the purposes of this Policy. The definitions contained in the superior Acts and regulations shall prevail should any further clarification be required.

1.5 Policy Statement

Kyogle Council has prepared this Policy document to clarify circumstances where an approval must be obtained from Council prior to carrying out activities associated with temporary accommodation, what form that approval may take, and what matters are considered by Council in its assessment process.

1.6 Legislative Framework

This Policy has been prepared and adopted under Chapter 7, Part 3 of the *Local Government Act 1993*. The *Local Government Act 1993* provides the legal framework for this policy.

In accordance with section 158 of the *Local Government Act 1993*, the Policy contains the following compulsory components:

- (1) Exemptions - the circumstances in which a person would be exempted from the necessity to obtain a particular approval of the Council;
- (2) Assessment Criteria for Approvals - the criteria which the Council must take into consideration in determining whether to give or refuse an approval of a particular kind;
- (3) Other Matters - additional matters relating to approvals under this Policy.

1.7 Policy History

Date adopted	Resolution Number	Date Reaffirmed	Resolution Number
		21 March 2005	210305/11
		17 August 2009	170809/17
		11 November 2013	111113/17

Part 2 Exemptions

2.1 General Provisions

A person is exempted from the necessity to obtain a particular approval of the Council under the *Local Government Act 1993* in the circumstances specified in this Part.

2.2 Limit of Activities Carried out by Exemptions

Where criteria for an exemption are not specified for a proposed activity or where an activity proposed would not strictly conform to the exemption criteria, an application for approval is required to be submitted to Council and approved prior to the activity being commenced.

2.3 Exempted Activities

The prior approval of Council is not required for the following activities:

- (1) The installation of a caravan, campervan or tent on Crown reserves or on land that is reserved or dedicated under the *Forestry Act 2012*.

Note: The use of caravans, campervans and tents on such lands is regulated under the *Crown Lands Act 1989* and the *Forestry Act 2012*, respectively. The use of caravans, campervans and tents on lands reserved or dedicated under the *National Parks and Wildlife Act 1974* is regulated under that Act.

- (2) The installation of moveable dwellings in approved caravan parks, camping grounds or manufactured home estates where they are designed, constructed and installed in accordance with the relevant requirements of the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*.
- (3) The installation of not more than two (2) caravans, campervans or tents on any land, so long as they are not occupied for more than two (2) days at a time and are not occupied for more than sixty (60) days (in total) in any single period of twelve (12) months.
- (4) The installation of not more than one (1) caravan or campervan on land occupied by the owner of the caravan or campervan in connection with that owner's dwelling-house, so long as it is used for habitation only by the owner or by members of the owner's household and is maintained in a safe and healthy condition.
- (5) the installation of a caravan or campervan on pastoral or agricultural land, so long as it is merely occupied seasonally by persons employed in pastoral or agricultural operations on the land.

Note: Council consent may be required for vehicular access under the *Roads Act 1993* and for water, sewer or stormwater connections under the *Local Government Act 1993*. In such instances the relevant consents must be obtained and constructed in accordance with Council's requirements prior to use.

Part 3 Assessment Criteria for Approvals

3.1 General Provisions

Where an activity is proposed to be undertaken for which no exemptions from approval exist, an approval must always be obtained.

Applications for temporary accommodation that do not comply with all of the relevant criteria will not be approved.

3.2 Common matters for Consideration

The matters that Council must consider in determining whether to approve applications are:

- (1) The matters prescribed in Section 89 of the *Local Government Act 1993* and the regulations there under;
- (2) Any relevant adopted Council Policy, performance standard or criteria; and

- (3) Principals of ecologically sustainable development.

3.3 Temporary occupation of Class 10 Buildings (Sheds) on building sites

- (1) Council will not consent to the temporary occupation of a shed unless:
 - (a) consent to develop a dwelling house has been issued for the subject land pursuant to the *Environmental Planning and Assessment Act 1979* and that consent is valid; or
 - (b) the property has a dwelling entitlement and the occupation is for a period not exceeding six (6) months from the date of issue of the Temporary Residential Occupation Permit.
- (2) Council will not consent to the temporary occupation of a shed where a dwelling house is erected on the land.
- (3) An On Site Waste Management Approval for a septic tank installation, or other approved treatment system, must be endorsed by Council and installed in accordance with the approved plans and documentation prior to use.
- (4) An adequate supply of potable water such as a reticulated water supply, 45,000 litre water tank or alternative potable water supply approved by Council's Environmental Health Officer pursuant to the New South Wales Health *Private Water Supply Guidelines* must be made available.
- (5) All ablutions and washing facilities must be properly connected to the approved effluent disposal system to the satisfaction of Council's Environmental Health Officer. At minimum facilities must include a hand basin or laundry sink, shower bay or bath, toilet, kitchen sink and hot water system.
- (6) All internal modifications essential for temporary accommodation must have approval from either Council's Building Surveyor and/or the Environmental Health Officer prior to any modifications occurring.
- (7) All fixtures approved above must be removed at the cessation of the approval period unless otherwise endorsed by Council in writing. A works as executed plan detailing the capping and decommissioning of unused facilities shall be submitted to Council within fourteen (14) days of the cessation of the approval period or issue of an Occupation Certificate or Temporary Occupation Certificate for the dwelling house, whichever comes first.
- (8) The shed must meet the requirements of the Building Code of Australia for the Kyogle Local Government Area.
- (9) Where the shed is erected on bush fire prone land it must meet the requirements of the Planning for Bushfire Protection 2006 and *Australian Standard 3959-2009: Construction of Buildings in Bush Fire Prone Areas*.
- (10) The shed must not be situated within 200m of a cattle tick dip site unless the requirements of *State Environmental Planning Policy 55 - Remediation of Land* have been met.

- (11) The Applicant shall submit to Council a report on how telecommunication and electrical services are to be maintained to the shed to the satisfaction of Council..
- (12) The subject land must have a driveway to a public road designed, approved and constructed to meet Council's standards from the edge of the adjacent road pavement to the site of the temporary accommodation.
- (13) In deciding whether or not the approval should allow the temporary occupation of a shed on flood liable land, the Council must have regard to the principles contained in the Floodplain Development Manual and Council's adopted Floodplain Risk Management Plan pertaining to the subject site.
- (14) Council shall have regard to whether the site is subject to inundation or land instability and whether the use of the building is likely to cause offensive noise, an invasion of privacy, or any other land use conflict.
- (15) Council will only give approval under clause 3.3(1)(a) of this Policy for a maximum period of twelve (12) months.

3.4 Temporary occupation of Moveable Dwellings on building sites

- (1) Moveable dwellings shall comply with the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005*.
- (2) The subject land must have a driveway to a public road designed, approved and constructed to meet Council's standards from the edge of the adjacent road pavement to the site of the temporary accommodation.
- (3) The moveable dwelling must be located:
 - (a) on the lot in relation to which a development consent has been granted under the *Environmental Planning and Assessment Act 1979*; or
 - (b) on a lot which has a dwelling entitlement and the occupation is for a period not exceeding six (6) months from the date of issue of the Temporary Residential Occupation Permit.
- (4) Where application is made under clause 3.4(3)(a) the moveable dwelling must be removed from the lot immediately after completion of the works for which the development consent was granted, or within twelve (12) months of the date of issue of the Temporary Residential Occupation Permit, whichever comes first.
- (5) All plumbing fixtures must be connected to an approved sewage system or an approved connection to the sewer.
- (6) A garbage receptacle with a tight fitting lid suitable for the reception of food scraps and papers must be provided and maintained until the temporary residential occupation is completed.
- (7) An adequate supply of potable water such as a reticulated water supply, 45,000 litre water tank or alternative potable water supply approved by Council's Environmental Health Officer pursuant to the New South Wales Health *Private Water Supply Guidelines* must be made available.

- (8) The moveable dwelling must not be situated within:
- (a) 1 metre of any registered easement, sewer main or water main;
 - (b) 40 metres of any natural waterbody;
 - (c) 200 metres of a cattle tick dip site where the requirements of *State Environmental Planning Policy 55 - Remediation of Land* have not been met;
 - (d) 45 metres of a main road reservation or 20 metres of any other property boundary; or
 - (e) land that comprises, or on which there is, an item that is listed on the State Heritage Register under the *Heritage Act 1977* or that is subject to an interim heritage order under the *Heritage Act 1977* or that is listed under an environmental planning instrument.
- (9) The moveable dwelling must meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia*, or if those provisions do not apply, must be structurally adequate.
- (10) The moveable dwelling must not cause an existing dwelling to contravene the *Building Code of Australia*.
- (11) The moveable dwelling must be installed in accordance with the manufacturer's specifications, if applicable.
- (12) No more than one (1) moveable dwelling may be installed on any lot.
- (13) The Applicant shall submit to Council a report on how telecommunication and electrical services are to be maintained to the moveable dwelling to the satisfaction of Council..
- (14) Council shall have regard to whether the site is subject to inundation, land instability or bushfire and whether the use of the site is likely to adversely affect the amenity of the area or cause offensive noise, an invasion of privacy, or any other land use conflict.
- (15) Moveable dwellings must not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent.
Note. A permit for the removal or pruning of a tree or other vegetation may be granted under a local environmental plan. A development consent for the removal of native vegetation may be granted under the *Native Vegetation Act 2003*.
- (16) Moveable dwellings must not involve earthworks that require a permit or development consent, unless the earthworks are undertaken in accordance with a permit or development consent.

3.5 Activities involving primitive camping

- (1) Any primitive camping shall comply with the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Movable Dwellings) Regulation 2005*.

- (2) Arrangements must be in place for the collection of any waste or recyclable materials likely to be generated as a result of the camping to prevent any littering and to ensure that no adverse impact to the local environment is caused. All waste should be removed from the site and disposed of at a waste facility approved to receive such waste in accordance with a waste management plan.
- (3) No camping shall be situated within 200m of a cattle tick dip site unless the requirements of *State Environmental Planning Policy 55 - Remediation of Land* have been met.
- (4) Any lighting of fires shall be in accordance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Clean Air) Regulation 2010* which defines the lighting of fires in the Kyogle area.
- (5) The land the subject of the camping shall be maintained in a clean and tidy state at all times.
- (6) Non-reticulated water supplies shall be of a potable standard and shall meet the requirements for private water supplies described in the *Australian Drinking Water Guidelines*, published in 2004 by the National Health and Medical Research Council and the Natural Resource Management Ministerial Council.
- (7) No camping shall be permitted within forty (40) metres of a natural waterbody or within one (1) metre of any registered easement, sewer main or water main.
- (8) Where applicable, the subject land must have a driveway to a public road designed, approved and constructed to meet Council's standards from the edge of the adjacent road pavement to the site of the temporary accommodation.
- (9) In deciding whether or not the approval should allow primitive camping on flood liable land, the Council must have regard to the principles contained in the Floodplain Development Manual and Council's adopted Floodplain Risk management Plan pertaining to the subject site.
- (10) Council shall have regard to whether the site is subject to inundation, land instability or bushfire and whether the use of the site is likely to adversely affect the amenity of the area or cause offensive noise, an invasion of privacy, or any other land use conflict.
- (11) Primitive camping must not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent.
Note. A permit for the removal or pruning of a tree or other vegetation may be granted under a local environmental plan. A development consent for the removal of native vegetation may be granted under the *Native Vegetation Act 2003*.

Part 4 Other Matters

4.1 Application of the Policy

This local approvals policy applies to those activities associated with temporary accommodation for which approval is required under Section 68 of the *Local Government Act 1993* and under the provisions of Part 4 of the *Environmental Planning and Assessment Act 1979*.

Additional approvals or consents may be required for activities and works under the provision of separate legislation.

4.2 Prohibitions

Unless otherwise exempted by this Plan, no approval will be given under any circumstances for temporary accommodation outside the RU1, RU2 or RU4 zones As identified in the Land Zoning Maps pursuant to Kyogle Local Environmental Plan 2012.

4.3 Surety (Bond)

Council will require, as an incentive for the cessation of temporary accommodation, a bond to be lodged at the time of application for the temporary accommodation. The bond shall be as defined in Council's adopted annual Fees and Charges and will be refunded upon satisfactory cessation or at such time as an interim occupation certificate or occupation certificate has been issued, whichever occurs first.

Council reserves the right to exercise the use of Bond monies for demolition or Court proceedings where a breach has been encountered.

4.4 Procedures for making an Application

- (1) The persons who may make application under this Policy are as follows:
 - (a) Any person intending to erect a dwelling house who owns or has legal rights to occupy the land;
 - (b) Any builder or tradesperson involved in the erection of a development approved under the *Environmental Planning and Assessment Act 1979* who has the written consent of the property owner; and
 - (c) Any person intending to establish a primitive camping ground who owns or has legal rights to occupy the land.
- (3) An application for approval must be accompanied by such matters as are necessary to enable Council to make an informed decision.
- (4) Application fees are required pursuant to the Kyogle Council Fees and Charges as current at the time of application.

4.5 Reconsideration of Applications

Where Council is formally requested by an applicant to review the determination of an application pursuant to section 100 of the *Local Government Act 1993*, the request must be made in writing to the General Manager within 28 days of Council's determination. The request must provide justification for Council's review and is to be accompanied by the appropriate fee. The council may review the determination pursuant to section 100 of the *Local Government Act 1993* and, as a consequence of its review, may confirm or change the determination having taking into consideration the grounds for review. The determination of the review is final.

4.6 Extension of Approval

Where an approval is conditioned for a specified duration application may be made for an extension of time to the maximum period. The application is to be accompanied by the appropriate fee and must be submitted to Council at least thirty (30) days prior to the expiration of the original approval.

Where an extension is requested in conjunction with the erection of a dwelling house the application will only be considered if a construction certificate for the dwelling house has been submitted and work is substantially commenced (i.e. above ground floor level) unless it is demonstrated to Council that there are bona fide extenuating circumstances which render an extension reasonable in the opinion of Council.

No extension of an approval may be granted under clause 3.3(1)(b) of this Policy.

4.7 Right of Appeal

An applicant who is dissatisfied with the determination of Council with respect to the applicant's application for an approval may appeal to the Land and Environment Court as described in section 176 of the *Local Government Act 1993*.

4.8 Revocation of Approval

Council reserves the right to revoke or modify an approval in any one or more of the following circumstances:

- (1) if the approval was obtained by fraud, misrepresentation or concealment of facts;
- (2) if there is cause arising after the granting of the approval which, had it arisen before the approval was granted, would have altered the terms of the approval or caused Council to refrain from the granting of the approval;
- (3) if there is any failure to comply with a requirement made by, or under, the *Local Government Act 1993* and the respective regulations relating to the subject of the approval;

(4) if there is any failure to comply with a condition of the approval.

4.9 Power of Entry

The right of Council staff involved in the processing of applications to enter and examine the subject land is inferred and accepted by the applicant without the requirement for any advance notification. This power of entry is limited to the assessment of the application only and does not permit Council staff entry into any structure without the consent of the owner.

4.10 Exemption of Application Fees

Council does not waive application fees as a general rule. Consideration may be given by Council to reimburse application fees pursuant to Council's Financial Assistance Policy.

4.11 Review of Policy

This policy will be automatically revoked at the expiration of twelve (12) months after the declaration of the poll for the next general election, unless the Council revokes it sooner.

Note. Section 165(4) of the Local Government Act provides for automatic revocation of the Policy. The next general election is expected to be held in September 2016.

Dictionary

Applicant means the person making an application for Council consent under this Policy.

Building Code of Australia has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

Bush fire prone land is defined, in relation to an area, as land recorded for the time being as bush fire prone land on a map for the area certified as referred to in section 146 (2) of the *Environmental Planning and Assessment Act 1979*.

campervan means a moveable dwelling (other than a caravan) that is designed so as to be capable of being registered (within the meaning of the [Road Transport Act 2013](#)) as a motor vehicle, and includes a camper trailer.

camp site means an area of land within a camping ground on which a campervan or tent may be installed or, in the case of a primitive camping ground, on which a campervan, tent or caravan may be installed, and that is designated as a camp site by the approval for the camping ground.

caravan means a moveable dwelling that is designed so as to be capable of being registered (within the meaning of the [Road Transport Act 2013](#)) as a trailer, but does not include a camper trailer.

Council means the Kyogle Council.

Land Zoning Map means the [Kyogle Local Environmental Plan 2012 Land Zoning Map](#).

relocatable home means:

- (a) a manufactured home, or
- (b) any other moveable dwelling (whether or not self-contained) that comprises one or more major sections, including any associated structure that forms part of the dwelling, but does not include a tent, caravan or campervan or any moveable dwelling that is a vehicle of a kind that is capable of being registered within the meaning of the [Road Transport Act 2013](#).

Policy means the Kyogle Council Local Approvals Policy - Temporary Accommodation.

primitive camping ground means a camping ground that is specified in its approval as being a primitive camping ground.

Waste includes:

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or

- (b) any discarded, rejected, unwanted, surplus or abandoned substance, or
- (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance, or
- (d) any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed by the regulations, or
- (e) any substance prescribed by the regulations to be waste.

A substance is not precluded from being waste for the purposes of this Act merely because it is or may be processed, recycled, re-used or recovered.

Waterbody (natural) or natural waterbody means a natural body of water, whether perennial or intermittent, fresh, brackish or saline, the course of which may have been artificially modified or diverted onto a new course, and includes a river, creek, stream, lake, lagoon, natural wetland, estuary, bay, inlet or tidal waters (including the sea).