Defence (Areas Control) Regulations

TABLE OF PROVISIONS

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Citation</td>
</tr>
<tr>
<td>2.</td>
<td>Interpretation</td>
</tr>
<tr>
<td>3.</td>
<td>Construction of buildings without approval prohibited in some areas</td>
</tr>
<tr>
<td>4.</td>
<td>Construction of buildings higher than 7.5 metres without approval prohibited in some areas</td>
</tr>
<tr>
<td>5.</td>
<td>Construction of buildings higher than 15 metres without approval prohibited in some areas</td>
</tr>
<tr>
<td>6.</td>
<td>Construction of buildings higher than 45 metres without approval prohibited in some areas</td>
</tr>
<tr>
<td>7.</td>
<td>Construction of buildings higher than 90 metres without approval prohibited in some areas</td>
</tr>
<tr>
<td>8.</td>
<td>Applications for approval</td>
</tr>
<tr>
<td>9.</td>
<td>False statements</td>
</tr>
<tr>
<td>10.</td>
<td>Grant or refusal of approval</td>
</tr>
<tr>
<td>11.</td>
<td>Conditions of approval to be complied with</td>
</tr>
<tr>
<td>12.</td>
<td>Hazardous objects</td>
</tr>
<tr>
<td>13.</td>
<td>Removal or marking of hazardous objects</td>
</tr>
<tr>
<td>14.</td>
<td>Powers of Minister where notice under regulation 13 not complied with</td>
</tr>
<tr>
<td>15.</td>
<td>Powers of authorised persons</td>
</tr>
<tr>
<td>16.</td>
<td>Notice that land has become affected land</td>
</tr>
<tr>
<td>17.</td>
<td>Compensation for loss of value of affected land</td>
</tr>
<tr>
<td>18.</td>
<td>Compensation for certain loss, damage or expense</td>
</tr>
<tr>
<td>19.</td>
<td>Delegation</td>
</tr>
<tr>
<td>20.</td>
<td>Review by Tribunal</td>
</tr>
</tbody>
</table>

SCHEDULE 1

SCHEDULE 2

SCHEDULE 3

SCHEDULE 4

SCHEDULE 5

SCHEDULE 6

Plan No. 1—Nowra Airfield
Plan No. 2—Nowra Airfield
Plan No. 3—Nowra Airfield
Plan No. 4—Nowra Airfield
Plan No. 5—Nowra Airfield
Plan No. 6—Nowra Airfield

(S.R. 66/84)—Cat. No. 14/2.11.1989
Defence (Areas Control) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the Defence Act 1903.

Dated 29 November 1989.

BILL HAYDEN
Governor-General

By His Excellency's Command,

David Simmons
Minister of State for Defence Science and Personnel

Citation
1. These Regulations may be cited as the Defence (Areas Control) Regulations.

Interpretation
2. (1) In these Regulations, unless the contrary intention appears:
   “affected land” means land within an area to which regulation 3, 4, 5, 6 or 7 applies;
   “building” includes any structure and any part of, or addition to, a building or structure;
   “decision” has the same meaning as in the Administrative Appeals Tribunal Act 1975;
   “interest”, in relation to land, means:
   (a) a legal or equitable estate or interest in possession in the land; or
   (b) a right, power or privilege over, or in connection with, the land;
“object” includes a tree, any other natural obstacle, a building, vehicle or vessel;

“the Act” means the Defence Act 1903;

“the relevant day”, in relation to affected land, means the day on which the land became affected land;

“Tribunal” means the Administrative Appeals Tribunal established by the Administrative Appeals Tribunal Act 1975.

(2) In these Regulations, a reference to the height of an object on land is to be read as a reference to the height of the highest point of the object above the lowest point of the natural ground level of the land covered by the object.

(3) In these Regulations, a reference to constructing a building includes a reference to causing or permitting a building to be constructed, altered or extended.

(4) In these Regulations, a reference to the marking of an object is to be read as a reference to marking the object (whether by lights, an electronic device or by any other means) in such manner that the existence of the object can be recognized by day and by night from an aircraft.

(5) In these Regulations, a reference to an object hazardous to aircraft or to communications is to be read as a reference to an object:

(a) that is, or may become, an obstruction or hazard to aircraft; or

(b) that interferes, or may interfere, with the control of aircraft; or

(c) that interferes, or may interfere, with the communications required for the control of aircraft or for the defence of Australia.

Construction of buildings without approval prohibited in some areas

3. (1) This regulation applies to each of the areas described in Schedule 1 by reference to a plan:

(a) that bears a number specified in that description; and

(b) that is set out, bearing that number, in Schedule 6.

(2) Except in accordance with an approval granted under these Regulations, a person must not construct a building within an area to which this regulation applies.

Penalty: $2,000.

Construction of buildings higher than 7.5 metres without approval prohibited in some areas

4. (1) This regulation applies to each of the areas described in Schedule 2 by reference to a plan:

(a) that bears a number specified in that description; and

(b) that is set out, bearing that number, in Schedule 6.
(2) Except in accordance with an approval granted under these Regulations, a person must not construct within an area to which this regulation applies a building higher than 7.5 metres.
   Penalty: $2,000.

Construction of buildings higher than 15 metres without approval prohibited in some areas

5. (1) This regulation applies to each of the areas described in Schedule 3 by reference to a plan:
   (a) that bears a number specified in that description; and
   (b) that is set out, bearing that number, in Schedule 6.

(2) Except in accordance with an approval granted under these Regulations, a person must not construct within an area to which this regulation applies a building higher than 15 metres.
   Penalty: $2,000.

Construction of buildings higher than 45 metres without approval prohibited in some areas

6. (1) This regulation applies to each of the areas described in Schedule 4 by reference to a plan:
   (a) that bears a number specified in that description; and
   (b) that is set out, bearing that number, in Schedule 6.

(2) Except in accordance with an approval granted under these Regulations, a person must not construct within an area to which this regulation applies a building higher than 45 metres.
   Penalty: $2,000.

Construction of buildings higher than 90 metres without approval prohibited in some areas

7. (1) This regulation applies to each of the areas described in Schedule 5 by reference to a plan:
   (a) that bears a number specified in that description; and
   (b) that is set out, bearing that number, in Schedule 6.

(2) Except in accordance with an approval granted under these Regulations, a person must not construct within an area to which this regulation applies a building higher than 90 metres.
   Penalty: $2,000.

Applications for approval

8. (1) An application for approval to construct a building on affected land must:
   (a) be in writing and signed by, or on behalf of, the applicant; and
   (b) be furnished to the Minister; and
   (c) state the purpose for which the building is proposed to be used; and
(d) state whether in connection with the building any object hazardous to aircraft or to communications is proposed, or is likely, to be brought on to the affected land; and

(e) state the height of any other objects that may reasonably be expected to be on the affected land in connection with the building; and

(f) be accompanied by plans, including elevation views, that show the shape, size, position and material of the building and the contours of the affected land.

(2) The Minister may, by notice in writing, require an applicant to furnish such further information with respect to an application as is referred to in the notice.

False statements

9. A person must not, in or in connection with an application under regulation 8, make a statement that is false or misleading.

Penalty: $2,000.

Grant or refusal of approval

10. (1) The Minister may, by instrument in writing, grant, or refuse to grant, approval to construct a building on affected land.

(2) The Minister may, by instrument in writing, grant approval to construct a building on affected land subject to such conditions with respect to:

(a) the position of the building; and

(b) its shape and size; and

(c) the manner of its construction; and

(d) the materials of which it is constructed; and

(e) the purpose for which it may be used; and

(f) the manner in which it is to be marked; and

(g) the height of apparatus to be used in its construction; and

(h) the manner in which that apparatus is to be marked;

as are specified in the approval.

(3) The Minister is not to:

(a) refuse to grant approval; or

(b) grant approval subject to conditions; or

(c) impose, either at the time of approval or by subsequent variation, conditions with respect to the marking of a building;

except for the purpose of:

(d) preventing the existence of an object hazardous to aircraft or to communications; or

(e) in relation to an object hazardous to aircraft or to communications—reducing the extent of that hazard.
Conditions of approval to be complied with

11. (1) A person to whom approval is granted under regulation 10 must not, without reasonable excuse, fail to comply with a condition subject to which the approval is granted.
   Penalty: $2,000.

   (2) Where the Minister receives notice in writing of an application under regulation 20 by a person to the Tribunal for review of a decision:
      (a) under subregulation 10 (2) to impose a condition subject to which a building may be constructed; or
      (b) under subregulation 10 (3) to impose, or vary, a condition with respect to the marking of a building;
   proceedings under subregulation (1) against the person for failure to comply with that condition, or that condition as so varied, as the case requires, must not be commenced, or be continued until:
      (c) the application is withdrawn by the person; or
      (d) the application is dismissed by the Tribunal; or
      (e) any other decision of the Tribunal on the application comes into operation.

Hazardous objects

12. A person must not bring on to, have on or construct on affected land an object hazardous to aircraft or to communications.
   Penalty: $2,000.

Removal or marking of hazardous objects

13. (1) Where:
      (a) a building is in an area to which regulation 3 applies; or
      (b) a building higher than 7.5 metres is in an area to which regulation 4 applies; or
      (c) a building higher than 15 metres is in an area to which regulation 5 applies; or
      (d) a building higher than 45 metres is in an area to which regulation 6 applies; or
      (e) a building higher than 90 metres is in an area to which regulation 7 applies; or
      (f) any other object hazardous to aircraft or to communications is in an area to which regulation 3, 4, 5, 6 or 7 applies;
   the Minister may, by notice in writing, given directions with respect to:
      (g) the removal, within a time of not less than 28 days specified in the notice, of the whole or a specified part of the building or object; or
      (h) the marking of the building or object within a time of not less than 28 days specified in the notice.
(2) The powers conferred by subregulation (1) may be exercised in relation to a building whether or not approval has been granted under these Regulations to construct the building.

(3) A notice under subregulation (1) in relation to a building or object on land may be served on any person believed by the Minister to occupy, or to have an interest in, the land.

(4) A notice under subregulation (1) must not be served on a person unless it is reasonable that the person should be required to comply with the requirement of the notice.

(5) A person must not, without reasonable excuse, fail to comply with a requirement of a notice served on him or her under subregulation (3).

Penalty: $2,000.

(6) Where:

(a) the Minister receives notice in writing of an application under regulation 20 by a person to the Tribunal for review of a direction given under subregulation (1); and

(b) the time for compliance with that direction has not expired, being the time specified in the notice served on the person under subregulation (3);

that time is to be taken to be extended by a period equal to the duration of the period commencing on the day on which the first-mentioned notice was received by the Minister and ending at the end of the day on which:

(c) the application is withdrawn by the person; or

(d) the application is dismissed by the Tribunal; or

(e) any other decision of the Tribunal on the application comes into operation.

(7) Where the Minister receives notice in writing of an application by a person to the Tribunal for review of a direction given under subregulation (1) and the time for compliance with that direction has expired, proceedings under subregulation (5) against the person for failure to comply with that direction must not be commenced, or be continued, until:

(a) the application is withdrawn by the person; or

(b) the application is dismissed by the Tribunal; or

(c) any other decision of the Tribunal on the application comes into operation.

(8) Where the person to whom subregulation (3) applies cannot be found and the place of business or residence of the person is unknown to the Minister, a notice under subregulation (1) may be served on the person by affixing it in a conspicuous position on or near the building, object or area to which the notice relates.
Powers of Minister where notice under regulation 13 not complied with

14. (1) Where within the time specified in a notice served on a person under subregulation 13 (1) or, where that time is extended under subregulation 13 (6), within that time as so extended, the person fails to comply with a requirement of the notice, the Minister may, by instrument in writing, authorise such persons as are specified in the instrument to enter upon any land or premises where the building or object referred to in the notice is situated and to do whatever is necessary to carry out the requirement.

(2) Where the Minister receives notice in writing of an application by a person to the Tribunal for review of a direction given under subregulation 13 (1) in relation to a building or object, the Minister is not to grant an authorisation in relation to that building or object until:

(a) the application is withdrawn by the person; or
(b) the application is dismissed by the Tribunal; or
(c) any other decision of the Tribunal on the application comes into operation.

Powers of authorised persons

15. (1) A person authorised by the Minister by instrument in writing may enter upon any land or premises for the purpose of:

(a) ascertaining whether the provisions of these Regulations are being complied with; or
(b) ascertaining whether the conditions to which an approval, granted or deemed to have been granted under these Regulations by the Minister, is subject are being complied with; or
(c) ascertaining information required for the purpose of preparing a notice to be served under regulation 13; or
(d) ascertaining whether the requirements of a notice served under regulation 13 are being, or have been, complied with; or
(e) preventing a contravention of, or securing compliance with, these Regulations; or
(f) gaining access to an area referred to in Schedule 1, 2, 3, 4 or 5 for a purpose referred to in paragraph (a), (b), (c), (d) or (e).

(2) The Minister may, by instrument in writing, authorise any person to take any specified action, including the marking, seizure, removal or destruction of any thing and the use of any reasonable force, required for the purpose of preventing a contravention of, or securing compliance with, these Regulations.

(3) An authorisation referred to in subregulation (1), (2) or 14 (1) must:

(a) identify any land or premises that may be entered; and
(b) state the names of the persons who are authorised to enter upon the land or premises, or to act, as the case requires; and
(c) state brief particulars of the acts to which the authorisation extends; and
(d) state the periods during which those acts may be done; and
(e) state the purposes for which those acts may be done; and
(f) state that the authorisation is given under the authority of these Regulations.

(4) A person must not, in connection with anything done or about to be done under these Regulations, obstruct or threaten a person authorised under subregulation (1), (2) or 14 (1).
Penalty: $1,000.

(5) A person must not do any act that interferes with, or is likely to interfere with, anything done or about to be done under these Regulations by a person authorised under subregulation (1), (2) or 14 (1).
Penalty: $1,000.

(6) A person who under an authorisation under subregulation (1), (2) or 14 (1) proposes to enter upon land or to take any action in relation to any thing is not so authorised:
   (a) if another person occupies and is on that land; or
   (b) if another person is in charge of and is near that thing; unless that authorisation is produced for inspection by that other person.

Notice that land has become affected land

16. (1) Where land becomes affected land, the Minister, as soon as practicable:
   (a) if the land is within an area to which regulation 3 or 4 applies—is to cause notice in writing of the fact to be served on each person believed by the Minister to have had, on the relevant day, an interest in the land; or
   (b) if the land is within an area to which regulation 5, 6 or 7 applies—is to cause notice in writing of the fact to be published in the Gazette and in a newspaper circulating in the district in which the land is situated.

   (2) A notice under paragraph (1) (a) or (b) must show the time within which, and the place at which, applications for compensation in respect of the land becoming affected land are to be furnished to the Minister.

Compensation for loss of value of affected land

17. (1) Subject to this regulation, where the value of land has been diminished because the land has become affected land, the Commonwealth is to pay as compensation for that diminution in the value of the land an amount equal to the amount by which the value of the land is so diminished.

   (2) Where compensation is payable under this regulation for the diminution in the value of any land, a person who, on the relevant day, had an interest in that land is entitled to be paid by the Commonwealth:
(a) if that person is the only person who on that day had an interest in that land—that compensation; or
(b) in another case—such proportion, if any, of that compensation as is reasonable having regard to the nature of that interest and of any other interests in that land.

(3) Compensation is not payable to a person for the diminution in the value of land unless:
(a) the person had an interest in the land on the relevant day; and
(b) subject to subregulation (4), the person furnishes an application in writing for compensation to the Minister not later than 6 months after:
   (i) service on the person of a notice in respect of the land; or
   (ii) publication under regulation 16 of a notice in respect of the land.

(4) Where undue hardship would be caused to a person if the period of 6 months is not extended, the application under subregulation (3) may be made within such longer period as the Minister, by notice in writing served on the person, determines, being a period ending not sooner than 28 days after that notice is served on the person.

(5) An application under subregulation (3) for compensation for the diminution in the value of land must set out:
(a) the name and address of the applicant; and
(b) the interest that the applicant claims to have had in that land on the relevant day; and
(c) the facts on which the applicant relies to establish that the applicant had that interest on the relevant day; and
(d) the amount claimed by the applicant to be the total amount of compensation payable by the Commonwealth for the diminution in the value of that land; and
(e) the names and addresses of any other persons known to the applicant who had, on that day, an interest in that land and, if known to the applicant, the nature of each of those interests; and
(f) if the applicant does not claim the amount referred to in paragraph (d)—the amount of compensation claimed in respect of the applicant’s interest in that land.

(6) For the purposes of determining the amount of compensation payable under this regulation for the diminution in the value of land:
(a) it is to be taken that approval will not be given under regulation 3, 4, 5, 6 or 7, as the case requires, for the construction of a building on the land unless the approval has been so given or is, under subregulation (8), deemed to have been so given; and
(b) if the approval has been so given, or is deemed to have been so given, it is to be taken that the approval was given on the relevant day.
(7) Within 2 months after the day on which the Minister receives from a person an application under this regulation for compensation for the diminution in the value of land, the Minister may, by notice in writing posted to the person at the person’s address set out in the application, notify the person that a building may be constructed on the land subject to specified conditions of the kind referred to in subregulation 10 (2).

(8) Where under subregulation (7) the Minister serves a notice on a person in respect of land, approval is to be taken to have been granted under subregulation 10 (2) to the person to construct a building on the land subject to compliance with the conditions specified in the notice.

(9) Within 3 months after the day on which an application under this regulation for an amount of compensation is received by the Minister from a person, the Minister, by notice in writing posted to the person at the person’s address set out in the application, is to notify the person of the amount of compensation (if any) payable to the person.

(10) For the purposes of subregulation (9), in deciding the amount of compensation (if any) payable to a person in respect of the diminution in the value of land that has become affected land, the Minister is to have regard to the value of the land immediately before, and on, the relevant day.

(11) Where in respect of an application under this regulation by a person for an amount of compensation the Minister fails to notify the person in accordance with subregulation (9), the Minister is to be deemed to have agreed that that amount is payable to the person.

(12) Compensation is not payable under this regulation to a person in respect of an interest in land to the extent that the interest is inconsistent with an interest claimed by another person in respect of which the Minister has, in good faith, paid, or agreed to pay, compensation.

(13) Where the Commonwealth has paid the compensation payable under this regulation for the diminution in the value of a person’s interest in land, no other compensation is payable under this regulation for any diminution that occurs in that value because the land has become affected land.

Compensation for certain loss, damage or expense

18. (1) Where:
   (a) a building or object is on land when the land becomes affected land; and
   (b) the building or object is removed or marked under these Regulations; and
   (c) a person suffers loss or damage, or incurs expense, because of the removal or marking;
the Commonwealth must pay to the person compensation for the loss, damage or expense.
Defence (Areas Control) 1989 No. 11

(2) The amount of compensation payable under this regulation is to be decided by the Minister.

Delegation

19. (1) The Minister may, either generally or as otherwise provided by the delegation, by writing signed by the Minister, delegate to:
   (a) an officer:
      (i) who holds in the Navy a rank that is not below the rank of Commodore; or
      (ii) who holds in the Army a rank that is not below the rank of Brigadier; or
      (iii) who holds in the Air Force a rank that is not below the rank of Air Commodore; or
   (b) a person who for the time being holds, or performs the duties of, an office in the Australian Public Service the minimum rate of salary for which exceeds the maximum rate of salary payable in respect of an Administrative Service Officer Class 8 in that Service; or

(2) A delegation under this regulation continues in force notwithstanding a change in the occupancy of, or a vacancy in, the office of the Minister.

(3) A document:
   (a) that purports to be a copy of delegation under this regulation; and
   (b) that bears an endorsement stating that the delegation is, or was on a specified date, in force, and purporting to bear the signature, or a facsimile of the signature, of the Minister;

is, upon mere production in a court or otherwise for any purpose arising under these Regulations, evidence that the delegation was duly made in the terms set out in the document and is, or was on the date specified, in force.

Review by Tribunal

20. (1) Application may be made to the Tribunal for review of:
   (a) a decision under subregulation 10 (1) to refuse to grant approval to construct a building; or
   (b) a decision under subregulation 10 (2) to impose a condition subject to which a building may be constructed; or
   (c) a decision under subregulation 10 (3) to impose or vary a condition with respect to the marking of a building; or
   (d) a direction under subregulation 13 (1) to remove a building or object; or
   (e) a direction under subregulation 13 (1) with respect to the marking of a building or object; or
   (f) a decision under subregulation 17 (4) refusing to approve the extension of the period for furnishing an application for compensation; or
(g) a decision under subregulation 17 (7) to impose a condition subject to which a building may be constructed; or
(h) a decision under subregulation 17 (9) or 18 (2) that no compensation is payable to a person or as to the amount of compensation payable to a person.

(2) Where the Minister makes a decision under subregulation 10 (1), (2) or (3), 13 (1), 17 (4), (7) or (9) or 18 (2) and gives to a person whose interests are affected by the decision notice in writing of the making of the decision, the Minister is to include in that notice a statement to the effect that, subject to the Administrative Appeals Tribunal Act 1975, application may be made by or on behalf of that person to the Tribunal to review that decision.

(3) Failure to comply with the requirements of subregulation (2) in relation to a decision does not affect the validity of the decision.
SCHEDULE 1

In this Schedule, a reference to hachuring shall be read as a reference to hachuring in the following form:

<table>
<thead>
<tr>
<th>Item</th>
<th>Description of area</th>
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<tbody>
<tr>
<td>1</td>
<td>Each of the areas of land near Nowra Airfield in the State of New South Wales delineated by hachuring on Plans Nos. 3 and 4 in Schedule 6.</td>
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</tbody>
</table>

SCHEDULE 2

In this Schedule, a reference to hachuring shall be read as a reference to hachuring in the following form:

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**SCHEDULE 4**

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Plan No. 1 — Nowra Airfield

Legend:
- ALL STRUCTURES REQUIRE APPROVAL
- STRUCTURES HIGHER THAN 75 M REQUIRE APPROVAL
- STRUCTURES HIGHER THAN 15 M REQUIRE APPROVAL
- STRUCTURES HIGHER THAN 45 M REQUIRE APPROVAL
- STRUCTURES HIGHER THAN 30 M REQUIRE APPROVAL

INDEX TO ADJOINING PLANS:
- PLAN 3, 4
- PLAN 5, 6
NOT