



Department.

Statutory Rules 1996 No. *L*

*292/*

# Airports (Building Control) Regulations

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**Fees**



Statutory Rules 1996 No. <sup>1</sup>

292/

## Airports (Building Control) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Airports Act 1996*.

Dated

<sup>1</sup>

1996.

11 December/

<sup>1</sup> WILLIAM DEANE/  
Governor-General

By His Excellency's Command,

<sup>1</sup>

Minister for Transport and Regional Development

JOHN SHARP/

### PART 1—PRELIMINARY

#### Citation

**1.01.** These Regulations may be cited as the Airports (Building Control) Regulations.

[NOTE: These Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

## Object of Regulations

**1.02.** The object of these Regulations is to establish, for Division 5 of Part 5 of the Act, a system for the approval of building activity on airports to which that Part of the Act applies.

[Note: Approval for a particular building activity on a core regulated airport may also be necessary under the Airports (Protection of Airspace) Regulations.]

## Effect on State laws

**1.03.** Nothing in these Regulations affects the operation of a State law in respect of:

- (a) the registration of builders or other persons having professional qualifications relating to construction;
- (b) builder insurance;
- (c) occupational health and safety;
- (d) the protection of persons against fire.

## Interpretation

**1.04. (1)** In these Regulations:

**“airport building controller”**, for an airport site, means a person appointed, for that site, under regulation 4.01;

**“approved final master plan”**, for an airport site, means the final master plan for the site approved under subsection 81 (2) of the Act;

**“Australian Standard”** means a standard approved for publication by, or for, the Council of the Standards Association of Australia as an Australian Standard;

**“authorised person”** means a person authorised by the Secretary, in writing, for a purpose of the provision in which the expression appears;

**“building”** includes a structure (within the meaning of subsection 98 (2) of the Act);

**“building approval”** means an approval under regulation 2.14 to carry out a building activity on an airport site;

**“building permit”** see subregulation 2.02 (2);

**“Building Code”** means the Building Code of Australia, as in force, or existing, from time to time;

**“building expert”**, for building activity on an airport site, means a person generally recognised within the building industry as having expert knowledge about, or qualifications for, the construction of buildings, and includes:

- (a) a person licensed to practice any of the following professions or trades in the State:
  - (i) building surveyor;
  - (ii) architect;
  - (iii) engineer engaged in the building industry;
  - (iv) fire-safety engineer; and
- (b) the person responsible for the building activity, or any stage of the building activity; and
- (c) a corporation that carries on the business of being a building expert in the State;

**“demolition authorisation”** see subregulation 2.02 (2);

**“expert in demolition procedures”**, for building activity on an airport site, means a person generally recognised within the building industry as having expert knowledge about, or qualifications for, the demolition of buildings,

**“FAC”** means the Federal Airports Corporation;

**“regulatory authority”** includes:

- (a) an authority or body authorised by law to regulate works for the supply of gas, water, electricity or sewerage services; or
- (b) AUSTEL; or
- (c) the Spectrum Management Agency;

**“Secretary”** means the Secretary to the Department;

**“State”** includes the Australian Capital Territory and the Northern Territory;

**“works”** includes:

- (a) earthworks or engineering works (within the meaning of subsection 98 (3) of the Act); and
- (b) electrical works; and
- (c) hydraulic works;

**“works expert”**, for building activity on an airport site, means a person generally recognised within the building industry as having expert knowledge about, or qualifications for, the carrying out of works, and includes:

- (a) a person:
  - (i) licensed to practice as an engineer in the State; or

- (ii) qualified for the carrying out of that type of building activity; and
- (b) the person responsible for the building activity, or any stage of the building activity; and
- (c) a corporation that carries on the business of being a works expert;

**“works permit”** see subregulation 2.02 (2).

(2) An expression used in these Regulations and in Division 5 of Part 5 of the Act has the same meaning in these Regulations as in that Division.

(3) An expression used in these Regulations and in the Airports Regulations has the same meaning in these Regulations as in those Regulations.

(4) A reference in these Regulations to Australian building standards:

- (a) for a building activity other than demolition—is a reference to:
  - (i) the Building Code, as the Code is applied in the State in which the building activity is taking place; or
  - (ii) if the Building Code does not apply to the building activity, or a part of the building activity—standards determined by the airport building controller, in writing, to be applicable to the building activity, or part, having regard to customary standards for the kind of activity being carried out; or
- (b) for a demolition—is a reference to Australian Standard AS 2601—1991, *The demolition of Structures*, as in force, or existing, from time to time.

(5) A reference in these Regulations to the airport building controller, for an airport site for which the Secretary has not appointed an airport building controller, is a reference to the Secretary.

(6) A reference in these Regulations to an appropriate building expert, for a part of a building activity, is a reference to a

building expert having the qualifications appropriate for the carrying out of that part.

## **PART 2—BUILDING ACTIVITY APPROVALS**

### **Purpose of Part**

**2.01.** The purpose of this Part is:

- (a) to establish a system for approval of appropriate building activities on airport sites; and
- (b) to exempt certain building activities from Subdivision C of Division 5 of Part 5 of the Act.

[Note: The requirement to obtain a building approval is affected by regulation 2.25.]

### **Application for approval to carry out building activity**

**2.02. (1)** A person requiring a building approval must make application, in writing, to the airport building controller for the airport site.

**(2)** An application may be for an approval of any of the following kinds:

- (a) if the proposed building activity is the construction or alteration of a building—a building permit;
- (b) if the proposed building activity is the construction or alteration of works—a works permit;
- (c) if the proposed building activity is the demolition, destruction, dismantling or removal of a building, or works—a demolition authorisation.

**(3)** The applicant for a building approval may be:

- (a) the airport-lessee company for the airport site, or a person on behalf of the airport-lessee company;
- (b) the sub-lessee, or a person on behalf of the sub-lessee, of the building or of the land in or on which the building work is to be carried out.



**Airport-lessee company consent**

**2.03. (1)** If the applicant for a building approval is not the airport-lessee company, the applicant must give to the airport-lessee company a copy of the application and of each document mentioned in regulation 2.05.

**(2)** If the applicant is a person described in paragraph 2.02 (3) (b), approval must be refused by the airport building controller for the airport site unless the application for approval has the consent of the airport-lessee company for the airport site.

**(3)** The airport-lessee company must:

- (a)** grant consent; or
- (b)** grant consent subject to any condition that it considers appropriate; or
- (c)** refuse consent.

**(4)** Before the end of 28 days after receipt of an application, or, if the applicant has agreed to a longer period, the end of that period, the airport-lessee company must give written notice of its decision:

- (a)** to the applicant; and
- (b)** to the airport building controller;

and, if consent is refused, or is granted subject to a condition, the notice must set out the reasons for the decision.

**(5)** Despite subregulation (3), if at the end of the applicable period under subregulation (4), the airport-lessee company has not given written notice to the applicant, consent is taken to have been refused.

**Considerations for grant or refusal of consent**

**2.04. (1)** An airport-lessee company must not refuse consent to an application for building approval unless the proposed building activity is inconsistent with:

- (a)** the final master plan for the airport (if any); or
- (b)** an approved major development plan for the airport (if any); or
- (c)** the final environment strategy (if any), under Part 6 of the Act, for the airport; or

- (d) the airport-lessee company's planning objectives for the airport.

[Note: It is possible that a proposal that, under paragraphs (a) and (b), has no inconsistency, could, nevertheless, be found to be unsatisfactory under paragraph (c) or (d). It is also possible that a proposal that is inconsistent in a way mentioned in subregulation (1) is preserved from refusal of consent, under subregulation (2).]

(2) An airport-lessee company must not refuse consent to an application for building approval if, to do so, would be inconsistent with an obligation of the company, relating directly or indirectly to approval of the building activity:

- (a) as lessor under a sublease to which subsection 22 (2) of the Act, or subsection 26 (2) of the *Airports (Transitional) Act 1996*, applies; or
- (b) under an interest to which subsection 22 (3) of the Act, or subsection 26 (3) of the *Airports (Transitional) Act 1996*, applies.

(3) In determining whether to refuse consent because a proposed building activity is inconsistent with a plan mentioned in paragraph (1) (a), (b) or (c), the airport-lessee company must have regard to the significance of the inconsistency.

(4) In determining whether to refuse consent because a proposed building activity is inconsistent with planning objectives for the airport, the airport-lessee company must have regard to the significance of the inconsistency and, in particular, to:

- (a) the type, location, shape, size, height, density, design and external appearance of the development that will result from the proposed building activity; and
- (b) if a building is intended to be constructed—the siting of the building in relation to the size, and shape, of the site it will occupy; and
- (c) the relationship the results of the activity will have:
  - (i) to existing buildings and other structures on adjoining land at the airport; and
  - (ii) to other approved development on adjoining land at the airport; and
- (d) if appropriate—the proposed means of entrance to, and exit from, the resulting development and, in particular,

- whether adequate provision has been made for loading, unloading, manoeuvring and parking of vehicles; and
- (e) if appropriate—the management of travel of vehicles and pedestrians to and from the resulting development; and
  - (f) the impact the building activity, or resulting development, is likely to have on the environment and, if an adverse impact is likely, whether it is reasonably possible to protect the environment.

(5) In determining whether it is appropriate to grant a conditional consent, the airport-lessee company must have regard to possible impacts of the proposed building activity on:

- (a) the safety and security of persons at the airport, in general; and
- (b) airport services and the efficient operation of the airport.

### **Information about proposed building activity**

**2.05. (1)** An application for a building approval must be in a form acceptable to the airport building controller for the airport site concerned, and must include:

- (a) a description of the proposed building activity, and its location on the airport site; and
- (b) if there is a final master plan for the airport—a statement describing how the proposed building activity is consistent with the plan; and
- (c) if the proposed building activity is, or comprises part of, a major airport development (within the meaning of section 89 of the Act)—a statement describing how the proposed building activity is consistent with:
  - (i) the approved major development plan for the airport; or
  - (ii) any exemption declared under paragraph 90 (1) (d) of the Act; and
- (d) if there is a final environment strategy for the airport—a statement describing how the proposed building activity is consistent with the strategy; and
- (e) 2 copies of the site plan for the proposed building activity, including a depiction of the proposed development resulting from the building activity

- (f) a copy of any other information about the proposed building activity required by a regulatory authority, or other body having a regulatory function, in relation to the resulting building, works or demolition.

(2) If there is a final master plan, approved major development plan or final environment strategy for the airport, the application must be supported by a declaration by the airport-lessee company for the airport to the effect that the proposed building activity is consistent with the final master plan, approved major development plan or final environment strategy, as the case may be.

[Note: “major airport development” is defined in section 89 of the Act. See also the Airports Regulations.]

### **Information about performance of building activity**

**2.06.** An application for a building approval must include:

- (a) an estimate of the cost of the proposed building activity; and
- (b) an estimate of the time necessary to complete the proposed building activity; and
- (c) a statement setting out the precautions to be taken to:
  - (i) protect persons, using the airport while the proposed building activity is going on, from injury arising from the building activity; and
  - (ii) protect property at the airport from damage arising from the building activity; and
- (d) a statement setting out the proposed arrangements for clean-up and rehabilitation of the site of the proposed building activity.

### **Additional information for application for a building permit**

**2.07. (1)** If an application is for a building permit, the following documents must be included:

- (a) 2 copies of the building plan;
- (b) 2 copies of the specification for the proposed building activity;
- (c) all certificates required, under any applicable law, approving arrangements for health and comfort of persons (including heating, insulation, cooling,

sanitation, disposal of refuse, sewerage, drainage, lighting and ventilation), fire resistance, fire protection, or telecommunications services;

- (d) any certificate given by an appropriate building expert, approving the structural elements of the building plan;
- (e) if approval under the Airport (Protection of Airspace) Regulations is required—a statement that the applicant has received approval, or has applied for approval, as the case may be, under those Regulations, for the proposed construction.

**(2) The building plan must:**

- (a) identify the class or classes, under the Building Code, of the building proposed to be built; and
- (b) describe, in accordance with Part C1 of the Code, the proposed type of construction of the building; and
- (c) show the dimensions of all parts of the building, including the footings; and
- (d) include a section plan of the building at the level of each floor, at an appropriate and legible scale; and
- (e) depict each elevation of the building, at an appropriate and legible scale; and
- (f) depict designed provision of fire safety measures in the building; and
- (g) give details of the construction materials proposed to be used for the building; and
- (h) provide for periodic inspections under paragraph 2.17 (1) (h), by:
  - (i) if the proposed contractual arrangement for the construction of the proposed building is a “design and construct” contract—setting out each “design and construct” stage for the project; or
  - (ii) in any other case—specifying the progress stages that it is proposed will be the inspection stages.

**(3) If the proposed building activity is the alteration or repair of an existing building, the building plan must be marked in such a way as to distinguish the proposed alteration or repair from the existing building.**

**(4) The specification for the proposed building must:**

- (a) describe in detail the type of construction and construction materials for the proposed building; and
- (b) describe in detail the proposed methods of drainage, sewerage, water supply and gas supply (if any); and
- (c) state whether it is intended to use in the building any second-hand material that could adversely affect the structural integrity of the building or have any other adverse safety consequence.

**Additional information for application for a works permit**

**2.08.** If an application is for a works permit, the following documents and information must be included:

- (a) 2 copies of the works plan;
- (b) 2 copies of the specification for the proposed works;
- (c) all certificates required, under any applicable law, approving arrangements for sewerage, drainage, lighting, ventilation, fire resistance and fire protection;
- (d) any certificate given by an appropriate works expert, approving the structural elements of the works plan;
- (e) details of the progress stages that it is proposed will be the inspection stages for paragraph 2.17 (1) (h);
- (f) details of the construction materials proposed to be used for the works.

**Additional information for application for a demolition authorisation**

**2.09.** If an application is for a demolition authorisation the following documents and information must be included:

- (a) 2 copies of the demolition plan;
- (b) nomination of the provisions of the Australian building standards with which the work is proposed to comply;
- (c) any certificate given by an expert in demolition procedures, approving the structural elements of the demolition plan;
- (d) the progress stages that it is proposed will be the inspection stages for paragraph 2.17 (1) (h).

**Amendment of application**

**2.10. (1)** An applicant for a building approval may vary, or withdraw, the application, at any time before the airport building controller has made a decision on the application, by giving the airport building controller written notice setting out the variation.

**(2)** Subregulation (1) applies only to a variation the effect of which is not to significantly alter the character, size or impact of the building activity or resulting development.

**Decision on application—duty of airport building controller**

**2.11. (1)** An airport building controller must deal with an application for approval of a building activity by:

- (a) approving the building activity; or
- (b) approving the building activity subject to any condition the airport building controller determines to be appropriate; or
- (c) undertaking to the applicant that the building activity will be approved if the applicant complies with a direction in the undertaking; or
- (d) refusing to approve the building activity.

**(2)** If, to enable an application to be competently determined, further information is reasonably required by the airport building controller, the airport building controller may request, in writing:

- (a) the applicant, to give the information; or
- (b) if the airport-lessee company for the airport has the information—that company, to give the information.

**(3)** The airport building controller need not make a decision under subregulation (1) until the requested further information is received.

(4) If the airport building controller gives an undertaking and direction under paragraph (1) (c), and the applicant complies with the direction, the airport building controller must approve the building activity.

(5) When an airport building controller has decided an application, it must:

- (a) give notice, in writing, of its decision to:
  - (i) the applicant; and
  - (ii) if the applicant is not the airport-lessee company for the affected airport—the airport-lessee company; and
- (b) if the decision is an approval—specify in the notice the inspection stages (if any) at which the building activity is to be inspected by an appropriate expert or a regulatory authority under paragraph 2.17 (1) (h); and
- (c) if the decision is not an unconditional approval—include a statement of the reasons for the decision.

(6) The airport building controller is taken to have refused to approve a building activity if it has not given the applicant notice of its decision before the end of 28 days after receiving:

- (a) the application for approval; or
- (b) the further information (if any) requested under subregulation (2).

[Note: Despite consent and approval under these Regulations, a proposed building activity could be affected by a requirement of the Airports (Environment Protection) Regulations.]

### **Airport-specific considerations**

**2.12. (1)** An airport building controller must not approve a building activity unless:

- (a) if the applicant is not the airport-lessee company for the airport (or a person acting on behalf of the airport-lessee company)—the airport building controller is satisfied that the airport-lessee company has consented to the proposed building activity; and
- (b) if approval of the proposed building activity is necessary under the Airports (Protection of Airspace) Regulations—the airport-lessee company for the airport,



or the Secretary, has approved the proposed building activity under those Regulations.

(2) An airport building controller may direct, as a condition of a building approval, that building activity not be carried out at specified times, or that certain types of building activity not be carried out at specified times, being times at which other activities at the airport should not be disrupted.

### **Criteria for building permit**

**2.13. (1)** If an application is for a building permit, an airport building controller must not approve the proposed building activity unless the airport building controller is satisfied that:

- (a) the proposed building, if completed in accordance with the plan and specification attached to the application, will be fit for occupancy; and
- (b) the building activity will be carried out in accordance with appropriate standards.

(2) For subregulation (1), the building activity will be carried out in accordance with appropriate standards if:

- (a) the design of the proposed building ensures compliance with the applicable Australian building standards; or
- (b) if the design does not ensure compliance with particular applicable Australian building standards—the applicant provides a written explanation of the inappropriateness of compliance with those standards, and the airport building controller approves the non-compliance.

(3) An airport building controller may comply with subregulation (1) in relation to a matter mentioned in paragraph (1) (a) or (b) by relying on:

- (a) a report prepared by an appropriate building expert; or
- (b) a certificate issued by a regulatory authority.

(4) In considering an application for a building permit, an airport building controller must also have regard to:

- (a) public safety during conduct of the building activity; and
- (b) amenity of buildings and services at the airport during conduct of the building activity; and

- (c) the appropriateness of proposed linkages, for the building activity, with services and facilities outside the airport; and
- (d) the appropriateness of proposed arrangements for clean-up and rehabilitation of the site of the building activity.

**Criteria for works permit**

**2.14. (1)** If an application is for a works permit, an airport building controller must not approve the proposed building activity unless the airport building controller is satisfied that:

- (a) the proposed works, if completed in accordance with the plan and specification attached to the application, will be fit for use; and
- (b) the building activity will be carried out in accordance with appropriate standards.

**(2)** For subregulation (1), the building activity will be carried out in accordance with appropriate standards if:

- (a) the design of the proposed building ensures compliance with the applicable Australian building standards; or
- (b) if the design does not ensure compliance with particular applicable Australian building standards—the applicant provides a written explanation of the inappropriateness of compliance with those standards, and the airport building controller approves the non-compliance.

**(3)** An airport building controller may comply with subregulation (1) in relation to a matter mentioned in paragraph (1) (a) or (b) by relying on a report prepared by an appropriate works expert.

**(4)** In considering an application for a works permit, an airport building controller must have regard to:

- (a) public safety during conduct of the building activity; and
- (b) amenity of buildings and services at the airport during conduct of the building activity; and
- (c) the appropriateness of proposed linkages, for the building activity, with services and facilities outside the airport; and
- (d) the appropriateness of proposed arrangements for clean-up and rehabilitation of the site of the building activity.

**Criteria for demolition authorisation**

**2.15. (1)** If an application is for a demolition authorisation, an airport building controller must not approve the proposed building activity unless the airport building controller is satisfied that:

- (a) the demolition will be carried out in accordance with applicable Australian building standards; and
- (b) the demolition, if completed in accordance with the plan attached to the application, will cause no greater disruption to other activities at the airport than is the least disruption reasonably practicable.

**(2)** An airport building controller may comply with subregulation (1) in relation to a matter mentioned in paragraph (1) (a) or (b) by relying on a report prepared by an appropriate expert in demolition procedures.

**(3)** In considering an application for a demolition authorisation, an airport building controller must have regard to:

- (a) public safety during the carrying out of the demolition; and
- (b) amenity of buildings and services at the airport during conduct of the demolition; and
- (c) the appropriateness of proposed arrangements for clean-up and rehabilitation of the site of the demolition.

**Amendment of approval**

**2.16. (1)** The person carrying out a building activity under a building approval may apply to the airport building controller for the airport, at any time, to vary the building approval, by giving the airport building controller written notice setting out the variation sought.

**(2)** Subregulation (1) applies only to a variation the effect of which is not to significantly alter the character, size or impact of the building activity or resulting development.

**(3)** The airport building controller must deal with the application by:

- (a) granting a varied building approval; or

- (b) granting a varied building approval subject to any condition the airport building controller determines to be appropriate; or
  - (c) undertaking to the applicant that a varied building approval will be granted if the applicant complies with a direction in the undertaking; or
  - (d) refusing to grant a varied building approval.
- (4) When an airport building controller has decided an application, it must:
- (a) give notice, in writing, of its decision to:
    - (i) the applicant; and
    - (ii) if the applicant is not the airport-lessee company for the affected airport—the airport-lessee company; and
  - (b) if the decision alters the inspection stages at which the building activity is to be inspected under paragraph 2.17 (1) (h)—specify in the notice the altered inspection stages; and
  - (c) if the decision is not an unconditional grant—include a statement of the reasons for the decision.

### **Duties attaching to building approval**

**2.17. (1)** Unless the airport building controller determines otherwise, in writing, a building approval imposes the following duties on the person carrying out the building activity:

- (a) for a building permit—the materials used in the building and the methods of use of those materials must comply with the Australian building standards for materials of that type when used in a building of that type;
- (b) for a works permit—the materials used in the works and the methods of use of those materials must comply with the Australian building standards for materials of that type when used in works of that type;
- (c) the building activity must be carried out with appropriate expertise;
- (d) the building activity must be carried out in accordance with the plan, specifications and conditions, if any, in respect of which the building approval was granted;

- (e) the building activity must be carried out by appropriately qualified and licensed persons;
- (f) the building activity must be supervised by appropriately qualified and licensed persons;
- (g) all necessary safety precautions must be taken in carrying out the building activity;
- (h) at least 7 days before the expected date on which the building activity will reach an inspection stage:
  - (i) the airport building controller must be notified of that expectation; and
  - (ii) further work on that part of the building activity must not occur until a regulatory authority, or other appropriate expert has inspected the building activity and:
    - (A) found it to be in accordance with the approval; and
    - (B) if the inspection is not by a regulatory authority—provided a certificate to that effect to the airport building controller;
- (j) the airport building controller must be given access to inspect the building activity at any reasonable time after notice is given to the person carrying out the building activity:
  - (i) in writing; and
  - (ii) a reasonable period in advance of the inspection;
- (k) if the airport building controller so requires, work must be opened up in order to verify that it has been properly performed;
- (l) any work or materials considered defective by the airport building controller must be rectified, or if that is not possible, removed;
- (m) the airport building controller must be provided with the results of any tests that it directs, in writing, be carried out;
- (n) before the end of 6 months after practical completion of the building activity, the airport building controller must be given detailed drawings of the resulting construction, in the form actually constructed;
- (o) as soon as the building activity is complete, the site of the building activity must be cleaned up and rehabilitated.

(2) For paragraph (h), an “**inspection stage**” is a particular stage reached in the building activity, that the notice of approval under subregulation 2.11 (5) specifies as an inspection stage.

### **Additional powers of airport building controller**

**2.18. (1)** An airport building controller may impose, at any time, an additional condition on a building approval if, in the course of the building activity, it appears to the airport building controller that, in the interests of the protection of persons from injury, or property from damage, compliance with the additional condition is appropriate.

(2) If the airport building controller considers that an action carried out in the performance of a building activity is a significant contravention of a provision of the Act, or these Regulations, the airport building controller may issue a written stop work order.

### **Duration of approval**

**2.19. (1)** A building approval has effect from the time it is granted:

- (a) until the end of 3 years after the grant; or
- (b) if it specifies a period shorter than 3 years—until the end of the specified period; or
- (c) if it is extended under this regulation—until the end of the extended period; or
- (d) if, under regulation 2.20, it is revoked before it would otherwise cease to be in force—until the time it is revoked.

(2) On application by the person carrying out the building activity, an airport building controller may extend the period for which the approval has effect for an additional period of 1 year.

(3) The application is ineffective unless made before the approval ceases to be in force, but may be granted after the approval has ceased to be in force.

(4) Application may be made, and granted, whether or not the period during which an approval has effect has already been extended, but an approval may be extended no more than twice.

(5) A building approval does not cease to have effect for the reason only that the person to whom it was granted has given up all, or any, of its interest in the proposed building, structure or works or the land on which it is to be constructed.

(6) Building activity that is commenced to be carried out on an airport site only after an approval for the building activity has ceased to be in force is a contravention of subsection 99 (1) or (3) of the Act, as the case may be.

### **Revocation of approval**

**2.20.** An airport building controller may revoke a building approval if:

- (a) the building activity:
  - (i) 2 years after the approval is given—has not begun, and, in the opinion of the airport building controller, is not likely to begin before the approval expires; or
  - (ii) has ceased, and, in the opinion of the airport building controller, is not likely to be resumed; or
  - (iii) can no longer be carried out in accordance with the approval; or
  - (iv) is not being carried out in accordance with a plan, specification or standard on the basis of which the approval was given; or
  - (v) is not being carried out in accordance with applicable Australian building standards; or
  - (vi) is not being carried out in accordance with a condition of the approval; or
- (b) the person holding the approval so requests; or
- (c) the airport building controller finds that the application, or a document or statement supplied in support of the application, was false, or misleading, in a significant way; or
- (d) the person carrying out the building activity fails to comply with a duty under regulation 2.17; or
- (e) in contravention of a stop work order under subregulation 2.18 (2)—the building activity has not ceased, or has recommenced without the written consent of the airport building controller.

**Register of applications**

**2.21. (1)** An airport building controller must keep a register of applications made to it for approval of building activity, showing:

- (a) the result of each application; and
- (b) for an approved application—any conditions attaching to the approval.

**(2)** If the appointment of an airport building controller for an airport site ceases, the airport building controller must pass the register:

- (a) to the Secretary; or
- (b) if, before the cessation, the Secretary has given the airport building controller notice of the name and address of the proposed succeeding airport building controller for the site—to the proposed succeeding airport building controller.

**(3)** The Secretary, or an authorised person, after giving reasonable notice to the airport building controller, may inspect the register at the office of the airport building controller, and may copy any part of the register, during normal office hours.

**Oversight of approval process**

**2.22 (1)** To enable monitoring of an airport building controller's approvals of building activities, the Secretary, or an authorised person, may require, by notice in writing, an airport building controller to give the Secretary, or authorised person, any of the following documents or things:

- (a) a copy of an application made to the airport building controller for approval of a building activity;
- (b) a copy of a document, or a thing, given by an applicant to the airport building controller in support of an application;
- (c) a copy of a document, or a thing, made by the airport building controller in connection with an application;
- (d) a copy of a document, or a thing, made, in connection with an application, by a person other than the airport building controller and in the possession of the airport building controller.



(2) The documents and things to which paragraph (1) (d), applies include documents and things made by a regulatory authority.

(3) The airport building controller must comply with the notice before the end of 28 days after it is given.

(4) If the Secretary is not the airport building controller for the building activity, the Secretary, or an authorised person must be given access to inspect the building activity at any reasonable time, after 2 days written notice given to:

- (a) the airport building controller for the airport at which the building activity is being carried out; and
- (b) the person carrying out the building activity;

(5) A person authorised for subregulation (1) or (4) must be:

- (a) an officer of the Department; or
- (b) an appropriate expert.

### **Inspections—airport building controller to be timely**

**2.23.** If, under these Regulations, work on a building activity is stopped until an airport building controller has made an inspection, the airport building controller must make the inspection as soon as is reasonably practicable.

### **Exemption from Subdivision C of Division 5 of Part 5 of the Act**

**2.24. (1)** For subsections 99 (1) and (3) of the Act, the following building activities are exempt from Subdivision C of Division 5 of Part 5 of the Act:

- (a) erection, or installation, of a manufactured home or moveable dwelling, or a similar construction;
- (b) erection of a building that is a class 10a building under the Building Code, having a floorspace of 10 square metres or less;
- (c) erection of a building that is a class 10b building under the Building Code, except:
  - (i) a fence more than 2 metres high; or
  - (ii) a fence that includes barbed wire or razor wire; or

- (iii) a mast, pole, antenna or similar structure that:
  - (A) if erected on a building—is more than 3 metres higher than its highest point of attachment to the building; or
  - (B) otherwise—is more than 8 metres high; or
- (iv) a wall (including a retaining wall) more than 1 metre in height; or
- (v) a sign unless:
  - (A) at its highest point, it is less than 8 metres above ground level; and
  - (B) it is a sign erected by the airport-lessee company for the regulation of traffic, or for a similarly advisory purpose;
- (d) repair, or alteration, of an existing building, if the repair or alteration:
  - (i) does not adversely affect any aspect of the safety of the building; and
  - (ii) does not adversely affect the structural soundness of the building; and
  - (iii) does not involve underpinning of, or replacement of, the footings; and
  - (iv) is in the nature of:
    - (A) appropriate maintenance; or
    - (B) cosmetic changes, or fitout, to the interior or exterior of the building; or
  - (v) is essential, because of an emergency relating to the safety of persons;
- (e) repair, or alteration, of an existing works, if the repair or alteration is minor and:
  - (i) does not adversely affect the structural soundness of the works; and
  - (ii) is appropriate maintenance
- (f) minor works, being a works that the airport building controller determines, in writing, should be exempt from the subdivision because:
  - (i) the interference with the airport site is minor; and
  - (ii) no danger arises of injury to a person using the airport.

[Note: In certain circumstances this provision operates only in conjunction with subparagraphs 99 (1) (d) (ii) or (iii) and 99 (3) (d) (ii) and (iii) of the Act.]

(2) The airport building controller for an airport site must be notified in writing of a building activity that, under this regulation, is exempt from Subdivision C of Division 5 of Part 5 of the Act.

(3) If building activity of the kind mentioned in subparagraph (1) (d) (v) is carried out, the person under whose direction the activity was carried out must, as soon as is practicable, give the airport building controller for the airport a certificate attesting to the structural safety of the building as repaired or altered.

(4) A person who carries out an exempt building activity, or on whose behalf an exempt building activity is carried out, must keep a record of all plans for the building activity, and of details of all work undertaken, until the end of 1 year after completion of the activity.

(5) The airport building controller for an airport site on which exempt building activity has been carried out may inspect a record referred to in subregulation (3):

- (a) at any reasonable time on a day when the office of the person keeping the record is normally open for business; and
- (b) after giving the person written notice at least 24 hours before making the inspection.

### **Transitional—existing building entitlement**

**2.25. (1)** A building activity on an airport site, that, before an airport lease for the airport is granted by the Commonwealth, is the subject of a written permission, or approval, however described, granted by the FAC, has, for section 99 of the Act, approval:

- (a) until the end of 3 years after the date on which the building permit was granted; or
- (b) if the permit is expressed to be in force for a period shorter than 3 years—until the end of the specified period; or
- (c) if the term for which the building permit is expressed to be in force has been extended, in writing, by the FAC—until the end of the earlier of:

- (i) the extended period; and
- (ii) 3 years after the date the extension was granted.

(2) A condition, subject to which the building permit was granted, has effect as if it were a condition imposed by the building controller for the airport, and, to the extent that it is inconsistent with a duty under regulation 2.17, prevails over the duty.

(3) If:

- (a) before commencement of the Act, the FAC consented to a building activity under a lease of land that, under the Act, is on an airport site; and
- (b) had not, immediately before commencement of the airport lease of the airport site, issued a permit to commence work on the building activity; and
- (c) under the Airports (Transitional) Act 1996, the airport-lessee company for the airport site has acquired the rights and obligations of the FAC in relation to the person to whom the consent was given;

the airport-lessee company must not withdraw the consent for the purpose only of avoiding a contractual obligation touching on, or concerning, the lease.

(4) In subregulation (1), “airport lease” means:

- (a) an airport lease under the *Airports (Transitional) Act 1996*; or
- (b) if an airport lease for the airport site is not granted under that Act—under the Act.

### PART 3—CERTIFICATES OF FITNESS

#### Interpretation

3.01. In this Part:

“**building**” includes a part of a building;

“**certificate for occupancy**” means a certificate of fitness to which paragraph 3.04 (1) (a) applies;

“**certificate for use**” means a certificate of fitness to which paragraph 3.04 (1) (b) applies.

**Application for issue of certificate of fitness**

**3.02.** Application for a certificate of fitness for a building, or works, on an airport site may be made, in writing, to the airport building controller for the airport by:

- (a) the airport-lessee company for the airport; or
- (b) the person carrying out the building activity that has resulted in the building, or works; or
- (c) a person whose interest in the building, or works, or the land on which the building, or works, is located, entitles the person to carry out the building activity that has resulted in the building, or works.

**Amendment of application**

**3.03.** An applicant for a certificate of fitness may vary, or withdraw, the application, at any time before the airport building controller has made a decision on the application, by giving the airport building controller appropriate written notice.

**Certificate of fitness—decision of airport building controller**

**3.04. (1)** A certificate of fitness may be issued for:

- (a) if application is for a building—occupancy; or
- (b) if application is for works—use.

**(2)** An airport building controller must deal with an application for a certificate of fitness by:

- (a) issuing the certificate; or
- (b) issuing the certificate subject to any condition the airport building controller determines to be necessary and reasonable; or
- (c) refusing to issue the certificate.

**(3)** The airport building controller for an airport must not issue a certificate of fitness for a building or works on the airport site unless the airport building controller is satisfied that the building or works, as completed:

- (a) is in accordance with the plan and specification submitted to the airport building controller with the application for the building approval for the building activity that has resulted in the building or works; and

- (b) makes proper provision, in accordance with Australian building standards, for the health, safety and comfort of any occupants or users; and
- (c) can reasonably be used for the purpose for which it was built; and
- (d) complies with the requirements mentioned in regulation 3.05 or 3.06, as the case requires.

(4) An airport building controller may rely on a relevant certificate issued, or report prepared, by a building expert, or a regulatory authority, for the purpose of satisfying the airport building controller in respect of a matter mentioned in subregulation (3).

(5) If, under the Building Code, different parts of a building are differently classified, an airport building controller may issue:

- (a) one certificate of fitness for the building; or
- (b) different certificates of fitness for the different parts of the building.

(6) If the airport building controller is satisfied, under subregulation (2), in respect of part only of the building or works, the airport building controller may issue a certificate of fitness for that part.

(7) When an airport building controller has decided an application, the airport building controller must:

- (a) give the applicant notice, in writing, of the decision; and
- (b) if the decision is not an unconditional certificate—include a statement of the reasons for the decision.

#### **Additional criteria for certificate for occupancy**

**3.05.** For paragraph 3.04 (3) (d), the building, as completed must:

- (a) be consistent with the approval given under regulation 2.11 for the building activity resulting in the building; and
- (b) make adequate provision, in its proposed use, for the protection of occupants against fire; and
- (c) make adequate provision, in its proposed use, for insulation, sanitation, disposal of refuse, sewerage, drainage, heating, cooling, lighting and ventilation; and

- (d) make adequate provision, in its proposed use, for services, installations and ancillary equipment likely to be required by users.

### **Additional criteria for certificate for use**

**3.06.** For paragraph 3.04 (3) (d), the works, as completed must be consistent with the approval given under regulation 2.11 for the building activity resulting in the works.

### **Duties attaching to certificate of fitness**

**3.07. (1)** A certificate for occupancy of a building imposes the following duties on the holder of the certificate:

- (a) the building must not be used for a purpose that is inconsistent with the classification of the building under the Building Code;
- (b) the building must be maintained in a condition that is consistent with its classification.

**(2)** A certificate for use of works imposes the following duties on the holder of the certificate:

- (a) the works must not be used for a purpose that is inconsistent with the standards to which it was constructed; and
- (b) the works must be maintained in a condition that is consistent with its use.

### **Content of certificate of fitness**

**3.08. (1)** A certificate for occupancy of a building must:

- (a) identify the building; and
- (b) set out the classification of the building under the Building Code; and
- (c) set out any conditions that the certificate is subject to; and
- (d) state that the airport building controller is satisfied in respect of the matters mentioned to in subregulation 3.04 (3); and

- (e) if the airport building controller is satisfied that the building, as completed, complies with Australian building standards—state that fact; and
  - (f) if the airport building controller is not satisfied that the building, as completed, complies with those standards—state that the airport building controller has approved the non-compliance.
- (2) A certificate for use of works must:
- (a) identify the land on which the works were carried out; and
  - (b) set out any conditions that the certificate is subject to; and
  - (c) state that the airport building controller is satisfied in respect of the matters mentioned in subregulation 3.04 (3); and
  - (d) set out the standards to which the works were required to be completed and:
    - (i) if the airport building controller is satisfied that the works, as completed, comply with those standards—state that fact; and
    - (ii) if the airport building controller is not satisfied that the works, as completed, comply with those standards—state that the airport building controller has approved the non-compliance.

### **Amalgamation of related certificates of fitness**

**3.09.** If an airport building controller has issued separate certificates of fitness for parts of a building, or works, during its construction, the airport building controller may issue:

- (a) one certificate of fitness for the building, or works, as completed; or
- (b) one certificate of fitness for all the parts of the building, or works, as completed, that have the same classification under the building standards or standards to which the works were required to be completed; or
- (c) different certificates of fitness for the different parts of the building, or works, as completed.



**Variation of certificate of fitness**

**3.10. (1)** The airport building controller for an airport may vary a certificate of fitness for a building, or works:

- (a) if application is made, in writing, by:
  - (i) the airport-lessee company for the airport concerned; or
  - (ii) the holder of the certificate; or
  - (iii) a person whose interest in the building, or works, or the land on which the building, or works, is located, entitles the person to carry out the building activity that has resulted in the building, or works; or
- (b) if the airport building controller is satisfied that the variation is necessary, in the public interest, to ensure, as the case requires, that:
  - (i) the building is safe for occupancy; or
  - (ii) the works are safe for use.

**(2)** In considering whether to vary a certificate of fitness, the airport building controller must take into account the matters mentioned in subregulation 3.04 (3), as if the airport building controller were considering issuing a certificate of fitness.

**Duration of certificate of fitness**

**3.11. (1)** A certificate of fitness has effect from the time it is granted:

- (a) until the building, or works, to which it applies ceases to exist, or undergoes alteration not accommodated by the information on which the certificate is based; or
- (b) if it is revoked before it would otherwise cease to be in force—until the time it is revoked.

**(2)** A certificate of fitness does not cease to have effect for the reason only that the person to whom it was granted has given up all, or any, of its interest in the building, or works, or the land on which it is constructed.

**Revocation of certificate of fitness**

**3.12. (1)** The airport building controller for an airport may revoke a certificate of fitness for a building, or works, on the airport, if:

- (a) the building or works ceases to be suitable for the purpose mentioned in the certificate; or
- (b) the airport building controller is satisfied that the application, or a document or statement supplied in support of the application, for the certificate, was false or misleading in a significant way; or
- (c) the holder of the certificate fails to comply with an applicable duty under regulation 3.07.

**(2)** A certificate of fitness under these Regulations for a building, or works, is taken to be revoked if another certificate of fitness is issued under these Regulations for, as the case may be:

- (a) the building, or a building that includes that building; or
- (b) the works.

**Transfer or termination of airport lease—effect on certificate of fitness**

**3.13.** Transfer or termination of an airport lease has no effect on a certificate of fitness under these Regulations.

**Issue of certified copy of certificate of fitness**

**3.14. (1)** If the airport building controller for an airport site is satisfied that:

- (a) a certificate of fitness for a building, or works, has been issued, and then lost or destroyed; and
- (b) the content of the certificate is reliably ascertainable;

the airport building controller may issue a copy of the certificate to:

- (c) the holder of the original certificate; or
- (d) a person who is the successor, for the time being, in title to the interest in the building, or works, of the holder of the original certificate; or
- (e) a person authorised, in writing, by the person mentioned in paragraph (c) or (d), as appropriate, to hold the certificate, or a copy.

(2) The airport building controller must endorse on the copy a statement that the copy is a true copy of the original certificate.

### **Function of certificate of fitness**

**3.15.** A certificate of fitness is evidence that the building, or works, to which it applies may be occupied, or used, but is not evidence:

- (a) that the building, structure, works or eligible alteration, as the case may be, complies with these Regulations; or
- (b) that the airport building controller has authorised the building to be used for a particular purpose.

### **Exemption from Subdivision D of Division 5 of Part 5 of the Act**

**3.16. (1)** For subsections 106 (1) and (4) of the Act, a building or an eligible alteration of a building, on an airport site, is exempt from Subdivision D of Division 5 of Part 5 of the Act if:

- (a) the building, or alteration, was completed before the airport site on which it is located was first leased, and the building:
  - (i) continues to have the use it had immediately before the airport site on which it is located was first leased; and
  - (ii) has been maintained in a condition consistent with the structural needs of that use; or
- (b) the building, or alteration, is the result of a building activity to which subregulation 2.24 (1) applied.

**(2)** For subsections 106 (1) and (4) of the Act, a works, or an eligible alteration of works, on an airport site, is exempt from Subdivision D of Division 5 of Part 5 of the Act if:

- (a) the works, or alteration, was completed before the airport site on which it is located was first leased; and
- (b) the works continues to have the use it had immediately before the airport site on which it is located was first leased; and
- (c) the works has been maintained in a condition consistent with the structural needs of that use.

(3) For this regulation, an “**eligible alteration**” is an alteration that constitutes only repair to, or reconstruction of, an existing building, or works, and that does not affect the safety or structural soundness of the building, or works, and that:

- (a) is appropriate maintenance; or
- (b) does not involve underpinning of, or replacement of, the footings; or
- (c) for a building—is in the nature of cosmetic change, or fitout, to the interior or exterior of the building.

(4) In subregulation (1), “**first leased**” means:

- (a) first leased under the *Airports (Transitional) Act 1996*; or
- (b) if an airport lease for the airport site is not granted under that Act—first leased under the Act.

## **PART 4—AIRPORT BUILDING CONTROLLER**

### **Appointment of airport building controller**

**4.01. (1)** The Secretary may appoint, as airport building controller for an airport site:

- (a) an authority of the Commonwealth, or of the State in which the airport site is located; or
- (b) a local government body; or
- (c) an individual, a body or a corporation:
  - (i) authorised under the law of the State in which the airport site is located, to approve building activity and certify the fitness of buildings in the State; and
  - (ii) that does not hold a stake (within the meaning given by clause 11 of the Schedule to the Act) of more than 5% in the airport-lessee company for the airport; and
  - (iii) in the case of a body or a corporation—in which the airport-lessee company does not hold a stake (within the meaning given by clause 11 of the Schedule to the Act) of more than 5%.

(2) At least 14 days before appointing an airport building controller for an airport site, the Secretary must give written notice of

the proposed appointment to the airport-lessee company for the airport, and invite the airport-lessee company to make any submission it thinks appropriate in relation to the proposal.

(3) In determining whether to make a particular appointment, the Secretary must have regard to a submission by the airport-lessee company if the submission is received before the day specified in the notice as the day on which it is proposed to make the appointment.

### **Immunity from certain liability**

**4.02. (1)** An airport building controller has no liability for anything done, or omitted to be done, in good faith, in reasonable reliance on a certificate given by a building or works expert.

(2) An airport building controller has no liability for anything necessarily or reasonably done, or omitted to be done, in good faith:

- (a) in exercising a power or function under these Regulations; or
- (b) in the reasonable belief that the act or omission was done in the exercise of a power or function under these Regulations.

### **Confidential information in hands of airport building controller**

**4.03.** Information given to, or obtained by, an airport building controller in the performance of a power or function under these Regulations must not be disclosed to any person who does not have a lawful, and proper, need to see the information.

## **PART 5—MISCELLANEOUS**

### **Fees**

**5.01.** For a matter mentioned in column 2 of an item in the Schedule, there is payable to the airport building controller concerned, the fee mentioned in column 3 of the item.

**Review by Administrative Appeals Tribunal**

**5.02.** Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal by a person described in column 3 of an item in the following table for review of a decision mentioned in column 2 of the item:

Column 1 Item no.	Column 2 Decision	Column 3 Person that may apply for reconsideration
Part 1—Decision by airport building controller		
1	Subregulations 2.11 (1) and (6)—refusal, or failure, to approve a building activity	the applicant for the approval
2	Subregulation 2.11 (1)—imposition of a condition on a building approval	the applicant for the approval
3	Subregulation 2.11 (1)—giving of a direction in relation to a building approval	the applicant for the approval
4	Subregulation 2.18 (1)—imposition of a condition on a building approval	the person carrying out the building activity
5	Subregulation 2.18 (2)—issuing of a stop work order on a building approval	the person carrying out the building activity
6	Subregulation 2.19 (2)—refusal to extend duration of a building approval	the person carrying out the building activity
7	Regulation 2.20—revocation of a building approval (except at the request of the holder)	the person carrying out the building activity
8	Subregulation 3.04 (2)—refusal to issue a certificate of fitness for a building or works	the holder of the building approval that authorised the building activity that resulted in the building or works

Column 1 Item no.	Column 2 Decision	Column 3 Person that may apply for reconsideration
9	Subregulation 3.04 (2)— imposition of a condition on a certificate of fitness	the holder of the building approval that authorised the building activity that resulted in the building or works
10	Subregulation 3.10 (1)— variation of a certificate of fitness	the holder of the certificate of fitness
11	Subregulation 3.10 (1)— refusal to vary a certificate of fitness	the holder of the certificate of fitness
Part 2—Decision by airport-lessee company		
12	Subregulations 2.03 (4) and (6)—refusal, or failure, to grant consent to application	the applicant for the approval
13	Subregulation 2.03 (4)— imposition of a condition on a grant of consent	the applicant for the approval



**SCHEDULE****FEES**

Regulation 5.02

Column 1 Item no.	Column 2 Matter	Column 3 Fee \$
1	Regulation 2.02—application for approval	0
2	Regulation 2.10—variation of application	0
3	Regulation 2.16—variation of approval	0
4	Regulation 3.02—application for certificate of fitness	0
5	Regulation 3.03—variation of application	0
6	Regulation 3.02—variation of certificate of fitness	0

[Note: At the commencement of the Regulations, there is, for the time being, no quantum to fees. The schedule is intended to be completed by amending regulation after appropriate consultation with industry.]

**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on

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1996. 12 December/