

Building Newsflash

DEALING WITH OBJECTS SUCH AS SHIPPING CONTAINERS UNDER THE *BUILDING ACT 1975*

Purpose

The purpose of this Newsflash is to assist local governments, building certifiers and other relevant stakeholders in applying the provisions of the *Building Act 1975* (BA) to objects such as shipping containers.

Background

A number of local governments have queried how they should deal with objects such as shipping containers under the BA. Local governments have advised that these objects are sometimes placed on land and used for purposes such as dwellings, offices and storage and that they may not be attached to the ground. It has been suggested that where these objects are not fixed to the ground, they would not come within the definition of “building” under the BA.

Legislation

Integrated Planning Act 1997

- Section 4.3.1(1) states that a person must not carry out assessable development unless there is an effective development permit for the development.
- Schedule 8, Part 1, Table 1 states that assessable development for building work is all building work that is not self assessable or exempt development under the BA.

Building Act 1975

- Section 20 states that all building work is assessable development unless it is self assessable development under section 21 of the BA, exempt development under section 22 or operational work mentioned in section 3.2.2B of IPA.
- Section 5(1)(a) states that building work is building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure.
- Schedule 2 defines “building” as a fixed structure that is wholly or partly enclosed by walls and is roofed and includes a floating building and any part of a building.
- Schedule 2 defines “structure” to include a wall or fence and anything fixed to or projecting from a building, wall, fence or other structure.

Acts Interpretation Act 1954

- Section 14A states that in interpreting a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.



Interpretation

The definition of building work in the BA applies to both buildings and structures and includes moving a building or structure. The BA sets standards for buildings and structures.

Buildings

For a structure to be a building under the BA, it needs to be a fixed structure, enclosed by walls (wholly or partly) and roofed. The Department's interpretation is that there is nothing in the BA requiring a building to be fixed to the ground to come within the definition of building. Case law on the meaning of "fixed" suggests that each case must be assessed on its own facts. However, the cases show that any element of permanency may lead to a structure being considered as fixed and therefore a "building" for the purposes of the BA. For example:

- A combi van was found to be a fixed structure where the van rested on wheels with metal stands provided at each wheel even though the van was capable of being moved.
- A caravan was found to be a fixed structure where it was supported by its wheels resting on the ground. It was connected to the electric mains, a television aerial was installed, was not registered and had no brakes.
- A caravan was found to be a fixed structure where it had two wheels resting on a small excavation made in the surface and, at the front end, was resting on bricks without wheels. Electricity supply wires for lighting and refrigeration were connected from the supply mains.
- A converted caravan and an adjoining shell of a caravan with an awning on top was found to be a fixed structure where the wheels were resting in holes in the ground to enable the frames to be levelled and stabilised. Mechanical jacks and masonry supports were used and there was a gutter and downpipe fixed to the awning on one side. Each structure had provision for attachment to a vehicle, but it would have taken some hours to actually remove them. The caravan was connected to electricity and telephone cables.

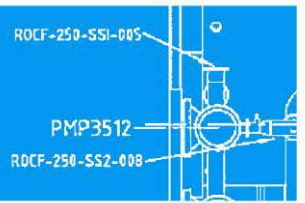
Structures

It is important to note that the definition of "structure" in the BA is much broader than that of "building" and does not necessarily require the structure to be fixed, enclosed by walls or roofed. As mentioned above, the definition of building work applies equally to both buildings and structures.

Summary

Whether or not a structure is "fixed" will depend on a proper analysis of the context in each case, including the degree of permanency, size and intended use along with any utility connections. In the example of a shipping container placed on land and intended for ongoing use as a dwelling, office or storage, the Department considers that such an object would be a fixed structure and therefore a "building" under the BA.

Generally, where an object comes within the definition of a building or structure, the building assessment provisions under section 30 of the BA apply unless the building or structure is exempt development under section 22 of the BA or is operational work



mentioned in section 3.2.2B of IPA. If the building or structure is assessable development, a building development approval is also required.

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