



Temporary Structures

The purpose of this bulletin is to draw to the attention of permit authorities, building surveyors and those involved with temporary structures the Building Act 2011 (the Building Act) provisions for temporary structures that are buildings or incidental structures.

Applicable Legislation

The Building Act sets out an approval process for buildings and incidental structures. It is important to note that the approval processes under the Building Act do not extend to structures that are neither buildings nor incidental structures.

Where a temporary structure is determined to be a building or incidental structure then a building permit is required prior to construction, erection, assembly or placement unless certain exemptions apply. For Class 2 to 9 buildings an occupancy permit may also be required before the building can be occupied.

It is critical to identify if the particular temporary structure is a building or incidental structure. If it is neither, then the building approval processes of the Building Act do not apply. These temporary structures may fall under other laws such as health or planning legislation administered by the local government in which the temporary structure is proposed.

The relevant permit authority may be able to provide guidance on the specific temporary structure.

What constitutes a building?

There is no formal definition of a "building" in the Building Act other than as including a part of a building. The Macquarie dictionary defines a building as "a substantial structure with a roof and walls, as a shed, house, department store, etc."

In the Jones and Building Services Board [2015] WASAT 51 decision the State Administrative Tribunal states:

The manner in which buildings are constructed and designed is subject to change and innovation over time. It is therefore necessary to attempt to apply the legislative scheme in a practical manner. It may be that a structure is not fully walled but is so designed as to provide adequate protection, or that a structure does not cease to be a building because the roof does not cover the entire structure. It must necessarily be a matter of fact and degree in each case to determine at what point a structure can be properly classified as a building.

What constitutes an incidental structure?

An incidental structure is defined in the Building Act as a structure **attached to or incidental to** a building and includes a chimney, mast, swimming pool, fence, free-standing wall, retaining wall or permanent protection structure, and a part of a structure.

Who determines if a structure is a building or incidental structure?

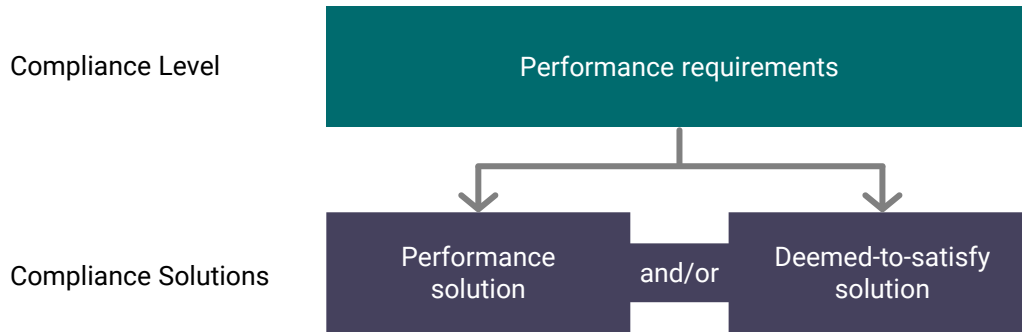
Ultimately the permit authority is responsible for enforcing the Building Act and may take legal action for breaches of that Act. Therefore, the proponent may wish to liaise with the permit authority.

What are the applicable building standards for a temporary structure that is a building or incidental structure?

The Building Act adopts the Building Code of Australia (BCA) which is Volume One and Two of the National Construction Code, published from time to time by the Australian Building Codes Board (ABCB), as the applicable building standards for all buildings and incidental structures. The BCA can be downloaded free of charge from the [ABCB website](#).

The BCA is a performance-based document in which compliance is achieved by satisfying the performance requirements. The BCA provides the choice of following prescriptive deemed-to-satisfy provisions or developing a performance solution specific to the building or incidental structure to demonstrate compliance with performance requirements.

The level of mandatory compliance and choice of compliance solutions is illustrated in the figure below:



Deemed-to-satisfy solution

A deemed-to-satisfy solution is a solution that complies with the deemed-to-satisfy (DTS) provisions prescribed within the BCA and deemed to have met the performance requirements. The application of DTS to temporary structures is unlikely to provide the most economical or practical outcome.

Performance solution

A performance solution is achieved by demonstrating:

- a) compliance with all relevant performance requirements; or
- b) the solution is at least equivalent to the deemed-to-satisfy provisions.

A performance solution must be shown to comply with the relevant performance requirements through one or a combination of the assessment methods specified in the BCA.

The [Temporary Structures Standard](#) published by the ABCB may be able to be used as part of a performance solution.

The ABCB has published a [Performance Solution Process](#) guidance document to assist in the development of performance solutions. The Department of Mines, Industry Regulation and Safety (DMIRS) has also published information on developing performance solutions including [Guidance on fire safety performance solutions](#) and industry bulletin [IB102 Performance solutions for housing projects](#).

To the degree necessary

A number of the performance requirements of the BCA use the expression “to the degree necessary” or “appropriate to”. The BCA stipulates that a reference in a performance requirement to “the degree necessary” means that:

- a) consideration of all the criteria referred to in the performance requirement will determine the outcome appropriate to the circumstances; and
- b) in certain cases it may not be necessary to incorporate any specific measures to meet the relevant performance requirement.

The [ABCB Handbook: ‘Energy Efficiency Volume Two’](#) states:

the term “to the degree necessary” has been included in the performance requirement because:

- a) there may be a minimum energy consumption below which it may be unnecessary or impractical to require energy efficiency features;
- b) there may be dwellings in some situations for which it may be unnecessary or impractical to require energy efficiency features; and
- c) some of the features may not be appropriate for some dwellings.

It may also be inappropriate to require energy efficiency in some instances. For example, where there may be a conflict with health or safety requirements. Another example of when it may be impractical to regulate for energy efficiency may be a remote hut that is occupied on an infrequent basis.

There are similar statements in the ABCB Handbook: Energy Efficiency Volume One.

What about temporary structures with fabric walls and roof, such as tents?

These type of structures may include marquees or simple tent structures used for tourist accommodation.

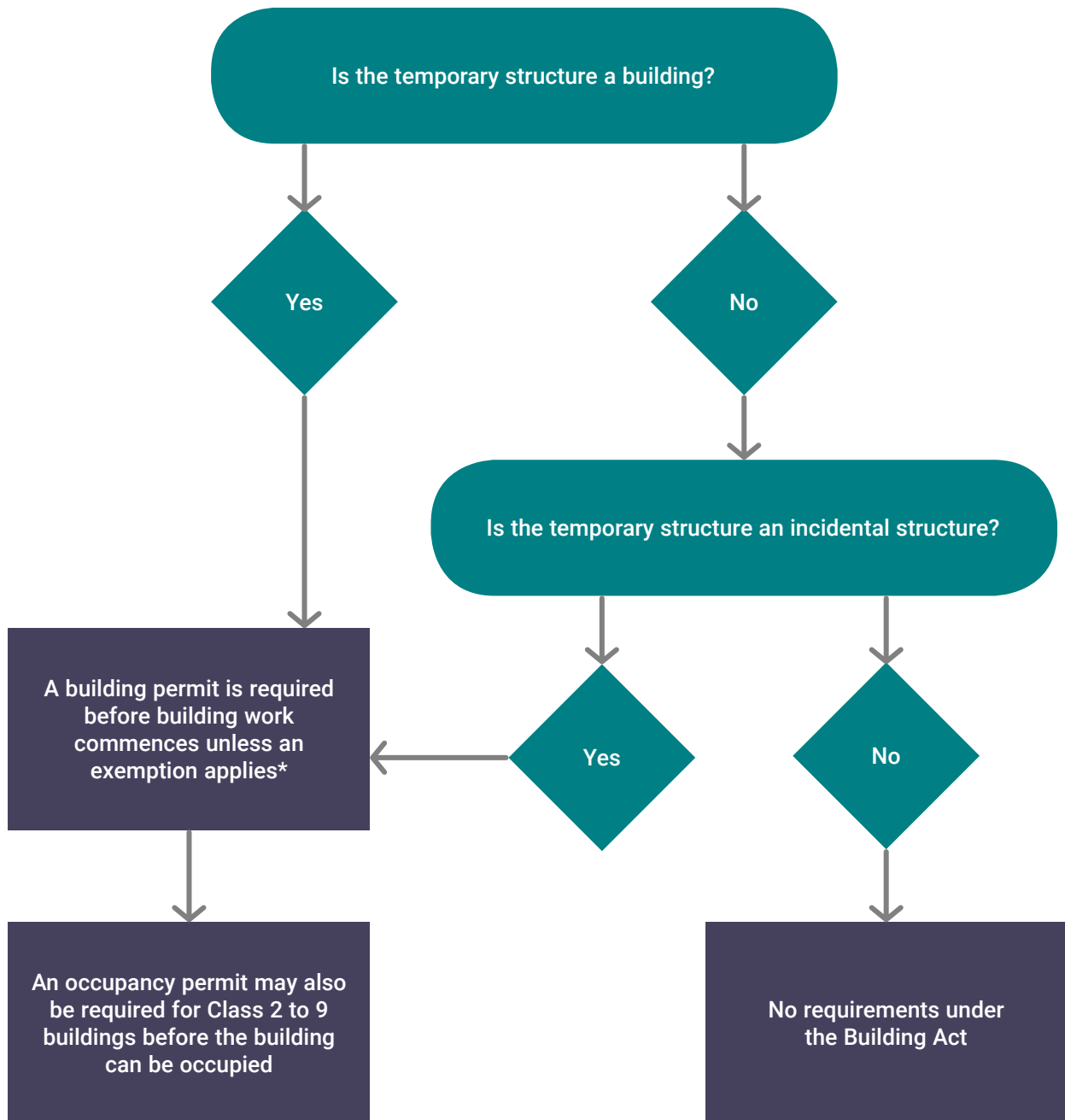
In situations in which a structure of this type is proposed, the permit authority may determine on a case-by-case basis whether these structures, either temporary or permanent, are buildings.

Where these structures are not buildings the building approval requirements of the Building Act do not apply to them.

If the characteristics of a proposed structure persuade the permit authority to form the view that the specific structure will be a building, then it will apply the Building Act processes.

Temporary structures building approvals flow chart

The diagram below illustrates a summary of requirements for temporary structures in relation to the Building Act.



*A building or incidental structure is required to comply with applicable building standards regardless of whether or not a building permit is required. Exemptions are found under Part 5 of the Building Act and in the Building Regulations 2012 Schedule 4.

Note: There may be other requirements outside of the Building Act that may need to be considered in any proposal.

Disclaimer – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

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