

Basix Certificate

BASIX Certificate is not required for Manufactured Homes'

**NSW Department of Planning Circular – PS 21-016 (2/12/2021)
that is attached to this document**

Planning circular

PLANNING SYSTEM

Flat-pack or manufactured homes

Circular	PS 21-016
Issued	2 December 2021
Related	Replaces PS 06-018

Approval to install relocatable and flat-pack homes outside a caravan park or manufactured home estate

The purpose of this circular is to clarify the approval requirements for the installation of two common types of transportable home on land that is not part of a caravan park or manufactured home estate (MHE). It also clarifies which types of transportable homes require a BASIX Certificate and which do not.

Introduction

'Transportable home' is a term commonly used by industry and consumers to refer to dwellings that are transported (partly or wholly pre-assembled) to a site then installed. 'Transportable home' however, is not a term defined or used in the *Environmental Planning and Assessment Act 1979* (EP&A Act), the *Local Government Act 1993* (LG Act) or in regulations under either Act. As some uncertainty has arisen amongst stakeholders about the approval processes applicable to the installation of different types of transportable home, this circular seeks to clarify this matter.

Transportable homes are an important form of low-to-moderate-cost housing, and ensuring each type of home undergoes the relevant approval process provides assurance the home is safe and suitable to occupy. Imposing incorrect approval requirements, however, is to be avoided.

Types of transportable homes

The two types of transportable home covered by this circular are:

- relocatable homes as defined in the *Local Government (Manufactured Homes Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* (LG Regulation 2005)
- flat-pack kit homes.

What is a relocatable home?

Under the LG Regulation 2005, 'relocatable home' means:

- (a) a manufactured home, or
- (b) any other moveable dwelling (whether or not self-contained) that comprises one or more major

sections, including any associated structure that forms part of the dwelling,

but does not include a tent, caravan or campervan or any moveable dwelling that is capable of being registered within the meaning of the *Road Transport Act 2013*.

Note that:

'*Manufactured home*' is defined in the LG Act as 'a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling: (a) that comprises one or more major sections, and, (b) that is not a registrable vehicle within the meaning of the *Road Transport Act 2013*.' This includes any associated structures that form part of the dwelling.

'*Moveable dwelling*' is defined in the LG Act as: '(a) any tent, or any caravan or other van or portable device (whether on wheels or not), used for human habitation, or (b) a manufactured home, or (c) any conveyance, structure or thing of a class or description prescribed by the regulations for the purposes of this definition.'

In the EP&A Act 'manufactured home' and 'associated structure' each has the same meaning as in the LG Act.

'*Major section*' is defined in the LG Regulation 2005 as 'a single portion of a manufactured home or relocatable home, being a portion: (a) that contains a total living space (excluding the living space contained in any associated structure) of at least 20 cubic metres, and (b) that comprises all the major components of that portion of the home, including the chassis or frame, the external and internal walls, the roof and ceilings, the floors, the windows

and doors, the internal plumbing and wiring, the tiling, the kitchen, bathroom and laundry fittings (other than stoves, refrigerators, washing machines and other whitegoods) and the built-in cupboards and cabinets.’

‘Associated structure’ is defined in the LG Act as: ‘(a) a carport, garage, shed, pergola, verandah or other structure designed to enhance the amenity of a moveable dwelling and attached to or integrated with, or located on the same site as, the dwelling concerned, or (b) a separating wall between two moveable dwellings.’

An example of a relocatable home not within the definition of ‘manufactured home’ would be a relocatable home that does not include a laundry.

The LG Regulation 2005 refers to ‘install’ rather than ‘erect’ a relocatable home. Installation of a relocatable home involves connecting together its major sections (and any associated structures that form part of the home) and attaching them to footings. It also includes connection of gas, electricity, telephone, water, sewerage and drainage. (See definition of ‘installation’ in clause 4 of the LG Regulation 2005.)

The definition of ‘building’ in section 1.4(1) of the EP&A Act specifically excludes ‘a manufactured home, a moveable dwelling or associated structure or part of a manufactured home, a moveable dwelling or associated structure’.

Recent changes – Bushfire recovery

In February 2020, amendments to the LG Regulation 2005 were made to assist with the provision of emergency accommodation for people whose homes have been badly damaged by the bushfires.

Clauses 74(4) and 77(c) of the LG Regulation 2005 were amended to accommodate persons displaced because of a bush fire to install a *moveable dwelling* on land by removing the requirement for prior approval of council for up to two years. That is on the condition that the moveable dwelling is maintained in a healthy and safe condition and removed within two years after it is installed.

More information can be found on the Department’s website at: <https://www.planning.nsw.gov.au/Policy-and-Legislation/Bushfires-recovery/Temporary-accommodation>

What is a flat-pack kit home?

Flat-pack kit homes are homes made of prefabricated parts. The parts in the kit may be combined with brickwork undertaken onsite. Flat-pack is an industry term used in design or materials-handling to describe how a structure can be packaged to make it easier to store and transport to reduce costs.

The purchaser of a flat-pack kit home may choose to erect it themselves (owner-built), or employ a builder to do so, directly or through a kit home supplier.

Flat-pack kit homes are similar to manufactured homes (as defined in the LG Act) in that both make use of mass-produced designs, materials, partial off-site

construction and packaging. However, flat-pack kit homes are not manufactured in the form of one or more major sections.

Approval needed to install a relocatable home

Local Government Act 1993

The installation of a relocatable home or associated structure on land other than in a caravan park or MHE requires approval under section 68 of the LG Act (as an activity within Item A1 in the table to that section), unless an exemption is provided by a local approvals policy (LAP) of the council.

In applying for a section 68 approval to install a relocatable home or an associated structure on land, the applicant needs to submit with their application the plans and specifications referred to in clause 79 of the LG Regulation 2005. The installation (if approved) would have to comply with all of the design, construction and installation requirements of Division 4 of Part 3 of that Regulation (clauses 133–136 excepted).¹

In applying the relevant provisions of Division 4 of Part 3 of the LG Regulation 2005 to the installation of a relocatable home or associated structure on land that is not in a caravan park or MHE, a reference in those provisions to a caravan park is taken to refer to the land on which a relocatable home or associated structure is to be installed. (See clause 81(3) of the LG Regulation 2005.)

The requirements of Division 4 include that the home or associated structure must:

- be of a design certified by a practising structural engineer as structurally sound;
- be installed in accordance with the specifications in the engineer’s certificate or such other specifications as are in the approval for the installation on the land; and
- have compliance plates attached.

These requirements are intended to ensure that the home meets relevant health, safety and amenity standards.

Environmental Planning and Assessment Act 1979

Development consent will only be required to use land for the purpose of installing a relocatable home (that land not being in a caravan park or MHE) if required by an environmental planning instrument (EPI), for example, a local environmental plan. It is noted that any EPI definition that refers only to the erection and/or use of some type of building will not include relocatable homes because (as noted earlier) those homes are not within the EP&A Act definition of ‘building’.

In determining a development application (DA) to install a relocatable home, the consent authority would be required to consider such of the matters referred to in section 4.15(1) of the EP&A Act as are relevant to the subject development.

A person (other than the Crown or a person acting on behalf of the Crown) may in the same DA apply for development consent and approval to install a relocatable home or associated structure. (See section 4.12(3)–(6) of the EP&A Act.)

If installation of a relocatable home does require development consent under an EPI, a construction certificate is not required (and should not be sought) for that installation. This is because a construction certificate is only required for building work or subdivision work, and installation of a relocatable home is not erection of a building for the purposes of the EP&A Act.

Instead of requiring a construction certificate, certification by structural engineer/s and compliance plates are relied upon. (See sections 143 and 157–159 of the LG Regulation 2005.)

A principal certifying authority (PCA) is not required to be appointed in connection with the installation of a relocatable home, and an occupation certificate is not required before the home is occupied.

Approval needed to install a flat-pack kit home

Environmental Planning and Assessment Act 1979

The Department of Planning considers flat-pack kit homes to be within the definition of building under the EP&A Act. (Flat-pack kit homes are not prefabricated in one or more major sections). As such, a flat-pack kit home will require development consent where the erection of a dwelling house (or dwelling) requires consent under an environmental planning instrument. A DA and construction certificate application will need to be lodged for the home (unless it may be erected as complying development in which case an application for a complying development certificate may be lodged instead).

The information and supporting documentation requirements for development applications, construction certificate and complying development certificate applications are contained in Schedule 1 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

A PCA must be appointed prior to the commencement of building work the subject of a development consent or complying development certificate and the relevant critical stage inspections (as well as any additional inspections required by the PCA) of that building work must be carried out. (See section 6.5 of the EP&A Act and clause 162A of the EP&A Regulation.)

Unless a prescribed circumstance in clause 156 of the EP&A Regulation applies, initial occupation or use of the whole or part of a flat-pack kit home must not commence until the PCA has issued an occupation certificate in relation to the building or part.

A garage, carport, verandah or other structure proposed to be incorporated in, or added to, a home constructed from a flat-pack, will need development consent and a construction certificate (alternatively a complying development certificate, where applicable)

under the EP&A Act (unless the particular structure may be erected as exempt development).

Local Government Act 1993

The erection of a dwelling that is not a relocatable home or other moveable dwelling is not within (and therefore does not require approval as) activity A1 under section 68 of the LG Act and is not subject to the LG Regulation 2005.

Transportable homes and BASIX

BASIX certificate is not required for relocatable homes

A BASIX certificate is presently only required for residential development that involves the erection of a 'BASIX-affected building', as defined in the EP&A Act (although not for relocation of a BASIX affected building – see below).

As a relocatable home is not within the definition of building under the EP&A Act, a BASIX certificate is not required for that type of home. This is the case even if the installation of the home requires development consent. Similarly, a relocatable home does not require a BASIX certificate when moved from one site to another site (because it remains a relocatable home).

BASIX certificate is required for flat-pack kit homes that require development consent

A development application (or complying development certificate application) to install a flat-pack kit home is required to be accompanied by a BASIX certificate. This is because a flat-pack kit home is considered to be within the definition of 'building' in the EP&A Act.

Relocation of BASIX-affected buildings

When a BASIX-affected building is moved from one site to another site it is exempt from the requirement for a BASIX certificate.

Further information

For more information about the approval process for the installation of transportable homes, contact your local council.

For further information about BASIX, visit the BASIX page on the NSW Planning Portal website at:

<https://www.planningportal.nsw.gov.au/basix>

For further information please contact Service NSW on 13 77 88.

Department of Planning, Industry and Environment circulars are available at:

planning.nsw.gov.au/circulars

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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