

Planning Compliance Issues for Storage of Sea Containers

By Tim Beckett

Local governments frequently deal with enforcement issues arising from the placement and storage of sea containers on land without approval. A recent prosecution in the Magistrates Court affirmed the proposition that, unless it is incidental to an approved land use, the storage of a sea container is a use of land for which development approval is required.

Recent Decision in Kalgoorlie Magistrates Court

In that case, the sea container was stored on a vacant property, for which there were no current development approvals. Accordingly, there was no approved use of land to which the storage of a sea container could be characterised as reasonably incidental. The landowner gave evidence to the effect that the sea container was empty at the time of the relevant offence and contended that the placement of the sea container on the property was not unlawful as the sea container did not constitute a building. However, the direction served on the landowner related to the unlawful use of land, rather than unlawful works being carried out on land, and the Court found that the storage of the sea container required development approval under the relevant local planning scheme. The Court imposed a penalty of \$4,000 and ordered the landowner to pay costs exceeding \$8,000 to the City. On 4 June 2019, a landowner was convicted in the Kalgoorlie Magistrates Court of an offence of failing to comply with a direction served on him under section 214(2) of the *Planning and Development Act 2005* (Act). The direction required the landowner to cease using the subject property for the storage of a sea container and, by failing to comply with that direction, the landowner was convicted of an offence under section 214(7) of the Act.

General Principles

While there is a general understanding by local governments that sea containers require development approval, there will be a number of issues for local governments to consider in determining whether the storage of a sea container on a particular property requires development approval and therefore potentially constitutes a contravention of a planning scheme.

The State Administrative Tribunal has, on several occasions, established the proposition that the storage of a sea container on a property will amount to a development or use of land which requires development approval, as held in *Chapman and City of Armadale* [2011] WASAT. Where there is no other approved or permitted use of the property being carried out, it will be sufficient for a local government to demonstrate that a sea container is present on a property with no other applicable approval in force. However, in some circumstances the storage of a sea container on a property could be found to be reasonably incidental to a permitted or approved use of the property. For example, if a property is being used for an approved agricultural or industrial use, the use of a sea container to store materials reasonably incidental to that use will not necessarily require a separate development approval. Some local government planning schemes may contain specific provisions relating to the placement or storage of sea containers on land. Where a local planning scheme specifically

prohibits the storage of sea containers in particular zones without approval, it may not be necessary for local governments to further assess whether the storage of that sea container may be reasonably incidental to a permitted predominant use of a property. However, where a local government planning scheme does not specifically address the storage of sea containers, a local government will need to consider the zoning of the relevant property and the effect of any permitted or approved uses of that property.

Enforcement Considerations

Accordingly, when dealing with potential compliance issues relating to the storage of sea containers on property, it is essential that a local government seeks to ascertain the purpose for which the sea container is being used. In the majority of cases, a sea container is likely to require development approval. However, local governments must assess the entirety of the circumstances and, in particular, consider the zoning and any existing approvals of the relevant properties to ascertain whether a sea container requires development approval or is otherwise being used in a manner which may be reasonably incidental to a permitted use of the property.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. For further information please contact Tim Beckett or Peter Gillett on 9383 3133.