

Deciding whether a structure is a building or a boat

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Determination 2018/031 considered whether a structure is a building or a boat; and whether construction of this structure is considered building work under the Building Act.



Background

In 2017 a building consent authority (BCA) issued a 'notice to fix' on a structure, as the work on the structure didn't have building consent. The BCA and owner of the structure disagreed over whether the structure was a building or if it was a boat under construction.

For a BCA to exercise its powers under the Building Act, such as issuing a notice to fix, a structure needs to be considered a building and work on the structure must be considered 'building work' under section 8 of the Building Act. If the structure was a boat under construction, the work on the structure would not fall under the Building Act.

Under Section 9 of the Building Act structures that are a "vessel, boat, ferry or craft used in navigation" are not considered a 'building'. It does not matter whether the structure has a means of propulsion or not.

In this case, the structure has a partially constructed timber-framed hull with non-nautical windows and a door. The hull contains a bathroom, storeroom, an open plan kitchen, and living area. The structure has a small cabin on the upper level that includes a bedroom.

A number of parts still needed to be finished including the framing the hull, installing a motor for propulsion, and removing and filling in the mid-hull windows.

Discussion

The determination considered whether the structure was a boat under construction that when finished would be a boat used in navigation, or whether it was a building with nautical-style design features. If the structure was a boat it would fall outside the Building Act and not require involvement of the BCA.

The determination used a similar approach to previous determinations and court judgments to test whether the structure was a building or a boat. To be considered a boat under section 9 the structure needed to be:

- "capable" of being used on the water and
- moved reasonably frequently from anchorage or mooring.

The determination accepted that there are times when boats used in navigation are not able to be used on water, such as during construction or maintenance. The determination noted that when construction or manufacture of a boat satisfies section 9 it is not considered building work, and that a boat could be occupied during its construction and still satisfy section 9.

However, even when under construction a boat used in navigation will still have the features and characteristics of a boat, and the reason it cannot be used on water is because it is under construction. In this case there were features of the structure, such as an open section of the hull, a door, and mid-hull windows, which made it incompatible with the definition of a boat used in navigation. For the structure to be a boat used

in navigation these features needed to be removed.

The decision

The structure did not meet the section 9 test because it had features that needed to be removed before it could be used as a boat. Therefore, the structure was a building with nautical-style design features and was not a boat under construction.

The determination found that the structure is a building under section 8 of the Building Act.

[Determination 2018/031](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2018-031/) (<https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2018-031/>) in full.

[Previous determinations](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/) (<https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/>) is a register of all previous determinations.