



Determination 2014/025

Regarding the proposal to issue a notice to fix in respect of a portable unit at 82 Scarborough Street, Kaikoura, and whether the unit is a building or vehicle



1. The matters to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are
 - the applicant, Kaikoura District Council (“the authority”) carrying out its duties as a territorial authority or building consent authority
 - N Dixon, the owner of the property (“the owner”).
- 1.3 This determination arises from the authority’s view that the portable unit (“the unit”) is a building for the purposes of the Act and accordingly building consent was required for the portable unit installed on site. The authority advised the owner that a notice to fix would be issued (refer paragraph 2.6).
- 1.4 The matter to be determined² is therefore the exercise of the authority’s powers of decision in its proposed issue of a notice to fix. In considering this matter, I must consider whether the portable unit comes within the definition of a building in section 8 of the Act.
- 1.5 In making my decision I have considered the submissions of the parties and other evidence in this matter.

¹ The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.dbh.govt.nz or by contacting the Ministry on 0800 242 243.

² Under sections 177(1)(b) and 177(2)(f)

2. The building work and background

- 2.1 The site on which the unit is installed is a large flat lot in a semi-rural location. The unit has been installed on the site and connected to services. The unit is 8m x 3.1m, and has wheels, a tow bar and rear lights. The unit is connected to water and sewerage, and uses a caravan power connection lead and an externally mounted LPG bottle. There are four galvanised steel uprights used as stabilisers; it is not clear how the stabilisers are connected.
- 2.2 On 13 November 2013 the authority issued building consent No. 102899 for excavation of the site and the supply and installation of drainage, plumbing and electrical services. The authority carried out inspections on 3 and 5 December 2013; I am not aware if a code compliance certificate was issued for that consent.
- 2.3 On 22 January 2014 the authority wrote to the owner, noting that a 'building complete with sleeping quarters, kitchen and bathroom' had been located on the site, and that electrical, gas and drainage services had been connected. The authority noted that
- The building is over 2.5m wide which means it would require a permit to transport this building on the road.
- This building was required to have a building consent uplifted for the work done.
- ...
- Section 164 of the Building Act 2004 may apply to the building work.
- 2.4 On 3 February the owner responded to the authority by email, stating that there was no new building on site but there was a caravan and that the caravan had the usual amenities including sleeping quarters, bathroom, kitchen, and gas bottles. The owner noted that the caravan was connected to 'permitted water and sewerage sump', and that electricity had not been connected but the caravan could be plugged in 'like any normal caravan'. The owner also stated that the caravan was registered, warranted, and was towed to the site 'without any permit or pilot vehicle necessary'.
- 2.5 On 4 February 2014 the authority emailed NZTA photographs of the unit and described it as being 2.940m wide. The authority requested the NZTA clarify whether the unit would require a special permit to move on the highways and roads, and if it could be registered as a trailer.
- 2.6 On 10 February 2014 the authority emailed the owner, stating that in its view the unit is a building and not a caravan, and that a notice to fix would be generated if the matter was not resolved.
- 2.7 On 11 February 2014 the authority received a response from NZTA which stated that the limits for caravans and mobile homes were specified in Factsheet 13 series depending on the vehicle type and gross weight, and that any over-dimensioned vehicle could not be operated on the roads and must be transported as a load. The email went on to state that the unit could be registered as a trailer but should not be able to obtain a warrant of fitness if it exceeds 2.5m wide or 'any other standard dimension'.
- 2.8 On 17 February 2014 the owner emailed the authority to reiterate his view that the unit was a caravan (as per paragraph 2.4). The owner noted that his intention was that it be temporary and moveable as in the future he intended to build a house on the site.

- 2.9 On 28 February 2014 the owner emailed the authority, noting that there were a number of manufacturer's producing similar units that were the same size or larger and these were used on campsites and camping grounds all over the country.
- 2.10 On 4 March 2014 an officer of the authority emailed the owner stating that in his personal view if the caravan was not being used for permanent long term accommodation he would not classify it as a building.
- 2.11 The matter remained in dispute between the parties and the Ministry received an application for determination on 25 March 2014.

3. The submissions

- 3.1 In the application for determination the authority submitted that it had applied the test 'is it permanently occupied', and 'is it a vehicle or can it be towed if it had a warrant [of fitness] and a [vehicle registration]'. The authority accepted that it was not permanently occupied, but believed that as the unit was 3.1m wide it could not be towed but needed to be transported as a load.
- 3.2 The authority acknowledged that it is a vehicle as defined under the Land Transport Act 1998, but noted that it required a special permit to move on the road. The authority considers it to be in effect a building that has had wheels added, and was concerned at the precedent that could be set if buildings were placed on axles and wheels 'in an endeavour to avoid the requirements of the Building Act and the Building Code.'
- 3.3 The authority provided copies of
- building consent No. 102899 and approved documents
 - correspondence between the authority and the owner
 - photographs of the unit on site
 - NZTA Guide to factsheet 13: Vehicle dimensions and mass (dated June 2013)
 - an advertisement from the manufacturer which describes similar units as a 'trailerised 8.1 x 3.1m caravan/building', and which also states 'No building consent needed as they are caravans'
 - Determination 2013/055.
- 3.4 On 28 March 2014 I sought further information from the parties. The authority responded on 31 March 2014 confirming that the foul water is connected to a sewer connection, water connected to a town supply, and that there is no storm water reticulation. The authority also noted that the unit appears to have four 'permanent or semi-permanent' galvanised steel uprights to stabilise it.
- 3.5 The owner provided a submission dated 1 April 2014 in response to the application, stating that although he understood he was purchasing a vehicle that could not be regularly towed around the country on holiday he still considered that the unit was a caravan designed to be mobile and moveable from site to site when necessary either by being towed or as a transport load. The owner stated that the unit could be legally towed on the road at 15km/h with a pilot vehicle.
- 3.6 A draft determination was issued to the parties for comment on 22 April 2014. The authority and the owner both accepted the draft without further comment in responses received on 2 May and 5 May 2014 respectively.

4. Discussion

4.1 General

4.1.1 The dispute centres on whether the unit is a ‘building’ for the purposes of the Building Act, and hence whether the authority was correct in its proposal to issue a notice to fix for building work carried out without consent first being obtained. The owner asserts that the unit is a vehicle rather than a building. However, this in itself does not preclude the Act applying, as in certain circumstances vehicles are considered to be buildings for the purposes of the Act and Building Code.

4.2 Is the unit a building?

4.2.1 A “building” for the purposes of the Act is defined in section 8(1)(a), and

means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); ...

4.2.2 Section 8(1)(b) provides that several matters are expressly included in the definition of a building and one of these matters concerns vehicles:

(iii) a vehicle or motor vehicle (including a vehicle or motor vehicle as defined in section 2(1) of the Land Transport Act 1998) that is immovable and is occupied by people on a permanent or long-term basis; ...

4.2.3 These provisions have been considered by the Court of Appeal in *Thames-Coromandel District Council v Te Puru Holiday Park Ltd.*³ The Court of Appeal agreed with the approach of the High Court stating:

[10] In the High Court, Duffy J held that Judge Thomas had misinterpreted s 8. She held that if a defendant contended that the alleged building was a vehicle, then the first thing the court needed to assess was whether it was. If it was, then the court had to assess whether it was a vehicle with s 8(1)(b)(iii) characteristics. If it had such characteristics, it was a building. If it did not have them, it was not a building. In those circumstances, it was irrelevant whether the vehicle might come within the general definition (by which we mean the definition in s 8(1)(a)). If, however, the court concluded that the alleged building was not a vehicle at all, then it had to assess whether the thing came within the general definition. ...

[22] Our conclusion is therefore that Duffy J approached the interpretation of ss 8 and 9 in the correct way by focusing first on whether the units came within s 8(1)(b)(iii). What she had to determine was whether the units were vehicles and, if so, whether they were immovable and occupied by people on a permanent or longterm basis. If they were, they were buildings. If they were vehicles but did not have those characteristics, they were not buildings. If they were not vehicles at all, then s 8(1)(b)(iii) fell to the side; what one then needed to look at was whether they came within the general definition.

4.2.4 Therefore, the first step in deciding when a vehicle will be required to be treated as a building under the Act is the meaning of the terms ‘vehicle’ and ‘motor vehicle’. Neither of these terms is defined in the Act, so their natural and ordinary meaning applies:⁴

vehicle – a thing used for transporting people or goods, especially on land, such as a car, lorry, or cart

motor vehicle – a road vehicle powered by an internal combustion engine.

³ [2010] NZCA 663

⁴ *Oxford Dictionary of English*, 3rd ed., Oxford University Press, 2010.

- 4.2.5 The reference to vehicle in section 8(1)(b)(iii) also includes a “vehicle or motor vehicle” as defined in section 2(1) of the Land Transport Act 1998. The relevant parts of those definitions provide:
- vehicle—
- (a) means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; ...
- motor vehicle—
- (a) means a vehicle drawn or propelled by mechanical power; and
- (b) includes a trailer; ...
- 4.2.6 If a particular structure is a vehicle, it will then only be treated as a building for the purposes of the Act if it also satisfies the two further requirements in section 8(1)(b)(iii) of the Act. These are that the vehicle must be ‘immovable’ and ‘occupied by people on a permanent or long-term basis’.
- 4.2.7 To summarise the position as to when vehicles will be treated as buildings:
- if something is a vehicle, and it is immovable and occupied by people on a permanent or long-term basis, it will be treated as a building
 - if something is not a vehicle, the question of whether it is to be treated as a building will fall to be considered under the main definition of building in section 8(1)(a) of the Act
 - if a person claims something is not subject to the Building Act because it is a vehicle, they must establish the thing is a vehicle or motor vehicle, and that it is movable or that it is not occupied by people on a permanent or long-term basis.
- 4.2.8 The first issue I need to consider therefore is whether the unit is vehicle or motor vehicle. The relevant requirements of those definitions, as noted above, are that the structure in question is used for transporting people or goods, is a contrivance equipped with wheels (or similar) on which it moves, or is a trailer.
- 4.2.9 The unit has wheels, an axle and tow bar. It appears from the photographs supplied that the unit is legally registered as a vehicle and has a current registration.
- 4.2.10 In my view, whether the unit can be considered a vehicle, does not turn on whether it is registered and has a current warrant of fitness. I consider that the unit is a vehicle, both within the natural meaning of that term, and as defined by the Land Transport Act 1998. The authority has also acknowledged that the unit is a ‘vehicle’ as defined in section 2(1) of the Land Transport Act 1998.
- 4.2.11 Having decided that the unit is vehicle, the question then becomes whether it should be treated as a building under section 8(1)(b)(iii) of the Act. This requires me to consider whether it has the characteristics specified in that section, namely whether it is immovable and occupied by people on a permanent or long-term basis.

4.3 Is the vehicle immovable?

- 4.3.1 The provision of features allowing the unit to be towed is designed primarily for ease of loading and unloading onto a transporter and positioning on site. NZTA has stated in correspondence to the authority that although the unit could be registered as a trailer it should not be able to obtain a warrant of fitness if it exceeds 2.5m wide or ‘any other standard dimension’. As the unit is 3.1m wide it is not legally allowed to be towed on the roads and must be loaded on a transporter. However, the fact that a

vehicle cannot be legally towed on a public road is not the same as being 'immovable' for the purposes of the Act.

4.3.2 Whether a vehicle is immovable is a question of degree that will turn on a range of factors such as:

- Whether the vehicle is attached to the ground and how easily those attachments can be removed;
- Whether the vehicle has been connected to services and how easily those can be removed;
- Whether the vehicle has retained its wheels and the ability to be towed or to move itself;
- Whether structures have been attached to the vehicle, such as decks, verandahs, or additional rooms, and how easily these can be detached.

4.3.3 In this case the unit sits on wheels and has retained the tow bar. It is designed to be freestanding, with jacks to keep it level while stationary and is not otherwise connected to the ground. I have received no information at this point on how easily the supports could be removed. However, the unit also has permanent services connections that would require the services of a person authorised under Plumbers, Gasfitters, and Drainlayers Act 2006 to disconnect.

4.3.4 Given the above I consider the vehicle is immovable for the purposes of section 8(1)(b)(iii) of the Act.

4.4 Occupancy

4.4.1 The unit is designed and fitted out for habitation. The owner has stated his intention to construct a dwelling on the site at a later date and that the unit is meant to be temporary and would be occupied for 'occasional/holiday/weekend use'. Given that it is not intended to be occupied by people on a permanent and long term basis I am of the view that it doesn't meet the test under section 8(1)(b)(iii) of the Act.

4.5 Conclusion

4.5.1 In conclusion, although the unit can be moved it has permanent services connections that are not easily disconnected. However the intended occupancy is not on a permanent or long term basis but for occasional use only. Taking into account the features of this particular unit in these circumstances, I consider that the unit is not a building under section 8(1)(b)(iii) of the Act.

4.5.2 I note here that for a prefabricated or relocated building being installed on site consent would be required for connections to services, and the building would be required to comply with the Building Code.

5. The decision

- 5.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the unit is not a building for the purposes of the Act and accordingly the authority was incorrect in the exercise of its powers of decision in proposing to issue a notice to fix.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 5 May 2014.

John Gardiner
Manager Determinations and Assurance

Appendix A

A.1 The sections of the Act discussed in this determination:

8 Building: what it means and includes

- (1) In this Act, unless the context otherwise requires, building—
- (a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and
 - (b) includes—
 - ...
 - (iii) a vehicle or motor vehicle (including a vehicle or motor vehicle as defined in [section 2\(1\)](#) of the Land Transport Act 1998) that is immovable and is occupied by people on a permanent or long-term basis; ...

40 Buildings not to be constructed, altered, demolished, or removed without consent

- (1) A person must not carry out any building work except in accordance with a building consent.

...

164 Issue of notice to fix

- (1) This section applies if a responsible authority considers on reasonable grounds that—
- (a) a specified person is contravening or failing to comply with this Act or the regulations (for example, the requirement to obtain a building consent); ...
- (2) A responsible authority must issue to the specified person concerned a notice (a notice to fix) requiring the person—
- (a) to remedy the contravention of, or to comply with, this Act or the regulations; ...