



## Determination 2016/019

### Regarding the code compliance of a shed on wheels at a neighbouring property at 108 Glenstrae Road, Redcliffs, Christchurch, and whether the shed is a vehicle or building



#### Summary

This determination discusses the definitions of building and vehicle under section 8, and whether a shed on wheels that is registered as a vehicle under the Land Transport Act is a building for the purposes of the Building Act. The determination also considers whether the building work was exempt under Schedule 1, the compliance of the shed with Clauses C and E1 in relation to other property.

#### 1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“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 this determination are:

- the owners of the property on which the shed was constructed, R & C Johns (“the owners”)
- the owners of an adjacent other property, S & S Deo, who applied for the determination (“the applicants”)
- Christchurch City Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).

<sup>1</sup> The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at [www.building.govt.nz](http://www.building.govt.nz) or by contacting the Ministry on 0800 242 243.

1.3 The determination arises from construction of a shed on the owner's property closer than its own height to the boundary and without building consent being obtained. The owners subsequently added wheels to the structure and consider it is not a building and therefore not subject to the Act and its regulations. The applicants are of the view that the structure is not a vehicle, was constructed too close to the boundary, and that it does not comply with the Building Code (First Schedule, Building Regulations 1992).

1.4 The matter to be determined<sup>2</sup> is whether the structure complies with:

- Clause C<sup>3</sup> in relation to protection of other property
- Clause E1 in respect of surface water.

In determining this matter I must also establish whether the structure is a building under section 8 of the Act.

1.5 In making my decision, I have considered the submissions of the parties and the other evidence in this matter.

## 1.6 Matters outside this determination

1.6.1 The applicants have referred to the construction of the shed as being done without resource consent being obtained under the *Resource Management Act 1991*. I have no jurisdiction under any other Acts, and this determination is limited to the matter set out in paragraph 1.4.

## 2. The building work and background

2.1 At some time in 2014 the owners constructed a garden shed on the subject property without building consent being obtained. The applicants have described the garden shed as being approximately 2.5 x 2.5 x 2.5m, and stated that it was constructed approximately 250mm from the boundary between the two properties. The figure below shows the boundaries of the two properties and the area in which the shed was constructed.

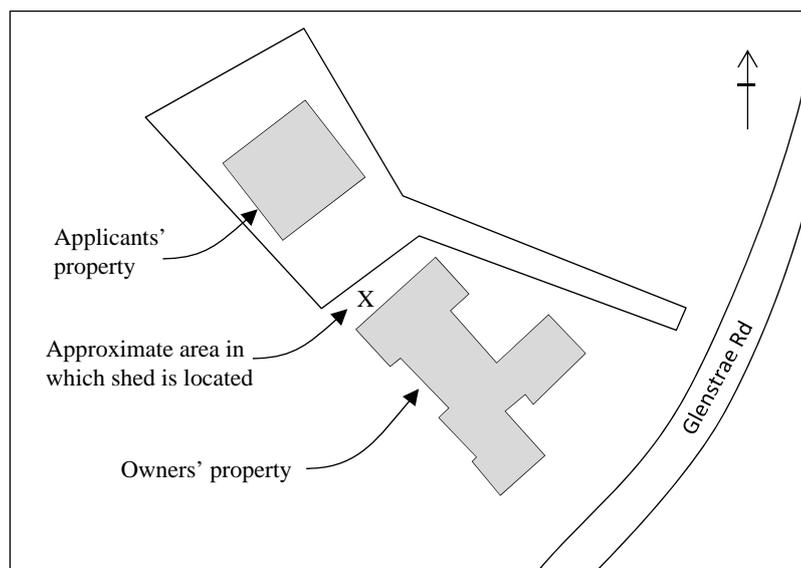


Figure 1: Approximate site plan (not to scale)

<sup>2</sup> Under section 177(2)(b) and 177(2)(f) of the Act.

<sup>3</sup> In this determination, unless otherwise stated, references to sections are to sections of the Act, and references to clauses are to clauses of the Building Code (First Schedule, Building Regulations 1992).

- 2.2 The applicants subsequently contacted the authority with concerns regarding the legality of the shed. The authority emailed the applicants on 17 and 31 July 2015 advising that it was seeking advice from its solicitors.
- 2.3 The authority wrote to the applicants on 5 August 2015, noting that the owners had been advised of their options, namely:
1. Remove the shed. In this instance there would be no non-compliance.
  2. [Move] the shed to a compliant location more than its own height from any boundary.
  3. Apply to the [the authority] for a [an exemption under Schedule 1(2) and] remove the shed to a location 1 metre away from either boundary and put in place a system to manage storm water.
  4. Apply for a building consent – an application for building consent would need to demonstrate how the shed would be made compliant with the building code including fire rating, storm-water management and foundation system.

(I note here that an application for building consent would only have been able to be sought for new building work being undertaken. A building consent could not have been issued retrospectively for the construction of the shed, but the owners could have applied for a certificate of acceptance if the construction was not exempt under Schedule 1.)

- 2.4 On 21 September 2015 the applicants contacted the authority again regarding the legality of the shed. In a further email on 12 October 2015 the applicants noted that there had been a change in staff at the authority and sought information on progress. The following day the authority advised it was still working with the owners to resolve the issue. Correspondence continued between the applicants and the authority during November.
- 2.5 On 8 December 2015, having not seen any progress on the matter, the applicants wrote to the authority setting out some of the background and copying the letter to the authority's Chief Executive and also the Mayor.
- 2.6 The authority wrote to the applicants on 10 December 2015, noting it had approached the owners and sought to have the matter resolved by either moving the shed away from the boundary or removing it altogether. The authority stated that it would begin taking legal action if the owners did not take any action to address the issue.
- 2.7 On 2 February 2016 the authority emailed the applicants, noting it had been advised by the owners that the shed has had wheels attached to it 'and it has been registered as a home built tendor (sic) (a vehicle).' The authority stated its view that 'there are no longer any Building Act issues to address'.
- 2.8 The Ministry received the application for determination on 3 March 2016.

### **3. The submissions**

#### **3.1 The applicants' submissions**

3.1.1 Along with the application for determination the applicants provided copies of correspondence between the applicants and the authority and photographs of the shed with the attached wheels. In a covering letter, the applicants set out the background to the events, and submitted the following (in summary):

- The shed is still a building and should not be classified as a vehicle. It is used for storage and has been a permanent fixture in the same location since it was constructed.
- The applicants have been unable to verify the vehicle registration and there is no visible registration plate.
- The shed has four wheelbarrow sized wheels with approximately half inch iron rods as axles. There does not appear to be any chassis.
- The shed is currently sitting on bricks, and it is unclear how it is secured.

#### **3.2 The authority's submissions**

3.2.1 The authority made a submission on the application on 31 March 2016, noting that until such a time as the shed was fitted with wheels and registered as a vehicle the authority considered it was a building under the Act. However, the shed has been registered as a trailer not designed for highway use, and the authority's assessment is that it is now a vehicle and the authority has no jurisdiction under the Building Act.

#### **3.3 The owners' submissions**

3.3.1 The owners acknowledged the application for determination in a completed form received on 4 March 2016, and noted that as the authority 'has decided the homebuilt tender is a vehicle' and therefore the Building Act did not apply.

#### **3.4 Submissions in response to the draft determination**

3.4.1 On 7 April 2016 I issued a draft determination to the parties for comment.

3.4.2 In a response received on 11 April 2016 the applicants accepted the draft without further comment.

3.4.3 The authority made a submission by email on 20 April 2016. Although the authority agreed with the conclusion reached in the draft that the shed was a moveable building, it did not agree with the analysis of section 8. The authority submitted the following (in summary):

- The term vehicle as used in section 8(1)(b)(iii) includes a vehicle as defined in the *Land Transport Act 1998* ("LTA"). It was the authority's view therefore that if something meets the definition of a vehicle in the LTA it must be a vehicle for the purposes of section 8(1)(b)(iii).
- If the shed is not able to be drawn or propelled it would not meet the definition of a 'trailer' under section 233 of the LTA.
- Simply because the shed is registered as a trailer does not make it a trailer; there is no requirement to provide evidence with an application for registration of a vehicle that it meets the relevant definition.

- The shed does not meet the definition of ‘vehicle’ under the LTA; although it has had wheels attached it does not appear it moves or can be moved.
- 3.4.4 The authority made a further submission on 20 April 2016, noting three minor errors that have since been amended.
- 3.4.5 The owners provided a submission on the draft determination by email on 23 May 2016, providing a photograph of the shed with the registration plate visible, reiterating that it was a “tender”<sup>4</sup>. The owners discussed the location of the shed in relation to the applicants’ property, expanded on the background to the dispute, and commented on sheds on other properties close to or on boundaries with neighbouring properties. The owners also noted the following (in summary):
- It was purchased as a kitset on the understanding that its construction did not require approval from the authority; it is less than 10 square metres.
  - It has been moved from its original position, has a vehicle registration plate, and is supported on the axels and wheels.
  - It fits within the meaning of the meaning of the word vehicle as it is equipped with wheels, is moveable, and is ‘a home built tender, non motorized and non pulling. It is designed to transport goods on land, and similar to a cart’.

## 4. Discussion: Is the shed a building?

4.1 Central to this determination is whether the shed, with wheels attached, is a building under section 8 of the Act. If the shed is a building it must comply with the Act and its Regulations.

### 4.2 What is meant by a building

4.2.1 I have considered this issue in numerous previous determinations that have considered whether a vehicle is a building under section 8(1)(b)(iii)<sup>5</sup>, and the process to follow is now well-established.

4.2.2 The first step is to decide whether the structure comes within 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:<sup>6</sup>

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.

4.2.3 The reference to vehicle in section 8(1)(b)(iii) also includes “a vehicle or motor vehicle (including 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

<sup>4</sup> The Oxford Dictionary definition of tender includes “1.1 a vehicle used in mobile operations by a public service or the armed forces”, “2. a dinghy or other boat used to ferry people and supplies to and from a ship”, and “3. A trailing vehicle closely coupled to a steam locomotive to carry fuel and water.” Oxford University Press, 2016.

<sup>5</sup> See for example Determinations 2015/067 and 2015/044.

<sup>6</sup> Oxford Dictionary of English, 3rd ed., Oxford University Press, 2010.

(b) includes a trailer; ...

4.2.4 Therefore, 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.

### 4.3 Is the shed a vehicle?

4.3.1 The relevant requirements of the definitions of a vehicle, 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, is powered by some form of combustion engine or self-propulsion, or is a trailer.

4.3.2 In its submission on the draft determination the authority put forward the view that if a thing meets the definition of a vehicle under the LTA it must be a vehicle or motor vehicle for the purposes of section 8(1)(b)(iii) of the Act. I disagree with the authority's view on this matter.

4.3.3 Section 8(1)(a) states that, unless the context otherwise requires, the term "building" 'means a temporary or permanent moveable or immovable structure ...' (my emphasis). The inclusion of a moveable structure within the definition of a building in section 8(1)(a) means that a vehicle (which is excluded from the definition of a building under section 8(1)(b)(iii)) cannot include a moveable structure; the terms "moveable structure" and "vehicle" must be given different meanings. There must be a distinction between structures that are buildings even though they are moveable, and vehicles under section 8(1)(b)(iii).

4.3.4 I am of the view that just because something is registered as a vehicle that won't necessarily make it a vehicle for the purpose of the Act; though the registration will be one factor to consider in deciding whether it is a vehicle it is not determinative. The very broad definition of a vehicle in the LTA would potentially capture all moveable structures, thereby excluding all of those moveable structures from the definition of building under section 8(1)(a). In the context of section 8 of the Act I am of the view that the distinction between a building that is moveable and a vehicle is that the vehicle must be a vehicle as that term is ordinarily defined, i.e. the vehicle has a primary purpose of transporting people or goods or must be powered by some form of combustion engine or self-propulsion.

4.3.5 Caravan or mobile homes are clearly vehicles; while they perform a similar function as a dwelling, in that they are used for sleeping accommodation and may contain sanitary facilities, they are designed to move on roads and are typically relocated from site to site. A vehicle such as a caravan or mobile home only falls within the Building Act if it meets the test under section 8(1)(b)(iii), being that it was both immovable and occupied on a permanent or long-term basis.

4.3.6 In recent times there has been an increase in small abodes that owners have claimed are vehicles and are not buildings under the Act, and I acknowledge that the interpretation of section 8 of the Act has been problematical for authorities. I have considered a number of examples in previous determinations<sup>7</sup> in respect of section 8(1)(b)(iii). In some circumstances, though the structures were on wheels they were not in fact able to be moved (see determinations 2015/067 and 2015/026) and I concluded that they were not vehicles and fell to be considered under the general definition in section 8(1)(a). In others the structures were designed to be towed on the road, and some also were legally registered (see 2015/044, 2014/025, and

<sup>7</sup> See for example 2015/067, 2015/044, 2015/026, 2014/025 and 2013/055.

2013/055); as they were vehicles the question then turned to whether they met the test under section 8(1)(b)(iii).

- 4.3.7 In this case, while the shed has been registered as a “trailer” and it may be “moveable” in that it can be shifted on the site on its wheels, the construction of the shed and attachment of the wheels is such that it is limited in this respect. I do not consider that the shed has been designed for transporting people or goods, and the owners have provided no evidence of its use being primarily that of a vehicle. Nor is it a road vehicle powered by an internal combustion engine or self-propelled. The fact that it has been registered as a vehicle does not necessarily make it a vehicle for the purposes of the Building Act; it is primarily a structure and its primary purpose is not transporting of people or goods.
- 4.3.8 Given the nature of the construction and its use, I consider that the shed falls under the definition of a building under the Act as a “moveable structure”, and is a relocatable building rather than a vehicle.

## **5. Discussion: The compliance of the building work**

### **5.1 Was construction of the shed exempt under Schedule 1?**

- 5.1.1 Schedule 1(3) provides that single-storey detached buildings not exceeding 10 square metres in floor area are exempt from the requirement to obtain building consent providing certain conditions are met. The owners have submitted that the shed does not exceed 10 square metres and it was their understanding that no approval from the authority was required. However, one of the conditions of the exemption under Schedule 1(3) is that the building work is no closer than the measure of its own height to any residential building or to any legal boundary.
- 5.1.2 The applicants have described the location of the shed as being approximately 250mm from their boundary, and that it is bounded by “the wall and boundary on another side” and the owners’ house at one end. I have not received any information on the distance between the shed to the properties other boundaries and to the house; however I note that the location of the shed is closer than its own height to the boundary with the applicants’ property and accordingly it did not fall within the exemption under Schedule 1(3) at the time of its construction.
- 5.1.3 The authority had offered a number of options to the owners to remedy the situation, with one being relocating the shed a minimum of 1m from the relevant boundaries and applying for a waiver or modification. I note here that a waiver or modification under section 67 is granted only in respect of a building consent. Also, in viewing satellite images of the site it appears that there may not be sufficient space in the area between the two properties in which it is currently sitting to relocate the shed such that it would comply with the minimum distance suggested.

### **5.2 Compliance with Clause C3 – Fire affecting areas beyond the fire source**

- 5.2.1 Under section 17 of the Act, all building work must comply with the Building Code to the extent required by the Act, whether or not a building consent is required in respect of that building work.
- 5.2.2 The Functional clause C3.3 provides ‘Buildings must be designed and constructed so that there is a low probability of fire spread to other property vertically or horizontally across a relevant boundary.’ The relevant performance clauses include

Clause C3.6 in respect of received radiation at the relevant boundary and Clause C3.7 in respect of the materials of external walls of buildings located closer than 1m to the relevant boundary.

- 5.2.3 I am of the view that the shed as constructed and located at 250mm from the relevant boundary, being the boundary to the applicants' property in this case, does not comply with Clause C.

### **5.3 Compliance with Clause E1 – Surface water**

- 5.3.1 The Functional Clause E1.2 provides 'buildings...shall be constructed in a way that protects people and other property from the adverse effects of surface water'. The relevant performance clauses include E1.3.1, which provides 'Except as otherwise required under the *Resource Management Act 1991* for the protection of other property, surface water, resulting from an event having a 10% probability of occurring annually and which is collected or concentrated by buildings or sitework, shall be disposed of in a way that avoids the likelihood of damage or nuisance to other property.'
- 5.3.2 Photographs of the shed show a gabled roof with corrugated iron cladding, with no guttering or downpipes.
- 5.3.3 I note however that the applicants have made no submission or provided any evidence on the run-off of surface water from the roof of the shed causing damage or nuisance to their property.

## **6. The decision**

- 6.1 In accordance with section 188 of the Act, I hereby determine that the shed is a building under section 8 of the Act, and it does not comply with clauses C3.6 and C3.7(a) and (c) of the Building Code.
- 6.2 I have insufficient evidence to make a determination regarding compliance with Clause E1.3.1 of the Building Code.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 30 May 2016.

John Gardiner  
**Manager Determinations and Assurance**

## Appendix A: Legislation

### A.1 Relevant sections of the Building Act 2004 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; and

...

### A.2 Relevant sections of the Building Code discussed in this determination

#### **C3 – Fire affecting areas beyond the fire source**

Functional requirement

...

C3.3 Buildings must be designed and constructed so that there is a low probability of fire spread to other property vertically or horizontally across a relevant boundary.

Performance requirement

...

C3.6 Buildings must be designed and constructed so that in the event of fire in the building the received radiation at the relevant boundary of the property does not exceed  $30 \text{ kW/m}^2$  and at a distance of 1 m beyond the relevant boundary of the property does not exceed  $16 \text{ kW/m}^2$ .

C3.7 External walls of *buildings* that are located closer than 1 m to the *relevant boundary* of the property on which the *building* stands must either:

(a) be constructed from materials which are not *combustible building materials*, or

...

(c) for *buildings* in Importance Levels 1 and 2, be constructed from materials that, when subjected to a radiant flux of  $30 \text{ kW/m}^2$ , do not ignite for 15 minutes.

#### **E1 – Surface water**

Functional requirement

E1.2 Buildings and sitework shall be constructed in a way that protects people and other property from the adverse effects of surface water.

Performance

E1.3.1 Except as otherwise required under the Resource Management Act 1991 for the protection of other property, surface water, resulting from an event having a 10% probability of occurring annually and which is collected or concentrated by buildings or sitework, shall be disposed of in a way that avoids the likelihood of damage or nuisance to other property