



Determination 2018/024

Regarding a notice to fix and whether a structure on a trailer with wheels at 547 Pound Road, Yaldhurst, Christchurch, is a vehicle or a building



Summary

This determination considers whether a structure is a building for the purposes of the Building Act, and whether the authority was correct to issue a notice to fix in relation to this. The determination discusses the definitions of building and vehicle under section 8 of the Building Act.

1. The matter 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, Katie Gordon, Manager Determinations, 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 owner of the property, L R Contracting Limited (“the applicant”)
 - the prospective purchaser of the property², G and S Gaiger represented by a legal adviser (“the purchaser”)
 - the Christchurch City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 I consider the manufacturer, Classic Affordable Cabins Limited (“the manufacturer”), is a person with an interest in the determination.

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

² The purchaser signed a sale and purchase agreement to buy the property and is considered an owner as defined under section 7 of the Act.

- 1.4 The determination arises from the authority's decision to issue a notice to fix for a structure on a trailer with wheels ("the structure"), on the grounds that it is a building for the purposes of the Act and that building consent had not been obtained for its construction as required under section 40 of the Act³.
- 1.5 The matter to be determined⁴ is therefore the authority's exercise of its powers of decision in issuing the notice to fix for the structure. In deciding this matter, I must consider whether the structure described in the notice to fix is a building under section 8 of the Act.

2. The structure and background

2.1 The structure

- 2.1.1 The structure, constructed onsite sometime after the Canterbury earthquakes⁵, is on a large property on the outskirts of Christchurch. There is also a pre-1987 80m² cottage and a large workshop on the property. The structure contains two bedrooms, a kitchen, toilet, bathroom, and living area. The structure has a full length deck and veranda attached on one side and a small porch on the other side.
- 2.1.2 The property and structures on it are currently for sale. The advertisement⁶ for the property describes the structure as a "dwelling" and "transportable" but does not specify the size.
- 2.1.3 The application and submissions include differing details about the dimensions of the structure. The notes from the authority's site visit of 21 January 2018 (refer to paragraph 3.4) state the structure is 76m² excluding the veranda and porch, with a total area of 103.4m².
- 2.1.4 The manufacturer's website⁷ describes the structures as "cabins" and "transportable buildings", and describes the structures in the various sizes available by use, such as "sleepout/office" and "crib". Some of the designs are fully self-contained with kitchen and bathroom/toilet facilities.
- 2.1.5 The structure in this case is timber framed, with the floor framing comprising joists located on bearers; with the bearers supported on timber blocks that are seemingly regularly spaced under the bearers as would be the case for a normal piled foundation. The manufacturer states the blocks are for levelling only. The trailer consists of a steel channel located either side of the structure, fixed by some means to an outer bearer, and steel members connecting the steel channels. The bottom of the bearers are cut away to accommodate the steel members.
- 2.1.6 The structure has five axles with wheels connected to the steel channel. The veranda and porch are located on separate supporting blocks from the main structure, and the applicant has advised that the veranda is bolted onto the structure. From photographs provided by the authority it seems floor joists are cantilevered from the structure to the porch or deck (or both); or if not, project well beyond the external walls of the structure.

³ 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)

⁴ Under sections 177(1)(b) and 177(2)(f) of the Act

⁵ The Canterbury Earthquake Sequence includes the 'Darfield Earthquake' of 4 September 2010 with a moment magnitude of 7.1, followed by a series of aftershocks that included a 6.3 magnitude earthquake on 22 February 2011.

⁶ Refer <https://www.trademe.co.nz/property/residential-property-for-sale/auction-1444785224.htm>

⁷ Refer <http://www.classicaffordablecabins.co.nz/> (accessed 24/5/2018)

- 2.1.7 Power is supplied through a caravan-type lead, and the water supply is via garden tap attached to a nearby shed. Gas for cooking and water heating is supplied from external LPG bottles located on concrete pavers and chained to the structure. Wastewater is piped to a sanitary pump station.
- 2.1.8 The manufacturer's website offers installation of a specified sanitary pump station and recommends pumping the waste to "a removable tank on wheels, where you can drive [the collected waste] away and dump into your local dump station"⁸. Photographs provided by the authority show a different sanitary pump station from that specified on the manufacturer's website and what appears to be plumbing from the pump station into the ground. A record from the authority's site visit notes the waste water is piped underground to a septic tank that is emptied annually. The applicant initially stated that the plumbing is not to ground and "it disconnects at the [sanitary pump station]". The applicant later confirmed that the waste is piped to the septic tank and that the pipe was dug into the ground to avoid damaging it when mowing the lawns, but that the plumbing can still be simply unclamped from the sanitary pump.

2.2 Background

- 2.2.1 The applicant's covering letter with the application for determination states that they contacted the authority to seek advice on whether they could construct the structure on the property. It is unclear whether the applicant was seeking advice about whether resource consent was required under the Resource Management Act and/or whether a building consent was required under the Building Act. However, the applicant proceeded to have the structure constructed on site on their understanding that consent was not required for what the applicant has described in the covering letter to this determination as a "movable caravan" or "a transportable".
- 2.2.2 Based on the electrical certificate of compliance and gasfitting certificate of compliance, construction was completed around August 2014.
- 2.2.3 According to records from the authority, the applicant contacted the authority on 11 January 2018 seeking its opinion about whether the structure was a vehicle. The authority subsequently conducted a site visit on 24 January 2018. The authority's record of this visit describes the site, fence and access, and the structure and trailer.
- 2.2.4 The authority issued a notice to fix on 14 February 2018, accompanied by a cover letter.
- 2.2.5 The particulars of the contravention were set out in the notice as follows:
- Building work ... has been carried out on site without a building consent in contravention of S40(1) and S44(1) of the [Act].
- 2.2.6 The remedies for the contravention were set out as follows:
1. Remove the tiny house from the property
 - OR
 2. You must apply for and obtain a certificate of acceptance for the building work carried out without building approval. Your application should provide sufficient information for an assessment to be made as to compliance of the building work with the New Zealand Building Code. Any remedial work required to bring non-consented building work up to building code standard may require a building consent to be granted.

⁸ Dump stations provide for disposal of wastewater from recreational vehicles such as motorhomes, campervans and boats. Publicly accessible dump stations are commonly provided by local government authorities and in some privately owned campgrounds.

3. The submissions

- 3.1 The Ministry received an application for a determination on 5 March 2018. The application included:
- a copy of Determination 2015/044⁹
 - a covering letter, dated 28 February 2018, setting out the background to the application
 - photographs of the structure
 - a copy of the electrical certificate of compliance and gasfitting certificate of compliance
 - an undated letter from the manufacturer of the structure
 - a copy of the cover letter from the authority and the notice to fix.
- 3.2 In the covering letter, the applicant explained the background to the construction of the structure. The applicant is of the view the right thing is to allow the structure to remain on the site as it is, and for the authority to issue a “retrospective consent”, noting that:
- ... we were told that due to the earthquakes we could actually build a permanent dwelling on our property so long as the family lived in one.
- 3.3 The letter from the manufacturer notes:
- The trailer is very strong made up of 150mm U channel steel, 5 axles and springs. It is capable of holding the 3.5 tonne weight of the caravan.
- The sewer and grey water are Mulched into a holding tank and then dumped in the sewer connection. The power connection is done with a standard caravan lead. The hot water and cooking are done by LPG... ; the water connection is done with a standard garden hose from a tap, as per a caravan.
- The inside construction is lined with 9mm custom wood, glued and nailed to give the caravan a strong brace to hold the whole unit together for towing, every part of the building is strapped back to the chassis in order to hold the caravan together,
- The caravans can be registered under a farm registration and towed within 20kms of the Property, only requiring a pilot vehicle to be towed down the road. It takes approximately 30 minutes to remove the Levelling stays/Power/Water/Deck and canopy and the caravan can be towed away.
- The caravans are designed to be towed with a tractor, not requiring brakes and a light board. A light board can be fitted when towing down the road, when needed.
- 3.4 The authority acknowledged the application on 6 March 2018 and made a submission on 12 March 2018. The submission included:
- a cover letter
 - notes about the site visit
 - photographs of the structure taken during the site visit.
- 3.5 The authority noted with reference to a number of previous determinations, it did not believe the structure falls within the definition of a vehicle, rather was a moveable building. With respect to factors to be taken account of when making a decision under section 8(1)(b)(iii), the authority noted the following:

⁹ Determination 2015/044 Regarding the issue of a notice to fix and whether the unit is a building or a vehicle (8 July 2015)

- The structure is supported by blocks that have not been attached to the ground.
 - Drainage has been installed that cannot be removed other than by a person authorised under the Plumbers, Gasfitters, and Drainlayers Act 2006.
 - The structure has wheels but it appears it is unlikely to be able to be successfully towed other than forwards or backwards to a small extent. (I note the applicant disputes this.)
 - There is a full length verandah along one side and a porch on the other, the subfloor space is closed off, the drawbar is covered and there is a fence with posts concreted in around the structure. (The applicant disputes that the posts are concreted in, and states the covering over the drawbar is easily removed.)
- 3.6 The authority also noted that even if the structure was a vehicle, the construction of the veranda and the installation of the in-ground drainage required a building consent as it was not exempt under Schedule 1.
- 3.7 With respect to the notice to fix, the authority advised:
- the notice incorrectly refers to the structure as a tiny house
 - the time period given to remedy the contravention was too short, and the authority would address this by providing a more reasonable time period once the determination process is complete
 - the authority is of the view that the structure does not comply with the Building Code, noting that this could have been mentioned in the notice to fix but the authority considered it would be more appropriate to address Building Code compliance issues through the certificate of acceptance process.
- 3.8 On 12 March 2018, in response to the authority's submission, the applicant submitted:
- the fence posts are not concreted into the ground, rather they just lift out
 - the plumbing is not underground – it disconnects at the pump unit
 - the verandas are standard to these types of structures and the extended ground level deck sits on the ground and away from the structure.
- 3.9 A draft determination was issued to the parties for comment on 16 April 2018.
- 3.10 The authority responded on 17 April 2018, accepting the draft subject to correction of non-contentious amendments.
- 3.11 On 26 April 2018 the applicant provided comment in response to the draft, noting the following:
- The veranda is bolted to the structure.
 - Water supply is via a garden tap attached to the shed (not the water tank).
 - Foul water goes to the sanitary pump station and is piped to a septic tank.
 - The decking covering the drawbar can be removed and the structure is easily moved.

- 3.12 The applicant provided a further submission on 9 May 2018, and a copy of an information page on the authority's website regarding temporary accommodation¹⁰. I note here that this information concerns compliance with the Resource Management Act (not the Building Act) and is not relevant to this determination. The applicant maintains the view that the structure is "a transportable" and therefore not a building, and advised that the purchaser intended 'to use it as a place to stay occasionally and or as [an] office'.
- 3.13 The applicant also provided a series of photos showing:
- a section of the fence removed
 - ground level decking timbers and steps leading to the deck removed
 - trellis around the edge of the deck removed, exposing the timber blocks supporting the veranda deck.
- 3.14 The purchaser provided submission to the draft on 27 April 2018 which expressed disappointment with the draft. The purchaser was of the opinion that the structure was not accurately described in the determination, the approach taken by the authority was open to being questioned, and that the draft decision was based on "misinformation". The purchaser did not clarify the matters that were incorrectly stated in the determination.
- 3.15 The manufacturer provided submissions on 2 and 9 May 2018, along with photographs of underneath the structure showing the bearers resting on timber blocks, the chassis, wheel sets and caravan springs. The manufacturer made the following submission:
- Although the structure is bigger than that considered in 2015/044, it is essentially the same structure with additional wheels, bracing and strapping.
 - The structure has been purpose built to be robust enough to be moved from site to site, and other similar structures have been successfully towed by tractor.
 - There are no fixed foundations; the levelling blocks are used for stability and can be easily removed.
 - The fact that it was constructed onsite is not relevant (with reference to 2015/044).
 - When constructed it is not connected to any plumbing or drainage services, is moveable to any location on the site. Subsequent additions are not the responsibility of the manufacturer.

4. Discussion

4.1 General

- 4.1.1 For a territorial authority or building consent authority to be able to exercise its powers under the Act the structure must fall under the definition of a building under section 8 of the Act and not be excluded under section 9 of the Act.
- 4.1.2 This issue has been considered in previous determinations (refer paragraphs 0 and 4.1.6), and I have included a decision tree that can be utilised in other similar circumstances in Appendix A.

¹⁰ <https://www.ccc.govt.nz/consents-and-licences/resource-consents/types-of-resource-consents/permitted-temporary-accommodation>
(accessed on 9 May 2018)

- 4.1.3 The definition of “building” in section 8 of the Act includes both permanent and temporary structures, as well as moveable and immovable structures:
- (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
- 4.1.4 The definition also includes vehicles, subject to the criteria set out in section 8(b)(iii).
- (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; ...

For a vehicle to be a building it must be immovable and occupied by people on a permanent or long term basis.

- 4.1.5 Determination 2016/011¹¹, referred to in the authority’s submission, considered whether two shepherd’s huts were vehicles. That determination found:
- 4.3.4 ...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.
 - 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 would therefore only fall within the Building Act if it met the test under section 8(1)(b)(iii), being that it was both immovable and occupied on a permanent or long-term basis.
- ...

- 4.3.7 In this case, while the shepherd’s huts are “moveable” in that they can be shifted on the site on their wheels and using the tow bar, the manufacture of the huts are such that they are limited in this respect. Given the nature of the construction and their intended use, I consider that the shepherd’s huts are relocatable buildings rather than vehicles.

- 4.1.6 Determination 2017/058¹² concerned a timber-framed structure used as a dwelling that was modified to attach wheels and a drawbar, and found:

- 4.1.8 For a structure to be a vehicle it must have characteristics of a vehicle, as well as durability of construction in terms of its capacity to be used as a vehicle.
- 4.1.9 I consider that just because a structure has some features of a vehicle, such as wheels, it does not necessarily make it a vehicle for the purposes of the Act. The distinction between a building that is moveable and a vehicle is that a vehicle is used for transporting people or goods or must be powered by some form of combustion engine or self-propulsion. Simply because a structure is capable of being moved does not mean that it falls to be considered a vehicle under the Act.
- 4.1.9 ...
 - 4.1.10 In this case, while the structure has been fitted with wheels and a drawbar, and it may be “moveable” in that it may be able to be moved on its wheels, it has very few other characteristics which are indicative of it being a vehicle; it

¹¹ Determination 2016/011 Regarding the issue of a notice to fix for a pit latrine, showering shed, water supply system, and two Shepherd’s huts (30 March 2016)

¹² Determination 2017/058 Regarding a notice to fix and whether a structure on wheels is a building (25 July 2017)

has no suspension, chassis, brakes, lights etc. It is not a motor vehicle powered by an internal combustion engine or self-propelled, and the owner has provided no evidence of it being used a vehicle, rather the owner has confirmed that its primary use is as a dwelling. I conclude therefore that the structure is not a vehicle in the context of section 8 of the Act.

- 4.1.7 The first question to be considered therefore is whether it is moveable structure or a vehicle; only if it is a vehicle will the second step be to consider whether it is immovable and occupied by people on a permanent or long term basis.

4.2 Is the structure a vehicle?

- 4.2.1 The applicant contends the structure is a vehicle. Therefore I must first consider 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 applies¹³:

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.

- 4.2.2 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

(b) includes a trailer; ...

- 4.2.3 If a person claims something is not subject to the Act because it is a vehicle, they must first establish the thing is a vehicle or motor vehicle, and also that it is movable or that it is not occupied by people on a permanent or long-term basis.

- 4.2.4 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.

- 4.2.5 In terms of the definition of a vehicle and motor vehicle, in this case, the structure is not used for transporting people or goods, nor is it a road vehicle powered by an internal combustion engine; it does however have wheels and a tow bar.

- 4.2.6 The manufacturer states the structures it builds are caravans that can be towed, noting:

- the trailers are sufficiently strong, and the bracing and strapping is sufficiently robust to hold the structures together, for towing
- the structures can be registered under a farm registration and towed within 20kms of the property, and are designed to be towed by a tractor. Brakes and lights are not required, but a light board could be fitted if necessary.

¹³ Oxford Dictionary of English, 3rd ed., Oxford University Press, 2010.

- 4.2.7 The owner has confirmed that the primary use of the structure is as a dwelling, and has provided no evidence of the structure being used as a vehicle, or moved around the property or moved off the property.
- 4.2.8 The applicant provided a copy of Determination 2015/044 to support their view that the structure is a vehicle. I note that determination did not distinguish between moveable structures and vehicles (refer paragraph paragraphs 0 and 4.1.6 above) as later determinations have.
- 4.2.9 In this case, I am of the view that the information provided does not establish that the structure is a vehicle in the context of section 8 of the Act. While the structure may have some features of a vehicle, it is in use as a dwelling and there is no evidence of it being used as a vehicle. That being the case I conclude that I must consider the structure under the general definition of a building in section 8(1)(a) of the Act and not under section 8(1)(b)(iii).
- 4.2.10 Given the nature of the construction and the use as a dwelling, I conclude the structure falls under the general definition of a building under section 8 of the Act.

4.3 The decision to issue a notice to fix

- 4.3.1 The notice to fix identifies the contravention as building work carried out on site without a building consent. The notice identifies the remedies as removal of the structure from the property or applying for a certificate of acceptance for the building work.
- 4.3.2 Given my conclusion in paragraph 4.2.10, I am of the view that the authority was correct to issue a notice to fix.
- 4.3.3 The authority has noted (refer to paragraph 3.7) an error in the wording used in the notice and has also reconsidered the period of time given to the owners to remedy the contravention. I leave the matter of modifying and reissuing the notice to fix to the authority to attend to in due course.
- 4.3.4 The applicant stated that they believe the authority should allow the structure to remain on site as it is, and that a “retrospective consent” should be issued.
- 4.3.5 If the structure is to remain on site, a certificate of acceptance is the appropriate regulatory mechanism to address building work that has been carried out without building consent first being obtained when consent was required. The authority may, on application, issue a certificate of acceptance, but only if it is satisfied ‘to the best of its knowledge and belief’ that the building work complies with the Building Code (section 96(2)).
- 4.3.6 Under section 17 of the Act, all building work must comply with the Building Code to the extent required by the Act. Establishing compliance with the Building Code will need to be addressed through the certificate of acceptance process. It may be necessary to carry out further building work that requires building consent in order to bring the building into compliance with the Building Code, and I leave that matter for the parties to address in due course.

5. The decision

- 5.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the structure is a building as defined by section 8 of the Act and I confirm the authority's decision to issue a notice to fix.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 1 June 2018.

Katie Gordon
Manager Determinations

Appendix A

Decision tree: section 8(1)(b)(iii)

