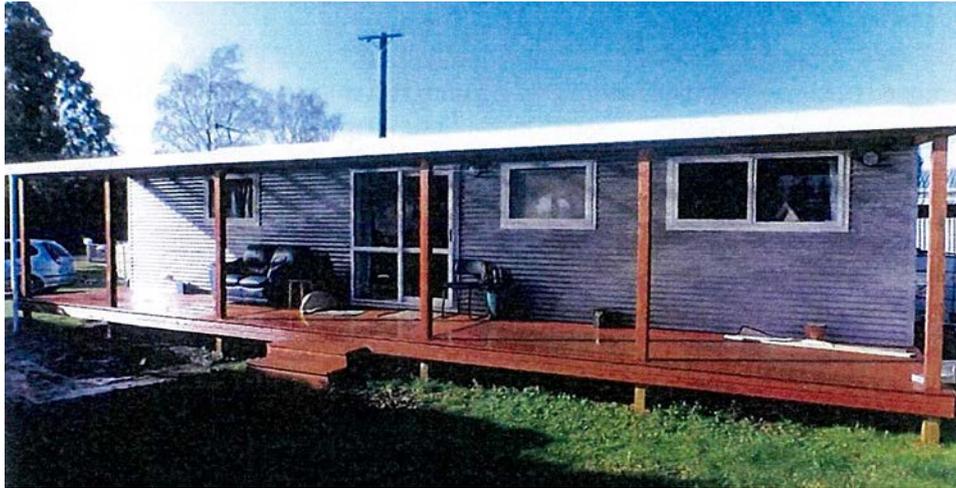




Determination 2018/025

Regarding a notice to fix and whether a structure on a trailer with wheels at 91 High Street, Oxford, is a vehicle or a building



Summary

This determination considers whether a structure on a trailer with wheels 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:

- Waimakariri District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority. The authority applied for this determination.
- the owner of the property, J Miller (“the owner”), acting through an agent (“the agent”)
- G Hooper of Classic Affordable Cabins Limited (“the builder”) who is a party under section 176(da) of the Act, being person to whom a notice to fix relating to the relevant building work has been issued under section 164

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.

- 1.3 I consider that Classic Affordable Cabins Limited (“the manufacturer”) is a person with an interest in this matter. I note that the builder, who is a party under section 176(da) because the notice to fix was issued to him, is also an employee and shareholder of the manufacturing company. On that basis I have treated submissions from the manufacturer as also representing the views of the builder.
- 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”) to the owner and the builder, on the grounds that it is a building under the Act and that building consent had not been obtained for its construction as required under section 40 of the Act².
- 1.5 The matter to be determined³ is therefore the authority’s exercise of its powers of decision in issuing the notice to fix for the structure for building work carried out without consent when building consent was required. 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.

1.6 Matters outside this determination

- 1.6.1 The application for determination and subsequent submission by the agent for the owner commented on a number of items concerning compliance of certain aspects of the structure with the Building Code.
- 1.6.2 The matter for determination (refer to paragraph 1.5) does not turn on matters of Building Code compliance, but rather whether the structure is a building for the purpose of the Act.
- 1.6.3 I also note that the authority has not made a decision about Building Code compliance matters, and although the owner has provided some information about the authority’s observations, it is unclear whether any of these matters are in dispute between the parties. Therefore this determination is limited to considering the authority’s decision to issue a notice to fix.

2. The structure and background

2.1 The structure

- 2.1.1 The structure is approximately 60m² consisting of an open plan kitchen and living area, bedroom, bathroom, and laundry. The structure has an approximately two metre wide veranda running the length of one side.
- 2.1.2 The manufacturer’s website⁴ notes that the structures can be built on site on wheels and chassis as transportable buildings. This structure was constructed during 2016 on the owner’s property, rather than being delivered on a pre-built assembly.
- 2.1.3 The structure is timber framed. The floor framing comprises joists located on bearers, with the bearers supported on timber blocks – the blocks appear regularly spaced under the bearers as would be the case for a normal piled foundation. The manufacturer disputes the blocks act as foundations and states they are randomly placed and are for levelling only.

² 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)

³ Under sections 177(1)(b) and 177(2)(f) of the Act

⁴ Refer <https://www.classicaffordablecabins.co.nz/> (accessed on 28 May 2018)

- 2.1.4 The trailer consists of a steel channel located either side of the structure, fixed by some means to an outer bearer, with steel members connecting the steel channels. The bottom of the bearers is cut away to accommodate the steel members. The structure has five axles with wheels connected to the steel channel.
- 2.1.5 The veranda is located on separate supporting blocks from the main structure. Different details have been received about the connection of the veranda to the structure: the authority's engineer stated it was attached with power-driven nails (refer paragraph 3.3), the builder stated it is screw-fixed (refer paragraph 3.6), and the owner stated that the veranda is attached to the structure with power-driven nails at the top by the roof and tek-screwed at the bottom by the floor (refer paragraph 3.12).
- 2.1.6 Power is supplied to the structure through a caravan lead from a meter board in a nearby workshop. The water supply is via garden tap. Gas for cooking and water heating is supplied from external LPG bottles. Wastewater is piped to a holding tank, which when full is towed to a caravan waste dump.

2.2 Background

- 2.2.1 The authority carried out an inspection of the structure on 9 May 2017. The authority stated in its submission that this inspection was carried out following an anonymous call to the authority about the structure.
- 2.2.2 As a result of the inspection, the authority formed the view that building work had been carried out without a building consent first being obtained and subsequently issued a notice to fix.

2.3 The notice to fix

- 2.3.1 The authority issued a notice to fix on 16 May 2017, accompanied by a cover letter and report.
- 2.3.2 The particulars of the contravention were set out as follows:
Undertaking building work of constructing a dwelling other than in accordance with a building consent as required by section 40 of the [Act].
- 2.3.3 The remedies for the contravention were set out as follows:
Prior to the expiry date ... apply for, be granted and uplift a Certificate of Acceptance for the building work carried out without a building consent. And,
Apply for be granted and uplift a building consent to complete any additional building work required to meet [Building Code] requirements.
- 2.3.4 In the letter accompanying the notice to fix, the authority advised the owner of its conclusions about the structure, including that some of the work, most notably the sub-floor construction and foundations, does not comply with the Building Code, and provided advice about the process for obtaining a certificate of acceptance.
- 2.3.5 The authority also advised the owner that the owner and the builder were to be sent infringement notices for breaching section 40 of the Act. In the application for determination, the authority advised that it subsequently withdrew the infringement notices after receiving a response from the builder contesting the notice.

3. The submissions

3.1 The Ministry received an application for a determination from the authority on 28 February 2018. The application included:

- a submission detailing the background to the events, and the authority's position on the matter and reasons for its decision that the structure is not a vehicle, including referring to a number of previous determinations
- a copy of the notice to fix, letter, and a report prepared by the authority containing photographs and on site observations that formed the basis for the decision to issue the notice to fix
- a copy of a report prepared by an engineer, engaged by the authority, about the ability of the trailer to transport the house, to inform the authority's application for determination.

3.2 In its submission, the authority noted that:

No building consent has been sought or obtained for any of the construction work associated with the structure. The [authority's] understanding is that [the builder] advised the owner that a building consent was not required.

The [authority] seeks a determination in order to resolve the status of the structure, being whether or not it is a "building" for the purposes of section 8 and therefore subject to the consenting regime.

3.3 In the report by the engineer engaged by the authority, the engineer stated that in his opinion the structure of the trailer is unlikely to be sufficiently strong to allow the trailer to travel very far without failing and would not readily be able to be moved off site due to:

- the need to remove the veranda and deck structure; the engineer was also of the opinion that the removal of the veranda would cause cladding damage
- the gateway and boundary fence would need to be altered for the structure to leave the property
- the trailer drawbar is approximately 0.9m from the face of the structure – the geometry of the towed vehicle distance means that the angle change allowed for a standard connection to a vehicle (tow-ball on short draw-bar) would not allow sufficient angle change to get the vehicle onto the road without taking down the boundary fence for its full width
- the tow coupling is a proprietary device with a rating of 2000kg – the empty trailer will be well in excess of 2000kg
- the tow bar is weaker than required to move this mass with a road worthy rating
- it is highly likely there would be a failure at the connections between the timber floor of the structure and the trailer when towing due to the shear forces on the fasteners
- there is no diagonal bracing in the trailer, no blocking between the timber joists at the bearer connections and the floor cladding is unlikely to successfully act as a diaphragm
- some welds are not completed around the full perimeter of the connecting members, which may lead to early connection failure

- notching to the mid span bearers reduces the member strength by 75%.
- 3.4 The builder provided a submission, received on 9 March 2018. The submission contained:
- an undated letter and photograph of the wheel connection
 - a copy of the gas compliance certificate and electrical certificate of compliance.
- 3.5 The builder noted:
- 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.
- 3.6 The builder also responded to comments made by the authority in the application for determination, noting:
- the deck and veranda are screw-fixed to the structure and take approximately 30 minutes to unscrew and remove – the nails are for the construction of the veranda not its fixing to the building
 - the decking is bolt on and temporary, designed to be moved. It does not count as a structure as it is an awning and easily removed
 - the structures are designed to be towed with a tractor, which have more turning ability and the tow ball adds an extra metre, hence the short tow bar
 - a screw has never sheared off during towing due to the way the timber sits down on each side of the chassis and there are supports fixed to the chassis in the middle
 - the wheels are designed so the tyres skid sideways when turning a tight bend
 - the structure cannot be fixed to the ground as it is a caravan. The blocks are simply to help keep it level.
- 3.7 The agent for the owner provided a submission on 12 March 2018 in response to the application. The submission included:
- a cover letter
 - a copy of the notice to fix
 - a detailed response to the authority's application
 - a copy of the gas compliance certificate.

3.8 The agent noted that Determination 2015/044⁵ concerned a structure built by the same company and considered that to be a vehicle. The structure in this case is built to the same standard, but is three metres longer and is therefore supported by an additional axle and two extra wheels. The agent concluded that it therefore stands to reason that the structure is a vehicle.

3.9 The agent made the following points to counter points made by the authority in the application for determination:

- There are five axles and 10 wheels and all wheels are in contact with the ground.
- The gas bottles are resting on a one metre square reinforced concrete slab.
- The only difference between this structure and the structure in Determination 2015/044 is the overall length.
- The owner is of the understanding that the structure was designed by a qualified engineer, employed by the builder.
- The water supply is from a standard garden hose with a standard tap.
- The trailer is not sitting on blocks; rather the wheels are sitting on the ground. A trailer has no means of self-propulsion.
- It would only take approximately 30 minutes to detach the veranda from the structure. Any possible superficial damage is not relevant to the determination, and there is no time frame in relation to making a structure moveable/transportable.
- The gateway has a swing gate that opens in either direction, and the wire and post fence could be removed in a matter of minutes leaving a usable gap of 5.6 metres (the structure is 4.435 metres wide).
- The description of the configuration of the structure could also apply to a caravan, which is classed as a vehicle.
- The structure has not suffered any damage, nor has it moved, in any of the natural hazard events of the past two years.

3.10 A draft determination was issued to the parties for comment on 23 April 2018.

3.11 In a response received on 15 May 2018, the authority accepted the finding of the draft determination without further comment.

3.12 The owner's agent provided a response on 16 May 2018, disputing aspects of the draft determination (as follows):

- The structure is not sitting on blocks, but rather uses levelling props for stability and these are not regularly spaced but are "randomly placed for stability only"
- The veranda is not on foundations – the post from the veranda roof holds the floor up off the ground and the floor of the veranda is tek-screwed to the structure for easy and quick removal.
- The veranda is attached to the structure with power-driven nails at the top by the roof and tek-screwed at the bottom by the floor.

⁵ Determination 2015/044 Regarding the issue of a notice to fix for a unit,... and whether the unit is a building or a vehicle (8 July 2015)

- Water supply is via a garden hose from a garden tap – there is no rain water tank.
 - LPG bottles are not mounted to the structure but are sitting on a concrete pad and have chains holding them to the structure to prevent them tipping over.
 - Wastewater empties into a holding tank on a trailer, which when full is disconnected and towed to a caravan waste dump.
 - Power, LPG, and wastewater are not permanently fitted – they do not require services of an electrician, drainlayer or gas fitter to disconnect.
 - The trailer has a chassis, and suspension and light bar can be fitted “easily at any time”.
- 3.13 The owner advised that the intended use was as temporary accommodation while the owner constructed a dwelling, and that the structure was purchased “so it could be removed from the property”. The owner offered to prove that the structure could be towed by supplying video evidence.
- 3.14 The manufacturer provided a submission on 16 May 2018 in response to the draft determination:
- In Determination 2015/044, in which another of the manufacturer’s structures was considered, the Ministry noted that it was not relevant that the unit was constructed on the site.
 - The structure is sufficiently robust to be towed and is designed to comply with independent engineering advice. The manufacturer disputes the opinion of the authority’s engineer.
 - To meet the test of being a vehicle under the Act does not require the vehicle to be roadworthy (refer 2014/025⁶).
 - The structure in this case can be distinguished from that considered in Determination 2017/058⁷ - when that structure was first inspected it had no wheels or drawbar, but these were added to alter what had been a relocated cabin to a vehicle. In this case however the structure is purpose built as a fully moveable vehicle, and when manufactured it was analogous to those accepted in previous Determinations 2014/025 and 2015/044 as being a vehicle. The manufacturer contends the only material difference between this structure and that considered in 2015/044 is the size.
 - Previous determinations have considered whether even if the structure is a vehicle for the purpose of the Act, it may fall within the Act under section 8(1)(b)(iii) if it is immovable and occupied by people on a permanent or long term basis. In this case the features of the structure such as water supply, wastewater and disposal, are consistent with the intention that the structure is moveable – albeit that it has not actually been moved and there is no immediate intention to move it. If the structure is moveable it does not meet the test of being a building under section 8(1)(b)(iii).

⁶ Determination 2014/025 Regarding the proposal to issue a notice to fix in respect of a portable unit ... and whether the unit is a building or vehicle (5 May 2014)

⁷ Determination 2017/058 Regarding a notice to fix and whether a structure on wheels is a building (25 July 2017)

- 3.15 The manufacturer provided photographs taken underneath the structure showing caravan springs, wheels and chassis, and photos of the corrugated iron cladding. The manufacturer advised the sheets are the length of the structure and fixed horizontally (3 sheets high), and are tek-screwed “for bracing every 1200 centres ... which makes it a very strong robust caravan”. The manufacturer confirmed the LPG bottles sit on a concrete paving stone and are chained to the external wall, and were fitted by a certified gas fitter.

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 A number of previous determinations⁸ have considered a variety of structures that also have wheels and whether they are buildings for the purpose of the Act. In Appendix A I have included a decision tree that can be utilised in other similar circumstances.

- 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(1)(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 Before applying the test in section 8(1)(b)(iii), it must first be established whether the structure is a vehicle. What constitutes a vehicle (s8(1)(b)) as opposed to a moveable structure (s8(1)(a)) has been considered in previous determinations:

- 4.1.6 Determination 2016/011⁹ 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

⁸ For example, Determination 2015/044, 2016/011, and 2017/058

⁹ 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)

section 8(1)(b)(iii), being that it was both immovable and occupied on a permanent or long-term basis.

- 4.1.7 In that case the matter concerned shepherd’s huts. The huts could be shifted on the site on their wheels and using the tow bar, but the manufacture of the huts was such that they were limited in this respect. The determination concluded that the shepherd’s huts were not vehicles but were relocatable buildings.
- 4.1.8 The same approach was taken in Determination 2017/058¹⁰, which concerned a timber-framed structure used as a dwelling that was modified to attach wheels and a drawbar. That determination 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 While caravans and mobile homes perform a similar function as a dwelling, in that they are used for sleeping accommodation and may contain sanitary facilities, they have all the characteristics of a vehicle and are relocated from site to site, meaning they only fall within the Building Act if they meet the test under section 8(1)(b)(iii) by being both immovable and occupied on a permanent or long-term basis.
- 4.1.9 That determination concluded that the structure was not a vehicle in the context of section 8 of the Act. While the structure had been fitted with wheels and a drawbar, and was moveable in that it could be moved on its wheels, it had very few other characteristics indicative of it being a vehicle; no suspension, chassis, brakes, lights etc. It was not a motor vehicle powered by an internal combustion engine or self-propelled, and the owner had provided no evidence of it being used a vehicle, rather the owner had confirmed that its primary use is as a dwelling.

4.2 Is the structure a vehicle?

- 4.2.1 I must first consider whether the structure in this case 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:

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

¹⁰ Determination 2017/058 Regarding a notice to fix and whether a structure on wheels is a building (25 July 2017)

(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 then 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; however, it does have wheels, chassis, suspension 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, although a light board could be fitted if necessary.
- 4.2.7 I note the engineer engaged by the authority (refer to paragraph 3.3) concluded that the structure of the trailer is unlikely to be sufficiently strong to allow the trailer to travel very far without failing; but this is disputed by the manufacturer.
- 4.2.8 The builder and the agent for the owner referred to Determination 2015/044 to support the claim that the structure is a vehicle. That determination did not distinguish between moveable structures and vehicles as later determinations have (refer paragraphs 4.1.5 to 4.1.9 above).
- 4.2.9 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 even intending to be moved around the property.
- 4.2.10 I am of the view that the information provided does not sufficiently 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 and may be capable of being moved, its use is that of a dwelling and there is no evidence of it being used as a vehicle.

4.3 Is the structure a building?

- 4.3.1 As the structure is not a vehicle, I must consider the definition of building in section 8(1)(a) of the Act. Given the nature of the construction and the use as a dwelling, I consider that the structure falls under the general definition of a building under section 8 of the Act.

4.4 The decision to issue a notice to fix

- 4.4.1 The notice to fix identifies the contravention as building work carried out on site without a building consent. The notice identifies the remedy as applying for a certificate of acceptance for the building work.
- 4.4.2 Given my conclusion in paragraphs 4.2.10 and 4.3.1, I am of the view that the authority was correct to issue a notice to fix.

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 7 June 2018.

Katie Gordon
Manager Determinations

Appendix A

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

