



Determination 2019/017

Regarding a notice to fix and whether a structure on a trailer at 56 Grierson Avenue, Amberley, is a vehicle or a building



Summary

This determination considers whether a unit on a trailer 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 building, A Dall, who applied for the determination (“the applicant”)
 - Hurunui District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from the authority’s decision to issue a notice to fix for a structure on a trailer (herein after referred to as “the unit”) that is on the applicant’s property. In the applicant’s view the unit is a vehicle and falls outside of the scope of the Building Act and so the notice to fix is invalid.

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.

- 1.4 The matter to be determined² is therefore the authority's exercise of its powers of decision to issue the notice to fix. In deciding this matter, I must consider whether the unit is a building as defined by section 8 of the Act.³
- 1.5 In making my decision, I have considered the application, the submissions and the other evidence in this matter. I have not considered any other aspects of the Act or Building Code beyond those required to decide on the matter to be determined.

2. The building work and background

2.1 The unit and its installation

- 2.1.1 The applicant constructed the trailer at a workshop off-site. The trailer is constructed from galvanised steel and has four wheels and two axles: one axle has hydraulic disc brakes fitted. The trailer has a drawbar and a trailer hitch, and there is an electrical plug for the trailer lights and the hydraulic braking system. The trailer was registered and given a warrant of fitness before being moved onto the site.
- 2.1.2 The unit was then constructed on the trailer at the site on which it sits. The unit has an approximate length of 8m, a width of 3.1m and is 4.2m high and contains a kitchen, bathroom with a chemical toilet, bedroom and living area.
- 2.1.3 The unit was built using structurally insulated roof and wall panels. The panels have aluminium capping around the top and bottom ends. The panels sit in a 75mm trough around the periphery of the trailer, with 90mm bolts holding the panels in place. The roof was glued and riveted to the four walls by alloy angle capping. Once the outer shell was in place internal bracing was put in, and then windows and doors were fitted.
- 2.1.4 At the front width of the unit there is a large window above the drawbar and next to the drawbar an aluminium box that houses the internal heating system. At the entrance, along the length of the front end, there are two hinged glass doors and a small window to the left of the doors. The joinery is aluminium. At the rear of the unit there is a chemical cassette toilet system. Electricity is supplied through a 12 volt truck battery.
- 2.1.5 The photographs provided by the applicant show an outdoor entertainment area with a small low level timber deck built adjacent to the unit. The deck is not attached to the unit.
- 2.1.6 Water is supplied to the unit through a garden hose attachment. Water from the shower and sinks is drained through a garden hose.
- 2.1.7 I note guidance provided by the New Zealand Transport Authority ("NZTA") specifies a dimensional width limit of 2.55m for trailer and vehicle combinations.⁴ The unit in this case exceeds 2.55m in width, although NZTA guidance provides for overdimension vehicles and loads that exceed one or more of the maximum dimensions to be transported on the road.⁵

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

³ Unless otherwise stated all references are to sections of the Act

⁴ Refer NZTA factsheet 13 Vehicles and dimensions mass (May 2017)

⁵ Refer NZTA Factsheets 53 Overdimension vehicles and loads (February 2017)

2.2 The notice to fix

- 2.2.1 The authority issued a notice to fix on 26 September 2018 for ‘construction of tiny house – not in compliance with section 40 of the Building Act 2004’. The accompanying letter noted that the unit ‘would have required a Building Consent’ and ‘the building work does not fit any of the definitions for Building Consent exemptions.’
- 2.2.2 The notice to fix required the applicant to ‘either remove/demolish the illegal building work ... or apply for a certificate of acceptance...’ to remedy the contravention.
- 2.2.3 The applicant was given until 18 October 2018 to demolish or remove the illegal building work or until 26 October 2018 to apply for a certificate of acceptance.
- 2.2.4 The Ministry received the application for determination on 18 October 2018.

3. The submissions and draft determination

3.1 The initial submissions

- 3.1.1 The applicant made a submission with the application for determination, setting out the background to the events and noting that both parties had agreed to seek a determination on the matter. The applicant contends the authority was wrong to issue the notice to fix and that the unit is not a building under section 8 of the Act.
- 3.1.2 The applicant further submitted (in summary):
- The unit is self-contained and off grid, it is not connected to services nor is it fixed to any foundation or ground.
 - The unit is occupied on a semi-permanent basis. The applicant submitted that some weeks it is occupied for 7 days of the week, some weeks 5 days and other weeks it is only occupied on the weekends.
 - The trailer is registered and has a current Warrant of Fitness.
 - The applicant considers the unit to be akin to a large caravan.
 - The unit is easily moved with little notice “it’s simply a case of putting away loose items inside and fixing down movable objects” “all in all this [unit] could be moved in two hours”, and “the whole structure has been towed on the road for a distance of around 40kms without any trouble”.
- 3.1.3 The applicant provided the following information with the submission:
- photographs of the trailer and unit
 - details of construction
 - a letter from the authority
 - a copy of the notice to fix.
- 3.1.4 The authority has acknowledged the application on 23 October 2018 but did not make a submission in response.

3.2 The draft determination and submissions received

3.2.1 A draft determination was issued to the parties for comment on 1 March 2019.

3.2.2 The authority responded on 1 March 2019, accepting the findings of the draft with no comments.

3.2.3 In a response received on 24 March 2019, the applicant did not accept the draft and submitted the following comments (in summary):

- The structure has all the characteristics of a caravan and falls into the category of vehicle. It does not carry people or goods in a general sense and the primary purpose is accommodation, yet it is still recognised as a vehicle because it is readily movable and was built with the intention and purpose of moving.
- Comments in the draft determination on the aerodynamics of the structure, its size and large windows were not consistent with vehicles with similar features such as a bus, truck or motorhome.
- The caravan [unit] has been built to the highest possible standards to be used on the road and it has been built with the intention and purpose of moving.

4. Discussion

4.1 General

4.1.1 The dispute centres on whether the unit is a ‘building’ for the purpose of the Act and whether the authority was correct to issue a notice to fix for building work carried out without a consent being obtained.

4.1.2 For the authority to be able to exercise its powers under the Act the unit must fall under the definition of a building under section 8 and not be excluded under section 9.

4.1.3 Previous determinations⁶ have considered whether or not various structures with wheels are buildings for the purposes of the Act, and I have taken a similar approach in this case.

4.2 What is meant by a building?

4.2.1 The definition of “building” in section 8 includes both permanent and temporary structures, as well as movable and immovable structures (section 8(1)(a)):

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

4.2.2 The definition also includes vehicles, subject to the criteria set out in section 8(1)(b)(iii):

(b) includes – ...

⁶ See for example Determination 2015/044 *Dispute about the compliance of overlay flooring in an 8 year-old apartment*, (22 September 2014), Determination 2016/11 *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), and Determination 2017/058 *Notice to fix and whether a structure on wheels is a building* (25 July 2017).

- (iii) a vehicle or motor vehicle (including a motor vehicle as defined in section 2 of the Land and Transport Act 1998) that is immovable and is occupied 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.*⁷ 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 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 for the purpose of section 8(1)(b) as opposed to a moveable structure under the general definition in section 8(1)(a) is a question that has been considered in previous determinations.

4.2.5 Determination 2016/011⁸ found:

4.3.4 ...The inclusion of a movable 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 movable structure. The terms “movable structure” and “vehicle” must be given different meanings.

4.3.5 Caravan[s] 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.

4.2.6 In that case the matter concerned small shepherd’s huts with axles, wheels and tow bars, which were not designed for road use but could be moved around the property. The determination found their manufacture was such that they were limited in terms of their use as vehicles, and concluded that they were not vehicles but rather were relocatable buildings (i.e. movable structures).

4.2.7 The same approach was taken in Determination 2017/058⁹, which concerned a timber-framed structure used as a dwelling that was modified to attach wheels and a drawbar. That determination found:

⁷ [2010] NZCA 663

⁸ 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)

⁹ Determination 2017/058 *Regarding a notice to fix and whether a structure on wheels is a building* (25 July 2017)

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.

4.2.8 That determination concluded 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 as a vehicle, rather the owner had confirmed that its primary use was as a dwelling.

4.3 Is the unit a vehicle or a building?

4.3.1 I now consider whether the applicant's unit comes within the meaning of the terms "vehicle" or "motor vehicle". If so, I will then consider whether the unit meets the criteria set out in section 8(1)(b)(iii); that it is a vehicle or motor vehicle that is immovable and occupied permanently or long term. If not, I will proceed to consider whether it falls under the general definition of "building" in section 8. Appendix A provides a decision tree for this process that may be used in similar circumstances.

4.3.2 The terms "vehicle" and "motor vehicle" are not defined in the Act so their natural and ordinary meaning applies¹⁰:

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.

4.3.3 The unit does not decidedly fall into the category of "vehicle or motor vehicle" in the ordinary sense of those terms. The unit is not powered by an internal combustion engine nor is it designed to transport people or goods. The unit's primary use is as a dwelling.

4.3.4 Having considered the natural and ordinary meaning I can now turn to consider whether the unit can be classified as a vehicle under the Land Transport Act 1998 ("Land Transport Act"). Section 8(1)(b)(iii) of the Act includes the Land Transport Act definition of "vehicle and motor vehicle" (refer paragraph 4.2.2). The relevant parts of those definitions contained in section 2(1) of the Land Transport Act 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; ...

¹⁰ *Oxford Dictionary of English*, 3rd ed, Oxford University Press, 2010

- 4.3.5 The unit can be classified a contrivance equipped with wheels on which it can be moved and therefore falls within the widely inclusive definition of vehicle under the Land Transport Act, and within the definition of motor vehicle as it can be considered so when it is towed by a car.¹¹
- 4.3.6 As found in previous determinations¹² and discussed above at paragraph 4.2, something is not considered a vehicle under the Act just because it has some features of a vehicle or simply because it can be moved.
- 4.3.7 I accept that the unit has multiple characteristics in common with vehicles, although this does not limit my analysis to these features alone.
- 4.3.8 Additionally, registration is one factor to consider of many and will not necessarily make a structure a vehicle under the Act. This was confirmed in determination 2016/019¹³ considering that "... though the registration will be one factor to consider in deciding whether it is a vehicle it is not determinative".
- 4.3.9 The NZTA provides guidance for "over dimension vehicles or loads".¹⁴ It is my understanding the trailer gained a registration and warrant of fitness prior to the construction of the unit on the trailer. Therefore the order of construction in this instance can support the classification of the unit as an "over dimension load" that can be moved on the road as an oversize or over dimension load.
- 4.3.10 In this case the unit's superstructure is less like a vehicle in design; the features of its superstructure are comparable to a building, the unit is not designed to transport goods or people, and though it has been moved from a site it is not typically moved from site to site. The unit is being used as an abode and is occupied on a long-term basis.¹⁵ Considering these factors collectively, the unit, in its nature and use is more akin to a building.
- 4.3.11 Furthermore, considering that I only have jurisdiction under the Building Act, I favour consideration of the natural and ordinary meaning of a vehicle in light of the purposes of the Act.
- 4.3.12 The purposes of the Act provide for the regulation of building work and accountability of owners and designers who have responsibilities for ensuring building work complies with the Building Code.¹⁶ The purposes are listed in section 3 and are copied below for reference –

3 Purposes

This Act has the following purposes:

- (a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—
- (i) people who use buildings can do so safely and without endangering their health; and
 - (ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and

¹¹ Section 233, Land Transport Act 1998

¹² For example, Determinations 2017/058 and 2018/001

¹³ Determination 2016/019 *Regarding the code compliance of a shed on wheels at a neighbouring property, and whether the shed is a vehicle or building at paragraph 4.3.4* (30 May 2016)

¹⁴ Refer NZTA Factsheets 53 overdimension vehicles and loads

¹⁵ Section 7, Building Act 2004

¹⁶ Section 3, Building Act 2004

- (iii) people who use a building can escape from the building if it is on fire; and
- (iv) buildings are designed, constructed, and able to be used in ways that promote sustainable development:

(b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.

4.3.13 Given the unit's characteristics considered as a whole and its essential nature in which it is used as an abode rather than as a vehicle, I consider that the unit is a moveable structure and therefore falls under the general definition of a building under section 8 of the Act.

4.4 Conclusion

4.4.1 Although the unit has features of a vehicle this does not mean that it is a vehicle for the purpose of the Act. Having found the unit is a movable structure it shall be considered under section 8(1)(a) to be a building.

4.4.2 Given my conclusion in paragraph 4.3.13, I am of the view that the authority was correct to issue a notice to fix.

5. Decision

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

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 17 May 2019.

Katie Gordon
Manager Determinations

Appendix A

