



## Determination 2019/036

### Regarding a notice to fix and whether a structure on trailers at 21 Boyce Street, Renwick is a vehicle or a building



#### Summary

This determination concerns a notice to fix issued for two relocated units built on trailers that were relocated onto site and joined via a walkway constructed on site. The determination considers whether the structure is a building for the purposes of the Act and whether the units separately are vehicles and not buildings. It also considers the particulars of contravention identified in the notice to fix and the persons to whom the notice was issued.

#### 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, 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:

- Marlborough District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority
- the owners, M and G Bilsborough, who were issued with the notice to fix and applied for the determination (“the applicants”)
- the company that constructed the units, Eco Cottages NZ Ltd (“the supplier”), who was also issued the notice to fix as the person carrying out the building work or supervising the building work<sup>2</sup>.

<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.

<sup>2</sup> Refer section 163 of the Act for the definition of a “specified person” to whom a notice to fix may be issued.

- 1.3 This determination arises from the authority's decision to issue a notice to fix to the applicants and the supplier regarding two units, both of which are constructed on trailers. The units have been joined together. For simplicity, throughout this determination I refer to the two units joined together as "the structure" and separately as "units".
- 1.4 The two units were constructed by the supplier off site, and relocated to the applicants' property where they were subsequently joined together. In the applicants' and supplier's view, the units are "transportable" and fall outside of the scope of the definition of a building in the Building Act 2004, and accordingly, in their view, the authority was incorrect when it issued the notice to fix.
- 1.5 The matter to be determined<sup>3</sup> is therefore the authority's exercise of its powers of decision in issuing the notice to fix. The notice to fix was issued in relation to non-compliance with the Building Code of the structure and siting of the structure within the applicants' property – it was not issued in respect of construction of the separate units. Therefore, in deciding this matter I have considered whether the structure, that is the two units joined together, is a building as defined by section 8 of the Act. However, as the applicants have also suggested they could simply detach the units and contend that the units are vehicles, I have also considered whether the units themselves are buildings.
- 1.6 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 that required to decide on the matter to be determined.

## 2. The structure

- 2.1 The applicants' property is a flat section down a right of way in a residential area. The property contains the applicants' family home as well as the structure that is the subject of this determination.
- 2.2 The structure is made up of two trailer mounted units, which for ease of reference I will refer to as "the main unit" and "the sleeping unit". There is also an extension to one of the units, comprising a deck and a backing wall that bridges the gap between the two units – I refer to this herein as "the walkway".
- 2.3 The supplier constructed the two units, including the trailer and superstructure, off site at its facility in Christchurch and delivered them to the applicants' property. The structure is currently sited approximately 600mm away from the south-western boundary fence.
- 2.4 The main unit measures 8.5m x 3m, and has a total floor area of 26.4m<sup>2</sup>. It is constructed on top of a triple-axle galvanised steel chassis, which the supplier states is rated to take the unit's weight. The chassis is fitted with three sets of wheels, and a detachable telescopic tow bar, which can be fitted at either end of the chassis. The unit is registered with the NZ Transport Agency as a "caravan"<sup>4</sup>, though I have been given no information that would confirm it has either a certificate of fitness or warrant of fitness. It is not currently connected to the ground in any way, but instead

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<sup>3</sup> Under sections 177(1)(b) and 177(2)(f) of the Act

<sup>4</sup> Caravans usually fall within the vehicle class of "light trailer". For more information see <https://www.nzta.govt.nz/vehicles/vehicle-types/motorhomes-caravans-light-trailers/>

- rests on its axles and wheels and some blocks of timber, which the applicants advise are being used as stabilisers.
- 2.5 The main unit has a steel frame and gable roof. The external walls of the unit are clad, inside and out, with powder-coated galvanised steel, with 75mm fire-retardant expanded polystyrene insulation inside them. The roof is also clad in powder-coated galvanised steel, and has 100mm eaves, aluminium guttering and downpipes. The floor is made of 20mm plywood, with foil-faced polyester blanket under-floor insulation, and vinyl flooring. The joinery is aluminium, and includes three windows and a French door on one of the unit's longer sides, a single window on the opposite wall, and a door in one end which leads onto the deck that has been constructed between the two units. It appears from the photographs provided that an external wall of the main unit has been extended as a wing wall and bridges the gap between the two units where the walkway has been constructed.
- 2.6 The main unit is fitted with a small kitchen, comprising cupboards, an oven, a fridge and a sink; a bathroom, with toilet, wash-hand basin and shower; and built-in wardrobes and shelves. Water is heated using a gas hot water system, and room heating is via wall-mounted panel heaters. The unit has had gas and electrical compliance certificates issued for it. The kitchen and bathroom are both fitted out with plumbing fittings, but I understand these are not yet connected to any drainage or sewage system. I have no information on whether the unit is yet connected to an electricity or water supply.
- 2.7 The sleeping unit measures 3.15m x 3.15m and has a 10m<sup>2</sup> floor area. It has a similar construction to the main unit, except that it is constructed on top of a single-axle chassis, and does not have any sanitary or kitchen facilities or other built-in fittings. The unit has 200mm eaves, two windows and French doors.
- 2.8 The chassis of the sleeping unit has inset eyes to enable the unit to be lifted by forklift. The applicants advise that at the time the sleeping unit was delivered to their property it was not fitted with either a tow bar or wheels, as these were not then available due to a supply shortage. However, both the tow bar and the wheels have been subsequently fitted, and the unit is now resting on its wheels and a number of timber blocks.
- 2.9 The authority was of the opinion that the two units had been joined by welding together their chassis. The applicants advise that this is not correct and instead the walkway is joined by three bolts to one unit and is riveted to the other. It appears from the photographs provided that the walkway is supported by a timber block.

### **3. Background**

- 3.1 On 28 January 2019, the applicants contacted the authority to enquire whether building consent was required for the main unit, which they had already purchased, to be relocated onto their property and for connections to the existing sewer network. The authority advised that a building consent probably would be required and that it was not aware of any exemption applying to the supplier's units.
- 3.2 On 8 February 2019, the applicants again contacted the authority seeking further clarification. The authority advised that the supplier would need to provide information, specific to the applicants' property, to prove why the unit should be exempt from requiring a building consent. If sufficient information was provided to

show that the unit was exempt, then a building consent would only be required for the connection to the drainage and sewer systems. If it was not, then in the authority's view building consent would also be required for the relocation of the unit to the site, along with certification as to the unit's compliance with the Building Code.

- 3.3 The authority then received notification that two units had been moved on to the applicants' property and carried out a site visit on 27 February 2019 to inspect these. The authority's record of the visit shows that one of the applicants was present during the visit, and was advised that a building consent would be required for connecting the drainage to the sewer and for installation of foundations for the units. The record also notes the location, configuration and dimensions of the units and that it was evident where the two chassis had been joined together and that this had been done by welding them together. It also noted that the axles were welded onto the floor of the units and that 'There is no suspension, no brakes, no drawbar attached, and no brake lights on the building.' The record notes the authority's intention to issue a notice to fix.
- 3.4 On 28 February 2019, the authority issued a notice to fix (number BCF0007-CI1432) to the applicants and the supplier, which stated:

**Particulars of contravention or non-compliance:**

**Details of failure or error:**

Contrary to section 17 of the Building Act 2004, the following building works do not meet the requirements of Schedule 1 of the Building Regulations 1992 (the building code) to the extent required by the Act:

- Clauses B1 Structure, B2 Durability – The dwelling that you have relocated to the property, constructed using steel framing and linea style colour steel cladding, that is approximately 36m<sup>2</sup> in total, made up of two units that are attached and located close to the South Western shared boundary, is not built to a recognisable standard.
- Clauses B1 Structure, B2 Durability – The dwelling that you have relocated to the property, constructed using steel framing and linea style colour steel cladding, that is approximately 36m<sup>2</sup> in total, made up of two units that are attached and located close to the South Western shared boundary, is not founded on compliant foundations.

Contrary to s.40 of the Building Act, the following building works have been undertaken without first obtaining a building consent:

The dwelling that you have relocated to the property is closer than the measure of its own height to the South Western shared boundary.

**To remedy the contravention or non-compliance you must undertake the following building work:**

**Details of building work that must be carried out:**

Remove the unauthorised building works; **Or**  
Pursue any other option/s required to make the building comply with the Building Act and regulations.

- 3.5 The notice gave the applicants and supplier until 28 June 2019 to remedy the contravention or noncompliance, and stated that in the interim all building work on the units, including the work on the foundations and drainage, must cease.

- 3.6 In a letter accompanying the notice to fix, the authority stated that it considered the structure to be a building under section 8 of the Act. The letter also detailed the features of the structure that, in the authority's view, made it a building – including the kitchen and bathroom fittings, and the configuration of the axles – and noting:

The dwelling has three axels [sic] welded to the steel chassis. The axels [sic] have wheels attached. The axels [sic] have been welded approximately 1.2m apart along the chassis. The configuration of the axels [sic] does not support easy turning capabilities. There is [sic] no suspension, shocks or springs, brakes, brake lights, turn signals or number plates installed. The drawbar has been removed.

The letter also reiterated the aspects of the structure that the authority considered were not compliant with the Building Code, and noted that no building consent had been issued in relation to the structure.

- 3.7 The applicants applied for a determination and this was received by the Ministry on 13 March 2019.

## 4. The submissions

### 4.1 The applicants' submission

- 4.1.1 The applicants advise that their intention is to relocate within five years and to take the structure with them at that time, which is one of the reasons for purchasing the units rather than constructing a more permanent structure as the units are easily transported. The structure is currently occupied by family members who spend some of their time residing in the structure and some time travelling in a campervan.
- 4.1.2 In the applicants' view, because the units that make up the structure are transportable, they are therefore not a building and do not fall within section 8 of the Act. The applicants purchased the units on the understanding that building consent was not required and were surprised to receive the notice to fix.
- 4.1.3 The applicants also submitted that the main unit is registered as a caravan and is designed to be movable and carry its own weight on its wheels. In the applicant's view, just because the unit did not have the necessary features to be 'legally towed on a public road' (brake lights, number plate etc) this did not make it immovable.
- 4.1.4 If moving outside the property, the unit would be transported on a truck and trailer and the supplier can supply lifting rods. The applicants stated the supplier can also supply a heavy duty 3.5 ton<sup>5</sup> rated tow bar and coupling if the distance travelled is less than 20km (as this is the distance allowed without a warrant of fitness).
- 4.1.5 The applicants also submitted that the sleeping unit is 10m<sup>2</sup> and hence exempt from the requirement for building consent under Schedule 1(3) of the Act. Although the units are currently connected, the applicants state they can be easily detached from each other within 30 minutes, if required, and the applicants submit there is no restriction against temporarily joining two "caravans". The units are not connected to the ground in any way, and if the plumbing was connected to services, this would be done in a temporary way, i.e. capable of being easily disconnected. In support of

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<sup>5</sup> As described in supplier product information

their arguments that the units are vehicles, the applicants referred to Determinations 2015/067<sup>6</sup> and 2014/025<sup>7</sup>.

4.1.6 The applicants also cited the rules in the authority's resource management plan relating to temporary buildings. However, as my jurisdiction is limited to matters pertaining to the Building Code and Act, I have not considered this further.

4.1.7 With their submission, the applicants provided copies of:

- the notice to fix and the authority's covering letter
- the supplier's 'standard inclusions' (or specifications) for its 8.5m x 3.1m units, and 3.15m x 3.15m units
- a floor plan of the main unit
- photos of the two units
- the gas-fitting and electrical certificates of compliance for the units
- a decision tree from Determination 2015/067.

## 4.2 The authority's submission

4.2.1 The authority acknowledged the application for a determination on 13 March 2019, but did not make a submission. The authority provided copies of:

- the notice to fix and the authority's covering letter
- the authority's record relating to the site visit, plus photos of the two units taken during the visit
- the authority's customer enquiry records relating to the applicants' January and February 2019 contacts with it
- email correspondence between the parties.

## 4.3 The supplier's submission

4.3.1 The supplier made a submission on 21 March 2019. The submission set out the specifications and features for the units that the supplier makes, describing them as "Tiny Houses". It explained that the models of units purchased by the applicants were 'both mobilized' on galvanised steel chassis capable of carrying the units' own laden weight, and that this allowed them to be towed 'around a private property' or 'moved at reasonable notice' by Hiab truck and trailer to another site.

4.3.2 The supplier advised that it sold and delivered its units around New Zealand and would help with levelling the units on site using timber blocks for stability. Customers were responsible for liaising with their local council about 'siting and service provisions'.

4.3.3 The supplier stated that the units were 'never designed or constructed to be a fixed foundation "building"', but instead were 'designed to provide a quality living space within a mobilized & trailerised [sic] coach structure that could, at any time, be moved at reasonable notice'. The supplier referred to definitions in the Collins

<sup>6</sup> Determination 2015/067 Regarding the issue of a notice to fix for three prefabricated units connected together ..., and whether the units joined together are a building or a vehicle (October 2015)

<sup>7</sup> 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 (May 2014)

Dictionary and Wikipedia in support of his contention that a building ‘has permanent siting by virtue of fixed foundation provisions’.

- 4.3.4 The supplier also noted that the units are not welded together and the structure could be separated into its two units in 30 minutes.
- 4.3.5 The supplier further submitted that these types of units were neither ‘a traditional caravan’ nor a ‘fixed foundation building, sited permanently’, but should be placed in a category of their own.

#### **4.4 The draft determination and submissions in response**

- 4.4.1 A draft of this determination was sent to the parties on 20 May 2019 for comment. The draft concluded that the units, both as they are joined together and also separately, are buildings for the purpose of the Act. The draft found that the authority had correctly issued the notice to fix with regard to the building work carried out on site to join the units together, but noted a number of aspects of the notice to fix that were unclear or ambiguous and sought clarification from the authority on those matters.
- 4.4.2 The applicants responded on 4 June 2019, accepting the draft without further comment.
- 4.4.3 The authority responded on 30 May 2019 noting that it intended to withdraw the notice to fix at the conclusion of the determination, and would then reissue the notice taking into account the findings of the determination.
- 4.4.4 The authority provided clarification of the following:
- The authority did not consider the building work carried out on site was exempt under Schedule 1.
  - The notice to fix was issued in respect of the building work to join the units and ‘foundation work (or lack thereof)’.
  - The building has the features of a habitable building and intended use as a dwelling. As such it is ‘subject to the performance criteria for [Clauses] B1, B2 and foundation work.’ These criteria indicate an expected and acceptable standard of work which is required to meet the objectives of those clauses, and the authority is of the view that ‘the work to join the buildings and foundation work (or lack thereof) is work which fails to meet a recognisable standard.’
  - Clause B1.3.3 requires self-weight and earthquakes to be taken into account in respect of the building’s stability. There is no information on how the building or the units meet the performance criteria in relation to ‘horizontal loads imposed by earthquake (foundation bracing and connections)’.
  - As a “dwelling” the building is categorised as an Importance Level 2 building (under Clause A3 for the purpose of Clause C), and it must comply with Clause C3.3 and C3.7 as those clauses relate to fire spread.

(I have appended the table set out in the authority’s submission in relation to relevant clauses of the Building Code in Appendix B.1.)

- 4.4.5 The authority offered its views regarding the remedies provided for in the notice and the authority’s practice in relation to these. The authority also requested in its submission that the determination offer comment on the relocation and placing of

buildings on site and what constitutes “building work”. The authority noted that it is difficult to ascertain siting requirements or work that may be required when a building is constructed outside of the region and there is no record of a building consent or information on its compliance with the Building Code.

- 4.4.6 With regard to the fact that the notice to fix was also issued to the supplier who constructed the units, the authority advised it had taken into account:
- (a) The [supplier] acts akin to a manufacture[r] selling completed buildings;
  - (b) The [supplier] makes a business of providing completed buildings of that nature;
  - (c) The buildings are intended for use as habitable dwellings and are therefore subject to stricter building requirements;
  - (d) The nature of [the] building contract is such that the owner is uninvolved in the construction of the building and invests completely in the building upon purchase. There is therefore little opportunity to assess the building process or stage financial investment.
  - (e) The owner of the building is financially unable to complete the work required by the Notice to Fix.
  - (f) Assessment of the building via a Certificate of Acceptance process is necessary to satisfactorily assess what work is required to ensure compliance with the Building Code at its current location.
- 4.4.7 The authority noted there was little guidance on assessing when it may be more appropriate for another responsible authority to issue the notice to fix for the construction of the units and asked that the determination set out factors the authority should consider in relation to when it may give notice under section 164(3) to another building consent authority.
- 4.4.8 The supplier responded to the draft determination on 7 June 2019. The supplier did not wish to make a submission, but noted that in their opinion the determination contradicted previous determinations and case law (discussed in paragraphs 5.2.4 to 5.2.6).

## **5. Discussion: Section 8 of the Act**

### **5.1 Does the Building Act apply?**

- 5.1.1 The matter for determination is whether the authority correctly issued the notice to fix. For the authority to be able to exercise its powers under the Act the structure must fall within the definition of a building under section 8 of the Act and not be excluded under section 9. Accordingly this matter turns on whether the structure is a building for the purposes of the Act.
- 5.1.2 In addition, as the applicants have also suggested they could simply detach the units and that the units on their own are vehicles and not buildings, I have considered whether the units themselves fall within the definition of “building” under the Act. I have also considered the contraventions identified in notice and the persons to whom the notices were issued.
- 5.1.3 The applicants are of the view that the structure is not a building, on the basis that the units can be easily separated and are designed to be transportable, and both the applicants and supplier contend that the units on their own are not buildings but are vehicles.



5.1.4 Previous determinations<sup>8</sup> 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. I will first consider the definition of a building in the Building Act 2004. I will then consider whether the structure and the units are vehicles. If the conclusion is that the structure or units are vehicles, I must consider whether they are buildings by virtue of being “immovable” and “occupied on a permanent or long term basis” (section 8(1)(b)(iii)); if the structure or units are not vehicles, then I must consider whether they fall under the general definition of a building in the Act.

## 5.2 What is meant by a building?

5.2.1 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

5.2.2 The definition of “building” 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; ...

5.2.3 Accordingly, a vehicle can be a building for the purposes of the Act, but in order to be so, it must be both immovable and occupied on a permanent or long-term basis.

5.2.4 The correct application of these provisions has been considered by the Court of Appeal in *Thames-Coromandel District Council v Te Puru Holiday Park Ltd*<sup>9</sup>, where 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 long term 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.

<sup>8</sup> See for example 2016/11, 2018/001, 2017/058, 2015/044.

<sup>9</sup> [2010] NZCA 663

- 5.2.5 The case established the decision process that should be followed where it is disputed whether a particular structure is a vehicle or a building (that is a building either by virtue of the general definition in section 8(1)(a) or under section 8(1)(b)(iii)). The first matter that must be established is whether the structure is a vehicle. If it is a vehicle, then the test in section 8(1)(b)(iii) can be applied to determine if it is a building for the purposes of the Act. If it is not a vehicle, then the question becomes whether the structure comes within the general definition of a building in section 8(1)(a).
- 5.2.6 In support of their contention that the structure and the units that make up the structure are not buildings the applicants referred to a decision tree appended to Determination 2015/067 and the supplier also referred to other previous determinations. I note here that the determinations and decision tree referred to focus on the test in section 8(1)(b)(iii) and whether something is immovable and occupied on a permanent or long term basis, but do not consider in any detail how a vehicle may be different from a structure that is movable under the general definition in section 8(1)(a).

### 5.3 Are the units or the structure vehicles?

- 5.3.1 I turn now to the question of whether the structure or the units are vehicles. The terms “vehicle” and “motor vehicle” are not defined in the Act so their natural and ordinary meaning applies<sup>10</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.
- 5.3.2 Neither the structure nor the units fall within the category of “vehicle” or “motor vehicle” in the ordinary sense of those terms. They are not powered by an internal combustion engine nor are they designed to transport people or goods. Their primary intended use is as a dwelling or, in the case of the separate units as they have been utilised in this case, as modular parts of a dwelling.
- 5.3.3 Having considered the natural and ordinary meaning of “vehicle” and “motor vehicle”, I also consider the definitions of these terms in section 2(1) of the Land Transport Act 1998. These types of vehicles are included within the types of vehicles that may be considered buildings under section 8(1)(b)(iii) of the Building Act. Section 2(1) of the Land Transport Act 1998 provides the following definitions:
- 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; ...
- 5.3.4 In my opinion, the applicants’ structure and the units are within the definition of a vehicle given in the Land Transport Act 1998, in that they are ‘contrivances equipped with wheels ... on which [they can be] moved’. They likewise come within the definition of a motor vehicle, in that they can be towed by a car or truck and they could also be considered to be a trailer.

<sup>10</sup> *Oxford Dictionary of English*, 3<sup>rd</sup> ed, Oxford University Press, 2010.

- 5.3.5 However, the definitions within the Land Transport Act 1998 are widely inclusive and designed for the specific purpose of ensuring that any type of object that might be able to go on a road can be regulated under the provisions of that Act. What might be considered a vehicle for the purpose of the Land Transport Act is not necessarily the same as what is meant under the Building Act 2004. The definition of a “building” in the Building Act clearly overlaps with the definitions of “vehicle” and “motor vehicle” in the Land Transport Act. That the Building Act envisages a situation where a contrivance (or structure) may have wheels, but not be a vehicle is evident from the specific distinction drawn in the section 8 definition of a building between a movable structure (section 8(1)(a)) and the exclusion of all vehicles except those that are immovable and occupied by people on a permanent or long-term basis (section 8(1)(b)).
- 5.3.6 What constitutes a vehicle for the purpose of section 8(1)(b) as opposed to a movable structure under the general definition in section 8(1)(a) is a question that has been considered in previous determinations.
- 5.3.7 Determination 2016/011<sup>11</sup> 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 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.
- 5.3.8 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 shepherd’s huts were used for accommodation, and both huts had connections to electrical supply through a caravan-type plug and socket connection, and connections to water supply through a flexible garden hose-type connector. 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).
- 5.3.9 The same approach was taken in Determination 2017/058<sup>12</sup>, 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 [sic] 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.

<sup>11</sup> 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)

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

- 5.3.10 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 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 was a dwelling.
- 5.3.11 In their submissions, the applicants have also referred to Determination 2014/025, where a portable unit fitted with wheels, axles and tow bar, and with current registration, was found to be a vehicle, but not a building, as it was not occupied on a permanent or long-term basis; and Determination 2015/067, which concerned three units joined together using capping, flashing and other building elements to form one combined unit, and which was found to be a building and not a vehicle.
- 5.3.12 In their submission, the applicants have asserted that their units are designed to be transportable, and therefore, are not buildings. They have also pointed out the features, such as the axles, wheels and tow bar that enable the units to be moved. The supplier has made similar points, stating that the units were never intended to have fixed foundations, but instead are designed to be capable of being “mobilized” at reasonable notice. However, as found in previous determinations<sup>13</sup>, 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.
- 5.3.13 I accept that the units have characteristics in common with vehicles and can be moved, and at least one is registered, but my analysis is not limited to these features alone. In my opinion, the applicants’ units are less like a vehicle than a movable structure in their design and intended use. The units’ superstructures are less like a vehicle in design; rather the features of the superstructures are comparable to a building and the units together are being used as an abode<sup>14</sup> and intended to be occupied on a permanent or long-term basis.
- 5.3.14 While the units are designed to be movable, they are clearly not designed or intended to be towed any distance on a public road. The capacity to tow the units is more for the convenience of positioning them on a site, or moving them within a property, and the supplier’s submission and website are clear that where the units are being transported on the road this is usually done by way of Hiab truck and trailer, rather than by towing the units. The website also refers to the units having small wheels so that they sit close to the ground. This feature enhances the units’ usability as buildings, rather than as vehicles. Likewise, the absence of brakes, tail lights and suspension, and the configuration of the axles on the main unit, show that the movability of the units is not the primary factor in their design.
- 5.3.15 The purposes of the Act in section 3(a)(i) and (ii) include the need to ensure people who use buildings can do so safely and without endangering their health, and that buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them. The principles in section 4(2) are also important and refer to matters such as the role that household units play in the lives of the people who use them, and the importance of the Building Code as it relates to household units.

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<sup>13</sup> For example, Determinations 2018/001 and 2017/058.

<sup>14</sup> Section 7, Building Act 2004

- 5.3.16 The natural and ordinary meaning of the term “vehicle” read in light of the purposes of the Act (refer above and Appendix A), must be balanced with the much broader one used for the purpose of the Land Transport Act 1998. Under this definition, the units are not designed to transport goods or people, but instead are intended to be used as dwellings. This is how the units will in fact be used, with family members occupying them as their permanent home. The fact that the occupants may spend time away from the units while travelling does not detract from the permanence and long-term nature of their occupation. The intended permanence (or semi-permanence) of the units’ location is reflected in their design, with the provision for drainage and sewage being via connection to authority networks, rather than being self-contained within the units itself, as might be found in a caravan.
- 5.3.17 Overall, given the units’ characteristics considered as a whole and their essential nature, which is as a dwelling or modular parts of a dwelling rather than a means of transport, I consider that they are not vehicles within the meaning of the Act. Instead, I consider that the units are movable structures, and therefore fall under the general definition of a building under section 8 of the Act. In other words, the units are movable structures intended for occupation by people.
- 5.3.18 In addition, it is material that at present the units have been combined to form one structure. In their submission, the applicants have suggested that the units could be separated and treated independently. This issue of whether independent units that have been combined to form a larger unit should be treated individually, or separately, was considered by the Court of Appeal in *Thames-Coromandel District Council v Te Puru Holiday Park Ltd*<sup>15</sup>, and has been discussed in subsequent determinations, including Determination 2015/067<sup>16</sup>. The view in that determination was that the three units, once connected together as one structure, became a combined unit that could not be considered a vehicle. In reaching this conclusion, the determination followed the approach of the Court of Appeal – that the structure had to be ‘assessed as it presented’, rather than broken down into its constituent parts.
- 5.3.19 I consider the same approach applies here. In its current configuration, it would be difficult to consider the structure as movable, let alone capable of being towed on a public road. Therefore I conclude the structure is not a vehicle for the purposes of the Building Act, but instead falls within the general definition of a building under section 8(1)(a) of the Act. As such, the structure is required to comply with the Building Act and Building Code.
- 5.3.20 I have also concluded that the separate units are buildings under the general definition in section 8(1)(a), separation of the component parts of the structure into its units would not mean they are no longer regulated under the Building Act – they also must comply with the Building Act and Building Code. I note also that building work carried out to construct the units would also be subject to the Building Act and must comply with the Building Code.

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<sup>15</sup> [2010] NZCA 663

<sup>16</sup> Determination 2015/067 Regarding the issue of a notice to fix for three prefabricated units connected together ... and whether the units joined together are a building or a vehicle (October 2015)

## 6. Discussion: The notice to fix

### 6.1 The legislation

6.1.1 Having found that the structure is a building, and therefore the authority was able to exercise its powers under the Act, the next matter I must consider is the exercise of the authority's powers in relation to its decision to issue the notice to fix. I have considered the contraventions listed in the notice as well as the persons to whom the notice was issued (refer paragraph 3.4 for details of the notice).

6.1.2 Section 164 provides for the authority to issue a notice to fix if it considers on reasonable grounds that a specified person is contravening or failing to comply with the Act or the regulations. The notice must require the person to remedy the contravention of, or to comply with, the Act or the regulations.

6.1.3 Section 163 of the Act defines a specified person to whom a notice can be issued:

specified person means—

(a) the owner of a building; and

(b) if the notice to fix relates to building work being carried out,—

(i) the person carrying out the building work; or

(ii) if applicable, any other person supervising the building work.

6.1.4 In addition, section 164(3) provides

... if a responsible authority considers that it is more appropriate for another responsible authority to issue the notice to fix, it must—

(a) notify the other authority that it holds that view; and

(b) give the other authority the reasons for that view.

The other responsible authority must then issue the notice to fix if it considers that there has been a contravention or failure to comply with the Act or regulations.

6.1.5 The particulars of contravention listed in the notice to fix include building work carried out without building consent first being obtained when consent was required in contravention of section 40, and non-compliance with the Building Code contrary to section 17 of the Act. The notice to fix was issued to the owner of the building as well as the supplier, and the authority has requested comment on factors for it to consider in relation to the exercise of its powers under section 164(3). I discuss each of these in turn.

### 6.2 Building work without consent

6.2.1 The description of the contravention of section 40 concerned the placement of the structure on the applicants' property "closer than the measure of its own height to the South Western shared boundary". Section 40(1) provides 'A person must not carry out any building work except in accordance with a building consent'.

6.2.2 I consider the wording of the notice in respect of a contravention of section 40 was not adequate. The notice was ambiguous as to what the building work was that it was being issued for, i.e. whether the authority was of the view that relocating the units onto site was building work that required consent or whether it was issued in relation to the building work to construct the structure on site.

- 6.2.3 In addition, the reference in the notice to placement from the boundary could be interpreted to mean that the authority considered the building work (whatever the authority considered that building work was) was not exempt under Clause 3(2) of Schedule 1 of the Act. For that reason, in the draft of this determination I considered whether the building work to construct the structure by joining the units and forming the walkway was exempt under that clause. I am of the view that because the structure does not meet the criteria in Clause 3(1) of the Schedule, the building work was not exempt under that clause. In relation to the location of the structure on site, I discuss this further in paragraph 6.3.2 to 6.3.4.
- 6.2.4 In its response to the draft of this determination, the authority raised the question of whether the placement of the units on site constitutes building work, and whether work is required to secure the structure by installing and connecting it to foundations. The authority has put forward the view that because the intended use of the structure is a habitable building, its importance level (as described in AS/NZS 1170<sup>17</sup>) requires the structure to be ‘securely placed in accordance with the Building Code’.
- 6.2.5 Previous determinations have considered the relocation of buildings and whether this constitutes “building work” under section 7 of the Act (see for example 2011/104 and 2014/030<sup>18</sup>). I concur with the view set out in those determinations, in summary, that the act of moving or relocating a building and placing it on site is not “building work” where there is no work for, or in connection with, the construction or relocation of the units.
- 6.2.6 While movement of the units onto the site was not building work, there was work carried out on site. This is building work and as such is required to comply with the Act and the regulations. In this respect, I consider the authority was correct in its decision to issue a notice to fix for contravention of section 40. However, as noted previously, the notice did not adequately describe the building work for which the notice was issued and accordingly I have reached the conclusion the notice should be reversed.
- 6.2.7 I have considered the authority’s view that the relocation of the units onto the site required the construction of foundations and connections of the units to foundations for the reasons suggested by the authority. I do not agree with that view.
- 6.2.8 There are no provisions in the Act that require a relocated structure to be affixed to foundations – the provisions in the Act for the authority to consider in relation to the relocated units are limited to whether:
- the relocated buildings are dangerous, affected or insanitary<sup>19</sup> (sections 121, 121A and 123 respectively)
  - the buildings have undergone a change of use (sections 114 and 115)
  - building work has occurred and whether this work required building consent (section 40) and is compliant with the Building Code (section 17).

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<sup>17</sup> Australia / New Zealand Standard NZS 1170 Structural design actions

<sup>18</sup> Determination 2011/104 The exercise of an authority’s powers to issue a notice to fix for a commercial storage facility made up of shipping containers (16 December 2011), and Determination 2014/030 Regarding the issue of a notice to fix for the placement of two shipping containers on a property (22 July 2014)

<sup>19</sup> I note for completeness the provisions relating to earthquake prone buildings under Subpart 6 A of the Act do not apply to the units or structure in this case (refer section 133AA)

6.2.9 I note also that the performance criteria of the Building Code do not apply in respect of a building that is simply relocated without building work being carried out. The Building Code comes into effect in those circumstances prescribed in the Act, for example: when the authority is considering the grant of a building consent (section 49(1)), or building work has been carried out and the authority is considering grant of a certificate of acceptance or issue of a notice to fix (sections 96(2) and 164(1)(a) respectively). Likewise, the standards relating to Importance Level 2 buildings as described in AS/NZS 1170 are relevant only in terms of the use of that standard as a means of establishing how compliance with the Building Code is to be achieved or has been achieved.

### 6.3 Compliance

6.3.1 I now turn to the contravention of section 17 identified in the notice. This section of the Act provides all building work<sup>20</sup> must comply with the Building Code to the extent required by the Act, whether or not consent is required in respect of that building work.

6.3.2 The authority included in the notice that the structure was closer than the measure of its own height to the boundary. The clauses of the Building Code relevant to the distance of the structure (or the units) from the boundary are the C Clauses that relate to the protection of other property from damage caused by fire. However, non-compliance with Clause C3.3 or Clause C3.7 was not identified in the notice to fix.

6.3.3 The authority has submitted that the assessment of whether this clause was breached presents difficulties because the units were constructed off site and the authority does not have sufficient information on their construction to make this assessment.

6.3.4 While I acknowledge the difficulties present for the authority with regard to assessing compliance of relocated buildings when construction has occurred off site, I do not consider that issuing the notice to fix (for contravention of section 17 of the Act) is the appropriate mechanism when there is a lack of evidence of the structure's compliance or non-compliance. I discuss this further in paragraph 6.3.12.

6.3.5 The notice to fix identified the non-compliance as being in relation to Clauses B1 Structure and B2 Durability with respect to the structure (being the two units joined together), which the authority described as 'not built to a recognisable standard', and 'not founded on compliant foundations'. I have addressed the question of whether foundations are required for relocated buildings in paragraphs 6.2.7 to 6.2.9. However, in this case the units were not simply relocated, but were joined together – i.e. the units were utilised as modular parts to construct the large structure. The fact that building work was carried out to construct this structure triggers obligations under the Building Code. I have referred to the certificate of acceptance<sup>21</sup> process in paragraph 6.3.13, and I leave the matter of compliance of the structure to the parties to address in due course.

6.3.6 Neither the notice to fix nor the covering letter set out the reasons, with reference to particulars of the building work or the relevant performance criteria, for the authority's view that the structure does not comply.

<sup>20</sup> The term "building work" is defined in section 7 of the Act and includes "work– (i) for, or in connection with, the construction, alteration, demolition, or removal of a building; ..."

<sup>21</sup> More information about applying for a Certificate of Acceptance can be found on the Ministry's website at <https://www.building.govt.nz/projects-and-consents/sign-off-and-maintenance/completing-your-project/certificate-of-acceptance/>



- 6.3.7 In the draft of this determination I invited the authority to clarify whether the reference to the construction being not built to a recognisable standard is in relation to the construction of the units themselves (which was building work undertaken off site by the supplier), or is in relation to the joining of the units together and construction of the walkway between, which was building work carried out on site.
- 6.3.8 In response, the authority advised that the reference to “recognisable standard” was to the level of performance required by the Building Code and the fact that there was not sufficient information available to the authority to demonstrate that the performance criteria in the Building Code had been met (see Appendix B.1 for more detail.) The authority advised that it issued the notice in respect of the building work carried out to join the two units and ‘foundation work (or lack thereof)’. The authority also considers the building work carried out by the supplier in constructing the units also ‘fails to meet a recognisable standard’.
- 6.3.9 In regards to the authority’s references to a “recognisable standard”, I note there is no requirement in either Clause B1 or Clause B2 that buildings must be built in accordance with a “recognisable standard” – what is required is that the building work meets the relevant performance criteria in Clause B1 for the period specified in Clause B2.3.1.
- 6.3.10 The notice to fix did not identify the specific performance criteria in Clause B1 that the authority considered the structure did not meet, nor did it identify the particulars of the building work, meaning it was not clear to the recipients of the notice what was required to bring the building work into compliance in order to satisfy the notice. In this matter I consider the authority incorrectly exercised its powers in relation to its decision to issue the notice to fix.
- 6.3.11 In the authority’s submission to the draft it has set out various clauses of the Building Code that it considers there is not sufficient evidence to establish compliance has been achieved (refer Appendix B.1). I note that in all instances the authority’s concerns relate to a lack of information to establish compliance, as opposed to evidence of a failure to meet the performance criteria.
- 6.3.12 As previously stated, I do not consider that the notice to fix is the appropriate mechanism where there is a lack of evidence of whether the structure is compliant or not compliant. A notice to fix is an enforcement notice that requires a person to carry out work to remedy a breach of the Act or Building Code (section 164(2)(a)), specifies a time period for doing so (section 165(1)(b)) and may be enforced by a prosecution for failing to comply with the notice (section 168). For an authority to issue a notice to fix it must consider on reasonable grounds that a person is contravening or failing to comply with the Act or regulations. The authority’s belief that the Act or regulations are being contravened will require some specific evidence in support of that belief before a notice to fix can be issued.
- 6.3.13 Given that the building work to construct the structure is subject to the Act but was not granted building consent, the appropriate avenue for regularising that work is by way of the certificate of acceptance process. This will provide the opportunity for the compliance or otherwise of the structure to be assessed, and is the appropriate avenue for the authority to consider relevant information and for the authority to reach an informed view on whether the building work complies.

6.3.14 For the benefit of the parties I note that previous determinations<sup>22</sup> have considered structures constructed from modular units that were prefabricated off site, and the Ministry's website has guidance on the use of components constructed off site<sup>23</sup>. The parties may find that information beneficial in assessing the requirements for obtaining a certificate of acceptance in this case.

## 6.4 Specified person

6.4.1 Section 163 of the Act defines a specified person to whom a notice can be issued, and this includes the owner of the building and the person carrying out the building work if the notice relates to the building work being carried out.

6.4.2 In this case I consider the authority was correct in its decision to issue the notice to fix to the owner of the building as the specified person, though I have concluded the notice itself was inadequate in terms of describing the building work for which it was issued and was not the correct mechanism to address the lack of information regarding compliance.

6.4.3 With regard to the notice being issued to the supplier, I am unable to come to a conclusion on this because the notice did not adequately describe the building work it was being issued for and I have received no information as to whether the supplier carried out the building work on site to join the two units together and thereby construct the larger structure.

6.4.4 In this case the building work carried out on site is quite separate and distinct from that carried out by the supplier off site to construct the two units. While the authority may consider issuing a notice to fix in respect of the construction of the units if it considers itself the more appropriate authority to do so, section 164(3) also provides for the authority to notify another responsible authority of its views regarding construction of the units and whether it considers building work was carried out in contravention of the Act. In doing so, the authority must give the other authority the reasons for its view.

6.4.5 While not a matter for this determination, the authority has requested my comment on factors to consider in making a decision about whether another responsible authority would be the more appropriate authority, and accordingly I offer the following. In my opinion the types of factors the authority should take into account when considering the exercise of its powers under section 164(3) include, but are not limited to:

- whether the authority has reasonable grounds to believe there was a contravention of the Act – for example the building work was carried out without consent when consent was required – and this should include consideration by the authority of whether that work would have been exempt under Schedule 1 of the Act
- whether the authority has reasonable grounds to believe the building work does not comply with the requirements of the Building Code
- evidence that the building work was carried out in the district of the other authority

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<sup>22</sup> See for example Determination 2016/040 Regarding the grant of a building consent for a modular house and the use of modules designed locally but prefabricated offshore (26 August 2016)

<sup>23</sup> <https://www.building.govt.nz/projects-and-consents/apply-for-building-consent/support-your-consent-application/off-site-construction/>

- the role of the other authority in relation to the building or building work, for example, whether a building consent was issued, whether inspections were undertaken, whether any enforcement action was undertaken
- practical considerations, such as building records, staff resources and expertise, access to the building, where the specified person is located etc which might make it easier or more convenient for one authority to pursue enforcement action.

## **6.5 Remedies**

- 6.5.1 I note that the ambiguity in the notice to fix is carried through to the remedies, where the notice gives the parties the option of either removing the structure or pursuing ‘any other option/s required to make the building comply with the Building Act and regulations’.
- 6.5.2 It is not now possible for the parties to remedy a breach of section 40 by retrospectively applying for a building consent; however an application could be made for a certificate of acceptance once it has been demonstrated that the building work complies with the Building Code. I am of the opinion the option to seek a certificate of acceptance should have been presented as one available remedy in the notice.
- 6.5.3 For completeness and for the benefit of the applicants, I note here that when making such an application it should be made clear what the scope of the building work is, and in paragraph 6.3.14 I have referred the applicants to previous determinations that have considered constructions that consist of modular units. I note that if the units themselves are subject of their own code compliance certificate or certificate of acceptance, then the scope of the certificate of acceptance for the construction of the structure on site will be limited in its scope to the building work carried out on site.

## **6.6 Conclusion:**

- 6.6.1 Based on the information before me, I conclude:
- the structure falls within the definition of a building under section 8(1)(a) of the Act, and therefore building work to construct the structure is subject to regulation under the Act and the authority was able to exercise its powers under the Act;
  - the authority acted correctly in making its decision to issue a notice to fix on the basis that building work was carried out without building consent when building consent was required;
  - however, the authority has incorrectly issued the notice to fix with reference to construction being to a “recognisable standard” and the notice does not adequately describe the breaches or contraventions or particulars of the building work.

## **6.7 Other matters**

- 6.7.1 I acknowledge the supplier’s desire for a new category of structure created to accommodate the type of structures the supplier is constructing and their compliance requirements. However, in absence of this, such structures must be considered in

terms of their compliance with the Building Act and regulations, to the extent that these will apply in the circumstances of each case.

- 6.7.2 I note that the Building Act and Building Code apply to a vast range of buildings, and although the monikers of “tiny house” and “transportable cottage” etc have been relatively recently applied to buildings of a certain kind, similar types of small and potentially movable structures have existed for a long time. This is evidenced by the numerous determinations and court cases that have considered these dwellings or structures, and enumerated the various attributes or characteristics that may serve to make a particular structure a building or a vehicle.
- 6.7.3 These determinations and cases provide a guide for parties to consult when considering the compliance requirements of these types of structures in the future. Suppliers of these structures could also consider applying for a national multiple use approval (known as “Multiproof”)<sup>24</sup> as a means of providing an efficient compliance pathway for this type of mass-manufactured building solution.

## 7. Decision

- 7.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the structure and the units that comprise it are buildings and therefore the authority correctly exercised its powers in deciding to issue notice to fix BCF0007-CI1432 on the basis that building work was carried out without building consent. However, given the deficiencies in the notice as described in this determination, I hereby reverse that decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 25 July 2019.

Katie Gordon  
**Manager Determinations**

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<sup>24</sup> More information on MultiProof can be found on the Ministry’s website at: <https://www.building.govt.nz/building-code-compliance/product-assurance-and-multiproof/multiproof/>

## Appendix A: – Legislation

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

#### **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
  - (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.

#### **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—
    - (i) ...
    - (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 ...

#### **17 All building work must comply with building code**

All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

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

- (1) A person must not carry out any building work except in accordance with a building consent.
- (2) A person commits an offence if the person fails to comply with this section.
- (3) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.

**163 Definitions for this subpart**

In this subpart, unless the context otherwise requires,—

...

**specified person** means—

- (a) the owner of a building;
- (b) if a notice to fix relates to building work being carried out,—
  - (i) the person carrying out the building work; or
  - (ii) if applicable, any other person supervising the building work:...

**A.2 Relevant sections of the Land Transport Act 1998 discussed in this determination****2 Interpretation**

**motor vehicle**—

- (a) means a vehicle drawn or propelled by mechanical power; and
- (b) includes a trailer; but
- (c) does not include— ...

**vehicle**—

- (a) means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; and
- (b) includes a hovercraft, a skateboard, in-line skates, and roller skates; but
- (c) does not include—...

## Appendix B: The relevant clauses of the Building Code

B.1 The relevant clauses of the Building Code from the authority's submission (refer paragraph 4.4.4)

Unmet criteria	Comment
<b>Construction of a habitable building for use as a dwelling</b>	
B1.1 (a), (b) and (c) Safeguard people, amenity and other property.	No evidence to indicate Performance and Functional requirements are met.
B1.2 Buildings and Building elements shall withstand the combination of loads throughout their lives.	Consequently no evidence to indicate Objective met.
B1.3.3 Account of all physical conditions (in this matter Self weight and earthquake).	No evidence to indicate Performance requirements. In particular how it withstands horizontal loads imposed by earthquake.  Consequently no evidence to indicate Functional requirement or Objective met.
<b>Construction of a walkway (and connection) between the two buildings forming the dwelling</b>	
B1.1 (a), (b) and (c) Safeguard people, amenity and other property.	No evidence to indication Performance and Functional requirements are met.  Consequently no evidence to indicate Objective met.
B1.2 Buildings and Building elements shall withstand the combination of loads throughout their lives.	No evidence to indicate Performance and consequently Functional requirements are met.  Consequently no evidence to indicate Objective met.
B1.3.3 Account of all physical conditions (in this matter Self weight and Earthquake).	No evidence to indicate Performance requirements. In particular how it withstands horizontal loads imposed by earthquake.
B1.3.3 Account of all physical conditions (in this matter Self weight and Earthquake).	Consequently no evidence to indicate Functional Requirement or Objective met.
<b>Use of wooden blocks for stabilisation (or foundation). Alternatively lack of foundation.</b>	
B1.3.3 Account of all physical conditions (in this matter Self weight and earthquake).	No evidence to indicate Performance requirements. In particular how it withstands horizontal loads imposed by earthquake.  Consequently no evidence to indicate Functional Requirement or Objective met.
<b>Use of wooden blocks for stabilisation (or foundation) (Tentative only)</b>	
B2.1 The objective of this provision is to ensure that a building will throughout its life continue to satisfy the other objectives of the Building	The Objective requirements apply to this building. No evidence to indicate how the

Code.	objective requirements are achieved.
B2.2 The Functional Requirement is that building materials, components and construction methods shall be sufficiently durable to ensure that the building, without reconstruction or major renovation, satisfied the other functional requirement of this Building Code throughout the life of the building.	The Functional requirements apply to this building. No evidence to indicate how the Objective requirements are achieved.
B2.3.1 The Performance Requirement is that building elements must, with only normal maintenance, continue to satisfy the performance requirements of this Building Code for the lesser of the specified intended life of the building, if stated, or: (c) 5 years if: (i) The building elements (including services, linings, renewable protective coatings, and fixtures) are easy to access and replace, and (ii) Failure of those building elements to comply with the Building Code would be easily detected during normal use of the building.  ([The authority] accepts 5 years durability as the blocks as such would be easily replaced).	The Objective requirements apply to this building. No evidence to indicate how the Objective requirements are achieved. Consequently no evidence to indicate Functional Requirement or Objective met.
Locating the smaller sleeping unit a distance less than its own height and width from the boundary	
C2 to C6 The Objective is to protect other property from damage caused by fire as the building is closer than 1m from the boundary requirements.  C1 – Objectives of Clauses C2 to C6 (protection from fire). The objectives of Clauses C2 to C6 are to: (b) protect other property from damage caused by fire.	The Objective requirements apply to this building. No evidence to indicate how the Objective requirements are achieved. In particular how protection of other property from damage caused by fire is achieved.
C3.3 The Functional Requirement of 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 functional requirements apply to this building. No evidence to indicate how the Performance requirements are achieved.  Consequently no evidence to indicate Functional Requirement or Objective are met.
C3.7(a) or (c) Performance Requirements: 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  (b) ...  (c) for buildings in Importance Levels 1 and 2, be constructed from materials that, which subjected to a radiant flux of 30 kW/m <sup>2</sup> , do not ignite for 15 minutes.	The functional requirements apply to this building. No evidence to indicate how the Performance requirements are achieved. In particular how protection of other property from damage caused by fire is achieved. The building is located closer than 1m from the boundary so the requirements of C3.7(a) or C3.7(c) apply.