



## Determination 2019/064

### Regarding a proposed notice to fix and whether work carried out at 466 Tasman View Road, Lower Moutere–Mahana is building work



#### Summary

This determination considers the authority's proposal to issue a notice to fix for work that the authority considers constitutes building work that required building consent. The issue concerns an abode that has been constructed using a trailer and that the owner contends is a vehicle and not a building. The matter turns on whether the work carried out was work for or in connection with the construction of a building.

#### 1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004 (“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.<sup>1</sup>
- 1.2 Because the matter in this determination turns on whether or not the work carried out was the construction of a building or of a vehicle that is not a building, I have used the term “unit” to describe the completed works for which the authority proposes to issue a notice to fix.

<sup>1</sup> The Building Act and Building Code are available at [www.legislation.govt.nz](http://www.legislation.govt.nz). The Building Code is contained in Schedule 1 of the Building Regulations 1992. Information about the Building Act and Building Code is available at [www.building.govt.nz](http://www.building.govt.nz), as well as past determinations, compliance documents and guidance issued by the Ministry.

- 1.3 The parties to the determination are:
- Tasman District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority; the authority is the applicant in this determination
  - the owners of the unit, L and M Aboubakr (“the owners”)
  - the owners of the land that the unit is located on, J and W Bryant (“the landowners”)
  - the licensed building practitioner who constructed the unit, Harper Builders Ltd (“the builder”).
- 1.4 This determination arises from the authority’s proposal to issue a notice to fix to the owners of the unit, on the grounds that the unit is a building as that term is defined in the Act, and that the building work in relation to the unit required a building consent and no consent has been applied for or issued. The owners are of the view that the unit is a vehicle and is not within the scope of the definition of a building in the Act, and as such no building consent was required for its construction.
- 1.5 The matter to be determined<sup>2</sup> is the authority’s proposed exercise of its powers of decision to issue a notice to fix. In deciding this matter I must consider whether the unit is a building as defined by section 8 of the Act and therefore the construction of the unit was building work.
- 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.
- 1.7 Relevant sections of the Act and the Land Transport Act 1998 are appended.

## 2. The unit

- 2.1 The unit that is the subject of this determination is currently situated on a large rural property in Lower Moutere–Mahana in the Tasman District (Lot 2 DP 434856). The unit is located on a level platform in a corner of the property, close to the road, with another building nearby that provides sleeping facilities (“the sleepout”). There is a wire fence to the east of the unit, and to the west, the ground slopes steeply downward.
- 2.2 The design and plans for construction of the unit, with the exception of the trailer that forms the chassis or subfloor, were prepared by a registered architect, and the unit was largely constructed off site by the builder at the builder’s premises. The builder has provided a record of building work<sup>3</sup> for work including the floor, walls, roof, bracing and external wall and roof cladding. Some of the internal finishing works, including the mouldings, decoration and drainage, were carried out by the owners once the unit was on site.
- 2.3 The trailer that forms the subfloor or chassis of the unit was manufactured by a company that specialises in, among other things, trailers designed for ‘tiny homes’. The trailer is made of galvanised steel and is designed to be able to carry a gross laden weight of 5250kg. It is triple-axle, with three sets of 13 inch wheels, and is

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

<sup>3</sup> Building (Forms) Regulations: Form 6A – Memorandum from licensed building practitioner (record of building work)

- fitted with a tow bar, assisted brakes, suspension, tail and side lights, and a jockey wheel. The trailer has cavities designed to hold 50mm thick insulation, and perimeter-mounted threaded rods to enable timber structures to be fixed to the trailer. It also incorporates four corner-mounted wind-down stabilisers, and 10 side-mounted screw jacks, which are evenly spaced, five on each side of the trailer. The trailer has a number plate, and at the time the application for determination was received, a current warrant of fitness and vehicle registration (as a light trailer)<sup>4</sup>.
- 2.4 The unit itself is a simple rectangular shape, measuring 7.9m long by 2.79m wide<sup>5</sup>, and standing 3.42m high at its rear elevation, and 3.6m high at the front. (The elevations were measured by the authority from the top of the roof to the top of the trailer frame.) I note guidance provided by the New Zealand Transport Authority (“NZTA”) specifies dimensional limits for trailer and vehicle combinations<sup>6</sup>, with the maximum width of a standard trailer being 2.55m. The unit in this case exceeds this maximum width as it measures 2.79m wide. However, NZTA provides guidance to allow over-dimension vehicles and loads that exceed one or more of the maximum dimensions to be transported on the road.<sup>7</sup> Under this guidance, the unit would not require a pilot vehicle or permit to be towed on the road, but would need to comply with other conditions relating to lighting, hazard markings, signs and panels, restricted travel times etc.
- 2.5 Inside, the abode contains a kitchen-living area, bathroom, and two mezzanine floors, one at each end of the unit, which are currently being used as storage. The abode also contains sanitary fixtures and appliances, including a composting toilet. The adjacent sleepout was also designed by the architect and constructed by the builder. The sleepout measures 2.7m by 3.7m, and was shifted to the site at the same time as the unit. It is not constructed on a trailer, and is not connected to either the unit or the deck. The sleepout is not the subject of this determination.
- 2.6 The unit is fitted with electrical power, which connects to a mains supply using an externally mounted caravan-style socket and plug-in cable. Gas is supplied for cooking and hot water from externally housed gas bottles. The owner has provided copies of a Gasfitting certificate and Gas safety certificate, and an Electrical certificate<sup>8</sup>. Water is supplied from an on-site water tank that is fed into the unit through pipework and a filtration unit. The tank is filled via tanker.
- 2.7 Wastewater from the kitchen and bathroom is removed via pipes fixed to the underside of the unit, which then feed into waste pipes leading to a four-stage gravity-fed filtration system, designed by the owners. The wastewater from the kitchen also goes through a grease trap. The filtered wastewater is then discharged around the trees on the property. The wastepipes can be unscrewed to detach them from the rest of the unit. The waste from the composting toilet is either emptied into a local dump station or treated for 12 months before being incorporated in compost. The unit is fitted with a single gutter on its rear elevation, which discharges via a downpipe straight to the ground.

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<sup>4</sup> A trailer with a maximum gross vehicle mass (GVM) of 3.5 tonnes (3500 kilograms) or less is classed as a TB (light trailer) for the purpose of Land Transport Rule: Vehicle Dimensions and Mass 2016. A trailer that has a gross vehicle mass exceeding 3.5 tonnes but not exceeding 10 tonnes is classed as a TC (medium trailer). Refer NZTA Vehicle Classes <https://www.nzta.govt.nz/vehicles/vehicle-types/vehicle-classes-and-standards/vehicle-classes/>

<sup>5</sup> Note that all measurements in paragraphs 2.4 to 2.8 were provided by the authority and are approximate.

<sup>6</sup> Refer NZTA Factsheet 13 Vehicles and dimensions mass (May 2017)

<sup>7</sup> Refer NZTA Factsheet 13 (limits for projecting loads) and Factsheet 53 Overdimension vehicles and loads (February 2017)

<sup>8</sup> This energy work did not require building consent (see section 43 of the Act) and energy work is self-certifying. (see section 19(1)(e) of the Act).

- 2.8 As the unit is currently located, there is 0.64m clearance between the ground and the bottom of the trailer frame. The unit is supported on its wheels and the four trailer-mounted stabilisers and 10 screw jacks. It is not currently attached to the ground by any type of structural foundations.
- 2.9 The owners have built a timber deck alongside the northern elevation of the unit. The deck measures 5.55m by 3.72m and its height is 800mm above ground level – I note that although construction of the deck is building work and must comply with the Building Code, it is exempt under Schedule 1(24) from the requirement to obtain building consent. The deck is supported on timber posts on top of a polyolefin floating foundation system, and has a flight of stairs leading from it, but is not connected to the unit in any way.

### 3. Background

- 3.1 The owners first met with the authority in May 2018 to discuss their plans to build a ‘tiny house’ and the regulatory regime that would apply to it.
- 3.2 Construction of the abode and sleepout started in August 2018, and was substantially completed at the builder’s premises. The unit and sleepout were shifted to their current location on the landowners’ property in November 2018. The sleepout was transported on the back of a truck, which also towed the unit. The owners advise that the sleepout was placed first, and the unit was then manoeuvred into place using a utility vehicle.
- 3.3 The owners started living in the unit & sleepout sometime around the end of 2018, and it is their permanent residence.
- 3.4 On 18 June 2019, the owners met with the authority to discuss their unit. At this meeting, the authority advised the owners that the unit was a building within the definition of the Act, and that the owners would need to apply for a certificate of acceptance for it. The owners emailed the authority later that day, confirming the discussion and outcomes of this meeting.
- 3.5 However, on 2 July the authority emailed the owners, stating that, on applying the Ministry’s decision tree<sup>9</sup>:
- ...there was some debate around whether your tiny house is classed as moveable or immovable. As your style of tiny house is becoming popular in the district, we have decided that going for a determination will give us a definite answer.
- 3.6 The authority subsequently made a site visit to the landowners’ property on 5 July 2019 ‘to get a better appraisal of the situation and the characteristics of the unit’.
- 3.7 The authority applied for a determination and this was received by the Ministry on 16 July 2019.

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<sup>9</sup> A number of previous determinations concerning the question of whether something constructed on a trailer was a building had a “decision tree” appended: however it is not clear from the authority’s correspondence which determination, and therefore which decision tree, it was referencing.

- 3.8 The Ministry wrote to the parties on 25 July 2019 seeking further information. In particular, the Ministry requested:
- confirmation from the authority as to whether it proposed to issue the notice to fix to the builder, as a specified person, as well as the owners
  - submissions from the parties on whether the unit was a vehicle. To assist the parties with this question the Ministry provided a copy of a recent determination that had considered the distinction between a movable structure and a vehicle (2019/036<sup>10</sup>).
- 3.9 The authority responded to the Ministry's request on 30 July 2019, and the owners responded on 10 August 2019: see paragraphs 4.2 and 4.4 respectively.

## **4. The submissions**

### **4.1 The authority's initial submission**

- 4.1.1 The authority made a submission dated 16 July 2019 with its application for a determination. In the submission, the authority stated that it was seeking a determination to clarify whether the owners' unit was 'a building in accordance with s8(1)(b)(iii)' of the Act, and accordingly whether its proposal to issue a notice to fix to the owners requiring them to apply for a certificate of acceptance for the unit is correct.
- 4.1.2 The authority confirmed that it had included the landowners as a party to the determination but not the trailer manufacturer as the authority did not have the resources 'to make a judgment on the construction and suitability of the trailer'.
- 4.1.3 The authority described the unit's features and construction, and provided copies of photos taken during its site visit.
- 4.1.4 The authority then went on to consider the definition of a building in sections 8(1)(a) and 8(1)(b)(iii) of the Act, and to summarise the issues raised with respect to similar units in previous determinations, and to apply these to the owners' unit. This included addressing whether the unit was a vehicle, was immovable, and was occupied on a permanent or long-term basis, and the authority discussed the various features of the unit that were relevant to each issue. With respect to the unit's location on the landowner's property, the authority expressed the view that the proximity of the unit to the fence to the east, downhill slope to the west, deck and sleepout would make it 'very difficult' to manoeuvre the unit out of its current position in the future.
- 4.1.5 The authority also listed a number of regulatory matters, including the code-compliance of the sleepout and the wastewater and stormwater disposal systems that it noted it may choose to revisit in the future.

### **4.2 The authority's further submission**

- 4.2.1 The authority made a further submission, received on 30 July 2019, in response to the Ministry's request for information and the owner's submission of 27 July 2019.

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<sup>10</sup> Determination 2019/036 Regarding a notice to fix and whether a structure on trailers is a vehicle or a building (25 July 2019). This determination has been appealed to the District Court – at the time of writing the District Court hearing has not yet been held.

- 4.2.2 In the submission, the authority confirmed its view that the unit ‘appeared to have the characteristics of a vehicle’ but that its ‘current situation (as [the authority] viewed it on 5 July 2019) would prevent the unit being moved’. This was due to open trenches, drainage pipework and the grease trap preventing a vehicle being attached to the unit’s tow bar. The authority acknowledged that these services could be altered in the future, but submitted that this additional building work would require a building consent.
- 4.2.3 With respect to the issue of whether the unit is a moveable structure for the purposes of section 8(1)(a), the authority referred to the decision in Determination 2019/036 to support its view that the unit is a moveable structure that is intended for occupation by people and hence comes within the definition of a building in that subsection.
- 4.2.4 With respect to section 8(1)(b)(iii), the authority noted that while the unit might be considered a vehicle for the purposes of the Land Transport Act 1998<sup>11</sup>, this was not necessarily the same as what would be considered a vehicle under the Building Act 2004, and that under the Building Act something is not considered to be a vehicle just because it has some of the features of a vehicle or can be moved. The authority concluded that:

It’s [the authority’s] contention that the unit is less like a vehicle (even though it may have characteristics that are common with a vehicle, including axles, wheels, drawbar e.t.c.) but is more akin to a movable structure in its design and intended use.

The authority found support for this view in the architect’s plans and details (which showed that the unit’s superstructure was more like a building than a vehicle); the difficulty of towing the unit any distance on the open road; and the intended permanence of the unit’s current location.

- 4.2.5 With respect to the Ministry’s question as to whether the authority’s proposal to issue a notice to fix would mean the notice would also be issued to the builder, the authority replied that it would not, and the authority advised of its reasons for that decision.

### **4.3 The owners’ submission**

- 4.3.1 The owners made a submission dated 27 July 2019. In the submission, the owners set out their reasons for seeking to build a ‘tiny house’ and the background to their dealings with the authority, both before and after the unit was constructed.
- 4.3.2 The owners stated that at the meeting in May 2018 they were advised by the authority that they did not need to apply for a building consent because the legislation relating to ‘tiny houses’ and their status as a ‘caravan’ or building was unclear. The owners also recall that the authority said that as long as no-one complained, it would not require consent, and that if someone did complain, the authority would help the owners obtain one. (I note here that a building consent cannot be granted retrospectively.)
- 4.3.3 Based on this discussion and the Ministry’s ‘decision tree’ in Determination 2018/024<sup>12</sup>, the owners decided to proceed with the construction of their unit

<sup>11</sup> Refer Appendix A.2 for the definitions of vehicle and motor vehicle under the Land Transport Act 1998.

<sup>12</sup> Determination 2018/024 Regarding a notice to fix and whether a structure on a trailer with wheels at ... is a vehicle or a building (1 June 2018)

without first applying for a building consent in relation to it. The owners made this decision because they had formed the opinion that their unit would be a vehicle and therefore ‘not a building under the Act’.

4.3.4 In their submission, the owners expressed the view that, based on the Ministry’s decision tree in Determination 2018/024: ‘So long as our tiny house is clearly a vehicle ... then it does not matter if you are using it for long term accommodation, it is still not a building under the Act’<sup>13</sup>.

4.3.5 They also detailed the design and construction of their unit, and confirmed that the building, plumbing, gas-fitting and electrical work had all been carried out by registered tradespeople and had been certified as compliant.

4.3.6 The owners then responded to various matters raised in the authority’s submission, and advised that the unit was ‘towable and easily movable’ and could be easily disconnected from the electricity supply and plumbing work and that:

Everything around the Tiny House is very well designed to be moved within a matter of minutes, and there is enough space for a tractor or a Ute to move the tiny house out of place.

4.3.7 The owners also made submissions on a number of matters that relate to the authority’s advice and fees, and are outside the scope of this determination.

4.3.8 With their submission, the owners supplied copies of:

- the architect’s building notes and plans for the abode and sleepout
- a ‘Form 6A: Memorandum from licensed building practitioner: Record of building work’, completed by the builder and dated 17 December 2018
- a ‘Gasfitting certificate of compliance and gas safety certificate’, completed by a registered gasfitter and dated 4 April 2019
- an ‘Electrical certificate of compliance and electrical safety certificate’, completed by a registered electrician and dated 27 July 2019
- a letter dated 27 July 2019 from a registered plumber confirming that the waste pipes for the unit had been installed in accordance with AS/NZS 3500.2:2003<sup>14</sup>, and that all of the waste pipes use quick-release sanitary joiners to enable them to be disconnected ‘when relocating the tiny house’
- correspondence between the parties
- a video recording of the unit and sleepout being transported.

#### **4.4 The owners’ further submission**

4.4.1 The owners made a further submission, dated 10 August 2019, in response to the Ministry’s request for information and the authority’s further submission of 29 July 2019. In their submission the owners commented on the term ‘tiny house’ and what this was commonly understood to mean in New Zealand and overseas. They noted that the open stormwater trenches, identified by the authority as an obstacle to moving the unit, had now been filled in and confirmed that all other plumbing fittings could be easily and quickly disconnected. The owners concluded that: ‘...the

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<sup>13</sup> The owners have since clarified that they were referring here to the definition of a “vehicle” in the Land Transport Act 1998.

<sup>14</sup> Australian / New Zealand Standard AS/NZS 3500.2:2003 Plumbing and drainage Part 2: Sanitary plumbing and drainage

entire structure is designed to be easily moved when required. The work done around site is not intended to permanently lock the tiny house from moving’.

- 4.4.2 The owners stated that the dimensions of the unit came within the limits of what could be towed on the road. They also submitted that just because the unit had been designed by an architect, and they had used qualified tradespeople to install the services, did not mean that the unit was a building, as these people could equally be used to construct a vehicle. Using this reasoning, it was equally arguable that as the trailer had been constructed by a vehicle manufacturer, the unit was a vehicle.
- 4.4.3 The owners referred to the decision tree and are of the view that the analysis for the purpose of this determination should be based on the test under section 8(1)(b)(iii) in that decision tree, because that is what they had relied on. The owners also reiterated their concerns that they had discussed their plans with the authority before they began construction.

#### **4.5 The other parties’ submissions**

- 4.5.1 The landowner and builder have not made submissions.

#### **4.6 The draft determination and submissions**

- 4.6.1 A draft of this determination was sent to the parties for comment on 19 September 2019.
- 4.6.2 The authority accepted the draft determination on 23 September 2019, subject to some non-contentious amendments. I have amended the determination accordingly.
- 4.6.3 The owners did not accept the draft determination, and made a submission on 4 October 2019, that included some non-contentious amendments to the draft, and I have amended the determination as I consider appropriate.
- 4.6.4 The balance of the owners’ submission discussed the lack of clarity that the owners felt existed around the status of ‘tiny homes’ and other structures on wheels and whether or not building consents were required for their construction. The owners reiterated their belief that they had been acting correctly, in good faith and within the law in proceeding to construct the unit without consent. They considered they had taken sufficient steps to ensure they were acting correctly and had been advised by the authority that no consent was required. In their opinion, the authority was itself unclear about the legal requirements and has now changed its approach.

### **5. Discussion**

- 5.1 The matter for determination is the authority’s proposal to exercise its powers of decision and issue a notice to fix for construction of the owners’ unit without building consent first being obtained. For the authority to be able to exercise its powers under the Act as it has proposed, the work carried out must fall within the definition of “building work” – that is it must have been work for, or in connection with, the construction of a building. It follows then that the question I must consider is whether the unit falls within the definition of a building under section 8 of the Act and is not excluded under section 9. Accordingly, this matter turns on whether the unit is a building for the purposes of the Act – if the unit is not a building the Act doesn’t apply and the authority cannot exercise its powers.



5.2 The majority of the parties' initial submissions revolved around the question of whether the unit was a vehicle, and if so whether it was immovable. In other words, the parties focused on whether the unit came within the definition of building in subsection 8(1)(b)(iii) of the Act. However, I note that when considering whether the unit is a building under Section 8, the enquiry is broader than this.

5.3 Previous determinations have considered whether or not various structures with wheels are buildings for the purposes of the Act, and have established an order in which the issue is best considered. I have taken a similar approach in this case.

- I will first consider what is meant by the definition of a building in the Building Act 2004.
- I will then consider whether the unit is a vehicle.
- If I conclude that the unit is a vehicle, I must consider whether it is a building for the purposes of the Act by virtue of being “immovable” and “occupied on a permanent or long term basis” (section 8(1)(b)(iii)).
- If I conclude that the unit is not a vehicle, then I must consider whether it falls under the general definition of a building in the Act (section 8(1)(a)), as a “temporary or permanent movable or immovable structure”.

#### 5.4 What is meant by a building under section 8 of the Act?

5.4.1 For the Act to apply, the owners' unit must come within the definition of a “building” in the Act.

5.4.2 The definition of “building” in section 8 includes both permanent and temporary structures, as well as movable and immovable structures (section 8(1)(a))<sup>15</sup>:

##### **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

5.4.3 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; ...

5.4.4 Accordingly, a vehicle (including a vehicle or motor vehicle as defined in the Land Transport Act) 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.

5.4.5 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>16</sup>, where the Court of Appeal stated:

<sup>15</sup> The term “structure” is not defined in the Building Act, but has been considered in previous determinations, see 2016/002 Regarding the issue of a dangerous building notice in respect of a damaged shared driveway (20 January 2015) and 2019/018 Regarding the code-compliance of a proposed design for a domestic driveway (20 May 2019)

<sup>16</sup> [2010] NZCA 663

[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.

5.4.6 The *Te Puru* case established the decision process that should be followed where it is disputed whether something is a vehicle or a building for the purpose of the Building Act. The first matter that must be established is whether it 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 also a building for the purposes of the Act. If it is not a vehicle, then the question becomes whether it comes within the general definition of a building in section 8(1)(a). This is the approach I will take in this determination.

## 5.5 Is the unit a vehicle?

5.5.1 I turn now to the question of whether the unit is a vehicle.

5.5.2 The terms “vehicle” and “motor vehicle” are not defined in the Act so I have considered their natural and ordinary meaning<sup>17</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.

5.5.3 The owners’ unit does not come within the definition of a “vehicle” or “motor vehicle” in the natural and ordinary sense of those terms. The unit is not powered by an internal combustion engine and is not designed to transport people or goods. Its primary intended use is as a dwelling, and its design reflects this use.

5.5.4 Section 8(1)(b)(iii) provides that the terms “vehicle” or “motor vehicle” include a “vehicle or motor vehicle as defined in section 2(1) of the Land Transport Act 1998”, which 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; ...

5.5.5 Vehicles or motor vehicles that come within the definition in the Land Transport Act 1998 are included within the types of vehicles that may also be considered buildings under section 8(1)(b)(iii) of the Building Act. In my opinion, the owners’ unit comes within the definition of a vehicle in the Land Transport Act 1998, in that it is a ‘contrivance equipped with wheels ... on which it...is moved’. It likewise comes within the definition of a motor vehicle; in that it can be towed by a car or truck and could be considered to be a trailer.

<sup>17</sup> *Oxford Dictionary of English*, 3<sup>rd</sup> ed, Oxford University Press, 2010.

- 5.5.6 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.
- 5.5.7 It is clear that the Building Act envisages a situation where a contrivance may have wheels, but not be considered a vehicle for the purposes of that Act. This is evident from the specific distinction drawn in the section 8 definition between a movable structure (section 8(1)(a), which is a building) and a vehicle or motor vehicle (including vehicle or motor vehicle as defined in the Land Transport Act), which is not a building unless it is both immovable and occupied by people on a permanent or long-term basis (section 8(1)(b)(iii)).
- 5.5.8 The result is an overlap between a building that is a movable structure and the very broad definitions of a “vehicle” or “motor vehicle” in the Land Transport Act. What constitutes a vehicle for the purpose of section 8(1)(b)(iii) as opposed to a movable structure under the general definition in section 8(1)(a) is the key issue that has been considered in a number of previous determinations.
- 5.5.9 Determination 2016/011<sup>18</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.
- 5.5.10 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.
- 5.5.11 The same approach was taken in Determination 2017/058<sup>19</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>18</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>19</sup> Determination 2017/058 Regarding a notice to fix and whether a structure on wheels is a building (25 July 2017)

- 5.5.12 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.
- 5.5.13 In their submissions, the owners have asserted that their unit, and its placement on the landowners' property, is designed to make it easily moveable. All of the services can be quickly detached, and the unit can be towed, and manoeuvred in and out of place using a utility vehicle. The authority has also provided evidence of features on the unit, such as its axles, wheels and tow bar that enable it to be moved and towed. The unit had, at the time the authority visited the site on 5 July 2019, a current warrant of fitness and registration enabling it to be legally towed on the road, and the unit was towed to the site. Noting the authority's concerns with regard to the current position of the unit on site, I accept that the unit is capable of being moved within or off the site.
- 5.5.14 However, as found in previous determinations<sup>20</sup>, just because a something has some features of a vehicle or because it can be moved, it does not necessarily follow that it is a vehicle for the purpose of the Building Act; and my analysis of the owners' unit is not limited to those features alone.
- 5.5.15 In my opinion, the owners' unit is less like a vehicle than a movable structure in its design and intended use. Other than the trailer that forms the subfloor or chassis of the unit, there is little about the design of the unit as a whole that is akin to a vehicle. In particular, the unit's superstructure is not primarily designed as a vehicle, rather the design, features, and construction are comparable to a small timber-framed dwelling and the unit is designed to maximise its usability as an abode. I note also that while it is clearly capable of being towed, the owners' architect has raised the possibility that it may be unstable in high winds and the authority also questioned whether it could be safely towed without being affected by high or strong crosswinds because of its height to width ratio. In my opinion, in the absence of information to the contrary, the geometry of the unit is highly likely to be sensitive to crosswinds and in my view this would limit its ability to be towed.
- 5.5.16 The features of the unit that make it moveable are a small aspect of its overall design, and as much about enabling the unit to be manoeuvred into position on a site, as they are about enabling it to be towed for any distance on an open road.
- 5.5.17 Similarly, all of the other features of the unit are geared towards maximising its usability as an abode, rather than as a vehicle. The construction, its features and layout, are designed to accommodate people living in it as a dwelling. There is nothing about the unit that would make it suitable for transporting people or goods or make it suitable for being moved frequently from place to place like a caravan or mobile home. Although I accept that the owners have taken specific steps to ensure the unit remains moveable, they have also taken specific steps to ensure it is comfortable to live in as their permanent or long-term home. The owners have been very open about their intention of living in the unit full-time, and provided useful

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<sup>20</sup> For example, Determinations 2018/001 and 2017/058.

information about their environmental, financial and cultural reasons for making the unit their home.

- 5.5.18 While I acknowledge that the unit falls within the broad definition of a “vehicle” or “motor vehicle” in the Land Transport Act 1998, this must be balanced against the ordinary meaning of that term in this context and in light of the purposes of the Building Act 2004, which under section 3(a)(i) and (ii) includes 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 wellbeing 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.
- 5.5.19 In this context, I consider that the unit’s characteristics, when considered as a whole, and its essential nature, which is as a dwelling rather than as a means of transport, show that the unit is not a vehicle for the purpose of the Building Act, but rather that the unit is a movable structure and falls within the general definition of a building under section 8(1)(a) of the Act.
- 5.5.20 I note another line of argument is that for something to be a building it must be fixed to the ground, and that this accords with the definition of “structure” in the Resource Management Act 1991: “any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft”. The argument that a building must be fixed to the ground was rejected in *Christchurch City Council v Smith Crane & Construction Ltd*<sup>21</sup> and I am of the opinion it would not be appropriate to import the meaning of the word “structure” from the Resource Management Act into the definition of “building” in the Building Act including because it would be inconsistent with reference to a movable structure in section 8(1)(a).

### **Conclusion**

- 5.5.21 I conclude that the owners’ unit is a movable structure intended for occupation by people, and is therefore a building for the purposes of the Act. Accordingly I am of the opinion that the work carried out to construct the unit was building work<sup>22</sup>.

## **6. Discussion: The notice to fix**

- 6.1 Having found that the structure is a building, and therefore the authority is able to exercise its powers under the Act in relation to it, the next matter I must consider is the authority’s proposed exercise of its powers to issue a notice to fix.
- 6.2 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. Under section 164(2) the authority “must issue to the specified person concerned a notice to fix” requiring the person to remedy the contravention, or to comply with the Act or the regulations.

<sup>21</sup> CIV-2009-009-12480, 19 February 2010.

<sup>22</sup> Section 7 Interpretation **building work**— (a) means work— (i) for, or in connection with, the construction, alteration, demolition, or removal of a building;

- 6.3 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.
- 6.4 The contravention that the authority proposes to issue a notice to fix for is carrying out building work without building consent first being obtained when consent was required under section 40. Because I have concluded that the owners' unit is a building, the authority can now do this.
- 6.5 In their submission on the draft determination the owners asked for clarification on how they have breached the Building Act, when they believed they had taken all possible steps to ensure they were acting correctly. The breach that has occurred is in carrying out building work for which a building consent is required, without first obtaining a building consent. This represents a breach of section 40 of the Act, and is one of the many breaches that a notice to fix can be issued for. Not all building work requires building consent, but the building work that did require consent in the owner's case includes the construction of the unit and installation of drainage on site. I note for completeness that construction of the deck on site is exempt under Clause 24 of Schedule, providing it is not possible to fall more than 1.5m even if it collapses.
- 6.6 The authority intends to issue the notice to fix to the owners, and require them to apply for a certificate of acceptance in respect of the completed building work. The Act provides for this as a means by which building work that was carried out without building consent can be regularised. I note in this case that the owners have a substantial amount of information regarding the construction of the unit which will assist them in making an application for a certificate of acceptance.
- 6.7 The authority does not intend to issue the notice to the builder, on the grounds that the building work is complete, and that to do so would be pointless as there would be no enforcement mechanisms available to the authority. I note that the decision about whether to issue the notice to fix to the builder is at the authority's discretion.

## 7. Other matters

- 7.1 The authority has sought this determination to clarify whether or not units similar to the owners' are buildings for the purposes of the Act, given the increasing prevalence of this style of dwelling within its region and nationwide.
- 7.2 I note that the authority is not alone in wrestling with this issue, and that many other authorities are also asking these questions.
- 7.3 Whether or not a particular unit, contrivance or structure will be a building for the purposes on the Act is an issue that must be decided on a case-by-case basis, based upon the particular characteristics of the structure in question. It is possible that, in relation to the many diverse movable and immovable structures that are being constructed as 'tiny houses' or 'tiny homes', some will be buildings under section 8 and others not. I note, however that the Ministry has been considering the question of whether moveable or transportable structures are buildings for some time, and

that there are many previous determinations on these issues that can assist parties in similar situations.

- 7.4 I note here also that in support of their view that the unit is not a building the owners have referred to the decision tree appended to Determination 2018/024. The authority also subsequently referred to this tree. That decision tree is a tool that parties can use when working through the question of whether something is a vehicle or a building for the purpose of the Act and, *if* it is a vehicle, whether it comes within the definition in the Act. It is important to note that the tree is indicative of the sort of factors that need to be considered, and is not intended to be comprehensive. There may be many factors that the parties need to look at and weigh up in reaching their decision.
- 7.5 It is not correct to interpret the tree to mean that because something is moveable, it is automatically a vehicle and hence the Act doesn't apply. Unfortunately the analysis is not so straight forward. As discussed above, just because a particular structure is moveable is not sufficient to make it a vehicle for the purpose of the Building Act. The question of whether or not a structure is moveable only becomes determinative with regards to section 8(1)(b)(iii) once it has first been established that the structure is a vehicle. In the current case, I have decided that the owners' unit is not.
- 7.6 I acknowledge the owners' perspective, expressed in their submissions that they had taken steps to establish that they were acting correctly before constructing the unit without a consent, including consulting the authority, and I commend the owners for taking that approach.
- 7.7 Whether or not the owners were misinformed by an officer of the authority or the authority changed its view on the matter is not something that can be considered, or decided via the determination process. However, as I have already noted, the increasing prevalence of tiny homes and other alternative forms of housing means that these types of issues are being dealt with by many building consent authorities, and the answer to whether they fall within the ambit of the Building Act is not always simple.

## 8. Decision

- 8.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the owners' unit is a building, and that the authority is correct in its proposed exercise of its powers to issue a notice to fix, on the basis that building work was carried out without building consent, and I hereby confirm that decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 16 December 2019.

Katie Gordon  
**Manager Determinations**

## Appendix A: – Legislation

A.1 Relevant sections of the Building Act 2004 discussed in this determination:

### 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—
  - (i) a perambulator or pushchair:
  - (ii) a shopping or sporting trundler not propelled by mechanical power:
  - (iii) a wheelbarrow or hand-trolley:
  - (iv) [Repealed]
  - (v) a pedestrian-controlled lawnmower:
  - (vi) a pedestrian-controlled agricultural machine not propelled by mechanical power:
  - (vii) an article of furniture:
  - (viii) a wheelchair not propelled by mechanical power:
  - (ix) any other contrivance specified by the rules not to be a vehicle for the purposes of this definition:
  - (x) any rail vehicle