MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Determination 2021/022

Regarding two notices to fix and whether work carried out at 14 Molesworth Street, Taita, Lower Hutt is building work

Summary

This determination considers the issue of notices to fix for construction of something that the owner claims is not a building. The determination considers whether the construction was of a vehicle, as the owner claimed, rather than a building. The determination also sets out the approach taken in High Court and District Court decisions that have considered the question of whether something with the characteristics of a vehicle were buildings.

1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004[1] ("the Act") made under due authorisation by me, Katie Gordon, National Manager Determinations, Ministry of Business, Innovation and Employment ("the Ministry"), for and on behalf of the Chief Executive of the Ministry.

1.2 The legislation which is discussed in this determination is contained in Appendix B. In this determination, unless otherwise stated, references to "sections" are to sections of the Building Act 2004 and references to "clauses" are to clauses in Schedule 1 ("the Building Code") of the Building Regulations 1992.

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

1.3 In this determination, because the dispute turns on whether or not the work carried out was the construction of a building or of a vehicle, I have used the term "the unit" to describe the partially constructed abode for which the authority issued notices to fix.

The parties

1.4 The parties to the determination are:

- the person constructing the unit and who is the owner of the unit, J Voss ("the owner"), who was issued with two notices to fix
- the owner of the land on which the unit is located, F Antoun ("the landowner") who was also issued with two notices to fix – the owner and landowner are joint applicants in this determination (together, "the applicants")
- Hutt City Council ("the authority"), carrying out its duties as a territorial authority or building consent authority.

The matter

1.5 The matter arises from the authority's decision to issue two notices to fix in relation to work that the authority considers is building work. The owner plans to fit the unit with axles and wheels and is of the view that the work being done is construction of a vehicle. For this reason the owner considers the unit does not fall within the definition of a "building" under the Act and, therefore, the work that is subject to the notices to fix is not building work.

1.6 A notice to fix ("the first notice") was issued to the applicants for breach of section 40 on the grounds that the unit is a building and no building consent had been obtained for its construction. After the period given to comply with the first notice expired, the authority issued a second notice to fix ("the second notice") for breach of section 40 and failure to comply with the first notice. The owner is of the view that the unit is not a "building" under section 8, and for that reason considers the authority was incorrect to issue both notices (together "the notices to fix").

1.7 Therefore, the matter to be determined under sections 177(1)(b) and 177(2)(f) is whether the authority was correct to issue the notices to fix for construction of the unit without building consent first being obtained. In deciding this matter I must consider whether the work carried out is "building work" as defined in section 7, which turns on whether the unit is a "building" as defined by section 8.

2. The unit

2.1 The unit was being constructed by the owner on the landowner's property in a residential area in Lower Hutt. I am unsure when the construction began, but I understand that all of the work to date has been carried out by the owner. There is already a dwelling belonging to the landowner on the site. However, it is the unit that is the subject of the notices to fix and, therefore, the subject of this determination.

2.2 The unit is rectangular, and measures 3.2m wide, 8m long and 4.5m high. Once finished, it will incorporate a combined living room and kitchen, and a bathroom with a laundry area, shower, toilet, and hand-basin and vanity unit on the ground floor, and a combined bedroom and office on the mezzanine floor. The mezzanine

floor measures 3.2m wide by 4.85m long and stands approximately 2m above the finished floor level of the ground floor. Access to the mezzanine floor is via a flight of stairs leading from the living area. The end of the mezzanine floor overlooking the living area is to be fitted with a wooden balustrade.

2.3 Work on the unit had halted when the application for this determination was made. At that time the owner advised the external cladding was only partially finished, the roof had no flashings fitted, and the unit was not connected to any services. On the inside, some of the insulation had been fitted, some cables and pipework installed, but the majority of work on the internal fittings or finishing was yet to occur.

2.4 The owner states the chassis has been designed to attach rolling gear, suspension, tanks, lines, batteries, hoses, storage boxes and spares. It is constructed from two steel universal beams, bolted together using four steel box sections. Steel cleats have been welded at 400mm intervals to the tops of the beams. Gussets have also been welded to the beams to add rigidity.

2.5 The unit is sitting on its chassis placed directly on the ground but is not fixed to the ground or any foundation system. The owner says that when the unit is moved to a different site and the suspension dropped, the chassis will be used to stabilise the unit and it is likely that levelling blocks will be used to level the chassis.

2.6 The owner describes the chassis as having a "modular design" that will have height-adjustable suspension added, along with two heavy-duty truck axles with brakes, wheels with low-profile truck tyres and a drawbar to the chassis, and external lights to the unit. The owner has provided sketches of the rolling gear, including its suspension system, and details of the elements intended to form part of this assembly. The owner advises that some of these elements have already been purchased, but none of them have yet been installed, as they would present a hazard during construction. The owner says that, once finished, the unit will be towed to a new destination "as a trailer with leading axle steering" and that it is also designed to be a "self-propelled vehicle".

2.7 The floor of the unit has been formed using floor joists that have been bolted to the cleats at 400mm intervals using coach bolts. Double ring beams are attached to the perimeter of the floor joists. The floor itself has been constructed from oriented strand board, fixed to the joists and ring beams.

2.8 The walls of the unit are timber framed, and are attached to the floor using screws and glue. The exterior of the walls has been covered with a waterproof membrane and clad with structural ply, with a cavity and insulation incorporated. The top half of the external walls is to be clad with cedar shingles. At the time the notices to fix were issued the cladding work was partially complete.

2.9 The unit incorporates windows on all of its elevations, including a large picture window at one end. An external door is set in one side. All of the joinery is aluminium double-glazed.

2.10 The roof is formed by a gable roof with four sets of dormer windows set into it. The owner advises that "a plywood skin ties the roof structure together". I assume the plywood is attached to the roof beams. Roof insulation and roof purlins have been installed on top of the plywood, and roofing iron installed over these. At the time the notices to fix were issued, the unit did not have flashings or guttering. The roof overhangs the walls to create eaves, but the drawings do not show the size of these.

2.11 The owner advises that the unit has been designed for both "on and off grid use", with space provided within the chassis for battery packs and black-water holding tanks. The owner proposes to use a recycled electric car battery for "off-grid power storage" and to power an electric drive installed in the rear of the unit to enable it to be manoeuvred on "tight sections" or moved between sites without the need for towing. Solar panels have been or are partially installed, and the owner proposes a caravan style socket for plugging the unit into mains-supplied electricity and to use LPG gas for heating water and cooking.

2.12 As part of their initial submissions, the owner provided drawings for the unit. The owner subsequently advised that the drawings were used to "investigate [the] consent process" and were not prepared by the owner and without the owner's input. Also, the owner advised that these drawings contain errors, such as, sewer and storm-water connections and a deck that are not proposed.

2.13 The drawings show that storm-water and sewage are to be connected to the existing services on the landowner's land for discharge. However, the owner's subsequent submission states that the unit will be "self-contained" and that "black water" from the toilet and shower will be held in "a holding tank and discharged through a flexible pipe" into an existing in-ground pipe[2] as required, and that there will be no "permanent connections".

2.14 The drawings also showed that, once finished, the unit will rest on the universal beams, and will be fitted with a deck. The wheels, axles and towing or drive apparatus are not shown in the drawings.

3. Background

3.1 On 7 November 2018, the authority visited the landowner's property and inspected the unit. At this visit, the authority formed the opinion that resource consent was required for the unit as a second dwelling on the site, and the matter was also referred to a building controls officer to investigate the legality of the work the authority considers is building work.

3.2 The authority visited the landowner's property again on 3 April 3019 and issued the applicants with the first notice to fix in respect of the unit. The notice stated:

> **PARTICULARS OF CONTRAVENTION OR NON-COMPLIANCE**
>
> I carried out a site visit at the [landowner's property] on 3 April 2019 and found an unconsented standalone two level habitable space with plumbing fixtures.
>
> The building work was carried out without a Building Consent and is therefore in breach of Section 40 of the Building Act 2004.
>
> **REQUIRED REMEDIAL ACTION**
>
> **To remedy the contravention or non-compliance you must:**
>
> 1 – Stop all work immediately.
>
> 2 – Apply for and obtain a Certificate of Acceptance for building work already completed and apply for and obtain a Building Consent for work yet to be completed.

[2] The owner advised that this in-ground pipe will later be used to drain both a spa-pool and waste water from a BBQ / outdoor kitchen area (which will occupy the site after the unit is removed).

Or,

Remove all un-consented building work.

This notice must be complied with by: 3 June 2019 for either action relating to point #2

3.3 At the same time, the authority was conducting a parallel process requiring the landowner to apply for resource consent for the unit[3].

3.4 Correspondence passed between the parties, including a letter dated 7 June 2019 from the authority setting out its position that due to the size and intended use of the unit it was a "building" under the Act. The landowner replied in a letter dated 12 June 2019, and set out the applicants' position that the unit was a vehicle, was "transportable" and would "not be occupied on a permanent basis", and was therefore, with regard to section 8(1)(b)(iii) of the Act, not a building.

3.5 The authority visited the unit again on 15 July 2019.

3.6 Following the expiry of the period given to comply with first notice to fix, on 17 July 2019 the authority issued the applicants with the second notice to fix in respect of the unit. The notice stated:

PARTICULARS OF CONTRAVENTION OR NON-COMPLIANCE

Failure to comply with Notice to Fix dated 3 April 2019.

I carried out a site visit at the [landowner's property] on 3 April 2019 and found an unconsented standalone two level habitable space with plumbing fixtures. A subsequent visit on 15 July has confirmed the building has not been removed and no Building Consent or Certificate of Acceptance has been applied for.

The building work was carried out without a Building Consent and is therefore in breach of Section 40 of the Building Act 2004.

REQUIRED REMEDIAL ACTION

To remedy the contravention or non-compliance you must:

1 – Stop all work immediately.

2 – Apply for and obtain a Certificate of Acceptance for building work already completed and apply for and obtain a Building Consent for work yet to be completed.

Or,

Remove all un-consented building work.

This notice must be complied with by: 26 July 2019 for either action relating to point #2

3.7 On 19 July 2019 the authority issued an infringement notice to the landowner for failure to comply with a notice to fix. I have not seen a copy of this infringement notice, but assume it relates to the first notice to fix.

3.8 The owner and the landowner applied together for a determination and this was received by the Ministry on 14 August 2019.

[3] The authority's subsequent decision to issue an abatement notice was appealed by the landowner and decided by the Environment Court in *Antoun v Hutt City Council* [2020] NZEnvC 6.

4. The submissions

4.1 Over the course of the determination I received a number of submissions from the parties. A detailed summary of the submissions and the correspondence between the parties and the Ministry is set out in Appendix A.

4.2 The owner sets out the view that they are constructing a vehicle (as defined under the Land Transport Act 1998 ("the LTA"), being "a contrivance equipped with wheels…on which it moves or is moved") which, when completed, will be movable and occupied on a temporary basis only. For that reason, the owner says the unit does not come within the definition of a "building" in section 8. In the owner's view the unit is in the nature of a caravan or mobile home.

4.3 In support of this view, the owner submitted (in summary):

- the decision in *Dall v Chief Executive of the Ministry of Business, Innovation and Employment* [2020] NZDC 2612 ("*Dall*") supports the owner's view that a contrivance on wheels is a vehicle for the purpose of the Act
- the unit, when complete, will be a vehicle that is movable and occupied as accommodation but on a temporary basis only
- the unit is comparable with caravans or mobile homes, which are designed to move on roads
- the unit is registered as a trailer/caravan and can be legally towed on public roads (if done so in accordance with the over-dimension requirements in the land transport legislation[4])
- the unit is a chattel because it is "not intended to be tied to the land" and is movable (as opposed to real property which has fixed foundations and is immovable)
- for the unit to be a 'building' under the Act it must be fixed to the ground
- the unit will transport goods, because when it is moved it will contain the owner's personal belongings
- the authority's insistence that the owner obtain a building consent for the unit is a breach of the owner's human right to adequate housing

4.4 The authority's submissions describe the work carried out by the owner and the background to the dispute. They set out the authority's position that it had validly issued the two notices to fix, as the authority considers the unit is a "building" under the Act and, therefore, the construction of the unit was "building work". The authority later submitted that the decision in *Dall* has no impact on this position.

4.5 The authority noted in its submissions the trend of people seeking to avoid the application of the Act by adding wheels to structures and claiming that they are vehicles.

4.6 The landowner has not made a submission. However, I have received a copy of the landowner's letter to the authority dated 12 June 2019, which sets out the landowner's position as to the unit. In the letter the landowner said, "Given [the

[4] An over-dimension (or oversize) vehicle is one that exceeds one or more of the maximum dimensions allowed for standard vehicles and may require a permit. Maximum dimensions for vehicles are set out in the Land Transport Rule: Vehicle dimensions and mass 2016

unit] is both transportable and not occupied on a permanent or long-term basis would mean that, under the current law it is not considered a building".

5. Discussion

5.1 As a preliminary matter, I note the owner hopes to establish a business building tiny houses (as the owner describes them) and part of the purpose in constructing the unit has been to develop a prototype for use in the business. As a result, some of the parties' submissions have discussed the various configurations and features that future units may have, and how the unit has been constructed to allow these adaptations to be made.

5.2 However, it is important to note that determinations are limited to the facts of the particular cases that they relate to, and in making my decision I have restricted my consideration to the unit in question.

The approach taken in this determination

5.3 The matter for determination is whether the authority was correct to issue the notices to fix for construction of the unit without building consent first being obtained.

5.4 For the authority to have correctly issued the notices to fix under the Act, the unit must fall within the definition of "building" under section 8 and not be excluded under section 9[5], and, if it is a building, the work to construct it must not be exempt under Schedule 1 of the Act[6].

5.5 Therefore, I must turn my mind to whether the unit is a building for the purposes of the Act – if the unit is not a building, the Act does not apply and the authority cannot exercise its powers under the Act in relation to the unit.

5.6 The applicants' views are that the unit is a vehicle which is both movable and occupied on a temporary basis only, and so it is not a building according to subsection 8(1)(b)(iii). The authority's view is that the unit is not a vehicle, but rather is a movable structure that falls within the definition of a building in section 8(1)(a). However, if it is a vehicle, the authority contends that it would still be a building for the purposes of the Act as it is both immovable and permanently occupied under section 8(1)(b)(iii).

5.7 The Court of Appeal, the High Court, the District Courts and previous determinations have considered whether or not various structures with vehicular characteristics are buildings for the purposes of the Act.

What is a building under the Act?

5.8 Section 8 defines what a building means and includes in the Act.

> **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] Section 9 Building: what it does not include
[6] Schedule 1 Building work for which building consent not required

> (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; …

5.9 Section 9 defines what the term building does not include.

The Court of Appeal approach for applying sections 8 & 9

5.10 The Court of Appeal in *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* [2010] NZCA 663 ("*TCDC v Te Puru*") provides the correct way to apply sections 8 and 9. More precisely, that case provides a decision process that must be followed when determining whether a particular structure or unit is a building for the purposes of the Act or, otherwise, a vehicle which is not a building under section 8(1)(b)(iii) (and, thus, not subject to the Act).[7]

5.11 Applying the decision process in *TCDC v Te Puru*, the first matter that must be considered is whether the unit is a "vehicle or a motor vehicle" (the "first limb"). If it is, then it is necessary to consider whether it is "immovable" and "occupied by people on a permanent or long-term basis" (together, the "second limb"). The unit must satisfy both criteria in the second limb, in order for the second limb to be met.

5.12 If the unit meets both limbs, it is a building for the purposes of the Act. If it meets the first limb, but not the second (i.e. because the unit meets only one or neither of the criteria in the second limb), it is not a building.

5.13 If the unit does not meet the first limb (i.e. it is not a vehicle or motor vehicle), then section 8(1)(b)(iii) is to be put aside, and I must then consider whether the unit comes within the general definition of building in section 8(1)(a).

Is the unit a vehicle?

5.14 Neither "vehicle" nor "motor vehicle" are defined terms in the Act; that being so it is appropriate to consider their natural and ordinary meaning:[8]

> vehicle –
>
> A conveyance, a form of transport.
>
> a. A general term for: anything by means of which people or goods may be conveyed, carried, or transported; a receptacle in which something is or may be placed in order to be moved.
>
> b. Specifically a means of conveyance or transport on land, having wheels, runners, or the like; a car, cart, truck, carriage, sledge, etc.
>
> motor vehicle –
>
> A road vehicle powered by an engine (usually an internal combustion engine).

5.15 In addition, the Act explicitly includes the definitions of "vehicle" and "motor vehicle'" as they appear in the LTA:[9]

> vehicle—
>
> (a) means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; …

[7] *TCDC v Te Puru* at [22].
[8] *Oxford English Dictionary Online*. Third Edition, June 2017; latest version published online March 2021.
[9] See LTA, section 2(1).

> motor vehicle—
>
> (a) means a vehicle drawn or propelled by mechanical power; and
>
> (b) includes a trailer; …

5.16 I note that the District Court in *Dall* held that my interpretation of the term "vehicle" in Determination 2019/017 was incorrect by "preferring the Oxford definitions over the LTA definitions."[10] The judge in that case went on to say that the term "includes" in section 8(1)(b)(iii) "does not authorise excluding [the LTA definitions] entirely or replacing that definition with a definition from the Oxford dictionary."[11] The effect of this decision is that, if a unit comes within the LTA definitions, then it must be considered a vehicle or motor vehicle for the purposes of the Act.[12] In light of this decision, I must apply section 8(1)(b)(iii) in a way which differs to that in the first draft[13] of this determination.

5.17 I turn now to the question of whether the unit is a "vehicle" under section 8(1)(b)(iii).

5.18 If I were to consider the unit as it presented when the authority issued the notices to fix, I would conclude that the unit is not a vehicle for the purposes of the Act. The unit would not come within the natural and ordinary sense of the terms "vehicle" and "motor vehicle" because, when the authority issued the notices to fix, the unit could not be used to transport people or goods and it was not powered by an engine (whether internal combustion or otherwise).

5.19 Neither would the unit meet the definition of vehicle or motor vehicle in the LTA. To be a vehicle under the LTA, the unit must be a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved. When the authority issued the notices to fix, the unit could not move or be moved on wheels, tracks, or revolving runners. Therefore, the unit as it presented is not a vehicle as defined in the LTA. As a consequence, because motor vehicles are a subset of vehicles in the LTA, the unit as it presented cannot be a motor vehicle under that legislation.

5.20 The owner submits, however, that the unit is a vehicle under construction. The owner says that axles, wheels, suspension and a drawbar will be added to the unit, as well as lights and other parts 'that will enable it to be legally towed on a road'. The owner says these parts will be added at a later stage in the unit's construction. The owner also says that the unit will be fitted with "some form of combustion or self-propulsion" system that will enable it to be moved independently, without the need to be towed.

5.21 This gives rise to the following question. Can the unit be considered to be a vehicle for the purposes of section 8(1)(b)(iii) on the basis of how it might present in the future, and, if so, what approach should be taken when undertaking such an assessment?

5.22 I accept that vehicles will have periods of time when they are not capable of moving on their wheels or the like (for example, during construction or manufacture, and

[10] *Dall* at [28].
[11] *Dall* at [30].
[12] In *Bilsborough* at [64] to [68] the court applied the same methodology as that used in *Dall* to resolve the issue of whether a unit was a building or a vehicle.
[13] Provided to the parties on 16 December 2019.

during periods of maintenance and repairs). I do not consider the construction or manufacture of a vehicle would be considered building work under the Act.

5.23 However, for me to be satisfied that the unit in this case is a vehicle for the purposes of section 8(1)(b)(iii), I am of the view that it must be reasonable to expect that the unit will become a vehicle according to either the LTA or the ordinary meaning of that term. To this end, I need to be satisfied that it is probable (i.e. more likely than not) that the unit will become a vehicle. I will undertake this assessment by considering the owner's stated intentions (as to the future state of the unit) and the circumstances in this case more broadly.

5.24 The owner says that, prior to the involvement of the authority, the construction of the unit was "largely built on the fly without plans", and that drawings were only drafted to assist the applicants in their discussions with the authority.

5.25 The owner says that the partially constructed unit was intended from the outset to be a vehicle. The owner says they have acquired front and rear axles for the unit, and that airbags will be used for suspension. The owner says that the:

> …axles and suspension have not been fitted to the chassis yet because of their locations they would be a trip hazard and directly affect the ease of construction as they would be in the work area. It was determined they would be fitted when the exterior was completed along with the drawbar.

5.26 The owner asserts that the unit is registered as a trailer/caravan under land transport legislation. As discussed in previous determinations,[14] registration may be one factor of many to consider when deciding whether something is a vehicle but it is not determinative in of itself. I also note the comments made by the Environment Court in *Antoun v Hutt City Council* [2020] NZEnvC 6 ("*Antoun v HCC")* regarding the purported registration of the unit in question:

> [34] The process whereby a tiny house, two completely separate axles and two wheels, all unconnected to each other, can be registered as a trailer is a mystery to me, but I was advised by Mr Milne[15] that it is possible to register something before it is finished. Accepting that Mr Milne's knowledge on these matters is superior to my own, I record that the fact of registration fails to convince me by a considerable margin that the tiny house may become a trailer by way of future intention. **Indeed, I do not accept that the tiny house itself is actually registered as a trailer at all, notwithstanding Mr Voss's contention in that regard. The information that he said that he provided to effect registration appears to relate to the axles rather than the tiny house.** I accept that he has apparently succeeded in registering as a trailer two separate axles disconnected to wheels or any other discernible form of trailer componentry.
>
> [my emphasis added]

5.27 I have received photos of one axle with wheels and another without wheels, and the owner has provided information about his work experience, including working as a fabricator and on the construction of trailers and tankers. However, the owner has not provided me with sufficient evidence to be satisfied that he is appropriately qualified or experienced to provide assurances about the feasibility of using these components in the manner the owner intends; nor has he provided an opinion from

[14] See for example Determination 2016/019 at paragraph 4.3.4.
[15] Representing the appellant.

an appropriately qualified expert in this regard. This matter was also canvassed by the Environment Court in *Antoun v HCC*.[16]

5.28 There are also a number of other components required to construct the trailer system that are yet to be fabricated or purchased by the owner (e.g. the drawbar and other specialised parts such as those required to connect the axles to the chassis).

5.29 The owner describes the unit as having a "modular design chassis [that] can be configured as desired, including as a trailer with leading axle steering or as self-propelled [17] vehicle". The owner says the unit is designed to be "placed permanently with no road gear if so desired by an end user". The unit can sit on pre-levelled ground on its "chassis" (as appears to be the case when the notices to fix were issued). I understand from this that the unit could be put to use as portable accommodation without ever becoming a vehicle.

5.30 It is also possible that the unit could be transported from site to site – not as a vehicle – but as a load on the back of a hiab truck and trailer unit[18].

5.31 Further to this, the owner has not indicated the length of time it will take to make the unit into a vehicle, other than asserting that the "rolling gear will be installed once the exterior has been completed and sealed".

5.32 The owner submits:

> …there is no legislation or act (sic) that states I am required to fabricate a vehicle in any specified order… When to install components is at the fabricator's discretion.

5.33 While it may be for the owner to decide when to install certain components, the owner's statement that the rolling gear will be installed at some ambiguous time in the future creates significant doubt whether this will actually happen. Further, the owner has not provided anything (other than his own assertions) to suggest he has the knowledge and experience to fabricate a unit that can or will function as a vehicle.

5.34 Therefore, while it might be possible for the unit to be fashioned into a vehicle – for example, by attaching axles and wheels to the unit upon which it is able to move or be moved – I am not satisfied that this is probable (i.e. more likely than not). That being so, I find that the unit is not a vehicle for the purposes of section 8(1)(b)(iii).

What if the unit becomes a vehicle?

5.35 Having determined that the unit is not a vehicle for the purposes of section 8(1)(b)(iii) I would ordinarily go on to consider whether the unit comes within the general definition of building in section 8(1)(a).

5.36 However, as I cannot rule out the possibility that the owner will achieve their stated intention to fashion the unit into a vehicle, I am of the view that it is appropriate in this case to comment on the criteria in section 8(1)(b)(iii) and how they might apply in the circumstances (i.e. whether the unit is immovable and occupied on a permanent or long-term basis).

[16] *Antoun v HCC* at [36].

[17] I understand that the self-propulsion system has not yet been designed or developed and, accordingly, I do not consider that weight can be placed on this at this stage. I note also the owner says self-propulsion "is not applicable at the current location due to the high potential for large oil leaks in the hydraulic systems while commissioning, bleeding air from the lines, pumps, rams, tanks, control valves, filters, aux systems, etc."

[18] A hiab truck and trailer unit consists of a truck mounted with a crane, which is used for the loading and unloading of freight, and a trailer, on which freight is loaded and transported.

5.37 I offer comment merely to indicate to the parties as to how section 8(1)(b)(iii) might apply should the unit be completed in the manner described by the owner (i.e. should the unit become a vehicle).

5.38 If only one or neither of the criteria in section 8(1)(b)(iii) are satisfied then the unit would not be a building for the purposes of section 8 and, as such, the unit would not be subject to regulation under the Act. However, if both criteria are satisfied the unit would be a building under section 8(1)(b)(iii) and, as such, it would be subject to the Act.

Is the unit immovable?

5.39 The question of what would constitute an "immovable" vehicle for the purposes of section 8(1)(b)(iii) was discussed by the High Court in *Te Puru Holiday Park Ltd v Thames Coromandel District Council* CRI-2008-419-000025 ("*Te Puru v TCDC*"), where the judge stated:

> [17]…I consider that Parliament has used the description "immovable" to refer to something that **cannot readily be moved**. In this sense, **the movable character of an item is a question of degree**. Many structures that would ordinarily be regarded as permanent structures affixed to the land on which they are sited will also be capable of being moved. Many conventional houses, which no one would dispute are buildings, are capable of being moved to different sites. I do not consider, therefore, that when Parliament used the word immovable in s 8(1)(b)(iii), it meant to refer only to structures that were almost, if not impossible to move. It follows that derelict vehicles will meet the definition of a vehicle that is immovable. Should such vehicles come into permanent use by people for occupation, they will then qualify under s 8(1)(b)(iii).
>
> [my emphasis added]

5.40 More recently, the District Court in *Dall* considered what was meant by the term "immovable vehicle":

> [37] The term "immovable vehicle" appears to be a contradiction in terms. If something is a vehicle, it must necessarily be movable. Accordingly, I am of the view that, in this context, the term "immovable" must not be strictly interpreted as "incapable of being moved". Such an interpretation would render the word "immovable" meaningless.

5.41 The court in *Dall* acknowledged that in New Zealand it is commonplace for even quite large and multi-storey buildings, to be moved or relocated from one site to another; and that "almost every building or structure is capable of being moved in some way". It concluded that:

> [39] Whether a structure is "immovable" in terms of s 8(1)(b)(iii) is therefore a matter of degree and will require consideration of, for example, the design, functional characteristics, and purpose of the structure. Ultimately, each case will turn on its own facts.

5.42 Therefore, just because a vehicle is capable of being moved, does not mean that it cannot be "immovable" for the purposes of the Act. Put another way, to be considered not immovable, something more is required than simply the ability to be moved.

5.43 Assessing the movable character of the unit is far from straightforward, particularly as it is under construction. The assessment is "a matter of degree" which requires weighing up all the relevant factors. In *Dall*, the design, functional characteristics, and purpose of the unit, were all given as examples of factors that can be considered.

These are not an exhaustive list so I can, therefore, take into account any other factors I consider relevant in this case.

5.44 The court in *Dall* gave the following reasons for forming its view that the unit in that case was not immovable:

- it possessed "wheels, a chassis, axles, brakes, lights, a drawbar and a trailer hitch"
- its design enabled it to be "attached to a vehicle and moved or relocated with relative ease"
- it had a "valid registration and warrant of fitness"
- it was "incapable of being fixed to the ground" and "incapable of being removed from its trailer"
- it was "self-contained in terms of all services…"
- there was evidence that the unit has "previously been moved and relocated…" and that although it was "not regularly moved from site to site, its design and purpose enabled relocation with relative ease"
- it was "indistinguishable in any way from a caravan", and in particular, like a caravan was:
    - was "designed to be towed by another vehicle"
    - provided "the sort of living accommodation one might expect of a caravan"
    - "was capable of simply being parked and remaining attached to its towing vehicle", or "capable of being detached from that vehicle" and "supported by some form of props or foundation".

5.45 A factor that the court in *Dall* did not consider relevant to the unit's movability was that, due to its particular dimensions, it had to comply with certain road safety requirements when it was moved.

5.46 Based on the factors in paragraph 5.44, the court in *Dall* concluded that the unit was "not immovable". However, the court stated that its finding would have been different if the unit had been "designed so that it could be moved off the wheels and fixed to the land".

5.47 The District Court in *Marlborough District Council v Bilsborough* [2020] NZDC 9962 ("*Bilsborough*") has also considered whether a structure was "immovable" under section 8(1)(b)(iii). In finding that the structure in question was immovable, the judge noted that its characteristics "quite clearly distinguish it from the unit in *Dall* for the following reasons:[19]

- "…the units have no suspension, shocks, springs, brakes, brake lights, turn signals, or number plates"
- "The units are not designed or intended to be towed any distance on a public road, and the units are required to be transported to the property by way of hiab truck and trailer, rather being towed"
- "…the axles, wheels and tow bars were more likely provided for the purposes of repositioning the structure on site", than for the relocation of the units

[19] *Bilsborough* at [67].

- "The units have no warrant of fitness, or certificate of fitness"
- "The drawbars have been removed, and would need to be reinstated if the units are to be towed"
- The units require "stabilisation on timber blocks", unlike the structure in *Dall* "which rested on wheels alone"
- "The units have been joined via a walkway which is bolted to one unit and riveted to the other, and would need to be deconstructed if the units were to be moved"
- "The units' superstructures are comparable to that of a building, and are not designed to transport goods or people"
- "…the units are not self-contained in terms of the services", with the kitchen and bathroom plumbing fittings needing to be "connected to the [council's] drainage and sewage system."

5.48 A number of previous determinations have discussed whether or not structures that are vehicles for the purposes of section 8(1)(b)(iii) are immovable.[20] In doing so, each of these determinations discuss factors considered relevant to their particular assessment whether the unit or units in their case was or were immovable. I note that I am not required to follow previous determinations, unlike a court which is bound by the decisions of a higher court in some circumstances.

5.49 I now consider whether the unit in question is "immovable". My starting point is the statement by the High Court in *Te Puru v TCDC*, "that Parliament has used the description 'immovable' to refer to something that **cannot readily be moved**" [my emphasis added]. Below I discuss each factor which I consider relevant to my assessment whether the unit can or cannot readily be moved. In doing so, I find it appropriate to compare the unit as designed with the design and functional characteristics of caravans, particularly those features that provide for them to be moved by towing. As I understand that the propulsion system for the unit has not yet been designed/developed and the owner says it will not be installed at the current location, I consider that it is not appropriate to compare the unit as designed with motor homes and any other forms of self-propelled accommodation.

5.50 Caravans are designed to readily be moved by towing; they are suitable for most towing situations with minimal effort. They are made of lightweight materials and have aerodynamic features in their design. Caravans typically contain specialist furnishings and appliances which are built-in or permanently installed inside; this removes the need to secure these items before a caravan is towed. Caravans are designed to be used self-contained, although, many also have fittings to connect them to services (most commonly, mains electricity). When *in situ*, most caravans make use of stabilizing legs which work in conjunction with their wheels. In some instances these legs are affixed to the caravan and are retractable. Caravans can have an un-laden weight from about 800 kilograms, with heavier caravans being around 3000 kilograms. They can be towed by a wide range of motor vehicles (e.g. cars and utes) as long as the towing vehicle has sufficient towing capacity. They are capable of making frequent journeys and of travelling long distances. They typically have brakes (such as service, breakaway and/or parking brakes), lights (such as

[20] Determinations 2006/072; 2013/055; 2014/025; 2015/044; 2015/067.

brake and indicator lights), and suspension systems. They are designed to be towable on public roads at or near the speed of other road traffic and must be registered, licenced and warranted under the land transport legislation for such use.

5.51 Like a caravan, the unit is intended to have a chassis, axles and wheels, and be towed. And like a caravan it has been designed to be used for accommodation. However, if the unit is to be constructed as intended it would have significantly less towing capability than a caravan. It appears to be significantly heavier than the heaviest of caravans, and would need to be towed by a specialised towing vehicle such as a tractor or truck. The unit does not appear to be fabricated using contemporary caravan manufacturing methods or materials which, among other things, provides caravans with the capability to be regularly towed on the road. I note that the unit, as intended, shares some features commonly associated with caravans, including a suspension system, brakes and lights. However, while the owner intends to install these features, it is unclear whether they are fit-for-purpose (e.g., whether the suspension system would adequately absorb undulations in towing surfaces). The owner has not provided any information about the durability of the unit under towing conditions. In the absence of this information I am not satisfied that the unit is designed to withstand forces under tow in the manner akin to a caravan.

5.52 Further, unlike caravans, the unit is not designed in a manner which would allow for it to be legally used as a trailer on public roads, despite the owner's assertion otherwise. While the owner says that the unit is registered on the motor vehicle register, I note that the Environment Court in *Antoun v HCC* did not accept this (refer paragraph 5.26), and it appears that the unit is not licenced for use on public roads. Even if the owner is able to licence the unit, they would not be able to obtain a warrant of fitness or certificate of fitness for the unit because it exceeds the maximum dimensions for a trailer under land transport legislation.[21] There appear to be no defences or exemptions available under land transport legislation which would permit the unit – with no vehicle licence or a warrant of fitness or certificate of fitness – to be towed on a public road.[22] While I accept that the unit – in a strictly mechanical sense – is no less movable simply for the fact that it is subject to certain road transport requirements, I am of the view these requirements significantly limit the towing uses it could be put to and that I can take this into account when assessing whether the unit is immovable.

5.53 Also, while it may be mechanically possible for the unit as designed to be towed on public roads, it is wider that most vehicle lanes and would travel at a speed significantly slower than most road traffic. In simple terms, it is not designed in a manner for it to be towed any distance on a public road.

5.54 It is clear from guidance[23] published by Waka Kotahi NZ Transport Agency, the only way for the unit to legally be on a public road is atop another vehicle (e.g., on a truck and trailer unit) transported as a secured over-dimension load.

5.55 For the reasons above, I am of the view that the towing capability of the unit is very limited, particularly when compared with that of caravans. While the unit's design

[21] For example, under the Land Transport Rule: Vehicle Dimensions and Mass 2016 the maximum legal width of a trailer is 2.55m; the unit which is the subject of this determination is 3.2m wide.
[22] For example, there does not appear to be any way for the unit to be legally towed on public roads under land transport legislation either as a permitted over-dimension trailer or as a specialist over-dimension trailer.
[23] https://www.nzta.govt.nz/vehicles/vehicle-types/vehicle-classes-and-standards/vehicle-dimensions-and-mass/tiny-homes/

and functional characteristics might provide for it to be towed a very short distance and manoeuvred into position, it is inadequate for any other towing uses (e.g., the re-location of the unit from one place to another). It is evident to me that were the unit to be constructed as designed, it would not be capable of being towed other than to a very limited extent.

5.56 At this point I would be satisfied that the unit is immovable. There are, however, other factors which also lead me to the same view.

5.57 Firstly, should the unit be constructed as designed, quite some further effort and time would be required to get it ready for towing. I note that an article reported the owner as saying that the unit would be able to be moved off the site "in about a day" once its wheels are affixed.[24]

5.58 I haven't been provided with information on the owner's intention to construct furnishings or fit out the unit in a manner consistent with the likes of a caravan. I note that it would be necessary to remove or, if possible, secure loose items before moving the unit.

5.59 The unit also appears to be hemmed-in on the landowner's property, making roads inaccessible or very difficult to access. The photos provided by the authority show the unit located behind the landowner's dwelling and surrounded on three sides by boundary fences. This prevents, or significantly hinders, the ability of the unit to be towed offsite. I note the observations of the Environment Court in *Antoun v HCC* at paragraph [50] that the:

> …only obvious way to get the [unit] onto a road is by use of crane and/or trailer (and again I do not accept that it is able to do so by trailer in the manner proposed by Mr Voss) through the neighbouring school property. Not only has the school not given permission to do so it was not approached regarding the possibility of doing so until August 2019 some 20 months or so after construction of the [unit] commenced, after the abatement notice was issued [under the Resource Management Act 1991] and after this appeal had been set down for hearing. No credible evidence was produced at all as to any serious attention being given to or inquiry made as to the legal or physical feasibility of transporting the [unit] from the property prior to its construction commencing.

5.60 These factors above and the information provided to date suggest to me that, were the unit completed according to the stated intentions of the owner, it would not be readily movable and, as such, as a matter of fact and degree the unit would be considered immovable for the purposes of section 8(1)(b)(iii).

Occupation on a permanent or long term basis

5.61 Having commented on whether the unit would be considered immovable, I now comment on whether it would be considered to be occupied by people on a permanent or long-term basis, should it become a vehicle.

5.62 The District Court in *Dall* stated that "whether a structure is occupied by people on a permanent or long term basis will depend on the facts of each individual case". It did not discuss what was meant by that criterion as it had already decided that the structure was movable.

5.63 The District Court in *Bilsborough* found that the units in that case were "being used as an abode intended to be occupied on a permanent or long-term basis, with one

[24] *Tiny home dream under threat in battle over what constitutes a vehicle*, Ruby Macandrew, August 30 2019, Stuff website.

containing sleeping facilities, and the other containing bathroom and kitchen facilities".

5.64 Determination 2006/072 considered the question of what was meant by "permanent and long-term occupation" in some length, but stressed that each case will depend on its particular circumstances; what will be considered "permanent or long term" in some contexts may not be in another. The determination concluded that:

> 4.6.11 I accept counsel's submission that "permanent . . . contemplates an indefinite period". However, I note that the *Concise Oxford Dictionary* defines "indefinite" as "**1** vague, undefined. **2** unlimited" and "indefinitely" as "**1** for an unlimited time"**.** Accordingly, I take the view that a unit is occupied on a permanent basis if there is no definite requirement or intention as to the length of occupancy, so that in the event it might be for many years or it might be for a much shorter time. That is the case, for example, with most family houses.
>
> 4.6.12 I also accept the submission that "long-term" is something less than "permanent", and take the view that "long-term" applies when the intended period of occupancy is known and can properly be regarded as "long". However, I repeat that the decision must be considered in context and do not accept that it must always "be treated as spanning a number of years, rather than months".
>
> 4.6.13 In other words, as currently advised, I take the view that:
>
> (a) Permanent occupancy is when there is an intention that the occupancy will be for an indefinite period, which could in the event be comparatively short.
>
> (b) Long-term occupancy is when the occupancy will be for a definite period that can properly be described as "long" in the particular circumstances

5.65 The applicants say that the owner intends to use the unit as accommodation in the future. The owner submits that the unit is "in no way…intended to be a permanent or long-term dwelling" and that it will be used as temporary accommodation and that the owner will spend a large amount of time away, meaning that the unit will only be occupied "at most a week out of every month". However, the owner contradicts that statement where the owner submits that the "[authority] is effectively making me homeless…"; this suggests that the owner intends to live in the unit on a permanent or long term basis.

5.66 The authority submits that the unit is, for the purposes of section 8(1)(b)(iii), occupied on a permanent or long term basis. In support of this submission the authority notes that the landowner has advised that the idea of the project was for the owner to have a place to "live in dignity" and that this statement suggests a permanency to the owner's residency.

5.67 Should the unit become a vehicle, it may be necessary to determine whether it is occupied (or is intended[25] to be occupied) on a permanent or long-term basis. Should that situation arise, it would be useful to consider whether the unit is designed in a manner for it to be lived in on a permanent or long term basis, the evidence of its occupation and use to date, and whether the period of occupation is for a definite or indefinite period.

[25] I use the term 'intended' more broadly than simply the stated intention of the owner; I am of the view that it is appropriate to ascertain intention from the surrounding circumstances in this case.

5.68 As I have already found that the unit is not a vehicle (see paragraph 5.34), the comments above are merely to guide the parties as to the assessment that may be required should the unit become a vehicle for the purposes of section 8(1)(b)(iii). I note, however, the comments suggest the unit – were it to become a vehicle – may well be a building by way of section 8(1)(b)(iii).

General definition of building

5.69 As the unit is not a vehicle for the purposes of section 8(1)(b)(iii), I now consider whether the unit comes within the general definition of "building" in section 8(1)(a). In this section "building" means:

> …a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels);

5.70 Previous determinations[26] have considered the meaning of "structure" as it appears in section 8(1)(a). In particular, determination 2016/002 states:

> 4.2.4 "Structure" is not defined in the Act and must be taken to have its usual or ordinary meaning: 'A building or other object constructed from several parts'[27], 'Something constructed or having organization – a building, an edifice'[28], and further 'Any framework or fabric of assembled material parts; a (typically large) man-made construction'[29].
>
> 4.2.5 For something to be a "structure" for the purposes of the Act, it must have some elements or constituent parts and/or be of some complexity. This is consistent with the content of sections 8 and 9 of the Act. The items included in the definition of "building" in section 8 or expressly excluded from the definition of "building" in section 9 are all objects composed of different parts and/or of some complexity.

5.71 In my view, the unit consists of a number of elements and is of sufficient complexity to be a "structure", and therefore it is a "building" by way of section 8(1)(a). Further, I note that the unit is not excluded from being a building by way of section 9.

5.72 The owner submits that for the unit to be a building it must be fixed to the ground, and that this aligns with the definition of "structure" in the Resource Management Act 1991 which provides "any building, equipment, device, or other facility made by people **and which is fixed to land**…" [my emphasis added].

5.73 The argument that a building must be fixed to the ground was rejected by the District Court in *Christchurch City Council v Smith Crane & Construction Ltd* CIV-2009-009-12480, 19 February 2010 ("*CCC v Smith Crane*").[30] As in that case, it is not open to me to add words that are not in the relevant section. Further, as in *CCC v Smith Crane*, the approach proposed by the owner would "give rise to significant policy consequences, particularly in relation to the purpose of section 3 and the principles [in section 4] that are to be applied when performing functions or duties or exercising powers under the Act"[31]. On this basis I do not accept the owner's argument that for the unit to be a building it must be fixed to the ground.

[26] Determinations 2016/002 and 2019/018.
[27] "Structure", n: *Oxford Dictionary*. Web Oct. 2015.
[28] "Structure", n: *Oxford English Dictionary*. Web. 25 Oct. 2015.
[29] "Structure", n: *Oxford English Dictionary*. Web. 25 Oct. 2015.
[30] At paragraphs [25] to [27].
[31] *CCC v Smith Crane*, paragraph [27].

5.74 From the information provided, it appears that the work on the unit carried out to date does not fall within any of the exempted work provided for in Schedule 1 of the Act. As the unit is a "building" for the purposes of the Act, the work carried out to construct the unit is "building work" for which building consent was required.

The notices to fix

5.75 Having found that the unit is a building (and the construction of the unit is building work), the next matter I must consider is whether the reason given by the authority for issuing the notices to fix is correct.

5.76 Section 164 of the Act provides the authority with the power 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.

5.77 Section 163 defines a "specified person" to whom a notice to fix 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.

5.78 The contravention that the authority issued the first notice to fix for is carrying out building work without building consent first being obtained when consent was required under section 40. This notice to fix required the applicants to "stop all work immediately" and, by 3 June 2019, either "apply for and obtain a certificate of acceptance for building work already completed and apply for and obtain a building consent for work yet to be completed" or "remove all un-consented building work".

5.79 An inspection by the authority on 15 July 2019 confirmed that the unit had not been removed and no building consent or certificate of acceptance had been applied for with respect to the unit. Following that inspection, the authority issued the second notice to fix with respect to building work on the unit.

5.80 On the basis of my findings that the unit is a "building" and the work carried out on the unit to date is "building work" that required building consent (see paragraphs 5.34, 5.71 and 5.74), I conclude that the reason for issuing the notices to fix – for carrying out building work without first obtaining building consent – is correct.

5.81 The notices to fix were issued to both the owner and the landowner. I assume this was done on the authority's presumption that the landowner is the owner of the unit. The owner submits, however, that the landowner has no ownership of the unit – if that is the case then the landowner does not meet the definition of a "specified person" under section 163. It is for the parties to this determination to clarify who owns the unit in order to identify who is legally responsible for the unit under the Act.

Other matters

5.82 In their submission, the owner discusses the status of the unit as chattel, as opposed to real property. As I understand the owner's submission, the terms the owner refers to are derived from common law concepts of property law. I note that the Act does not make use of the concepts of "chattel" and "real estate". While these terms may be relevant for identifying who is legally responsible for the unit, they do not determine whether the unit is subject to regulation under the Act.

5.83 In their submission, the owner has also referred to human rights law and claimed that the authority's insistence that he obtain a building consent is a breach of the owner's human right to adequate housing. It is not, however, within the scope of the Act for me to determine whether the authority has breached any obligations it may have to the owner with respect to the right to adequate housing under human rights law. I note, however, that human rights law recognises that few rights are absolute and reasonable limits may be placed on most rights and freedoms. Also, I note that the Act contributes to upholding New Zealanders' rights to adequate housing by ensuring that dwellings (and other buildings) are safe, functional and fit for their intended purpose.

5.84 The authority has raised concerns in its submissions about the current trend of people seeking to avoid the application of the Act by adding wheels to structures and claiming they are vehicles. I note that every case must be considered on its own facts; some of these structures may be vehicles and if not immovable or occupied on a permanent or long-term basis will not be regulated by the Act.

6. Decision

6.1 In accordance with section 188 of the Act, I confirm the authority was correct to issue the notices to fix for building work carried out without building consent on the basis that the work carried out to construct the unit is building work and, as such, required building consent under section 40 of the Act.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 30 September 2021.

Katie Gordon
National Manager, Determinations

Appendix A: – Submissions

A.1 The application and initial submissions

Applicants 14/08/2019	**Ministry received application for determination, covering letter, and submissions.**
	In their application, the owner and landowner ask the Ministry to "determine whether the [unit] when completed is a vehicle or a building, and is exempt from the [Building Act 2004]. To remove the notice to fix and any penalties".
	The owner contends they are constructing a vehicle (as defined under the Land Transport Act 1998 (the LTA), being "a contrivance equipped with wheels…on which it moves or is moved") and when completed will be movable and occupied on a temporary basis only. For that reason, the owner says the unit does not come within the definition of a "building" in section 8. In the owner's view the unit is in the nature of a caravan or mobile home.
	The owner describes the work being carried out, both existing and what is planned. The applicants explain the reasons for opting to construct a "tiny house" as being to provide the owner with temporary accommodation and to be a prototype for a future business which the owner hopes to establish, building tiny houses for others. For the latter reason, the applicants state the unit has been designed and constructed to be affordable, easy to move, self-sufficient, environmentally friendly, low maintenance, and to be an alternative to renting or buying a house. The size of the unit was designed to ensure it could be moved as "an over-dimension vehicle" without the need for a permit.
	The owner also explains that the unit will only be used as temporary accommodation (for approximately one week per month) with shower and cooking facilities while the main house on the landowner's dwelling is being renovated (work which the owner is undertaking), and that it will be moved off site when all projects have been completed.
	The owner set out the background to the dispute with the authority, and confirmed that drawings had been prepared by a third party when considering the option of applying for a building consent and resource consent. The owner had also carried out research, and sought advice from the authority and Ministry about the legal requirements for "tiny houses".
	The other main points from the owner's submission are: • The authority has relied on determination 2016/011 for its opinion that the unit is not a vehicle, but the owner's unit is different from the shepherds' huts considered in that case, because once finished it will have "every feature required of a vehicle" and is "not something modified to have wheels". The owner submitted that the unit is not comparable to those huts and is closer aligned with caravans or mobile homes, which are designed to move on roads. • Once finished, the unit will be "powered or drawn by some form of combustion or self-propulsion"; the self-propulsion system will be developed by the owner. The unit, like a mobile home, is a vehicle as defined in the LTA; the unit will carry the owner's property, which constitutes goods. • The authority claims the unit is too big to be a vehicle, but determination 2014/025 says that just because a vehicle cannot be legally towed on a road does not make it immovable for the purposes of the Building Act 2004. The owner's unit is an over-dimension vehicle, but does not require a special permit, although it may require a pilot vehicle. It is currently registered as a "trailer/caravan". There is nothing in the Act that refers to the "size or intended use" of a vehicle in determining its status under the Act. • The owner also considers that "a structure is something of a substantial size which is built up from component parts and intended to remain permanently on a permanent foundation" , and that once installed it would normally remain *in situ* or that removal would amount to pulling it down or taking it to pieces. The owner is of the view that the unit "can never [be] of substantial size because it is designed to be conveyed on a public highway" and that it is designed to be mobile and "removed at a moment's notice" (i.e. removed in one piece). • The fact that the unit is being constructed on site and does not yet have its axles and towing

Applicants 14/08/2019 (continued)	gear fitted does not mean it is not a vehicle. Determination 2015/044 established that it is the nature of the finished unit that determines whether or not it is a building, and that just because a unit is being constructed on site does not mean it won't be capable of being moved once finished. • The unit is not a structure but rather a chattel, as that term is defined in common law, as it is "not intended to be tied to the land but freely disposed of at any time", and it is movable, as opposed to real estate which has fixed foundations and is immovable. The unit is not, nor is it intended, to be connected or fixed to or have any permanent connects to the ground or land in anyway. In this respect the owner also considers the Building Act 2004 is in alignment with the Resource Management Act 1991 (the RMA). • The owner does not seek to have the unit titled to the landowner's lot, nor to seek any additional consent or permit to remove the unit, which the owner considers is illogical and an unnecessary cost for moving a vehicle to another site. • There is a difference between something that is "movable" versus something that is "mobile", and that this principle underpins the definition in the Act that provides for structures to be "movable". • The unit is currently immobile (because it is not finished) and is not occupied; it does not, therefore, fall within the definition of a building. A vehicle has to be both permanently occupied and immovable to fall within the definition of building under the Building Act 2004, and it will never satisfy both criteria. • The authority's insistence that the unit is a building is against the owner's human rights. Every New Zealander has the right to an adequate standard of living, including a right to adequate housing. The owner also raised concerns regarding disclosing his intended future use of the unit to either the authority or the Ministry. • If the unit was a building, section 40 of the Building Act 2004 would not be the correct provision to apply. Instead, section 44 should apply and the unit "remain as an unconsented building".
	With their submission, the owner provided copies of: • plans for the unit • photographs of the unit and the work • first and second notice to fix • third-party commentaries on the International Bill of Human Rights, and legal matters relating to tiny houses • *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* [2010] NZCA 663 ("*TCDC v Te Puru*") and a third-party commentary on the case • NZ Transport Agency Factsheet 53a which explains the land transport rules for over-dimension vehicles and loads • an extract from the authority's website relating to a proposed district plan change.
Ministry 22/08/2019	**The application for determination was accepted by the Ministry.**
Authority 17/09/2019	**Authority acknowledged receipt of the application and provided submissions.**
	The Authority's submission describes the work carried out by the owner and the background to the dispute. It sets out the authority's position that it had validly issued the notices to fix, as the authority considers the unit is a building under the Building Act 2004 and, therefore, the construction of the unit was building work.
	The submission then goes on to consider the Court of Appeal's decision in *TCDC v Te Puru*, as well as determinations 2016/011, 2016/019, 2017/058, 2018/025 and 2019/017 in relation to the issue of whether the unit is a vehicle for the purposes of the Act. On this point, the authority submitted that: • the "approach of making a two storey house look like a vehicle in some respects, and potentially sharing some of the functional elements of a vehicle is not sufficient" to avoid

Authority 17/09/2019 (continued)	the unit being a building under the Building Act 2004 • at the time the notices to fix were issued, "key components that would be essential to assert the [unit] is a vehicle had not been installed, including the wheels, axles or means of propulsion" • the intended use of the unit is important, and appears to be primarily as a dwelling for the owner • it is not clear if the unit is registered as a trailer / caravan, but if it is this is "not determinative of its status"; determination 2013/055 noted that whether particular units are vehicles "does not turn on whether they are registered and having a current warrant of fitness".
	The authority concluded that: > …the nature of construction and its intended use render the [unit] a relocatable building rather than a vehicle. Although the [unit] appears to have been fitted with elements of a vehicle, the primary purpose and use of the [unit] as a dwelling, as opposed to the transport of people or goods, is determinative. Accordingly, it is submitted that the house is not a vehicle for the purpose of the [Building Act 2004].
	With respect to the issue of movability, the authority referred to determinations 2014/025 and 2013/055, and applied the criteria discussed in those determinations to the unit. The authority concluded that while the unit was not connected to the site at the moment, its size would make it difficult to move, and it was not currently capable of being towed, and that, "Accordingly, it does not appear to be movable".
	The authority then went onto to consider what would happen if the alternative were correct (i.e. the unit was a vehicle), and whether it would still be considered a building under the Act because it was both immovable and intended to be occupied on a permanent basis.
	With respect to the occupation of the unit, the authority considered determinations 2014/025 and 2018/024 and submitted that there was "a permanency" to the owner's intended residency in the unit, and that it was intended as long-term accommodation. The owner was also intending to build the unit as a prototype for other units, which may be occupied permanently, and: > It is of concern to the [authority] that a structure of this nature could be built with no building consent and, once built, there are no practical constraints on the frequency and nature of occupation.
	The owner had submitted that the unit would be moved off the landowner's site, but had given no confirmation that when that happened it would only be occupied on a temporary basis. The authority concluded that the unit was intended to be occupied on a permanent or long-term basis.
	With its submission, the authority's provided copies of: • photos taken during the authority's site visits • an article from an online newspaper about the unit • the landowner's letter of 12 June 2019 and attachments.
Landowner 12/06/2019	**Included with its submissions, the authority provided me a copy of the landowner's letter to the authority dated 12 June 2019.**
	The letter sets out the landowner's view as to the unit at that time. In the letter the landowner said, "Given [the unit] is both transportable and not occupied on a permanent or long-term basis would mean that, under the current law it is not considered a building". The letter also confirmed that: • the unit had been registered as a "trailer-caravan" • "all services are of the quick disconnect variety" • the unit was "in no way attached to the ground or any other structure" • the unit would enable the owner to "live in a safe environment" and would provide

Landowner 12/06/2019 (continued)	"accessible affordable accommodation".

A.2 The first draft determination and further submissions in response

Ministry 16/12/2019	**The Ministry issued a first draft to parties for comment.**
	The draft concluded the work carried out to construct the unit is "building work" and the authority had correctly exercised it powers of decision in issuing the notices to fix for building work carried out without building consent when consent was required.
Authority 6/03/2020	**Ministry received further submissions and supporting documents from the authority.**
	The purpose of the authority's further submissions is to consider the implications of a recent District Court decision – *Dall v The Chief Executive of Ministry of Business, Innovation and Employment* [2020] NZDC 2612 ("*Dall*"). The authority's position is that the decision *Dall* has no impact on the overall conclusion in the authority's 17 September 2019 submissions that the notices to fix were validly issued as the unit is a building under section 8.
	In its further submissions the authority applied the findings in *Dall* to this matter for determination. The key points it made were: • despite the shift in focus to the LTA definition in Dall, the unit would still not be considered a vehicle or a motor vehicle as defined under section 2(1) of the LTA because the facts are different and this conclusion is supported by the Environment Court decision involving the unit – *Antoun v Hutt City Council* [2020] NZEnvC 6 • while breaches of the RMA are not a matter for MBIE to address in this determination, given an Environment Court decision carries the same weight as a District Court decision, and as it specifically deals with the unit, MBIE has no reason to distinguish that decision • the Environment Court found that the house was not a vehicle or motor vehicle but on inspection was 'patently a house, albeit a small one', and - noted that despite the intention to convert the house into a trailer in the future, it had considerable concerns as to the feasibility of constructing a trailer from the axles - was not satisfied that the unit may become a trailer by fact of the unit's registration as a trailer under land transport legislation - noted that while the applicants have provided assurances that the unit can become a trailer, they are not impartial - found that there is insufficient evidence to establish that what is proposed by the applicants to covert the house from a building is possible • MBIE should adopt the same analysis as the Environment Court and find the unit is not a vehicle or motor vehicle for the purposes of the LTA or section 8 of the Building Act 2004 • in the event the determination finds otherwise, the authority's position remains the same as in its 17 September 2019 submissions that the unit falls within the section 8(1)(b)(iii) definition of building on the basis of being both immovable and occupied permanently or on a long term basis • with respect to the assessment as to "immovability", the facts in this determination application can be distinguished from those factors considered in *Dall* • while the Court in Dall did not consider whether the unit in that case was occupied on a permanent or long-term basis, it did say that this assessment depends on the facts of each individual case.
Owner 16/03/2020	**Ministry received further submissions and supporting documents from the owner.**
	The owner does not accept the draft determination dated 16 December 2019 that was provided to the parties for their consideration. The owner provides reasons for not accepting the draft.

	I note many of the points in the owner's further submissions are the same as those made in their initial submissions. The owner also clarifies matters of fact which relate to the unit.
	The owner reiterates their view that the unit is a vehicle which is neither immovable nor occupied on a permanent or long term basis and, therefore, is not a building for the purposes of the Building Act 2004. The owner reiterates that once finished the unit will be towed to a new destination.
	The owner considers the implications of *Dall* in their further submission, and says that the decision in *Dall* supports their view that a contrivance on wheels is a vehicle for the purposes of the Building Act 2004.
	The owner describes some of the features that have been included in the design to maximise its movability and use as a vehicle, including: • in-cab controlled extendable multi length drawbar • height adjustable air suspension, for "more clearance on rough uneven terrain" and greater steering angles for tighter turning radius • the height of the unit once complete will be 4.650m, which is under 4.8m (with reference to NZTA Factsheet 53a) and it does not require any special permits to be on the road
	The owner says that: > there is no legislation or act that states [the owner is] required to fabricate a vehicle in any specified order, nor [has the owner] been asked to fabricate in any order or even when the [rolling] gear will be in place. When to install components is at the fabricator's discretion. The rolling gear will be installed once the exterior has been completed and sealed…
	The owner bought the axles for the tiny house project in late 2017 well before any work started on the unit at the landowner's property. The owner also says that the suspension and axles systems will be fabricated for the unit off-site where the owner has access to a full engineering shop with all the required equipment. In the further submissions the owner lists the components intended to be used to fabricate these systems.
	The owner refers to *Skerritts Of Nottingham Ltd v Secretary Of State For Environment, Transport & Regions & Anor* [2000] EWCA Civ 5569 and asserts this case supports the owner's submissions regarding the interpretation of the terms "immovable", "movable"' and "mobile" and the status of the unit as a chattel as opposed to real property.
	The owner reiterates that the authority's insistence that the owner obtain a building consent is a breach of the owner's human right to adequate housing, and provides further arguments to support this view.
	The owner disputes the particulars of the notices to fix. In particular, the owner says: • the unit is not two levels • there were no plumbing fixtures installed • as it is a vehicle under construction and not a building, no building work can be said to have occurred • the unit cannot be said to be "habitable" because it was unfinished
Owner 16/03/2020 (continued)	The other main points from the owner's further submissions are: • the owner intends to fabricate the unit in a way which aligns with the purposes in the Building Act 2004 (i.e. so that the unit will have attributes that contribute appropriately to the health, physical independence, and wellbeing of the people who use it) • the drawings of the unit by a third party were done without the owners involvement, were based on rough sketches by the owner on a piece of plywood, and contain errors (i.e. it includes sewer and storm-water as connections when they do not exist) • the proposed self-propulsion of the unit is "not applicable" at the current location due the high

	potential for large oil leaks in the hydraulic systems • the proposed self-propulsion system will be capable of moving the unit from location to location • the huts in determination 2016/011 have nothing in common with the unit • contrary to the statement in the draft determination, the unit has the infrastructure to enable the rolling gear to be installed, that being a chassis • solar panels, a caravan style socket and LPG hot water and gas have been or are partially installed • the owner will use a battery pack in the unit • no storm-water or waste-water will be connected permanently to existing services • there is no deck and even if there was one it would not be fitted or attached to the unit • there is 2m from the floor of the unit to the bottom of the mezzanine • the authority is incorrect when it set out its position that due to the size and intended use of the unit it was a building under the Building Act 2004; the owner notes that there is nothing in the Act that refers to the size or intended use of a vehicle • the landowner is not familiar with the Building Act 2004 and their understanding of the situation is very basic • the owner does not want the unit to be considered real property and therefore the property of the landowner • mobile homes, including tiny homes on wheels are personal property • the second notice to fix was issued on 16 July 2019 with 10 days given for compliance, which in the owner's view was unreasonable in the circumstances • the authority has never asked when the wheels and other vehicular components would be installed or asked for proof
	With their submissions, the owner provides a number of drawings of the chassis with the running gear attached.

A.3 The second draft determination and further submissions in response

Ministry 22/06/2021	**The Ministry issued a second draft to parties for comment.** The second draft concluded the work carried out to construct the unit is "building work" and the authority had correctly exercised it powers of decision in issuing the notices to fix for building work carried out without building consent when consent was required.
Authority 1/07/2021	Accepted the findings of the draft with no further comment.
Landowner 6/07/2021	Accepted the findings of the draft. The owner, however, did not provide any response or comments regarding the draft, despite having the opportunity to do so.

Appendix B: – Legislation

B.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 P

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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:…

B.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—…