MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Determination 2015/067

Regarding the issue of a notice to fix for three prefabricated units connected together at 747 Ardlussa Cattleflat Road, Gore, and whether the units joined together are a building or a vehicle

Summary

This determination discusses the approach to be used when establishing whether a vehicle is a building under section 8 of the Building Act, including factors to consider when deciding if it is immovable and occupied on a permanent or long term basis. The determination includes a decision tree that can be utilised in other similar circumstances, and applies the framework in this case where three portable units were connected together.

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, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment ("the Ministry"), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to this determination are:

- Southland District Council, carrying out its duties as a territorial authority or building consent authority ("the authority") – the authority is the applicant in this determination
- the owner of the units and property, M Moir ("the owner")

1.3 I consider that the manufacturer of the units ("the manufacturer") is a person with an interest in the matter.

1.4 The determination arises from building work associated with three prefabricated units placed on the owner's property that have been joined together. For clarity I will refer to the individual units as the "unit" or "units", but to them as they are joined together as the "combined unit".

1.5 The authority has applied for a determination on whether the combined unit is a building under section 8 of the Act and accordingly whether the combined unit complies with the Building Code. The authority also requested a determination in relation to a notice to fix, and I take this to be in respect of the authority's decision to issue a notice to fix for building work related to the combined unit.

[1] The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.building.govt.nz or by contacting the Ministry on 0800 242 243.

1.6 The matters to be determined[2] are therefore:

- whether the combined unit complies with the Building Code, and
- whether the authority was correct in its decision to issue the notice to fix.

In making that decision I must consider whether the combined unit is a building under section 8 of the Act.

1.7 In making my decision, I have considered the submissions of the parties and the other evidence in this matter.

2. The building work

2.1 The owner's property is a flat rural site. Three prefabricated units have been transported to and placed on the site. Information on the manufacturer's website (supplied by the authority) shows that the units are designed to be modular, and states that they can be joined 'in many ways to create multiple rooms and spaces for any circumstance'.

2.2 The three prefabricated units on the property have been joined together to form a residential dwelling; the owner is living in the combined unit. The individual units each measure approximately 8m x 3m, and are constructed of 50mm thick colour-steel clad insulated panels. They are fitted with a mixture of single and double glazed aluminium framed windows and doors.

2.3 The units have been designed to be capable of being towed, and are fitted with tandem wheels and a tow bar. The units are still resting on their wheels as their main means of support, although posts have been placed under some of the corners to provide additional support. It appears that these posts are freestanding and have not been fixed onto the units or attached to the ground in any way.

2.4 The three units have been placed on the site in a C shape. The central unit contains simple kitchen and living facilities. Water has been plumbed into the kitchen taps, and the authority has issued a notice to fix in respect of foul water connections (refer paragraph 3.4). Bathroom and laundry facilities are housed in a separate existing building on the site (refer paragraph 2.9).

2.5 The central unit also contains a pot-bellied stove set within a hearth area. The stove does not have a flue and its installation has not been completed. The other two units have been placed as wings to the central unit, one at each end, and are being used as sleeping areas.

2.6 A deck on wooden foundations is in the process of being constructed in the central space outside and between the combined unit. From the foundations, it appears that the deck, once complete, will form a low platform between the three units.

2.7 Externally, the units are connected by flashing strips that have been screwed in place at their junctions. Flashings have also been screwed into place at the roof junctions. I have been given no information about the electricity supply; whether there is one connection which is then run through the combined unit or whether there are three separate connections to each unit. I assume power supply is through a standard caravan lead.

[2] Under sections 177(1)(a), 177(1)(b) and 177(2)(f) of the Act

2.8 Internally, framed doorways lead from the central unit into the two wing units at each end. These doorways form the internal access between the units, and the wall and ceiling joints between them have been fitted with caps. The floor of the east end of the central unit has vinyl flooring, which extends over the joint between the central and eastern wing unit. Likewise, the floor at the western end of the central unit has been carpeted, and this carpet extends over the joint between the central unit and the unit forming the western wing.

2.9 The combined unit is located next to a separate building that I understand is all that remains from a former dwelling that previously stood on the site but has now been demolished. The building contains bathroom and laundry facilities. The waste from the kitchen sink inside the central unit drains via a 50mm pipe into a waste pipe that was previously used to drain a bath that has since been removed. The owner advised the authority that this drain leads to a soak hole in a neighbouring paddock.

3. The background

3.1 On 19 January 2015, an officer of the authority inspected the combined unit on the owner's property. On 20 January 2015, the officer filed a report in which he described the units and the building work associated with them. In his report he recorded his impressions about the movability of the units and concluded that 'I suggest even though they are connected, they remain relatively easy to move if need be and they still fall outside the definition of a building.'

3.2 The officer also concluded that 'connection of the kitchen waste of the central trailer unit to the existing on site sanitary drainage system should have had a building consent', as should any foundations associated with the units. The officer recommended that a notice to fix should be issued requiring a building consent to be applied for in respect of this building work.

3.3 On 18 February 2015, the authority emailed the Ministry for advice on whether 'these modular units still fall within the scope of decisions made under determination 2006/72 and fall outside the definition of a building even though they are interconnected'. Various correspondence subsequently passed between the authority and the Ministry that canvassed the issues the authority should take into account in assessing the code compliance requirements for interconnected units.

3.4 On 23 February 2015, the authority issued a notice to fix to the owner in respect of building work associated with the combined unit carried out without consent being sought, namely:

> 'building work by way of connection of sanitary drainage from a residential unit to an existing onsite effluent disposal system has been undertaken other than in accordance with a building consent. Application needs to be made to [the authority] for a Building Consent.

(I note here that a building consent cannot be sought retrospectively and that the notice to fix is in error in that respect. For building work carried out without consent when consent was required the correct regulatory mechanism is a certificate of acceptance.)

3.5 The notice to fix stated that the building work was required to comply with the Building Code and that although no consent was required for the deck and its foundation they still needed to be constructed so as to comply with the Building Code.

4. The submissions

4.1 On 3 June 2015, the authority applied for a determination about whether the combined unit was a building under section 8(1)(b)(iii) of the Act and complied with the Building Code.

4.2 With its application the authority provided copies of:

- the authority's site inspection report dated 20 January 2015
- the notice to fix
- its correspondence with the Ministry, and excerpts from the manufacturer's website.

4.3 On 17 June 2015 I received a submission dated 10 June from the owner. The owner holds the view that the units are easily movable and, as a combined unit, are not a building under the Act, submitting (in summary):

- The flashings between the units are primarily for water-tightness; they are held in place by 'up to six screws and a bead of silicone' and 'remain very simple to remove.
- Internally there are caps that cover the joints and the small gap between the units; they hide the gap between the units and are held in place mostly by silicone and are easy to remove.
- The carpet and vinyl floor coverings go over the joint and were laid after the units were located and connected; they would need to be cut to completely separate the units but this would be simple to do.
- The units are designed to be fully self-supporting by the wheels and tires, and when not connected to the towing vehicle require stabilisers to prevent them from rocking on the axles, bouncing on the tires, and to hold them level.
- The stabilisers are H4 or H5 treated pine rounds that were provided with the units.

4.4 The owner went on to state that:

> [The] units were purchased as an affordable, temporary accommodation for our current situation, with the mindset that when circumstances change and they are no longer required, they [can] be very easily removed or relocated.

The owner's submission did not indicate what the circumstances were that would meant the combined unit would no longer be required or indicate what period of time the owner considered was "temporary".

4.5 On 2 July 2015 the manufacturer advised that a submission on the application would be forthcoming. By email on 21 July the manufacturer advised the submission was 'very nearly ready', and again on 5 August that it was 'almost complete' and would be provided 'in a couple of days'.

4.6 By 10 August 2015 no submission from the manufacturer had been received. To avoid unnecessary delay to the parties I opted to issue the draft without the promised submission, and the parties and the manufacturer were invited to provide comment or further submissions in response to the draft determination.

4.7 The owner and the authority accepted the draft without further comment in responses received on 17 and 24 August 2015 respectively.

4.8 A submission on the application for determination was received from the manufacturer on 25 August 2015. The manufacturer holds the view that:

- when prefabricated units such as this (which the manufacturer describes as "caravans") are touching or interconnecting it does not mean they are no longer caravans or immovable
- the units would be easily separated in preparation for being moved, and the time taken to do so would be less than the average family tent and some caravan awnings
- an unintended consequence of the determination may be that caravans with awnings, stabilisers and the like would be considered immovable and consequently 'would need a building consent'
- the subject units do not contain a bathroom, meaning they are not 'a fully contained residential dwelling'.

4.9 The manufacturer went on to state there was 'reasonable room to argue about [the] conclusion' reached in the High Court (refer paragraph 5.4.3) and in the Court of Appeal (refer paragraph 5.4.4). The manufacturer holds the view that the joining together, how permanently that connection is, and how much work would be required to disconnect is a matter of degree. The manufacturer used the example of two caravans linked together by an awning which the manufacturer considered would not be logical to say they had become one item.

4.10 I responded to various points raised in the manufacturer's submission in paragraph 5.9, and a second draft determination was sent to the parties and the manufacturer for comment on 14 September 2015.

4.11 The authority and the owner accepted the second draft without further comment in responses received on 29 September and 8 October 2015 respectively.

4.12 No further comment was received from the manufacturer.

5. Discussion

5.1 This determination arises from the authority's uncertainty over whether the owner's units, once they are placed and connected on site, fall within the definition of a building in section 8 of the Act, and as a result whether building consent and compliance with the Building Code is required.

5.2 I note that the notice to fix issued for work associated with the combined unit, and the building work it relates to, are not in dispute between the parties. What is at issue, is the extent to which the combined unit is required to comply with the Building Code, and this issue in turn hinges on whether or not the combined unit is a building under section 8 of the Act. Accordingly I do not address the notice to fix in terms of the identified breaches that are undisputed, but I have considered whether there is building work that has breached the Act or Building Code that has not been addressed in the notice.

5.3 What is meant by a building

5.3.1 In order to make a decision as to whether the units and/or the combined unit comply with the Building Code I must first consider whether they fall within the definition of a building for the purposes of the Act. I have considered this issue in numerous previous determinations, and the process to follow in establishing whether or not a particular structure is a building is now well-established.

5.3.2 A "building" for the purposes of the Act is defined in section 8(1)(a), and

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

5.3.3 Section 8(1)(b) provides that several matters are expressly included in the definition of a building and one of these matters concerns vehicles:

> (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; …

5.3.4 These provisions have been the considered by the Court of Appeal in Thames-*Coromandel District Council v Te Puru Holiday Park Ltd.*[3] The Court of Appeal agreed with the approach of the High Court stating:

> [10] In the High Court, Duffy J held that Judge Thomas had misinterpreted s 8. She held that if a defendant contended that the alleged building was a vehicle, then the first thing the court needed to assess was whether it was. If it was, then the court had to assess whether it was a vehicle with s 8(1)(b)(iii) characteristics. If it had such characteristics, it was a building. If it did not have them, it was not a building. In those circumstances, it was irrelevant whether the vehicle might come within the general definition (by which we mean the definition in s 8(1)(a)). If, however, the court concluded that the alleged building was not a vehicle at all, then it had to assess whether the thing came within the general definition. …
>
> [22] Our conclusion is therefore that Duffy J approached the interpretation of ss 8 and 9 in the correct way by focusing first on whether the units came within s 8(1)(b)(iii). What she had to determine was whether the units were vehicles and, if so, whether they were immovable and occupied by people on a permanent or long term basis. If they were, they were buildings. If they were vehicles but did not have those characteristics, they were not buildings. If they were not vehicles at all, then s 8(1)(b)(iii) fell to the side; what one then needed to look at was whether they came within the general definition.

5.3.5 Therefore, the first step in deciding when a vehicle will be required to be treated as a building under the Act is to decide whether it comes within the meaning of the terms 'vehicle' and 'motor vehicle'. Neither of these terms is defined in the Act, so their natural and ordinary meaning applies: [4]

> vehicle – a thing used for transporting people or goods, especially on land, such as a car, lorry, or cart
>
> motor vehicle – a road vehicle powered by an internal combustion engine.

5.3.6 The reference to vehicle in section 8(1)(b)(iii) also includes a "vehicle or motor vehicle" as defined in section 2(1) of the Land Transport Act 1998. The relevant parts of those definitions provide:

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

[3] [2010] NZCA 663
[4] *Oxford Dictionary of English*, 3rd ed., Oxford University Press, 2010.

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

5.3.7 If a particular structure is a vehicle, it will then only be treated as a building for the purposes of the Act if it also satisfies the two further requirements in section 8(1)(b)(iii) of the Act. These are that the vehicle must be 'immovable' and 'occupied by people on a permanent or long-term basis'.

5.3.8 To summarise the position as to when vehicles will be treated as buildings:

- if something is a vehicle, and it is immovable and occupied by people on a permanent or long-term basis, it will be treated as a building;
- if something is not a vehicle, the question of whether it is to be treated as a building will fall to be considered under the main definition of building in section 8(1)(a) of the Act;
- if a person claims something is not subject to the Building Act because it is a vehicle, they must establish the thing is a vehicle or motor vehicle, and that it is movable or that it is not occupied by people on a permanent or long-term basis.

5.4 Is the combined unit a vehicle?

5.4.1 The first issue I need to consider in the current case is whether the combined unit is a vehicle or motor vehicle. The relevant requirements of those definitions, as noted above, are that the structure in question is used for transporting people or goods, is a contrivance equipped with wheels (or similar) on which it moves, or is a trailer.

5.4.2 The units in the current case all have wheels, axles and tow bars, and in my opinion are clearly designed to be capable of being towed as a trailer. The units, in their original state are vehicles, both within the natural meaning of that term, and as defined by the Land Transport Act 1998. I note that the authority does not dispute that the units, individually, are vehicles.

5.4.3 I must however consider whether the combined unit as currently presented is a vehicle. The matter of connected prefabricated units was considered in *Te Puru Holiday Park Ltd v Thames Coromandel District Council*[5]*:*

> [21] The unit on this site is described as a duplex; it comprises two [proprietary] units locked together to form a single dwelling. Whatever the character of the units might be when separate, I do not see how, when linked together as a "duplex", they can be said to be a vehicle in terms of s 8(1)(b)(iii). … There is no evidence to suggest that as a "duplex" the unit could move or be moved on the road. I consider that the locking together of two units to form a "duplex" has the effect of creating a new item that is distinguishable from the individual units of which it is comprised. Furthermore, I consider that it is this new single item, rather than its constituent parts, which falls for consideration under s 8(1)(b)(iii). Looked at in this way, I conclude, therefore, that the unit as it is sited on site C.22 cannot be a vehicle in terms of s 8(1)(b)(iii) …

5.4.4 This view as upheld by the Court of Appeal in Thames-*Coromandel District Council v Te Puru Holiday Park Ltd.*[6] The Court of Appeal agreed with the approach of the High Court stating:

> [28] [Counsel for the Holiday park] challenged Duffy J's conclusion. He submitted there was "evidence" that the two locked units "could be … dismantled and

[5] HC Hamilton CRI-2008-419-25, 11 May 2009, Duffy J
[6] [2010] NZCA 663

> separated and moved away in very short order". From that he reasoned that they should be looked at separately. If looked at separately, they would be found on the evidence to be "vehicles" in terms of s 8(1)(b)(iii).
>
> …
>
> [30] It may be there was a question of law as to whether the Judge was right in her conclusion that, in assessing a thing, one assessed it as it presented, not by its constituent parts. We doubt whether such a question of law could have met s 144 criteria. In any event, we are satisfied the Judge was entirely correct in her view that the duplex did have to be assessed as it presented.
>
> [31] It would have been wholly artificial to assess the duplex by its constituent parts. The evidence was clear that the units had been constructed of normal housing materials and had the internal layout of a small holiday home. The towbar for each unit had been removed. The duplex sat on concrete blocks and timber packers. Slatted screens had been installed between the floor and ground level and a removable deck had been added. The duplex was connected to power and water. Wastewater pipes were plumbed into an inground facility. There was even a bay window and a ranchslider.

5.4.5 In the current case the three units have been joined to each other with flashings, capping, and other building elements to work together as one combined unit. While the individual units which are designed to be modular have retained their wheels and towbar, in being joined together the units have become components of a larger single structure (the combined unit) which is immovable. I hold the view therefore that the units, once connected together as one structure, become a combined unit that is not a vehicle.

5.4.6 Having concluded that the combined unit is not a vehicle it must be decided whether the combined unit falls within the general definition of a building under section 8(1)(a), namely whether it is 'a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels)'. The combined unit is an immovable structure intended for occupation by people and falls within the definition of a building under section 8(1)(a).

5.4.7 Having decided that the combined unit does not satisfy the test of being a vehicle in terms of section 8(1)(b)(iii) I do not need to consider whether the combined unit has the characteristics specified in that section, namely whether it is immovable and occupied by people on a permanent or long-term basis. However, as I recognise that there is need for guidance on this issue for authorities and the industry in general I have discussed in paragraphs 5.5 and 5.6 the two criteria as they would apply in this case if I had concluded the combined unit was a vehicle.

5.5 Is the combined unit immovable?

5.5.1 As I have stated in previous determinations, whether a vehicle is immovable is a question of degree that will turn on a range of factors such as:

- whether the vehicle is attached to the ground and how easily those attachments can be removed;
- whether the vehicle has been connected to services and how easily those can be removed;
- whether the vehicle has retained its wheels and the ability to be towed or to move itself;

- whether structures have been attached to the vehicle, such as decks, verandas, or additional rooms, and how easily these can be detached.

5.5.2 In regards to the considerations set out above, I note the following:

- The units are all still resting on their wheels as their primary means of support; although some posts have been inserted under the units for additional support, these are not affixed to either the units or the ground and would not be considered sufficient to render the units immovable. However the combined unit has the wheels of one unit at 90 degrees to the wheels of the other two units, making the structure as a whole immovable. Further, the overall footprint of the combined unit is 14m x 8m with the joints being of screw-fixed flashings; it is obvious that any attempt to move the combined unit as currently presented on site would result in the destruction of the joints and the pulling apart of the combined unit. Much strengthening and further works would be required to make the combined unit able to be moved.
- I have been given no information about the exact nature of the connection between the water mains and the central unit, but assume it would be a relatively simple matter to disconnect this if required.
- Likewise, I have been given no information about the electricity supply to the unit, whether there is one connection which is then run through the three prefabricated units or whether there are three separate connections. I assume power supply is through a standard caravan lead.
- From the authority's description, the waste discharge from the kitchen sink is a flexible pipe that has been directed into an existing drain, which could be easily removed.
- The authority has issued a notice to fix for foul water connections being done without building consent; presumably building consent would be required if these were to be disconnected in the future.
- It is my understanding the deck is not intended to be affixed to the units at all, but the location of the deck is such that it most likely would need to be removed in order for the combined unit (once adequately prepared) or individual units to be moved.

5.5.3 Though many of the features described above would indicate that the individual units would not be considered 'immovable' for the purposes of section 8(1)(b)(iii), the characteristics of the structure as a whole, being the combined unit, mean it is 'immovable' for the purposes of section 8(1)(b)(iii).

5.6 Is the combined unit occupied on a permanent or long-term basis?

5.6.1 At present, the owner is occupying the combined unit as his place of residence. The owner has not indicated under what circumstances the combined unit would no longer be required or used as accommodation, nor did the owner indicate why he considered the accommodation to be "temporary", either by circumstance or period of time.

5.6.2 A solid fuel fire is in the process of being installed in one of the units, and a sizable deck is being built between them, this suggests the combined unit will be occupied, either by the owner or someone else, for the foreseeable future. Given the owner has not provided an indication to the contrary I would consider that the second criteria in

section 8(1)(b)(iii) would be satisfied and the combined unit would be considered as being occupied on a long term or permanent basis.

5.7 The notice to fix

5.7.1 The question of the point at which a vehicle becomes a building has been considered in previous determinations, notably Determination 2006/72, which has been referred to by the authority in the documents it supplied. It is important to establish when the vehicle becomes a building because that determines whether or not a building consent is required. This issue was considered in Determination 2006/72, and I maintain the reasoning set out in that Determination (see paragraph 4.5.3 of Determination 2006/72).

5.7.2 As stated in paragraph 5.4, the units in the current case became a building at the point that they were attached to each other and formed the combined unit. Because the units did not become a building until they had been joined together their previous placement on the owner's property cannot properly be called the construction of a building for which a building consent was required. However, work carried out to convert the units to a building, and any subsequent building work falls within the ambit of the Act and unless exempt under section 41 a building consent is required. For example, attaching the building to foundations and utilities does not fall within section 42A and Schedule 1 and would therefore require a building consent.

5.7.3 The authority has issued a notice to fix for building work carried out without consent, namely the connection of sanitary drainage. The connection of sanitary drainage can properly be considered building work and therefore the authority was correct to issue a notice to fix for this building work; I note this is not in dispute between the parties. Likewise, if the owner intends to continue with the installation of a fireplace in the combined unit, this is building work that would require a building consent and must comply with the Building Code.

5.7.4 However, in the remedies listed in the notice to fix, the authority has stated that the applicant is required to lodge a building consent application. I note here that a building consent application cannot be made in respect of any building work that has already been carried out; the appropriate regulatory mechanism is for the owner to seek a certificate of acceptance for completed building work that required consent.

5.7.5 I also note that from the information I have been provided, there is no indication that the owner is installing permanent foundations for the combined unit. Propping up the corners with free-standing posts is not, in my opinion, akin to building foundations. I note also the authority cannot use a notice to fix requiring permanent foundations be constructed. A notice to fix can be issued for a breach of the Act or regulations; for example if the combined unit as one structure were in breach of Clause B1 of the Building Code – how that performance requirement is met is for the owner to propose.

5.8 The compliance of the building work

5.8.1 Under section 17 of the Act, all building work must comply with the Building Code to the extent required by the Act, whether or not a building consent is required in respect of that building work. Section 7 defines building work as work 'for, or in connection with, the construction, alteration, demolition, or removal of a building …'. As noted in paragraph 5.7.2 above, the placement of the units on the site does not constitute building work.

5.8.2 The alterations carried out to connect the units together into a combined unit constitute building work; however, I have received no information from the authority in relation to non-compliance of the building work carried out to join the units.

5.8.3 I note here that any subsequent additions or alterations to the building must also comply with the Building Code to the extent required by the Act.

5.9 General comment

5.9.1 In providing a submission to the draft determination, the manufacturer raised a number of concerns regarding the application of the Act in respect of vehicles and awnings. I make the following general comments in order to provide further guidance to the manufacturer and to the industry in general.

Vehicles and awnings

5.9.2 The manufacturer's concerns regarding consents being required for awnings used in association with caravans or other vehicles is misplaced. Firstly one must consider the status of the caravan or vehicle in order to establish whether the Act applies. In putting up an awning attached to a caravan or motorhome, the question of whether it is building work for the purposes of the Act will depend on the status of the caravan or motorhome under the Act.

5.9.3 The circumstances where an awning may be considered building work are limited to those where the vehicle is a building to which the Act applies. A caravan or motorhome is only a building to which the Act applies in particular circumstances, that is:

- if it is no longer a vehicle (such as the combined units in this case) and it falls within section 8(1)(a), or
- it is immovable AND occupied on a permanent or long term basis such that it falls under section 8(1)(b)(iii).

5.9.4 Part of the manufacturer's concern appears to be an interpretation of the *Te Puru* judgement whereby a caravan with an awning "as it presented" would fall within section 8(1)(a), that is it would no longer be a vehicle. I note here that in *Te Puru* there were a number of characteristics that meant the structures as presented were no longer vehicles. I hold the view that the types of structures and systems identified in *Te Puru* that meant the structures taken as presented were no longer vehicles do not have sufficient similarity to awnings connected to vehicles to mean that the *Te Puru* judgement would apply. Awnings of the type that are associated with a caravan or motorhome, typically lightweight tent & pole type structures, are designed to be used in conjunction with the vehicle and their use in that context would not fall under the ambit of the Act.

5.9.5 In regards to the manufacturer's concerns as to whether a caravan or motorhome with an awning is "immovable" and therefore is treated as a building under the Act; while it may be the case that the vehicle is immovable for the period of time where the awning is in place, the test for whether the vehicle is a building under section 8(1)(b)(iii) involves not only that it is immovable but also that it is occupied on a permanent or long term basis.

5.9.6 Building work carried out to a vehicle in converting it to a building, and building work carried out subsequently, are considered building work to which the Act and the Building Code applies. For example: in the combined unit considered in this

determination the work carried out to the external envelope at the connections between the units is required to comply with Clause E2.

5.9.7 In regards to the manufacturer's concerns regarding whether building consent is required, I note that whether consent is required is not only a matter of whether a structure is a building under section 8 of the Act but whether building work is proposed and whether that building work is or is not exempt from the requirement for building consent (refer section 41 of the Act regarding exempt building work).

Whether the fact that combined units can easily be disconnected means they are not a building

5.9.8 I note here that the Court has previously addressed the issue of disconnection of interconnected units (refer paragraph 5.4.4). The approach taken by the Court also applies in this case.

The classified use

5.9.9 Regarding the statement from the manufacturer that the units are not 'a fully contained residential dwelling', I note that the classified use of the combined unit does not affect whether that structure falls within the definition of a building under section 8 of the Act, and the requirements of the Building Code comes into effect when building work is carried out or when there is a change of use[7]. In addition, the requirement under clause G1.3.3 that 'facilities for personal hygiene shall be provided in convenient locations' and whether this would exclude facilities in a separate building will depend on the circumstances in each particular case.

6. The decision

6.1 In accordance with section 188 of the Act, I hereby determine that:

- the units together, being the combined unit, are a building under section 8 of the Act, and the building work carried out to connect the units together and any subsequent building work carried out must comply with the Act and the Building Code; however I have insufficient evidence to form a view on the compliance of the building work carried out onsite to date
- the authority correctly exercised its powers of decision to issue the notice to fix, but the notice is to be modified in respect of the remedies as outlined in paragraphs 5.7.4 and 5.7.5 of this determination.

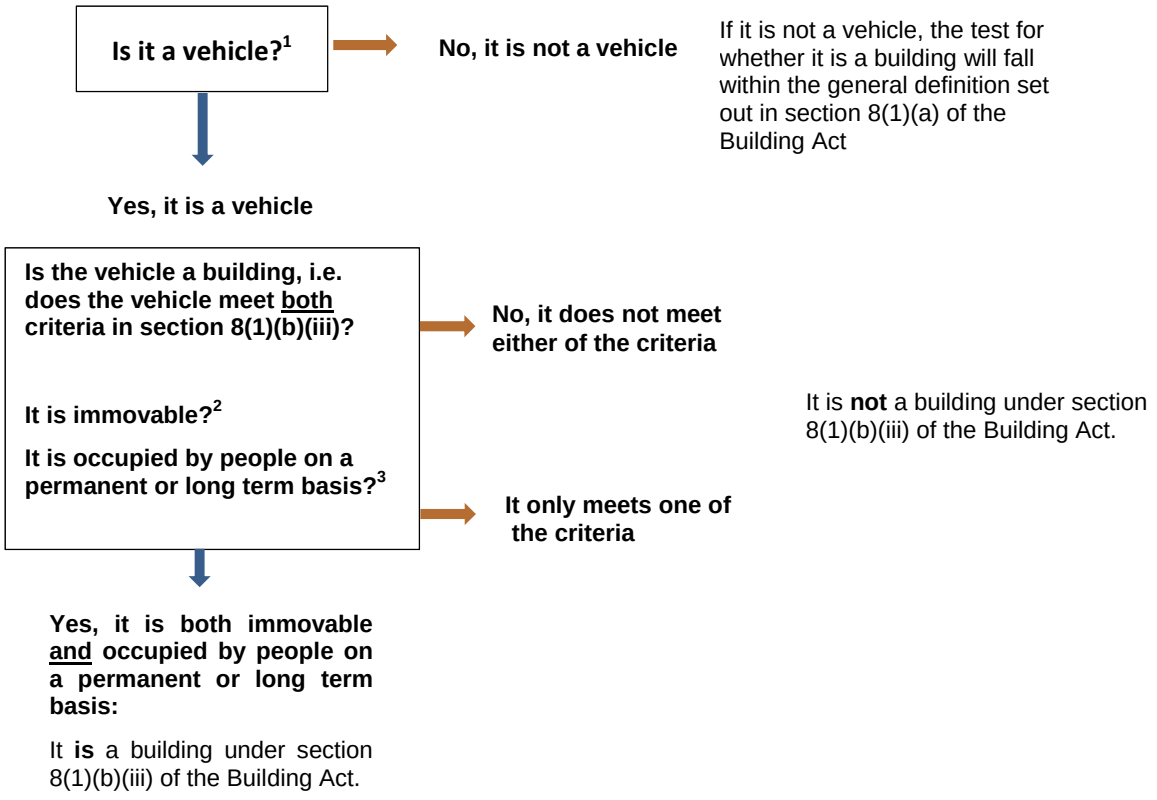
Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 29 October 2015.

John Gardiner
Manager Determinations and Assurance

[7] Under the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005

Appendix A

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



Notes:

1. In establishing whether something is a vehicle, consider the following definitions:
   - The natural and ordinary meaning:
     - a thing used for transporting people or goods, especially on land, such as a car, lorry, or cart
     - a road vehicle powered by an internal combustion engine.
   - "vehicle or motor vehicle" as defined in section 2(1) of the Land Transport Act 1998.
     - 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; …

   Consider also how it is currently presented, that is in its entirety and not the constituent parts e.g. two or more vehicles located onto site that are then connected and would require disconnection in order to be moved (refer *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* [2010] NZCA 633)

2. Whether a vehicle is immovable is a question of degree that will turn on a range of factors, for example:
   - Whether it is attached to the ground and how easily those attachments can be removed;
   - Whether it has been connected to services and how easily those can be removed;
   - Whether it has retained its wheels and the ability to be towed or to move itself;
   - Whether structures have been attached, such as decks, verandahs, or additional rooms.

   (See determination 2014/025 for example)
3. Whether a vehicle is considered to be occupied on a permanent or long term basis will turn on a range of factors, for example:
   - Is the intended period of occupancy known;
   - Is there a definite requirement as to the length of occupancy;
   - Is occupation intermittent/occasional (such as holidays/weekends only)
   - Is occupation continuous or cyclical

   (See Determinations 2006/72 and 2013/055 for example)