



Determination 2018/001

Regarding a notice to fix and whether a relocated unit is a building at 17 Pembertons Road, Sefton



Summary

The determination considers whether a unit relocated onto a residential property is a building for the purposes of the Building Act, and whether the authority was correct to issue a notice to fix in relation to this. The determination discusses the definitions of building and vehicle under section 8 of the Building Act.

1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are:
 - the owner of the property, J Haywood (“the owner”)
 - Waimakariri District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority. The authority applied for the determination.
- 1.3 The manufacturer of the unit (“the manufacturer”) has been included as a person with an interest in the matter.
- 1.4 This determination centres on building work carried out in association with a relocated unit, and turns on whether the unit is a building as defined by section² 8 of the Act (refer Appendix A). The authority has issued a notice to fix, but the owner is of the view the unit does not fall within the definition of a building under the Act.

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.

² In this determination, unless otherwise stated, references to sections are to sections of the Building Act 2004.

- 1.5 The matter to be determined³ is whether the authority correctly exercised its powers of decision in issuing the notice to fix. In making my decision, I have considered:
- whether the relocated unit is a building as defined by section 8
 - the particulars of contravention or non-compliance as set out in the notice to fix in regard to building work carried out without building consent.

I have not considered whether the building work complies with the Building Code.

2. The building work and background

2.1 The unit and its installation on site

- 2.1.1 The unit was purchased from the manufacturer and relocated onto the site. The unit is nominally 12x4m in plan. The unit contains an open living / dining / kitchen space, a bathroom, and bedroom.
- 2.1.2 The floor consists of 21mm H3-treated orientated strand board⁴ on a galvanised steel frame, and the walls and roof are made from foam insulated structural panels. The panels consist of an expanded polystyrene foam core and a pre-finished galvanised steel 'skin' to both faces; the wall panels are 50mm thick, and roof panels are 75mm thick. The unit has aluminium windows and doors.
- 2.1.3 The unit has twin axles fixed directly to the chassis and the wheels have been removed: the unit is supported on concrete pavers and timber blocks. The unit has a tow coupling, but does not appear to have any indicator or brake lights, and similar.
- 2.1.4 The unit is supplied 'fully wired' and has an electrical certificate, and it is connected to an external power source via a 'caravan lead' to the adjacent dwelling. The unit has instantaneous gas water heating with gas bottles located on the ground. Drainage services have been run and connected to an existing on-site waste water treatment system. The unit has a heat pump with the outdoor condenser sitting on the ground outside the unit.
- 2.1.5 The photographs provided by the authority show a ground level timber deck and verandah constructed adjacent to the relocated unit; the deck is not attached to the unit. It appears the timber deck is partly located over the in-ground on-site waste water treatment system (I note the unit is also located over or very close to the system).
- 2.1.6 Rainwater is collected from the roof which discharges directly onto the ground via a downpipe.

2.2 The notice to fix

- 2.2.1 The authority met with the owner on 12 June 2017, and wrote to the owner on 5 July 2017 to confirm its view that building work had been carried out that required building consent. Also, some of the building work (including the sub-floor construction, foundations, terminal vent, pipe lagging, and smoke detector) did not comply with the Building Code. The letter included a number of photographs taken on-site along with the notice to fix.

³ Under sections 177(1)(b) and 177(2)(f) of the Act.

⁴ Oriented strand board is a sheet material similar to particle board formed by compressing layers of wood strands in specific orientations in an adhesive matrix.

- 2.2.2 The notice to fix is dated 7 July 2017, with the particulars of non-compliance/contravention set out as follows:
- Undertaking building work of relocating a polystyrene panel dwelling and associated drainage other than in accordance with a building consent as required by section 40 of [the Act]
- 2.2.3 The remedy was set out in the notice as:
- Refer to advisory letter dated 5 July 2017 and before the expiry date below,
Apply for, be granted and uplift a Certificate of Acceptance for building work completed not in accordance with a building consent and,
Apply for, be granted and uplift a building consent to complete any additional building work that may be required to meet the requirements of the New Zealand Building Code.
- 2.2.4 The owner was given until 26 January 2018 to comply with the notice to fix.

3. The submissions

- 3.1 The Ministry received the application for a determination from the authority on 31 July 2017. The authority did not provide a submission in support of the application, but provided copies of the notice to fix and a covering letter with photographs.
- 3.2 On 7 August 2017 the owner made an initial submission responding to the application for determination. The owner advised that the unit was relocated to site approximately a year before. Based on conversations with the manufacturer and the authority, the owner believed a building consent was not required because the unit was on a trailer.
- 3.3 On 14 August 2017 the owner advised they wished to make a further submission on the matter. The owner's submission was received on 25 September 2017, and included email correspondence between the owner and the authority, a brief submission, and photographs of smoke detectors in place, the downpipe and the tow coupling. The owner advised that drainage works were carried out by a drainlayer, the electrical connections were wired by an electrician, and the owner had a gas certificate (no copies of relevant certificates were provided). The owner advised they intended to move the unit in the future.
- 3.4 A draft determination was issued to the parties and the manufacturer for comment on 3 October 2017.
- 3.5 On 4 October 2017 the owner provided a copy of the specifications of the unit from the manufacturer.
- 3.6 In a response received on 13 October 2017, the authority accepted the draft without further comment.
- 3.7 On 18 October 2017 the owner contacted the Ministry to clarify the outcome of the determination. No further submission was received from the owner in response to the draft of this determination despite a reminder to do so.
- 3.8 No submissions were received from the manufacturer.

4. Discussion

4.1 Whether the unit is a building

- 4.1.1 For a territorial authority or building consent authority to be able to exercise its powers under the Act the unit must fall under the definition of a building under section 8.
- 4.1.2 The definition of “building” in section 8 includes both permanent and temporary structures, as well as moveable and immovable structures:
- (1) In this Act, unless the context otherwise requires, building—
 - (a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and
 - (b) includes—
 - ...
 - (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; ...
- 4.1.3 Based on the approach taken in the High Court⁵ and upheld in the Court of Appeal⁶, the first test in this case is to establish whether the unit is a vehicle. I have considered this issue in numerous previous determinations⁷, and the Ministry’s view of the matter is now well-established.
- 4.1.4 I must first consider whether the unit comes within the meaning of the terms ‘vehicle’ and ‘motor vehicle’. Neither of these terms are defined in the Act, so their natural and ordinary meaning applies:⁸
- vehicle – a thing used for transporting people or goods, especially on land, such as a car, lorry, or cart
- motor vehicle – a road vehicle powered by an internal combustion engine.
- 4.1.5 The reference to vehicle in section 8(1)(b)(iii) also includes “a vehicle or motor vehicle (including 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; ...
- motor vehicle—
- (a) means a vehicle drawn or propelled by mechanical power; and
 - (b) includes a trailer; ...
- 4.1.6 The relevant requirements of the definitions of a vehicle, 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, is powered by some form of combustion engine or self-propulsion, or is a trailer.
- 4.1.7 For a structure to be a vehicle it must have characteristics of a vehicle, and durability of construction in terms of its capacity to be used as a vehicle.

⁵ *Te Puru Holiday Park Ltd v Thames Coromandel District Council*, HC Hamilton CRI-2008-419-25, 11 May 2009, Duffy J

⁶ *Thames-Coromandel District Council v Te Puru Holiday Park Ltd*, [2010] NZCA 663

⁷ See for example Determinations 2015/067, 2016/011 and 2016/019.

⁸ Oxford Dictionary of English, 3rd ed., Oxford University Press, 2010.

- 4.1.8 I consider that just because a structure has some features of a vehicle, such as wheels, it does not necessarily make it a vehicle for the purposes of the Act. The distinction between a building that is moveable and a vehicle is that the vehicle is used for transporting people or goods or must be powered by some form of combustion engine or self-propulsion. Simply because a structure is capable of being moved does not mean that it is considered a vehicle under the Act.
- 4.1.9 While caravans and mobile homes perform a similar function as a dwelling, in that they are used for sleeping accommodation and may contain sanitary facilities, they have all the characteristics of a vehicle and are relocated from site to site. This means they only fall within the Building Act if they meet the test under section 8(1)(b)(iii) by being both immovable and occupied on a permanent or long-term basis.
- 4.1.10 In this case, while the structure was previously fitted with wheels, and it may be “moveable” in that the wheels may be refitted and it may then be able to be moved, it has very few other characteristics that are indicative of it being a vehicle; it has no suspension, brakes, lights, etc. It is not a motor vehicle powered by an internal combustion engine or self-propelled, and the owner has provided no evidence of it being used a vehicle, rather the owner has confirmed that its primary use is as a dwelling. I conclude therefore the structure is not a vehicle in the context of section 8 of the Act.
- 4.1.11 If something is not a vehicle, the question of whether it is to be treated as a building falls to be considered under the main definition of building in section 8(1)(a). Given the nature of the construction and its use, I consider that the unit falls under the definition of a building under the Act.

4.2 The notice to fix

- 4.2.1 The authority issued the notice to fix for ‘Undertaking building work of relocating a polystyrene panel dwelling and associated drainage other than in accordance with a building consent as required by section 40 of [the Act]’.
- 4.2.2 Previous determinations⁹ have considered whether a building consent is required for the relocation of a building, and I maintain the view that the relocation of a building onto a site does not itself constitute building work. While there was building work carried out associated with installation of the unit into this site (foundations, connection to services, and the like), I consider the authority was incorrect to include the reference to the relocation itself in the notice to fix, and any building work carried out on site that required building consent should be clearly stated.
- 4.2.3 All building work carried out on site is required to comply with the Building Code and required a building consent prior to the works being carried out unless exempt under Schedule 1. Any building work carried out without consent when building consent was required can be regularised through a certificate of acceptance.

⁹ See for example Determinations 2015/026 and 2014/030

5. The decision

- 5.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the unit is a building as defined by section 8 of the Act and that the authority correctly exercised its powers of decision in issuing the notice to fix for drainage works carried out without building consent. However, the notice to fix is to be modified as discussed in this determination.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 1 February 2018.

Katie Gordon
Manager Determinations

Appendix A: The legislation

A.1 The relevant sections of the Building Act 2004

8 Building: what it means and includes [my emphasis]

- (1) In this Act, unless the context otherwise requires, building—
- (a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and
 - (b) includes—
...
(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; ...

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

- (1) A person must not carry out any building work except in accordance with a building consent.
- ...

96 Territorial authority may issue certificate of acceptance in certain circumstances

- (1) A territorial authority may, on application, issue a certificate of acceptance for building work already done—
- (a) if—
 - (i) the work was done by the owner or any predecessor in title of the owner; and
 - (ii) a building consent was required for the work but not obtained; ...
- (2) A territorial authority may issue a certificate of acceptance only if it is satisfied, to the best of its knowledge and belief and on reasonable grounds, that, insofar as it could ascertain, the building work complies with the building code.
- (3) This section—
- (a) does not limit section 40 (which provides that a person must not carry out any building work except in accordance with a building consent); and
 - (b) accordingly, does not relieve a person from the requirement to obtain a building consent for building work.