

Determination 2007/109

Whether a converted trailer at Lawton Drive, Aotea, Kawhia, is a vehicle or a building.



Photograph 1: The unit (since this photograph was taken, the deck has been detached and lowered)

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, John Gardiner, Manager Determinations, Department of Building and Housing, for and on behalf of the Chief Executive of that Department.
- 1.2 The determination arises out of a disputed decision by a territorial authority that a converted trailer (“the unit”) was a building and that therefore installing the unit was building work for which a building consent was required.

¹ The Building Act 2004 is available from the Department’s website at www.dbh.govt.nz

- 1.3 The application for the determination was made by G and S Fletcher (“the owners”). The only other party is the Otorohanga District Council (“the territorial authority”).
- 1.4 In their application, the owners described the unit as a:
Very small one bedroom caravan/vehicle for occasional use
and said:
We are applying to have the structure/caravan . . . classified as a vehicle.
- 1.5 Strictly speaking, that is not a matter that can be submitted for determination because it is not one of the matters listed in section 177 of the Act. To bring the matter within section 177 either the owner would have to apply for a building consent and the territorial authority to refuse that application, or the territorial authority would have to issue a notice to fix under section 164. However, I note that section 186(1)(a) requires me to “avoid unnecessary delay and formality” and accordingly I take the view that the territorial authority’s letter can be treated as amounting to a decision to refuse to issue a building consent covered by section 177(1)(b)(i).
- 1.6 Unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

2 Background

- 2.1 The unit is shown in the photographs 1 and 2.



Photograph 2: The axles and wheels remain in place

- 2.2 The owners said that the unit was originally a dual axle curtain-sided trailer. The curtain sides, etc, were removed and a Portacom installed on the deck of the trailer. The Portacom includes a single bedroom, a combined toilet and shower, and a combined kitchen and living area. In the owners’ words:

The size of the section does not allow for sewage and waste water disposal to be in the ground so the only alternative was to have a structure that allowed for storage of the waste water and sewage underneath which are all free standing and removable.

. . . the waste will be disposed of off-site.

- 2.3 At some stage, the deck was fully detached from the unit and reduced in height. Construction of the deck was building work exempted from the need for a building consent under Schedule 1(g) as the deck forms a platform “from which it is not possible for a person to fall more than 1 metre”. Under section 17, the deck must comply with the Building Code “whether or not a building consent is required”, but this determination is essentially concerned with whether the unit is a “building” so that I make no determination as to whether the deck complies with the Building Code.
- 2.4 The unit was apparently installed without the knowledge of the territorial authority. However, when the territorial authority became aware of the unit an inspection was carried out and, after some discussions and correspondence, the territorial authority wrote to the owners on 26 January 2006 saying “*we are unable to approve this structure under the Building Act 2004 and its associated Regulations*” and listing a number of aspects that “*do not comply or require further consents*” under the Act and the Resource Management Act 1991. The letter concluded:
- It is unfortunate that no further work can be carried out, building not to be occupied and the structure removed. . .
- Have a plan prepared to comply with all the building regulations and once the previously mentioned matters pertaining to the site have been cleared, apply for a building consent.
- 2.5 The owners applied for a determination on 6 July 2006.

3 Submissions and the draft determination

- 3.1 In the application for a determination the owner cited the definition of “vehicle” in the Land Transport Act and said that the unit:
- is able to be moved.
 - has a steel chassis.
 - is self-supporting by way of wheels and built-in jacks.
 - has amenities similar to those of a caravan.
 - has “no structures attached, this includes waste water, drinking water and sewage.
- 3.2 In a letter dated 27 July 2006 the territorial authority cited section 8 and doubted whether the trailer, with the Portacom on it, would “*obtain appropriate registrations and WOF as a vehicle*”.
- 3.3 On 2 August 2006 the territorial authority acknowledged receipt of the application and made submissions in response.
- 3.4 On 6 September 2006 the Department wrote to the parties enclosing a copy of Determination 2006/72, saying that it was about a very similar circumstance. Having received no response, the Department wrote again on 31 January 2007 asking “if and how your situation [differs] from that described in [Determination] 2006/72”.
- 3.5 On 6 March 2007 as the parties had still not responded I prepared a draft determination (“the draft”) and sent it to the parties for comment.

- 3.6 The territorial authority accepted the draft, but the owners, through their lawyer, did not accept the draft for the reasons discussed in 5.3.1 below.

4 Legislation

- 4.1 The relevant provisions of the Act are:

8 Building: what it means and includes

- (1) In this Act, unless the context otherwise requires, building—
- (a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and
- (b) includes—
- (iii) a vehicle or motor vehicle (including a vehicle or motor vehicle as defined in section 2(1) of the Land Transport Act 1998) that is immovable and is occupied by people on a permanent or long-term basis; and

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.

- 4.2 The relevant provision of the Land Transport Act is the definition of “vehicle” in section 2, which provides:

Vehicle—

- (a) Means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved . . . [subject to various inclusions and exclusions that are not relevant to this determination]

5 Discussion

5.1 General

- 5.1.1 As the owners recognised in their application for a determination, the matter turns on whether the unit is a “building” for the purposes of the Act. If it is not, then that is the end of the matter. If it is, then the territorial authority has powers under the Act to take action to deal with the situation.

- 5.1.2 Accordingly, this determination does not consider any specific matters of compliance with the Building Code raised by the territorial authority.

- 5.1.3 Although the matter in dispute was not expressed in those terms, an underlying question is whether the unit is controlled by the Act as a building, or by the Land Transport Act 1988 as a vehicle. For the reasons set out below, I consider that the unit is controlled by the Act when it is being used as a building.

5.2 Determination 2006/72

- 5.2.1 Determination 2006/72 was issued on 11 August 2006 and is about certain purpose-built residential units (the chalet units”) equipped with wheels and extending tow bars but only for use in manoeuvring the chalet units into position on site.

- 5.2.2 Determination 2007/72 included discussion on vehicles and moveable buildings, how these were defined, and the interface between building and land transport legislation. Determination 2007/72 found that the chalet units were buildings for the purposes of the Act.
- 5.2.3 As I believe Determination 2006/72 deals with a similar circumstance to that described here, with respect to whether the unit is building or a vehicle, it was sent to the applicants for their comment (refer paragraph 3.4).
- 5.2.4 The owners did not agree that the relevant facts in this case are indistinguishable from those in Determination 2006/72. The owners made the following submission.

5.3 The owners' submissions

5.3.1 That Determination 2006/72 was confined to its own facts

5.3.1.1 It was submitted for the owners that:

... [the draft says that] 2006/72 is applicable as it is "indistinguishable" However in 2006/72 it was stated:

... this determination must be confined to the application of the Building Act to the three Leisurebuilt Chalet units at the Oakura Beach Camp

5.3.1.2 I take that to be a general argument to the effect that Determination 2006/72 is irrelevant because it is confined to its own facts.

5.3.1.3 In response, I note the following. Any determination must be made in respect of the particular matters concerned. However, I recognise that determinations are analogous to case law in the sense that determinations can properly be used as guidance on what is required under the Act and the Building Code. It was on that basis that I sent copies of Determination 2006/72 to the parties. That is not to say that I am legally bound by previous determinations, but it does mean that I will generally follow previous determinations unless I consider that there are exceptional circumstances which make it inappropriate to do so.

5.3.2 That the facts are distinguishable

5.3.2.1 It was submitted for the owners that:

... at [paragraph 6.1 of Determination 2006/72] the notice to fix was amended to require a certificate of acceptance for only:

... that building's foundations and that building's connections to its foundations and to its utilities,

It follows that the defining criteria then are any "building's" relationship to its foundations as discussed in [4.6.5 of Determination 2006/72].

At [paragraph 2.4 of Determination 2006/72] it was noted:

As installed the units are supported on concrete blocks and timber packets [*sic*]. Not all wheels remain in contact with the ground.

and

The units are connected to the camping ground's electrical, water and sewerage systems.

The [owners'] situation is materially different than that considered in determination 2006/72 as their vehicle rests solely on its wheels all of which remain in contact with the ground.

Further in regard to electrical, water and sewerage systems the [owner's] vehicle is not connected to services as is the case in [Determination 2006/72]. . . Rainwater is collected and retained in tanks situated under the trailer deck, similarly the grey water from the shower, sinks and toilet are stored in a tank and taken off site for disposal. . .

The power connection is . . . by means of a . . . plug similar to those found in a camping ground caravan park.

- 5.3.2.2 I accept that in many respects the unit with which this determination is concerned differs from the chalet units in Determination 2006/72. However, those differences do not affect my view that both units come within the section 8(1)(a) definition of a building as “a moveable structure”.
- 5.3.2.3 Furthermore, those submissions are in terms of section 8(1)(b)(iii) not of section 8(1)(a). The unit ceased to be a vehicle when it had been manoeuvred into the position where it is to be used as a building. As the unit is not a vehicle, it comes within section 8(1)(a) and not section 8(1) (b) (iii). It therefore makes no difference whether or not it is “immovable” or “occupied by people on a permanent or long term basis” the unit is considered as a “building” in terms of section 8(1)(a) and not as “immoveable vehicles” in terms of section 8(1)(b)(iii).
- 5.3.2.4 The submission for the owner also said that the unit “is only utilised for holiday weekends”. I do not accept that as a reason for considering that the unit need not comply with the Act. The same could be said for a large number of bachs, cribs, ski huts, and other holiday dwellings, but the fact that there are no people in a dwelling over any particular period does not mean that it is not a building for the purposes of the Act.

5.4 Conclusion

- 5.4.1 The submissions for the owner while identifying some differences in facts between this and those in Determination 2006/72 have not persuaded me that the unit is any other than a building as defined in the Act.
- 5.4.2 In terms of whether the unit is controlled by the Act or by the Land Transport Act, see 4 above, I conclude that:
- (a) The unit is a “moveable structure” and therefore comes within the definition of “building” in section 8(1)(a) of the Act.
 - (b) The unit is a “contrivance equipped with wheels” and therefore comes within the definition of “vehicle” in section 2 of the Land Transport Act.
 - (c) Both Acts apply, but:
 - (i) The Act applies when the unit is being used as a building, and
 - (ii) The Land Transport Act applies when the unit is being used as a vehicle.

6 Decision

- 6.1 In accordance with section 188(1), I hereby confirm the territorial authority's decision to the effect that the unit is a building and must therefore comply with the Building Code to the extent required by the Act.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing
on 17 September 2007.

John Gardiner
Manager Determinations