IN THE DISTRICT COURT
AT CHRISTCHURCH

I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI

CIV 2023-009-1456
[2024] NZDC 18429

UNDER	the Building Act 2004
IN THE MATTER	of an appeal pursuant to s 208 of the Building Act 2004 against Determination 2023/009 of the Chief Executive of the Ministry of Business, Innovation, and Employment
BETWEEN	ERIC WOODS Appellant
AND	WAIMAKARIRI DISTRICT COUNCIL Respondent
AND	THE CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Interested Party

Hearing: 10 July 2024

Appearances: E Woods, Appellant in person
H Harwood for the Respondent
N Smith for Interested Party

Judgment: 6 August 2024

RESERVED JUDGMENT OF JUDGE K D KELLY

Introduction

[1] This is an appeal against a Determination of the Chief Executive of the Ministry of Business, Innovation and Employment (Chief Executive or MBIE)[1] pursuant to the Building Act 2004 (the Act) in relation to thirteen 'Cosy Homes' units that were under construction.

Background

[2] The appellant is the director of Mindspace Solutions Limited which trades as 'Cosy Homes'. Cosy Homes makes units that are marketed as high quality portable accommodation although the units can be used for a range of other purposes.

[3] The units which are the subject of this appeal were located at the appellant's place of business at 108 Butchers Road, Kaiapoi in the Canterbury region (the Production Site). Once purchased and constructed, the units are transported off the Production Site and around the country.

[4] The Chief Executive - the interested party in this matter - provided a report to the Court pursuant to rule 18.19 of the District Court Rules 2014. The report commences with an overview of the background to the Determination which is the subject of this appeal.[2] I repeat this for context as I consider that it fairly portrays the background to his appeal, and the link between this appeal and an associated decision of this Court in *Woods v Waimakariri District Council*:[3]

> The [Waimakariri District Council] became aware of construction activities at the Appellant's premises in April 2018 and carried out inspections in April and November 2018. The [Council] issued a letter and notice to fix to the Appellant in December 2018 regarding the construction of units without a building consent. The [Council] carried out a further inspection in March 2019 and engaged a consultant to investigate the compliance of the units in April 2019. On 28 August 2019 the [Council] applied for a determination in relation to the ongoing construction of units by the Appellant without building consents and a unit being used as a 'granny flat' at the Appellant's premises.

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[1] While the determination was made by Ms Katie Gordon, the National Manager, Building Resolution of MBIE I refer to Ms Gordon as the Chief Executive for the purposes of this decision as Ms Gordon did so for and on behalf of the Chief Executive, Ms Carolyn Tremain

[2] Report of the Chief Executive of the Ministry of Business, Innovation and Employment dated 26 October 2023 at [3] – [6]

[3] *Woods v Waimakariri District Council* [2022] NZDC 24083

> After discussion between the Ministry and the [Council], the [Council] split the application into two separate matters for determination with the Ministry accepting the application for a determination in respect of the granny flat on 19 September 2019, and issuing determination 2022/001 on 01 March 2022. The Appellant appealed Determination 2022/001 and the District Court issued its decision on 09 December 2022 in [*Woods*].
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> The [Council] carried out a further inspection of the units under construction in October 2019, and provided further information in support of its application for a determination in respect of the units under construction on 14 November 2019. The Ministry accepted this application for a determination on 25 November 2019.
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> Both parties made submissions and a draft determination was issued on 16 November 2022. Both parties indicated further submissions would be made, although submissions were only received from the [Council]. Determination 2003/09 was issued on 27 April 2023.

The Determination

[5] In relation to the units under construction, pursuant to s 188 of the Act, the Chief Executive determined (the Determination) that the:

(a) thirteen units built by the appellant and observed in various stages of construction between 5 April 2018 and 2 October 2019 are 'buildings' as defined in s 8(1)(a) of the Building Act 2004 (the Act);[4] and

(b) the respondent (the Council) was correct in its proposal to issue a notice to fix for the units under s 164 of the Act on the grounds that building work was carried out without building consent when building consent was required.

[6] As in *Woods*, the Chief Executive applied the approach to the interpretation of s 8 of the Act as confirmed by the Court of Appeal in *Thames-Coromandel District Council v Te Puru Holiday Park Ltd.*[5]

[7] This approach first required an assessment of whether the units were 'vehicles or motor vehicles' as those terms are defined in s 2(1) of the Land Transport Act 1998 (LTA).

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[4] It is understood that most of these have since been sold and removed from the Production Site
[5] *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* [2010] NZCA 663

[8] The Chief Executive noted that the terms 'vehicle' and 'motor vehicle' are not defined in the Act and that it was appropriate to consider the dictionary definition of those terms but expressly said that the dictionary definition cannot be preferred over the LTA definition and that the effect of *Dall v Chief Executive of Ministry of Business, Innovation and Employment*[6] is that if a structure comes within the LTA definition, it must be considered a vehicle or a motor vehicle for the purposes of s 8(1)(b)(iii) of the Act.

[9] The Chief Executive not only referred to *Te Puru*[7] and to the District Court decisions in *Dall,* and *Marlborough District Council v Bilsborough*[8]*,* but the Chief Executive also noted that since its draft determination was issued, the District Court had issued its decision in *Woods.*

[10] The Chief Executive recognised that at the time of inspection the units were still under construction and that marketing and the design of the units allows for them, or some of them, to be completed as vehicles. The Chief Executive noted that the units are built on steel support frames which is designed to allow a retractable towbar and removable axles and wheels to be added which parts, it appeared, could be added at any stage during the construction process. On this basis, the Chief Executive assumed that all of the units inspected were capable of being completed as vehicles under the broad LTA definition.

[11] The Chief Executive also noted Mr Wood's submission that the trailer/steel support frame is built first and that it provides "wheels on which it moves" to make it a vehicle, with everything being built on top of the trailer such that, in Mr Woods' opinion, it is able to still maintain its vehicle status. During the production process, Mr Woods said that the trailer is always moved around.

[12] The Chief Executive went on to say, however, that the owner's website and other online listings indicated that the units are customisable and made to order with the wheels and towbar being described as "optional". The Chief Executive noted that

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[6] *Dall v Chief Executive of Ministry of Business, Innovation and Employment* [2020] NZDC 2612
[7] *A*bove n 5
[8] *Marlborough District Council v Bilsborough* [2020] NZDC 9962

it appeared that the wheels, axles and towbar are attached temporarily for the purpose of shifting the units around the yard and are subsequently removed.

[13] In light of this, the Chief Executive considered that it was clear that the wheels and towbars are not a necessary part of the design and that it seemed that a purchaser would have to decide whether to purchase the unit with these features prior to construction commencing. The Chief Executive noted, however, that Mr Woods had not provided any evidence that these features had been requested on the units subject to the determination. As a result the Chief Executive said:[9]

> I am not satisfied that the units can be considered vehicles solely by virtue of having been moved around the yard on temporary wheels. In my opinion, the temporary wheels that are attached to the internal frame during construction are akin to falsework[10] in that they are not a permanent feature of the units but are temporarily attached to manoeuvre the units on the owner's property during construction. The attachment of these wheels for the purpose of construction is not a basis to conclude that the units will meet the definition of a vehicle once completed, or that this temporary use of wheels reflects the completed construction.
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> …
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> Turning to the units as they presented during the authority's inspections, the thirteen units photographed by the [Council] were located in the yard. None of the identified units were fitted with wheels or towbars at the time of the [Council's] inspections. Where it is possible to view the underside of the units in the photographs, they appear to be sitting on jacks or concrete blocks.

[14] The Chief Executive said unlike the unit that was the subject of *Woods*, in this case Mr Woods had not provided evidence that the thirteen units identified were intended to be, or were in fact, completed with features that vehicles have. Accordingly the thirteen units were not considered to have met the definition of 'vehicle' in either

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[9] Determination 2023/009 dated 27 April 2023 at [5.23] and [5.25]. It has since been conceded by the Chief Executive that the chassis of one support frame referred to in the Determination (figure 2 at [5.21]) was incorrectly referred to as having only one axle and chassis when it had two axles and four wheels. It is submitted, however that this does not affect the analysis or conclusions reached in the Determination

[10] Defined in s 7 of the Act as meaning, in relation to building work or the maintenance of a building: (a) any temporary structure or framework used to support building products, equipment, or an assembly; and (b) includes steel tubes, adjustable steel props, proprietary frames, or other means used to support a permanent structure until it becomes self-supporting; but (c) does not include scaffolding or cranes used for support

the LTA or the dictionary. The Chief Executive concluded therefore that they were not vehicles for the purposes of s 8(1)(b)(iii) noting:[11]

> To conclude otherwise would mean that something without wheels at the time it presents and without evidence of wheels being attached at completion of construction is a vehicle on the basis the generic designs provide an option for wheels to be fitted at some point in the future.

[15] The Chief Executive then addressed the question of whether the units were buildings in terms of s 8(1)(a). The Chief Executive considered whether the term 'building' includes a movable structure and rejected Mr Woods' argument that a building must be fixed to the ground saying that this was rejected by the District Court in *Christchurch City Council v Smith Crane & Construction Ltd*.[12] The Chief Executive also noted that in *Te Puru*, two units sitting on concrete blocks and timber packers were both buildings within the general definition in s 8(1)(a).

[16] The Chief Executive considered that the units consisted of a number of elements and were of sufficient complexity to be considered 'structures' and that at the point of manufacture, they were moveable structures ultimately intended for occupation by people. Without there being any evidence to the contrary, the Chief Executive found the units to be buildings under s 8(1)(a).

Grounds of Appeal

[17] Mr Woods appeals against the Chief Executive's Determination.

[18] The gist of Mr Woods' appeal is that the Chief Executive was wrong to find that the units under construction were not vehicles because they did not have wheels attached to them for the entirety of their build.

[19] Mr Wood seeks that the Determination be reversed and this Court find that the units are vehicles and not buildings for the purposes of the Act.

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[11] Above n 9, at [5.27]

[12] *Christchurch City Council v Smith Crane & Construction Ltd* CRI-2009-009-012480, Oral Decision of JE Borthwick DCJ, 19 February 2010

Legal Framework

[20] In *Woods* this Court set out the approach to be taken on appeal. I repeat and adopt what Judge Tuohy said in that decision:

> ***The Appeal***
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> [12] The applicant or any other party to a determination has a right of appeal to the District Court pursuant to s 208 of the Act. It is specifically provided in s 211(2) that the section does not give the District Court power to review any part of the determination other than the part against which the appellant has appealed.
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> [13] The appeal is by way of rehearing[13] following the approach articulated in *Austin Nichols & Co Inc v Stichting Lodestar*[14]. The appeal court has the responsibility of arriving at its own assessment of the merits of the case. The appellant is entitled to judgment in accordance with the opinion of the appellate court, even where that opinion is an assessment of fact and degree and entails a value judgment. While the appellate court is entitled to give such weight as it sees fit to the conclusion of the decision-maker, if the court's opinion is different from the conclusion of the decision-maker appealed from, then the decision under appeal is wrong, even if it was a conclusion on which minds might reasonably differ.
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> [21] The powers of this court on appeal are set out in s 211 of the Act. The court may confirm, reverse or modify the determination of the Chief Executive; or refer the matter back to the Chief Executive; or make any determination that the Chief Executive could have made in respect of the matter.
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> ***Relevant provisions of the Building Act 2004***
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> Section 8 of the Building Act is the crucial provision:
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> **8. Building: what it means and includes**
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> (1) In this Act, unless the context otherwise requires, *building*—
>
> (a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and
>
> (b) includes—
>
> (i) a mechanical, electrical, or other system; and
>
> (ii) any means of restricting or preventing access to a residential pool; and

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13 DCR 18.19

14 *Austin Nichols & Co Inc v Stichting Lodestar* [2008] 2 NZLR 141

(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

(iv) a mast pole or a telecommunication aerial that is on, or forms part of, a building and that is more than 7 m in height above the point of its attachment or base support (except a dish aerial that is less than 2 m wide); and

(c) includes any 2 or more buildings that, on completion of building work, are intended to be managed as one building with a common use and a common set of ownership arrangements; and

(d) includes the non-moving parts of a cable car attached to or servicing a building; and

(e) after 30 March 2008, includes the moving parts of a cable car attached to or servicing a building.

(2) Subsection (1)(b)(i) only applies if—

(a) the mechanical, electrical, or other system is attached to the structure referred to in subsection (1)(a); and

(b) the system—

(i) is required by the building code; or

(ii) if installed, is required to comply with the building code.

(3) Subsection (1)(c) only applies in relation to—

(a) subpart 2 of Part 2; and

(b) a building consent; and

(c) a code compliance certificate; and

(d) a compliance schedule.

(4) This section is subject to section 9.

[23] Building work is defined in s 7 of the Act:

Interpretation

…

building work—

(a) means work that is either of the following:

(i) for, or in connection with, the construction, alteration, demolition, or removal of a building:

(ii) on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code; and

(b) includes sitework; and

(c) includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act (*see* subsection (2)); and

(d) in Part 4, and the definition in this section of supervise, also includes design work (relating to building work) of a kind declared by the Governor-General by Order in Council to be building work for the purposes of Part 4 (*see* subsection (2)); and

(f) includes the manufacture of a modular component

[24] The approach to the interpretation of s 8 has been established by the Court of Appeal's decision in Te Puru which is binding on this court. The court must address the following questions consecutively:

- Is the unit a 'vehicle' or 'motor vehicle' in terms of s 8(1)(b)(iii)?
- If the unit is a 'vehicle', then consideration must be given to whether it is immovable and occupied by people on a permanent or long-term basis. If both those conditions are fulfilled, then the unit is a 'building' in terms of the Act. Otherwise, it is not.
- If the unit is not a vehicle, then does it otherwise come within the general definition of a building under s 8(1)(a)?

[25] Both the decisions of the District Court [in Dall and Bilsborough] provide helpful guidance in relation to the assessment of whether a vehicle is immovable or is occupied by people on a permanent or long-term basis. However, both emphasise that that assessment must be made on the facts of the particular case.

[21] To *Dall* and *Bilsborough* must now be added *Woods*.

Appellant's submissions

[22] Mr Woods appears to the Court be a man motivated by considerable social concern to help resolve the current housing crisis. Mr Woods is concerned to see that people have a place to live without added barriers of what he considers to be the

unnecessary cost of regulation as it relates to building consents where that is not required.

[23] Mr Woods considers that if units such as the ones he builds are all required to have building consents, notwithstanding that they meet the building code, then that is an additional cost for people who are already struggling to find a place to live.

[24] Mr Woods sees the solution to affordable housing lying in part in the distinction between chattels and real property. That is, Mr Woods considers that where a person intends to use one of his units as a vehicle, then that unit is and ought to be regarded as a chattel which can easily be moved. People purchasing vehicles, Mr Woods submits, do not expect them to require building consents.

[25] Where, however, a person wants to use one of his units to be a more permanent structure and affixes it to the land, then it ought not to be regarded as a vehicle and is susceptible to needing a building consent.

[26] The Act, Mr Woods submits, is aimed at defining buildings as structures fixed to land and annexed to title and does not include chattels such as vehicles or shipping containers or Cosy Homes being sold and transported to customers as portable goods.

[27] Mr Woods submits that when his units are constructed, they are initially fitted with wheel assemblies allowing them to be moved around the Production Site as part of the manufacturing process. Purchasers are given a choice as to whether they wish to retain the wheels and axles on the units they purchase, or to remove these for placement of the units more permanently on land. This, the appellant submits, provides the customer with maximum flexibility as to how they wish to use the Cosy Home units in the future.

[28] Mr Woods submits that in *Woods* Judge Tuohy determined that his units are vehicles while under construction, even though in that case the wheels had been removed at the time in question. Accordingly, he submits that the Chief Executive's determination ought to be reversed to find that while under construction the units are

vehicles, and that they do not need to have their wheels attached for the entirety of their build to maintain their status as vehicles.

[29] Whereas in *Woods*, the Chief Executive agreed that the units were vehicles, Mr Woods says that the Chief Executive is now saying that they are not. In part, Mr Woods submits that this is because in MBIE's analysis, MBIE has wrongly narrowed the meaning of the term 'vehicle' by considering the dictionary definition of that term, when the term is defined in s 8(1)(b)(iii) by reference to s 2(1) of the LTA.

[30] Mr Woods submits that it is not determinative that the units are buildings based on the units' wheels being able to be removed. The units are designed so that the wheels can be modular and added or removed as the need arises. Similarly, the towbars are optional. This, it is submitted, is not falsework as MBIE suggests.

[31] Mr Woods submits that it cannot be known whether the units are vehicles or buildings until purchasers elect how they intend to use the units, that is, until its future purpose is determined, which use was unknown at the time of MBIE's determination.

[32] What a customer does, Mr Woods submits, is the customer's choice and if customers decide to fix the units to the land (e.g. by attaching to foundations or attaching decks to the units) after they are transported off of the Production Site, he advises them about the need for a building consent which is a matter for them if they go down that route.

[33] Mr Woods also submits that if the units are not vehicles, then the critical term against which they need to be assessed in s 8(1)(a) is 'structure', and because that term is not defined in the Act, the definition in the Resource Management Act 1991 should be adopted namely "any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft".

[34] Mr Woods submits that MBIE does not understand the term 'moveable structure" and submits that the "single, narrow District Court case" of *Smith Crane* should have been appealed. Insofar as the Chief Executive relied on that case because it considered the term 'structure' by reference to its usual ordinary meaning, or because

that term connotes the need for some elements or constituent parts or be of some complexity, the Chief Executive's decision is wrong.

[35] In Mr Woods' view, because the court in *Dall* rejected the dictionary definition of the term 'vehicle', so too should the usual or ordinary meaning of the term 'structure' be rejected. Again, Mr Woods submits that at its core, the Act is attempting to deal with buildings as structures fixed to land. In this regard, his units may be moveable but they are not structures as they are not fixed to land.

The Council's submissions

[36] Mr Harwood for the Council submits that Mr Woods seeks to avoid the need to obtain building consents by characterising his Cosy Homes as vehicles.

[37] Mr Harwood submits that the Chief Executive's determination was correct and that simply because some of the units include features that vehicles can have (i.e. wheels, axles and tow bars), those do not of themselves render the units to be vehicles.

[38] Further, the Council submits that there is no principled reason why the units should not need to comply with the building consent regime like other dwellings. If the units are found to be vehicles, the Council submits, not only would Mr Woods not need to obtain building consents but the units would not need to comply with the building code. It is submitted that there would be no way to ensure that the units are sufficiently safe and durable to be occupied, despite Mr Wood's assertions that they are built to code.

[39] As regards their movability, it is submitted that the wheels and towbars are optional 'add-ons' unnecessary for the construction of the units. Their purpose is to enable the units to be moved small distances on flat surfaces from the hanger in which they are initially constructed, and their possible existence cannot be the basis for deeming them units for the purposes of s 8(1)(b)(iii) of the Act.

[40] It is further submitted that the qualifying aspect of the LTA definition is that other than being a contrivance, the units must be equipped with the necessary equipment on which they move or are moved, this being integral to the contrivance.

The LTA definition, it is submitted, does not go as far as to include units that could be modified to occasionally be moved. It is submitted that while the units have the ability to include detachable towbars and wheels, when they were inspected by the Council, none of the units were fitted with wheels or towbars.

[41] It is also submitted that the units are, as a matter degree, immovable insofar as amongst other things, they are designed to be used for residential purposes, and cannot withstand being towed on a road (instead needing to be transported on a large truck and requiring a crane to place them on the purchaser's site).

[42] In terms of the units being occupied by people on a permanent or long-term basis, the Council submits that Cosy Homes' marketing material describes the homes as being designed and intended to be lived in on a permanent basis and that they include a full kitchen, sanitation and sleeping facilities.

[43] As the units are not vehicles, Mr Harwood also submits that units otherwise come within the general definition of a building under s 8(1)(a) and that as noted by MBIE in its determination, the argument that a building needs to be fixed to the ground has previously been rejected by this Court.[15]

The Chief Executive's report

[44] Mr Smith, who appeared for the Chief Executive, spoke to the Chief Executive's report. As was the case in *Woods,* Mr Smith took no position on the correctness or otherwise of the Determination and his appearance was not as a contradictor. This is reflected in the Chief Executive's status in the proceeding as being an interested party.

[45] The report provides a broad overview of the Act and its relevant provisions and legal aspects of an appeal to this Court. The report then provides an analysis of the Determination before making a number of points about the appellant's submissions.

[46] Notably, the report makes the following points:

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[15] Above, n 12

- the wheels that were attached to the units during construction were temporary wheels to enable the units to be more easily moved around the construction site;

- temporary support for buildings during their construction is common in the building industry being defined as 'falsework' in s 7 of the Act;

- the facts in *Woods* (where Judge Tuohy said that he was unable to see the construction as building work because the unit was a vehicle equipped with wheels when it was manufactured), differ from the present case in that *Woods*:

    - concerned a completed unit and not one that was in the construction process such that Judge Tuohy's comment was made retrospectively about the construction of the unit; and

    - was based on an assumption that the unit was built with its wheels on, which was not the case (as during construction the units do not have wheels but temporary wheels are added to enable them to be moved around the manufacturing site);

- portable houses, buildings, and increasingly, modular buildings and houses, all of which are transportable and movable, are:

    - an important and increasing type of building work undertaken within the building industry; and

    - all of these types of buildings would be excluded from the definition of "building" (and the work to construct them would not be "building work") if it was concluded that a building must be fixed to the ground to be a building under s 8(1)(a) of the Act - this argument was rejected in *Christchurch City Council v Smith Crane & Construction Ltd.*[16]

[16] Above, n 12

Discussion

[47] At the outset I note that Mr Woods objects to a number of aspects of the Determination and seeks that those parts be corrected or expunged from the Determination. Mr Woods also seeks guidance or clarity as to the law about building small, transportable homes both for himself and for others involved in industry. As Mr Woods put it, he does not feel that MBIE is 'getting the message' from cases determined by the Courts, which will require builders like himself to keep coming back again and again on appeal for the same issues.

[48] As Judge Tuohy said in *Woods:*[17]

> [38] The District Court is a court of record which means that the only powers it has are those given by statute. These do not extend to deciding any matter other than those which are properly before it on the appeal. While there is nothing to prohibit a court expressing an opinion on any other matter, any such opinion would have no legal status. The common law tradition is that courts do not generally provide views or opinions which are not required by the decision which has to be made. That is particularly so in relation to lower courts such as the District Court.
>
> [39] Another fundamental constitutional convention needs to be mentioned. Under our legal system, lower courts are bound to follow legal principles which have been established by decisions of higher courts. For example, whether it agrees with it or not, this court is bound to follow the decision of the Court of Appeal in *Te Puru* insofar as it established the correct approach to the interpretation of s 8 of the Act. By contrast, this court is not required to follow decisions made by District Court judges in other cases although those decisions should be accorded respect.
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> [40] I mention these fundamental principles so that Mr Woods will understand why the following discussion does not cover all the issues raised in his submissions. It is clear that he has undertaken considerable research and given much thought to those issues. I respect those efforts and sympathise with his search for certainty and clarity. However, while decisions in which statutory definitions are applied to individual cases can incrementally assist the search for certainty, it can often be more efficiently attained by more prescriptive primary or secondary legislation.

[49] I reiterate this because it equally applies in this case.

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[17] Above n 3, at [37]-[39]

[50] Importantly, to the extent that Mr Woods considers that the law needs changing to adapt to innovations like his, this may more effectively be directed towards his local Member of Parliament or to the relevant Minister or Ministers.

Issue for determination

[51] There is no dispute in these proceedings that Mr Woods' company constructed the Cosy Homes observed by the Council.

[52] The issue that I must decide is whether MBIE was correct in its finding that the units which are the subject of its determination are 'buildings' for the purposes of s 8 of the Act?

[53] As noted, the Court of Appeal in *Te Puru* said the correct approach to the interpretation of s 8 of the Act where it is contended that a unit is a vehicle, is to ask the following questions:

> (a) Is the unit a 'vehicle' or 'motor vehicle' in terms of s 8(1)(b)(iii)?
>
> (b) If the unit is a 'vehicle', then consideration must be given to whether it is immovable and occupied by people on a permanent or long-term basis. If **both** those conditions are fulfilled, then the unit is a 'building' in terms of the Act. Otherwise, it is not.
>
> (c) If the unit is not a vehicle, then does it otherwise come within the general definition of a building under s 8(1)(a)?

[54] This is the approach I take to my analysis.

[55] Before doing so, however, it is important to address Judge Tuohy's decision in *Woods*. This is because Mr Woods has said that Judge Tuohy determined in that case that the unit in question, which was a constructed version of the units in this case, was a vehicle at the time of its construction even though the wheels had been removed at the time in question. Mr Woods says that where the Chief Executive agreed that the unit in *Woods* was a vehicle, she now says that the units that are the subject of this appeal, are not.

[56] In *Woods* the Court was faced with an appeal of a determination relating to one unit (a constructed 'granny flat') which the Chief Executive said was immovable. The

particular aspects of that unit included the absence of towing capability particularly compared to caravans, together with the absence of features usually found in caravans including brakes, indicator and brake lights, number plates and registration, vehicle licence and a warrant or certificate of fitness.[18] Other factors that lent weight to that assessment were that that the unit was designed to sit on eight concrete feet rather than on wheels; that those feet largely performed the same function as the foundations of a building; that the wheels had to be refitted to the unit before it could be towed, and that significant preparation was required for the unit to be towed. [19]

[57] As Judge Tuohy said, the "main thrust of that appeal related to the findings in the determination that the unit was immovable and occupied by people on a permanent or long-term basis and that its construction involved 'building work' in terms of the Act for which a building consent was required". [20]

[58] Relevantly, both parties had agreed that the unit was a vehicle. There was no appeal on that point. Therefore, the primary issue, for the purposes of applying the approach in *Te Puru*, was whether the unit was immovable and occupied by people on a permanent basis or long-term basis, and did not include the issue of whether the unit was a 'vehicle' or 'motor vehicle' in terms of s 8(1)(b)(iii) (as I must do here). [21]

[59] It is in this context that Judge Tuohy commented: [22]

> I am unable to see that the consideration of this unit, which was a vehicle equipped with wheels when it was manufactured, could have been building work when it was undertaken because at that point it was not a building. The vehicle only became a building at the earliest when it was placed at its outside location and became immovable. Only work which falls within the definition in s 7 and which was carried out then or later could be building work.

[60] I note this because Mr Woods has placed considerable importance on this statement for the present appeal, saying that the core issue of this appeal was already decided in *Woods*. While I acknowledge why Mr Woods thinks this to be the case, the issue that he contends was decided in *Woods* was not decided because there was no

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[18] Above n 3, at [7]
[19] Above n 3, at [8]
[20] Above n 3, at [11]
[21] Above n 3, at [41]
[22] Above n 3, at [67]

need for Judge Tuohy to do so, it being agreed that the unit in that case was a vehicle. Judge Tuohy was not required to turn his mind to that issue.

[61] This appeal does not start with the same underlying agreement that the units were vehicles at the time that they were inspected.

[62] Implicit in Mr Woods submissions is that not only are the units vehicles, but they are also movable at the time that they were inspected. Were this not the case they would be caught by s 8(1)(b)(iii) which Mr Woods argues they are not. Similarly, Mr Woods considers that the units are moveable for the purposes of s 8(1)(a) but that they are not 'structures' for the purposes of that subsection.

Are the units 'vehicles' or 'motor vehicles' in terms of s 8(1)(b)(iii)?

[63] Mr Woods' primary argument that the units are 'vehicles' or 'motor vehicles' in terms of s 8(1)(b)(iii) is that vehicles do not need to have features such as wheels or towbars attached for the entirety of their construction to maintain their 'vehicle' status.

[64] Again, this issue was not determined by Judge Touhy in *Woods* for the reasons stated. It is implicit in his decision, however, that a vehicle that did not have features associated with vehicles could become a building at a later date if these are not present.

[65] I agree with Mr Harwood's submission that the definition of the terms 'vehicle' and 'motor vehicle' in s 8(1)(b)(iii) is wider than the LTA definition of those terms. This is clear from the construction of s 8(1)(b)(iii) that vehicles and motor vehicles include vehicles as defined by the LTA. This, however, does not expand the definition of those terms themselves.

[66] In *Dall*, the Court did not determine that one cannot consider the dictionary definition of the term 'vehicle' but said that: [23]

> "The term 'includes' permits an expansion of the LTA definition where appropriate but does not authorise excluding that definition entirely or replacing that definition with a definition from the Oxford dictionary."

[23] Above n 6, at [30]

[67] I am satisfied that this was understood by the Chief Executive when she said:[24]

> In *Alan Dall v The Chief Executive of the Ministry of Business, Innovation and Employment* ("*Dall*"), the court established that the Oxford definition of the word 'vehicle' cannot be preferred over the LTA definition. The effect of the *Dall* decision is that if a structure comes within the LTA definition, it must be considered a vehicle or motor vehicle for the purposes of section 8(1)(b)(iii).

[68] Having regard to s 2(1) of the LTA, the term 'vehicle' is defined as follows:

> **vehicle**—
>
> (a) means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; and
>
> (b) includes a hovercraft, a skateboard, in-line skates, and roller skates; but
>
> (c) does not include—
>
> (i) a perambulator or pushchair:
> (ii) a shopping or sporting trundler not propelled by mechanical power;
> (iii) a wheelbarrow or hand-trolley:
> (iv) *[Repealed]*
> (v) a pedestrian-controlled lawnmower:
> (vi) a pedestrian-controlled agricultural machine not propelled by mechanical power:
> (vii) an article of furniture:
> (viii) a wheelchair not propelled by mechanical power:
> (ix) any other contrivance specified by the rules not to be a vehicle for the purposes of this definition:
> (x) any rail vehicle

[69] The Chief Executive assumed that all the units were capable of being completed as vehicles under the broad LTA definition. This is not disputed.

[70] The issue was that the wheels and towbar were optional features such that are not a necessary part of the design and were required to enable towing on the site. They were not intended to be a permanent feature of the units.

[71] The definition of a vehicle in s 2(1) of the LTA as a "contrivance equipped with wheels, tracks or revolving runners on which it moves," is very broad.

[72] The Chief Executive noted that for eleven of the thirteen identified units, the exterior appeared to be complete or close to completion. There were two units in the

[24] Above n 9, at [5.13]

initial stages of construction; one consisted of a support frame, base and three partially completed walls, and the other consisted solely of a support frame with a number of floor panels laid across.[25]

[73] The Chief Executive noted that all of the units are built on a steel support frame which is designed to allow a retractable towbar and removable axles and wheels to be added. The chief Executive considered that the addition of these units can occur at any stage during the completion process and that because all the units share the same supporting frame design, it was safe to assume that they could all be capable of being completed as vehicles under the broad LTA definition.[26] There is no dispute on this point.

[74] The dispute centres on the Chief Executive's finding that as none of the units were fitted with wheels or towbars at the time of the inspections, and because there was no evidence that the wheels would be completed with features that vehicles have, they did not meet the definition under either the LTA or dictionary definitions.

[75] I find no error in this. The Chief Executive recognised that the units had the potential to be vehicles by the addition of features that vehicles have, but Mr Woods did not provide evidence that this was the intention. In other words, what they were ultimately intended to be was not unknown with certainty. The only outcome that was known and available to the Chief Executive was to find that the units were not vehicles in the state that they were in especially given that any wheels and towbars were likely to be for the purpose of positioning the units on the Production Site rather than relocation of the units to an off-site location.

Are the units immovable and occupied by people on a permanent or long-term basis?

[76] The definition of a vehicle in s 2(1) of the LTA as a "contrivance equipped with wheels, tracks or revolving runners on which it moves," is very broad and could allow owners to avoid the application of the Act by simply adding wheels, tracks or runners to any structure and claiming it can be moved.

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[25] Above n 9, at [5.15]
[26] Above n 9, at [5.17]

[77] In light of this, I go on to consider whether the units were immovable and occupied by people on a permanent or long-term basis.

[78] As was recognised in *Dall*,[27] the exceptions in s 8(1)(b)(iii) protect against the deliberate circumvention of the Act and that a vehicle will still be considered a building for the purposes of the Act if it is immovable and occupied by people on a permanent or long-term basis.

[79] As was also recognised in *Dall*, the term "immovable vehicle" is a contradiction in terms. If something is a vehicle, it must necessarily be movable. Accordingly, in the context of s 8(1)(b)(iii), the term "immovable" must not be strictly interpreted as "incapable of being moved". Such an interpretation would render the word "immovable" meaningless.[28]

[80] 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. [29]

[81] The units in this case, when inspected, were not fitted with any wheels or towbars. By Mr Woods own acknowledgement the units might never be fitted with wheels or towbars other than when they are fitted with temporary wheels for moving around the Production Site. Mr Woods' design allows for this, depending on the wishes of purchaser.

[82] Standing back, I consider that the units are immovable for many of the same reasons that Judge Zorab found the units in *Bilsborough* to be immovable. In that case Judge Zorab said:[30]

> [66] The next question then is whether the structure is immovable. As almost every building, particularly one that is a vehicle, will be capable of being moved or relocated, the term "immovable" cannot be strictly interpreted as "incapable of being moved".

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[27] Above n 6, at [36]
[28] Above n 6, at [37]
[29] Above n 6, at [38]
[30] Above n 8, at [66]–[68]

> [67] In my view, the irresistible conclusion on the facts of this case is that the characteristics of this structure quite clearly distinguish it from the unit in *Dall* for the following reasons:
>
> (a) The units have no suspension, shocks, springs, brakes, brake lights, turn signals, or number plates,
>
> (b) 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 than being towed.
>
> (c) It seems clear that the axles, wheels and tow bars were more likely provided for the purposes of repositioning the structures on site, than for the relocation of the units.
>
> (d) The units have no warrant of fitness, or certificate of fitness.
>
> (e) The drawbars have been removed, and would need to be reinstated if the units are to be towed.
>
> (f) …
>
> (g) …
>
> (h) The units' superstructures are comparable to that of a building, and are not designed to transport goods or people.
>
> (i) 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.
>
> (j) The units are being used as an abode intended to be occupied on a permanent or long-term basis, with one containing sleeping facilities, and the other containing bathroom and kitchen facilities.
>
> [68] Accordingly, the structure is an immovable vehicle for the purposes of s 8(l)(b)(iii) of the LTA, which is intended to be occupied on a permanent or long- term basis, and the structure is therefore a building for the purposes of the Act.

[83] I also agree with, and adopt Judge Tuohy's analysis about whether the units are immovable and occupied by people on a permanent or long-term basis:

> [55] It was noted in *Dall* that the occupation envisaged by [s 8(1)(b)(iii)] need not be continuous. It may be considered permanent or long-term even though the vehicle may be vacant from time to time. I agree with that observation. It is common that structures used for human habitation are vacant from time to time. Nor do I think it would make any difference if the individual occupants were not permanent or long-term. A motel unit may have a different occupant each day but still occupied by people on a permanent or long-term basis who are entitled to a safely constructed building. The same should apply if a vehicle is used as human habitation.

> [56] I also consider that common sense requires the phrase to be interpreted as meaning '*is intended to be* or is occupied by people on a permanent or long-term basis'. The purpose of the Building Act is to ensure that people who use buildings can do so safely and without endangering their health. If a structure contains all the accoutrements of human habitation, such as kitchen, bathroom and toilet facilities and bedrooms and thus obviously intended to be occupied by people, then it should comply with the provisions of the Building Act whether or not anyone has moved in yet.
>
> [57] While the evidence of actual occupation is sparse, I am satisfied that the unit was constructed with the intention that it would be used for permanent or long-term occupation ….
>
> [58] The former conclusion is inevitable from the unit's design and construction and from Mindspace's marketing material. The latter conclusion is based on an admission to that effect by Mindspace and is also a reasonable inference from the fact that the services provided to the unit were connected.
>
> [59] For those reasons, I am satisfied that the unit was occupied on a permanent or long-term basis … even though I accept Mr Woods' statement in his submissions that the unit was not occupied then or for some time after. On my interpretation, that makes no difference.

[84] For the same reasons, I am satisfied that the units here were immovable and were intended to be occupied by people on a permanent or long-term basis. Accordingly, even if they are vehicles, they fall foul of the protections in s 8(1)((b)(iii).

[85] For completeness, I do not accept that the definition of the terms vehicle or motor vehicle in s 8(1)(b)(iii) (including the definition in the LTA) is capable of the subjective interpretation that Mr Woods invites. Section 8(1)(b)(ii) requires an objective interpretation. A subjective interpretation where a purchaser decides whether the units are vehicles or not, would render s 8(1)(b)(iii) unworkable defeating the section's purpose, and would largely oust the jurisdiction of the Chief Executive.

[86] If I am wrong and the units are vehicles that are movable and not occupied by people on a permanent or long-term basis as Mr Woods suggests, I consider the final question in the approach set down by *Te Puru*.

Do the units otherwise come within the general definition of a building under s 8(1)(a)?

[87] In terms of Mr Woods' central submission that the units are not 'structures', I disagree.

[88] As the Council rightly submits, and as explained by the Chief Executive in the Determination, it is not open to MBIE to read s 8 in the way that Mr Woods submits it ought to be read. In the first instances, *Dall* did not say that regard could not be had to the ordinary dictionary definition of the term 'vehicle'.

[89] In any event, unlike s 8(1)(b)(iii) which expressly includes reference to the term vehicle or motor vehicle in s 2(1) of the LTA, there is no similar reference in s 8(1).

[90] Thirdly, even if Judge Borthwick in *Smith Crane*, was wrong in saying that to read s 8(1) in this way would be to add words to the subsection that are not there (amounting to judicial amendment of the subsection),[31] as the Chief Executive noted, in *Te Puru* the Court of Appeal found that the Leisurebuilt units were buildings under 8(1)(a). Those units were described as "new generation caravans and mobile homes" and as "trailerised recreational and accommodation units", which sat on concrete blocks and timber packers demonstrating that a unit does not have to be fixed to land in order to be a building under s 8(1)(a) of the Act.

[91] There is nothing before me that leads me to adopt from the Resource Management Act 1991, the definition of the term 'structure' given the different purpose of that Act and the Act here. The purposes of the Resource Management Act 1991 is to promote the sustainable management of natural and physical resources, whereas the purpose of the Act here is, amongst other things, the setting of performance standards for buildings to ensure that people who use buildings can do so safely and without endangering their health; that buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and that people who use a building can escape from the building if it is on fire.

Summary

[92] By way of summary I conclude that:

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[31] Above n 12, at [27]

(a) the units were not vehicles for the purposes of s 8(1)(b)(iii) of the Act;

(b) even if they were, they are immovable and are intended to be occupied by people on a permanent or long-term basis; and

(c) even if I am wrong in relation to (a) and (b), the units are temporary or permanent movable or immovable 'structures' for the purposes of s 8(1)(a) of the Act.

[93] I do not find the Determination to be incorrect.

Result

[94] Pursuant to s 211(1)(a) of the Act I confirm the Determination of the Chief Executive.

Costs

[95] To the extent that costs are being sought, the parties should file and serve a memorandum within 10 working days with any response filed by Mr Woods within a further 10 working days. A decision will be made thereafter on the papers.

K D Kelly
District Court Judge