



TINY HOMES

Tiny Home? Or Not a Tiny Home?

Tiny homes seem to be everywhere at the moment. The tiny home movement has a strong following on social media.

They are promoted as an answer to housing affordability, the housing shortage and as a desirable alternative to the traditional house and mortgage. Conflicts between tiny home owners and local authorities have received heavy news coverage, they continue to cause headaches for council enforcement officers, and MBIE has been asked to determine whether a steady stream of tiny homes are vehicles or buildings.

The issues involved are not new or novel. In fact, the Court of Appeal articulated the test to be applied in a 2010 case called *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* [2010] NZCA 633. That case concerned units described as “new generation caravans and mobile homes” and “trailerised recreational and accommodation units”. The owners of the units argued they were vehicles. The council said they were buildings. Simply articulated, the Court was asked to determine whether the units were vehicles or buildings.

Section 8 of the Building Act defines what a building is and section 9 defines what it is not. The Court did not find the interpretation exercise easy, but concluded that both those sections needed

to be looked at together. Where a specific thing is described and stated to be either included or not included in the definition, that is decisive. The specific obviates the need to consider the general definition. If the thing in question is not specifically dealt with, then you have to consider whether it comes within the general definition.

So in the case of a person arguing that something is a vehicle, the first thing that must be assessed is whether it is, in fact, a vehicle. If it is a vehicle then the next step is to assess whether the vehicle is immovable and occupied by people on a permanent or long term basis. If it is immovable and occupied on a permanent or long term basis, it is a building. If however it is found not to be a vehicle at all, then an assessment needs to be made on whether the thing comes within the general definition of building (which includes a movable structure).

One of the units the Court of Appeal was asked to consider had the following characteristics:

- a. It had no suspension.
- b. It had no brakes.
- c. The wheels on the unit were bolted to the hubs.
- d. Some of the tyres were not on the ground; the unit was sitting on concrete blocks and timber packers;
- e. It could not be towed without a special permit because of its width (3.64m).

- f. It could not have passed a warrant of fitness test.
- g. It was constructed of components commonly used on prefabricated buildings.
- h. It was plumbed.
- i. It was laid out like a small holiday house.
- j. It was occupied on a permanent basis.
- k. It was immovable for the time being and would take a lot of time to get it ready for towing.
- l. It did not have a tow bar.
- m. It did not have tail lights or registration plates.
- n. It had a ranchslider, going onto a wooden deck, with steps down to the ground.

Having considered the above, the Court found that the unit as presented was not a vehicle. It said *“The facts set out are not indicative of a vehicle, of something that moves. They are indicative of a small house, somewhere to live. We accept that the unit, if considerably modified, could have been turned into a caravan or trailer, but that is of minor relevance in determining its “as is” categorisation.”*

Following the Court of Appeal’s judgment there have been a number of determinations by MBIE and its predecessor on this very issue and apart from a couple of obvious mistakes, if a tiny home looks like a building, was designed to operate as a building i.e. “it is indicative of a small house, somewhere to live”, then generally it has been found to be a building.

More recently, in determination 2018/031, MBIE has provided guidance on how to determine if a thing was a building or a boat. Again there is an interaction between sections 8 and 9 of the Building Act. The thing in question was on land and fitted the definition of “building” in section 8(1)(a)

in that it was a “temporary or permanent movable or immovable structure”. However a boat “used in navigation” is expressly excluded from the definition of building by section 9(d). For MBIE the decision came down to whether the thing could be used in navigation. It was found that a number of features of the thing, including non nautical doors and windows in the hull and a greywater system discharging to the ground, were incompatible with a boat used in navigation. MBIE conceded that if modified the structure could be used in navigation – but if we take the Court of Appeal’s reasoning, that is of minor relevance in determining its “as is” categorisation.

We have fielded a lot of questions about tiny homes. These have increased since our presentation at the SBCO Forum. BOINZ has kindly agreed to send our case note and the quiz questions (and answers) to the forum delegates so they can use them as training aids. We have also included MBIE’s useful flow chart with this case note.

We ended our presentation in Wellington by saying these issues are not straightforward. Three very clever Court of Appeal judges found the interpretation exercise difficult. If you need help please do not hesitate to contact us at Heaney & Partners.

Franca Divich
Partner - Heaney & Partners



Is it a vehicle or a movable structure?

Things to consider:

- is it equipped with wheels, tracks or revolving runners on which it moves or is moved?
- is it used for transporting people or goods?
- is it drawn or propelled by mechanical power?
- what is the superstructure made up of?
- whether structures have been attached to it, such as decks, verandas, or additional rooms.

No, it is not a vehicle

A moveable structure falls under the general definition of a building under section 8(1)(a)

Yes, it is a vehicle

Does the structure meet the criteria in section 8(1)(b)(iii)?

Is it immovable? Consider:

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

No, it does not meet either criterion

It is **not** a building under section 8(b)(iii)

Is it occupied by people on a permanent or long-term basis? Consider:

- whether there is an intention of an indefinite period of occupancy;
- whether there is a definite or intended period of occupancy;
- whether occupation is intermittent, occasional, continuous or cyclical.

If it only meets one criteria

Yes, it is both immovable and occupied by people on a permanent or long term basis

It is a building under section 8(1)(b)(iii)