



**AFTER MUCH SOUL
SEARCHING AND A
CHANGE OF MIND,
THE STRUCTURE
WAS FOUND
TO BE...**

When is a man's boat his castle?

Sometimes the simplest questions prove to be the most vexing.

MBIE recently grappled with the vexed question of whether a structure was a boat or a building (*Determination 2018/31*). You would, like me, assume such an assessment to be straightforward: but it is not. To answer the question, MBIE issued three draft determinations, held a hearing, undertook a site visit, instructed a naval architect and heard an array of submissions.

In 2017 a building consent authority (BCA) issued a 'notice to fix' on a boat/building (that we shall call a "structure" for the purposes of this article) as the structure was being built without a building consent. The BCA and the man who owned the structure disagreed over whether the structure under construction was a building (which needed a building consent) or a boat (which didn't need one).

For a BCA to exercise its powers under the Building Act (such as issuing a notice to fix) a structure needs to be considered a "building" and work on the structure must be considered "building work" under section 8 of the Building Act.

If the structure was a boat under construction, the work on the structure would not fall under the Building Act. That's because section 9 of the Building Act says that structures that are a "vessel, boat, ferry or craft used in navigation" are not considered a "building". It does not matter whether the structure has a means of propulsion or not.

In this case, the structure had a partially constructed timber-framed hull with non-nautical windows and a door. The hull contained a bathroom, storeroom, an open plan kitchen and living area. The structure had a small cabin on the upper level that included a bedroom. There was also a wood-burning stove.

A number of parts still needed to be finished including the framing of the hull, the installation of a motor for propulsion, wiring and control systems, anchors and sea cocks and the removal and filling in of the mid-hull windows.

The determination considered whether the structure was a boat under construction that, when finished, would be a boat used in navigation, or whether it was a building with nautical-style design features. If the structure was a boat it would fall outside the Building Act and not require the involvement of the BCA.

The determination used a similar approach to previous determinations and court judgments to test whether the structure was a building or a boat. To be considered a boat under section 9 the structure needed to be:

- "capable" of being used on the water; and
- moved reasonably frequently from anchorage or mooring.

The determination accepted that there are times when boats used in navigation are not able to be used on water, such as during construction or maintenance. The determination noted that when construction or manufacture of a boat satisfies section 9 it is not considered building work, and that a boat could be occupied during its construction and still satisfy section 9.

However, even when under construction, a boat used in navigation would still have the features and characteristics of a boat. The reason it could not be used on water was because it was under construction.

In this case, there were features of the structure (such as the open section in the hull, a door and mid-hull windows) which made it incompatible with the definition of a boat used in navigation. For the structure to be a boat used in navigation these features needed to be removed.

After much soul searching and a change of mind, the structure was found to be (in an 18 page determination)... a building. MBIE said the building did not meet the test in section 9 because before it could be used as a boat it had features that needed to be removed and replaced. The moral of the story: sometimes a man's boat is his castle and subject to the controls of the Building Act. **LG**