

Deciding when houses are vehicles or buildings

By **Sarah Macky**, Heaney & Partners.



In February this year the District Court in Christchurch delivered a decision about a tiny house and whether it was a ‘building’ under the Building Act 2004.

The Hurunui District Council had issued the tiny house owner, Mr Dall with a notice to fix in respect of a structure that he had built on a trailer. The notice required Dall to demolish the structure or apply for a certificate of acceptance.

The District Court decision was the result of an appeal against a decision of the chief executive of the Ministry of Business Innovation & Employment (MBIE), which determined that Dall’s house structure was a building as defined by section 8 of the Building Act 2004 as opposed to it being a vehicle or a motor vehicle.

Section 8(1)(b)(iii) of the Building Act 2004 makes it clear that a vehicle will not be a building unless it is immovable and occupied by some person on a permanent or long term basis.

Dall satisfied the District Court that his tiny house was moveable as it was registered, had wheels, chassis, axels, brakes, lights, draw bar and trailer hitch, it had no plumbing and no electrical

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power supply and that it had and would be moved from site to site.

The District Court concluded that the house was similar to a caravan that is clearly a vehicle and not a building in terms of section 8 of the Building Act 2004.

Therefore, MBIE’s determination was set aside and Dall was not required to comply with the ‘notice to fix’ issued by the Council.

This recent decision can be compared with another involving tiny houses called Thames Coromandel District Council v Te Puru Holiday Park. This was a decision of the Court of Appeal in 2011.

Te Puru was convicted of an offence under the Building Act 2004 for not complying with notices to fix in respect of two tiny house structures on Te Puru’s

land that had been sited without a building consent.

The Court of Appeal considered section 8(1)(b)(iii) of the Building Act 2004 in terms of whether the buildings were immovable and occupied by some person on a permanent or long term basis.

The Court of Appeal took into account that the units had no suspension, no brakes, the wheels were bolted to the hubs, some of the wheels did not touch the ground and the units were sitting on concrete blocks with timber packers, they were plumbed, occupied on a permanent basis and could not be moved without a lot of modification for towing.

The Court of Appeal held the structures were buildings and so the convictions under the Building Act 2004 stood.

With the increase in popularity of tiny houses these two cases give some direction as to the criteria that should be considered when assessing whether a structure is a building under the Building Act 2004 as opposed to a vehicle.

One of the main criteria appears to be whether the structure is immovable and plumbed, although the distinction can be fine and each case is best considered on its own facts. **LG**

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