# When is a vehicle a building?

Two trailer homes and a legal definition send a building dispute through three tiers of the New Zealand legal system and offer a warning to anyone contemplating building without consent.

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In *Thames-Coromandel District Council v Te Puru Holiday Park Limited,* the Court of Appeal was asked to interpret the definitions of the Building Act 2004 and consider whether the High Court had properly dealt with a District Court appeal. At issue was whether two trailer homes at a campground should be considered buildings.

The units were referred to by their manufacturer as new generation caravans and mobile homes and trailerised recreational and accommodation units. The units had been sited without a building consent, and the council laid charges against the campground operator and its director for failing to comply with notices to fix under the Building Act. The campground operator argued that the notice to fix did not apply because the units were not buildings.

## A matter of definition

The District Court judge's approach to the interpretation was to rely on a general inclusive definition in section 8(1)(a) of the Building Act, which states:

(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).

Section 8 goes on to provide specific examples of things categorised as buildings. In the context of the case, the relevant specific definition was section 8(1)(b)(iii), which defines a building as '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'.

The District Court judge decided that he did not need to consider this specific definition because the general inclusive definition covered both units. The campground operator and its director were both convicted of offences under the Building Act.

## Incorrect interpretation

On appeal, the High Court agreed with the campground operator and director's argument that the District Court's approach to interpretation was wrong. Justice Duffy said that the correct approach was to first consider whether the units were vehicles and, if they were, whether they were vehicles with the characteristics set out in section 8(1)(b)(iii) of the Building Act. If those characteristics were not present, the units were not buildings.

Justice Duffy agreed with the District Court that one of the units was not a vehicle but a building under section 8(1)(a) of the Building Act. This unit was comprised of two trailer units locked together. The towbars for the unit had been removed, it sat on concrete blocks and packers, slatted screens had been installed between the floor and ground level, it was connected to power and water and it was plumbed.

However, Justice Duffy considered that the second unit could be a vehicle. She said the difficulty was that the District Court had not considered whether it was a vehicle or not or if it was a vehicle with section 8(1)(b)(iii) characteristics. She could either allow the appeal and set aside the conviction regarding this unit or direct a rehearing of the charge in the District Court. She decided to take the former option, noting that the respondents were entitled to finality. The High Court granted leave to appeal its decision to the Court of Appeal.

## No need for rehearing

The Court of Appeal agreed with the High Court's approach to the interpretation. In the context of the Building Act, it said the best approach to the interpretation was to start with the sections describing and stating specific things to be included or not included as buildings. If a defendant asserts a thing falls within any of the specific parts of section 8 or 9, that argument had to be addressed first.

However, the Court of Appeal found Justice Duffy had not properly dealt with the appeal regarding the second unit. It said that the proper options were either to decide whether or not the charge was made out or to send the matter back to the District Court for a rehearing. It also found there was sufficient evidence before the Court to determine the issue and concluded that the second unit was not a vehicle either. It said the relevant facts were that it had no suspension or brakes, it sat on blocks and its wheels were bolted to the hubs, it could not be towed without a permit because of its width and could not have obtained a warrant of fitness. Also, it was constructed from materials commonly used on prefabricated buildings, and it was plumbed, laid out like a small holiday house, permanently occupied and immovable for the time being. Accordingly, the Court of Appeal reinstated the District Court's conviction regarding the second unit.

## Check if a building consent is needed

This case illustrates that there are instances where it's unclear if the Building Act covers a structure. Here, the property owner took a risk that the units would not require building consents. That risk resulted in convictions and significant costs arguing the issue through three tiers of the Court system. The prudent option would have been to seek clarification before taking any steps that could be classified as building work covered by the Building Act. When in doubt, seek advice from the relevant Territorial Authority or a legal advisor.