

When is a structure a vehicle or building?

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MBIE has issued several determinations in recent years relating to whether a structure is a vehicle or a building under the Building Act.



Is it a vehicle?

Section 8 of the Building Act considers the meaning of a building. Section 8(1)(b)(iii) states a building includes "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."

'Vehicle' and 'motor vehicle' are not defined in the Building Act. To establish whether something is a vehicle, the following definitions should be considered:

- the dictionary definition (natural and ordinary) meaning:
 - a thing with a primary purpose of transporting people or goods
 - powered by some form of combustion or self-propulsion.
- 'vehicle' or 'motor vehicle' as defined in section 2(1) of Land Transport Act 1998:
 - Vehicle – (a) means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved...
 - Motor vehicle – (a) means a vehicle drawn or propelled by mechanical power, and (b) includes a trailer...

(Note: this is not an extensive list of Land Transport Act definitions)

Just because a structure has some vehicle-like features, such as wheels, doesn't necessarily make it a vehicle under the Building Act. The distinction between a building that is movable, and a vehicle, is that a vehicle is used for transporting people or goods, or must be powered by some form of combustion or self-propelled.

Recent determinations have considered whether the following structures were vehicles or buildings:

- a shepherd's hut with wheels and tow bar
- a shed registered as a trailer under the Land Transport Act
- a structure with wheels
- a structure previously fitted with wheels.

The determinations found the structures had some features of vehicles, such as wheels, and could be moved on-site, but had very few other characteristics in common with vehicles (eg suspension, chassis, brakes, lights). The structures weren't used for transporting people or goods, and weren't road vehicles powered by internal combustion engines or self-propelled. Generally, there was no evidence of the structures being used as vehicles.

Is it a building?

If a structure isn't a vehicle, the test for whether it is a building falls within the general definition of a building set out in section 8(1)(a) of the Act. Under this definition, "building" means "a temporary or permanent moveable or immovable structure..."

The examples above were all considered to be moveable structures, and not vehicles. This means they were buildings under the Building Act, and needed to comply with the requirements of the Act and Building Code.

When is a vehicle also a building?

If a structure is a vehicle, it can still be considered a building under the Building Act if it is "immovable" and "occupied by people on a permanent or long-term basis."

Caravans or mobile homes are vehicles used as accommodation. However, they are clearly designed to move on roads and are generally moved from site to site. A vehicle such as a caravan or mobile home would only be considered a building if it were both immovable and occupied permanently or on a long-term basis.

If the structure doesn't meet both of these criteria, it will not be a building as set out in section 8(1)(b)(iii). Determination 2016/011 outlines the criteria to consider whether a vehicle is immovable.

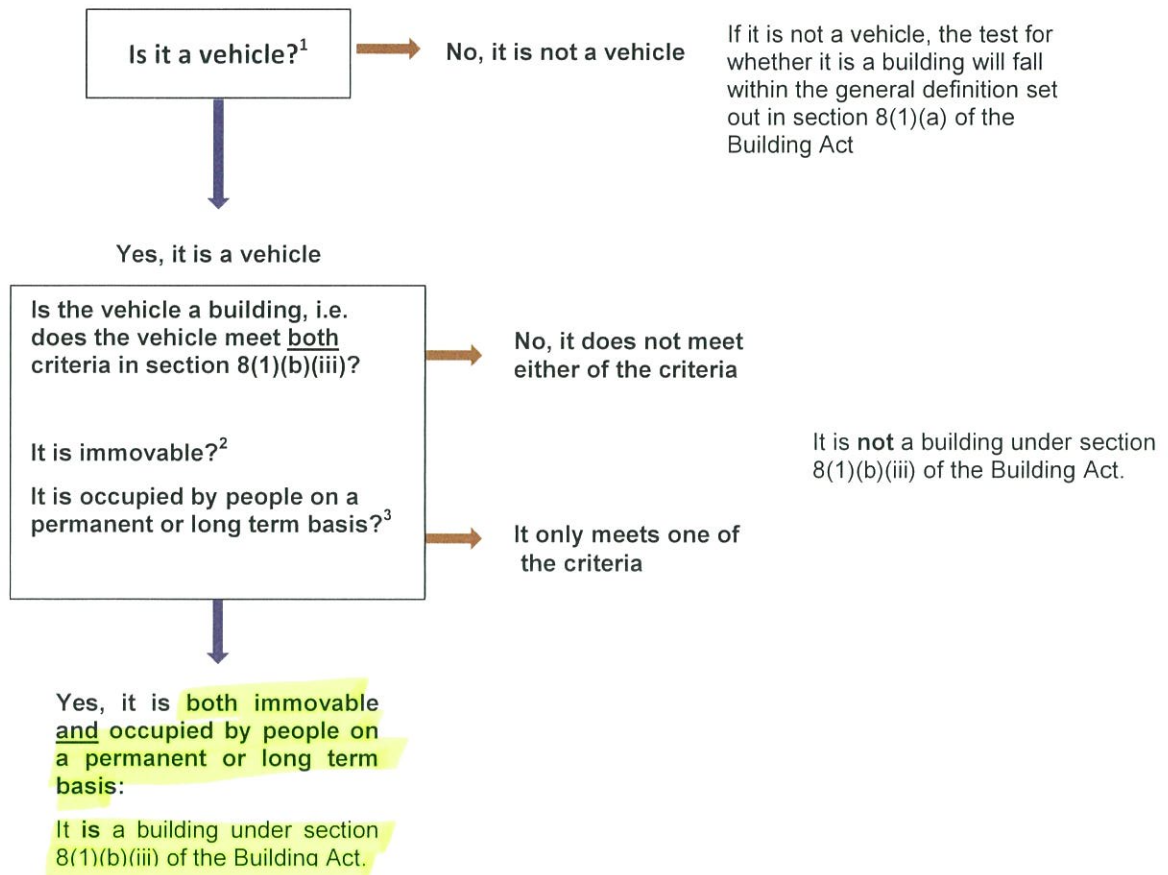
Relevant determinations:

- Determination 2016/011 (<https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2016-011/>) (includes the vehicle decision tree)
- Determination 2016/019 (<https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2016-019/>)
- Determination 2017/058 (<https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2017-058/>)
- Determination 2018/001 (<https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2018-001/>)



Appendix B

Decision tree: section 8(1)(b)(iii)



Notes:

- In establishing whether something is a vehicle, consider the following definitions:
 - The natural and ordinary meaning:
 - a thing used for transporting people or goods, especially on land, such as a car, lorry, or cart
 - a road vehicle powered by an internal combustion engine.
 - “vehicle or motor vehicle” as defined in section 2(1) of the Land Transport Act 1998.
 - vehicle— (a) means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; ...
 - motor vehicle— (a) means a vehicle drawn or propelled by mechanical power; and (b) includes a trailer; ...

Consider also how it is currently presented, that is in its entirety and not the constituent parts e.g. two or more vehicles located onto site that are then connected and would require disconnection in order to be moved (refer *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* [2010] NZCA 633)
- Whether a vehicle is immovable is a question of degree that will turn on a range of factors, for example:
 - Whether it is attached to the ground and how easily those attachments can be removed;
 - Whether it has been connected to services and how easily those can be removed;
 - Whether it has retained its wheels and the ability to be towed or to move itself;
 - Whether structures have been attached, such as decks, verandahs, or additional rooms.

(See determination 2014/025 for example)
- Whether a vehicle is considered to be occupied on a permanent or long term basis will turn on a range of factors, for example:
 - Is the intended period of occupancy known;
 - Is there a definite requirement as to the length of occupancy;
 - Is occupation intermittent/occasional (such as holidays/weekends only)
 - Is occupation continuous or cyclical

(See Determinations 2006/72 and 2013/055 for example)