

Submission on Waimakariri District Council - Proposed District Plan

Form 5 Submission on publically notified proposal for policy statement or plan, change or variation

Clause 6 of Schedule 1, Resource Management Act 1991

To: Waimakariri District Council - Development Planning Unit

Date received: 18/11/2021

Submission Reference Number #:55

This is a submission on the following proposed plan (the **proposal**): Waimakariri District Council - Proposed District Plan

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Attachments:

APPENDIX A..pdf

APPENDIX C. .pdf

APPENDIX D.pdf

APPENDIX E.pdf

APPENDIX F...pdf

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APPENDIX H.pdf

APPENDIX B.pdf

APPENDIX VERSION OF SUBMISSION.pdf

I wish to be heard: Yes

I am willing to present a joint case: No

Could you gain an advantage in trade competition in making this submission?

- N/A

Are you directly affected by an effect of the subject matter of the submission that

(a) adversely affects the environment; and

(b) does not relate to trade competition or the effects of trade competition
- N/A

Submission points

Point 55.1

Section: Definitions

Sub-section: General

Provision: General

Sentiment: Amend

Submission:

We support a simple definition of 'Building' but oppose the using of the National Planning standard definition in the Proposed District Plan as written:

BUILDING: means a temporary or permanent movable or immovable physical construction that is:

*but excludes any motorised vehicle or other mode of transport that could be moved under its own power.
(National Planning Standard definition)*

- a. partially or fully roofed; and*
- b. is fixed or located on or in land;*

Our Claim: (a) That in its present form, the Proposed District Plan definition of 'Building', is 'not fit for purpose' as it enables an inconsistent and biased application of its Rules by supporting one type of vehicle (motorised) and through its absence in the definition intentionally discriminates against another type of vehicle (non-motorised) and this is erred in law.

(b). If left as written the Proposed District Plan definition of 'Building' would see a Bus converted to a mobile home, a RV motor home defined as a 'Vehicle' and not required to comply with the Building Code or have a Building Consent, BUT a 5th wheel caravan, a bumper pull touring Caravan, a Tiny Home built on a light trailer defined as a Building and required to comply with the Building Code and have a Building Consent.

(c). The law has established that drawn vehicle are not buildings regardless of whether they are occupied or not and this legal precedent supports the inclusion of 'drawn vehicle' in the definition wording that excludes them for being a building in the Proposed District Plan.

(d). There is a framework that Council can use in the Building Act 2004: Discretionary Exemption allowing the use of trailer type vehicles without classifying them as Buildings.

Finally, without a legitimate provision in the Proposed District Plan for the siting, storing, and a permitted occupation of drawn vehicles the integrity of the Building Act exemptions in schedule 1 or the application for discretionary exemption in schedule 1(2) are undermined and the spirit to which they came into existence illegitimately dismissed.

Read full submission in attached pages APPENDIX VERSION OF SUBMISSION

Relief sought

What we request from Council

(1) We ask Council to expand on the National Planning standard definition and add 'drawn vehicle' to the exclusion definition so that caravans or THOWs (mobile or static, factory manufactured or custom built) are acknowledged as vehicles and have a

legitimate place beside Motor Homes.

This new wording would read; *but excludes any motorised vehicle or drawn vehicle or other mode of transport that could be moved under its own power*".

(2) Change the Proposed District Plan to allow the siting, storage, parking, and utilization of 'Vehicles' in appropriate residential zones for short term stays, or used for long term stays if compliance under schedule 1 or 1(2) of the Building Act 2004 is achieved. Cover the classification of trailer type vehicle in a new permitted sleeping place. This wording could include any one or all of the following;

Temporary Residential Unit: means a relocatable vehicle of not more than 30m² nett floor area for the accommodation of a person or persons meeting one or more of the following criteria:

either: an aged or disabled person or persons who without the physical care and support of the persons occupying the larger household unit on the same site would be incapable of an independent existence;

or: a person, without whose physical care and support the aged or disabled occupant(s) of the larger household unit on the same site would be incapable of an independent existence.

Provided that where the occupiers of both units are not related by blood or marriage, it can be established that the link between them is of a permanent nature or brought about by the employment of a person for the purpose of providing physical care and support.

Temporary Family living space: means self-contained vehicle used for accommodation of not more than 30m² nett floor area, located separately to a residential unit or minor residential unit on the same site, which are occupied by family member(s) who are dependent in some way on the household living in that residential units, and which is encumbered by an appropriate legal instrument which ensures that the use of the family living space is limited to dependent family members of the household living in the residential unit.

Temporary Living Place: means where people stay for one or more nights in: which can include.

A vehicle that can be legally driven or towed to a different location on request; *used for overnight stays. The term 'temporary' in this definition refers to the form of accommodation, not necessarily the duration of time on the site.*"

Accessory to any existing residential unit on-site; or It is; Not used as a permanent residence; and from 7 February to 1 December in the same year but excluding all public holidays, no more than 2 vehicles used for overnight stays are on site."

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI ŌTAUTAHĪ**

**CIV-2019-085-000404
[2020] NZDC 2612**

BETWEEN

ALAN DALL
Appellant

AND

THE CHIEF EXECUTIVE OF THE
MINISTRY OF BUSINESS, INNOVATION
AND EMPLOYMENT
Respondent

Hearing: 19 February 2020

Appearances: Ms Odgers, Mr Richardson, Ms Hodgson for the Appellant
Mr La Hood, Ms Herd for the Respondent

Judgment: 19 February 2020

JUDGMENT OF JUDGE M J CALLAGHAN

Introduction

[1] This is an appeal against a decision of the Chief Executive of the Ministry of Business, Innovation and Employment (“MBIE”), determining that a unit constructed by Mr Dall is a “building” as defined in s 8 of the Building Act 2004 (“the Act”).¹

Background

[2] On 26 September 2018, the Hurunui District Council issued to Mr Dall a Notice to Fix under s 164 of the Act in relation to building work he had carried out without a building consent. Mr Dall had constructed what is commonly referred to as

¹ *Determination 2019/017*, 17 May 2019 (hereinafter ‘The Determination’).

a “tiny house”, or a unit comprising of a trailer (the substructure) and a dwelling which is constructed on the trailer (the superstructure).²

[3] On 18 October 2018, Mr Dall applied to the Chief Executive of the MBIE for a determination under s 177 of the Act. The decision-maker was required to determine whether the Unit was a “building” in terms of s 8 of the Act and thus subject to the requirements of the Act, or whether the Unit was a “vehicle” or a “motor vehicle” and therefore excluded from the definition of “building” pursuant to s 8(1)(b)(iii) of the Act.

[4] The decision-maker concluded:³

Given the unit’s characteristics considered as a whole and its essential nature in which it used as an abode rather than as a vehicle, I consider that the unit is a moveable structure and therefore falls under the general definition of a building under section 8 of the Act.

[5] The decision-maker therefore concluded that the Unit was a building and that the Council was correct to issue a notice to fix under the Act.

Grounds of appeal

[6] Mr Dall appeals the determination on the following grounds:

- (a) The decision-maker erred in fact and law by finding that the Unit was not a “vehicle” and was therefore a “building” as defined in s 8 of the Act;
- (b) The decision-maker erred in law by incorrectly adopting, as its preferred meaning of “vehicle” and “motor vehicle”, the natural and ordinary meaning of those terms, as opposed to those defined in s 2(1) of the Land Transport Act 1998;

² Herein after referred to as “the Unit” – which includes both the substructure and the superstructure.

³ The Determination, at 4.3.13.

- (c) The decision-maker erred in law by concluding that “a vehicle... cannot include a moveable structure”;
- (d) That the decision-maker erred in fact and in law by failing to distinguish the facts of Determination 2016/011 and Determination 2017/058;
- (e) That the decision-maker erred in fact and in law by, having referred with approval to para 4.3.5 of Determination 2016/011 that “caravan(s) or mobile homes are clearly vehicles”, failing to properly or correctly consider the degree to which the Unit in fact corresponded to either or both caravans or mobile homes;
- (f) That the decision-maker erred in fact and in law by attaching weight, or too much weight to the use of the Unit as opposed to its structural and functional characteristics;
- (g) That the decision-maker erred in fact and in law by attaching weight, or too much weight, to NZTA rules and regulations around load widths, which are not relevant to the meaning of “vehicle” or “motor vehicle”;
- (h) That the decision-maker erred in fact and in law by failing to properly consider, and give necessary weight to, the degree to which the Unit conformed to either of the possible meanings of “vehicle” and “motor vehicle” which were available.

[7] Mr Dall therefore seeks orders that the determination of the Chief Executive of MBIE be set aside and that the Court order that the Unit is a vehicle or a motor vehicle and not a building in terms of s 8 of the Act.

[8] MBIE sought leave to appear on this appeal. The decision maker would not normally do so and would abide by the decision of the Court in most circumstances. In this case because of the interpretation aspects involved concerning the Building Act the decision maker deemed it necessary to argue its position.

Approach on appeal

[9] The issue to be determined by this appeal is whether the decision-maker was correct to conclude that the appellant's Unit is not a "vehicle" or a "motor vehicle" but is a "building" under s 8(1)(a) of the Act.

[10] In *Austin Nichols & Co Inc v Stichting Lodestar*, the Supreme Court held:⁴

On general appeal, the appeal Court has the responsibility of arriving at its own assessment of the merits of the case ... Those exercising general rights of appeal are entitled to judgment in accordance with the opinion of the appellate Court, even where that opinion is an assessment of fact and degree and entails a value judgment. If the appellate Court's opinion is different from the conclusion of the tribunal appealed from, then the decision under appeal is wrong in the only sense that matters, even if it was a conclusion on which minds might reasonably differ.

Legal principles

[11] Section 8 of the Act defines what a building "means and includes" under the Act, and relevantly provides:

8 Building: what it means and includes

- (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); and
 - (b) includes—
 - (i) ...
 - (iii) 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 longterm basis; and ...
- ...
- (4) This section is subject to subsection 9.

[12] Section 9 sets out a list of what the term "building" does not include, none of which are relevant in the circumstances.

⁴ *Austin Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141 at [5] and [16].

[13] The interpretation of s 8(1)(b)(iii) was considered by the Court of Appeal in *Thames-Coromandel District Council v Te Puru Holiday Park Ltd*.⁵ The Court held at [22]:

Our conclusion is therefore that Duffy J approached the interpretation of ss 8 and 9 in the correct way by focusing first on whether the units came within s 8(1)(b)(iii). What she had to determine was whether the units were vehicles and, if so, whether they were immovable and occupied by people on a permanent or longterm basis. If they were, they were buildings. If they were vehicles but did not have those characteristics, they were not buildings. If they were not vehicles at all, then s 8(1)(b)(iii) fell to the side; what one then needed to look at was whether they came within the general definition.

[14] The appropriate methodology for resolving the current appeal can therefore be set out in the following way:

- (a) Is the Unit a “vehicle” or “motor vehicle”?
- (b) If so, is the Unit immovable and occupied by people on a permanent or long-term basis? If so, then the Unit is a “building”. If the Unit is a vehicle but is not immovable or not occupied by people on a permanent or long-term basis, then it is not a building;
- (c) If the Unit is not a vehicle at all, does it otherwise come within the general definition of “building” in s 8?

Is the Unit a vehicle or a motor vehicle?

Chief Executive’s determination

[15] The decision-maker correctly identified that the first step was to determine whether the Unit was a vehicle or a motor vehicle. In making that determination, she noted that those terms are not defined in the Act. Accordingly, she held that their “natural and ordinary meaning” must apply.

⁵ *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* [2010] NZCA 633.

[16] The decision-maker went on to adopt the following definitions of “vehicle” and “motor vehicle”, as provided in the Oxford Definition of English, 3rd Edition 2010 (“the Oxford definitions”):⁶

vehicle – a thing used for transporting people or goods, especially on land, such as a car, lorry, or cart.

motor vehicle – a road vehicle powered by an internal combustion engine,

[17] The decision-maker noted that the Unit did not fall neatly into either of those definitions.

[18] The decision-maker then noted that s 8(1)(b)(iii) referred to the definitions of “vehicle” and “motor vehicle” that are contained in s 2(1) of the Land Transport Act 1998 (“the LTA”). Section 2(1) of the LTA relevantly defines the terms “vehicle” and “motor vehicle” in the following way (“the LTA definitions”):⁷

vehicle – means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved...

motor vehicle – (a) means a road vehicle drawn or propelled by mechanical power; and (b) includes a trailer.

[19] The decision-maker accepted that that Unit would fall within both of the LTA definitions. However, she stated:⁸

I only have jurisdiction under the Building Act, I favour considerations of the natural and ordinary meaning of a vehicle in light of the purposes of the Act.

[20] The decision-maker acknowledged that the Unit had many characteristics in common with “vehicles”, including that the Unit was registered. However, the decision-maker stated that the Unit obtained registration prior to the construction of the superstructure on the trailer. She noted that the superstructure was more akin to a building than a vehicle in terms of design, purpose and use. She therefore concluded that the Unit was not a vehicle or a motor vehicle, but a building.

Submissions

⁶ The Determination, at 4.3.2.

⁷ At 4.3.4.

⁸ At 4.3.11.

[21] The appellant submits that the decision-maker erred in “arbitrarily adopting” the Oxford definitions. It is submitted that it was Parliament’s intention in the drafting of s 8(1)(b)(iii) that the LTA definitions would apply when determining what constitutes a vehicle or motor vehicle under the Act.

[22] It is further submitted that, given that the decision-maker accepted that the Unit met the LTA definitions of vehicle and motor vehicle, her determination is wrong in that it is premised on arbitrary and incorrect definitions.

[23] The appellant submits that the use of the Unit is not relevant to determining whether it is a vehicle. The appellant also submits that the Unit is indistinguishable in any way from a caravan. The decision-maker accepted in her decision that a caravan is a “vehicle” and referred to other determinations where caravans were found to be vehicles. She then failed to distinguish those determinations.

[24] The respondent submits that the decision-maker correctly considered the natural and ordinary meaning of the terms ‘vehicle’ and ‘motor vehicle’, before considering the wider meaning of those terms in the context of s 8 and in light of the purposes of the Act.

[25] It is submitted that the LTA definitions are necessarily broader than those intended to apply in the context of the Building Act, given that the LTA concerns the regulation of all vehicles that could use a road. The respondent also points to the use of the term “includes” in s 8(1)(b)(iii) and submits that it is intended that the LTA definitions are inclusive rather than exclusive in this context.

[26] The use of the Unit is a consideration to take into account in determining whether it is a vehicle.

[27] It is submitted that the decision-maker’s analysis as to the design, purpose and use of the Unit cannot be criticised.

Discussion – the definitions of “vehicle” and “motor vehicle”

[28] I am of the view that the decision-maker erred in preferring the Oxford definitions over the LTA definitions.

[29] The reference in s 8(1)(b)(iii) of the Building Act to the LTA definitions is clear. The section states that a building will include a vehicle or motor vehicle (“including” a vehicle or motor vehicle as defined in the LTA), but only to the extent that the vehicle is immovable and is occupied by people on a permanent basis.

[30] The term “includes” permits an expansion of the LTA definition where appropriate but does not authorise excluding that definition entirely or replacing that definition with a definition from the Oxford dictionary.

[31] I also do not consider that the LTA definitions were intended to apply only to immovable and permanently occupied vehicles. In fact, such an approach would be inconsistent with the purposes and legislative history of the Act.

[32] In *Te Puru*, the Court of Appeal held that s 8 defines a building with reference to what it does include.⁹ However, the Act’s predecessor, the Building Act 1991, defined building with reference to what it did not include. Section 3(1)(e) of the 1991 Act provided:

... the term building... does not include... vehicles or motor vehicles (including vehicles and motor vehicles as defined in s 2(1) of the Land Transport Act 1998), but not including vehicles and motor vehicles, whether movable or immovable, which are used exclusively for permanent or long-term residential purposes.

[33] As such, it is clear that under the 1991 Act, the term “building” did not include vehicles or motor vehicles, including vehicles or motor vehicles as defined in s 2(1) LTA. The Court of Appeal in *Te Puru* held at [20]:

It will be immediately apparent that no change was intended from the position pertaining under the 1991 Act. Vehicles were to be excluded from the purview of the new Act unless they were used exclusively for permanent or long-term residential purposes.

⁹ *Te Puru*, above n 5, at [17]-[18].

[34] Therefore, I am satisfied that the LTA definitions apply when determining whether a unit is a “vehicle” for the purposes of s 8(1)(b)(iii). That is consistent with the purposes of that section, namely to exclude vehicles from the ambit of the Act, unless the stated exceptions apply.

[35] I acknowledge that the definition of a vehicle in s 2(1) of the LTA as a “contrivance equipped with wheels, tracks or revolving runners on which it moves” is very broad and could allow owners to avoid the application of the Building Act by simply adding wheels, tracks or runners to any structure and claiming it can be moved.

[36] However, the exceptions in s 8(1)(b)(iii) protect against such deliberate circumvention of the Act. A vehicle will still be considered a building for the purposes of the Act if it is “immovable” and “occupied by people on a permanent or long-term basis”.

[37] The term “immovable vehicle” appears to be a contradiction in terms. If something is a vehicle, it must necessarily be movable. Accordingly, I am of the view that, in this context, the term “immovable” must not be strictly interpreted as “incapable of being moved”. Such an interpretation would render the word “immovable” meaningless.

[38] In New Zealand it is commonplace for buildings, sometimes quite large houses and even multi-story steel or concrete buildings, to be constructed at one site and then moved or “relocated” to another site. It is easy to move some buildings, difficult to move others, and impracticable or economically not feasible to move the rest.¹⁰ The point is, almost every building or structure is capable of being moved in some way.

[39] Whether a structure is “immovable” in terms of s 8(1)(b)(iii) is therefore a matter of degree and will require consideration of, for example, the design, functional characteristics, and purpose of the structure. Ultimately, each case will turn on its own facts.

¹⁰ See *Determination 2006/72*.

[40] Similarly, whether a structure is “occupied by people on a permanent or longterm basis” will depend on the facts of each individual case.

Discussion – Is the Unit a “vehicle”?

[41] I am satisfied that the Unit is a “vehicle” for the purposes of s 8(1)(b)(iii), in that it is a contrivance equipped with wheels. The Unit possesses wheels, axels, brakes, lights, drawbar and a trailer hitch.

[42] I conclude that the decision-maker erred by, having accepted that the Unit could be categorised as a vehicle in terms of the LTA definition, determining that the Unit was nonetheless not a “vehicle”.

Given the Unit is a vehicle, is it immovable and occupied by people on a permanent or longterm basis?

Discussion – is the Unit immovable?

[43] Clearly, the Unit is capable of being moved. However, as stated, the term “immovable” must not be interpreted so narrowly and factors such as the design, functional characteristics and purpose/use of the unit must be considered. I agree with the appellant’s submission that use is not a consideration when determining if the Unit is a vehicle but is relevant to consideration of whether it is immovable.

[44] I am of the view that the Unit was not immovable, for the following reasons:

- (a) The Unit possesses wheels, chassis, axles, brakes, lights, drawbar and trailer hitch. The functional design of the Unit enables it to be attached to a vehicle and moved or relocated with relative ease. I do not consider this to be a case where a structure that would otherwise be a building has been equipped with wheels solely in an attempt to circumvent the provisions of the Building Act;
- (b) Furthermore, the Unit has a valid registration and warrant of fitness, although I accept that the Unit was registered before the superstructure

was constructed on the trailer. The decision-maker considered the fact that the Unit was “over dimension for use on the road” weighed in favour of a finding that the Unit was not a vehicle. However, I accept the appellant’s submission that the Unit is no less a vehicle (and no less movable) simply for the fact that it must comply with certain road safety requirements due to its dimensions in the event that it is to be moved;

- (c) The Unit is incapable of being fixed to the ground. My finding on movability would be different if, for example, the Unit was designed so that it could be moved off the wheels and fixed to the land. The appellant’s Unit is built in such a way that it is incapable of being removed from the trailer;
- (d) The Unit is self-contained in terms of all services (water is supplied by a garden hose, wastewater is drained through a garden hose, and a chemical cassette toilet system is used for waste);
- (e) The decision-maker’s determination relied on the fact that the, “unit’s superstructure is less like a vehicle in design; the features of its superstructure are comparable to a building”. I accept the appellant’s submission that the decision-maker artificially separated and bifurcated the superstructure from the Unit as a whole in making that determination;
- (f) Mr Dall stated that his intention was to move the Unit “from site to site”. There is evidence that the Unit had previously been moved and relocated, including on one occasion being transported approximately 40 km. While I accept that the Unit was not regularly moved from site to site, its design and purpose enabled relocation with relative ease;
- (g) I accept the appellant’s submission that the Unit is indistinguishable in any material way from a caravan. Like a caravan, the Unit is designed to be towed by another vehicle. It provides exactly the sort of living

accommodation one might expect of a caravan. Like a caravan, the Unit was capable of simply being parked and remaining attached to its towing vehicle, it was capable of being detached from that vehicle and it was capable of being supported by some form of props or foundation. The decision-maker stated, “caravans or mobile homes are clearly vehicles”, but then did not distinguish the Unit from a caravan.

[45] Overall, I am satisfied that the Unit was not immovable. As such, the exception in s 8(1)(b)(iii) will not apply. I note that s 8(1)(b)(iii) 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. As I have found that the Unit was not immovable, I am not therefore required to determine whether it was occupied by a person on a permanent or long-term basis.

[46] I am satisfied that the Unit is a vehicle and that the Unit is not immovable. As such, the Unit is not a building for the purposes of the Building Act.

Conclusion

[47] I make the following orders:

- (a) The determination of the Chief Executive (*Determination 2019/017*) is set aside;
- (b) The Unit is a “vehicle” and is not “immovable”. It is therefore not a “building” in terms of s 8 of the Act.

M J Callaghan
District Court Judge

BUILDING PERFORMANCE

Building work that does not require a building consent

Exemptions Guidance for Schedule 1 of the Building Act 2004

Fifth edition - August 2020
First published - March 2014

pages deleted not relevant to submission



Ministry of Business, Innovation and Employment (MBIE)

Hīkina Whakatutuki – Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

The Exemptions Guidance document is produced by the Building System Performance branch.

This document is issued as guidance under section 175 of the Building Act 2004. While MBIE has taken care in preparing the document it should not be relied upon as establishing compliance with all relevant clauses of the Building Act 2004 or Building Code in all cases that may arise. This document may be updated from time to time and the latest version is available from MBIE's website at www.building.govt.nz.

More information

www.building.govt.nz
[0800 24 22 43](tel:0800242243)

Information, examples and answers to your questions about the topics covered here can be found on our website www.building.govt.nz or by calling us free on [0800 24 22 43](tel:0800242243).

Fifth edition – August 2020

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Purpose

This is guidance for building work that does not require a building consent under the Building Act 2004 (the Act). It lists all building work that doesn't need a building consent, with guidance to support compliance.

Who is this guidance for

- **Building and home owners** who are planning building work and carry out building work themselves
- **Trade and sector professionals** who may carry out building work or provide advice
- **Councils, building consent authorities and regional or territorial authorities** who may provide advice about what does or does not need a building consent.

How to use this guidance

This guidance provides information on each building consent exemption. To get started, we suggest you read the sections on:

- the context for exempt work
- seeking advice
- building owners' responsibilities
- amendments to building consent exemptions
- the relevant exemption for the work you wish to carry out.

The building consent exemptions have been grouped by building project type to help homeowners and trade sector professionals easily find the information they need to depending on the type of work they'd like to carry out. Refer to the section on [Technical requirements for exempt building work](#).

More information:

- [Links to earlier legislation](#) ↓
- [Useful links](#) ↓
- [Glossary](#) ↓

Some work is exempt

New Zealand's building legislation recognises some building work does not require a building consent. The list of building work includes conditions to manage risk.

The list of building work that does not require a building consent is provided under Schedule 1 of the Building Act 2004.

For more information see:

- [Building Act 2004](#)
- [Section 41](#) of the Building Act 2004
- [Section 42A](#) of the Building Act 2004
- [Schedule 1, Building work for which building consent is not required](#)

The technical requirements for exempt building work section describes building work for which a building consent is not required. Detailed information and several examples are provided in this guidance. All building work, whether it needs a building consent or is exempt, must still comply with the Building Code and other relevant legislation including:

- [Plumbers, Gasfitters, and Drainlayers Act 2006](#)
- [Gas Act 1992](#)
- [Gas \(Safety and Measurement\) Regulations 2010](#)
- [Electricity Act 1992](#)
- [Electricity \(Safety\) Regulations 2010](#)
- [Resource Management Act 1991](#)
- [Fire and Emergency New Zealand Act 2017](#)
- [Health and Safety at Work Act 2015](#)
- [Local Government Act 2002](#).

Offences and penalties

A responsible authority such as the council is able to issue a notice to fix. A notice to fix is a warning to correct an instance of non-compliance with the Building Code and/or Building Act 2004. For example, the requirement to obtain a building consent where necessary and the requirement for all building work to comply with the Building Code. If you fail to correct the non-compliance, you are liable on conviction of a maximum fine of \$200,000 and a further \$20,000 for each day the offence is continued. An instant fine of \$1,000 can also be issued if a notice to fix is not complied with.

Certificate of Acceptance

You should note that exemptions are not retrospective. If you carried out unconsented building work, after 31 March 2005, which was not exempt when it was undertaken (ie it was not covered by an exemption in the legislation in force at the time), you will need to apply to the territorial authority for a certificate of acceptance.

Ask for advice

As a home or building owner, you are responsible for:

- determining whether or not your building work is exempt from requiring a building consent or not
- making sure that any exempt building work complies with the Building Code and other relevant legislation.

If you are not sure whether or not your building work is exempt, it is important to get advice from a professional who has building knowledge and expertise. Even if your building work is exempt, you can still apply for a consent from your local building consent authority, if you would like extra peace of mind that your plans are compliant.

Who you can ask for advice:

- Building consent authority (typically a district or city council), as they have extensive building control expertise and planning expertise and information about exemptions and building consent processes (they may charge a fee for this)
- Registered Architect
- Chartered Professional Engineer
- Registered Building Surveyor
- Building Consultant
- Registered Electrician
- Licensed Building Practitioner – check they hold the relevant licensing class before seeking advice
- Registered Certifying Plumber or Drainlayer
- Independent qualified person (IQP)

Discretionary exemptions

You can apply for a discretionary exemption through your local council. We recommend you talk to your council first before applying.

Who can undertake exempt work

Some exempt building work requires that an authorised professional carry out, supervise, design or review the design of the proposed work. These professionals include:

- **Chartered Professional Engineers** for work that must be designed or have the design reviewed by a chartered professional engineer, who is registered under the Chartered Professional Engineers of New Zealand Act 2002
- **Plumbers and Drainlayers** for work that must be carried out by a person authorised under the Plumbers, Gasfitters and Drainlayers Act 2006
- **Licensed Building Practitioners (LBP)** for work that must be carried out or have the design and construction supervised by a LBP, who is registered under Part 4 of the Building Act 2004

[Chartered Professional Engineers of New Zealand Act 2002](#)

[Plumbers, Gasfitters and Drainlayers Act 2006](#)

[Building Act 2004, Part 4](#) – Regulation of building practitioners

Some other registered or licensed practitioners are deemed to be LBP for the purpose of licensing. These practitioners are entitled to use any LBP related exemptions due to their registration or licence with another regulatory authority. Practitioners deemed to be licensed are as follows:

- Registered Architects are deemed to be licensed in Design
- Chartered Professional Engineers are deemed to be licensed in Design and Site
- Certifying Plumbers are deemed to be licensed in Roofing, External Plastering and Bricklaying and Blocklaying.

Authorised professionals will be registered with their respective professional body. Each professional body has to have a public register, which enables you to check that your tradesperson or designer is authorised to carry out the work as an authorised person. You can access the relevant public registers below:

- [Register of Plumbers, Gasfitters and Drainlayers](#)
- [Register of Chartered Professional Engineers](#)
- [Register of Licensed Building Practitioners](#)
- [Register of Architects](#)
- [Register of Electricians](#)

There are also some exemptions that don't require an authorised professional. However, some of this building work may be too complex to complete without construction experience or technical understanding of the Building Code and other relevant legislation. If you're not sure how to comply, seek advice from a professional before you start your project.

Before you start

Exempt work compliance

- Exempt building work must comply with the Building Code. After the building work is completed, if the building complied with the Building Code immediately before the work commenced, the building must continue to comply. If the building did not comply immediately before the work began, the building must continue to comply at least to the same extent as it did previously (ie you cannot make the building a lower standard than prior to commencing the work).
- Exempt work must comply with any other relevant legislation, such as the Resource Management Act 1991.

Selling property with work that has been exempted

To ensure the information about your property is kept up to date, it is recommended that you notify the council of any exempt work and provide them with relevant documentation. Councils may charge for this process.

Checklist

Before starting any exempt building work, it is recommended that you complete the following steps during the planning stage:

1. Read this guidance document
2. Consult with a professional and/or your local council
3. Check your plans are compliant with other relevant legislation such as the Resource Management Act 1991, district plans and by-laws
4. Check your plans and specifications are compliant with the Building Code

Consider letting your council know when you have finished your project, if you'd like your property file updated.

Amendments to building consent exemptions

MBIE works with the sector to make improvements and additions to the list of building work that can be undertaken without requiring a building consent. Amendments that have been made are outlined below to help users of this guidance understand when each of the regulation changes came into effect.

Exemptions are not retrospective. If you carry out unconsented building work which was not exempt at the time the work was undertaken, you will need to apply to your local council for a Certificate of Acceptance. You can only apply for a Certificate of Acceptance if building work was carried out without a building consent from 1 July 1992 onwards, or in specific circumstances, when a code compliance certificate can't be issued. For further information, please contact your council.

Exempted building work	Effective from	Document version
All building consent exemptions	March 2014	1
Carports	June 2016	2
Means of restricting access to small heated pools – minor amendments Retaining walls – minor amendments	August 2017	3
Ground moisture barriers	July 2019	4
Verandas and porches – additional exemption Single-storey detached buildings – three additional exemptions Carports – additional exemption Awnings – additional exemption Outdoor fireplaces or ovens Flexible water storage bladders Short-span bridges on private land without public access Pipe supporting structures Ground-mounted solar panel arrays – three new exemptions Single-storey pole sheds and hay barns	August 2020	5

Territorial and regional authority discretionary exemptions

This section allows territorial authorities (city or district councils) or regional authorities (regional councils) to use their discretion to exempt any proposed building work if it complies with the Building Code and is unlikely to endanger people or buildings.

Territorial authorities or regional authorities can use their discretion to exempt any proposed building work from the requirement to obtain a building consent if;

- a. the completed building work is likely to comply with the Building Code; or
- b. if the completed building work does not comply with the Building Code, it is unlikely to endanger people or any building, whether on the same land or on other property.

This is the only exemption in Schedule 1 which requires a territorial or regional authority to make a decision about any proposed building work. For all the other exemptions, it is up to the owner to decide whether an exemption in Schedule 1 applies.

This exemption can be applied across a wide range of building work. At one end of the scale, the council may choose to exempt simple, low-risk, repetitive-type building work, such as that relating to farm buildings, proprietary garages or bus shelters. These are typically buildings of importance level 1 from Building Code clause A3 – Building importance levels.

At the other end of the scale, the building work could be for complex engineered projects where the construction will be designed and supervised by chartered professional engineers. These might include single-span bridges on public land, complex temporary stage and lighting towers, or major infrastructure projects such as motorway tunnels, electrical substations for rail networks or substantial wharf repairs. In these cases, the work is likely to comply, because skilled professionals are doing or supervising the work, and furthermore, council's processing and inspecting procedures would add little value to the overall process.

As a building owner:

If you want your proposed building work to be considered for this exemption, we suggest that you or your agent start by discussing it with the relevant council. It is then likely that you will have to make a formal written request. The council may charge a fee for issuing a discretionary exemption.

The council will take into account what it considers the risk to be, whether your building work will comply with the Building Code and whether it will endanger people or property.



It is recommended that you check with your council to see if they have a policy to exempt certain building work under exemption 2. This may or may not require a formal application.

As a territorial or regional authority:

You should have procedures for making formal decisions under exemption 2 that meet the criteria of (a) and (b) above.

When determining the likelihood of compliance, we suggest your considerations include:

- any substantial previous demonstration of competence in carrying out similar work by the people who will carry out this work (eg a history of previous building work in the council's district)
- the complexity of the building work relative to the competence of the people who will carry it out
- any independent quality assurance systems or checks that will be applied in the course of the work.

In determining the likelihood of endangerment, we suggest your considerations include:

- the location of the building work (eg whether it is high density urban or remote rural)
- how close it will be to the property boundary and/or other buildings.

In all cases, we recommend that you record your decision, the reason for it and the outcome, and place this information on the property file relating to the building work.

MBIE has produced a guidance document that outlines good practice relating to the use of this exemption (which corresponds to Clause 2 of Part 1 of Schedule 1 of the Building Act 2004) and also covers some suggested policy and procedures.

[Guidance in relation to Clause 2 of Part 1 of Schedule 1 and issuing building infringement notices](#)



Any type of building work could potentially be considered under this exemption. However, all building work carried out under this exemption should comply fully with the Building Code and all other [relevant legislation](#).



What the law says

Schedule 1 of the Building Act 2004

2. Territorial and regional authority discretionary exemptions

1. Any building work in respect of which the territorial authority or regional authority considers that a building consent is not necessary for the purposes of the Building Act 2004 because the authority considers that:
 - (a). the completed building work is likely to comply with the Building Code;
or
 - (b). if the completed building work does not comply with the Building Code, it is unlikely to endanger people or any building, whether on the same land or on other property.

Notes for single-storey detached buildings: 2.1-2.5

Sections 2.1-2.5 cover five separate exemptions for single-storey detached buildings.

- Buildings up to 10 square metres in floor area
- Single-storey detached buildings exceeding 10, but not exceeding 30 square metres in floor area, constructed of lightweight materials
- Buildings up to 30 square metres in floor area using a kitset or prefabricated building where a manufacturer or supplier has had the design carried out or reviewed by a Chartered Professional Engineer
- Buildings up to 30 square metres in floor area where a Licensed Building Practitioner is to carry out or supervise design and construction.
- Unoccupied detached buildings

Before you begin your project, you need to consider the following:

Durability

The Building Code requires building materials, components and construction methods to be sufficiently durable to ensure the building (without reconstruction or major renovation) satisfies the other functional requirements of the Building Code for the life of the building.

Smoke alarms

You must install smoke alarms if the detached building is going to be used for sleeping. Please refer to [Acceptable Solution F7/AS1](#) for more information on the location and type of smoke alarms to install. It is recommended that any smoke alarm in a sleepout is interconnected with the smoke alarms in the main dwelling.

[Compliance Document for New Zealand Building Code Clause F7 Warning Systems](#) which includes Acceptable Solution F7/AS1.

Stormwater

You need to consider the Building Code requirements regarding the disposal of stormwater from the roof of your building. You should seek professional guidance and seek approval from your council. All new drains must be laid by an authorised drainlayer.

On-site waste water disposal systems

If the building is intended to be a sleepout in connection with an existing dwelling, and the waste water from the existing dwelling discharges to an on-site waste water disposal system (ie a septic tank), you need to check that the existing waste water disposal system has the capacity for the extra persons.

Location of services

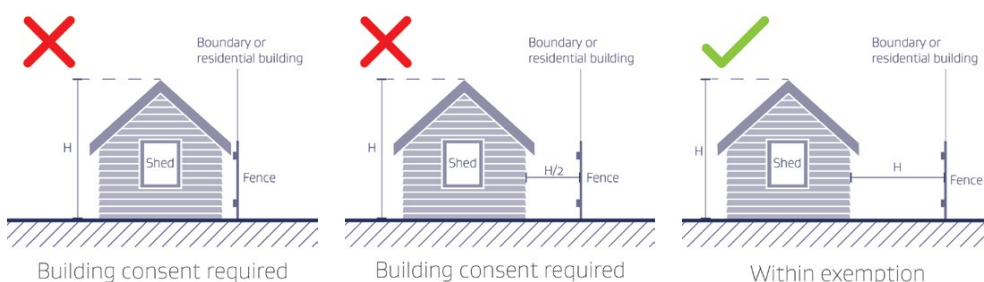
You need to confirm the location of any underground services that could affect the location of the build. Check with your local council and an underground services location company to ensure you are not building over any existing below ground services, such as drains, electricity, gas, telecommunications etc

District planning

Always check with your local council to make sure your proposed building work does not have any district or regional planning implications taking consideration of maximum site coverage, yard or setback requirements, daylight access planes or permitted activities. A resource consent may be required and it is important that this is obtained before starting any building work.

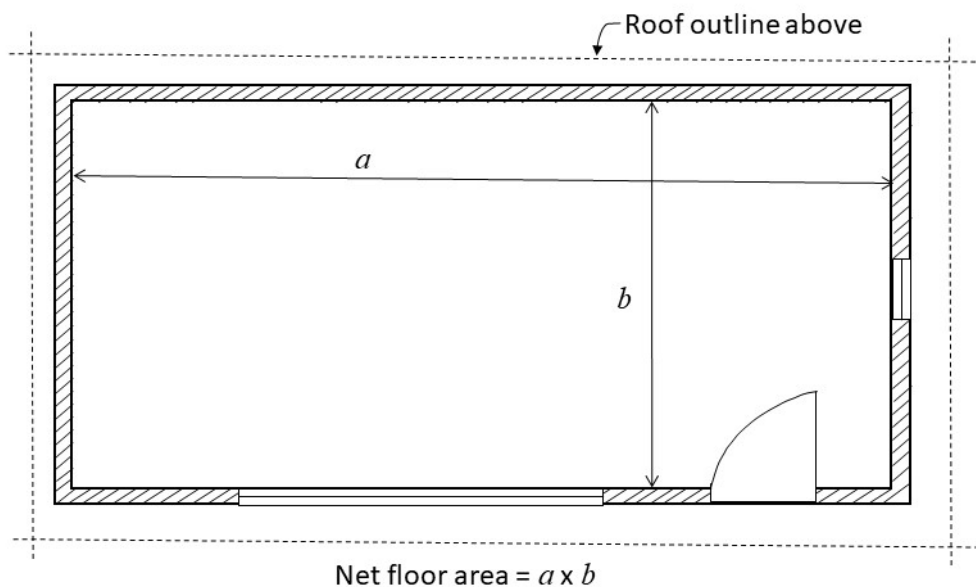
Building close to boundaries

If you are building close to boundaries, you need to consider the Building Code requirements regarding protection from fire, particularly in relation to the external spread of fire to neighbouring property.



Measuring the net floor area

The net floor area in a building is measured to the inside of the enclosing walls or posts/columns.



Note for manufacturers of prefabricated buildings

If you are a supplier or manufacturer of proprietary garden sheds, greenhouses, cabins or sleepouts, we recommend that you make sure anyone buying them is aware of the how the small building is to be used and located in order to be exempt from needing a building consent. If a small building is not used or located as required by the exemption, the purchaser will need to apply for a building consent.

Examples



What is exempt

1. A 9 square metre sleepout is constructed in the backyard of a residential dwelling. It is more than its own height away from all boundaries and the associated residential dwelling, and does not contain cooking or sanitary facilities, or a potable water supply.
2. Owners of a childcare centre intend to build a 10 square metres detached building to serve as a staff retreat area. The proposed building will be more than its own height away from the boundaries. It contains no potable water supply and no facilities for cooking or sanitation.



What needs consent

1. A rural land owner decides to erect a 10 square metre sleepout on a property that does not have a residential dwelling on it. This sleepout would require a building consent as it is not associated with a residential dwelling.
2. A building owner erects a kitset garden shed that is 2 metres high. It is located 1 metre from the boundary. This garden shed would require a building consent as it is not its own height away from the boundary.
3. A home owner decides to build a detached 10 square metre sleepout on the back of their 1000 square metre section. The sleepout floor level is 900 millimetres above the supporting ground and the apex of the roof is 3.5 metres above the floor level. The sleepout is also more than its own height away (4.4 metres) from the house and the boundaries. The owner decides to optimise the sleepout space by including a loft of 8 square metres as a study area. As the proposed floor level of the loft is more than 1 metre above the supporting ground, a building consent will be required.



What the law says

Schedule 1 of the Building Act 2004

3. Single-storey detached buildings not exceeding 10 square metres in floor area

1. Building work in connection with any detached building that:
 - (a). is not more than 1 storey (being a floor level of up to 1 metre above the supporting ground and a height of up to 3.5 metres above the floor level); and
 - (b). does not exceed 10 square metres in floor area; and
 - (c). does not contain sanitary facilities or facilities for the storage of potable water; and
 - (d). does not include sleeping accommodation, unless the building is used in connection with a dwelling and does not contain any cooking facilities.
2. However, subclause (1) does not include building work in connection with a building that is closer than the measure of its own height to any residential building or to any legal boundary.



Tiny houses in New Zealand

Library research brief

Published	October 2020
Author	Amy Duxfield, Research Services Librarian

Summary

The tiny house movement is growing in New Zealand and abroad, as conventional housing becomes increasingly unaffordable for many, and as people seek alternative ways of living. Currently, New Zealand does not have a standard definition for what constitutes a tiny house. As a result, it can be unclear to what degree tiny houses, and especially tiny houses on wheels (THOWs), are subject to the usual building and resource consents process.

One of the main issues is whether THOWs should be classed as a building under s 8 of the Building Act 2004, or as a vehicle. If THOWs are classed as vehicles, they may not require a building consent. This may also depend on how the relevant local government district plan defines “building”, the section the THOW is sited on, and how long the THOW will be occupied for.

The inconsistencies in how THOWs are defined has caused difficulties for tiny house owners around New Zealand. In March 2020, a group of tiny house owners and builders presented a petition to Parliament, asking it to pass legislation to recognise and protect the rights of tiny house owners, and to implement a low cost compliance framework.¹

This paper presents an overview of the current regulatory framework governing tiny houses in New Zealand.

Building and resource consents

Housing construction is administered at the local government level, with most city and district councils responsible for issuing building consents under s 212 of the Building Act 2004. City and district councils are also responsible for granting resource consents under s 31 of the Resource Management Act 1991.

Building consents

Tiny houses that are permanently fixed to a particular site are generally uncontroversial in terms of whether they require building consent. They are clearly buildings within the definition set out in s 8 of the Building Act 2004. The definitions of building in district plans will also generally capture fixed tiny houses. From 31 August 2020, some single-story detached buildings up to 30m² will no longer require a building consent. However, this does not include buildings that have sanitary facilities, potable water supply, and cooking facilities.²

In contrast, tiny houses on wheels (THOWs) do not clearly fall into the definition of building under s 8. Nor are they necessarily captured by the definition of building in each council's district plan. This has led to an inconsistent approach between councils and local authorities, as THOWs are sometimes classed as buildings and therefore require a building consent, and sometimes as vehicles and therefore are exempt.³

Resource consents

A new house of any size may also require a resource consent, depending on the relevant district plan. District plans may specify how large or small a dwelling can be, whether it must conform to a particular style, and where it can be sited on a given section. All of these factors may affect whether a tiny house or THOW requires resource consent.

Examples of council definitions of building

Council	Definition of building
Auckland Council	<p>"Any permanent or temporary structure" including "structures used as a dwelling" that are "Over 1.5m in height; and in use for more than 32 days in any calendar year."</p> <p>A dwelling is defined as "living accommodation used or designed to be used for a residential purpose as a single household residence contained within one or more buildings, and served by a food preparation facility/kitchen."⁴</p>
Christchurch City Council	<p>"Any structure or part of a structure, whether permanent, moveable or immovable" including "any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit."</p> <p>A residential unit is defined as "a self-contained building...used for a residential activity by one or more persons who form a single household."⁵</p>
Wellington City Council	"An enclosed structure built with a roof and walls." ⁶
Hamilton City Council	"Any structure of any kind, whether temporary or permanent, moveable or immovable, and includes...Any vehicle, trailer, tent, caravan or boat, whether fixed or moveable, used as a place of accommodation." ⁷
Tauranga City Council	Has the same meaning as the Building Act 2004, but excludes any building smaller than 10m ² and less than 2m in height. A building less than 10m ² but over 2m in height will be classed as a building for the purposes of the City Plan. ⁸
Hutt City Council	"Any building or structure or part of a building or structure, whether temporary or permanent, movable or immovable." ⁹

Council	Definition of building
Dunedin City Council	"A structure that includes a roof that is, or could be, fully or partially enclosed with walls. The definition of building includes the parts of buildings defined as building utilities and rooftop structures." ¹⁰
Palmerston North City Council	"Any structure made by people and which is fixed to land" excluding "Any retaining wall not exceeding 1.5m in height measured from the lowest adjoining ground level" and "any wall (other than a retaining wall) or fence of any height not exceeding 2m measured from the lowest adjoining ground level." ¹¹

Recent legal decisions

There have been two recent court decisions regarding the consenting requirements for tiny houses and THOWs. In the absence of a specific regulatory framework, these decisions are likely to have an impact on how councils classify THOWs for the purposes of granting building and resource consents. Previous determinations by the Ministry of Business, Innovation and Employment (MBIE) may also be relevant.¹²

In *Alan Dall v Chief Executive of the Ministry of Business, Innovation and Employment* [2020] NZDC 2612, the District Court held that a THOW did not fall under the definition of building in s 8, and therefore did not require building consent. In *Antoun v Hutt City Council* [2020] NZEnvC 6, the Environment Court held that a tiny house constructed on a base of two parallel steel beams was a structure within the definition in s 2 of the Resource Management Act 1991, and therefore required a resource consent.

Dall v Chief Executive of MBIE

The *Dall* case sets out the following methodology for deciding whether a THOW should be classed as a building for the purposes of s 8 of the Building Act:

1. Is the THOW a "vehicle" or "motor vehicle" as defined in s 2 of the Land Transport Act 1998 (LTA)?
2. If yes, is the THOW immovable, and occupied by people on a permanent or long-term basis?
3. If the THOW is not a vehicle, does it fall under the general definition of "building" in s 8 of the Building Act?¹³

If the first two limbs of the test are satisfied, the THOW will be deemed to be a building and subject to the Building Act. Matters which may be relevant when considering whether a THOW should be classified as a building include:

- the construction of the THOW, particularly whether it has been clearly designed to be attached to another vehicle and relatively easily relocated;

- whether it has a valid registration and warrant of fitness;
- whether the THOW can be removed from the trailer base and fixed to the ground;
- the degree to which the THOW is self-contained in terms of services such as water and sewerage; and
- whether the THOW can be distinguished in any material way from a caravan.¹⁴

Antoun v Hutt City Council

Although the *Antoun* decision turned more on the question of whether the tiny house was a structure for the purposes of the Resource Management Act 1991, the court also considered whether the tiny house was a building or vehicle. In coming to its decision that the tiny house was not a vehicle, the court considered the following factors:

- the tiny house had not been constructed on a trailer or other vehicle base, and was not equipped with wheels or any other means by which it could be easily relocated;
- the tiny house had not been warranted or registered as trailer or other vehicle; and
- the size of the tiny house was such that it would have been difficult for it to be legally carried on a trailer or other motor vehicle for relocation.¹⁵

Other standards applicable to THOWs

As noted in the *Antoun* decision discussed above, THOWs that are intended to be moveable may be subject to Land Transport Rules regarding legal loads for motor vehicles and trailers. These rules are set out in the Land Transport Rule: Vehicle Dimensions and Mass 2016, and include restrictions on the total mass of vehicles, and the dimensions of loads that may be carried on a truck or trailer.

A further consideration regarding THOWs is the safety of do-it-yourself and home-built THOWs if they are classified as vehicles and do not require a building consent. The New Zealand Tiny House Association, an advocacy group for tiny house owners and builders, has suggested that THOWs comply with similar safety standards to caravans, particularly regarding heating, cooking facilities, electrical installations, and sanitary facilities (table 1, below).¹⁶

Table 1: standards currently applicable to caravans

Australia/New Zealand Standard	What it covers
AS/NZS 5601.2:2020 Gas Installations – Part 2: LP gas installations in caravans and boats for non-propulsive purposes	Requirements and deemed-to-conform solutions for the installation of gas cooking, heating, and water heating in caravans. This includes requirements for adequate ventilation.

Australia/New Zealand Standard	What it covers
AS/NZS 3001:2008 Electrical installations - Transportable structures and vehicles including their site supplies	Requirements for electrical installations associated with transportable structures and vehicles that are intended for connection to low-voltage AC supply systems. This includes both vehicles, and structures with or without wheels, that can readily be moved from one site to another either under their own motive power or by some other means.
AS/NZS 3500.2:2018 Plumbing and drainage – Part 2: Sanitary plumbing and drainage	Requirements for the design and installation of sanitary plumbing and drainage from fixtures to a sewer, common effluent system, or an on-site wastewater management system.
NZS 5465:2001 Self-containment of motor caravans and caravans	Requirements for water supply, sanitary plumbing and drainage installation and solid waste containment in motor caravans and caravans for the purpose of obtaining a self-containment certificate.

References

¹ "Petition of Andrew Crisp: Tiny/Mobile Dwellings as a Permanent, Healthy, Affordable & Dignified Residence (2017/481)," March 6, 2020, https://www.parliament.nz/en/pb/petitions/document/PET_93492/petition-of-andrew-crisp-tinymobile-dwellings-as-a-permanent.

² Ministry of Business, Innovation and Employment, "New Building Consent Exemptions," accessed October 9, 2020, <https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/check-if-you-need-consents/building-work-that-doesnt-need-a-building-consent/new-building-consent-exemptions/>; Hon Jenny Salesa, "Home Improvements Cheaper as Building Consent Rules Relaxed," *The Beehive*, August 31, 2020, <http://www.beehive.govt.nz/release/home-improvements-cheaper-building-consent-rules-relaxed>.

³ Skara Bohny, "Trying to Build Legally Leaves Tiny Home Couple 'Worse Off,'" *Stuff*, March 22, 2020, <https://www.stuff.co.nz/life-style/homed/119846031/trying-to-build-legally-leaves-tiny-home-couple-worse-off>; Chloe Ranford, "Tiny Home Resembles 'Lego Exercise,'" *RNZ*, June 3, 2020, <https://www.rnz.co.nz/news/ldr/418160/tiny-home-resembles-lego-exercise>; Skara Bohny, "Tiny Home in Lower Moutere Found to Be Building Requiring Consent," *Stuff*, February 7, 2020, <https://www.stuff.co.nz/nelson-mail/119265333/tiny-home-in-lower-moutere-found-to-be-building-requiring-consent>.

⁴ "Auckland Unitary Plan (Operative in Part): Chapter J - Definitions" (Auckland Council, September 24, 2020), <https://unitaryplan.aucklandcouncil.govt.nz/Images/Auckland%20Unitary%20Plan%20Operative/Chapter%20J%20Definitions/Chapter%20J%20-%20Definitions.pdf>.

⁵ "District Plan: Chapter 2 - Abbreviations and Definitions" (Christchurch City Council, December 19, 2017), <https://districtplan.ccc.govt.nz/pages/plan/book.aspx?exhibit=DistrictPlan>.

⁶ "District Plan: Volume 1 - Objectives, Policies, and Rules" (Wellington City Council, June 30, 2020), <https://eplan.wellington.govt.nz/eplan/#Rules/0/4/1/0/0>, at [3.10].

⁷ “Operative District Plan: Appendix 1 - District Plan Administration” (Hamilton City Council, October 17, 2017), <https://www.hamilton.govt.nz/443/our-council/council-publications/districtplans/ODP/Pages/Operative%20District%20Plan.aspx>, at [1.1.2].

⁸ “Tauranga City Plan: Chapter 3 - Definitions” (Tauranga City Council, September 11, 2018), <https://www.tauranga.govt.nz/council/council-documents/tauranga-city-plan/city-plan-pdf-version>.

⁹ “District Plan: Chapter 3 - Definitions” (Hutt City Council, September 29, 2020), http://eplan.huttcity.govt.nz/pages/plan/book.aspx?exhibit=hcc_eplan_uvhkbbnlwrbwyslvorg.

¹⁰ “Second Generation District Plan (Appeals Version): Chapter A - Plan Overview and Strategic Directions” (Dunedin City Council, July 18, 2020), <https://2gp.dunedin.govt.nz/plan/pages/plan/book.aspx?exhibit=DCC2GP>, at [1.4.1].

¹¹ “District Plan: Section 4 - Definitions” (Palmerston North City Council, February 2020), <https://www.pncc.govt.nz/council-city/official-documents/district-plan/>.

¹² Ministry of Business, Innovation and Employment, “Previous Determinations,” Building Performance, accessed October 15, 2020, <https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/>.

¹³ *Alan Dall v Chief Executive of the Ministry of Business, Innovation and Employment* [2020] NZDC 2612, at [14].

¹⁴ *Alan Dall v Chief Executive of the Ministry of Business, Innovation and Employment*, at [41]-[44].

¹⁵ *Antoun v Hutt City Council* [2020] NZEnvC 6, at [39].

¹⁶ New Zealand Tiny House Association, “Draft Tiny House on Wheels (THOW) Building Standard,” n.d.

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APPENDIX D

 <p>SOUTHLAND DISTRICT COUNCIL</p>	<p>Southland District Council 15 Forth Street PO Box 903 Invercargill 9840 New Zealand Phone: 0800 732 732 Fax: 0800 732 329</p>	<p>Application for a discretionary exemption from building consent</p> <p>Building Act 2004 - Schedule 1, exemption (2)</p>
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1. About this form

- Please check that the forms that you are using are current at the time of application as they are subject to change without notice.
- General information can be found on our website at www.southlanddc.govt.nz
- A building consent exemption under Schedule 1(2) of the Building Act 2004 is the formal decision issued by a territorial authority confirming a building consent is not required for the intended building works.

2. Location of proposed work

Street address:

Legal description of land where building is located (e.g. Lot Number, DP)

3. The applicant (must be the property owner)

New Zealand Companies Registered Number: (if applicable)

Name of applicant:

Applicant's postal address: (Must be a New Zealand address)

Contact person: (If different from the applicant)

Email:

Phone number:

Owner details: (If different from the applicant)

Name:

Email:

Phone Number:

4. The agent acting on behalf of the owner

New Zealand Companies Registered Number: (if applicable)

Name of agent:

Agent's postal address:: (Must be a New Zealand address)

Contact person: (If different from the agent)

Email:

Website:

Phone number:

Relationship to owner: (state details of the authorisation from the owner to make the application on the owner's behalf)

First point of contact for communications with the Council: (Mark boxes as appropriate)

☐

Applicant

☐

Owner

☐

Agent

My preferred method of written communication is:

☐

Email

☐

Post

All related invoices are to be charged to: (Mark boxes as appropriate)

☐

Applicant

☐

Owner

☐

Agent

My preferred method of written communication is:

☐

Email

☐

Post

5. Project details

Provide a description of the work to be considered for exemption. Before completing this application please refer to MBIE guidance documents:

<https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/check-if-you-need-consents/building-consent-exemptions-for-low-risk-work/schedule-1-guidance/>

in particular the sections that discuss work that is unlikely to be approved.

Brief projection description

If your application is for a temporary structure, include critical dates.

Estimated value of work:

Is this application earthquake related?

☐

Yes

☐

No

If yes, is it coordinated by CP Reg Engineer

☐

Yes

☐

No

If yes, name of Engineer:

Application comments: (For example, related application numbers, or notes of processing staff)

6. Exemption details

All fields in this section must be completed (or separate quality assurance documents covering all aspects provided with the application) otherwise your application will be not accepted.

This should consider the complexity of the work, the risks and consequences of it not complying, and any quality assurance that can be offered. Refer to MBIE for further guidance, and in particular the guidance examples on how to complete this application.

Detailed description of work

Describe the proposed work in detail; specify work not to be covered by exemption; for earthquake repairs, specify damage to the building.

Grounds for exemption

There are two grounds on which the Council can decide to exempt building work from requiring building consents.

Please nominate which of these that you believe applies to this project (both options may be selected if necessary).

(a) ☐ The completed work is likely to comply with the Building Code if it is carried out in accordance with your proposal.

OR

(b) ☐ If the completed work were not to comply with the Building Code, it would unlikely endanger any people or building provided it is carried out in accordance with your proposal.

Means of compliance

Specify the standards, acceptable solutions, or MBIE guidance documents that may apply.

Design responsibilities

- *Who is carrying out the design work?*
- *What qualifications and proven record of compliance do they have in carrying out work of this complexity?*

Notes:

- Comprehensive details of all designers and consultants involved in the project along with relevant experience in similar works must be provided.

Construction responsibilities

- *Who is carrying out the building work?*
- *What qualifications and proven record of compliance do they have in carrying out work of this complexity?*

Notes:

- Comprehensive details of all contractors involved in the project along with relevant experience in similar works must be provided.

Quality assurance

- *Outline everything you are offering to satisfy council that the requirements of Schedule 1, 2(a) and/or (b) of the Building Act 2004 will be met.*

Notes:

- Summarise the QA system to be used to ensure compliance e.g. inspection schedules and completion documents. Document can be attached.

7. Supporting documents

Include all relevant drawings (plan, elevations, typical sections), supporting documents, specifications, photos, and critical member sizes and critical construction details, if any.
If an engineer is involved, provide the engineer's calculations and sketches, including a producer statement - design.

8. Declaration

[To be completed and signed by applicant or agent]

I/we understand that the fee charged at lodgement is a fixed fee for the Council to assess this application. This will be paid before the decision is released. The fee is payable whether the application is approved or declined.

If the application is not accepted for processing an administration fee may still be charged.

Where an invoiced amount has not been paid by the stated due date, the Council may commence debt recovery action. The Council reserves the right to charge interest, payable from the date the debt became due, and recover costs incurred in pursuing recovery of the debt.

All of the above information is, to the best of my knowledge, true and correct. I understand that all plans, documentation and reports submitted as part of an application are required to be kept available for public record, therefore the public (including business organisations and other units of the Council) may view this application, once submitted.

I/we understand that no work covered by this application is to commence until the building consent exemption decision is approved.

Print name:

Date:

Applicant or agent signature:

PRIVACY INFORMATION:

If you would like to request access to, or correction of, your details, please contact the Council.

9. Information

GENERAL INFORMATION:

For general enquiries please phone 0800 732 732 or email info@southlanddc.govt.nz

SUBMIT AN APPLICATION USING ONE OF THE FOLLOWING METHODS:

- You can submit your application using our online form at southlanddc.govt.nz
- You do not need to upload this form (Application for an Exemption from Building Consent) if you are submitting your application online.

An application can also be lodged via the following methods:

- Post your application to: Southland District Council, PO Box 903, Invercargill 9840
- Hand delivered to the Invercargill office, 15 Forth Street, Invercargill or dropped off at any SDC Area Offices

All applications will be checked for completeness prior to acceptance. Please ensure that you have compiled your documents carefully to avoid delays in accepting your application. If your application is incomplete it will not be accepted.

Application for a discretionary exemption from building consent

Building Act 2004 - Schedule 1, exemption (2)

1. About this form

- Please check that the forms that you are using are current at the time of application as they are subject to change without notice.
- General information can be found on our website at www.ccc.govt.nz/goahead
- A building consent exemption under Schedule 1(2) of the Building Act 2004 is the formal decision issued by a territorial authority confirming a building consent is not required for the intended building works.

2. Location of proposed work

Street address:

Legal description of land where building is located: (e.g. Lot No, DP)

3. The applicant

New Zealand Companies Registered Number: (If applicable)

Name of applicant:

Applicant's postal address: (Must be a New Zealand address)

Contact person: (If different from the applicant)

Email:

Phone number:

Owner details: (If different from the applicant)

Name

Email:

Phone number:

4. The agent (only required if application is being made on behalf of the applicant/owner)

New Zealand Companies Registered Number: (If applicable)

Name of agent:

Agent's postal address: (Must be a New Zealand address)

Contact person: (If different from the agent)

Email:

Phone number:

Relationship to owner: (state details of the authorisation from the owner to make the application on the owner's behalf)

First point of contact for communications with the council: (Mark boxes as appropriate)

☐ Applicant ☐ Owner ☐ Agent ☐ My preferred method of written communication is: ☐ Email ☐ Post

All related invoices are to be charged to: (Mark boxes as appropriate)

☐ Applicant ☐ Owner ☐ Agent ☐ My preferred method of written communication is: ☐ Email ☐ Post
5. Project details

Provide a description of the work to be considered for exemption. Before completing this application please refer to our B-390 and B-391 guidance documents, in particular the sections that discuss work that is unlikely to be approved.

Brief project description

If your application is for a temporary structure, include critical dates.

Estimated value of work:

Is this application earthquake related?

☐ Yes ☐ No

If yes, is it coordinated by an insurance company via a project management organization PMO, e.g. Hawkins, Arrow, Fletchers, etc?

☐ Yes ☐ No

If yes, name of PMO:

PMO Claim No

Application comments: (For example, related application numbers, or notes to processing staff)

6. Exemption details

All fields in this section must be completed (or separate quality assurance documents covering all aspects provided with the application) otherwise your application will be not be accepted.

This should consider the complexity of the work, the risks and consequences of it not complying, and any quality assurance that can be offered. Refer to our [exemptions web page](#) for further guidance, and in particular the guidance examples on how to complete this application.

Detailed description of work

Describe the proposed work in detail; specify work not to be covered by exemption; for earthquake repairs, specify damage to the building.

Grounds for exemption

There are two grounds on which the Council can decide to exempt building work from requiring building consents.

Please nominate which of these that you believe applies to this project (both options may be selected if necessary).

(a) ☐ The completed work is likely to comply with the building code if it is carried out in accordance with your proposal;

AND/OR

(b) ☐ If the completed work were not to comply with the building code, it would unlikely endanger any people or building provided it is carried out in accordance with your proposal.

Means of compliance

Specify the standards, acceptable solutions, or MBIE guidance documents that may apply.

Design responsibilities

- *Who is carrying out the design work?*
- *What qualifications and proven record of compliance do they have in carrying out work of this complexity?*

Notes:

- *Comprehensive details of all designers and consultants involved in the project along with relevant experience in similar works must be provided.*

Construction responsibilities

- *Who is carrying out the building work?*
- *What qualifications and proven record of compliance do they have in carrying out work of this complexity?*

Notes:

- *Comprehensive details of all contractors involved in the project along with relevant experience in similar works must be provided.*

Quality assurance

- *Outline everything you are offering to satisfy council that the requirements of Schedule 1, 2(a) and/or (b) of the Building Act 2004 will be met.*

Notes:

- *Summarise the QA system to be used to ensure compliance e.g. inspection schedules and completion documents. Document can be attached.*

7. Supporting documents

Include all relevant drawings (plan, elevations, typical sections), supporting documents, specifications, photos, and critical member sizes and critical construction details, if any.

If an engineer is involved, provide the engineer's calculations and sketches, including a producer statement - design.

8. Declaration

[To be completed and signed by applicant or agent]

I/we understand that the fee charged at lodgement is a fixed fee for the Council to assess this application. This will be paid before the decision is released. The fee is payable whether the application is approved or declined.

If the application is not accepted for processing an administration fee may still be charged.

Where an invoiced amount has not been paid by the invoice due date the Council may commence debt recovery action. The Council reserves the right to charge interest, payable from the date the debt became due, and recover costs incurred in pursuing recovery of the debt.

All of the above information is, to the best of my knowledge, true and correct. I understand that all plans, documentation and reports submitted as part of an application are required to be kept available for public record, therefore the public (including business organisations and other units of the Council) may view this application, once submitted. Please also note that for any refund due, the refund will be credited to the "deserving party" who may not have been the original "payee"

I/we understand that no work covered by this application is to commence until the building consent exemption decision is approved.

Print name:

Date:

Applicant or
agent signature:

PRIVACY INFORMATION: If you would like to request access to, or correction of, your details, please contact the Council.

9. Information

GENERAL INFORMATION:

For general enquiries please phone (03) 941 8999 or email info@ccc.govt.nz

SUBMIT AN APPLICATION USING ONE OF THE FOLLOWING METHODS:

Online Services application form:

- You can submit your application using our online form at <http://onlineservices.ccc.govt.nz>
- You will need to register to use Online Services. You can register at <http://onlineservices.ccc.govt.nz>
- You do not need to upload this form (B-004 Application for an exemption from building consent) if you are submitting your application online.

An application can also be lodged via the following methods:

- Post (additional costs apply) your application to: Building Consenting, PO Box 73013, Christchurch 8154.
- Hand delivered (additional costs apply) to Civic Offices, 53 Hereford Street, Christchurch Central or dropped off at any Council Service Desks listed on our website at www.ccc.govt.nz/contact-us.

All applications will be checked for completeness prior to acceptance. Please ensure that you have compiled your documents carefully to avoid delays in accepting your application. If your application is incomplete it will not be accepted.

Information for building owners & building practitioners:

Building work that does not require a
building consent

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Building work that does not require a building consent

The Building Act has allowed for specified work to be carried out without requiring building consent since 1992.

Most of this work is exempt as of right under Schedule 1 of the Building Act 2004.

Guidance is available in the Ministry of Business, Innovation and Employment (MBIE) document [‘Building work that does not require a building consent’](#) which should be read in association with this document.

Council discretionary exemptions

The Act allows councils to exempt other building work from requiring a building consent. Christchurch City Council has been recording decisions on exemptions since 1996.

The Council considers applications for exemption from building consent on a case-by-case basis for a wide range of work and projects where the design and construction work is:

- carried out by suitably qualified and experienced persons with a proven track record of competence in similar work
- comprehensive assurances are offered to show why it is likely that compliance with the New Zealand building code will be achieved, and
- the purposes and principles of the Building Act will not be undermined by the approval of an exemption.

Each request is considered carefully by a team dedicated to exemption applications. Compliance with the building code to the extent required by the Building Act is required with all building work, whether or not a building consent is obtained.

Please note: If Council becomes aware that work has been undertaken other than in accordance with an approved exemption, or if the information provided proves to be inaccurate, the approval becomes void and may be revoked.

This guide is mainly focused on discretionary exemption decisions made by Christchurch City Council and includes:

1. How exemptions make a difference to Christchurch City Council building consent customers.
2. Examples of residential or commercial work that we may consider for exemption.
3. Examples of residential or commercial work that we generally will not consider for exemption.
4. Clarifications on work that is exempt from building consent without asking the Council.
5. Frequently Asked Questions.

Please note: You may also find the Council’s [B-391 Guidance document](#) on preparing a high quality application useful.

All work must comply with the building code

An exemption from the requirement to obtain building consent is not an exemption from complying with the building code.

What is an exemption?

In simple terms, the purpose of the Building Act is to provide for the regulation of building work so that buildings are safe, sanitary, have appropriate amenity, and promote sustainable development. The Act outlines who is responsible for making sure building work complies with the New Zealand building code.

An exemption from building consent may be possible in instances where:

- It is likely the building work will comply with the New Zealand building code and the Building Act.
- There is little or no risk to life or other property.

Examples are provided further into this document.

The exemption process is carried out under Schedule 1 of the Building Act – the schedule lists work that is exempt, i.e. can be carried out without requiring approval by a building consent authority first. Schedule 1(2) allows a territorial authority (e.g. Christchurch City Council) discretion to consider other building works for exemption from building consent.

Exemptions mean:

Building practitioners with a **proven track record of quality work** who are undertaking work that is within their competence are able to undertake building work with less Council involvement in the project. Proven track record, means work under taken under building consent are examples of previous building projects.

No code compliance certificate is issued once the work is complete.

Responsibilities with an exemption

Building work (whether subject to consent or not) is required to comply with the Building Act, building code and all other laws, including:

- Resource Management Act - You should consult with Council planners especially where you have a heritage or character building, or where there may be an effect on neighbours
- Plumbers Gasfitters & Drainlayers Act
- Electricity Act
- Fire and Emergency New Zealand Act
- Health and Safety at Work Act

The responsibility for complying with all requirements remains with the owner and those people carrying out the work. We recommend that our customers engage the services of a competent building professional or practitioner who has a good understanding of the Building Act, the Resource Management Act and the construction environment.

Examples of Schedule 1(2) exemptions that will be considered by the Christchurch City Council

The Council approves Schedule 1(2) exemptions on a case-by-case basis where there is little or no value to be added by building consent authority processing and/or inspections, and where the design and building work is to be carried out and monitored by suitably qualified persons who have a proven record of compliance and have demonstrated a sound understanding of the Building Act and building code.

Please note:

1. It is important that you read this section alongside the Ministry of Business, Innovation and Employment (MBIE) guidance document '[Building work that does not require a building consent](#)'. This provides the scope of work already exempt from the need to obtain a building consent under Schedule 1 of the Building Act 2004 (the Act).
2. If you are unsure, don't start building work as you need to be certain it is exempt.
3. Applications that are likely to be refused include:
 - a. Applications where clear evidence of a proven track record in similar work is not provided.
 - b. Applications that include details that clearly do not comply with the building code. Non-compliant design details do not give the Council confidence that the work is likely to be built in compliance with the building code.
 - c. Multiple applications for the same work where it has been previously refused,
 - d. The Council considers that the risks of non-compliance to people or other property are not reasonable.

The following examples of work that can be considered for an exemption from building consent are indicative and not the only types of work that will be considered. We can consider any other work on a case-by-case basis.

Examples of residential work that we may consider for exemption:

1. Repair and/or replacement of all or a substantial part of damaged foundations in accordance with Table 2.3 of the Ministry of Business, Innovation & Employment guidance document '[Repairing and rebuilding houses affected by the Canterbury earthquakes \(December 2012\)](#)'.

Request is expected to be supported by:

- a. Confirmation, where foundations are being replaced, that the site is not in a flood-prone area or a mass movement area.
 - b. Engineer's damage report with repair recommendation, soil tests and a producer statement – design (PS1).
 - c. Construction documents, including plans, specifications and details showing the extent of repair work.
 - d. Repair methodology statement including confirmation that the engineer will inspect the completed works.
2. Cladding replacements. These must be very low risk and meet the following requirements:
 - a. Proposed cladding work uses a system that has been appraised by a reputable organisation, is a certified product/system or an acceptable cladding option under E2/AS1.

- b. Low or medium wind speed.
 - c. Single storey.
 - d. The roof-to-wall intersection is fully protected with eaves of at least 450mm.
 - e. Any intersections between claddings are simple.
 - f. Details provided must be specific to the building.
3. Accessory buildings, for example:
- a. Sleepouts sited closer than their own height to a boundary.
 - b. Garages of proprietary design (e.g. Versatile, Skyline etc.) or designed using NZS 3604:2011. Note that compliance with the City Plan must be shown or resource consent granted if applicable.
 - c. Carports (attached or detached) with a roof plan area of more than 40 square metres and covered by a CPEng structural engineer's design. Compliance with the District Plan must be shown or resource consent granted if applicable.
4. Closing in of an existing verandah/patio area outside the scope allowed under Schedule 1(15).
5. Alterations to residential buildings where the Council is satisfied that the work is low risk and being carried out by suitably qualified persons.
- Examples: removal of a single load bearing wall by a licensed building practitioner with design and supervision by a suitably qualified person; installation of additional sanitary fixtures in an existing bathroom with clear details and relevant registered contractors.
6. Plumbing and drainage beyond the scope of exemption (34) and (35) of Schedule 1 but still deemed low risk (to be assessed on a case-by-case basis) e.g. installation of a new ensuite. Refer also to the comments on wet-area showers on work that is unlikely to be approved.
7. Solar water heaters where the existing cylinder is not to be moved or replaced, and meeting the following criteria:
- a. Solar water heater complies with AS/NZS 2712.
 - b. Solar water heater installation complies with NZBC G12/AS2.
 - c. Installation is to be carried out by a Sustainable Energy Association of New Zealand ([SEANZ](#)) registered installer.
8. Installation of thermal insulation in external wall framing cavities meeting the following criteria:
- The installation of segment type thermal insulation (e.g. fibreglass, Dacron and wool based batt products) in external wall cavities with the following limitations:
- a. Building wrap or breather-type building paper is required to be in place behind the existing exterior cladding system.
 - b. Timber framing to have a moisture content in accordance with NZS 3602:2003 (below 18% m/c).
9. Simple retaining walls:
- Request is expected to be supported by:
- a. Geotechnical report on the land, including a statement that the land is not subject to a hazard under section 71 of the Building Act.
 - b. Engineer design that recognises the geotechnical report and includes a producer statement – design (PS1).
 - c. Construction documents, including details of any barriers and drainage.
- Retaining walls that include a waterproof membrane to prevent water entering a building should be submitted for building consent.

Examples of residential work that we will generally not consider for exemption:

1. Solid or liquid fuel heaters. There is already a simple and economical building consent process for these, and as there are significant consequences if something goes wrong it would be inappropriate to exempt them. This includes:
Changes to existing burners that alters how they comply, such as an existing inbuilt burner in a masonry chimney being converted so that it is a timber enclosure. If the timber enclosure is only above the ceiling line then this is less of an issue as the flue temperatures reduce significantly with height.
2. Cladding replacements not meeting the requirements of 2 above. The Council needs to be cautious with cladding replacements unless there is an extremely low risk of non-compliance, or if the consequences are low.
There is a long history of weathertight failures so unless an owner is making their own decision under Schedule 1(1) that a building consent is not required as the work is repairs or maintenance (taking note of the exclusions that apply), a building consent should be sought so that appropriate assessments and inspections are carried out.
3. Wet-area showers on timber floors, especially on upper levels. These have a history of failure that makes it inappropriate to approve exemptions for them.
4. Fencing associated with the use of a residential swimming pool requiring compliance with F9 of the building code. The consequence of failure associated with any non-compliance is significant. In addition, the issue of a code compliance certificate formally initiates regular inspections by either the Council or an independently qualified pool inspector.
5. Work on land subject to a hazard. Work that otherwise would require an assessment for a hazard notice (s71-74) if it were a building consent, e.g. “major alterations” in a flood awareness area or on some hill sites (a geotechnical expert should be able to provide an opinion on hazards on a hill site). Complete foundation replacement is considered to be a major alteration.
6. Stages of consentable building work. This may include piles/ground improvement for future building to be built under a building consent, or building work which effects building work being done under a current building consent.
There are some situations where an exemption will alter a building in such a way that it prevents or hinders the issue of a future building consent or a code compliance certificate for work on the same building.
If the project involves an underlying building consent then an exemption is not appropriate. An amendment to the original building consent, and/or a further stage of the building consent is more appropriate in those circumstances.

Examples of commercial work that we may consider for exemption:

1. Repeat long-term structures - small, simple, low risk structures where a building consent has previously been obtained and compliance demonstrated (e.g. bus shelters, pedestrian shelters, lighting towers etc.).

Request is expected to be supported by:

- a. Engineer's producer statement – design (PS1).
- b. Construction documents, including plans, elevations, sections, details and specification.

2. "Art" works, statues, displays, sculptures, memorials etc.

Request is expected to be supported by:

- a. Engineer's producer statement – design (PS1).
- b. Construction documents.

3. Simple voluntary structural strengthening to a building that is not earthquake-prone (i.e. already meets or exceeds 34% of new building standard (NBS)) where there will be no reduction in compliance for means of escape from fire and access and facilities for persons with disabilities.

Buildings are expected to have:

- a. been designed and constructed to a recognized standard when new;
- b. a score less than 11 as measured in the MBIE guidance document "Requesting information about means of escape from fire for existing buildings";
- c. a height of less than 12 metres above the lowest ground level, and no more than 2 storeys.

The work is to be simple in nature, such as brackets and braces to remedy isolated weaknesses. This is at the discretion of the Council and will consider the risk of non-compliance.

The application is expected to be supported by:

- a. An engineering assessment as per the [Ministry of Business, Innovation and Employment's EPB methodology](#).
- b. Construction documents, including plans, elevations, sections, details and specification.
- c. Engineer's producer statement – design.
- d. Construction documents.
- e. An assessment using the above mentioned guidance document.

4. Voluntary accessibility upgrade where work does not reduce compliance with any other building code clause.
5. Commercial fit-outs and alterations which may include minor plumbing and drainage work and/or minor changes to existing specified systems (e.g. relocating a few fire sprinkler and/or detector heads).

Additions or alterations to specified systems that are already included on the building's compliance schedule but will require the compliance schedule to be amended may be considered. These applications must also include a completed application for amendment to compliance schedule (B-031)

Please note that a separate fee is payable for an amendment to compliance schedule.

6. Short-term structures such as promotional or event-based e.g. performance stages, TV screens, lighting towers, temporary tiered seating etc. may be more complex but have a short life; construction to be well monitored by reputable people (for example a chartered professional engineer - CPEng). Such structures will usually be outside and part of a well-organised event; they may have been given a building consent for a prior occasion and organisers have planned people management.

7. Marquees meeting the following criteria:
 - a. Request is from a Council recognised and accepted marquee supply company.
 - b. Request is accompanied by completed Council form B-053 and all supporting documentation is attached (including producer statements, evacuation plans, details of alarms, lighting, heating, toilets, accessibility provisions etc.)

Examples of commercial work that we will generally not consider for exemption:

1. The building to which the building work relates is a hazardous substance location that is required to be authorised under the [Health and Safety at Work Act 2015](#) or any regulations made under that Act. (Building Act 2004, Section 42A(2)(d)).
2. Work on land subject to a hazard. Work that otherwise would require an assessment for a hazard notice (s71-74) if it were a building consent, e.g. “major alterations” in a flood awareness area or on some hill sites (a geotechnical expert should be able to provide an opinion on hazards on a hill site). Foundation replacement is considered to be a major alteration.
3. Work that includes the adding of or significant alterations to the following specified systems:
 - SS 1 - Automatic systems for fire suppression,
 - SS2 - Automatic or manual emergency warning systems for fire or other dangers
 - SS 5 - escape route pressurization systems,
 - SS 6 - riser mains for use by fire services,
 - SS 8 - Lifts/ escalators,
 - SS 10 - building maintenance units,
 - SS 11 - laboratory fume cupboards,
 - SS 13 - smoke control systems,
 - SS 14 - emergency power systems,
 - SS 16 - cable cars

The adding of other types of specified systems may be considered for exemption on a case-by-case basis, dependent on complexity of the building and the risk profile of the work.

4. Work undermining section 112 of the Building Act, e.g. it will significantly undermine the potential upgrading of a commercial building for fire egress or accessibility. MBIE have a guidance document “[Requesting information about means of escape from fire for existing buildings](#)” that is appropriate to use as a test for exemptions.

If the building score using this document is greater than 11, the building will need to be particularly small, simple or a thorough argument presented as to why a project will not undermine section 112 in order for an exemption to be considered.

Although this guidance document is with regard to fire, it is reasonable to assume that access and facilities for people with disabilities will have been assessed concurrently with fire egress.

5. Structural strengthening of a building that has been assessed as being less than 34% new building standard (NBS), or if the strengthening work is substantial. The Council has chosen to use NBS as the measure for whether an exemption could be considered rather than earthquake prone building (EPB) status, as the complexities of EPB assessment are outside the scope of our process.

It is appropriate that the design of this work is engineer reviewed, inspections carried out, and appropriate statements collected before the issue of a code compliance certificate. This will ensure that the Council can be confident in accurately recording the EPB status.

Council may also consider other matters, such as the history of engineering assessments, when deciding whether a full assessment of proposed work is more appropriately carried out as a part of a building consent application.

Also refer above to our comments on voluntary structural strengthening that we may consider for exemption.

6. Stages of consentable building work. This may include piles/ground improvement for a future building to be built under a building consent, or building work which effects building work being done under a current building consent.

There are some situations where an exemption will alter a building in such a way that it prevents or hinders the issue of a future building consent or a code compliance certificate for work on the same building.

If the project involves an underlying building consent then an exemption is not appropriate. An amendment to the original building consent, and/or a further stage of the building consent is more appropriate in those circumstances.

Guidance on requesting a decision on an exemption (also see B-391 Guidance on presenting high quality applications)

1. Requests for an exemption from the need to obtain a building consent under Schedule 1(2) should be submitted electronically using [Online Services](#). You will need to register to use this service, however using the Online Services system minimises administration time for the Council and can lead to faster processing times. Alternatively you can use Council's form B-004 which can be found at www.ccc.govt.nz/building-consent-forms-and-guides.
2. Please note that the fees for an exemption apply whether the decision is to approve or to decline. If the application is not accepted, either due to insufficient information or as it is obvious that it is outside the scope of this process, then officer time will be charged as per the [building consents fee schedule](#).
3. The level of information required to support a request for a decision will vary according to the circumstances. Information provided in support of an exemption under clause (2) for complex, high-risk work may be more extensive than would be required for a building consent, whereas simpler, lower risk work may be appropriately supported by less information than would be required for a building consent
4. The following must be included with a request for a decision:
 - a. Completed application including the names and registration numbers of all relevant suitably qualified persons, when known and the previous experience that they have in the type of work proposed.
 - b. Building practitioners with a **proven track record of quality work** who are undertaking work that is within their competence are able to undertake building work with less Council involvement in the project.
 - c. Detailed written explanation of how compliance with the New Zealand building code will be achieved. This should consider the complexity of the work, the risks and consequences of it not complying, and any quality assurance that can be offered.
 - d. In addition to any specific requirements noted above, provide one copy of all relevant drawings, supporting documents and specifications. For example, the drawings would usually include a plan, elevations, typical sections; and critical member sizes and critical construction details, if any.
 - e. If an engineer is involved, a copy of the engineer's calculations and sketches including a producer statement - design.
5. PLEASE NOTE that the following factors reduce evidence of competency of the people undertaking the work or assurances of compliance on site. They therefore make it unlikely that an exemption decision will be to approve and include:
 - a. Plans supplied at the time of the request not complying with the building code. Requests for further information should not be required for significant non-compliances. If the designer has not shown compliance with the building code without guidance and prompting there is a significant concern that the work will not comply on site.

- b. The request not identifying the means of compliance, or not covering all or most of the compliance issues that the project will involve. Most projects will involve more than (for example) just the structure. They will almost always need consideration of other building code clauses, an example being F5 – Construction and demolition hazards. If the applicant does not understand what is required to be considered, then it is not reasonable for the Council to decide that it is likely to be carried out correctly on site. Please ensure you have engaged a professional from all appropriate design disciplines to make sure all applicable clauses are covered.

General advice on repairs without building consent

If you are doing repairs without a building consent we advise you seek professional advice and keep records of the work done and who carried out the work. This will assist when you come to sell your home in the future, as purchasers are likely to have questions about the damage caused by the earthquake, who repaired the building and if it was done properly.

- Get expert advice.
- Use a skilled and professional building practitioner.
- Get several quotes for the work and ask for references.
- Keep records of the work done (e.g. photos) and who did it.
- Consult with your insurer and EQC if it is earthquake related work.

Clarifications on work that is exempt from building consent without asking the Council

This part of the guidance document provides some additional clarification on some of the clauses in Schedule 1 other than exemption (2), and on other work that does not require consent.

- Exemption 1 - Repairs, maintenance and replacement
- Exemption 34 – Minor alterations to drains

Exemption 1. General repair, maintenance, and replacement

1. The repair and maintenance of any component or assembly incorporated in or associated with a building, provided that comparable materials are used.
2. Replacement of any component or assembly incorporated in or associated with a building, provided that:
 - a. a **comparable component or assembly** is used; and
 - b. the replacement is **in the same position**.
3. However, subclauses (1) and (2) do not include the following building work:
 - a. **complete or substantial replacement** of a specified system; or
 - b. complete or substantial replacement of any component or assembly contributing to the building's structural behaviour or fire-safety properties; or
 - c. repair or replacement (other than maintenance) of any component or assembly that has failed to satisfy the provisions of the building code for durability, for example, through a failure to comply with the external moisture requirements of the building code; or
 - d. sanitary plumbing or drainlaying under the Plumbers, Gasfitters, and Drainlayers Act 2006.

Much of the interpretation below is extracted from MBIE Determination 2013/071. With regard to (2) above, the following phrases need to be interpreted:

'Comparable component or assembly'

Comparable, in terms of the nature of a component or assembly, has a broad interpretation. It is expected that to be comparable:

- it would be made of similar materials and similar configuration;
- their performance in terms of the building code was equivalent to or as good as that of the originals;
- there would be a similarity of function; and
- there would be a similarity in the complexity of the finished assembly.

'In the same position'

This is generally self-explanatory, but an example of replacing an existing pile with one immediately adjacent to it is considered to be an "assembly in the same position" for the purposes of Schedule 1(a).

With regard to (3) above, the following phrase needs to be interpreted:

‘Complete or substantial replacement’

‘Substantial’ has a broad interpretation, and can be described as ‘of considerable importance, size or worth’. This can be measured quantitatively and/or qualitatively. 50% or more may be considered substantial using a quantitative measure, but this does not take into account the nature of the building and the site so a qualitative measure also should be applied.

An example of the replacement of a foundation would need to consider how critical the nature of the element was to the building, as various parts of that foundation may be subject to different loadings. In some cases 50% of the foundation being replaced may not be substantial because the parts being replaced do not carry significant loads. In other cases significantly less than 50% of the foundation may be substantial if the parts being replaced carry a large portion of the loads.

The assessment of whether the replacement is or isn’t substantial is not always easy, and should be left to professionals who fully understand the function of the component or assembly being replaced.

Repairing cracks in pre-cast concrete wall panels could often be considered to be a repair with comparable materials, therefore being exempt under schedule 1(1). This decision should be made by a suitably qualified and experienced person such as an engineer with CPEng (Structure).

Exemption 34. Minor alteration to drains

1. Alteration to drains for a dwelling if the alteration is of a minor nature, for example, shifting a gully trap.
2. Subclause (1) does not include making any new connection to a service provided by a network utility operator.

The MBIE guidance discusses changes to sewer drains, but does not mention alterations to stormwater drains. The Christchurch City Council considers that an extension of an existing stormwater system for a house to a residential garage or outbuilding is minor, and fits within this exemption.

If building work, such as a single storey detached building, carport, hay barn, veranda etc. is exempt under another Schedule 1 exemption, then the drainage is included as “building work in connection with” it and does not require separate building consent approval.

Frequently Asked Questions

Q1. How does the Building Act 2004 provide for the Council to exempt this building work from needing building consent?

Exemption (2) of Schedule 1 of the Building Act 2004 provides for a territorial authority (the Council) to exempt proposed building work from the requirement to obtain a building consent where the building work:

1. is unlikely to be carried out otherwise than in accordance with the building code; or
2. if carried out otherwise than in accordance with the building code, is unlikely to endanger people or any building, whether on the same land or on other property.

Q2. How will the Council's building exemptions team make a decision on exempt work? How will I know if the exemption has been approved?

The decision is usually based on how complex the work is and the competency / proven record of the people designing, carrying out or supervising the work. You will usually need a quality or independent checking system in place to assist with getting an exemption approved.

The decision is confirmed by letter and is recorded on the property file so that anyone requesting a land information memorandum (LIM) can see it.

Q3. What are the advantages of an exemption?

The documentation required may be less. With a building consent, the Council decision to grant the consent is whether the drawings and specifications show enough detail so that the work will comply if the builder follows those drawings. This means that the drawings have to be very comprehensive. With an exemption the work is required to comply at the end of the job so drawings will not always need to be as complex. The more complex the work is however, the more detailed the drawings need to be demonstrated through consideration of relevant building code clauses.

The processing costs are less - Exemptions requests that are submitted under clause (2) to the Council (e.g. the examples of types of work above) have a fixed fee that is significantly less than the fees for a building consent. There are also no fees for inspections or a code compliance certificate as they are not required as part of the process. If the work is exempt under any of the Schedule 1 clauses other than exemption (2), then there is no need to gain building consent approval from the Council, therefore there is no cost. You can choose to have a copy of the documents that you have for the work put on the Council property file (email to propertyfileinfo@ccc.govt.nz) for a nominal fee if you wish, however the Council takes no responsibility for the work if you do this.

Processing times may be less - Decisions under clause (2) are simpler for the Council to make, therefore can be processed promptly as long as a sound proposal has been given to us. As no inspections are undertaken by the Council, there is also no requirement to program your work around when an inspector is available. Please note there are no guarantees an exemption will be approved, and no work contained in the application should take place until after approval.

Q4. What about insurance if the work does not have a building consent?

Exemptions are an acceptable way to comply with the Building Act. People involved in the work must make sure it is carried out correctly. The Act has specified work that does not require building consent since the introduction of the Building Act 1991, so this not a new provision in legislation. Please discuss the process with your insurer if you have any concerns.

Q5. Can I place a record of the work on the Council file?

For a small fee you can provide information to the Council with regard to work that you have carried out, which will be placed on the file for your property (email to propertyfileinfo@ccc.govt.nz). This will be recorded on any future land information memorandum (LIM) as being work carried out under exemption that has not been checked by the Council. This may prove beneficial when you come to sell your home or building in future as these records are public and can be reviewed by interested parties.

Q6. Who can request a decision on exempt building work?

Anyone can request that the Council makes a decision on whether specific building work can be carried out without obtaining a building consent. This does not give approval to actually carry out the work, only that if it is to be undertaken it does not require a building consent. Whether the work is carried out or not is a decision that remains with the owner, who must also ensure compliance with all other applicable laws and regulations.

Consenting and Compliance Group
Christchurch City Council
Phone: 03 941 8999
ccc.govt.nz/goahead

Guidance on presenting high quality applications for exemption

IMPORTANT NOTE:

The exemption process developed by the Christchurch City Council is intended for highly competent persons who have a proven record to show that they fully understand Building Act and building code requirements (relevant to the work being undertaken) and can be relied on to achieve compliance on site.

If you do not understand the information provided below we suggest that it would be appropriate to engage the services of a suitably qualified and experienced person to provide advice and make the application on your behalf. It is up to the applicant to convince council that they have sufficient provisions in place to allow an exemption decision to be made.

Compliance with the building code to the extent required by the Building Act is required with *all* building work, whether or not a building consent is obtained.

This short guide includes:

1. Guidance on preparing your request for a decision on an exemption from building consent.
2. Advice on presenting appropriate 'assurances' to council that allow a decision to be made that building work is likely to comply with the building code.

Please note: It is important that you read this document alongside the Christchurch City Council's [B-390 Guidance document](#) and the Ministry of Business, Innovation and Employment (MBIE) guidance document '[Building work that does not require a building consent](#)'.

What is an exemption?

Schedule 1(2) of the Building Act 2004 allows territorial authorities such as Christchurch City Council the discretion to exempt work from requiring a building consent.

An exemption from building consent may be possible in instances where:

- It is likely the building work will comply with the New Zealand building code and the Building Act.
- There is little or no risk to life or other property.

General guidance

Requests for an exemption from the need to obtain a building consent under Schedule 1(2) should be submitted electronically using [Online Services](#). You will need to register to use this service, however using the Online Services system minimises administration time for the Council and can lead to faster processing times. Alternatively you can use Council's form B-004 which can be found at www.ccc.govt.nz/building-consent-forms-and-guides.

Good applications

1. A successful exemption application requires complete design, construction and monitoring methodology to be considered, ensuring that adequate quality & safety assurances are presented. Good applications aim at convincing council that all compliance factors have, and will be considered and achieved throughout the process.
2. Information provided on the application form, or a referenced attached document, will form the basis on which the application will be assessed. For more complex work it is considered appropriate that a quality management plan be submitted containing details of design, construction, inspection and sign off 'assurances'.
3. The Council will approve the application only when satisfied that all potential risks have been mitigated
4. The application may be declined where the processing officer determines that insufficient assurances are offered and/or a brief review of the documentation raises doubt that compliance with the building code will be met and/or it is considered that the project would be best assessed under a building consent application. Please note that the application fee is for the Council to make a decision, whether that is to approve or decline. Refunds are not available when an application is declined.
5. The level of information required to support a request for a decision will vary according to the circumstances. Information provided in support of an exemption under clause (2) for complex, high risk work may be more extensive than would be required for a building consent, whereas simpler, lower risk work may be appropriately supported by less information than would be required for a building consent.

Unsuitable applications

The following factors **reduce evidence of competency** of the people undertaking the **work** or assurances of compliance on site. They therefore make it **unlikely that the exemption decision will be to approve** the application:

1. Plans supplied at the time of the request not demonstrating compliance with the building code. Requests for further information should not be required for significant non-compliances. If the designer has not shown compliance with the building code without guidance and prompting there is a significant concern that the work will not comply on site, meant that the exemption is likely to be declined.
2. The request not identifying the means of compliance, or not covering all or most of the compliance issues that the project will involve. Most projects will involve more than (for example) just the structure of the building. They will almost always need consideration of other clauses, an example being F5 – Construction and demolition hazards. If the applicant does not understand what is required to be considered, then is not reasonable for the Council to decide that it is likely to be carried out correctly on site. Design statements are expected from all design disciplines clearly identifying the building code clauses and means of compliance considered by each designer.
3. Applications which involve work identified in the B-390 guidance on exemptions as *work we will generally not consider for an exemption*.

How to fill out the B-004 application form (sections 5, 6 and 7)

A fully completed B-004 Application for an exemption form or its online equivalent is required in order for a request for an exemption to be accepted for processing. Note that you can refer to supporting documents if the information is presented in a quality management plan or similar document as the space available on the form may not be sufficient.

Section 5. Project details

Brief project description

Example

Earthquake repair of foundation.

Example

Office Fit-out in existing building

Section 6. Exemption details

Detailed description of work:

Define the situation and scope of the proposed work.

Provide a detailed description (scope) of the proposed building work to be captured by the exemption application. Clearly identify if the work is new or repairs.

Example (Based on above)

Engineer repair solution involving partial ring foundation replacement and re-levelling using grout injection.

Example (Based on above)

Office Fit-out - Internal alterations, including new partition walls, changes to fire safety and ventilation systems, new accessible toilet and small staff kitchenette.

Grounds for exemption:

Define the situation and scope of the proposed work.

Nominate which ground Council is asked to assess the application against- Schedule 1(2) (a) and/or (b). In some situations it may be necessary to use both grounds.

Means of compliance:

1. Specify compliance means / choices covering all aspects of the proposed work including applicable design codes, standards & guidelines representing best practice to be adopted.

Example

Documents adopted:

- NZS 3101:2006 - Concrete structures standard
- AS/NZS 1170 (relevant parts)
- NZS 3604:2011 (relevant parts)
- NZBC B1/VM4; B2; F5/AS1

2. Consider mitigation / avoidance of danger to personnel, public & property and provide an assessment of any risks that may present during & after the work is performed. This may be nil but still state that and provide reasoning.

Example

- Work is to comply with NZBC: F5 (Safe site practices employed)
- Work is isolated from public areas, site fully fenced etc.
- Asbestos hazard management plan (for demolitions)

Design responsibilities:

List all persons responsible for the design of the work. Provide the business entity name, followed by participant details, validated by PS1's or licence number. If peer review involved then provide those particulars as well. A design statement from each of the designers should also be provided with the application.

Examples:

- Structural Engineer name, CPEng #, (provide design statement with accurate scope of work and identifying means of compliance)
- Civil Engineer name, CPEng #, (provide design statement with accurate scope of work)
- Architect name, NZIA # (provide design statement with accurate scope of work and identifying means of compliance)
- Design draughtsperson name(s), LBP# ((provide design statement with accurate scope of work and identifying means of compliance)
- Provide details of the designers experience with similar building projects

Construction responsibilities:

List all persons responsible for the intended construction. This may simply be noted as a reputable established construction entity, otherwise individuals with licenses if known. If you are not providing specific details then you should give us details of what you will be looking for in regard to experience and qualifications - outline in your application how you will select the contractor.

Examples:

- Established construction entity with proven track record. (outline their experience/capabilities)
- Construction individuals / entities responsibilities. (provide an accurate scope of works for this group, even if participating individuals / entities are not yet known)
 - Site supervision - Name / LBP# name/relevant experience
 - Foundations - Name / LBP# name/relevant experience
 - Carpentry - Name / LBP# name/relevant experience
 - Plumbing -Registration#
 - Fire safety systems - Name/relevant qualifications/experience
 - Mechanical ventilation - Name/relevant qualifications/experience

Provide details of the contractors experience with similar projects.

Quality Assurance:**1. Project management/Sign off:**

As Council will not be carrying out inspections or issuing a code compliance certificate, advise what project management and quality assurance systems will be in place to ensure that the completed work has been carried out to the intent of the contract documents and that the completed work complies with the building code. This is a critical aspect when requesting an exemption, the greater the number of steps put in place to ensure compliance of the building work the better.

2. Monitoring:

List those responsible for supervision/inspections/monitoring and issue of written sign off (via producer statement (PS3, PS4 or similar)

Examples:

Structural Engineer - name, CPEng # - PS4 monitoring (to match initial scope of PS1)

Civil Engineer - name, CPEng # - PS4 monitoring (to match initial scope of PS1)

Architect - name, NZIA # - (specify supervision or project management and the scope)

Design draughtsperson(s) - name(s) LBP# - (if providing site supervision/monitoring)

Contractors/sub-contractors - name(s) LBP# - Construction Statement requirements.

Provide details of experience in monitoring similar projects.

3. Inspection schedules:

Provide an inspection schedule from the professionals to cover all areas of work that would normally be inspected by Council under a building consent.

NB. For work outside of the scope of a CPEng engineer, inspections are expected to be carried out by suitably qualified persons independent of the contractor/sub-contractor. For very minor work where the risk of non-compliance is considered by the processing officer as very low, self-certification by an LBP may be accepted. Generally for each area of specific design there should be a corresponding sign off.

3. Final inspection/sign off:

Where multiple personnel are involved from different disciplines (structural/fire/mechanical etc.) it is suitable that someone is nominated to have overall responsibility for the completion, inspection and sign off of all work. They would also be responsible for managing the collection of statements, site records, photographs, etc.

Section 7. Supporting documents

Identify the documents being provided with the exemption application, including those relating to construction monitoring to be provided when construction is complete, if desired, to complete Council property records for future reference. Note: The current application fee does not include the receipt / filing of documentation after approving the exemption. The [building consents fee schedule](#) states the amount required to have documents added to the property file at the customer's request.

Examples:

- Included at application:
 - Engineers building damage reports
 - DEE's (for commercial buildings with EQ damage repairs)
 - Geotechnical reports (for foundation repairs/replacements)
 - Construction drawings
 - Specifications
 - PS1 & PS2 (as applicable)
- To be provided after completion of construction:
 - PS3's & PS4's (as applicable)
 - Engineer site instructions etc.
 - Pipework testing results
 - Photographs

Quality management/Construction management plans

As the scope and complexity of work being considered under an exemption grows it is considered appropriate to provide a comprehensive supporting document containing all of the design, construction, inspection and sign off procedures in one document.

An outline document like this enables the exemption processing officer to clearly and efficiently understand the provisions the applicant is putting in place to ensure the work is likely to comply with the building code.

A comprehensive plan should include all of the information above and could include:

- Clear scope of works
- Step-by-step methodology/timeframe of construction/inspection/sign off
- Health and safety
- Detailed list of personnel involved and a more in-depth description of their role and their relevant experience/qualifications
- Reporting procedures
- Examples of prospective documentation - statements/reports/site records.

Tiny houses in New Zealand

Library research brief



PARLIAMENTARY SERVICE

Te Ratonga Whare Pāremata

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Summary

The tiny house movement is growing in New Zealand and abroad, as conventional housing becomes increasingly unaffordable for many, and as people seek alternative ways of living. Currently, New Zealand does not have a standard definition for what constitutes a tiny house. As a result, it can be unclear to what degree tiny houses, and especially tiny houses on wheels (THOWs), are subject to the usual building and resource consents process.

One of the main issues is whether THOWs should be classed as a building under s 8 of the Building Act 2004, or as a vehicle. If THOWs are classed as vehicles, they may not require a building consent. This may also depend on how the relevant local government district plan defines “building”, the section the THOW is sited on, and how long the THOW will be occupied for.

The inconsistencies in how THOWs are defined has caused difficulties for tiny house owners around New Zealand. In March 2020, a group of tiny house owners and builders presented a petition to Parliament, asking it to pass legislation to recognise and protect the rights of tiny house owners, and to implement a low cost compliance framework.¹

This paper presents an overview of the current regulatory framework governing tiny houses in New Zealand.

Building and resource consents

Housing construction is administered at the local government level, with most city and district councils responsible for issuing building consents under s 212 of the Building Act 2004. City and district councils are also responsible for granting resource consents under s 31 of the Resource Management Act 1991.

Building consents

Tiny houses that are permanently fixed to a particular site are generally uncontroversial in terms of whether they require building consent. They are clearly buildings within the definition set out in s 8 of the Building Act 2004. The definitions of building in district plans will also generally capture fixed tiny houses. From 31 August 2020, some single-story detached buildings up to 30m² will no longer require a building consent. However, this does not include buildings that have sanitary facilities, potable water supply, and cooking facilities.²

In contrast, tiny houses on wheels (THOWs) do not clearly fall into the definition of building under s 8. Nor are they necessarily captured by the definition of building in each council's district plan. This has led to an inconsistent approach between councils and local authorities, as THOWs are sometimes classed as buildings and therefore require a building consent, and sometimes as vehicles and therefore are exempt.³

Resource consents

A new house of any size may also require a resource consent, depending on the relevant district plan. District plans may specify how large or small a dwelling can be, whether it must conform to a particular style, and where it can be sited on a given section. All of these factors may affect whether a tiny house or THOW requires resource consent.

Examples of council definitions of building

Council	Definition of building
Auckland Council	<p>"Any permanent or temporary structure" including "structures used as a dwelling" that are "Over 1.5m in height; and in use for more than 32 days in any calendar year."</p> <p>A dwelling is defined as "living accommodation used or designed to be used for a residential purpose as a single household residence contained within one or more buildings, and served by a food preparation facility/kitchen."⁴</p>
Christchurch City Council	<p>"Any structure or part of a structure, whether permanent, moveable or immovable" including "any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit."</p> <p>A residential unit is defined as "a self-contained building...used for a residential activity by one or more persons who form a single household."⁵</p>
Wellington City Council	"An enclosed structure built with a roof and walls." ⁶
Hamilton City Council	"Any structure of any kind, whether temporary or permanent, moveable or immovable, and includes...Any vehicle, trailer, tent, caravan or boat, whether fixed or moveable, used as a place of accommodation." ⁷
Tauranga City Council	Has the same meaning as the Building Act 2004, but excludes any building smaller than 10m ² and less than 2m in height. A building less than 10m ² but over 2m in height will be classed as a building for the purposes of the City Plan. ⁸
Hutt City Council	"Any building or structure or part of a building or structure, whether temporary or permanent, movable or immovable." ⁹

Council	Definition of building
Dunedin City Council	"A structure that includes a roof that is, or could be, fully or partially enclosed with walls. The definition of building includes the parts of buildings defined as building utilities and rooftop structures." ¹⁰
Palmerston North City Council	"Any structure made by people and which is fixed to land" excluding "Any retaining wall not exceeding 1.5m in height measured from the lowest adjoining ground level" and "any wall (other than a retaining wall) or fence of any height not exceeding 2m measured from the lowest adjoining ground level." ¹¹

Recent legal decisions

There have been two recent court decisions regarding the consenting requirements for tiny houses and THOWs. In the absence of a specific regulatory framework, these decisions are likely to have an impact on how councils classify THOWs for the purposes of granting building and resource consents. Previous determinations by the Ministry of Business, Innovation and Employment (MBIE) may also be relevant.¹²

In *Alan Dall v Chief Executive of the Ministry of Business, Innovation and Employment* [2020] NZDC 2612, the District Court held that a THOW did not fall under the definition of building in s 8, and therefore did not require building consent. In *Antoun v Hutt City Council* [2020] NZEnvC 6, the Environment Court held that a tiny house constructed on a base of two parallel steel beams was a structure within the definition in s 2 of the Resource Management Act 1991, and therefore required a resource consent.

Dall v Chief Executive of MBIE

The *Dall* case sets out the following methodology for deciding whether a THOW should be classed as a building for the purposes of s 8 of the Building Act:

1. Is the THOW a "vehicle" or "motor vehicle" as defined in s 2 of the Land Transport Act 1998 (LTA)?
2. If yes, is the THOW immovable, and occupied by people on a permanent or long-term basis?
3. If the THOW is not a vehicle, does it fall under the general definition of "building" in s 8 of the Building Act?¹³

If the first two limbs of the test are satisfied, the THOW will be deemed to be a building and subject to the Building Act. Matters which may be relevant when considering whether a THOW should be classified as a building include:

- the construction of the THOW, particularly whether it has been clearly designed to be attached to another vehicle and relatively easily relocated;

- whether it has a valid registration and warrant of fitness;
- whether the THOW can be removed from the trailer base and fixed to the ground;
- the degree to which the THOW is self-contained in terms of services such as water and sewerage; and
- whether the THOW can be distinguished in any material way from a caravan.¹⁴

Antoun v Hutt City Council

Although the *Antoun* decision turned more on the question of whether the tiny house was a structure for the purposes of the Resource Management Act 1991, the court also considered whether the tiny house was a building or vehicle. In coming to its decision that the tiny house was not a vehicle, the court considered the following factors:

- the tiny house had not been constructed on a trailer or other vehicle base, and was not equipped with wheels or any other means by which it could be easily relocated;
- the tiny house had not been warranted or registered as trailer or other vehicle; and
- the size of the tiny house was such that it would have been difficult for it to be legally carried on a trailer or other motor vehicle for relocation.¹⁵

Other standards applicable to THOWs

As noted in the *Antoun* decision discussed above, THOWs that are intended to be moveable may be subject to Land Transport Rules regarding legal loads for motor vehicles and trailers. These rules are set out in the Land Transport Rule: Vehicle Dimensions and Mass 2016, and include restrictions on the total mass of vehicles, and the dimensions of loads that may be carried on a truck or trailer.

A further consideration regarding THOWs is the safety of do-it-yourself and home-built THOWs if they are classified as vehicles and do not require a building consent. The New Zealand Tiny House Association, an advocacy group for tiny house owners and builders, has suggested that THOWs comply with similar safety standards to caravans, particularly regarding heating, cooking facilities, electrical installations, and sanitary facilities (table 1, below).¹⁶

Table 1: standards currently applicable to caravans

Australia/New Zealand Standard	What it covers
AS/NZS 5601.2:2020 Gas Installations – Part 2: LP gas installations in caravans and boats for non-propulsive purposes	Requirements and deemed-to-conform solutions for the installation of gas cooking, heating, and water heating in caravans. This includes requirements for adequate ventilation.

Australia/New Zealand Standard	What it covers
AS/NZS 3001:2008 Electrical installations - Transportable structures and vehicles including their site supplies	Requirements for electrical installations associated with transportable structures and vehicles that are intended for connection to low-voltage AC supply systems. This includes both vehicles, and structures with or without wheels, that can readily be moved from one site to another either under their own motive power or by some other means.
AS/NZS 3500.2:2018 Plumbing and drainage – Part 2: Sanitary plumbing and drainage	Requirements for the design and installation of sanitary plumbing and drainage from fixtures to a sewer, common effluent system, or an on-site wastewater management system.
NZS 5465:2001 Self-containment of motor caravans and caravans	Requirements for water supply, sanitary plumbing and drainage installation and solid waste containment in motor caravans and caravans for the purpose of obtaining a self-containment certificate.

References

¹ "Petition of Andrew Crisp: Tiny/Mobile Dwellings as a Permanent, Healthy, Affordable & Dignified Residence (2017/481)," March 6, 2020, https://www.parliament.nz/en/pb/petitions/document/PET_93492/petition-of-andrew-crisp-tinymobile-dwellings-as-a-permanent.

² Ministry of Business, Innovation and Employment, "New Building Consent Exemptions," accessed October 9, 2020, <https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/check-if-you-need-consents/building-work-that-doesnt-need-a-building-consent/new-building-consent-exemptions/>; Hon Jenny Salesa, "Home Improvements Cheaper as Building Consent Rules Relaxed," *The Beehive*, August 31, 2020, <http://www.beehive.govt.nz/release/home-improvements-cheaper-building-consent-rules-relaxed>.

³ Skara Bohny, "Trying to Build Legally Leaves Tiny Home Couple 'Worse Off,'" *Stuff*, March 22, 2020, <https://www.stuff.co.nz/life-style/homed/119846031/trying-to-build-legally-leaves-tiny-home-couple-worse-off>; Chloe Ranford, "Tiny Home Resembles 'Lego Exercise,'" *RNZ*, June 3, 2020, <https://www.rnz.co.nz/news/ldr/418160/tiny-home-resembles-lego-exercise>; Skara Bohny, "Tiny Home in Lower Moutere Found to Be Building Requiring Consent," *Stuff*, February 7, 2020, <https://www.stuff.co.nz/nelson-mail/119265333/tiny-home-in-lower-moutere-found-to-be-building-requiring-consent>.

⁴ "Auckland Unitary Plan (Operative in Part): Chapter J - Definitions" (Auckland Council, September 24, 2020), <https://unitaryplan.aucklandcouncil.govt.nz/Images/Auckland%20Unitary%20Plan%20Operative/Chapter%20J%20Definitions/Chapter%20J%20-%20Definitions.pdf>.

⁵ "District Plan: Chapter 2 - Abbreviations and Definitions" (Christchurch City Council, December 19, 2017), <https://districtplan.ccc.govt.nz/pages/plan/book.aspx?exhibit=DistrictPlan>.

⁶ "District Plan: Volume 1 - Objectives, Policies, and Rules" (Wellington City Council, June 30, 2020), <https://eplan.wellington.govt.nz/eplan/#Rules/0/4/1/0/0>, at [3.10].

⁷ "Operative District Plan: Appendix 1 - District Plan Administration" (Hamilton City Council, October 17, 2017), <https://www.hamilton.govt.nz/443/our-council/council-publications/districtplans/ODP/Pages/Operative%20District%20Plan.aspx>, at [1.1.2].

⁸ "Tauranga City Plan: Chapter 3 - Definitions" (Tauranga City Council, September 11, 2018), <https://www.tauranga.govt.nz/council/council-documents/tauranga-city-plan/city-plan-pdf-version>.

⁹ "District Plan: Chapter 3 - Definitions" (Hutt City Council, September 29, 2020), http://eplan.huttcity.govt.nz/pages/plan/book.aspx?exhibit=hcc_eplan_uvhkbbnlwrbwyslvorg.

¹⁰ "Second Generation District Plan (Appeals Version): Chapter A - Plan Overview and Strategic Directions" (Dunedin City Council, July 18, 2020), <https://2gp.dunedin.govt.nz/plan/pages/plan/book.aspx?exhibit=DCC2GP>, at [1.4.1].

¹¹ "District Plan: Section 4 - Definitions" (Palmerston North City Council, February 2020), <https://www.pncc.govt.nz/council-city/official-documents/district-plan/>.

¹² Ministry of Business, Innovation and Employment, "Previous Determinations," Building Performance, accessed October 15, 2020, <https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/>.

¹³ *Alan Dall v Chief Executive of the Ministry of Business, Innovation and Employment* [2020] NZDC 2612, at [14].

¹⁴ *Alan Dall v Chief Executive of the Ministry of Business, Innovation and Employment*, at [41]-[44].

¹⁵ *Antoun v Hutt City Council* [2020] NZEnvC 6, at [39].

¹⁶ New Zealand Tiny House Association, "Draft Tiny House on Wheels (THOW) Building Standard," n.d.

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Guidance information about exempt building work



The purpose of this document is to provide guidance information about Schedule 1 of the Building Act which provides for building work that does not require a building consent. This type of work is considered low risk.

What is Schedule 1 of the Building Act 2004?

Schedule 1 is a list of building work that does not require a building consent. If the work does not need a building consent the owner still has responsibilities under the Act to make sure work complies with the Building Code.

Schedule 1 also contains a provision (exemption 2), which provides an applicant with an opportunity to seek an exemption when a building consent might otherwise be required. Applicants must apply to Council and seek approval for this exemption.

The Ministry of Business Innovation & Employment has produced a guide to building work that does not require a building consent. You can view their guidance on their website here: <https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/check-if-you-need-consents/building-work-that-doesnt-need-a-building-consent/>

As a building owner, what are my responsibilities?

Building owners are responsible for:

1. determining whether proposed building work is exempt from requiring a building consent
2. ensuring exempt building work complies with the Building Code; and
3. ensuring the work does not breach any other Act

Although work may be exempt, section 17 of the Building Act 2004 states that all building work must comply with the Building Code to the extent required by the Act whether or not a building consent is required in respect of that building work. To ensure that building work complies with the Building Code owners should seek professional advice from an independently qualified person (i.e. builder or architect).

Further section 42A(2)(c) of the Act requires that the building work does not breach any other enactment.

This section of the Act means that if the building work is likely to breach any other enactment then the work is no longer exempt from the need to obtain a building consent. However, if approval under the other legislation is obtained, the work reverts to being exempt building work.

Example: resource consent is required because the work does not comply with the unitary plan; applicant obtains resource consent, work is still exempt from the need to obtain building consent, so long as the proposed building work is within the scope of schedule 1.

Council also strongly recommends that all building owners check with the Resource Consents team before undertaking any building work to ensure that resource consent is not required.

Resource consents maybe necessary for several different reasons including but not limited to: -

- zoning
- site coverage
- height in relation to boundary

What if I don't know if the building work is exempt?

You should always check with a building professional and seek their advice before deciding whether building work is exempt. The Building Act is quite clear that it is the owner's responsibility to ensure that they obtain a building consent when one is required.

What if the building work is exempt and I want to place a record on file?

When it comes to selling a property, all sorts of issues arise when the records Council has don't reflect what has been built on site. For this reason, Council is prepared to accept records from owners relating to exempt building work and place a copy of this information on the property file. You can submit this online on our public website [here](#) when notifying Council and requesting that a record of exempt building work is placed on your property file.

For record keeping purposes, the notification must be accompanied by drawings depicting what an applicant has built or renovated. This helps to ensure that property records are up-to-date and identify all work undertaken on site.

There is a small administrative charge for placing this information on file; this charge covers the cost of storing this information on file for the life of the building. Owners should be aware that Council **does not** take any responsibility for checking that the information provided about exempt building work, is in accordance with the requirements of the Building Code. Similarly, Council will **not** carry out any inspections on this work. For this reason, we do not acknowledge receipt of the documentation.

Although Council has no specific requirements regarding the quality of information supplied, it must be suitably legible and accurately portray the work to be of any value for record-keeping purposes. Please do not use previously stamped plans, as the plans need to depict the work, which is the subject of the notification.

Can I apply for a building consent even if the work is exempt?

Yes, even if building work is exempt you may still wish to obtain a building consent.

Can I apply for an exemption when a building consent is required?

Yes, exemption 2 of Schedule 1 of the Building Act makes provision for a person to seek an exemption even if a building consent is required. If applying for an exemption, please apply online [here](#). Exemption 2 gives Council the discretion to waive the requirement for a building consent. Council will consider each application on a case-by-case basis. Before approving such applications, Council needs to be satisfied that:

1. The building work will be carried out in accordance with the Building Code, or
2. If carried out, other than in accordance with the Building Code, is unlikely to endanger people or any building, whether on the same land or any other property.

If applying for an exemption, applicants still need to provide the same level of detail as if they were applying for a building consent to enable a full assessment and subsequent decision to be made. There is a small charge payable for this assessment.

Does exempt building work have to be undertaken by a licensed building practitioner?

No; however, the building work must be carried out in accordance with the Building Code. Further, regardless of whether a building consent is required, the building work must comply with other relevant legislation, including the:

- Plumbers, Gasfitters, and Drainlayers Act 2006
- Electricity Act 1992
- Resource Management Act 1991; and
- Fire and Emergency New Zealand Act 2017.

Submission on behalf of BUILDBEST CONSTRUCTION LIMITED
Building Company operating in North Canterbury.

Our Submission

We support a simple definition of 'Building' but oppose the using of the National Planning standard definition in the Proposed District Plan as written:

BUILDING: means a temporary or permanent movable or immovable physical construction that is:

a. partially or fully roofed; and

b. is fixed or located on or in land;

but excludes any motorised vehicle or other mode of transport that could be moved under its own power.

(National Planning Standard definition)

1. Our Claim

That in its present form, the Proposed District Plan definition of 'Building', is 'not fit for purpose' as it enables an inconsistent and biased application of its Rules by supporting one type of vehicle (motorised) and through its absence in the definition intentionally discriminates against another type of vehicle (non-motorised).

2. Submission Rationale

We are opposed to the scope of the wording "*but excludes any motorised vehicle or other mode of transport that could be moved under its own power*" for the following reasons;

(a). This narrow scope in the exclusion in the Building definition is protects motor vehicles that have an engine and intentionally targets and discriminates those vehicles that require to be drawn by a vehicle that has an engine.

(b). If left as written the Proposed District Plan definition of 'Building' would see a Bus converted to a mobile home, a RV motor home , Gypsy Wagon on a truck deck, Horse truck with living quarters, Refrigerated box truck converted to living quarters, a Container home secured to the deck of a truck, a Caravan secured to the deck of a truck, a flat deck truck with a Tiny Home built on it defined as a 'Vehicle' and not required to comply with the Building Code or have a Building Consent, **BUT** a 5th wheel caravan, Gooseneck horse trailer with living quarters, a bumper pull touring Caravan, a Tiny Home built on a light trailer or an articulated Box trailer with push outs converted to a Mobile Surgical Unit be defined as a Building and required to comply with the Building Code and have a Building Consent.

(c). We contend District Plans should be a guiding document of consistency and that the Proposed District Plan is inconsistent with recent rulings around what is a vehicle and not a building.

(d). We content that the Proposed District Plan is erred in law with the definition of 'Building'. It correctly legitimises a 1939 Bus conversion to a motor home that sits on a property, or a 1972 CF Bedford Pop Top Jumbo Van with a self-containment certificate that can park in a shed, registration on hold, compliant because it has an engine BUT a 2021 Jayco Silverline caravan parked in the same shed as the CF Bedford, or a steel framed, clad, lined and insulated tiny home built on a trailer with a WOF and registered are buildings and need a building consent. Case law exists that define the latter as a vehicle and not a building. Notwithstanding this case law, the Proposed District Plan blurs the line of this now established legal precedent.

(e). In a statement made in 2019 to RNZ on a landmark Tiny House court case. Waimakariri District Council's manager of regulation Nick Harrison was quoted as saying;

“until the Building Act offered greater clarity around tiny houses, building consent authorities needed to continue their role making sure new builds were up to minimum safety standards.”

(f). There is now a new exemption template within the Building Act that gives discretionary power to individual Territorial or Regional Authorities. If implemented with genuine intent, the tools offered councils can create the necessary clarity Mr Harrison felt powerless to determine in the past.

(g). In February 2020 a court ruling (APPENDIX A) made it clear that a Tiny Home on wheels was a vehicle. In August 2020 Central Government expanded on building work that does not need a building consent under the Building Act 2004 (APPENDIX B). In October 2020 Parliamentary Services produced a library research brief on Tiny Houses in New Zealand (APPENDIX C). These documents provide councils with recent and relevant direction to plan better so that err in law inconsistencies and bias need not exist albeit councils would need to be open minded on how to use this new freedom granted them.

(h). With Judge Callaghan's ruling a Tiny Home on wheels is a vehicle in February 2020, we find no rationale in the Waimakariri District Council decision to specifically exclude motorized vehicle from its definition of 'Building' but not encompass non-motorized vehicles with the same exclusion. Not only does this not line up with Judge Callaghan's ruling it will be problematic for the Council as it has been found to be erred in law.

Examples to Demonstration the problem:

example 1. Within the definition of Building in the Proposed District Plan a Tiny Home built on a light trailer with wheels is a 'Building' but if it was built on the deck of a truck with wheels it is a 'Vehicle'.

Example 2. A 1939 Bus converter motor home used for sleeping will be compliant because it is a 'Vehicle', but a 2021 home built Tiny Home of a steel frame construction, clad, lined and insulated built on a trailer with a WOF and registered and built to current building 'industry standards' being used for sleeping parked beside the Bus is non-compliant because it is a 'Building'.

(i). *Courts, councils’ and owners have thrashed this argument out over many years, “what is a vehicle and what is a building”? Our conclusion from court cases is that councils’ have often got it wrong yet gone to extraordinary lengths to prove themselves. For us it is how ‘vehicles’ should be treated by councils’ in district plans in the future.*

(j). We contend that a provision in the Proposed District Plan permitting the siting, storing, and a permitted occupation of both vehicle types will strengthen the integrity of the Plan and enable the utilization of the Building Act 2004 to its full potential.

(k). The Parliamentary Service library research brief document confirms there is a lack of clarity in the definition of ‘Vehicle’ between the supporting legislations and councils’ planning rules and the ruling from Judge Callaghan appears to support this.

(l). Now that Judge Callaghan’s ruling has been established we believe that Council should revisit the building definition wording in the Proposed District Plan and include both vehicle types in the “but excludes” part of the definition. This will align with Judge Callaghan’s ruling and enable the council to move away from the ‘Notice to Fix’ tool and toward a collaborative approach that promotes recent legislation that empowers Territorial and Regional authorities to explore discretionary exemptions.

(j). The Government brought in Discretionary Exemptions under the Building Act 2004 in August 2020. Therefore, the Council has a mandate to align the wording in the Proposed District Plan to the current legal rulings in this space.

3.0 Drivers for the solution

The wording in the Building Act August 2020 Guidance document for Schedule 1 (2) discretionary exemptions states on page 14;

Territorial or Regional authorities can use their discretion to exempt any proposed building work from the requirements to obtain a building consent if,

(a) the completed work is likely to comply with the Building Code: or

(b) If the completed building work does not comply with the Building Code, is it unlikely to endanger people or any building, whether on the same land or on other property?”

Use of the words “likely to comply” in part (a) and the words “does not comply...,is it unlikely to endanger people or any building...” in (b) are in our view the conduit that allows vehicles, motorized or non-motorized to be excluded from being ‘Buildings’ in the Proposed District Plan.

We contend that this wording gives Waimakariri District Council a clear mandate to take a pragmatic approach to the trailer type vehicles with building on it. The Proposed District Plan and Building Act schedule 1 (2) exemptions can work together for better outcomes for all but

requires genuine effort to make this relationship work. Therefore, for schedule 1(2) exemptions to function with the Proposed District Plan in a meaningful way vehicle must be recognised as vehicles, motorised or drawn and focus to turn to how to treat them.

4. Building Act Exemption template and guidance.

A quick search and we found many Councils' (on face value) have embraced the discretionary exemption mandate from Central Government

Southland district council application form (APPENDIX D) is simple with a link to the *Building Performance portable for Guidance on Schedule 1 Exemptions*, whereas the Christchurch City Council on the surface uses the same simple form (APPENDIX E) but their *B-390 booklet starts the journey of confusion* (APPENDIX F) and its guidance document B-391 document (APPENDIX G) on how to lodge an application is scarier than a Fox Terrier chasing the Mail Man. The Christchurch City Council B-390 & 391 documents are complicated and do more to discourage than encourage. We found them well meaning, but too much and encumbering.

The Auckland Council on the other hand appears to be the stand out as they tie the exemption under *schedule 1 or 1(2) with an example and directive that connect* their Unitary Plan to the exemption process. (APPENDIX H). They wrote the following to demonstrate when an exemption triggered further action required and how that affected the exemption;

....This section of the Act means that if the building work is likely to breach any other enactment then the work is no longer exempt from the need to obtain a building consent. However, if approval under the other legislation is obtained, the work reverts to being exempt building work.

Example: resource consent is required because the work does not comply with the unitary plan; applicant obtains resource consent, work is still exempt from the need to obtain building consent, so long as the proposed building work is within the scope of schedule 1.

Council also strongly recommends that all building owners check with the Resource Consents team before undertaking any building work to ensure that resource consent is not required.

Resource consents maybe necessary for several different reasons including but not limited to:

- 1. zoning*
- 2. site coverage*
- 3. height in relation to boundary*

This is simple, easy to follow and understand. It supports our argument that a District Plan

needs to be a guiding document and 'fit for purpose' for the Building Act exemption tool to work.

The Waimakariri District Council appears not have a discretionary exemption template for applicants to exercise at the time of compiling this submission.

5.0 Change of mind suggestions.

(a) The Waimakariri District Council could expand on the National Planning standard definition and add 'drawn vehicle' to the exclusion definition so that caravans (mobile or static, factory manufactured or custom built), and THOWs (tiny houses on wheels), acknowledging they are vehicles and have a legitimate place beside Motor Homes as vehicles.

(b) The Waimakariri District Council uses the opportunity to dovetail the Proposed District Plan to the Building Act schedule 1 & 1(2) exemptions. This will facilitate a move away from leveraging one against the other to serve the 'Notice to Fix' tool to a collaborative mechanism where owners and council work with each other in mutual trust and respect.

(c) The Waimakariri District Council could include additional rules in the Proposed District Plan that allows the siting, storage, parking, and utilization of Vehicles for short term occupation, or long term occupation if compliance with schedule 1 or 1(2) of the Building Act 2004 is achieved.

We contend that this approach is the right one as with others the manufacturers of THOWs are currently afforded the ability to, if meeting all Building Code requirements, gain a MBIE Multiproof Building Consent (APPENDIX J) for a standard repeatable Building design. A Multiproof Building Consented build would not require to obtain a Building consent from a Territorial Authority. Farfetched as it sounds and difficult but possible to achieve.

(d). Insight to our thinking: We content there is nothing stopping a Tiny Home builder gaining a Multiproof Certificate from MBIE if they meet Schedule 1 (2) Building Consent exemption requirements for their assets may or may not need a resource consent under a District Plan. Noting that a number of these assets will not require many if any on site services due to the possibility they are fitted out under the caravan and motor home standards of self-containment certification. It is also worth noting that any schedule 1 exempt buildings established on a site and utilized as intended under that exemption criteria could at any time request a 'discretionary exemption' under schedule 1 (2) of the Act to install a bathroom or kitchen. At worst this example would only require plumbing and drainage approval as the structure itself will still be exempt under schedule 1.

6. Conclusions

We believe that we have demonstrated that;

- (1) In its present form the Proposed District Plan definition for 'Building' is 'not fit for purpose'.

(2). The proposed wording will enable an unjustifiable discrimination against one legitimate vehicle type and be erred in law.

(3). The law has established that drawn vehicle are not buildings regardless of whether they are occupied or not and this legal precedent supports the inclusion of 'drawn vehicle' in the definition wording that excludes them for being a building in the Proposed District Plan.

(4). There is a framework that Council can use allowing the use of trailer type vehicles without classifying them as Buildings but will require a cooperative approach to achieve effective outcomes.

Finally, without a legitimate provision in the Proposed District Plan for the siting, storing, and a permitted occupation of these assets the integrity of the Building Act exemptions in schedule 1 or the application for discretionary exemption in schedule 1(2) are undermined and the spirit to which they came into existence illegitimately dismissed.

7.0 What we request from Council

(1) We ask Council to expand on the National Planning standard definition and add 'drawn vehicle' to the exclusion definition so that caravans or THOWs (mobile or static, factory manufactured or custom built) are acknowledged as vehicles and have a legitimate place beside Motor Homes.

This new wording would read;

"but excludes any motorised vehicle or drawn vehicle or other mode of transport that could be moved under its own power".

(2) Change the Proposed District Plan to allow the siting, storage, parking, and utilization of 'Vehicles' in appropriate residential zones for short term stays, or used for long term stays if compliance under schedule 1 or 1(2) of the Building Act 2004 is achieved.

This wording could include any one or all of the following;

Temporary Residential Unit

means a relocatable vehicle of not more than 30m² nett floor area for the accommodation of a person or persons meeting one or more of the following criteria:

either: an aged or disabled person or persons who without the physical care and support of the persons occupying the larger household unit on the same site would be incapable of an independent existence;

or: a person, without whose physical care and support the aged or disabled occupant(s) of the larger household unit on the same site would be incapable of an independent existence.

Provided that where the occupiers of both units are not related by blood or marriage, it can be established that the link between them is of a permanent nature or brought about by the employment of a person for the purpose of providing physical care and support.

Temporary Family living space

means self-contained vehicle used for accommodation of not more than 30m² nett floor area, located separately to a residential unit or minor residential unit on the same site, which are occupied by family member(s) who are dependent in some way on the household living in that residential units, and which is encumbered by an appropriate legal instrument which ensures that the use of the family living space is limited to dependent family members of the household living in the residential unit.

Temporary Living Place

means where people stay for one or more nights in: which can include.

A vehicle that can be legally driven or towed to a different location on request; used for overnight stays. The term 'temporary' in this definition refers to the form of accommodation, not necessarily the duration of time on the site."

Accessory to any existing residential unit on-site; or It is; Not used as a permanent residence; and from 7 February to 1 December in the same year but excluding all public holidays, no more than 2 vehicles used for overnight stays are on site."