



Claude Lewenz  
Executive Director  
Portable Overland Dwelling (POD) Association

1 October 2019

Dear Mr Lewenz,

I am writing in response to your message on 9 September 2019.

You have outlined your concern about recent determinations and the impact these decisions will have on tiny house, cabins, cottages or portable structures. An important point to emphasise is that MBIE's view is not that these dwellings are not allowed, but rather that those that are buildings for the purposes of the Building Act must comply with the requirements of the Building Act and Building Code. Similarly, owners and manufacturers of such dwellings are expected to follow the relevant regulatory processes, which exist to ensure the safety and wellbeing of building users.

The Building Code in New Zealand is performance-based and designed specifically to enable flexibility and innovation in conjunction with adherence to minimum standards. There has been an increasing evolution in the types of accommodation over recent years, and there are a variety of different types of portable or relocatable dwellings that would fall within your description of a "pod". When an application for a determination is before me I must consider each case on its merits.

However I acknowledge that there is a matter of interpretation common to these determinations that concerns the definition of a "building" for the purpose of the Building Act, and more specifically what constitutes a movable structure under section 8(1)(a) and what is a vehicle that may also fall within the definition of a building under section 8(1)(b)(iii).

You have referred to previous determinations and what you consider is a lack of consistency between those and more recent determinations. As noted in a recent determination (2019/036), some earlier determinations focussed on the test in section 8(1)(b)(iii) and whether something was immovable and occupied on a permanent or long term basis, but did not consider in any detail how a vehicle may be different from a structure that is movable under the general definition in section 8(1)(a). I remain of the view set out in recent determinations that there is a difference and that this must be considered in each case. I am also of the view that this approach is in line with the Court of Appeal judgement (Thames-Coromandel District Council v Te Puru Holiday Park Ltd [2010] NZCA 663). There are currently two appeals lodged with the District Court that involve this issue of interpretation and it is anticipated that the outcome of those appeals will assist in clarifying this and some related issues for the sector.

I also note that you have asked to meet with me to discuss these matters. A determination is a quasi-judicial process and as such it would not be appropriate for me to meet with you given my role as Manager Determinations, particularly as I currently have determination applications before me that involve some of the issues raised in your correspondence. I have however forwarded your correspondence to the relevant team within MBIE that is responsible for providing advice on the legislative setting, because much of the matters you raise concern the regulatory settings and how these types of dwellings fit within the current regulatory environment. It is apparent from your correspondence that there is common ground between the trade association and the Ministry, being that dwellings should be constructed in such a way that they can be occupied safely and without endangering the health of the occupants.

I also note that the Government recently completed public consultation on a range of proposals to improve the Building Regulatory system, by lifting quality and ensuring there are fairer outcomes when things go wrong. This includes proposals that will make it easier for modern methods of construction, including off-site manufactured construction, to be used. You can read more about this here: <https://www.mbie.govt.nz/have-your-say/building-system-legislative-reform-programme-public-consultation/>. If they progress, these changes would help to support the government's delivery of a broader range housing and urban development priorities. I understand the Government intends to make decisions on proposals to progress this year.

Yours sincerely,

A handwritten signature in blue ink that reads "Katie Gordon". The signature is fluid and cursive, with the first letter 'K' being particularly large and stylized.

Katie Gordon  
Manager Determinations