IN THE COURT OF APPEAL OF NEW ZEALAND

CA771/2009
CA32/2010
[2010] NZCA 633

BETWEEN	THAMES-COROMANDEL DISTRICT COUNCIL Appellant And Cross-Respondent
AND	TE PURU HOLIDAY PARK LIMITED First Respondent And First Cross-appellant
AND	RONALD ANTHONY JULIAN Second Respondent And Second Cross-appellant

Hearing:	23 June 2010
Court:	William Young P, Chambers and Randerson JJ
Counsel:	D J Neutze for Thames-Coromandel District Council M D Talbot for Te Puru Holiday Park Ltd and Ronald Anthony Julian
Judgment:	21 December 2010 at 4 pm

JUDGMENT OF THE COURT

A The appeal is allowed. The convictions and sentences relating to the unit on site E18 are reinstated.

B The cross-appeal is dismissed.

C There is no order as to costs.

REASONS OF THE COURT

(Given by Chambers J)

Are trailer-homes buildings?

[1] Te Puru Holiday Park Ltd operates a camping ground in Te Puru, just north of Thames on the Coromandel Peninsula. Ronald Julian is Te Puru's sole director. Te Puru's camping ground is divided into 135 separate titles. Situated on sites C22 and E18 are "Leisurebuilt" units. The maker of these units describes them as "new generation caravans and mobile homes" and as "trailerised recreational and accommodation units".

[2] The respondents were convicted in the District Court at Thames of offences against s 168 of the Building Act 2004 (the Act).[1] The offending involved a failure to comply with notices to fix issued by Thames-Coromandel District Council. These notices to fix alleged that the trailer homes situated on sites C22 and E18 were buildings and that they had been sited without a building consent.

[3] The respondents appealed their convictions to the High Court.[2] They argued that the units were not "buildings" under the Act, and so did not require building consents; the notices to fix were accordingly invalid. The particular argument made was that these units were in fact vehicles, and because they were not both immovable and occupied by people on a longterm basis, they did not qualify as "buildings" under the Act. The appeal was allowed in relation to the unit on site E18, but dismissed in relation to the duplex unit on site C22.[3]

[4] Duffy J subsequently granted leave to appeal to this Court on five questions of law.[4] We prefer to group the issues under two heads. First, what is the correct way

---

1 *Thames-Coromandel District Council v Te Puru Holiday Park* DC Thames CRN 0707550069/70/71/72, 29 February 2008 ["DC decision"].

2 There were also appeals against the sentences imposed in the District Court. The sentence attaching to the quashed E18 conviction was set aside. The sentence attaching to the C22 conviction was upheld: *Te Puru Holiday Park Ltd v Thames Coromandel District Council* HC Auckland CRI-2008-419-25, 30 June 2009.

3 *Te Puru Holiday Park Ltd v Thames Coromandel District Council* HC Auckland CRI-2008-419-25, 11 May 2009 ["HC decision"].

4 *Te Puru Holiday Park Ltd v Thames Coromandel District Council* HC Auckland CRI-2008-419-25, 16 October 2009.

of interpreting the definition of "building" under the Building Act? Secondly, did Duffy J deal with the appeals correctly in light of the conclusion she reached on the first issue?

What is the correct way of interpreting the definition of "building" under the Building Act?

[5] Section 8 defines what a building "means and includes" in the Act. It 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) a mechanical, electrical, or other system; and
>
> (ii) a fence as defined in section 2 of the Fencing of Swimming Pools Act 1987; and
>
> (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
>
> (iv) a mast pole or a telecommunication aerial that is on, or forms part of, a building and that is more than 7 m in height above the point of its attachment or base support (except a dish aerial that is less than 2 m wide); ...
>
> ...
>
> (4) This section is subject to section 9.

[6] Section 9 continues the definition of "building", this time setting out what the term does not include:

> **9 Building: what it does not include**
>
> In this Act, **building** does not include –
>
> (a) A NUO system, or part of a NUO system, that –
>
> (i) is external to the building; and
>
> (ii) is connected to, or is intended to be connected to, the building to provide for the successful functioning of the NUO system in accordance with the system's intended design and purpose; and
>
> (iii) is not a mast pole or a telecommunication aerial that is on, or forms part of, a building; or
>
> (ab) a pylon, free-standing communication tower, power pole, or telephone pole that is a NUO system or part of a NUO system; or
>
> (b) cranes (including any cranes as defined in regulations made under the Health and Safety in Employment Act 1992); or
>
> (c) any of the following, whether or not incorporated within another structure:
>
> (i) ski tows:
>
> (ii) other similar stand-alone machinery systems; or
>
> (d) any description of vessel, boat, ferry, or craft used in navigation –
>
> (i) whether or not it has a means of propulsion; and
>
> (ii) regardless of what that means of propulsion is; or
>
> (e) aircraft (including any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth); or
>
> (f) any offshore installation (as defined in section 222 of the Maritime Transport Act 1994) to be used for petroleum mining; or
>
> (g) containers as defined in section 2(1) of the Hazardous Substances and New Organisms Act 1996; or
>
> (h) scaffolding used in the course of the construction process; or
>
> (i) falsework.

[7] For completeness, we note that the definition of "vehicle" in s 2 of the Land Transport Act is "a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved". A "motor vehicle" in the same section is defined as "a vehicle drawn or propelled by mechanical power" and as including "a trailer".

[8] The Judges in the courts below were divided on how one approaches the definition of "building".

[9] Judge Ian Thomas in the District Court thought the correct approach was to look first at s 8(1)(a) to see whether the units came within that definition. He concluded that the units on sites C22 and E18 did come within the general definition of "building" in s 8(1)(a).[5] He therefore considered it unnecessary to determine whether the units also came within the extended part of the definition in s 8(1)(b)(iii).[6] By implication, the Judge thought it would be sufficient if the units *either* came within the "means" part of the definition *or* came within the extended, "included" part of the definition in s 8(1)(b)(iii).

[10] In the High Court, Duffy J held that Judge Thomas had misinterpreted s 8. She held that if a defendant contended that the alleged building was a vehicle, then the first thing the court needed to assess was whether it was. If it was, then the court had to assess whether it was a vehicle with s 8(1)(b)(iii) characteristics. If it had such characteristics, it was a building. If it did not have them, it was not a building. In those circumstances, it was irrelevant whether the vehicle might come within the general definition (by which we mean the definition in s 8(1)(a)). If, however, the court concluded that the alleged building was not a vehicle at all, then it had to assess whether the thing came within the general definition.[7]

[11] Before us, the Council supported the District Court's approach to s 8, while the respondents defended that of the High Court.

[12] While we have not found the question easy, we have concluded that Duffy J was right. Sections 8 and 9 need to be looked at together. Where a specific thing is

---

[5] DC decision at [20].
[6] At [20].
[7] At [19].

described and stated to be either included or not included in the definition, that is decisive. The specific obviates the need to consider the general definition. If the thing in question is not specifically dealt with, then one must consider whether it comes within the general definition. We wish to emphasise that this is the approach to interpretation best suited to ss 8 and 9 in the context of this Act. We are not setting out a general rule of statutory interpretation. In other contexts, it may well be appropriate to go first to a "general definition".[8] Courts must adopt the methodology which best seems to fit the drafters' intent.

[13] Any other approach to interpretation in this case yields irrational results. For instance, most fences are permanent immovable structures. On the District Court approach, supported before us by Mr Neutze for the Council, one would go no further: the general definition provides the answer. But it is clear, by reference to the definition in s 8(1)(b)(ii), that Parliament intended to capture only swimming pool fences. On the Council's interpretative methodology, this specific definition is otiose. That cannot have been the Parliamentary intention.

[14] Similarly, masts and poles on buildings, whatever their height, will generally be either temporary or permanent immovable structures. But Parliament has made it clear that it intended to bring within the Building Act's net only masts or poles that are on or form part of buildings and that are more than seven metres in height.

[15] Judge Thomas's approach potentially swept into the net, by virtue of the general definition, vehicles that were movable and vehicles not occupied by people on a permanent or longterm basis. We acknowledge immediately that the Judge, when assessing whether each unit was a "building" within the general definition, took into account the purpose for which the units were being used. He regarded as significant the fact "that the majority of the units would remain on the site once placed there" and that they were "occupied on a permanent basis by the owners or rented out by camp proprietors".[9] But the fact remains that the interpretative approach meant that s 8(1)(b)(iii) did not need to be considered at all. This approach

---

8 See, for example, *Begg v Commissioner of Inland Revenue* [2009] NZCA 160, [2009] 3 NZLR 353.

9 DC decision at [18].

overrode the restrictions Parliament had fixed in s 8(1)(b)(iii) as to which vehicles should be brought within the scope of the Act.

[16] We accordingly agree with the approach to the interpretation of ss 8 and 9 that found favour with Duffy J.

[17] We also consider this approach is consistent with the legislative history. The precursor to ss 8 and 9 of the Act was s 3 of the Building Act 1991. Subsection (1) of that section read as follows:

> (1) In this Act, unless the context otherwise requires, the term **building** means any temporary or permanent movable or immovable structure (including any structure intended for occupation by people, animals, machinery, or chattels); and includes any mechanical, electrical, or other system, and any utility systems, attached to and forming part of the structure whose proper operation is necessary for compliance with the building code; but does not include –
>
> (a) Systems owned or operated by a network utility operator for the purpose of reticulation of other property; or
>
> (b) Cranes, including any cranes as defined in any regulations in force under the Health and Safety in Employment Act 1992; or
>
> (c) Cablecars, cableways, ski tows, and other similar stand-alone machinery systems, whether or not incorporated within any other structure; or
>
> (d) Any description of vessel, boat, ferry, or craft used in navigation, whether or not it has any means of propulsion, and regardless of that means; nor does it include –
>
> (i) A barge, lighter, or other like vessel:
>
> (ii) A hovercraft or other thing deriving full or partial support in the atmosphere from the reactions of air against the surface of the water over which it operates:
>
> (iii) A submarine or other thing used in navigation while totally submerged; or
>
> (e) Vehicles and motor vehicles (including vehicles and motor vehicles as defined in section 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; or
>
> (ea) Aircraft, including any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth; or

> (f) Containers as defined in section 2 of the Dangerous Goods Act 1974; or
>
> (g) Magazines as defined in section 2 of the Explosives Act 1957; or
>
> (h) Scaffolding used in the course of the construction process; or
>
> (i) Falsework used in the course of the construction process.

[18] It is clear from para (e) of that definition that vehicles and motor vehicles were not included within the definition *unless* they were used exclusively for permanent or long-term residential purposes. Without doubt, had this case arisen under the 1991 Act, the focus would have been on whether the units were vehicles under para (e) and then, if they were, on whether they were being used exclusively for permanent or long-term residential purposes. If they were being used for permanent or long-term residential purposes, they would not have fallen within para (e). One would then have turned to consider whether they came within the general definition of "building". If they were not being used exclusively for permanent or long-term residential purposes, then they would have been vehicles within para (e) and thus excluded from the definition of "building" and would not have been caught by the Building Act.

[19] The Parliamentary Counsel Office, when drafting the Bill which, when enacted, became the Building Act 2004, decided to split the old s 3 into two: cls 8 and 9.[10] We see no interpretative significance in the split: it merely reflects changes in drafting practice between 1991 and 2003. Part of those changes was a move towards shorter sections. When the Bill was introduced, vehicles were in cl 9, that part of the definition where things were excluded. The exclusion was expressed in this way:

> (d) vehicles and motor vehicles (including vehicles and motor vehicles as defined in section 2(1) of the Land Transport Act 1998), but not including vehicles and motor vehicles, whether movable or immovable, that are used exclusively for permanent or long-term residential purposes;

---

[10] The clause numbers were in fact 7 and 8, but for convenience we shall refer to clause 7 as clause 8 and to clause 8 as clause 9, because they became ss 8 and 9 when the Bill was enacted.

[20] It will be immediately apparent that no change was intended from the position pertaining under the 1991 Act.[11] Vehicles were to be excluded from the purview of the new Act unless they were used exclusively for permanent or longterm residential purposes.

[21] When the Bill was reported back following Select Committee hearings, the reference to vehicles was moved from cl 9 to cl 8. The definition was recast in the form in which it now appears in s 8(1)(b)(iii).[12] Two changes had been made. The principal change was to capture only immovable vehicles. Under the 1991 Act and under the Bill as introduced, movable vehicles could be buildings provided they were "used exclusively for permanent or long-term residential purposes". Secondly, whereas previously to be caught the vehicle had to be "used exclusively for permanent or long-term residential purposes", now it had to be "occupied by people on a permanent or longterm basis". We see nothing particularly significant in that change. Nor do we see any special significance in the fact that vehicles intended to be caught moved from being an exception to an exclusion to being an inclusion. This was simply a drafting rearrangement, akin to removing a double negative. Certainly, in the report back by the Select Committee, no point was made of this, even though the other two changes in the definition to which we have referred were mentioned.[13]

[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.

---

[11] This is confirmed by the explanatory note to the Bill on its introduction: see Building Bill 2003 (78-1) (explanatory note) at 5.

[12] See [5] above.

[13] Building Bill 2004 (78-2) (select committee report) at 6.

Did Duffy J deal with the appeals correctly in light of the conclusion she reached on the first issue?

[23] Duffy J, having reached a different view from Judge Thomas as to the correct method of interpreting ss 8 and 9, was then in a quandary. She said:

> [19] The District Court never considered if the units on site C22 and E18 were vehicles in terms of s 8(1)(b)(iii) and, if so, whether or not they were within the other specified characteristics in s 8(1)(b)(iii). Since this was the basis of the appellants' defence, it follows that their case was never properly considered. They never had a proper opportunity to be heard. In addition, the decision that it was sufficient to determine the case on the consideration of s 8(1)(a) alone was an error of law.
>
> ...
>
> [20] Since the District Court never considered the appellants' case in terms of s 8(1)(b)(iii), it made no factual findings on the evidence it heard in terms of this subsection. I have not had the benefit of hearing the evidence. However, it is appropriate that I consider the evidence that was led before the District Court for the purpose of determining a view on it.

[24] Her Honour then went on to consider first the duplex unit on site C22 and then the unit on site E18.

Site C22

[25] Duffy J found that the unit on this site was a building within s 8(1)(a). Mr Talbot, for the respondents, has challenged that conclusion. He submits Her Honour made an error in "failing to analyse the evidence to assess whether the duplex sited on site C22 was, in fact, two vehicles in terms of s 8(1)(b)(iii)".

[26] Duffy J described "the unit" on this site as "a duplex".[14] She noted that it comprised "two Leisurebuilt units locked together to form a single dwelling". The essential part of her reasoning was this:[15]

> I consider that the locking together of two units to form a "duplex" has the effect of creating a new item that is distinguishable from the individual units of which it is comprised. Furthermore, I consider that it is this new single

---

[14] HC decision at [21].
[15] At [21].

> item, rather than its constituent parts, which falls for consideration under s 8(1)(b)(iii). Looked at in this way, I conclude, therefore, that the unit as it is sited on C22 cannot be a vehicle in terms of s 8(1)(b)(iii).

[27] Her Honour then went on to consider whether it came within the general definition. She concluded it did. It was "a structure that is being used to accommodate people".[16] She therefore concluded that the conviction in relation to this unit had been properly entered.

[28] Mr Talbot challenged Duffy J's conclusion. He submitted there was "evidence" that the two locked units "could be ... dismantled and separated and moved away in very short order". From that he reasoned that they should be looked at separately. If looked at separately, they would be found on the evidence to be "vehicles" in terms of s 8(1)(b)(iii).

[29] Although Duffy J granted leave to the respondents to bring a cross-appeal on this issue, we have considerable doubts as to whether there is a "question of law" for our determination. On second appeals under the Summary Proceedings Act 1957, our jurisdiction is limited to "questions of law".[17] The alleged "failure to analyse the evidence" is not really an error of law at all; rather, what is complained about is that the Judge preferred on this point evidence called by the Council to evidence called on behalf of the respondents. That this was in truth a finding of fact is perhaps betrayed by the question itself, which invites the answer that "the duplex on site C22 was, *in fact*, two vehicles in terms of s 8(1)(b)(iii)".

[30] It may be there was a question of law as to whether the Judge was right in her conclusion that, in assessing a thing, one assessed it as it presented, not by its constituent parts. We doubt whether such a question of law could have met s 144 criteria. In any event, we are satisfied the Judge was entirely correct in her view that the duplex did have to be assessed as it presented.

[31] It would have been wholly artificial to assess the duplex by its constituent parts. The evidence was clear that the units had been constructed of normal housing materials and had the internal layout of a small holiday home. The towbar for each

16 At [22].

unit had been removed. The duplex sat on concrete blocks and timber packers. Slatted screens had been installed between the floor and ground level and a removable deck had been added. The duplex was connected to power and water. Wastewater pipes were plumbed into an inground facility. There was even a bay window and a ranchslider.

[32] Judge Thomas and Duffy J were both correct in finding that the C22 duplex was a building within the general definition. The convictions were rightly entered in respect of C22. The cross-appeal must be dismissed.

Site E18

[33] The position in respect of the unit on site E18 is more difficult. Duffy J considered this could well be a vehicle. The difficulty was that Judge Thomas, because of his view of how s 8 should be interpreted, had never made findings as to whether it definitely was a vehicle and, if it was, whether it had s 8(1)(b)(iii) characteristics.

[34] Duffy J then considered she had two options:[18]

(a) allow the appeal and set aside the conviction under s 121 of the Summary Proceedings Act; or

(b) direct a rehearing of the information under s 131.

[35] For some reason, she did not consider a third option: analysing the evidence herself and determining whether or not the unit was a vehicle under s 8(1)(b)(iii) and, if it was not, whether it was a building under the general definition. She decided not to direct a rehearing, because she considered the respondents were "entitled to some finality". She decided to allow the respondents' appeal with respect to this unit, but added that the judgment would not be "a barrier to the laying

[17] Summary Proceedings Act 1957, s 144.
[18] At [25].

of fresh informations, should the [Council] want to continue with requiring the [present appellants] to obtain building consents for the unit”.[19]

[36] Mr Neutze challenged the course the Judge had decided to adopt. Even if Judge Thomas had got the law wrong, he had made sufficient findings of fact to enable Duffy J to reach a view as to whether the charges relating to the unit on site E18 had been made out. In any event, she had the evidence from which she could draw her own conclusions. Appellate courts are frequently asked to reassess trial evidence and the trial Judge's conclusions thereon and to make their own evaluation of the evidence. There was, Mr Neutze submitted, no reason why the standard appellate approach should not have been followed here.

[37] Further, he referred to the inconsistency in her Honour's reasoning. She said the reason she was not going to direct a rehearing was that the respondents were "entitled to some finality". Yet in the next breath she said there would be nothing to prevent the laying of fresh informations in respect of the same unit.

[38] With respect to the Judge, we consider the course she adopted was a plainly wrong exercise of her discretion. Once she had determined the law, the only proper options open to her in the circumstances of this case were to analyse the evidence herself and make a factual determination as to whether the Council had proved the charge or to send the case to the District Court for rehearing. The question then arises as to what we should do about it. While we too have power to direct a rehearing in the District Court,[20] we have decided that the evidence is sufficiently clear that we can form our own assessment of the E18 charges.

[39] Judge Thomas made the following findings:[21]

(a) The unit had no suspension.

(b) The unit had no brakes.

---

[19] At [25].
[20] Summary Proceedings Act 1957, s 144B.
[21] DC decision at [14]-[19].

(c) The wheels on the unit were bolted to the hubs.

(d) Some of the tyres were not on the ground; the unit was sitting on concrete blocks and timber packers.

(e) The unit could not be towed without a special permit because of its width (3.64 m).

(f) The unit could not have passed a warrant of fitness test.

(g) The unit was constructed of components commonly used on prefabricated buildings.

(h) The unit was plumbed.

(i) The unit was laid out like a small holiday house.

(j) The unit was occupied on a permanent basis.

(k) The unit was immovable for the time being and would take quite a lot of time to get it ready for towing.

[40] Mr Talbot took us to the evidence in some detail, as did Mr Neutze. We are quite satisfied that all of Judge Thomas's findings of fact were properly made. Mr Talbot has not persuaded us to the contrary. Other facts not specifically mentioned by Judge Thomas reinforce the conclusion to which he came. These were:

(l) The unit did not have a towbar.

(m) The unit did not have tail-lights or registration plates.

(n) The unit had a ranchslider, giving onto a wooden deck, with steps down to the ground.

(o) The unit presented in exactly the same way on a variety of dates between 21 December 2006 and 20 February 2008.

[41] Of course, Judge Thomas, having made his findings of fact, then turned first to consider whether the unit was a building within the general definition. For the reasons we have given above, he should have asked first whether the unit was a vehicle. We have no doubt, however, what his answer would have been had he asked himself that question. His answer would have been that the unit, as it presented, was not a vehicle. The facts set out are not indicative of a vehicle, of something that moves. They are indicative of a small house, somewhere to live. We accept that the unit, if considerably modified, could have been turned into a caravan or trailer, but that is of minor relevance in determining its "as is" categorisation.

[42] We find, based on the evidence and Judge Thomas's findings, which we endorse, that the unit on site E18 was not a vehicle. Accordingly, s 8(1)(b)(iii) did not apply. The next task is to assess whether the unit is a building within the general definition. We have no doubt that it was and that Judge Thomas was correct so to find.

[43] Mr Neutze cited to us a number of cases from the United Kingdom,[22] Canada,[23] the United States[24] and Australia[25] where the courts have had to grapple with whether mobile homes or trailer-homes constitute "buildings" for the purposes of building control legislation. We do not find it necessary to go through those cases. We consider they are all consistent with the findings we have made.

[44] Mr Talbot strongly relied on a Canadian case, *Springman v R.*[26] In that case, the accused had been charged with wilfully setting fire to a building or structure contrary to s 374(1)(a) of the Criminal Code. The things set fire to were a crusher, loaders, trucks, bunkhouses and workshops, all of which belonged to his own company, which was involved in the supply of sand, gravel and crushed rock.

---

22 *London County Council v Tann* [1954] 1 All ER 389.

23 *Farr v Moore (Township)* [1978] 2 SCR 504 at 508; *Bedard v R* [1978] 1 SCR 1096; *R v Dunnachie* [1969] 1 CCC 363 (BCCA); *R v Dyer* [1980] 2 WWR 446 (ABCA); *Stroshin v Parksville (City)* 2010 BCSC 350 at [118]-[119].

24 *Corning v Town of Ontario* 121 NYS 2d 288 (SC 1953) at 291-294.

25 *Hay Shire Council v Crease* [1973] 1 NSWLR 545 (CA).

[45] The issue before the Supreme Court of Canada was whether all these things were buildings or structures. If they were, then s 374(1)(a), which carried a maximum penalty of 14 years' imprisonment, was the correct section. If they were not buildings or structures but instead were personal property, then the accused had been charged under the wrong section. He should in that event have been charged under s 374(2), which carried a lower maximum penalty. The Court held all of the things to which the fire was set (including the bunkhouses and workshops) were not buildings or structures but personal property. All of the equipment (including the bunkhouse and workshops was mounted on wheels "for the purpose of ready movement from place to place wherever rock crushing operations were to be carried on".[27]

[46] We consider this case readily distinguishable. First, it was concerned with the criminal law of arson, not with whether the things in question should be subject to building control legislation. Secondly, the bunkhouses and workshops were obviously readily movable and were in fact moved regularly from place to place as the company's operation moved. This case does not assist the respondents here.

[47] It follows from the above discussion that we allow the Council's appeal with respect to the convictions relating to the unit on site E18. Those convictions are reinstated. Duffy J dismissed the appeal against sentence relating to the unit on site C22 and no leave to appeal in respect of that sentence was granted. Although the appeal against sentence relating to the unit on site E18 was never heard, owing to Duffy J's decision to quash the relevant convictions, the respondents did not seek to raise the appropriateness of the E18 sentences in the event those convictions were reinstated by us. We consider the E18 sentences imposed were appropriate in the circumstances. They too are reinstated.

---

[26] *Springman v R* [1964] SCR 267.
[27] At 270.

Result

[48] Five questions of law were posed by the appeal and cross-appeal. We answer those questions as follows:

(a) Whether the inclusive definition in s 8(1)(b)(iii) of the Building Act 2004 overrides the general definition of building in s 8(1)(a).

Answer: Yes, in the sense that, if a defendant asserts that a thing is not a "building" for the purposes of the Building Act because it comes within s 8(1)(b)(iii), the Court must assess that assertion first.

(b) Whether the Court must be satisfied that the units are not vehicles in terms of s 8(1)(b)(iii) before the application of s 8(1)(a) is considered.

Answer: Yes.

(c) Whether the Leisurebuilt unit on site E18 is a building under s 8(1)(a), because it is a movable structure and intended for occupation by people, regardless of whether or not it is a vehicle covered by s 8(1)(b)(iii).

Answer: The Leisurebuilt unit on site E18 is not a vehicle (as that term is used in s 8(1)(b)(iii)) but is a building under s 8(1)(a).

(d) Did the High Court Judge err in law by failing to analyse the evidence to assess whether the structure was, in fact, a "vehicle" as it was being used on site E18?

Answer: Yes. She should not have simply allowed the appeal in respect of the unit on site E18 without considering the evidence herself.

(e) Did the High Court Judge err in law by failing to analyse the evidence to assess whether the duplex sited on site C22 was, in fact, two vehicles in terms of s 8(1)(b)(iii) of the Building Act 2004?

Answer: The Judge was correct to assess the duplex as a single item rather than by its component parts. Her conclusion that the duplex did not come within s 8(1)(b)(iii) was correct.

[49] We have allowed the Council's appeal and dismissed the respondents' cross-appeal. Nonetheless, the Council was not completely successful in its argument, as we did prefer Duffy J's view of the law to Judge Thomas's. Given that honours have roughly been shared, there will be no order as to costs.

Solicitors:
Brookfields, Auckland, for Thames-Coromandel District Council
McCaw Lewis Chapman, Hamilton, for Te Puru Holiday Park Ltd and Ronald Anthony Julian