

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2023] NZEnvC 159

IN THE MATTER OF

an appeal under s 325 of the Resource
Management Act 1991

BETWEEN

D T BEACHEN

(ENV-2022-AKL-000241)

Appellant

AND

AUCKLAND COUNCIL

Respondent

Court: Judge MJL Dickey
Commissioner A Gysberts

Hearing: 7 June 2023
Last case event: 7 June 2023

Appearances: DT Beachen for himself
J McGrath for Auckland Council

Date of Decision: 3 August 2023

Date of Issue: 3 August 2023

DECISION OF THE ENVIRONMENT COURT

- A: The abatement notice is confirmed.
- B: The appeal is disallowed. The stay will end within 21 days.
- C: Any application for costs must be made within three weeks and any reply shall be filed and served two weeks after that.



REASONS

Introduction

[1] At least three years ago Mr Beachen moved a tiny home onto his property by trailer. It remains on the trailer, and while containing kitchen and bathroom facilities it is presently disconnected from water and wastewater systems. His mother has variously resided in the home or stayed there.

[2] The Council claims it is a building, used or able to be used as a residence and is therefore a minor dwelling which needs a resource consent. Mr Beachen disagrees, saying it is not a building but a vehicle because it is on a registered trailer and can be moved at any time. He also says that it is not permanently occupied as a residence. It sits empty most of the time.

The abatement notice

[3] The Auckland Council issued an abatement notice dated 8 November 2022 to Mr David Beachen in relation to an unconsented minor dwelling at the property at 703A Coatesville-Riverhead Highway, Riverhead, Auckland legally described as Lot 1 DP 410108.

[4] The abatement notice required Mr Beachen to disestablish the minor dwelling by 17 March 2023 on the grounds it is a minor dwelling under the Auckland Unitary Plan Operative in Part (**Plan**) and requires a resource consent as a restricted discretionary activity under Rule H19.8.1(A27).

The appeal against the abatement notice

[5] Mr Beachen appealed the abatement notice seeking that the notice be cancelled. The reasons for the appeal were:

- 1) Limitation period. Section 338(4) of the RMA expressly states a limitation period of 12 months after the date on which the contravention giving rise to the charge first became known to the local authority or consent authority (screenshot below). Auckland Council visited the address initially in Aug 2020 to investigate the situation, followed by an email October 21st, 2020. There have also been a few other visits since then. The appellant spoke to Auckland council via phone, late October

2020. On this call, Auckland Council confirmed that they had spoken with their legal team, and confirmed that no further action would be taken in this instance. ...

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2022, the limitation period in respect of an offence against subsection (1), (1A), or (1B) ends on the date that is 12 months after the date on which the contravention giving rise to the charge first became known, or should have become known, to the local authority or consent authority.

- 2) The ‘minor dwelling’ in question is not actually a ‘minor dwelling’. It is a tiny home / caravan. This was part of the reason why Auckland Council had initially declined to proceed with an abatement notice in 2020. The unit has wheels and is built on a trailer with a drawbar. It is not fixed to the ground.

Stay of the abatement notice

[6] A stay was granted which will remain in place until the appeal is heard and determined.¹

Issues to be determined

[7] The issues to be determined are:

- (a) Is the abatement notice valid?
- (b) Is the tiny home² a “minor dwelling”?

Is the abatement notice valid?

[8] Mr Beachen claims that the abatement notice is invalid because of the 12 month limitation period applying to laying informations under s 338(4) of the RMA. Section 338(4) of the RMA provides that:

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against subsection (1), (1A), or (1B) ends on the date that is 12 months after the date on which the contravention giving rise to the charge first became known, or should have become known, to the local authority or consent authority.

¹ Minute of the Court, dated 27 March 2023.

² “Tiny home” is one of the descriptions used by Mr Beachen. It is convenient to refer to it in the decision as a tiny home, but we record that the Council referred to it as a cabin throughout its evidence and submissions.

[9] Mr Beachen argues that the Council initially visited the property to investigate the situation in August 2020. Therefore, he submits that when the abatement notice was issued in November 2022 it was outside the 12 month limitation period.

[10] The Council submits that s 338(4) of the RMA relates to the filing of criminal charges in the District Court and does not extend to remedies in the Environment Court such as enforcement orders and abatement notices.³ Further, s 322 of the RMA empowers an enforcement officer to issue abatement notices. There is no limitation period within this section, or any other section of the RMA, relating to issuing an abatement notice.⁴

[11] We agree that there is no limitation period associated with issuing an abatement notice. The limitation period referred to by Mr Beachen applies to criminal charges initiated under the RMA and heard in the District Court. In any event, the contravention of s 9 of the RMA and Rule H19.8.1 (A27) arises each day that the activity requiring a resource consent occurs. It is a continuing event, so any limitation period would not commence until the activity ceases.⁵

[12] On that point we find that the abatement notice is valid.

Is the tiny home a “minor dwelling”?

[13] The main issue for us to decide is whether the tiny home is a “minor dwelling” under the Plan. There was no substantive dispute of the facts necessitating a site visit. The specific location of the tiny home on the site is not an essential part of the matters we have to decide. The heart of the dispute is the applicability of the Plan rules to the tiny home.

[14] The Council contends that the tiny home clearly meets the definition of “structure” in the RMA, as well as the definitions of “building” and “dwelling” under the AUP(OP).

³ Legal submissions on behalf of Auckland Council, dated 29 May 2023, at [5.3].

⁴ Legal submissions on behalf of Auckland Council, dated 29 May 2023, at [5.2]-[5.3].

⁵ *R v Gordon* [2004] DCR 572; *Tauranga City Council v Jacko Basil Holdings Ltd* [2016] NZDC 17674.

[15] The tiny home is shown in the following photograph. It is the larger of the two units, which the Council says is a minor dwelling.⁶



[16] Mr Beachen maintains that the tiny home is a mobile home/vehicle and not a “dwelling”, “building” or “structure”. What cannot be seen in the photograph is the trailer and wooden pallets on which the tiny home rests.

Plan and RMA definitions

[17] The property is in the Rural – Rural Countryside Living Zone in the Plan. One dwelling per site is a permitted activity,⁷ and minor dwellings require consent as restricted discretionary activities.⁸

[18] There are several relevant definitions in the Plan and the RMA. Broadly speaking, and leaving to one side its use, to be a “minor dwelling” the tiny home must be a “dwelling”. To be a dwelling it must, among others, be a “building” and to be a building it must be a “structure”.

⁶ The unit on the left hand side of the photograph is not attached to the tiny home but abuts it.

⁷ AUP(OP), Activity Table H19.8.1(A72).

⁸ Activity Table H19.8.1(A27).

[19] It is helpful to first determine whether the tiny home is a “structure”. We will then determine if it is a “building”, a “dwelling” and a “minor dwelling”.

[20] The Council called evidence from three officers who had inspected the property prior to the issue of the abatement notice: Pieter Johannes Schutte, senior Compliance Officer;⁹ Brett Michael McGrath, Compliance Officer;¹⁰ and Paul Louis Northover, Team Leader Compliance.¹¹ Mr McGrath had sworn an affidavit but was unable to appear at the hearing. He was not required for cross-examination.

[21] Mr Beachen gave evidence, confirming several statements he had provided to the Court.¹²

Is the tiny home a “structure”?

[22] “Structure” is not defined in the Plan but is defined in the RMA. In the absence of any contrary provision in the Plan “structure” has the meaning given in the RMA:¹³

structure means any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft

The Council’s submissions

[23] The Council submitted that the tiny home is fixed to the property in such a way as to be defined as a “structure”.

[24] In *Antoun v Hutt City Council (Antoun)*¹⁴ the Court considered whether a tiny home was a “structure” under the RMA. Judge Dwyer concluded that the two main indicators of whether a building is fixed to the land are the degree of annexation and the object of annexation.¹⁵ We agree.

⁹ Affidavit of PJ Schutte sworn on 26 May 2023.

¹⁰ Affidavit of BM McGrath sworn on 29 May 2023.

¹¹ Affidavit of PL Northover sworn on 30 May 2023.

¹² Undated affidavit of Mr Beachen attached to the Notice of Appeal December 2022; Evidence and submissions Volume 1 - Mr Beachen (EV1 D Beachen) dated 19 May 2023; and Evidence and submissions Volume 2 - Mr Beachen (EV2 D Beachen) dated 2 June 2023.

¹³ AUP(OP) J1.1(3) Interpreting the definitions.

¹⁴ *Antoun v Hutt City Council* [2020] NZEnvC 006.

¹⁵ *Antoun* at [53], in reliance on *Elitestone Ltd v Morris* [1997] 1 WLR 687.

[25] As to the degree of annexation, the Judge observed that large buildings can be, and are frequently, moved about on New Zealand roads.¹⁶ He found that for a building to be annexed to the land it need not be tied or connected by reinforcing, foundations or piles imbedded in the land,¹⁷ and that the definition of “fixed” could include things held permanently in place by their weight and bulk and/or firmly placed in a stable position.¹⁸ In that case, the Court found that the tiny home was annexed to the land in circumstances where the building was held in place solely by its weight and bulk of its superstructure, meaning that it could not be readily or practically moved.¹⁹

[26] The Court also found that the object of connection was immediately apparent when looking at the tiny house; it was on the property for the purpose of being used as a dwellinghouse – the degree and object of annexation “are patent for all to see”.²⁰

The degree of annexation

[27] Although the tiny home sits on a trailer that has wheels, a chassis, axles and a box that would fit a removable towbar, the Council submitted that it is not capable of being moved with ease. Its evidence was that the tiny home has the following features:

- (a) A steel framed floor sitting on an eight wheeled trailer frame which does not have suspension. The removable drawbar has been removed. It is also supported by wooden cores stacked under the ends of it, which appear to be to keep the tiny home level.²¹
- (b) Gas and plumbing installed that is connected to the ground and a large water tank, placed in the front of the unit.²²
- (c) A trailer with wheels that are not touching the ground, with the trailer being placed atop several wooden pallets or blocks functioning as a

¹⁶ *Antoun* at [50].

¹⁷ *Antoun* at [54].

¹⁸ *Antoun* at [57].

¹⁹ *Antoun* at [51], [54], and [58].

²⁰ *Antoun* at [55] and [56].

²¹ BM McGrath at [4.2(b)].

²² PL Northover at [3.2(e)].

rudimentary foundation for the tiny home.²³

- (d) To move the tiny home there would have to be a considerable amount of work completed, including, the removal and/or moving of the deck, removal/dismantling of the smaller unit, removal of the water tank and disconnection of the stormwater and sewage connections.²⁴
- (e) The trailer lacks many components that would make it road usable. There is no suspension installed, no lights or registration, and the connection of the tiny home to the trailer would not support the tiny home for safe road travel.²⁵
- (f) The tiny home has remained in situ for approximately three years. It is therefore, for all intents and purposes, a “permanent” structure.

[28] The Council submitted that all of the above factors support a finding that the tiny home is “fixed” to the land for the purposes of the definition of “structure”.

The object of annexation

[29] The Council submitted that the tiny home is intended to be used as a dwelling capable of permanent occupation and this is demonstrated by the various “signs of life” observed within and around it. They include the observations that the tiny home is connected to various services, contains a living area and a full kitchen with kitchen facilities that include a wash sink, cooktop, oven and a fridge.²⁶ It also has a shower,²⁷ a heat pump, a cali-font²⁸ and an electrical plug.²⁹ There are various household items inside the tiny home including a lounge suite and pictures on the walls.³⁰ It also has a deck containing outdoor furniture³¹ and a clothes line, and timber stairs for access.³²

²³ PL Northover, at [3.2(f)].

²⁴ PL Northover, at [3.2(h)].

²⁵ PL Northover, at [3.2(d)].

²⁶ BM McGrath, at [4.5(g)] and [4.10(f)].

²⁷ BM McGrath, at [4.5(g)].

²⁸ Continuous Flow Gas Hot Water Heater.

²⁹ BM McGrath, at [4.5(f)].

³⁰ BM McGrath, at [4.10(f)].

³¹ PJ Schutte at [5.7(c)(i)].

³² PJ Schutte, at [5.7(c)(i) and (ii)].

[30] In addition, the Council noted that Mr Beachen advised Mr McGrath that his mother stays in the tiny home when she is visiting, and at other times it is occupied by Mr Beachen and his immediate family over the weekends.³³ Mr Beachen advised Mr Schutte that his mother resides in the tiny home.³⁴

Mr Beachen's submissions

[31] Mr Beachen argued that because the tiny home is not fixed to the ground it cannot be considered a “structure”, and consequently cannot be a “building” or a “dwelling”.³⁵ He observed that the Council’s interpretation of “structure” would mean every caravan in Auckland would be considered a “structure” and a “dwelling”.³⁶

[32] He submitted that the tiny home is a mobile home/vehicle which is not fixed to the land and is not lived in permanently.³⁷ He advised that the tiny home is registered with a licence plate and fitted with elements such as tail-lights to make it roadworthy. He has registered it for farm use and plans to “tow it up to the top paddock in the future”.³⁸ In support of his argument he referred us to the definition of a “vehicle” in the Land Transport Act 1998:

vehicle—

- (a) means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; and
 - (b) includes a hovercraft, a skateboard, in-line skates, and roller skates; but does not include—
- ...

[33] Mr Beachen also referred us to *Dall v Chief Executive of the Ministry of Business, Innovation and Employment*³⁹ (**Dall**) and *Thames-Coromandel District Council v Te Puru Holiday Park Limited*⁴⁰ (**Te Puru Holiday Park**).

³³ BM McGrath, at [4.4].

³⁴ PJ Schutte, at [5.8].

³⁵ EV1 D Beachen, at page 5.

³⁶ EV2 D Beachen, at page 1.

³⁷ EV1 D Beachen, at page 2.

³⁸ EV1 D Beachen, at page 3.

³⁹ *Dall v Chief Executive of the Ministry of Business, Innovation and Employment* [2020] NZDC 2612.

⁴⁰ *Thames-Coromandel District Council v Te Puru Holiday Park Limited* [2010] NZCA 633.

[34] In *Dall* the Court considered whether a unit constructed by Mr Dall was a “building” defined in s 8 of the Building Act 2004. At issue was whether the unit was a “vehicle” or “motor vehicle”, and therefore excluded from the definition of “building” pursuant to s 8(1)(b)(iii) of the Act. Having found that the unit was a vehicle, the Court then discussed whether it was 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;

[35] In *Te Puru Holiday Park* the Court found the correct way to approach s 8(1)(b)(iii) is to determine whether the units are vehicles and whether they were immovable and occupied by people on a permanent or long term basis. If they have those characteristics, they are buildings.⁴¹

[36] Relying on those cases, Mr Beachen argued that the appeal can be resolved as follows:

- Is the tiny home a “structure” or “motor vehicle”?
- If so, is the tiny home immovable and occupied by people on a permanent or long term basis?
- If so, then it is a “building”.
- If it is a vehicle but is not immovable or not occupied on a permanent or long term basis, it is not a building.

⁴¹ *Te Puru Holiday Park*, at [22].

- If it is not a vehicle, does it otherwise come under the general definition of “building” in s 8?

[37] Mr Beachen submitted that the circumstances in *Antoun* are not comparable with his situation. He argued that, unlike Mr Antoun’s tiny home, his tiny home has wheels and is capable of being removed from the property; it is on wheels, with axles, and a tow bar and can be disconnected and towed away in the same manner as any weekender caravan, or campervan.⁴² He argued that the tiny home in *Antoun* had a greater level of annexation than his tiny home.⁴³

[38] He said that he has had someone onsite to confirm that the tiny home is towable,⁴⁴ and argued that the tow hitch can be attached at either end of the tiny home allowing it to be towed in either direction. He said that the water tank and other building (10m² unit) do not need to be removed to tow the tiny home away. He noted also that the deck is not attached to the tiny home.⁴⁵

[39] On the matter of foundations, Mr Beachen argued that most mobile homes/caravans have little legs/stays/stabilisers to balance them out.⁴⁶ He also argued that the stacks of wood under the tiny home are not ‘foundations’ and are simply stacks of wood used as temporary stabilisers.⁴⁷

[40] Mr Beachen advised the Court that since the Council visited the property the tiny home has been disconnected from the property’s septic system. It is now a closed system, with a repository that can be emptied as required.⁴⁸

⁴² EV2 D Beachen, at page 6.

⁴³ EV2 D Beachen at page 2.

⁴⁴ EV1 D Beachen, at page 8.

⁴⁵ EV2 D Beachen, at page 9.

⁴⁶ EV2 D Beachen, at page 7.

⁴⁷ EV2 D Beachen, at page 7.

⁴⁸ EV1 D Beachen, at page 7; NOE, at page 56, lines 6-9.

Discussion

[41] We accept that the tiny home was brought/towed onto the property attached to a frame/trailer.⁴⁹ We accept that the existence of the frame and the wheels on the frame may bring the tiny home within the definition of vehicle under the Land Transport Act 1998. However, that is not the end of the matter, and we need make no finding on it. The fact that it has a frame and was towed to its current location, and can be towed in the future, does not disqualify it from being a “structure” now that it is located on the property and has been for three years.

[42] Furthermore, the Plan’s definition of “building” is different to that contained in the Building Act 2004 as it does not refer to vehicles, among others. We do not, therefore, accept Mr Beachen’s argument about whether the tiny home is a vehicle because it is not relevant to our assessment.

[43] What was unclear was whether the tiny home remains fully attached to the frame/trailer given the conflict in evidence between the Council’s witnesses and Mr Beachen.⁵⁰ However, whether or not it is fully attached to the frame does not change the outcome. Regardless of the extent of that attachment, we find that it is fixed to the land in a way that demonstrates that it is not intended to be readily moved, and we are satisfied that it would be difficult to do so.

[44] While the trailer is registered, it does not have a warrant of fitness, and there was no credible evidence to support the contention that the tiny home could be moved without a great deal of work being done. Also, at the time the Council officers inspected the property the wheels of the trailer were not in contact with the ground, and the tiny home was supported off the ground by timber blocks.⁵¹

[45] We agree with the submissions of the Council that the tiny home is imbedded in the land. It has been in place for three years and the level of integration is clear

⁴⁹ NOE, at page 53, lines 20-24.

⁵⁰ BM McGrath, at [4.2(a)], [4.5(d)], [4.9(b)]; PL Northover, at [3.2(d)]; NOE, at page 36, lines 4-6; NOE, at page 44, lines 15-19; NOE, at page 54, lines 6-24.

⁵¹ BM McGrath, at [4.2(a) and (b)], [4.5(c)], [4.9(b)]; PL Northover, at [3.2(f)]; NOE, at 36, lines 14-30.

from the photographs provided in evidence. Features that illustrate the tiny home's degree of annexation to the land are:

- (a) the deck located in front of it. While not physically connected, it abuts it and is clearly constructed to complement and fit in with the tiny home's dimensions, and is intended for use as part of the tiny home.
- (b) the 'shed' or unit abutting it that is accessed from the deck. Again, the shed/unit complements and fits with the tiny home.
- (c) it is partially nestled into the land, sitting on its trailer which in turn sits on wooden framing.⁵²
- (d) access to the property's water, wastewater and power systems. This is evident from the pipework present beneath the tiny home.⁵³ At the hearing Mr Beachen advised that the connection to the wastewater system has been removed, but at the time the abatement notice was issued the tiny home was connected to water and wastewater.
- (e) the heat pump.⁵⁴
- (f) the kitchen with full cooking and food storage facilities.⁵⁵

[46] For these reasons we are satisfied that the tiny home comes within the definition of a "structure".

⁵² BM McGrath, at [4.2(a) and (b)], [4.5(c)], [4.9(b)]; PL Northover at [3.2(f)]; NOE, at page 31, lines 10-11; NOE, at page 33, line 23; NOE, at page 34, line 5; NOE, at page 35, lines 25-26; NOE, at page 36, lines 14-25 and lines 29-30; NOE, at page 37, lines 4-6, lines 10-16, and lines 25-29; NOE, at page 44, lines 29-33; NOE, at page 54, lines 1-7.

⁵³ BM McGrath, at [4.8], [4.9(c)]; PL Northover, at [3.2(e)]; NOE, at page 30, lines 1-5; NOE, at page 36, lines 8, 22, 29; NOE, at page 37, lines 8-9.

⁵⁴ BM McGrath, at [4.2(c)], [4.5(f)]; NOE, at page 33, line 3.

⁵⁵ BM McGrath, at [4.2(d)], [4.5(g)], [4.10(f)]; PJ Schutte, at [6.3], [6.4]; PL Northover, at [3.2(g)]; NOE, at page 33, lines 4-15; NOE, at page 56, line 1.

Is the tiny home a “building”?

[47] “Building” is defined in the Plan as:⁵⁶

Any permanent or temporary structure.

On land for the purposes of district plan provisions, “building” includes the following types of structures listed in Table J1.4.1, only where they meet the qualifying dimensions or standards:

...

[48] The definition states that buildings include certain specified structures, including:

Type of structure	Qualifying dimension or standard (for height either the average ground level or rolling height method)
Structures used as a dwelling, place of work, place of assembly or storage, or structures that are in a reserve or camping ground	Over 1.5m in height In use for more than 32 days in any calendar year

[49] The Council submits that the tiny home is captured by the specifically listed activity, as it is over 1.5m in height; is used for more than 32 days in any calendar year; and is used as a residential dwelling.⁵⁷

[50] In response, Mr Beachen claims that there are plenty of structures that are buildings, which are not dwellings including farm sheds, garages, shops, commercial premises and schools.⁵⁸ He referred the Court to s 8(1)(a) Building Act 2004, which defines a building as meaning:

... a temporary or permanent, movable or immovable structure (including a structure intended for occupation by people, animals, machinery or chattels).

[51] Regarding the qualifying dimensions and standards in the Plan, he contended that no one lives in the tiny home permanently and that it sits empty most of the time. It was originally purchased as an Auckland base for his mother who has a permanent base in Parakai.⁵⁹

⁵⁶ AUP(OP), J1.

⁵⁷ Legal submissions on behalf of Auckland Council, dated 29 May 2023, at [4.11].

⁵⁸ EV2 D Beachen, at page 2.

⁵⁹ EV1 D Beachen, at page 10.

[52] While accepting that the Building Act is not “overly relevant” to this proceeding, Mr Beachen relies in part on s 8(b)(iii) – that the tiny house/cabin is a vehicle that is neither immovable or occupied by people on a long term or permanent basis.

Discussion

[53] We are satisfied that the tiny home meets the definition of “any permanent or temporary structure”.

[54] We also accept the Council’s evidence that it is over 1.5m in height and that at the time the Council visited the property and issued the abatement notice it was being occupied on a semi-permanent/permanent basis by Mr Beachen’s mother.⁶⁰ For completeness we note that even if it were not presently ‘occupied’, we still consider it is a structure. The definition is inclusive and does not exclude other types of structures.⁶¹

[55] Having already determined that the tiny home is a “structure”, we are satisfied that it is a “building”. We do not accept that the definition of “building” in the Building Act 2004 is relevant to our assessment.

Is the tiny home a “dwelling”?

[56] “Dwelling” is defined in the Plan as follows:⁶²

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.

A food preparation facility/kitchen includes all of the following:

- means for cooking food, food rinsing, utensil washing and waste water disposal; and
- space for food preparation (including a suitable surface) and food storage including a refrigerator or a perishable food storage area capable of being cooled.

⁶⁰ BM McGrath, at [4.4]; PJ Schutte, at [5.8]; NOE, at page 14, lines 3-6; NOE, at page 22, lines 8-10.

⁶¹ AUP(OP) J1.1(5) “Where a list is preceded by the word “includes”, that list is not limited to the matters listed.”

⁶² AUP(OP), J1.

[57] Mr Beachen referred us to the definition of “dwellinghouse” in the RMA, which states:

dwellinghouse means any building, whether permanent or temporary, that is occupied, in whole or in part, as a residence; and includes any structure or outdoor living area that is accessory to, and used wholly or principally for the purposes of, the residence; but does not include the land upon which the residence is sited

[58] We see little material difference between the RMA and the Plan’s definitions, given that both focus on residential use. In any event, we note that the Plan’s definition is to prevail.⁶³

[59] The Council submitted that the following elements demonstrate that the tiny home is living accommodation designed for, and used for, residential purposes.

- (a) it is, or can be, connected to various services, contains a living area and a full kitchen with kitchen facilities that include a wash sink, cooktop, oven and a fridge.⁶⁴
- (b) it has a shower⁶⁵ and toilet (and was connected to the wastewater system at the property at the time the abatement notice was issued).
- (c) it has a heat pump, a cali-font⁶⁶ and an electrical plug.⁶⁷
- (d) it has a lounge suite and pictures on the walls.⁶⁸
- (e) it has a deck containing outdoor furniture,⁶⁹ a clothesline and timber stairs for access.⁷⁰

⁶³ AUP(OP) Rule J1.1(3).

⁶⁴ BM McGrath, at [4.5(g)] and [4.10(f)].

⁶⁵ BM McGrath, at [4.5(g)].

⁶⁶ Continuous Flow Gas Hot Water Heater.

⁶⁷ BM McGrath, at [4.5(f)].

⁶⁸ BM McGrath, at [4.10(f)].

⁶⁹ PJ Schutte, at [5.7(c)(i)].

⁷⁰ PJ Schutte, at [5.7(c)(i) and (ii)].

Discussion

[60] When one looks at the photographs produced in evidence, and the elements to which we refer above at [59], the tiny home was being used (at the time of the abatement notice) and is designed to be used as living accommodation and is served by a food preparation facility/kitchen.

[61] Mr Beachen worked hard to persuade us that the tiny home is not a dwelling. He had disconnected it from certain of the utility services, he had dug out the land around it in places and retained the trailer's wheels (albeit they were not connected to the trailer), he has registered the trailer and advises it is towable, and he ensured that the deck was not connected in any way to the structure. However, none of those steps dissuades us from our finding that the tiny home is a dwelling in every sense of the meaning of that word. It most clearly has been used, and is designed to be used, as a dwelling. It was unconvincing to liken it to a caravan or mobile home as it is not either of those. It is, as Mr Beachen's description of it suggests, a tiny home.

[62] We find that the tiny home is a "dwelling".

Is the dwelling secondary to the principal dwelling on the site?

[63] Having determined that the tiny home is a "dwelling", the remaining question to determine is whether it is a "minor dwelling" which is defined as:⁷¹

A dwelling that is secondary to the principal dwelling on site.

[64] The Council states that the tiny home is secondary to a principal dwelling on the site. Mr Schutte deposed that there is an existing 60.52m² cottage on the property that includes two bedrooms, a bathroom, laundry, kitchen, and lounge and is used as the principal dwelling by Mr Beachen.⁷²

[65] Mr Beachen obtained resource consent in June 2022 to locate another dwelling on the property that would be used as the principal dwelling and to convert the cottage (the current principal dwelling) to a minor dwelling.⁷³

⁷¹ AUP(OP) J1.

⁷² PJ Schutte, at [5.2(b)].

⁷³ LUC60400809.

Discussion

[66] The resource consent for a new principal dwelling means that the existing cottage would become a minor dwelling and there would then be a new principal dwelling. The Assessment of Environmental Effects and the Council officer's report make no mention of the tiny home, but it would have been on the property at the time the application for resource consent was made. Apparently, the Council officer did not visit the property prior to the resource consent so did not pick up on the existence of the tiny home.

[67] Despite consent being granted for a new principal dwelling, we agree with the Council's assessment that a principal dwelling is present on the site and that the tiny home is secondary to that dwelling. Whether the current or new dwelling is used as a point of reference, there is already a principal dwelling on the property.

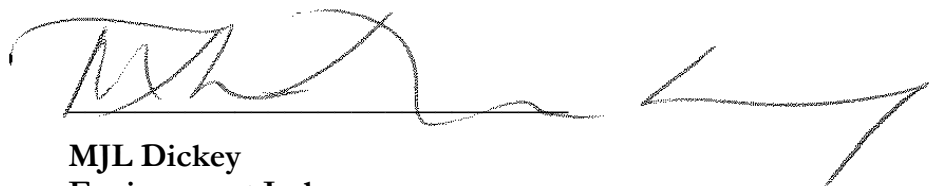
Outcome

[68] For the reasons set out in this decision we confirm the abatement notice.

[69] The appeal is disallowed. The stay will end within 21 days.

[70] Any application for costs must be made within three weeks and any reply shall be filed and served two weeks after that.

For the Court:



MJL Dickey
Environment Judge

