USING YOUR MOTORHOME FOR TEMPORARY ACCOMMODATION ON PRIVATE PROPERTY

INTRODUCTION: Members have been advised by local authorities and other organisations to obtain resource and building consents prior to using their motorhomes[1] for temporary accommodation purposes on private property, e.g. when building a new house or renovating an existing dwelling. Unfortunately, some of the advice received is inconsistent with the prevailing legislation. This article clarifies when resource and building consents are required to legitimately undertake this activity.

The use of motorhomes for temporary accommodation purposes on private property may be restricted under either the Resource Management Act 1991 ("the RMA") or the Building Act 2004 ("the Building Act"). Both these Acts operate independently and just because you comply with one it does not mean you comply with the other.

Failure to comply with either of these Acts may result in a fine or result in a prosecution. For example:

- A person using land in breach of a rule in a district plan or any proposed district plan is a *Grade 1 offence* under the RMA and comes with a maximum penalty of up to 2 years imprisonment or a fine up to $300,000.[2]

- Under the Building Act, any person who carries out building work without a building consent could be liable for a fine of up to $100,000 with a further fine not exceeding $10,000 for every day or part of a day during which the offence continues.[3]

If you have any doubts or concerns surrounding your obligations please discuss these with your local Council or with an independent professional.

When resource consent may be required (the RMA)

Council district plans set out the activities that require, and do not require, resource consent. In some cases (not all) you will require land-use resource consent before using a motorhome for temporary accommodation purposes on private property.

Plan rules may apply to all land across a single district, or vary between properties within a single district. Therefore, it is worth noting a rule that applies to your neighbour's property or friend's property down the road may not necessarily apply to yours.

To help demonstrate this point I discuss the relevant rules in the recent Thames-Coromandel Proposed District Plan[4].

Under the proposed Thames-Coromandel district plan, if your property is located within (for example) the Rural or Rural Lifestyle Zones you would not require resource consent provided your motorhome was used only for temporary accommodation and it could be legally driven or towed to a different location on request.

To provide for an activity of this nature the proposed plan specifically defines 'Temporary Living Place' ("TLP"), which includes motorhomes that are vehicles

"Temporary Living Place

means where people stay for one or more nights in:

- **A tent without a foundation, and/or;**
- **A vehicle that can be legally driven or towed to a different location on request;**

used for sleeping, without a tariff paid. No building is included in this activity. The term 'temporary' in this definition refers to the form of accommodation, not necessarily the duration of time on the site."

If the activity meets the definition of TLP, but your property was located in another zone, for example the Coastal Living Zone, a Residential Zone, or Village Zone, then resource consent would be required unless the activity was also

- *"Accessory to an existing dwelling 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 sleeping are on site."*

Conversely, if you parked your motorhome on the road outside your property in any zone, or on another property located within (for example) the Industrial Zone, and used it for accommodation purposes then you would require resource consent for a **non-complying activity**[5].

As demonstrated, rules that may regulate the use of motorhomes on private property are not always consistent between properties within a single district and as each district has its own plan they are not consistent between districts.

The best advice is to clearly understand the district plan rules that apply to your property. Council planners will clarify any requirements (either for free or at cost) provided you supply them with accurate information. If necessary, consider independent advice from a planning consultant or a resource management lawyer should you disagree with the Council's interpretation of their district plan and the prevailing legislation.

Maintaining a current Warrant of Fitness and registration for your motorhome will usually be the first and best protection against any requirement to obtain resource consent.

When building consent is required (the Building Act)

Building consent is required if your motorhome is a "building" as defined under the Building Act (not a district plan). Section 8(1)(a) of this Act defines a **building** to mean

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

(b) includes –
...
*(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 long-term basis;...*

[My emphasis]

To determine exactly when a motorhome is a "building" for the purposes of the Building Act we can draw on the Court of Appeal's decision in *Thames-Coromandel District Council v Te Puru Holiday Park Ltd.*[6] This decision concerned two trailer homes that the Council deemed to be buildings and consequently issued a notice to fix under the Building Act. The Respondents contended the notice to fix was invalid as the trailer homes were not 'buildings' under the Building Act. The case turned on the correct interpretation of section 8 in the Building Act.

The Court of Appeal confirmed the High Court's decision as to how section 8 was to be interpreted.

They stated:

[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 I had to assess whether the thing came within the general definition.

[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 long term 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.

They concluded that the inclusive definition in section 8(1)(b)(iii) overrides the general definition in section 8(1)(a) in that it must be assessed first. If the thing does **not** meet the definition of a vehicle then it is assessed under section 8(1)(a). If it does meet that definition then it will only be classified as a building if it is immobile **and** occupied on a permanent or long term basis.

There are three questions to be asked under section 8(1)(b)(iii):

1. Is your motorhome a vehicle?

In addition to the natural meaning of the word, the definition of building under the Act includes a "vehicle or motor vehicle" as defined in section 2(1) of the Land Transport Act 1998, which states

vehicle—
(a) means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved;…

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

The definition of a vehicle is very broad and it is unlikely any motorhomes used by NZMCA members are not vehicles.

2. Is your motorhome immobile?

We note generally that if your motorhome has a current warrant of fitness and registration then it will **not** be immobile. However if a motorhome is used permanently on a property then any assessment of whether it is immobile will be fact specific.

In *Te Puru Holiday Park Ltd* there were a number of facts that the Court used to determine the things were not vehicles (see [39]-[41]), they were:

a. It had no suspension or brakes;
b. It could not have obtained a warrant;
c. It was sitting on concrete blocks and timber packers;
d. It was plumbed;
e. It could not be towed without a special permit;
f. It was constructed of components commonly used on prefabricated buildings and was laid out like a small holiday house.

I consider these facts are also applicable to any assessment of whether the motorhome is immobile.

If members wish to place their motorhomes permanently on a property and perform modifications such as those above it is likely that the vehicle will be immobile. If it is immobile, then it also needs to be occupied on a permanent or long-term basis for the Building Act to apply.

3. Is your motorhome occupied on a permanent or long term basis?

What constitutes a permanent or long term basis for the purposes of this Act is unclear. However if the motorhome is used as the principal place of residence as opposed to a more conventional house then this it is likely to be deemed permanent or long term occupation.

If the answer to questions 2 and 3 above is '**yes**' then your motorhome is a "building" under the Act and will require a building consent. If the answer to either question is '**no**' you will not require a building consent.

Some members have been told that their motorhome will require a building consent irrespective of the fact that it is movable and will only be occupied on a temporary basis. This is incorrect advice. In accordance with the Court of Appeal's decision and a subsequent report issued by the Ministry of Business, Innovation, and Employment[7] ("MBIE"), you do not have to apply for a building consent if it is not a legal requirement under the Building Act.

Conclusion

District plan rules usually vary between districts and often between properties within districts themselves. Therefore, it would be prudent for any member contemplating using their motorhome for accommodation purposes on private property to clarify any resource consent requirements with the Council and, if necessary, obtain independent professional advice.

Following the Court of Appeal's decision discussed above and subsequent determination report by the MBIE, if your motorhome is movable or it is not occupied on a permanent or long-term basis, it is not a building and a building consent should not be required. If, however, your motorhome is immovable and will be occupied on a permanent or long-term basis, it is a building under the Building Act and a building consent is required.

You can be fined for failing to comply with district plan rules or the Building Act, and ignorance is no defense. Before undertaking this type of activity you should familiarise yourself with your local rules and, if necessary, makes steps to comply with them. The legislation is not only designed to protect the environment and other people from adverse effects that may be generated by your activity, but also to help protect you and your family's health and safety.

A copy of this article and referenced material can be retrieved from **www.nzmca.org.nz** or by emailing ***james@nzmca.org.nz.***

This advice was prepared on 24th April 2014.

Notes

1 For the purposes of this article a motorhome includes any vehicle used for sleeping accommodation, including (but not limited to) campervans, caravans, buses etc., and meets the definition of vehicle or motor vehicle under the Land Transport Act 1998.

2 Environmental Defence Society. (n.d). Resource Management Act: Offences. Retrieved from http://www.rmaguide.org.nz/rma/otherprocesses/offences.cfm?section=types on 01 April 2014

3 Ministry of Business, Innovation and Employment. (n.d.). Penalties. Retrieved from Department of Building and Housing: http://www.dbh.govt.nz/bomd-penalties on 01 April 2014

4 At the time of writing this advice submissions on the Thames Coromandel proposed plan had recently closed and the rules discussed do not yet have legal effect.

5 Non-complying activities require resource consent before commencing. The Council may grant consent, provided you can establish that the adverse effects on the environment will be minor or that the activity will not be contrary to the objectives of the relevant plan or proposed plan (section 104D(1) RMA).

6 [2010] NZCA 633.

7 For further information see: Ministry for Business, Innovation and Employment. (2013, September 23). *Determination 2013/055: regarding the issue of notices to fix in respect of two units and a deck at 35 Charles Street, Takapau, and whether the two units are buildings or vehicles*, 1-13.