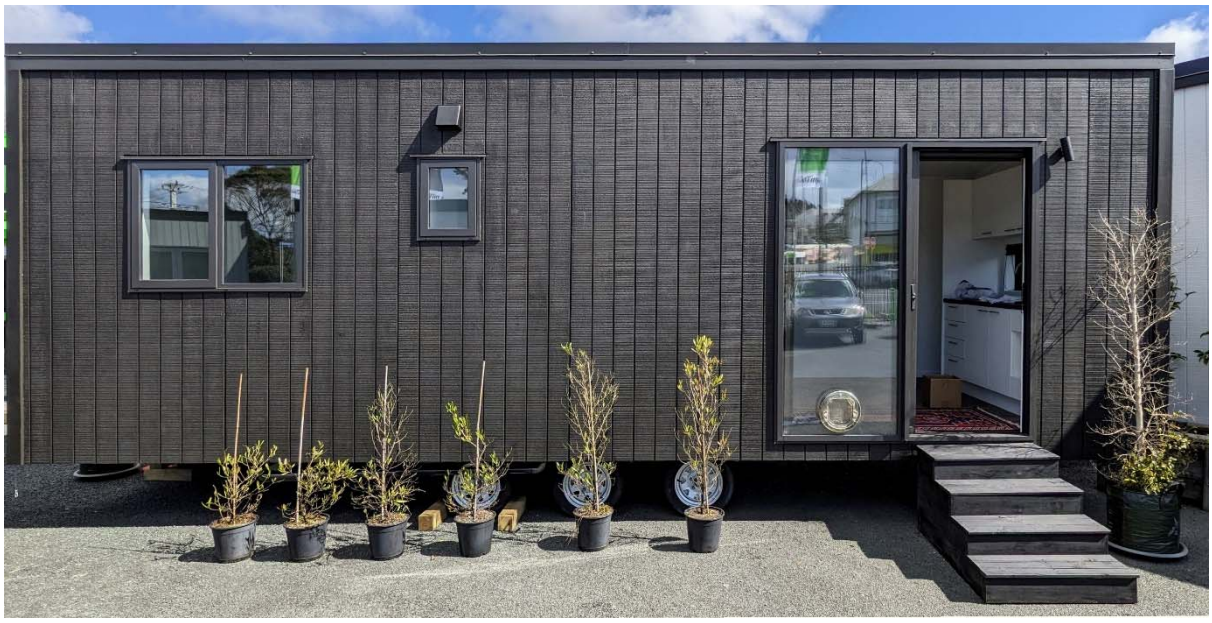
THE LEGAL STATUS OF MOBILE HOMES IN NEW ZEALAND

What is a mobile home and why is it important?

A mobile home is chattel housing as opposed to realty housing. Chattel is personal property. Realty is real property where all attached to land loses its independent identity. In the past 15 years, the affordable housing crisis in New Zealand gave rise to an ancient but previously rare-in-NZ form of factory-made chattel housing known as *mobile homes*, and a more recent trend of do-it-yourself (DIY) enthusiasts making their own *tiny homes on wheels*. Unlike buildings, mobile homes do not commit land; they can be here today, gone tomorrow leaving only bare soil. Unlike buildings, they are a commodity that does not enhance value of land, but does provide a temporary housing need. Temporary does not mean a period of time, but on location until the need passes. Most importantly, such chattel housing is affordable. When a KiwiBuild home was projected at $650,000 and would take years to construct on site, mobile homes cost $65,000, made in a factory in two weeks, and install on site in two hours.



Is there a problem? Yes

The Resource Management Act 1991 [RMA] (and the subsequent district/unitary plans) and the Building Act 2004 paid little attention to such chattel housing. In the past seven years, local government enforcement action has turned attention to these chattel homes, issuing abatement orders and notices to fix based on questionable legal theories. For a $65,000 solution to require $25,000 in consenting costs results in an insurmountable barrier to affordability, especially if, once granted, a rental or resold mobile home is relocated to a new site a year later. This memorandum examines the issue and makes recommendations.

Questions Presented

q1. Is there an affordable housing crisis and is it due to improper regulation?
q2. Is a mobile home a minor dwelling/dwelling/building/structure/realty or is it chattel?
q3. What tests find the dividing line between realty and chattel in mobile homes?
q4. Is the RMA flawed in execution; an obstacle to mobile homes as affordable housing?
q5. Is the Building Act misinterpreted when asserting mobile homes are buildings
q6. Is there a better, interim way to permit mobile homes throughout New Zealand?

Short Answers

a1. Yes and yes
a2. A mobile that remains mobile is chattel not realty
a3. Analyse the meaning of *fixed to land*
a4. Yes
a5. Yes
a6. Yes, covenant on title

Cases and Legal Analysis cited

- Elitestone Ltd v Morris [1997] 1 WLR 687
- *Jurisprudence* – 12th Ed (1966) Sir John W. Salmond ISBN: 978-0421056107
- Beachen v Auckland Council Decision [2023] NZEnvC 159
- Dall v MBIE [2020] NZDC 2612
- Chelsea Yacht & Boat Company Ltd. v Pope [2000] EWCA Civ 425
- Skerrits of Nottingham v Secretary Of State [2000] EWCA Civ 5569
- Savoye and Savoye v Spicer [2014] EWHC 4195 (TCC)
- Berkely v Poulett and Others [1977] 241 EGD 754
- Antoun v Hutt City Council [2023] NZEnvC 159
- Thames-Coromandel District Council v Te Puru Holiday [2010] NZCA 633
- Law Commission Legislation Manual Structure and Style [1996]

Is there a problem? Yes.

[1] **RMA:** In 2021, in its introduction of the National Policy Statement on Urban Development (NPS-UD) and The Resource Management (Housing Supply and Other Matters) Amendment Act 2021 [Housing Supply Act] Central Government made clear the council planning system was not working. It wrote: "*Constraints in the planning system have made it harder for people to build and live in homes they want. This has led to high land prices, unaffordable housing, and a system that incentivises land banking and speculation. It has also resulted in people having poor access to employment, education and social services. This impacts most on our poor, vulnerable and younger generations.*" In addition to these constraints, cash-strapped councils ignored s36AAA of the RMA that limits charges to reasonable cost recovery as direct (fees, fines and contributions) and indirect (de facto requirement that applications are

written by expensive private consultants) consenting costs and delays became significant barriers to approval for affordable housing.

[2] **Building Act:** In Dall v MBIE [2020], the Court found that the council erred in issuing a Notice-to-Fix alleging A. Dall's mobile home (tiny home on wheels) was a building. The regulatory environment is confused, inconsistent and faces the same cost and delay issues generated by cash-strapped territorial authorities, further negatively impacted by the leaky house crisis that exposed them to substantial liability costs. MBIE has issued inconsistent determinations and territorial authorities do not apply consistent standards.

[3] **Insurmountable Obstacles:** In short the problem includes costs, delays and inappropriate requirements. A mobile home costing $65,000 can encounter direct and indirect consenting costs of $25,000 and take months to approve, creating an effective barrier resulting in people remaining hidden homeless. This is further complicated for the rental market where a mobile home is deployed to one site in one jurisdiction for a year, and then relocated to another site in another council territory the next year.

[4] **Broken:** To address this crisis, in the context of chattel housing it is necessary to first disprove the assertion that chattel housing (mobile homes and some tiny homes) are buildings. Under the RMA, it is then necessary to show the RMA is broken in terms of fulfilment of its purposes, and to propose an alternative, using covenant of title, rather than ask thousands of families to suffer while the law and plans are properly reformed.

Is a mobile home realty (a minor dwelling/dwelling/building/structure)?

[5] **No.** A mobile home is by definition mobile, a higher standard than "moveable", further from the immovableness of realty. As long as it remains movable, it has not lost its independent identity and therefore has not become part of the land.

[6] **Chattel and Realty:** In property law, as preeminent NZ jurist, Sir John W. Salmond, former Solicitor General of and Supreme Court Judge in NZ, wrote in *Jurisprudence*.

> *Among material things the most important distinction is that between movables and immovables, or to use terms more familiar in English law, between chattels and land. In all legal systems these two classes of objects are to some extent governed by different rules, though in no system is the difference so great as in our own…*
>
> *5…all objects placed by human agency on or under the surface with the intention of permanent annexation. These become part of the land, and lose their identity as separate movables or chattels; for example buildings, walls and fences. Omne quod inaedificatur solo cedit [Everything which is erected on the soil goes with it] said the Roman Law. Provided that the requisite intent of permanent annexation is present, no physical attachment to the surface is required. A wall built of stones without mortar or foundation is part of the land on which it stands. Conversely, physical attachment, without the intent of permanent annexation, is not in itself enough. Carpets, tapestries, or ornaments nailed to the floors or walls of a house are not thereby made part of the house. Money buried in the ground is as much a chattel as money in its owner's pocket.*
>
> *Footnote 2: Unlike a chattel, a piece of land has no natural boundaries. Its separation from the adjoining land is purely arbitrary and artificial, and it is capable of subdivision and separate ownership to any extent that may be desired.*

[7] **Not a loophole:** The difference between chattel housing and realty housing goes to the heart of New Zealand property law. It is not incidental or a loophole. Law is to be consistent, thus if a mobile home is found to be realty under the RMA or Building Act, but the identical property is deemed chattel under property law (mortgages, insurance, rates, ownership disputes, etc.) the consistency that is intrinsic to rule of law collapses.

Law versus fear: At https://teara.govt.nz/en/judicial-system/print the NZ Government explains how NZ's judicial system works. In ***precedent and stare decisis*** it says "*Consistency and stability in the law are values intrinsic to the rule of law, allowing citizens to predict how the law, when applied, will affect them.*" Determinations and decisions by quasi-judicial ministry officials or lower courts who make contrary findings undermine the foundation of New Zealand's judicial system, resulting a fear-based, lawless environment of *don't ask, don't tell and avoid grumpy neighbours.*

[8] **Chain of Realty:** Beachen [18] clearly sets out a series of "must be" relationships:

> *[18] ...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".*

However, the judge in Beachen failed to finish the linkage – all of the above are realty.

As a whole, this can be referred to as *the chain of realty* diagrammed in this way:

Realty = Minor Dwelling > Dwelling > Building > Structure > Fixed to Land > Land

The chain of realty can be expressed as a series of dependencies:

- All **minor dwelling** are dwellings
- All **dwellings** are buildings
- All **buildings** are structures
- All **structures** are realty
- All **realty** (real property / real estate) is either land or that which is fixed to land

[9] **The weak link**: Fixed to land is the weak link. If broken, a mobile home is not realty, and if not realty, it is not a minor dwelling, not a dwelling, not a building or structure.

[10] **Gap in Law:** If a mobile home is not fixed to land and annexed to title, it cannot be a structure as defined by the RMA. Thus, if the district/unitary plan does not speak to chattel housing, this creates a gap in the law. While the short cut of a territorial authority is to simply amend its district plan, this creates bad law, as for example found in the Proposed District Plan of the Queenstown Lakes District Council,:

> ***Part 1 (2) Building*** *Notwithstanding the definition set out in the Building Act 2004, and the above exemptions a building shall include: a. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on a site for a residential accommodation unit for a period exceeding 2 months*

[11] **Bad Law:** This is bad law because buildings commit land and permanently change its character. In contrast a mobile home can be here today and gone tomorrow leaving only bare soil. In the case of Queenstown that has a severe affordable housing crisis with hidden homeless living in cars, tents, sheds, garages and severely overcrowded

conditions, the council should create a new class of removable, interim chattel housing is not subject to the same regulations (and costs) of permanent buildings.

Not all homes are dwellings:

[12] **Sequential tests:** To assert a mobile home is a dwellinghouse the mobile home is living accommodation designed for and used for residential purposes does not arise unless it first has been shown to be fixed to land. Lord Justice Morritt wrote in Chelsea:

> *"The provision of a home does not necessitate annexing the structure (be it a caravan or a boat) to the land so as to become a part of it; it is sufficient that it is fitted out for living in. I agree with Tuckey LJ that the Dinty Moore cannot, in these and the other circumstances to which he refers, be regarded as a part of the land. In those circumstances the second question, whether the Dinty Moore is a dwelling house within the Housing Act 1988, does not arise."* [underline added]

[13] **Is it fixed to land?** As set out in Chelsea and in the chain of realty, before asking the second question – is it a dwelling house – the law requires the object in question is found to be part of the land, that it has lost its independent identity and become part of the realty. That test applies to both the RMA and Building Act. While the RMA permits territorial authorities to write district/unitary plans that govern the effect of chattel housing, they must do so within the framework that Salmond calls "*the most important distinction …between movables and immovables, or to use terms more familiar in English law, between chattels and land*."

What tests find the dividing line between realty and chattel in mobile homes?

[14] **Dividing Line:** *Fixed to land* is not binary. It is a continuum in which facts must be examined, both physical and intent. Savoye and Savoye v Spicers [2014], cites Horwich v Symond [1915] 84 LJKB 1083 where HHJ Seymour, QC speaks to:

> *The dividing line between things which are fixed and not fixed.*

[15] **NZ Court acknowledgement of Elitestone as stare decisis:** In Beachen [24] Judge Dickey wrote:

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

[16] **Degree and Purpose of Annexation:** In Elitestone Lord Lloyd writes

> *For my part I find it better in the present case to avoid the traditional two-fold distinction between chattels and fixtures, and to adopt the three-fold classification set out in Woodfall, Landlord and Tenants, Release 36 (1994), vol. 1, pp. 13/83, para. 13.131:*
>
> > *"An object which is brought onto land may be classified under one of three broad heads. It may be (a) a chattel; (b) a fixture; or (c) part and parcel of the land itself. Objects in categories (b) and (c) are treated as being part of the land."*

> *So the question in the present appeal is whether, when the bungalow was built, it became part and parcel of the land itself. The materials out of which the bungalow was constructed, that is to say, the timber frame walls, the feather boarding, the suspended timber floors, the chip-board ceilings, and so on, were all, of course, chattels when they were brought onto the site. Did they cease to be chattels when they were built into the composite structure? The answer to the question, as Blackburn J. pointed out in Holland v. Hodgson (1872) L.R. 7 C.P. 328, depends on the circumstances of each case, but mainly on two factors, the degree of annexation to the land, and the object of the annexation.*

[17] **The tests:** Elitestone referenced Hellawell v Eastwood (1851) 155 ER 554 which in Hellawell established two tests:

> *Firstly to consider the degree in which the item is annexed to the land and whether it can be removed without damage to it or the land.*
>
> *Secondly, the purpose of the annexation must be addressed. If it is placed to be enjoyed better as an object it is likely to be a chattel. If it is placed for the benefit of the land, it is likely to be a fixture.*

Degree of Annexation

[18] **Remove intact, not destroyed, easily done:** In Elitestone, Lord Clyde wrote:

> *…in considering the mode and extent of annexation of the articles in that case, referred to the consideration whether the object in question "can easily be removed, integré, salvé, et commodé,* [integrated (intact), saved (not destroyed), and convenient (easily done)] *or not, without injury to itself or the fabric of the building."*

[19] **Mobile homes are chattel:** In Elitestone, Lord Lloyd explicitly writes, by example, that mobile homes are chattel, not realty:

> *It follows that, normally, things which are not fixed to the building except by the force of gravity are not fixtures. However, there can be exceptions e.g. where a wooden bungalow was constructed on concrete pillars attached to the ground – the bungalow was not like a mobile home or caravan which could be moved elsewhere; it could only be removed by demolishing it and it was, therefore, not a chattel but and must have been intended to form part of the realty: (underline added)*

[20] **Utility connections do not make a house realty:** In Elitestone, Lord Lloyd writes:

> *A house which is constructed in such a way so as to be removable, whether as a unit, or in sections, may well remain a chattel, even though it is connected temporarily to mains services such as water and electricity. But a house which is constructed in such a way that it cannot be removed at all, save by destruction, cannot have been intended to remain as a chattel. It must have been intended to form part of the realty.*

[21] **On relocation:** Elitestone continues with Lord Lloyd writing:

> *In Deen v. Andrews the question was whether a greenhouse was a building so as to pass to the purchaser under a contract for the sale of land "together with the farmhouses and other buildings." Hirst J. held that it was not. He followed an earlier decision in H.E. Dibble Ltd. v. Moore [1970] 2 Q.B. 181 in which the Court*

> *of Appeal, reversing the trial judge, held that a greenhouse was not an "erection" within section 62(1) of the Law of Property Act 1925. I note that in the latter case Megaw L.J., at p. 187G, drew attention to some evidence "that it was customary to move such greenhouses every few years to a fresh site." It is obvious that a greenhouse which can be moved from site to site is a long way removed from a two bedroom bungalow which cannot be moved at all without being demolished.*

Elitestone finds it is obvious a greenhouse which can be moved every few years to a fresh site is a long way from a bungalow that cannot be moved at all without being demolished. Likewise a factory-built mobile home is designed to be moved from site to site, is a long way from a minor dwelling (a building) that cannot be moved at all without being taken apart or demolished. Indeed a mobile home, by virtue of its design to be mobile, is easier to move than Elitestone's greenhouse.

[22] **On the manner of removal:** Skerritts writes:

> *13. Jenkins J said this:*
>
> > *"It would be undesirable to attempt, and, indeed, I think impossible to achieve, any exhaustive definition of what is meant by the words, 'is or is in the nature of a building or structure'. They do, however, indicate certain main characteristics. The general range of things in view consists of things built or constructed. I think, in addition to coming within this general range, the things in question must, in relation to the hereditament, answer the description of buildings or structures, or, at all events, be in the nature of buildings or structures. That suggests built or constructed things of substantial size: I think of such size that they either have been in fact, or would normally be, built or constructed on the hereditament as opposed to being brought on to the hereditament ready made. It further suggests some degree of permanence in relation to the hereditament, ie, things which once installed on the hereditament would normally remain in situ and only be removed by a process amounting to pulling down or taking to pieces."* [Underline in original]

[23] **Degree of permanence:** A building or structure is normally constructed on site, as opposed to being brought onto the site ready made. The need for the Building Act 2004 is to ensure these bespoke on-site constructions meet an acceptable standard in accordance with a formal building code. The council review of the plans and inspection during construction is to ensure the person paying for the new construction and future buyers for at least 50 years are getting a safe, healthy and durable structure, for which the council takes on a certain element of liability. In contrast, a mobile home made in a factory has a completely different process called manufacturing, not construction, and it follows a standard assembly procedure that repeats the same process in a controlled environment supervised by an in-house quality control system. As such it takes on full liability for the product, where the protections come not under the Building Act, but other Acts that offer protection for the purchase of chattels.

[24] **Limits to Skerritts:** Skerrits 13. quoted Jenkins J. in Cardiff v Guest Keen [1949] at a time when there was a binary divide between buildings constructed on site and chattel shelter brought on site that remained as chattel. More recently, the building industry has seen the rise of modular construction where factories make fully-finished blocks, sometimes even including kitchens, bathrooms and curtains that are trucked to site and

craned into place. In these cases, the test of purpose or object of annexation is applied. If a module is like a mobile home, but on skids, set on the ground but objectively capable of being moved, it probably remains chattel. But if it is set on a foundation, where the complete onsite construction is nothing more than bolting onto a screwpile, and the intention is to add value to the property, then it would be realty. Realty even if brought onsite ready made and capable of being removed without pulling down or taking to pieces. However, this question is beyond the scope of this analysis.

[25] **On utility connections**: As in [20] above Elitestone, Lord Lloyd of Berwick writes:

> *A house which is constructed in such a way so as to be removable, whether as a unit, or in sections, may well remain a chattel, even though it is connected temporarily to mains services such as water and electricity.."*

[26] **Meaning of temporary:** In this test in established law, temporary connection to mains services such as water and electricity do not, in themselves, cause chattel housing to lose its independent identity and become part of the land. Temporary does not mean elapsed time, but ease of removal. Mobile homes that are connected using caravan type connections (as most are to ensure compliance as chattel) can be disconnected as easily as unplugging an EV from a charging station and disconnecting a garden hose from the tap. Nevertheless, even if the services were connected by licensed professional (plumbed / hard-wired), as long as they are not embedded in a foundation or behind walls, they are likely to be found to remain as temporary connections.

[27] **Temporary is not a measure of time:** In Elitestone the question of counting years is considered, and is not accepted as a test on its own. In Elitestone, Lord Clyde finds that had the bungalow, which stood in place for half a century, been designed and constructed in a way that would enable it to be removed and re-erected elsewhere, it may have retained its character as a chattel… notwithstanding its tenure of 50 years.

> *Accession also involves a degree of permanence, as opposed to some merely temporary provision. This is not simply a matter of counting the years for which the structure has stood where it is, but again of appraising the whole circumstances. The bungalow has been standing on its site for about half a century and has been used for many years as the residence of Mr. Morris and his family. That the bungalow was constructed where it is for the purpose of a residence and that it cannot be removed and re-erected elsewhere point in my view to the conclusion that it is intended to serve a permanent purpose. If it was designed and constructed in a way that would enable it to be taken down and rebuilt elsewhere, that might well point to the possibility that it still retained its character of a chattel. That the integrity of this chalet depends upon it remaining where it is provides that element of permanence which points to its having acceded to the ground.*

[28] **Permanent and temporary connections:** Another example of this is found in Savoye and Savoye v Spicers. [2014] where HHJ Seymour, QC wrote:

> *The dividing line between things which are fixed and not fixed might be the telephone on one's desk which is not fixed to the land and the socket in the wall which is.*

The socket in the wall is part of the house, and removal will make the house appear unfinished or even short-circuit or corrupt the phone line. A hard-wired/hard-plumbed

connection gets closer to the dividing line, where an objective assessment would be needed to determine what remains. However, for the purpose of this analysis, the focus is on caravan-type connections where it is clear the utilities are temporary.

[29] **Degree of connection linked by cables and plumbing:** In Berkely v Poulett and Others [1977] 241 EGD 754, Roch LJ said at page 6:

> *…a cooker will, if free standing and connected to the building only by an electric flex, be a chattel. But it may be otherwise if the cooker is a split level cooker with the hob set into a work surface and the oven forming part of one of the cabinets in the kitchen. It must be remembered that in many cases the item being considered may be one that has been bought by the mortgagor on hire purchase, where the ownership of the item remains in the supplier until the instalments have been paid. Holding such items to be fixtures simply because they are housed in a fitted cupboard and linked to the building by an electric cable, and, in cases of washing machines by the necessary plumbing would cause difficulties and such findings should only be made where the intent to effect a permanent improvement in the building is incontrovertible.*

The question of adding value to the land is central to determining if an object is chattel or realty. A mobile home that can be towed away does not become part of the land because it is linked to an adjacent building. A mobile home connected to a house tap does not become realty, just as a self-contained washing machine does not. Indeed, the built-in cooker is far closer to the chattel/realty line than a stand-alone mobile home.

[30] **On access to water, waste water, power and heat pumps:** In Beachen [2020], the Council argued and the Judge accepted access to the property's water, wastewater and power systems as well as the presence of a heat pump "were evidence of the tiny home's degree of annexation to the land". This is inconsistent with established law. It also should be noted that in the Beachen affidavit of Council Inspector McGrath, a photograph on page 18 shows the heat pump outdoor unit is mounted on the mobile home wall, thus is not in any way fixed to the land. It is chattel fixed to chattel.

[31] **On blocks and bolts**: Savoye citing Horwich where Buckley LJ said at page 1087:

> *"The question whether these articles were so fixed that they ought to be treated as annexed to the freehold, or were merely chattels, is, as I have said, a dual question of fact. The mere fact of some annexation to the freehold is not enough to convert a chattel into realty. That is shown by the case of carpets, which are certainly not fixtures; and the same principle seems to apply to a shop counter which stands on the floor not as a fixture, but as a chattel with a certain amount of fixing to keep it steady."*

Most mobile homes are brought onto site on their own wheels and then parked with blocks inserted at the corners to keep the unit from rocking. Some have the wheels removed and stored, both to prevent premature deterioration of the tyres and theft (which has happened) of the mobile home where someone tows it away.

However, in some high-hazard zones, including high wind, flood and earthquake there may be a certain amount of fixing to keep it steady. These even may include ground anchors with chains or bolts. Such fixings take the mobile home closer to the dividing line, but, as discussed in Savoye, do not necessarily cross it.

[32] **On moveable structures:**: The dividing line is further confirmed more recently in Skerritts [2000] in which the justices brought together landmark cases including Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen Baldwin's Iron and Steel Company Limited [1949] 1 KB 385.

Lord Justice Schiemann wrote:

> *The words which were used in the context of rating in that case*[1] *upon which the judge and Mr Katkowski, who appears for the respondent, rely, are to be found in the judgments of Denning LJ and Jenkins J. Denning LJ said this:*
>
> > *"A structure is something of substantial size which is built up from component parts and intended to remain permanently on a permanent foundation; but it is still a structure even though some of its parts may be movable, as, for instance, about a pivot. Thus, a windmill or a turntable is a structure. A thing which is not permanently in one place is not a structure but it may be, 'in the nature of a structure' if it has a permanent site and has all the qualities of a structure, save that it is on occasion moved on or from its site. Thus a floating pontoon, which is permanently in position as a landing stage beside a pier is 'in the nature of a structure', even though it moves up and down with the tide and is occasionally removed for repairs or cleaning. ." [Underline in original]*

[33] **Administrative and judicial creep on "moveable":** Interpreting the meaning of moveable has been subject to "administrative and judicial creep". The established law says a building may have movable parts, but it still is a building. The example of the floating pontoon permanently in position as a landing stage is echoes in the RMA meaning of **structure** "…*and includes any raft*". But this goal post has been moved, for example in Beachen, where the Council stated:

> *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*

Factually, the assertions were incorrect (the deck, water tank and adjacent shed did not have to be removed, and the mobile home was easily removed after the court upheld the abatement order), but regardless, the standard of "considerable amount of work" is far from the meaning of movement as set out in Elitestone. Considerable amount of work means taking apart or demolishing, or that the unit is landlocked (typically when a unit is made on site, as in Antoun). Movable structures are like the fixed-in-place raft that rises with the tide, but not the houseboat, as found in Chelsea v Pope [2000]:

[34] **Difficulty to remove:** Chelsea applied the tests of Elitestone asking if the unit could be moved quite easily without injury to itself or the land. In Chelsea, it was asserted a house boat was realty because of how it was held in place. Tuckey LJ writes:

> *"Turning firstly to the degree of annexure it is important to bear in mind that what is required is sufficient attachment to the land so that the chattel becomes part of the land itself. Here the houseboat rested periodically on the river bed below it and was secured by ropes and perhaps to an extent the*

[1] Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen Baldwin's Iron and Steel Company Limited [1949] 1 KB 385

> *services to other structures. It is difficult to see how attachments in this way to the pontoons, the anchor in the riverbed and the rings in the embankment wall could possibly make the houseboat part of the land. One is bound to ask "which land?" There is in my judgment no satisfactory answer to this question. More importantly, however, all these attachments could simply be undone. The houseboat could be moved quite easily without injury to itself or the land. [emphasis added]*

In Beachen, the respondent asserted the mobile home would be difficult to remove, but failed to show how it would be difficult, instead listing extraneous factors that did not support the allegation. In fact, when the Court found for the Council, Mr. Beachen sold the mobile home to a buyer hundreds of kilometres away and the mobile home was easily removed intact with no injury to itself or the land, thus demonstrating it was chattel. The proof was in the pudding, but too late for Mr. Beachen.

Conflation of the Building Act

[35] **On adjectives in law:** While this brief primarily focuses on the RMA meaning of building, in several Environment Court cases, S8 of the Building Act has been cited by both parties and the judge. The relevant part of the Act says:

> ***building****— (a) means a temporary or permanent movable or immovable structure means a temporary or permanent movable or immovable structure (including a 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… that is immovable and is occupied by people on a permanent or long-term basis".*

This complex sentence has produced misinterpretations by councils issuing notices to fix, MBIE recent determinations and has spilled over to RMA cases such as Beachen where the Building Act is not being contested, but was cited, such as in Beachen [44] where the judge wrote *"While the trailer is registered, it does not have a warrant of fitness,.."* Accordingly, it is necessary to parse s8 to understand its meaning.

[36] **A building means a …structure:** Parsing the first part: *building— (a) means a temporary or permanent movable or immovable structure*… one begins by removing adjectives to get: *building means a …structure.* Then examine the adjectives: *temporary or permanent* is added to make clear if it is fixed to land intent is irrelevant. The next adjectives, *movable or immovable*, are in the context of Skerritts and others, in which motion is a feature of a structure, such as movement by force of wind (windmill) or tide (pontoon) as opposed to mobile. For example, an old crane truck too rusted to pass a COF is moved onto site and its outriggers welded to concrete footings. The crane moves, but it has become a structure. Note, as discussed in [39] below, such a converted truck is not subject to s8 of the Building Act, but if it was a converted bus occupied by people it would be. This is also reflected in the RMA meaning of structure, when it says "*and includes any raft"* where "*raft*" *means any moored floating platform which is not self-propelled.* What remains unchanged regardless of the adjectives is the clear limit that *building means a …structure*.

[37] **On vehicles:** There is a tangential problem in NZ quasi-judicial proceedings including abatement orders, notices to fix, MBIE determinations as well as appeals to the lower

courts in New Zealand. Too many cases heard in NZ, including Dall v MBIE [2020] ask *is it a vehicle*, when case law from the UK, including Elitestone, focuses on the correct question, *is it chattel or realty?*

[38] **NZ Court of Appeals [2010]:** In Thames-Coromandel v Te Puru [2010], the appeals court examined the facts related to two mobile homes, one of which was clearly immovable because it comprised of two units locked together, thus rendering them practically immovable without taking apart. As per Skerrits, the two units were, *once installed on the hereditament would normally remain in situ and only be removed by a process amounting to pulling down or taking to pieces."*

Accordingly the appeals court focused on how the alleged vehicle (as defined in s8(b)(iii) lost its independent identity and became part of the land. Unfortunately, this has tended to turn the question in NZ cases to the subsidiary question: *is a vehicle*, obscuring the precedent question: *is it realty or chattel*?

[39] **Means and Includes:** Turning to s8(b)(iii), the NZ Law Commission *Legislation Manual Structure and Style* section on DEFINITIONS speaks to how Building Act section 8 is structured:

> *208 In drafting definitions, use **means** if the complete meaning is stipulated. **Includes** is appropriate if the stipulated meaning is incomplete. Do not use the phrase **means and includes**. It is impossible to stipulate a complete and an incomplete meaning at the same time. In an unusual case it may be appropriate to use the formula **means . . . and includes** . . . if the function of the second part of the definition is to clarify or remove doubt about the intended scope of the first part of the definition:*

In s8, ***building***— *(a) means …and (b) includes* is an unusual case where (b) signals a limit to the reach of the Act. A vehicle can become a structure as in s8(a) but whereas (a) includes "*occupation by people, animals, machinery, or chattels"*, (b)(iii) limits vehicles that have become structures to those "*occupied by people on a permanent or long-term basis"*. In other words, vehicles rendered immovable (i.e. fixed to land) that are occupied by animals, machinery or chattels (or by people on a short term basis, such as a bus converted to a hunting blind), are excluded from the reach of the act. Thus, for example, a bus converted to a hen house or a tool room on a farm and made immovable, does not require building consent and is not subject to the requirements of the NZBC. This is made clear in s3 Purposes which is focused on use by people and their health, safety, wellbeing, physical independence and ability to escape a fire.

Unfortunately, council notices to fix, MBIE determinations and district courts seem to have overlooked this fundamental way in which to interpret s8. Sequentially, as set out in Chelsea (see [12] above) the first question asks "*is it a structure?"* meaning *is it realty* and only when that has been found in the affirmative does the finder of fact proceed to ask "*is it a vehicle?"* which requires the structure is occupied by people, not animals, machinery, storage or chattel.

[40] **Buildings are not buildings when on the road**: In Beachen [25] Judge Dickey wrote: *As to the degree of annexation, the Judge [in Antoun] observed that large buildings can be, and are frequently, moved about on New Zealand roads*. While this is correct, an

important matter of law was overlooked: while uplifted it is not a building. The object to be moved is a building until the movers lift it off its foundation and detach it from the land. Detached from its foundation it loses it structural integrity. It becomes chattel, and as a matter of law, is no longer realty. If the property was subject to a mortgage, the bank may have to give permission to remove it, as it is part of the land thus the bank has a security interest in it – security that is lost when it is detached from the land. If removed without permission, the bank is in its full rights to declare the mortgage breached and demand full payment of the loan. Also, if the building had rateable value, the land owner would ask that it be removed from the LIM and the land record. Then, if it is taken to the mover's yard and stacked on wooden blocks or pallets, it is not a building in the yard, it is chattel for sale. It only becomes a building when it is purchased by a landowner and is then affixed to a new foundation. Contrast this with a mobile home that maintains its engineered integrity on road or on site, always a chattel.

[41] **Building movers do not move buildings; only the top part:** Further, while Judge Dwyer in Antoun made the observation that large buildings can be moved, in fact only part of the building is moved. Such buildings are (as in Skerrits), partially taken apart, i.e. the building is detached from its foundation. The foundation is part of the building, but the upper part of the building is detached. The foundation remains on site, and in many cases it is then demolished. The superstructure's structural integrity is compromised and it is carefully set on heavy steel bearer beams to prevent it from falling apart. What is transported is not a habitable dwelling but a shell that can be revived. In some cases, before moving, the wooden building is cut into parts. Unlike a mobile home which is ready to occupy in a few hours, large buildings brought onto site require weeks or months to be made habitable. They need to be fixed safely to the newly-constructed foundation and then may require considerable work, including remedial work to repair broken plaster, distorted door and window frames and a host of other repairs that are expected because buildings are not designed to be moved.

[42] **Note on language:** The English language is a nuanced language in which different concepts may use different verbs. With realty, one constructs a structure or builds a building. But chattel tends to be manufactured in factories. If they are intended as mobile homes, they are engineered to be self-contained and self-supporting, capable of being delivered to site intact and undamaged. They must endure the equivalent of earthquakes as they travel NZ potholed and metalled roads and the equivalent of cyclones as they pass through rainstorms whilst driving at speeds up to 90 km/h. They must arrive onsite with no significant damage, a test no in-situ constructed building must endure. In *construction,* trades people must be masters of their trade and local government officials inspect their work to ensure health, safety and durability. In *manufacturing,* quality-control systems and repetitive processes use assembly-line personal supervised by quality-control managers to ensure a consistent product that ensures health, safety and durability. The manufacturer holds complete and exclusive liability for their product, thus relieving authorities, such as district councils of potential liability. This exclusion of liability has its foundation in the difference between chattel housing, which is not the responsibility of council, and realty housing which is.

On Purpose of Attachment

[43] **Attachment is objectively determined by intention:** In Elitestone Lord Lloyd wrote:

> *…in Melluish v. B.M.I. (No. 3) Ltd. [1996] A.C. 454. In that case Lord Browne-Wilkinson said, at p. 473:*
>
> > *"The terms expressly or implicitly agreed between the fixer of the chattel and the owner of the land cannot affect the determination of the question whether, in law, the chattel has become a fixture and therefore in law belongs to the owner of the soil: . . . The terms of such agreement will regulate the contractual rights to sever the chattel from the land as between the parties to that contract and, where an equitable right is conferred by the contract, as against certain third parties. But such agreement cannot prevent the chattel, once fixed, becoming in law part of the land and as such owned by the owner of the land so long as it remains fixed."*

[44] Lord Clyde wrote:

> *The reasoning in such a case where there is no physical attachment was identified by Blackburn J. in Holland v. Hodgson (1872) L.R. 7 C.P. 328, 335: "But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land." He continued with the following instructive observations:*
>
> > *"Thus blocks of stone placed one on the top of another without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, though the same stones, if deposited in a builder's yard and for convenience sake stacked on the top of each other in the form of a wall, would remain chattels. On the other hand, an article may be very firmly fixed to the land, and yet the circumstances may be such as to show that it was never intended to be part of the land, and then it does not become part of the land.*
> >
> > *The anchor of a large ship must be very firmly fixed in the ground in order to bear the strain of the cable, yet no one could suppose that it became part of the land, even though it should chance that shipowner was also the owner of the fee of the spot where the anchor was dropped. An anchor similarly fixed in the soil for the purpose of bearing the strain of the chain of a suspension bridge would be part of the land.*
>
> *Perhaps the true rule is, that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to shew that they were intended to be part of the land, the onus of shewing that they were so intended lying on those who assert that they have ceased to be chattels, and that, on the contrary, an article which is affixed to the land even slightly is to be considered as part of the land, unless the circumstances are such as to shew that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel."*

[45] **Burden of Proof:** As set out in Elitestone, mobile home not otherwise attached to the land than by their own weight is not to be considered as part of the land, unless the circumstances are such as to show that the mobile home was intended to be part of the land, and the onus to prove falls to the territorial authority. As the example of the anchor shows, weight and size is not an indicator. As the example of the wall stone shows, the same object is not the determinate. A building erected on the land clearly

becomes part of the land; it changes the character of the land and to remove it involves both expense and destruction of the property. It adds to the value of the land, often producing a capital gain for the land owner. In contrast, a mobile home that can be here today and gone tomorrow adds no value to the land, indeed often it depreciates in value while not impacting the value of the land either way. It exists solely to fulfil a need.

[46] **On objective not subjective intention:** In Elitestone Lord Clyde continues:

> *It is important to observe that intention in this context is to be assessed objectively and not subjectively. Indeed it may be that the use of the word intention is misleading. It is the purpose which the object is serving which has to be regarded, not the purpose of the person who put it there. The question is whether the object is designed for the use or enjoyment of the land or for the more complete or convenient use or enjoyment of the thing itself.*
>
> … *Regard may not be paid to the actual intention of the person who has caused the annexation to be made.*

This means regardless of what the person says they intended, assessment is based on the facts. Thus, for example, in Antoun [2020] while builder Jono Voss asserted and believed he was making a vehicle, the facts of the case showed he was constructing a non-consented building. The not-so-tiny/not-on-wheels home he was building was objectively and properly assessed as a minor dwelling. In contrast, while the court found for the council in Beachen, the mobile home he had towed onto the property intact was subsequently sold and towed intact offsite, thus demonstrating the Court erred. This error occurred because D Beachen chose to represent himself pro se and failed to know how to access Elitestone that would have shown an objective assessment of his facts were in alignment with Elitestone and other established law. They showed his mobile home was chattel, not realty, hence not a minor dwelling. Unfortunately Beachen did not know this and did not appeal to a higher court in the time allowed.

[47] **Improvement or Enjoyment:** Savoye quotes Halsbury's Laws of England (2012), by reference to various authorities, says at Para. 174:

> *"Whether an object that has been brought onto the land has become affixed to the premises and so has become a fixture (or a permanent part of the land) is a question of fact which principally depends first on the mode and extent of the annexation, and especially on whether the object can easily be removed without injury to itself or to the premises; and secondly on the purpose of the annexation, that is to say, whether it was for the permanent and substantial improvement of the premises or merely a temporary purpose for the more complete enjoyment and use of the object as a chattel. The mode of annexation is, therefore, only one of the circumstances to be considered, and it may not be the most important consideration.*

[48] **Enjoyment:** In Elitestone, **Lord Lloyd writes:**

> *If a structure can only be enjoyed in situ, and is such that it cannot be removed in whole or in sections to another site, there is at least a strong inference that the purpose of placing the structure on the original site was that it should form part of the realty at that site, and therefore cease to be a chattel.*

A mobile home can be enjoyed in situ for a year, and then, especially in the case of leased mobile homes, when the need passes the leasing company sends down its removal team to take it away for delivery to the next customer. It is removed in whole, with no damage or necessity to take it apart.

[49] A building constructed on land often increases the value of the land more than the cost of construction. This capital gain is accrued because there is no competition, it is not a commodity. In contrast, a mobile home towed onto the property competes in a national market, thus it tends to depreciate in the same way cars depreciate. It is brought onto the land solely for Elitestone's *more complete or convenient use or enjoyment of the thing itself*. When it is on the land, it provides shelter, a place to sleep, eat, bathe and relax. But when the need passes, it is sold or if leased, removed and deployed elsewhere. It does not make a permanent and substantial improvement of the premises, and if the land is sold, for the land buyer to acquire it, the mobile home must be listed in a chattels addendum the same as a buyer purchasing a home including the furniture or rugs. This is generally tested in mortgage foreclosures where the bank claims right over certain objects on the property where the court finds they are chattel, thus absolute ownership remains with the person, not the land.

[50] **Conversion:** There are times when a property owner brings on a mobile home, and when the need passes, finds its market value has depreciated, but if fixed to land will enable protection of the investment value and likelihood of a capital gain. To do so, the owner consults with the Council to learn if a resource consent is required, and if a building consent is needed for the construction of and fixing to a permanent foundation or any other new building work. Nevertheless, when this conversion occurs, the mobile home ceases to be mobile, loses its independent identity and becomes part of the land and annexed to title.

Recommendations

[51] **The RMA is broken:** It is generally acknowledged the RMA is failing in its purpose to enable people and communities to provide for the social, economic and cultural wellbeing, health and safety while protecting and preserving the environment. In 2019, news media reported "*Sir Geoffrey Palmer, creator of the Resource Management Act, has labelled it an "incoherent mess" and says he "disowned it" long ago*."

In an ever-increasing search for new sources of revenue, local government have – in apparent disregard for RMA s36AAA that charges should be cost neutral – increased consenting charges while establishing an opaque application process that requires the expensive services of a private consultant – in some cases, the former council planner who wrote the plan. In the meanwhile the affordable housing crisis grows. More people are becoming hidden homeless – living in cars, tents, sheds, garages and overcrowded conditions. In tourist centres like Queenstown and Waiheke Island the situation is dire. On Waitangi Day 2024 in Northland, media reported Prime Minister Luxon *visited a settlement on Friday with "third world housing in a first-world country*".

[52] **Test to determine if an Abatement Order is appropriate**: In the Appendix on the next page, a checklist of recommended tests is set out to assist in determining if a mobile home is a minor dwelling (realty) or chattel. But what to do if is chattel?

[53] **Covenant on Title:** Instead of trying to fix the RMA and district/unitary plans, councils have another arrow in their sling: covenants on title. It is recommended councils develop a standard covenant on title that grants 15-year permission to locate mobile homes on private property. The applicant would come to the front desk duty planner who would apply a checklist to ensure placement on the site would not have significant adverse impact. If acceptable, the land owner would sign a standard covenant that would be registered on the title and remain in effect until the mobile home(s) was removed, with a required removal at the end of 15 years unless (a) central government and the council had failed to address the affordable housing crisis or (b) the land owner applied for and received consent to convert the mobile home to a minor dwelling fixed to land.

Avoid incoherent mess: Resource consenting is one tool required for a simple job like a 9 m² garden shed in restricted discretionary zone to a major development of 4,000 new homes. Unfortunately due to what Sir Geoffrey Palmer calls an "incoherent mess", the former can attract consenting costs that exceed the actual cost of building the shed.

Check List: In the case of mobile homes, a covenant on title enables the council to filter out the extraneous check lists of the incoherent mess, and solely focus on relevant potential effects. These include:

- Adequate provision for waste water, especially in rural areas
- Storm water (a minor consideration given the minimal roof area)
- Site coverage and set back
- Parking and road access (if changed by the addition)
- Minimum standards of manufacture to ensure health, safety and durability
- Active GPS and consent for council to wirelessly monitor GPS location
- Termination if the unit(s) removed with no intention of replacement
- Termination at 15 years, provided government solved the affordable housing crisis.
- At termination to remove mobile home or apply to fix to land with realty consents
- Nuisance clause specifying adverse activities (noise, lights, smells, etc)
- Powers granted council including desist orders, eviction, removal, sale of the unit

Simple Application: A standard simple evaluation check list would be provided to a duty officer at the council who would examine the property records and the application to determine that the adverse effects would be di minimis – mostly focusing on wastewater and site. If the site was deemed to meet the standards, the applicant would sign a standard, non-negotiable covenant on title with the specific conditions (such as number of allowable units) pay the $90 electronic registration of covenant fee as well as a nominal sum (suggest $100) for the Council to receive and sign the covenant.

Rates: Some councils may object the occupant of the mobile home enjoys rates-funded amenities but pay no rates. Given the low value of mobile homes (typically under $100,000), the lost rates may in the range of $200, noting that if connected to municipal water and wastewater, the principal residence pays for the additional consumption. As a low-income housing solution, it is recommended the council forgo the negligible revenue, especially as the cost of tracking and accounting may exceed the income.

APPENDIX – CHATTEL OR REALTY

This is the first draft of a checklist of factors that may assist in determining if a mobile home or DIY Tiny Home meets the test of chattel or not. If likely chattel, no abatement order is likely.

Exclusions and notes

- ☐ There is a gap in the law, neither RMA nor Building Act anticipated chattel habitat
- ☐ Owner's intention is irrelevant. Objective assessment only. (*Reynolds v Ashby 1903 AC 466*)
- ☐ Tenure has no relevance. Mobility is tested on ability to move, not how long it is in place
- ☐ Adjacent realty (decks, sheds) not attached to the mobile home have no relevance
- ☐ For the most part, utility connections should be irrelevant unless inaccessible
- ☐ NZTA rules excluded from Building Act or RMA enforcement. WOF is not a determinant
- ☐ This checklist does not address shipping containers used as storage nor modular housing

Factors that suggest chattel

- ☐ Made in a factory to standard specifications as a mobile home intended for road deployment
- ☐ Transported to site intact (can be towed or trailer/cabin placed on a hiab or flatbed)
- ☐ Installed in such a way that it can be removed intact (same as above)
- ☐ 4.3m height maximum including the trailer or if carried on a truck or heavy trailer
- ☐ Cabin is 2.55m or less in width, or if wider has a separate floor from trailer (cabin is a payload)
- ☐ If an on-road trailer, specifications that would pass WOF (but only if trailer is to be road towed)
- ☐ Trailer wheels and removable draw bar located onsite or stored for easy access (prevent theft)
- ☐ Held in place by gravity. Stability blocks or flood/wind/quake safety anchors do not imply realty
- ☐ Power supply uses a caravan-type socket and fitting, or solar panels used
- ☐ Water supply uses caravan type connection
- ☐ Waste water uses caravan type connection or waterless toilet and greywater disposal
  Note: Grey water disposal must not contravene Council regulations on land use

Factors that suggest realty

- ☐ Fixed on a purpose-built foundation in a way that improves the realty
- ☐ Added to the title for mortgage and insurance purposes, to increase land value
- ☐ Tiny Home fabricated on site and is landlocked (cannot practically be removed from the site)
- ☐ Mobile home brought on site but boxed in by fixtures that make removal impractical
- ☐ DIY made on site that is too high, too heavy, too top-heavy to be moved safely on roads
- ☐ Mobile homes or DIY joined together in a way that cannot be disconnected without damage
- ☐ Same as above, with permanent connection to buildings, decks, porches and other realty.

Factors that require further examination (this does not imply realty, only to examine more)

- ☐ Any DIY tiny home on wheels made on site (because DIY has no set standard)
- ☐ DIY cabin without an engineer inspection confirming it will hold together when moved on roads
- ☐ If on a trailer, is it roadworthy? Springs, axle rating, braked, width, engineered for mobility
- ☐ If trailer not designed for road use, examine if it can be transported on hiab, flat bed, trailer, etc.
- ☐ Made onsite, exit roads unsuitable for towing or trucking off the site. In effect locked to lot.
- ☐ Disingenuous claims to be a trailer such as inadequate wheels bolted to floor and a rego plate
- ☐ Larger module (factory-made) designed to rest on skids (this brief does not address modules)
- ☐ Held in place on piles with easily removable bolts (debatable question, advise to avoid)
- ☐ Utilities connected by licensed professional that cannot be easily removed on extraction