IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2024] NZEnvC 180

IN THE MATTER	of the Resource Management Act 1991
AND	an application for enforcement orders under s316 of the Act
BETWEEN	TASMAN DISTRICT COUNCIL
	(ENV-2023-CHC-32)
	Applicant
AND	MATHIAS SCHAEFFNER AND CHRISTIN SCHAEFFNER
	Respondents

Court:	Environment Judge K G Reid Sitting alone under s309 of the Act
Hearing:	at Nelson on 11 June 2024
Appearances:	S F Quinn and A C Besier for the applicant A S Olney for the respondents
Last case event:	24 June 2024
Date of Decision:	31 July 2024
Date of Issue:	31 July 2024

DECISION OF THE ENVIRONMENT COURT

A: Under s314(1)(a)(i)and (b)(i) of the Resource Management Act 1991 the court makes the enforcement orders set out in Appendix 1.

B: Costs are reserved. Any application for costs must be filed and served within three weeks and any reply shall be filed and served two weeks thereafter.

REASONS

Background

[1] In mid-2021 Mr and Mrs Schaeffner moved a tiny home onto their property at 6 Neudorf Road, Upper Moutere (the property). The tiny home has remained there since. The Tasman District Council (the Council) maintains that the tiny home requires a resource consent because it is a dwelling. Mr and Mrs Schaeffner disagree.

[2] The Schaeffners maintain that the tiny home is a mobile home. They say it is neither a dwelling nor a building under the relevant definitions in the Tasman Resource Management Plan (TRMP) and Resource Management Act 1991 (RMA). However, they accept that the tiny home has been used as a place of long-term accommodation.

[3] The Tasman District Council has applied for an enforcement order under s316 of the RMA. Orders are sought by the Council requiring that the tiny home is either removed from the property or decommissioned, such that it can no longer be used as a dwelling.

[4] The principal issue before the court is whether the tiny home requires a resource consent as a dwelling. This issue turns on the application of various definitions in the TRMP and RMA to the facts. In short, under the relevant definitions for the tiny home to be a "dwelling" it must be a "building", for it to be a building it must be a "structure", and for it to be structure it must be "fixed to the land". The dispute is about whether it is fixed to the land.

Plan provisions

[5] I now turn to the relevant provisions of the TRMP and RMA.

[6] The property is zoned "Rural 1" under the TRMP. Chapter 17.5 of the TRMP sets out land use rules that apply in the Rural 1 zone. Rule 17.5.3.1 provides that the construction, alteration or use of a building in the Rural 1 zone is a permitted activity provided that, amongst other requirements, the building is not a dwelling.

[7] The Rural 1 zone rules (including rule 17.5.3.1) are more restrictive of dwellings than the rules for the other rural zones in the TRMP. The reason for this is explained in the *principal reasons* section of the rural zone rules as follows:

> The construction of buildings, especially dwellings, has been recognised as a contributing factor to fragmentation of land which limits the productive values, including versatility of land. The rules relating to land use, including those for buildings and location are to control the adverse effects of land fragmentation on the productive values of the land, as well as on rural character and amenity values. The more highly valued versatile land in the Rural 1 zone is at greater risk of fragmentation and the rules seek to limit those adverse effects through more stringent controls than in Rural 2.
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> Small subsidiary units that are dependent on the main dwelling are permitted, whereas consent is required for additional dwellings because of their propensity to contribute to land fragmentation. Cooking facilities are not allowed in these subsidiary units as these can encourage separation and independence from the main dwelling.[1]

[8] Nothing turns on the issue of activity classification. However, for completeness, if the tiny home is a dwelling, it would require a resource consent as either a restricted discretionary, or more likely a discretionary activity. One of the criteria for a dwelling in the Rural 1 zone to be a controlled activity is that it is

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[1] TRMP Chapter 17 p 126.

the only dwelling on the property (rule 17.5.3.2 in Chapter 17.5 of the TRMP). Given the Schaeffners' main residence is also situated on the property, the tiny home would be the second dwelling and would not meet this requirement (and therefore would not be a controlled activity).

[9] The TRMP defines a "dwelling" as:

> a building or part of a building for a single self-contained housekeeping unit, whether of one or more persons (where "single self-contained housekeeping unit" means a single integrated set of sleeping, ablution, and cooking facilities under a continuous roof and fully enclosed walls).

[10] The only element of this definition that is in dispute is whether the tiny house is a "building". The TRMP defines a "building" as:

> any structure (as defined in the Act) or part of a structure whether temporary or permanent, movable or immovable, including accessory buildings but does not include:
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> coastal protection structures:
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> (a) any scaffolding or falsework erected temporarily for maintenance or construction purposes;
> (b) fences, walls or retaining walls of up to 1.8 metres in height, not used for advertising or for any purpose other than as a fence or wall;
> (c) structures that are both less than 5 square metres in area and less than 1.2 metres in height, except where such structures are for the purposes of damming, diverting, taking, or using water;
> (d) free-standing masts, towers, pylons, poles, radio and television aerials (excluding dish antennae for receiving satellite television), less than 10 metres above mean ground level;
> (e) fan blades of any tower-mounted frost protection device;
> (f) any vehicle, trailer, tent, caravan or boat whether fixed or movable, unless it is used as a place of long-term accommodation (for two calendar months or more in any year), business or storage;
> (g) overhead lines;

> (h) in relation to any building setback requirement, any eaves, spouting, or bay windows projecting 1 metre or less from any exterior wall.

[11] Under this definition, if the tiny home is a "structure or part of a structure" it is a "building" regardless of whether it is temporary or permanent, movable or immoveable, unless one of the exceptions in (a) to (i) applies. None of the exceptions are relevant except for (g). It was common ground that the exception in (g) does not apply because even if the tiny home is a "vehicle", a "trailer", or a "caravan" it has been used as a place of long-term accommodation for more than two calendar months in any given year. In fact, it is quite clear that the tiny home has been used in this way for considerably longer.

[12] The TRMP adopts the definition of "structure" from the RMA as:

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

[13] The element of circularity in the definition with the inclusion of the word "building" has been previously noted by the court.[2] However in this case the tiny house is clearly a "building… or other facility made by people".

[14] Both counsel characterise the sole issue for the court to determine as whether the tiny house is "fixed to the land".

Evidence

[15] Two visits to the property were conducted by Council staff who have provided affidavit evidence with photographs of the tiny home and surrounds. Mr Schaeffner swore an affidavit in opposition to the application in June 2023. Mr and Mrs Schaeffner provided a joint affidavit in August 2023.

[16] The affidavits filed by the Schaeffners make a series of allegations about the

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[2] *Antoun v Hutt City Council* [2020] NZEnvC 6.

way they say they have been dealt with by the Council and Council staff. These include allegations that Council officers exceeded or misused their powers, or otherwise acted unlawfully in investigating the tiny home. It is quite clear that the Schaeffners feel deeply aggrieved. The issues raised relate partly to the two occasions when Council staff visited the Schaeffners' property to inspect the tiny home in June and August 2022. The second of these occasions was pursuant to a search warrant.

[17] Mr Olney began representing the Schaeffners after the June 2023 affidavit had been filed. At the hearing he addressed some, but by no means all, of the allegations against the Council in submissions and directed questions in cross-examination to aspects of the Council officers' conduct. However, Mr Olney submitted that none of these issues were relevant to the substantive issues the court must decide. Consequently, the focus on these issues in the affidavits has been of little assistance to the court. Mr Olney states that the Council's conduct is relevant to costs. I address the allegations briefly at end of this decision in that context and when discussing relief.

[18] The Schaeffners' August 2023 joint affidavit addresses the principal issues. The affidavit appended a series of helpful videos. One of these videos showed the tiny home being moved onto the site in 2021. I will call this the "2021 video". A second video shows a demonstration of the tiny home being disconnected from services and towed a short distance by a tow truck, I will call this the "demonstration video". Mr Schaeffner also gave oral evidence.

[19] I now summarise the evidence from Council officers Mr Galbraith and Mr Waters:

(a) in June 2022 after receiving a complaint from the public, Mr Waters and another Council officer visited the property to carry out an inspection but were asked to leave. The officers returned to the property on 22 August 2022 with a search warrant. Also present were

two police officers;

(b) the Council officers took photographs of what they saw. Attachment 1 is the view of the tiny house from outside the gate on the day in question. Attachment 2 is a closeup of the tiny home. From the photographs the tiny house sits on a trailer with two axles and four wheels. It has a tow bar, jockey wheel, road lights, and a registration plate;

(c) the interior of the tiny home is visible through the windows. A kitchen, bathroom, laundry, and living area downstairs can be seen. There is a mezzanine floor containing a sleeping area. There are pot plants, kitchen items, ornaments and items hung on the wall;

(d) there is an external door to the tiny home with steps made of pallets leading up to the entrance;

(e) several plastic pipes have been extended through holes made in the floorboards of the tiny house. These pipes lead to a sump or gully trap near the front door. The pipes come from below the bathroom, kitchen, and laundry areas;

(f) the tiny home has a corrugated steel roof with guttering, there is a downpipe at the rear extending from the roof to a plastic water tank sitting on pallets. Rainwater collects in the tank;

(g) there is another building located adjacent to the tiny house (the yellow building) which appeared to the Council officers in August 2022 to be being used as a massage studio. Next to the yellow building is a shed containing household items, and a pump. There is a buried electric cable running from the tiny house to the pump;

(h) from his experience Mr Waters concluded that the tiny house has a composting toilet. Composting toilets separate liquids (urine) and solids within the toilet. The solids are contained within the main chamber of the toilet and the liquids flow out of the system in a pipe to containment elsewhere. In this case, the urine was being conducted via a pipe though the floor to an external plastic container;

(i) there are wind-down stabilisers and wooden blocks underneath the

tiny house. There are various pipes, timber and other materials stored under the tiny house;

(j) gas supply is self-contained. There are external gas pipes leading to an enclosed box behind the tow bar labelled "flammable gas". This is where it would be expected a gas bottle would be stored, although a gas bottle is not visible in the photographs;

(k) the photographs show that the tiny house is serviced by a driveway and gate that is separate to the main house. There are gardens, various pot plants and other materials around the tiny house;

(l) Mr Galbraith is a compliance officer employed by the Council. He drives past the site on the way to work each day. The tiny home and any vehicle parked outside were clearly visible from the road. He first noticed the tiny home and a car parked outside in mid-2021. He saw lights on in the evenings and sometimes a person outside the tiny home. From what he saw he considered that the tiny home was being occupied as a dwelling from mid-2021 to early November 2023, when he affirmed an affidavit in these proceedings.

[20] Mr Schaeffner appeared for questioning on Mr and Mrs Schaeffners' joint evidence. I summarise the relevant matters from their evidence as follows:

(a) Mr Schaeffner says that the tiny home was constructed off-site and towed by a transportation company (Lift N Shift Ltd) approximately 50 km along public roads to its present location. While accepting that a specialist moving company had been hired to tow the tiny home, Mr Schaeffner maintained that there was nothing special about the vehicle used (a Toyota Hilux) with a towing capacity of 3.5 tonnes. The 2021 video shows the tiny home being towed to the site. The tiny home has not since been moved, the only exception being when it was moved on 2 July 2023 as part of the demonstration video;

(b) the tiny house was built in accordance with the Land Transport Rule: Vehicle Dimensions and Mass Rule 2016. The tiny home measures

2.5 m in width, 4.10 m in height at its highest point and 8.90 m in length (including the towbar fixture) which, I was told, is the maximum size;

(c) Mr Schaeffner said that the tiny home has solar panels on the roof which generate electricity. The buried extension cable conveys power from the tiny home to the pump and water is pumped back to the tiny home via an underground pipe;

(d) the demonstration video shows the tiny house being disconnected from the services and towed by a tow truck a short distance to the gate. A jack is used to raise the tiny home so that blocks of wood underneath it can be removed. Mr Schaeffner is shown disconnecting an underground pipe or hose supplying water to the tiny home with a spanner. Mr Schaeffner said that the pipes connecting to the tiny home can easily be detached in "less than a minute";

(e) in the demonstration video four pipes leading from the kitchen, laundry and bathroom under the tiny home are disconnected from the gully trap by removing the end extenders on each pipe. This exercise is relatively straight forward because the extenders are not glued in place. However, the extensive piping under the tiny house remains in place. Pipes hang down from the holes through the floor and extend to a point in front of the wheels adjacent to the gully trap. The tiny home is towed without these pipes being removed;

(f) Mr Quinn questioned Mr Schaeffner about the process required to move the tiny home. Mr Schaffner confirmed that in addition to the pipes the power cable needed to be disconnected, wooden blocks for levelling out needed to be removed using a "standard jack" and the downpipe from the gutter to the water tank needed to be disconnected and removed;

(g) before being moved items inside the tiny home needed to be packed away. Mr Schaeffner maintained that this was no different to a normal caravan and the packing needed was similar to what might occur at the end of a holiday at a campground;

(h) once the tiny home was moved items left behind where it had been included the rainwater tank, the gully trap, the power cord connecting to the pump, the water hose connection to the pump. Gravel is left where the tiny home had been and the driveway;

(i) Mr Schaeffner said that the yellow building, shed and water tank were present prior to the tiny house arriving. If the tiny home was removed, they would remain as they had previously. Mr Schaeffner did not accept that the yellow building was being or had been used for running a massage business;

(j) Mr Schaeffner's evidence was that the tiny home had been occupied continuously from the time it was moved onto the site, a period of approximately 2 and a half years;

(k) Mr Schaeffner accepted that the occupation of the mobile home was separate to the occupation of the main house. Services are not connected to the main house and the occupants are effectively self-sufficient.

[21] Little turns on the registration status of the tiny home. However, Mr Schaeffner made a point of it in his evidence. His evidence was that the tiny home is "registered at NZTA as a "caravan" with licence number 612S1".[3] He produced a registration search for 612S1.[4] According to the search, registration number 612S1 is for a "2023 Trailer Fisher Caravan", with no more details.

[22] The registration plate attached to the tiny home can be seen in the 2021 video when it was brought to the property, and again in the demonstration video in 2023. Both videos show the tiny home with a different registration number (62Y44). There is an expired 2021 registration sticker (for 62Y44) next to the plate in the 2023 video.

[23] Mr Schaeffner did not alert the court's attention to, nor seek to explain, the

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[3] Affidavit of M Schaeffner dated 29 August 2023 at [12].

[4] Affidavit of M Schaeffner dated 29 August 2023 Exhibit 10.

difference in registration numbers. When Mr Quinn questioned him about the lack of a current registration sticker in the demonstration video, Mr Schaeffner maintained that at the time the video was taken the tiny home had a current registration "just not attached to the outside of the mobile home" and that it had been produced as "part of [his] affidavit", in reference to the registration search for 612S1.[5]

[24] It is clear to me that the tiny home was registered as 62Y44 when it came to the property. It retained this registration number until at least 2023. The registration was not kept current past 2021 and was not current when these proceedings were brought in April 2023, nor on 2 July 2023 when the demonstration video was taken. Without an explanation as to the relevance of 612S1, I put Mr Schaeffner's evidence on the registration status of the tiny home to one side.

Council's submissions

[25] Mr Quinn referred to two recent Environment Court cases where the definition of "structure" has been considered in the context of a tiny home; *Antoun v Hutt City Council*[6] and *Beachen v Auckland Council.*[7] Both cases focus on the interpretation of the words "fixed to land" in the definition of "structure" in the relevant plan and RMA – the same issue I need to determine.

[26] In *Antoun*, the court considered a number of cases relating to the distinction under property law between a fixture and a chattel. These included the *Auckland City Council v Ports of Auckland Ltd*[8] and *Lockwood Buildings Ltd v Trust Bank Canterbury Ltd.*[9] Both these cases referred to the test adopted by the House of Lords in

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5 Transcript p 96, lines 1-5.
6 *Antoun v Hutt City Council* [2020] NZEnvC 6.
7 *Beachen v Auckland Council* [2023] NZEnvC 159.
8 *Auckland City Council v Ports of Auckland Ltd* [2000] 3 NZLR 614 (CA).
9 *Lockwood Buildings Ltd v Trust Bank Canterbury Ltd* [1995] 1 NZLR 22 (CA).

Elitestone Ltd v Morris,[10] of whether the chattel could be said to have become "part and parcel of the land" in question. The main two indicators being the *degree of annexation* and the *object of annexation.* In *Beachen*, the court adopted the same approach as the court in *Antoun.*

Respondents' submissions

[27] For the respondents, Mr Olney closely examined various property law cases, including those referred to above. He said the traditional distinction is between moveable and immovable property, which is also known as the distinction between chattels and land (realty). Land includes not just land itself, but also things sufficiently fixed to the land. The distinction depends on the circumstances of the case, but mainly on two factors, *the degree of annexation* to the land, and the *object of annexation.*[11]

[28] Mr Olney submitted that removability has always been an important touchstone when assessing both the degree and purpose of annexation. If an object can be removed, then it is likely to be a chattel. He submitted that removability does not depend on the object being moved within any particular time.[12]

[29] Mr Olney relied on *Lockwood Buildings Ltd v Trust Bank Canterbury Ltd* in submitting that where an object is attached to the ground, it is presumed to be fixed to the land; where it rests solely on its own weight, is presumed to be a separate chattel. These presumptions will not apply where the degree and object of the annexation lead to a different conclusion.

[30] The object of annexation refers to the purpose for which an item is affixed to the land. The court must assess whether the object is intended to become a

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[10] *Elitestone Ltd v Morris* [1997] 1 WLR 687 (HL) at 692.
[11] *Elitestone Ltd v Morris* [1997] 1 WLR 687 (HL) citing *Holland v Hodgson* [1872] L.R.7 C.P. 328. *Lockwood Buildings Ltd v Trust Bank Canterbury Ltd* [1995] 1 NZLR 22 (CA).
[12] *Elitestone v Morris* [1997] 1 WLR 687 (HL).

part of the land or whether it is intended to remain as separate property. Intent is assessed from the perspective of an objective bystander based on visual features of the property. Subjective intent of the landowner is irrelevant to the assessment other than to the extent that it is manifestly objective.

[31] Mr Olney submitted that the *degree of annexation* of the mobile home to the land in this case is negligible. He referred to the following factors:

(a) it is constructed atop a trailer chassis and sits on the land entirely by its own weight;
(b) pipes through which greywater and rainwater are carried from the mobile home to a sump and a plastic tank are not attached to the sump or the tank and are easily (a matter of seconds) detached from the tiny home;
(c) the connection to water is no different in type to those found on caravans, mobile homes, for boats (or a domestic hose) and is readily disconnected (a matter of seconds);
(d) the tiny home is not connected at all to the property's sewerage or power systems;
(e) urine can be removed from the toilet in the tiny home to a small tank through a detachable pipe. The tiny home is not attached to the tank, the tank is not fixed to the land, and the pipe can be detached (a matter of seconds);
(f) the makeshift steps up to the door of the tiny home are simple wooden pallets that sit on the ground; they are not fixed to the land nor attached to the tiny home; and
(g) the tiny home can be towed on public roads and can be, and has recently been, made ready to be moved within about 10 minutes and moved without damage to the land or the tiny home.

[32] Mr Olney submitted that objectively visible features of the tiny home point to the *object of the annexation* being to maintain it as a chattel separate from the land

and not affixed to it. He submitted that:

(a) the tiny home was constructed so as to make it easily movable, registrable as a trailer (and therefore a vehicle) and towed on public roads;
(b) it has been kept in a condition that enables it to be easily moved, registered as a trailer and towed on public roads;
(c) the external pipes are not connected to the land or to anything connected to land and can be detached easily and quickly from the tiny home;
(d) it contains its own gas supply and means of generating electricity (solar) and is not connected to the property's sewerage or power systems;
(e) it can easily be disconnected from the external water supply;
(f) no permanent or purpose-built steps to the entrance have been constructed and nor are the wooden pallets that serve as makeshift steps attached to the tiny home or to the land;
(g) the limited capacity of the tub into which urine is discharged requires that the tub periodically be moved elsewhere to be emptied. Such a system is consistent with the intention that it be a temporary arrangement and no less labour-intensive system consistent with longer term intentions have been built.

[33] Mr Olney noted that while the Schaeffners own the land they do not own the tiny home. He submitted that the tiny home's owner may choose to move the tiny home at any time, or that the Schaeffners may require the owner to do so. He submitted that the separate ownership of the tiny home is inconsistent with any intention that it be part of the land.

[34] Mr Olney distinguished the tiny homes in *Antoun* and *Beachen* on the basis that the degree of annexation and object of annexation in both cases was greater than the present.

Discussion

[35] I do not think there is any significant difference of approach between the parties on the applicable law. Both counsel referred to and sought to apply the two previous Environment Court cases dealing with tiny homes. Both these cases approach the issue of whether the tiny home in question is "fixed to the land" so as to be a structure by considering the *degree of annexation* and the *object, or intent, of annexation.*

[36] I see the property law approach as a helpful way to analyse the facts. However, it should be borne in mind that the issue in this case is the application of the statutory definition of "structure" in the RMA to the facts, and not whether the tiny home is in fact a chattel or a fixture in a property law sense.

[37] Although nothing turns on it, I observe that some aspects of Mr Olney's summary of the property cases are not translatable into the current statutory context. The asserted common law presumption that where an object rests solely on the ground by its own weight it is a chattel, is one such aspect.[13] Approaching the issue on the basis that there is a presumption, one way or the other, is neither relevant nor helpful. I do not think a presumption has any proper statutory basis in the definition of "structure" with which I am dealing.

[38] The analogy with the property law cases should also not result in a reading down of the statutory definition of "structure". The word "structure" as it appears in the RMA and district and regional plans occurs in a range of contexts. The current context is in the definition of "building" in the TRMP. A building is a structure "whether moveable or immovable, temporary or permanent".[14] A building (which must be a structure) is able to be both *temporary* and *moveable.*

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[13] *Lockwood Buildings Ltd v Trust Bank Canterbury Ltd* [1995] 1 NZLR 22 (CA).

[14] Although definitions of 'building' may vary in plans throughout the country, they include this formulation as a matter of course.

[39] I do not see any difficulty with the concept of an object being fixed to land and also being temporary and moveable. One example might be a building secured to the ground for a specific event to be removed afterward: such buildings are commonly controlled as structures by rules in district plans such as the TRMP.[15]

[40] However, a temporary building erected for a specific event would likely be a chattel rather than a fixture in a property law sense on the various cases Mr Olney referred to.

[41] The limitations of the analogy with the property law cases is illustrated with reference to the Environment Court cases where a vessel moored in the coastal marine area has been held (on the facts in question) to be "fixed to land" and a "structure".[16] Those cases do not on the face of it align well with the English cases Mr Olney referred to concerning houseboats such as *Chelsea Yacht and Boat Company Ltd v Pope.*[17] Mr Olney quoted the following passage:

> Turning firstly to the degree of annexation 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. …
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> …
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> Here the houseboat rested on the riverbed below it and was secured by ropes and perhaps to an extent the 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

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[15] Rule 17.5.2.1 of the Rural 1 zone rules is an example. This rule sets out the conditions under which an event which is advertised for public admission is a permitted activity. One of the conditions is that "any temporary building or structure … is removed at the end of the event".

[16] *Tasman District Council v Way* [2010] NZEnvC 349 where the vessel in question was mainly located in two locations but took brief sorties away from these anchor points to other nearby locations.

[17] *Chelsea Yacht and Boat Company Ltd v Pope* [2000] EWCA Civ 425.

land.

[42] I set out the above reservations for completeness. As I apprehend it, the differences in the submissions on the law between counsel were, on the facts of this case, questions of emphasis rather than substance. The real difference of view between the parties was on how the facts should be interpreted.

[43] I turn to my analysis of the facts and approach the issues by considering the *degree of annexation to the land* and the *object of annexation*.

[44] Firstly, the degree of annexation. In the 2021 video the tiny home can be seen being towed, somewhat awkwardly, by a ute to its current location. Since that time modifications to the tiny home have been made. It has been connected to infrastructure installed on the property, in particular water and electricity, and wastewater. These systems are all self-contained. They do not connect to the mains or other services on the property.

[45] The modifications are substantial. Holes have been made in the floorboards of the tiny home and extensive piping installed. Wastewater is conveyed through the pipes and into the ground via the gully trap.

[46] Mr Olney made much of the fact that the pipes are not glued to the gully trap, rather they simply connect through holes made in the gully trap. I find that this makes no material difference to the degree of annexation. The pipework and gully trap are part of a purpose-built wastewater disposal system that connects and attaches the tiny home to the ground.

[47] The infrastructure for the supply of water consists of an underground power cable leading from the tiny home to the pump and a water pipe returning underground, to the tiny home. The infrastructure can be disconnected with tools, but I find that these connections mean the tiny home is attached to the ground.

[48] The rainwater collection system including the down pipe and water tank, as well as the gardens, plantings, gravel pad, driveway, pallets and the proximity and integration with the yellow building, shed and water tank all show that the tiny home is integrated into the site. It has the appearance of a separate lived-in, residential unit.

[49] I agree with Mr Quinn that much of this infrastructure would be rendered purposeless if the tiny home were to be towed away.

[50] I find as a matter of fact that the tiny home cannot simply be driven away, contrary to Mr Schaeffner's assertions. The demonstration video showed the tiny home can be disconnected and towed a short distance (with the assistance of a tow truck). The video also showed the piping underneath the tiny home remained in place as it was towed, as did the water connecting hose/pipe and the pipe connecting to the urine container. I find that the various modifications to the tiny home, particularly the connected wastewater infrastructure which hangs underneath the tiny home, mean that it can only be moved with difficulty.

[51] While in my assessment a matter of much less significance in terms of the degree of annexation, I find that at the time of the demonstration video the weight of the tiny home was resting on the wheels and also on the wooden blocks which are seen underneath it. The video shows a jack being used to lift the tiny home so that these can be removed.

[52] As to the object, or intent of annexation, I find that it is intended that the tiny home is fixed to the land. The modifications made to the tiny home make it clear that the intention is that the tiny home will remain on the site. As I indicated, the tiny home has been modified so that it can only be moved with difficulty.

[53] As I have said, the tiny home has the appearance of a separate lived-in, residential unit. The level of integration demonstrates that the tiny home is intended to remain in its current location on a long-term basis or permanent basis.

[54] The tiny home is also furnished and set up internally in a way that indicates that it is intended that it will continue to be used in its current location as a long-term or permanent residence. There are numerous loose personal effects, pot plants, pictures hung on the wall. Items are loosely stored in cupboards. There is no system to contain these items as would be needed if the tiny home was being transported on a road.

[55] The tiny home has in fact been occupied on a permanent basis for over two and a half years. Mr Schaeffner says that the tiny home can be taken away at any point by its owners. However, I find that the removal of the tiny home from the site is not what is intended. The modifications to the tiny home and the infrastructure surrounding it indicate that it is intended to be used as a separate self-contained residential unit in the long-term.

[56] As to Mr Olney's submission that the separate ownership of the tiny home is inconsistent with any intention that it be part of the land, the court was not told who owns the tiny home or what relationship the owners have (if any) with Mr and Mrs Schaeffner. But in any event, I do not agree that there is any inconsistency. Any separate ownership has not prevented the tiny home being integrated into the property in the way I have described.

[57] For these reasons I find that the tiny home is fixed to the land in such a way as to be a structure as defined under s2 of the RMA. On this basis it is common ground that the tiny home contravenes rule 17.5.3.1(b) of the TRMP. Accordingly, there are grounds for the court to make an enforcement order requiring the respondents to cease using the tiny home in a manner that breaches this rule.

Whether the court should make orders

[58] The court retains a discretion to refuse to make an order. However, an order will seldom be refused where grounds are made out. The focus is on environmental effects and the public interest in maintaining the integrity of district

and regional plans and the RMA rather than the detriment that might be suffered by private individuals.[18]

[59] I find that it is fundamental that the integrity of the TRMP be maintained. Under the TRMP dwellings are discretionary (or restricted discretionary) in order to protect highly productive land in that zone from fragmentation, and to maintain rural character and amenity. In this case, the tiny home has been set up as a separate residential unit some distance from the main dwelling on the property in a way that appears quite inconsistent with plan provisions.

[60] There are other possible adverse effects, although I note the evidence has not addressed these in detail. These include the discharge of greywater to the property and the collection of urine in a container when it is not clear how the contents are being disposed of.

[61] In summary there are no circumstances, exceptional or otherwise, that would justify the court refusing to grant an order.

Section 332 power of entry

[62] Before turning to the details of the proposed enforcement order I briefly address the Schaeffners' allegations against the Council. It would be fair to say that the focus of much of Mr and Mrs Schaeffners' evidence is dealing with these issues.

[63] Mr Olney submits that there is contested evidence before the court about the conduct of the Council that the Schaeffners consider is "heavy-handed, overbearing, disrespectful, misleading and/or unlawful". Mr Olney submits that these matters do not directly bear on whether the tiny home and its use contravene the TRMP and what, if any, enforcement orders should be made. He submits that the Council's alleged conduct is relevant to costs. As I indicated to the parties, I

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[18] *Auckland Council v Blackwell* [2011] NZEnvC 352 at [43].

intend to reserve the issue of costs. If an application for costs is made, I will deal with the relevance or otherwise of the Schaeffners' allegations in that context.

[64] One issue that received some attention in evidence and submissions concerned the scope of the Council's powers under s332 of the RMA. Mr Olney made submissions to the effect that the Council officers who went to the property on 14 June 2022 failed to correctly exercise these powers. The issue is academic, because the officers left the property when they were requested to do so without collecting any evidence and only came back later after obtaining a search warrant.

[65] However, the issue has some wider relevance (beyond the circumstances of 14 June 2022 and the issue of costs) because it is intended that Council officers will go back to the property to monitor compliance with the enforcement order and in doing so may again be exercising s332 powers. I therefore comment on the parties' submissions on the issue.

[66] Section 332 of the RMA provides:

> **332 Power of entry for inspection**
>
> (1) Any enforcement officer, specifically authorised in writing by any local authority, consent authority, or by the EPA to do so, may at all reasonable times go on, into, under, or over any place or structure, except a dwellinghouse, for the purpose of inspection to determine whether or not —
>
> (a) this Act, any regulations, a rule of a plan, a resource consent, section 10 (certain existing uses protected), or section 10A (certain existing activities allowed), or section 20A (certain lawful existing activities allowed) is being complied with; or
>
> (b) an enforcement order, interim enforcement order, abatement notice, or water shortage direction is being complied with; or
>
> (c) any person is contravening a rule in a proposed plan in a manner prohibited by any of sections 9, 12(3), 14(1), 15(2), and 15(2A).
>
> …
>
> (3) Every enforcement officer who exercises any power of entry under this section shall produce for inspection his or her warrant of appointment

> and written authorisation upon initial entry and in response to any later reasonable request.

[67] Mr Olney submitted in summary, that s332(1) requires that the local authority specifically and separately authorise in writing the exercise of the power in that section. Further, he submitted that s332(2) requires that where the power in that section is exercised an enforcement officer is required to produce both their warrant and a separate written authorisation, in response to a reasonable request.[19]

[68] Mr Olney submitted that there was no evidence that any specific authority existed authorising the exercise of s332 on 14 June 2022. If any authorisation existed, it was not produced on initial entry as it should have been. He submitted that the Schaeffners were therefore within their rights to ask the officers to leave (as the officers in fact did).

[69] In response, Mr Quinn drew the court's attention to *Re Waikato Regional Council*[20] where the Environment Court made comments to the effect that the specific authorisation in s332(1) can and should be contained in the wording of the officers warrant. The court found this to be in accordance with s38(5) of the RMA which states that:

> The local authority or Minister shall supply every enforcement officer authorised under this section with a warrant, and that warrant shall clearly state the functions and powers that the person concerned has been authorised to exercise and carry out under this Act.

[70] I am satisfied that the Council officers who went to the property on 14 June 2022 did not incorrectly exercise their powers under s322. Mr Waters' evidence was that the specific written authorisation under s332 is written on his warrant.[21] That approach is in accordance with *Re Waikato Regional Council* and s38(5). The

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[19] Respondents' submissions at [6.5] and [6.6].
[20] *Re Waikato Regional Council* (2002) 9 ELRNZ 90.
[21] Transcript p 64 at lines 4-6.

evidence is also that Mr Waters and the other Council officer who attended on 14 June 2022 produced their warrant cards during the visit.[22]

[71] There is nothing in the text of s332 indicating that there is a need for a separate specific authorisation over and above the specific authorisation set out on the warrant, and I find that there is no such requirement. The words "specifically authorised in writing" in s332(1) mean specifically authorised in writing to exercise the s332(1) power. The words of s332 do not imply any requirement for a separate authorisation for each occasion the power is exercised. That interpretation is not consistent with the plain meaning of the section.

[72] I am satisfied that the written authorisation under s332 that is set out in the wording of an enforcement officer's warrant card is sufficient for the purposes of s332, without the need for a further, separate or occasion-specific written authorisation.

Terms of the enforcement order

[73] Both counsel filed closing submissions addressing the terms of a potential enforcement order. The order proposed by the Council is as follows:

> An order under section 314(1)(a)(i) of the Act requiring the Respondents, within 4 weeks upon service of the Order of the Court, to:
>
> (a) cease using the building at 6 Neudorf Road, Upper Moutere, (Property) as a dwelling by:
>
> (i) removing the building from the Property;
>
> (ii) decommissioning or undertaking alterations to the building so it can no longer be used as a dwelling, undertaking work to the building to fully and permanently remove all kitchen and cooking related facilities and relocating the building on the Property to be situated within 20m of the dwelling (being the primary residence of

[22] Affidavit of Shawn Waters 10 November 2023 at [9].

the Respondents) and to ensure that the building remains within 20m of this dwelling; or

(iii) not using the building as a place of long-term accommodation, by ensuring that the use is for no more than two calendar months in any year); and

(b) not obstruct enforcement officers appointed by Tasman District Council from entering the Property for inspection for the purpose of monitoring compliance with this Order:

Note:
Tasman District Council's enforcement officers intend to undertake an inspection 4 weeks after the Respondents' have been served with this Order. If compliance with this Order has not been achieved, Tasman District Council's enforcement officers will undertake further inspections.

Note:
The Respondents are to provide evidence of compliance with order (iii) (if that option is elected) to enable the Council to effectively monitor compliance.

Note:
For Order (iii), if the building is to continue use of the sump for the discharge of grey water then it will need to obtain a certificate of compliance under the Building Act 2004 and ensure that the discharge remains below $2m^3$ to ensure that no resource consent is required.

[74] The terms of the enforcement order should be sufficient to address the underlying breach of the TRMP. There are a number of ways the property could be brought into compliance. Under the vehicle exclusion from the definition of building the tiny home would comply if it is no longer used as a place of long-term accommodation (two calendar months or more in a given year).

[75] Alternatively, the tiny home could be modified to remove the kitchen and cooking facilities so that it is no longer a single self-contained housekeeping unit and therefore not a dwelling under the TRMP. Even if the kitchen and cooking facilities were to be removed, the tiny home would be considered a sleepout which

would need to be within 20 m of the primary dwelling to be a permitted activity.[23]

[76] Mr Olney objects to orders (a)(i) and (a)(ii). He notes that an enforcement order under s314(1)(b)(i) is limited to requiring a person to do something that in the opinion of the Environment Court is *necessary* to ensure compliance on behalf of that person with a rule in a plan. If I understand the point correctly, Mr Olney submits that an enforcement order cannot require a recipient to undertake one of a number of alternatives because no one of the alternatives are "necessary" in terms of s314(1)(b)(i). Mr Olney does not object to draft order (a)(iii) which is the alternative that the tiny home cease being used as a place of long-term accommodation.

[77] Mr Olney also raises the point that an enforcement order cannot require the third party owner to take any action, including to modify the tiny home, by removing the kitchen and cooking facilities.

[78] I see nothing in s314(1)(b)(i) which prevents an order from requiring that a recipient undertake one of a number of alternatives in order to achieve plan compliance. The three alternatives, one of which must occur, should be seen together as "necessary". Also, the words in subsection (b) "require a person to do something" are clearly wide enough to permit the framing of an order in the alternative.

[79] I agree with Mr Olney that the order cannot require someone other than the Schaeffners to carry out work on the tiny home. Nor should the enforcement order require the Schaeffners to modify a tiny home they do not own. However, the intent of the draft order is that it should provide a self-contained set of alternatives specifying how the tiny home can be brought into compliance. None of the specified alternatives are obligatory, because one or other of the alternatives can be chosen. Beyond that I am satisfied that the issue Mr Olney raises can be

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[23] TRMP definitions of "dwelling" and "sleepout" and rule 17.5.3.1 (e).

addressed in the drafting of the order.

[80] Mr Olney objects to the order numbered (b) as well as the explanatory notes set out in the draft. Order (b) is intended to make clear the Schaeffners' obligation not to obstruct Council officers when they attend the property for monitoring compliance with the order. Mr Olney's objection is that the wording is undesirably imprecise. I am satisfied that the proposed draft is clear, and I find that it is desirable to make this order so that there is clarity between the parties, given the history.

[81] The proposed "notes" set out when the Council intends to undertake inspections and how the Council intends to enforce the requirement that the building not be used for long-term accommodation, if that is the option chosen. I am satisfied again, given the history of the matter, that the notes should be included in the order for clarity between the parties.

Outcome

[82] Under s314(1)(a)(i) and (b)(i) I make the enforcement order set out in Appendix 1.

[83] Costs are reserved. Any application for costs must be filed and served within three weeks and any reply shall be filed and served two weeks thereafter.

K G Reid
Environment Judge

Attachment 1

Attachment 2

3

APPENDIX 1

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2024] NZEnvC 180

IN THE MATTER	of the Resource Management Act 1991
AND	an application for enforcement orders under s316 of the Act
BETWEEN	TASMAN DISTRICT COUNCIL
	(ENV-2023-CHC-32)
	Applicant
AND	MATHIAS SCHAEFFNER AND CHRISTIN SCHAEFFNER
	Respondents

Court:	Environment Judge K G Reid Sitting alone under s 309 of the Act
Date of Decision:	31 July 2024
Date of Issue:	31 July 2024

ENFORCEMENT ORDER

A: Under s314(1)(a)(i) and (b)(i) of the Resource Management Act 1991 (RMA) the Environment Court orders Mathias Schaeffner and Christin Schaeffner to comply with Order (a) or (b) in the alternative, and Order (c):

(a) cease using the Building at 6 Neudorf Road, Upper Moutere, (Property) as a dwelling by removing the Building from the Property, **unless**:

(i) all kitchen and cooking related facilities are fully and permanently removed from the building; **and**

(ii) the building is relocated on the Property to be situated within 20m of the dwelling (being the primary residence of the respondents) and to ensure that the Building remains within 20m of this dwelling; **or**

(b) not using the Building as a place of long-term accommodation, by ensuring that the use is for less than two calendar months in any year; **and**

(c) not obstruct enforcement officers appointed by Tasman District Council from entering the Property for inspection for the purpose of monitoring compliance with this Order:

Note:
"the Building" in this Order is shown in Attachment 2 to the decision.

Note:
Tasman District Council's enforcement officers intend to undertake an inspection four weeks after the respondents have been served with this Order. If compliance with this Order has not been achieved, Tasman District Council's enforcement officers will undertake further inspections.

Note:
The respondents are to provide evidence of compliance with Order (a)(i) and (ii) (if that option is elected) to enable the Council to effectively monitor compliance.

Note:

For Order (a)(ii) and (iii), if the building is to continue use of a sump for the discharge of greywater then it will need to obtain a certificate of compliance under the Building Act 2004 and ensure that the discharge remains within permitted limits.

K G Reid
Environment Judge