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Hoang v Fairfield City Council [2026] NSWLEC 1473

**Hoang v Fairfield City Council
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1. These proceedings involved a class 1 appeal in the Land and Environment Court (**Court**) against a development control order issued under the *Environmental Planning and Assessment Act 1979* (**EPA Act**) by Fairfield City Council (**Council**) on 13 November 2025.
2. The Order the subject of the proceedings was an order no. 3 and required:
 - (a) The demolition and removal of a secondary dwelling (including brick footings, connection to sewer, water and electricity).
 - (b) Contact to be made with Council to arrange an inspection to ensure works carried out to Council's satisfaction.
3. The principal issue in this case was whether the structure was a building under the EPA Act or whether it was a caravan and therefore a moveable dwelling under the *Local Government Act 1993* (**LG Act**).
4. Council conceded that the order should be modified only to delete item (b) (re contact being made for an inspection).
5. The structure was supplied by Little Dream Home (**Company**), was delivered as a container,

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measuring 5.85m (length) x 2.5m (width) and 2.53m (height) on a trailer. The container and trailer were lifted over the Applicant's house by a crane, the container then opened up to become a two bedroom dwelling with a kitchen and bathroom (which were connected to sewer). Benches and cabinetry were added. The structure remained attached to the trailer and rested on brick piers which had been constructed.

6. The evidence relied upon by the Applicant included that the:
 - (a) Applicant contracted with the Company to supply and install an "expandable caravan" which came on a registrable trailer with a VIN chassis number and a blue slip so the owner could register it with Service NSW.
 - (b) Container could be reversed into place or in this case craned into place.
 - (c) Structure sits on a trailer but when sections fold out, they have additional supports such as bricks or pavers.
 - (d) Planned to start a family and structure would be used by mother to help.
7. Council relied upon evidence from compliance officers, which included:
 - (a) Whilst the structure has a trailer frame and axles, it was not supported by them and instead relied upon piers for structural support.
 - (b) Structure therefore considered to be fixed in place and not moveable.
 - (c) Size of the structure consistent with a small self-contained dwelling.
 - (d) Has the characteristics of a building, including fixed position and provided with services and fixtures.
8. The parties made competing submissions to the Commissioner on the central issue.
9. Moveable dwelling is defined in the LG Act as follows:

moveable dwelling means—

 - (a) *any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation, or*
 - (b) *a manufactured home, or*
 - (c) *any conveyance, structure or thing of a class or description prescribed by the regulations for the purposes of this definition.*
10. The Commissioner noted that caravan is not defined in the EPA Act or LG Act, however it is defined in the *Local Government (Manufactured Homes Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021 (Regulation)* as follows:

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caravan means a moveable dwelling designed to be capable of being registered as a trailer, but does not include a camper trailer.

11. The Applicant ultimately submitted that the structure was a caravan and was not a building and that the order should be revoked. Furthermore there was no need for approval under s 68 of the LG Act as the exemption under clause 77(1) of the Regulation was satisfied (because the Applicant owned the caravan, there was an existing dwelling on the site and his mother would be occupying).
12. Finally the applicant relied upon a decision of Commissioner Dixon (now Senior Commissioner Dixon) from 2018 (being *Korena Marie Russell v Camden Council* [2018] NSWLEC 1159). *Russell* involved a structure craned onto the site, had wheels, a draw bar, VIN plate was positioned on temporary supports, had a kitchenette, bedroom and ensuite and was connected to services. The Commissioner in that case found the structure was a caravan and “had the obvious appearance of a caravan.”
13. The Council argued that the structure lacked portability which was necessary for it to be a caravan or other van or portable device.
14. Council relied upon a decision of Justice Moore in *Ogilvie v Rovest Holdings Pty Ltd* [2023] NSWLEC 17 (*Ogilvie*). Those proceedings were judicial review proceedings challenging the validity of a development consent (including s 68 approval) issued by the Council, for modular accommodation units.
15. In *Ogilvie*, Justice Moore held that the modular units were not moveable dwellings for a number of reasons including that they had verandahs attached after they were moved on site, bathrooms were connected to potable water and the units were connected to mains power. His Honour considered that the accommodation units could not be readily and frequently moved from place to place.
16. Acting Commissioner Sherry ultimately held as follows:
 - (a) The structure being considered in these proceedings could not described as being a caravan.
 - (b) Whilst the structures in *Ogilvie* and other cases may all have been literally moveable, the Court nonetheless found for reasons including their size, connection to services, assembly and additional construction that they were not moveable dwellings.
 - (c) The structure in this case was not readily moveable and whilst it could be moved, it is primarily designed to remain in place. This includes because it is in an open out form, fitted with a kitchen, connected to services and functions as a secondary dwelling.
 - (d) To be moved, it is not as simple as connecting to a trailer and would entail ceiling ridge capping to be removed, fitted kitchen cabinets removed, sewer and water services disconnected, side walls folded back, floor raised and ceiling lowered.

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17. It is clear that whether a structure is a building (and therefore captured by the EPA Act) or a moveable dwelling (and therefore excluded from the definition of a building) is a matter of fact and degree. However this case does confirm that where a number of characteristics are present, the Court may not be satisfied as to portability and will therefore find that the structure is a building.
18. In our experience councils are regularly dealing with issues relating to structures being placed upon land which are claimed to be a caravan and therefore not a building. It is important to consider the matters raised in these and other cases prior to issuing a demolition order. Furthermore councils should avoid including (as a term of an order) the need to contact council to arrange an inspection.
19. Similarly many property owners appear to place strong reliance upon advice from companies as to the need (or otherwise for approvals) and should exercise caution prior to placing/installing such structures on their land.

For more information about this update, please contact Tom Ward.

Pikes & Verekers Lawyers

Suite 1.02
201 Elizabeth Street, Sydney
NSW 2000

T 02 9262 6188
F 02 9262 6175

E info@pvlaw.com.au
W www.pvlaw.com.au

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