BUILDING APPEALS BOARD OF VICTORIA (BAB)

Building Act 1993

BAB CASE NO. 456631

Appeal

APPLICANT	Australian Tourist Park Management Property Pty Ltd (ACN 135 271 564) as trustee for the Australian Tourist Park Management Property Trust (Subject Land owner)
RESPONDENT	Municipal Building Surveyor for the Alpine Shire Council
RELEVANT MUNICIPALITY	Alpine Shire Council
SUBJECT LAND	2-4 Cherry Lane, Bright
NATURE OF THE PROCEEDING	Appeal made under s 142(1)(a) of the *Building Act 1993* (the Act) by the owner of the building or land against the decision of the relevant building surveyor to serve a building notice on the owner under s 106 of the Act.
BEFORE	Members L Martin (panel chair) and M Patterson
HEARING TYPE	e Hearing
DATE OF HEARING	5 February 2026
DATE OF DETERMINATION AND ORDERS	28 May 2026

DETERMINATION AND ORDERS

Having considered all the submissions and information placed before it, the Building Appeals Board (**BAB**) determines that:

1. Pursuant to s 149(1)(a) of the *Building Act 1993* (**the Act**), the decision of the Respondent to serve a building notice dated 4 April 2025 is affirmed.
2. Pursuant to sch 3, cl 16(3) to the Act, liberty to apply on the question of costs of and incidental to the proceeding, subject to such liberty being exercised within **14 days** from the date of this determination.[1]

[1] Clause 17 of Schedule 3 to the *Building Act 1993* provides: 'Unless the Building Appeals Board otherwise determines, a party to a proceeding before the Board must bear his, her or its own costs'.

Member L Martin **Registrar M Finlay**

APPEARANCES

For the Applicant Mr B James, solicitor

For the Respondent Ms B Weir, solicitor

REASONS

BACKGROUND

1. These background facts are drawn largely from the parties' Agreed Statement of Facts dated 4 February 2026. The Applicant at all material times was:

   (a) the Australian Tourist Park Management Property Pty Ltd (A.C.N 135 271 56) ATF for the Australian Tourist Park Management Property Trust;

   (b) a lessee or licensee of Crown land; and

   (c) pursuant to section 217 (2B) of the *Building Act 1993* (Vic) (**Building Act**), deemed to be an "owner" for the purposes of the Act.

   (**Applicant**)

2. The Municipal Building Surveyor for the Alpine Shire Council is the Respondent. The Alpine Shire Council at all material times was:

   (a) a 'council' for the purposes of section 3 of the *Local Government Act 1989*;

   (b) recorded as the 'Crown Land Administrator' on the certificate of title of the subject property; and

   (c) the lessor or licensor of the subject property.

3. The subject land is located at 2-4 Cherry Lane, Bright. The Applicant operates a registered caravan park at the subject land under the *Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations 2024* (**CP Regulations**) (**Subject Land**).

4. On 22 October 2021, an employee of the Applicant, sent a letter to the Respondent attaching plans and specifications for a proposed safari tent installation at the caravan park (**Safari Tents**). The four Safari Tents are substantially the same in their design and specifications. In or about January 2022, the Applicant engaged Glam Experience Pty Ltd to supply and install four Safari Tents at the subject property.

5. The parties and we also accept that the Safari Tents are 'dwellings' for the purposes of section 3 of the *Residential Tenancies Act 1997* (**RTA**), which provides that a dwelling;

   > means any structure that is designed to be used for human habitation and that is capable of being so used, and includes a motor vehicle or trailer that is so designed and capable.

6. On or about 31 January 2022, a representative of the Respondent served a building notice, which is not in issue in this proceeding. Since the serving of that building notice, the Applicant has not permitted the occupation of, or otherwise let, the Safari Tents.

7. On 4 April 2025, a municipal building surveyor of the Alpine Shire Council served a further building notice (**Building Notice**) on the basis that the following circumstances/circumstance existed:

> Building work carried out without a building permit being issued and in force under the Building Act 1993, when a building permit was required by the Building Act 1993.
>
> The following building work has been carried out on the buildings without a building permit as required by the Building Act 1993.
>
> Four class 3(1) accommodation buildings have been constructed and installed at 2-4 CHERRY LANE, BRIGHT VIC. 3741, without a building permit first being issued and in force as required under section 16 of the Building Act 1993.

8. On 2 May 2025, the Applicant commenced an appeal pursuant to s 142(1)(a) of the Building Act against the Respondent's decision to serve the Building Notice. The appeal was commenced within the prescribed time.

9. The parties agree that the key question for determination by the BAB is whether the Safari Tents installed at the subject property satisfy the definition of 'movable dwellings' in section 3 of the RTA.

10. The Applicant contends that s 517 of the RTA exempts the Safari Tents from compliance with the Building Act and, consequently, that the Building Notice is unenforceable. The Respondent disputes that s 517 of the RTA operates to exempt the safari structures.

11. Section 517 of the RTA provides that:

> '*The Building Act 1993, except Part 12A, does not apply to moveable dwellings situated in a caravan park but does apply to buildings situated in a caravan park that are not movable dwellings*.'

12. Section 3 of the RTA states that:

> '*movable dwelling means a dwelling that is designed to be movable, but does not include a dwelling that cannot be situated at and removed from a place within 24 hours*.'

13. The issue between the parties is whether the Safari Tents satisfy the definition of a 'movable dwelling' under the RTA.

SUBMISSIONS OF THE APPLICANT

14. The Applicant refers to reg 5 of the *CP Regulations*, which defines a tent as:

> a movable dwelling that, apart from any rigid support frame, has walls and a roof of canvas or other flexible material.

15. The Applicant submits that the Safari Tents are tents or movable dwellings within the meanings of both the CP Regulations and the RTA. Accordingly, they do not require a building permit pursuant to section 517 of the RTA.

16. The Applicant contends that, based on its experience and that of its representatives and the manufacturer, safari tents of the kind that are the subject of this proceeding are routinely installed at caravan parks throughout Victoria without the need for a building permit.

17. The installation process requires a team of four to five people. Components such as subfloor angle braces, pole holders and hulk anchors are connected using bolt-fixed systems that are designed for modular assembly and disassembly. The installation process does not involve any permanent slabs or the affixing of concrete anchors. The Safari Tents were designed to be, and

can be, installed and removed within 24 hours, including the installation of the anchor footings and the capping off of services.

18. The Applicant relies on a video depicting the range of products offered by Glam Experience, and the various locations at which the safari tents have been built. The video shows the assembly of a 38-1 model structure, which is similar to the Safari Tents at the subject property. It also depicts a Glam Experience structure being dismantled between 13.43 and 14.10 minutes. The Applicant further relies on an updated video demonstrating that the installation of the footing system can be completed within 24 hours.

19. The Applicant also relies upon the Victoria Civil and Administrative Tribunal (**VCAT**) decision in *Foster v Ellerton Lodge Pty Ltd* (**Foster Decision**).[2] The decision concerned applications brought by occupiers of 'units' at Summerhill Residential Park, who were challenging rent increases under the RTA.

20. We note that while the decision does not expressly provide a detailed description of the dwellings in question, it refers to them as being 'units situated at Summerhill Residential Park', where rent is paid for the site and associated facilities. They are described in the decision as 'basic units' designed to be movable, although many were subsequently fitted by the owners with additions such as steps, carports and verandahs. Structurally, the VCAT observed that they are 'well designed for transportation', incorporating steel joist sleds and a secondary steel platform, with assembly and disassembly forming a key feature of their design.

21. The central issue in that case concerned whether the units within the park properly fell to be characterised as 'movable dwellings', and in particular whether they satisfied the statutory requirement of being capable of both installation at, and removal from, a site within a period of 24 hours.

22. In that case, the Respondent contended that additions such as verandahs and carports, together with the developed condition of the park, rendered removal within 24 hours impracticable. However, the VCAT rejected this argument, holding that the 24-hour test is not site-specific and must be assessed at the time of manufacture, rather than by reference to subsequent modifications or current site conditions.

23. In that decision the VCAT observed that the expert evidence largely addressed the practical difficulties of removing the dwellings in their present, modified state, but did not establish that they could not have satisfied the 24-hour test at the relevant time. The evidence also indicated that the dwellings were manufactured off-site, transported to the park, and installed in a manner consistent with relocatable or transportable homes.

24. The Applicant stated that, put simply, the test for a movable dwelling has two limbs under the Act:

    (a) that the dwelling is designed to be movable; and

    (b) that the dwelling that can be situated at and removed from a place within 24 hours.

[2] [2006] VCAT 1426 (9 January 2006).

25. With respect to point "a", the Applicant contends that the Safari Tents are clearly designed to be movable as is apparent by their name, construction materials, installation features and installation process. With respect to point "b", the Applicant contends that the evidence demonstrates that 'the tents can readily be situated or removed within 24 hours as per the criteria provided by the' Foster Decision.[3]

26. As such, the Applicant states that the Safari Tents are therefore movable dwellings in accordance with the RTA and so do not require a building permit.

SUBMISSIONS OF THE RESPONDENT

27. The Respondent accepts that the definition of 'movable dwelling' contains two limbs. As to the first limb, the Respondent contends that the safari tents are not designed to be movable. They sit on raised timber platforms, without which the structures would be incapable of use for habitation, and that the flooring therefore forms an integral component of the dwellings themselves.

28. The Respondent submits that the wooden flooring is not designed to be movable being connected with a series of screws. Unlike a standard tent or caravan, this is not conducive to efficient disassembly and transport. Practical relocation would require total disassembly that may permanently damage these construction materials.

29. When considering whether a dwelling is 'designed to be moved', destruction or damage to the dwelling has been considered indicative of a dwelling not satisfying this requirement. The Respondent relies on the decision in *Mornington Peninsula SC v Premier Homes Pty Ltd (Red Dot)* (**Premier Homes Decision**),[4] which he says held that moving the building must cause 'as little wastage or destruction' to the dwelling as possible to be deemed designed to be movable for the purposes of certain planning schemes.

30. The Respondent submitted that repeatedly screwing and unscrewing the wooden flooring of the Safari Tents is likely to damage the stability and integrity of the timber. On this basis, the Respondent submits that the safari structures are not designed to be movable. Though the canvas walls and roofing are designed to be movable, the wooden flooring is not.

31. The Respondent further submits that, even if the safari structures are capable of being moved, they are not designed for, or capable of, frequent moving and should not be considered 'movable dwellings' on this basis. The Respondent relies on the decision in *Ogilvie v Rovest Holdings Pty Ltd* (**Ogilvie Decision**),[5] which he says interprets the meaning of movable dwellings for the purposes of the New South Wales Act, the *Local Government Act 1993* (NSW) (**LGA**). While the Respondent accepted that these principles do not relate directly to the RTA, it says that the definition of movable dwellings in the LGA is similar. Therefore, principles arising from interpretation of the LGA definition may assist in interpreting the RTA's definition.

32. In the Ogilvie Decision, the court reasoned that movable dwellings should be 'specifically designed to be readily and frequently moved from place to place'.

[3] Emphasis added.
[4] [2021] VCAT 94.
[5] [2023] NSWLEC 17.

However, the Respondent contends that, given the presence of electricity and plumbing services, steel footings and wooden decking, it is apparent that the Safari Tents are not intended to be frequently moved. Though it may be possible to move them, they are not intended to be moved regularly and are more akin to a permanent 'tiny house' style dwelling. The presence of a pre-prepared site also makes this clear.

33. Following a similar line of reasoning, this tribunal considered a series of domed storage structures, consisting of fabric walls and wooden flooring, were permanent structures in *Meave v Municipal Building Surveyor of the Shire of Mount Alexander.*[6] Primarily, this was because the owner did not intend to relocate or move the structures at any point. The Respondent submits that, similarly, the safari structures are intended to remain at the subject property permanently despite the capacity to relocate them if desired.

34. The Respondent accepts that the 24-hour test is the appropriate test to determine whether the safari structures are movable, as per the definition of 'movable dwelling' in section 3 of the RTA. However, the Respondent does not agree with the Applicant's interpretation of the test.

35. The Respondent notes that the Applicant relies heavily upon the interpretation of the 24-hour test set out in the Foster Decision, which is not binding authority either generally or specifically on the BAB. The Respondent notes that whilst the BAB has considered the definition of moveable dwelling since the Foster Decision, it has made no reference to that case and its subsequent application in *Sun River Parks Pty Ltd v Campaspe SC* (Land Valuation).[7] Both cases concern disputes that are entirely financial in nature.

36. On this basis, the Respondent submits that the reasoning of this tribunal in *Clark v Shire of Yarra Ranges*[8] (**Clark Decision**) is a more appropriate guide for the interpretation of the 24-hour test. In the Clark Decision, the BAB considered whether the structure or building in question – a shipping container converted for use as a dwelling –was a 'movable dwelling' within the meaning of the RTA. In that decision the BAB interpreted the 24-hour test to require construction or removal of the dwelling within 24 hours 'in the ordinary course of business'.

37. Although in the Clark Decision the BAB said it did not have sufficient information to determine whether the converted shipping container was a moveable dwelling, the decision was made in a similar context to this proceeding and the Respondent therefore submits that the reasoning in the Clark Decision is relevant and applicable here.

38. The Respondent further submits that all components of the safari structures, including plumbing and electrical services, ought to be considered part of the 24-hour removal.

39. In the Foster Decision, VCAT held that the 24-hour test does not include any 'upgrades' to the safari structures as this could lead to legislative uncertainty. The VCAT held that the status of a dwelling should not be capable of changing over time. However, the Respondent submits that, if substantial additional

[6] [2024] VBAB 86 (**Meave**).
[7] [2011] VCAT 2390 (**Sun River**).
[8] [2018] VBAB 32.

fixtures are added to a movable unit, it would be illogical or even absurd to apply the 24-hour test solely to the original structure. A unit logically ceases to become a movable dwelling once sufficient additions have been made which hinder its ability to be moved easily.

40. Otherwise, any modular building could be considered movable, regardless of the actual practicality of moving it. The addition of plumbing and electrical services to the Applicant's safari structures demonstrates such absurdity. Though aspects of the dwelling are easily removable, such as the canvas walls, the plumbing and electrical services are not submits the Respondent.

41. Merely disconnecting these services is not sufficient for removal. If the dwelling requires a pre-prepared site that has plumbing and electrical services in situ for connection to the dwelling, the dwelling would be compromised once it is moved to a site where these services do not exist. A moveable dwelling should retain all of the same features before and after it is moved, no matter where it is moved to.

42. The Respondent contends that other decision makers have refused to follow the broad interpretation given in the Foster Decision. When discussing a similar definition of 'movable buildings' in relation to the Frankston City Council planning scheme, VCAT has remarked that such a broad definition would allow 'every house' to be considered movable.[9]

43. The Respondent further contends that the proper construction of the 24-hour test requires the removal and reconstruction of all components of the safari structures, including plumbing lines and electrical services, in the ordinary course of business, within a 24-hour period.

44. The Respondent notes that the Applicant provided a video that is said to demonstrate the installation of the 'footing system' within 24 hours, a letter from the manufacturer to the Applicant which says the safari structures can be 'disassembled' within 24 hours, and a work schedule for dismantling a safari structures that spans a nine-hour period and requires a team of four to five persons plus a trade plumber and trade electrician.

45. However, the Respondent contends that this does not demonstrate the safari structures are moveable within 24 hours because:

    (a) the video refers to the construction of the footing system, frame and canvas walls, but not all of the other features of the safari structures;

    (b) the letter from the manufacturer refers to 'disassembling' the Safari Tents. If all that they are doing is pulling the safari structures down, this is not moving the safari structures and does not make them movable dwellings; and

    (c) the manufacturer's opinion is not independent. The Applicant's evidence and submissions on this issue are limited and does not demonstrate that the safari structures are movable dwellings.

[9] *Truong v Frankston CC* [2019] VCAT 900.

46. The Respondent submits that the safari structures are not moveable, or alternatively, that there is insufficient evidence before the BAB to determine whether they are moveable.

SUBMISSIONS OF THE APPLICANT IN REPLY

47. In its submissions in reply, the Applicant agrees that the wooden flooring of the safari tents must be considered part of the dwelling itself. However, the Applicant disagrees that the wooden flooring is not designed to be movable.

48. It contends that the Applicant's comparison of the Safari Tents to standard tents or caravans has no relevance to the proceeding. Moveable dwellings under the RTA come in many shapes and sizes, including but not limited to, registerable movable dwellings, unregistrable movable dwellings (**UMD**s), tents, tiny homes and any other dwellings satisfying the definition of 'moveable dwelling' under the RTA.

49. The Applicant contends that the proper inquiry is whether the dwelling has been designed to be movable and submits that the safari tents satisfy that criterion. Disassembly of the flooring to the safari tents does not permanently damage the materials and the materials may be used in reinstallation of the tents at another location.

50. The Applicant submits that the disassembly of the safari tents is comparable to the processes involved in the installation and relocation of UMDs under the CP Regulations, which are recognised as 'movable dwellings' for the purposes of the RTA. UMDs have more significant disassembly and reinstallation requirements which can include but are not limited to:

    (a) unscrewing and screwing of roof sheets into roof battens;

    (b) physically separating joined sections of the dwelling; and

    (c) installation and removal of bracing sections for lifting and transport.

51. The VCAT decision in the Premier Homes Decision, submits the Applicant, is of limited relevance to the present matter. It is a planning decision concerning the definition of 'movable building' under the planning scheme, which requires a structure to be designed to be moved on more than one occasion. That requirement does not appear in the RTA definition of 'movable dwelling', which is materially different in scope.

52. Further, the Respondent's reliance on the proposition that the VCAT held a requirement of minimal wastage or destruction is misplaced, submits the Applicant; that observation appears in a quotation from an advice from Stuart Morris QC within the decision, rather than a binding finding of the VCAT itself.

53. The Applicant contends that the Respondent's reliance on 'frequent moving' in the Ogilvie Decision is not relevant to the present appeal. That decision concerned the interpretation of different statutory provisions under the LGA.

54. The Respondent's suggestion that the definition of "movable dwelling" under the NSW legislation is materially similar to that in the RTA is also incorrect, it submits. The definition under the LGA is 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.

55. Had the legislature intended that the definition of movable dwellings be extended to require that a movable dwelling be 'capable of frequent moving' as the Respondent contends, the definition would have provided as such. In any event, the Applicant submits that the Safari Tents are capable of frequent moving.

56. The Applicant says that the Respondent's submissions regarding frequent moving and pre-prepared sites are misconceived and entirely incongruent with industry practices throughout Victoria. Throughout Victoria, it is common practice for residential villages to be developed as registered caravan parks pursuant to the CP Regulations.

57. Dwellings installed at such developments are UMDs pursuant to the Regulations. UMDs installed can be as large as three-bedroom homes and can have purchase prices far exceeding $500,000.

58. UMDs installed throughout Victoria commonly include the following features:

(a) concrete footings; and/or

(b) steel posts embedded in concrete footings; and/or

(c) tie downs between UMDs and anchor points.

59. Although compliant with the Regulations, UMDs are not commonly moved from one location to another and the movement of a UMD from one location to another would require the following: -

(a) disconnection of water, sewerage, gas, electrical and stormwater connections including capping off of underground services, removal of pipework and cabling;

(b) removal of external features, removal of air conditioners, hot water units, aerials and stairs.

(c) In the event that the UMD comprised more than one section, disassembly of the sections of the dwelling. Disassembly of sections could include removal of roof sheets or capping by unscrewing, removal of internal wall linings, removing any fasteners or joins between sections, annexes or adjacent structures.

60. In comparison to the UMDs (which are accepted as compliant under the Regulations), the safari tents are much easier to move from one place to another. If the Respondent's submissions with respect to frequency of movement from one place to another were accepted, then nearly all UMD installations occurring throughout Victoria would also be non-compliant with the RTA and its regulations. If this was the case, this would result in a proliferation of non-compliant installations in parks both in the Alpine Shire and throughout the State of Victoria.

61. Similarly, the Meave Decision has no relevance to the current proceeding as it does not involve consideration of the definition of 'movable dwelling' under the RTA it submits.

62. Furthermore, the safari tents are not intended to remain at the Subject Land permanently. The Applicant leases the caravan park and will remove the tents from the Subject Land prior to the expiry of the Lease. In addition, the Applicant owns several other similar businesses and may move the tents to any of its other properties if it suits its business objectives to do so.

The second limb – 24-hour test

63. The Applicant accepts that the BAB is not bound by the Foster Decision. However, the Applicant submits the BAB ought to follow the Foster Decision. That decision has long governed the interpretation of the 24-hour test for the caravan park industry it submits. Businesses and manufacturers in the industry have relied on this test in installing movable dwellings at caravan parks. The Applicant submits that it is not appropriate for the BAB to overrule the Foster Decision because of the widespread impact it would have on the industry. In addition, the authority of the Foster Decision was reaffirmed in the decision of *Sun River Parks Pty Ltd v Campaspe SC (Land Valuation).*[10]

64. The Clark Decision the Applicant contends is of limited relevance to the present matter. It did not concern a registered caravan park, with the result that s 517 of the RTA was not engaged. The case involved consideration of a shipping container in a context that is not analogous to the present facts, and the BAB did not make any determination as to whether the container constituted a "movable dwelling" for the purposes of the Building Act.

65. The Respondent's submissions further mischaracterise the decision in *Truong*, which does not provide support for the propositions advanced. The Truong decision is a planning determination made under a separate statutory regime. It does not consider the RTA or the definition of "movable dwelling" therein, nor does it engage with the authorities relied upon by the Respondent, including the Foster Decision.

66. Accordingly, the Applicant submits, this tribunal ought to have no consideration to the *Truong* decision. In summary, the Applicant contends that the Respondent's position with respect to the 24-hour test is unsupported by any case law or industry practice and appears merely to be an opinion on what the 24-hour test should be and/or seeks to unilaterally import further aspects to the statutory test. The Respondent's position is not only disparate with how other municipalities treat the installation of movable dwellings generally but is specifically at odds with the how other municipalities treat the installation of safari tents.

FURTHER SUBMISSIONS OF BOTH PARTIES

67. At the conclusion of the hearing on 6 February 2026, the BAB asked the parties for further submissions as to:

    (a) how the word 'situated' should be interpreted in the definition of 'movable dwelling' in s 3 of the RTA;

[10] [2011] VCAT 2390.

(b) the applicability, if any, of item 7 of schedule 3 to the *Building Regulations 2018*.[11]

68. The Applicant's further submissions, dated 23 February 2026, were received by the BAB on 6 March 2026. In those submissions, the Applicant contends that the term 'situated' refers to a dwelling being a static item that is 'situated' at a particular place, or being located in situ. It is not meant to describe the physical process of erection, installation, or construction of the dwelling on site.

69. The Applicant relies upon related provisions, including regs 5 and 34 of the *CP Regulations*, which govern movable dwellings in caravan parks and employ the terminology of 'install' and 'construct' rather than 'situated'. The Applicant submits that this distinction supports the construction of 'situated' as referring to a dwelling being located in position, rather than the process of installation or construction.

70. It follows that, for the purposes of the statutory test, the dwelling must necessarily have an initial place of installation. In the present case, the safari tents are situated at a defined site within the NRMA Caravan Park. The relevant inquiry is therefore whether, from that location, the safari tents are capable of being removed within 24 hours.

71. The Applicant contends that the analysis is identical to the reasoning in the Foster Decision, which states that:

> This interpretation of the definition gains support from a comparison of the words 'install' and 'installation' used in the Regulations. In accordance with the principle of statutory interpretation (see Statutory Interpretations in Australia Fifth edition, DC Pearce & RS Geddes atp.90) use of different words support different meanings. The dwelling is therefore situated at a site by being transported to a park and unloaded or towed to a site; as another operation it is installed at the site.[12]

72. In its further submissions of 18 March 2026, the Respondent states that the Applicant has quoted from an incomplete passage from the Foster Decision. The Respondent says that the first two sentences of that passage quoted by the Applicant make reference to the fact that the structures in question had compliance plates and were manufactured offsite.

73. The Respondent submits that, in the Foster Decision, the VCAT concluded that 'situate at' was intended to reflect the act of placing a structure on the site by transporting or towing it to that location. By contrast, the present case involves a structure that was not transported to the site in a prefabricated form.

74. Therefore, the Respondent submits, to give meaning to the word 'situate at' in this case, it must be interpreted as requiring that the time taken to build the structure on site has to be considered in the 24-hour timeframe. The Applicant countered that, if Parliament intended for the word situate to mean 'construct'

[11] As the BAB has decided that it is not necessary to determine the issue of the applicability of item 7 of schedule 3 to the *Building Regulations 2018* as part of this proceeding, it does not propose to set out the parties' submissions on this issue.

[12] *Foster v Ellerton Lodge Pty Ltd* [2006] VCAT 1426 [21].

or ‘install’ it would have said so. It notes that these terms are used in the RT Regulations.

75. The Applicant refers to the definition of the word ‘construct’ in reg 5 the RT Regulations which is ‘construct’, in relation to an unregistrable movable dwelling or rigid annexe, means to manufacture or construct the dwelling or annexe but does not include to do the work necessary to install the dwelling or annexe at a site. However, the Respondent submits that this definition has no relevance to this case because it is a definition ‘in relation to an unregistrable movable dwelling or a rigid annexe’.

76. The Respondent submits that applying the definition of ‘movable dwelling’ to this case, one can only interpret the word ‘situated’ to apply to the time required to construct the safari tents in their location at the caravan park. If the safari structures were structures that could be constructed elsewhere and brought to site on a chassis or in prefabricated parts, then ‘situate’ could mean bring to site and install on the land.

77. However, in this case, these structures can only be built on the land itself, and therefore ‘situate at’ must mean to build the safari structures on their intended location and the time this takes needs to be considered when applying the definition of movable dwelling.

78. The Respondent stresses that it follows that a movable dwelling is one which does not include a dwelling that cannot be located at and removed from one place within 24 hours.

79. The Respondent states that, at the hearing, the panel heard from the Applicant’s witness that the Safari Tents take at least three full days to construct the basic structure. Additional time is required to construct verandas, stairs and balustrades or to meet other specifications of a client such as painting flooring, privacy screens, plumbing and electrical wiring.

80. These additional features were included in the safari structures in question, meaning that they took well over 3 full days to construct or ‘situate’ at the Bright Carvan Park.

81. The Respondent submits that the panel also heard evidence that it takes a team of eight people eight to nine hours to remove a safari tent when it is constructed as a display at a conference or similar event. The Respondent says that at the hearing it was evidenced that display structures do not have all the features of the safari tents that have been built at the Bright Caravan Park so removing the safari tents in question could take more than 9 hours.

82. Even if it was open to add up the hours it would require to ‘situate and remove’ the structure on the Applicant’s own evidence this would be well over 24 hours. The Respondent’s position is that 24 hours means that all of the work to situate and remove the structure must be able to be completed in a single period of 24 consecutive hours. The Applicant’s own evidence shows this is not possible; therefore, the structures are not movable dwellings.

EVIDENCE

83. The Applicant relied upon a range of material, including elevation drawings of the Safari Tents, photographs, a supporting letter from Mr Leonardus Juffermans (director of Glamxperience Pty Ltd), and a work schedule setting

out the time to dismantle a safari tent. They also relied on two videos depicting the installation and dismantling of the Safari Tents.

84. At the hearing, Mr Juffermans gave evidence and was questioned by both parties and the panel. Mr Juffermans confirmed that the work schedule contemplated approximately eight to nine hours to dismantle a safari tent, including its footings. Mr Juffermans accepted that a video shown at the National Caravan Industry Conference depicted a safari tent being dismantled in approximately five hours, although he explained that the structure shown was not fully connected.

85. Mr Juffermans stated that additional time had been allowed in his assessment to account for the disconnection of plumbing and electrical services by a licensed plumber and electrician, resulting in a total estimated timeframe of approximately nine hours. He was asked whether the re-erection process resulted in significant wastage of materials. He responded that it did not, stating that 'everything is reused'.

86. He was further asked about the suggestion that repeated screwing and unscrewing of the timber flooring may cause damage. He said that care is taken during the process, although on occasion a plank may need to be removed or replaced where damage occurs or a screw cannot be extracted. He stated that while individual components may occasionally require replacement, the materials are otherwise reused on each installation.

87. Mr Juffermans was also asked about concerns regarding potential impacts on the structural integrity of the timber through repeated assembly and disassembly. He responded that the principal structural elements are secured by bolts, which are capable of repeated use. Mr Juffermans acknowledged that minor damage can occur in the ordinary course of installation, but said that such issues are addressed as they arise.

88. Under cross-examination, Mr Juffermans was asked whether, in a real-world scenario, disassembly would take longer than depicted in the video. He responded that it would take 'a few hours longer to get all anchors away'.

89. The following exchange subsequently took place between Ms Weir and Mr Juffermans:

> Ms Weir: What about when you're assembling one of these structures, how long does that take?
>
> Mr Juffermans**:** The standard is around between two and three days, so 24 hours. Yep.
>
> Ms Weir**:** Two or three days or 24 hours?
>
> Mr Jufferman: Well, two or three days. So let's say three days. Yep.
>
> Ms Weir**:** Three full days of eight hours?
>
> Mr Juffermans: Yep.
>
> Ms Weir: So around about 24 hours to put it up and you say nine hours to put it down.
>
> Mr Juffermans: Yep. Correct.
>
> Ms Weir: So one third of it.

> Mr Juffermans**:** Yep. It is when I say assembly, it is again with the anchors and with the with the bearer. So with the deck included.

90. Mr Juffermans agreed that the relevant Safari Tents at Bright, in addition to the actual area of the tent, there is also quite an extensive verandah on the front with a lounge in it. He said that the add-on can be an integrated lounge with a BBQ, depending on what the customer chooses. He conceded that the videos provided to the BAB and Respondent don't include the installation of the lounge area or the dismantling of it.

91. Mr Juffermans was then asked questions by BAB Member Patterson:

> Member Patterson: So just with the definition of movable dwelling out of the RTA talks about a dwelling that's designed to be moved or intended to be moved so with these structures so obviously they get moved when you're installing the expos and things like that but … how often do these structures get moved between caravan parks is it something that happens very rarely or it happens um occasionally?
>
> Mr Jufferman: Very rarely. So it is comparable with a cabin. You know, that's a movable dwelling. You put it on a caravan park, it stays there for 10 years.
>
> Member Patterson: And after 10 years, would that mean it would get removed from the site or demolished? Or does it mean that it would get, I suppose, how often would you actually move one of these structures? Are you able to give some indication how many times you've done it in your career?
>
> Mr Jufferman: Yeah, it's a handful. So when you exclude the expos, yeah, it's a handful. It's that they are designed for 25 years, but sometimes after a heavy storm, like we saw a few weeks ago, sometimes you have to replace a roof or a canvas part, and sometimes the client wants okay something new on this site or something built and he says hey okay take them away and sometimes we sell them then a second hand but it doesn't happen a lot.

92. Mr Juffermans stated that, with respect to the balustrade across the front of the dwelling, that the posts that are fixed to the ground, that 'we put a protective bitumen paint around it and then it goes in the ground and … we use concrete, a little quickly set concrete to keep it in place'.

93. Mr Juffermans said that, if asked to quote for his company to relocate similar safari tents, he would allow for a team to spend nine hours dismantling the structure and a further three days to reassemble it.

FINDINGS

Are the Safari Tents located at the subject property designed to be movable?

94. Both parties ultimately accepted that the timber structures upon which the four safari tents at the subject property in Bright are erected form part of the dwellings themselves. In our view, that concession was properly made. Even absent it, we would have reached the same conclusion, having regard to the integral role of the decking in forming the usable floor of the safari tents.

95. In any event, in assessing whether the dwellings were designed to be movable, we consider it appropriate to have regard to the structure as a whole as depicted in the photographs and plans. This includes not only the canvas tent structure and the timber decking (both internal and external), but also the

access stairs, fitted amenities such as BBQ areas, utility connections, and the structural underpinnings. The evidence of Mr Juffermans' confirms that these elements are assembled and dismantled as part of a single integrated system, rather than as discrete components installed or removed independently.

96. While we accept that the approach in the Foster Decision focused on design intention at the time of manufacture and installation, that case concerned prefabricated dwellings subsequently placed on site and later modified by the occupants with incremental additions. The present case is materially different involving structures constructed and completed on site as integrated units.

97. In the Foster Decision, the VCAT emphasised that classification should not fluctuate with later additions such as verandahs, steps, or other site works, and that site-based elements, such as foundations, anchoring systems, and utility connections, are generally to be understood as part of installation rather than determinative of design character. However, that reasoning does not, in our view, justify excluding consideration of those elements where they form part of the original integrated construction of the dwelling itself.

98. Here, the Safari Tents are not simply tent structures placed upon pre-existing bases. Rather, they are constructed as composite units incorporating substantial timber platforms, fixed access structures such as stairs, and utility connections from inception. The evidence of Mr Juffermans confirms that installation and removal are undertaken as a single coordinated process, including decking, anchoring and services, rather than as separable stages. In that context, it is artificial to treat those components as peripheral to design.

99. Considerable attention was directed by the parties as to whether the concept of a movable dwelling imports a requirement of "frequent" movement. We accept the Applicant's submissions that the RTA imposes no such express requirement and that reliance upon authorities arising under different statutory schemes risks importing concepts not found within the present legislation.

100. However, the absence of such a requirement does not resolve the inquiry. The statutory question remains whether the dwelling was designed to be movable. In our view, that requires more than mere technical capacity for disassembly; it requires that relocation form part of the dwelling's intended design and ordinary function.

101. While we accept that a dwelling need not be moved frequently, we consider that, to be properly characterised as designed to be movable, it must be capable of relocation on more than a single occasion. Mr Juffermans' evidence was that, in practice, relocation is rare and occurs only occasionally in practice.

102. While the Applicant relies on modular bolt-fixed systems and reuse of components, those features do not of themselves establish design for mobility. The evidence confirms that installation and removal involve full system disassembly, including decking, anchoring, and services, undertaken as a substantial coordinated exercise.

103. The safari tents, as constructed, are holiday accommodation units with characteristics more closely aligned with semi-permanent cabins than relocatable modular structures. The integrated use of bolted timber flooring, concrete anchoring, and fixed utility services supports that conclusion.

104. The distinction with prefabricated dwellings manufactured offsite and intended from the outset for relocation, as considered in the Foster Decision, is significant. Here, the evidence indicates structures intended to remain in situ for extended periods, with relocation contemplated only at the end of the lease and then as a substantial exercise involving full dismantling and reconstruction. Accordingly, while the structures are capable of disassembly and reuse, we are not satisfied that they were designed to be movable within the meaning of the RTA. The degree of integration and permanence points instead to dwellings that are functionally fixed, notwithstanding their capacity for occasional relocation.

Can the dwelling be situated at and removed from a place, within 24 hours?

105. Given our conclusion on the first limb of the definition, it is unnecessary to determine the second limb. However, if we are wrong, we propose to address it briefly.

106. The statutory definition directs attention to whether the dwelling is designed to be movable, including whether it can be situated at and removed from a site within 24 hours. We consider that the inquiry is directed to the character of the dwelling assessed in a practical and realistic sense.

107. While the Applicant, and at times the Respondent, referred to the test as to whether the dwelling can be situated at, or removed from, a place within 24 hours, the statutory definition uses the conjunctive 'and' rather than 'or'. We do not accept that the provision contemplates two separate 24-hour periods, one for installation and one for removal.

108. Properly construed then, the question is whether the dwelling is capable, in practical terms of being both situated and later removed within a 24-hour period. As to whether the 24-hour period is intended to be one single continuous 24-hour period, or one that can be aggregated into discrete periods over several days as was contemplated in Foster Decision, for the reasons set out below, we find it unnecessary to answer this question.

109. We do not accept the Applicant's construction of 'situated at' as referring only to the end state of physical placement on site, divorced from the process by which the dwelling is constructed. That approach may be appropriate in relation to prefabricated dwellings manufactured offsite and then transported and installed as was the case in the Foster Decision.

110. However, the present case is materially different. The Safari Tents are constructed on site as integrated accommodation units. They are not dwellings delivered to land and installed as finished structures. In that context, the act of 'situating' the dwelling is not meaningfully separable from its construction in place.

111. Accordingly, we find that 'situated at', in this context, encompasses the process of constructing the dwelling in its location on the land. On that basis, the relevant inquiry is whether the dwelling can be constructed in situ and later removed within the requisite 24-hour period.

112. For the reasons set out above, we propose to consider the structure of the Safari Tents as a whole. The evidence of Mr Juffermans was that construction of the basic structure takes a team of workers approximately two to three

days, which he equated to around 24 hours of working time, with additional time required for verandahs, stairs, balustrades and associated works including plumbing and electrical connections. Those elements formed part of the dwellings as erected at the subject site.

113. In relation to removal, Mr Juffermans gave evidence that dismantling a comparable safari tent in a less complex configuration takes approximately eight to nine hours, including removal of footings and disconnection of services. He accepted that, in practice, the process may take a few additional hours to remove anchors and complete disconnection depending on site conditions.

114. Even on the most favourable view of that evidence, the combined time required for construction in situ and subsequent removal exceeds 24 hours. On the evidence, the period to situate and remove the Safari Tents takes a team of workers somewhere between 32 and 35 hours over several days, with additional time required for associated works. Even adopting the beneficial approach to the 24-hour period taken in the Foster Decision, that evidence takes the Safari Tents outside the allowable time.

115. Accordingly, whether considered under the first limb or, if necessary, the second limb, the structures do not satisfy the statutory definition. It follows that we must find that the Building Notice was validly served and therefore we will affirm the decision to serve it.

DATE OF DETERMINATION: 28 May 2026