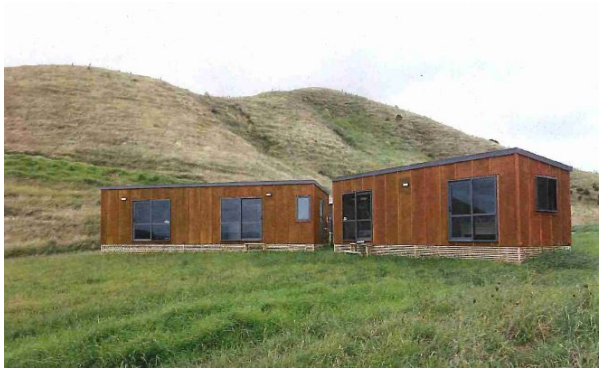
Determination 2019/043

Regarding the issue of a notice to fix for two relocated units on a rural property at 1220A Kuaotunu–Te Rerenga Road, Kuaotunu



Summary

This determination considers whether a building consent authority correctly issued a notice to fix in relation to two relocated units. The units, which are on wheels, were built in another district and then transported to the applicant's property. The determination looks at whether building work requiring a building consent was carried out at the property.

1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004[1] ("the Act") made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment ("the Ministry"), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to the determination are:

- G Ardern, a trustee of the Vanjul NZ Family Trust which owns the property ("the applicant")
- Thames-Coromandel District Council carrying out its duties and functions as a territorial authority or a building consent authority ("the authority").

1.3 The determination arises from the authority's decision to issue a notice to fix in relation to two relocated units ("the units") on the applicant's Coromandel property for a contravention of section 40 of the Act[2]. In the applicant's view, no building work was carried out on site and therefore the notice to fix should not have been issued to the applicant.

[1] The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.building.govt.nz or by contacting the Ministry on 0800 242 243.
[2] Section 40 of the Act: Buildings not to be constructed, altered, demolished, or removed without consent

1.4 The matter to be determined[3] is whether the authority correctly issued the notice to fix with respect to the applicant's units. In determining this matter I have considered the contravention as described in the notice and whether any building work requiring building consent occurred on the applicant's property.

1.5 In making my decision I have considered the application, the submissions of the parties and the other evidence in this matter. I have not considered any other aspects of the Act or Building Code beyond those required to decide on the matter to be determined.

1.6 Appendix A contains relevant extracts from the legislation and Appendix B contains summaries of responses to drafts of the determination and of oral submissions made at the hearing. I note that in this determination, unless otherwise stated, references to sections are to sections of the Building Act 2004 and references to clauses are to clauses of the Building Code.

1.7 Matters outside this determination

1.7.1 The parties' submissions to the determination have included consideration of whether the units are vehicles or whether they are buildings under section 8 of the Act (either under the general definition in section 8(1)(a) as movable structures or under section 8(1)(b)(iii) as vehicles that are immovable and occupied on a permanent or long-term basis). For the authority to be able to exercise its powers under the Act the units must fall within the definition of a building under section 8 of the Act and not be excluded under section 9.

1.7.2 However, for the authority to be able to issue a notice to fix for contravention of section 40 of the Act to the applicant, there must be building work carried out for which building consent was required and for which the applicant is properly considered to be the specified person as defined in section 163. On that basis, I have accepted the applicant's request that this determination considers only whether the authority was correct to issue a notice to fix in respect of building work carried out at the applicant's property.

2. The property and relocated units

2.1 Since 2007 the applicant has owned a rural lifestyle block of about 10 hectares in the Coromandel Peninsula, on the Kuaotunu–Te Rerenga Road (State Highway 25). The two units that are the subject of this determination have been located there since 11 December 2017. They were constructed by a building firm ("the builder") at its premises and then transported to the site.

2.2 While I have received limited information about the construction of these units it is apparent from the photographs and one-page specification sheets provided to me and from the description of similar units on the builder's website that the units are timber framed with board and batten cladding, have aluminium joinery and have metal roofing. One of the units includes a kitchen and living area, while the other contains sleeping and bathroom facilities.

2.3 Both units are built on galvanised steel chassis/trailers with axles and wheels. The gap between each unit and the ground is currently screened with timber trellising. The units' wheels were the only form of support the authority observed at its site

[3] Under sections 177(1)(b) and 177(2)(f) of the Act

visit on 28 February 2018 (refer paragraph 3.1.3). A photograph taken by the authority at a later visit[4] shows a couple of blocks at the base of one unit.

2.4 According to the applicant there are no public services or utilities on the property. Power supply is via a caravan-style lead (the applicant has a generator for occasional use), each unit has an exterior connection for bottled gas and a califont (gas water heater) that is currently connected to a hose, and the units have holding tanks for foul water.

3. Background

3.1 Events leading to the notice to fix

3.1.1 In mid-2017 the applicant commissioned the builder to construct the two units. These were completed at the builder's premises, which is located outside the district that the authority is responsible for, and delivered to the property by transporter on 11 December 2017. The units were then positioned on flat land about 100m northwest of an existing shed and its adjacent water tank.

3.1.2 On 15 December 2017 the authority received an enquiry submitted by one of the authority's employees regarding the units' status.

3.1.3 On 28 February 2018 the authority visited the property to inspect the applicant's units. Its inspection report described the reason for this visit as "unconsented buildings".

3.1.4 On 6 June 2018 the authority emailed the applicant to advise it had visited the property following a complaint about unconsented buildings on site, asked about the applicant's intentions for the units, and required the applicant to apply for a building consent to have them "permanently sited".

3.1.5 The applicant replied on 8 June 2018 advising the intention to use these units until a permanent family home was built on site. Further, as the units were on trailers and there were no services and no one lived there, the applicant did not consider they were within the ambit of the Act.

3.1.6 The parties continued to correspond about the status of the units and whether they were vehicles or buildings. On 19 June 2018 the applicant submitted a request under the Official Information Act 1982 (OIA) which the authority responded to on 13 July 2018.

3.2 Issue of the notice to fix

3.2.1 On 25 July 2018 the authority issued the applicant with notice to fix No. 2018/057 ("the notice") regarding "two buildings located approximately 100 m to the northwest of existing consented shed".

3.2.2 This notice to fix gave the particulars of the contravention or non-compliance as follows:

> An investigation involving the New Zealand Transport [Agency] identified that the structures on the above mentioned property were registered to two smaller trailers. The NZTA stated that they are not legal trailers as they are greater than 2.55 m in width and deregistered the two number plates attached to the structures. The two structures are therefore buildings.

[4] Photograph marked "29/09/2018" and included in the authority's response to the first draft of the determination (refer Appendix B1, to information supplied by the authority on 19 October 2018)

> Breach of section 40[5] of the Building Act 2004 (the Act) requiring that: "Building not to be constructed, altered, demolished or removed without consent".
>
> The two buildings on your property are of a size that they required a building consent to be obtained but no consent was applied for.

3.2.3 The remedy stated on the notice (to be complied with by 15 October 2018) was that the applicant must either:

- remove the two units from the property, or
- apply for a certificate of acceptance under section 96[6] and also "apply for a building consent to permanently found and connect the services to approved outfalls, compliant with the New Zealand Building Code", or
- apply to the Ministry for a determination regarding the authority's decision to view the units as buildings and not vehicles in terms of section 8[7].

3.2.4 An email and letter accompanying this notice discussed matters of whether the units were "road legal" and could be classified as vehicles.

3.2.5 The applicant replied on 2 August 2018 noting that the trailers had been provided by the builder, and that the applicant had no reason to believe they were anything other than lawful.

3.2.6 On 6 August 2018 the Ministry received an application for a determination.

4. Submissions

4.1 The initial submissions, those made in response to the drafts of this determination, and oral submissions at the hearing have included consideration of whether the units are vehicles or buildings. Given that this determination considers only whether there was building work carried out on site for which a notice to fix could be issued, I have not included points raised regarding the status of the units here.

4.2 Initial submissions

The applicant

4.2.1 The applicant provided an initial submission dated 2 August 2018, summary of events and copies of:

- specification sheets for and photographs of the units
- correspondence with the authority (6 June – 2 August 2018) and the notice to fix
- information received under the applicant's OIA request including the authority's inspection report and photographs.

4.2.2 The applicant described the units as mobile caravans and described various features of these units. The applicant made various requests for relief, said the authority had failed to properly establish that it was entitled to take action in relation to the units, and also said "undue delay, without good reason, to address the situation makes this matter void".

4.2.3 The applicant considered the notice to fix was defective because: there had been no building work at the property relating to the units and therefore no breach of section

[5] Section 40: Buildings not to be constructed, altered, demolished, or removed without consent
[6] Section 96: Territorial authority may issue certificate of acceptance in certain circumstances
[7] Section 8: Building: what it means and includes

40; the authority had not described the building work with any specificity; and even if the units were buildings the Ministry had previously determined that relocating buildings onto a site did not constitute building work.

4.2.4 The applicant considered the directive to apply for a certificate of acceptance was erroneous as there was no building work associated with the units and building consent was not required. The requirement for the applicant to seek building consent in addition to this was also erroneous, as the notice to fix did not specify what services the applicant was supposed to "found and connect" and the applicant did not want to site the units permanently.

4.2.5 On 15 August 2018 the applicant sent more information relating to the trailers' registration and warrants of fitness including correspondence with the NZ Transport Agency (NZTA). The applicant said this issue was only relevant once the units were moved off private property.

4.2.6 The applicant emailed again on 13 September 2018 in response to the authority's submission (refer paragraphs 4.2.7 to 4.2.9), saying its focus on whether the units were buildings or vehicles was not the issue for determination but the applicant was providing further comment for clarification and interpretation. The applicant noted there were no permanent exterior fixtures – wooden steps to the units were self-supported and not attached, and a brushwood screen was decorative.

The authority

4.2.7 The authority sent a submission and summary of events on 10 September 2018, acknowledged its delay in dealing with the applicant's units, and also sent copies of relevant material including:

- the inspection report, photographs, internal communications regarding the matter, and the notice to fix
- correspondence with the applicant and with NZTA, the warrant of fitness check sheets and NZTA information sheets.

4.2.8 The authority said the construction of the units, wherever this was carried out, was not exempt from the requirement to obtain a building consent. In particular, the authority said this building work was not exempt under Schedule 1 (Parts 1, 2 and 3)[8] and/or as specified in sections 41, 42A and 43 of the Act[9].

4.2.9 In the authority's view:

- The notice to fix was still in force, although it needed to be modified and re-issued as the authority had confirmation at 15 August 2018 that the units were not deregistered (by NZTA).
- The directives to remedy the contravention were still relevant. Seeking a certificate of acceptance for [construction of] the units was not erroneous as building consent was required but not applied for.
- Building consent would be required for any further works siting these units.
- There was no time limit set in the Act so the matter was not void.
- The underfloor of the units had been enclosed with timber battens fixed horizontally on timber framing, which would need to be removed to relocate

[8] Schedule 1: Building work for which building consent not required
[9] Section 41: Building consent not required in certain cases; section 42A Building work for which building consent is not required under Schedule 1; section 43: Building consent not required for energy work

them; other structures such as landings and steps had been attached; and brushwood screens had been used to create an outdoor shower area.

4.3 Draft determinations and the hearing

4.3.1 A draft of this determination was sent to the parties for comment on 4 October 2018 (the first draft) and a revised draft on 8 January 2019 (the second draft). I also held a hearing on 12 June 2019 via teleconference. The parties' submissions in response to the drafts and at the hearing are described in Appendix B. I have taken these submissions into consideration and amended the determination as I consider appropriate.

4.3.2 The first draft found that the authority:

- was correct to conclude the relocated units were buildings rather than vehicles in terms of the Act
- incorrectly issued the notice to fix as building work had not been carried out on site, and reversed that decision.

4.3.3 The second draft reached the same conclusions as the first draft regarding the status of the units and the notice to fix. I accepted the authority's submission that offsite construction of the applicant's units involved building work (in another district) and amended the draft accordingly. Other amendments to the first draft included the addition of two persons with an interest to the determination – the builder and the responsible authority for the district in which the applicant's units were constructed ("the other authority") – and comments on some further considerations.

4.3.4 After hearing the parties' oral submissions on 12 June 2019 the determination was amended further, removing the persons with an interest and the section on "further considerations" and changing the discussion's initial focus on considering whether the applicant's units are vehicles or buildings to whether any building work has been carried out on site that required building consent.

4.3.5 The third draft of this determination was sent to the parties on 17 July 2019.

4.3.6 The applicant accepted the third draft on 29 July 2019.

4.3.7 The authority responded on 29 July 2019 that it did not accept the third draft. In its response the authority said it considered the question of whether the applicant's units were buildings or vehicles was "the crux of this issue", and disagreed with the conclusion at paragraph 5.2.7 that the determination did not need to consider this. However, on 5 August 2019 it advised that it now wished to accept the third draft determination.

5. Discussion

5.1 General

5.1.1 The matter to be determined is whether the authority correctly issued the notice to fix in relation to the applicant's units for a contravention of section 40 of the Act. In the authority's view the Act applies to these units as they meet the definition of a building under section 8(1)(a) and building work has been carried out in relation to them without a building consent. In the applicant's view, regardless of whether or not the units are buildings, no building work was carried out on site and therefore the notice to fix should not have been issued to the applicant.

5.1.2 The applicant has also expressed the view that the authority delayed unduly without good reason, making this matter void. The applicant refers to the authority's complaints policies, which include response timeframes the applicant said were exceeded in this case, and to a number of other response timeframes and guidelines for best practice. The authority has acknowledged the delay between inspecting the property and advising the applicant of its concerns, saying this was not good customer service but does not invalidate the notice to fix.

5.1.3 In discussing this delay the applicant has referred to Determination 2014/035[10] as saying a notice to fix should be issued promptly:

> 5.5.4 The limits on issuing a notice to fix to a subsequent owner where the building work was carried out by the previous owner in contravention of the Act mean an authority should follow up any contraventions of the Act promptly. That is reinforced by the six month time limit in section 378 of the Act on filing a charging document for an offence against the Act.

5.1.4 I agree that it would have been preferable for the authority to have acted promptly. However, the Act does not specify a time limit for a decision to issue a notice to fix (as it does for filing a charging document in the event of a prosecution, under section 378). Therefore, while it may not be best practice, the delay does not itself invalidate the notice to fix.

5.1.5 I also acknowledge that the delay affected the applicant's ability to raise issues with the builder. However, the determination is unable to consider this contractual matter.

5.1.6 In addition, the applicant regards the actions of at least one of the authority's employees in relation to the enquiry about the units as inappropriate and an "abuse of power". The authority says that anyone, including an employee, can raise a request for service and that its normal process was followed in this case.

5.1.7 I have considered the parties' submissions further and have not seen any evidence that leads me to conclude the authority's issue of the notice to fix for the applicant's units under section 164 has been invalidated by the process followed. I note that in reaching its decision to issue this notice the authority did not rely solely on the initial enquiry of 15 December 2017 but conducted a property inspection (refer paragraph 3.1.3) and carried out further investigations including engaging in correspondence with the applicant regarding the nature of, and intent for, the units (refer paragraphs 3.1.4 to 3.1.6).

5.2 The decision to issue the notice to fix

5.2.1 The notice to fix identifies the contravention as (unspecified) building work carried out without a building consent. As described on this notice, the authority considers the Act applies because the units' trailers are not legally registered so these units are buildings and are "of a size" that building consent was required. I note that the authority has already acknowledged that the statement on the notice regarding NZTA deregistering the trailers is incorrect.

5.2.2 The notice to fix then identifies the remedy as either removing these units from the property, applying for a determination, or:

- applying for a certificate of acceptance (i.e. to regularise any building work carried out without a building consent), and also

[10] Determination 2014/035: The issue of a notice to fix for weathertightness remedial work carried out by a previous owner (15 August 2014)

- applying for a building consent to "permanently found and connect the services to approved outfalls".

5.2.3 As the authority did not specify on the notice to fix or in the accompanying letter what it considered the unconsented building work[11] to be, I have drawn on its correspondence with the applicant in making the following points.

5.2.4 The relocated units were built for the applicant in another district and, once completed, were transported to the applicant's property. Previous determinations[12] have considered whether a building consent is required for the relocation of a building, and I maintain the view that the relocation of a building onto a site does not itself constitute building work. Therefore, I consider that even if the applicant's units were found to be buildings in terms of the Act, their relocation onto the property did not involve building work.

5.2.5 Now considering whether any building work requiring a building consent was carried out on site in relation to these units, in my view this has not been the case. In particular:

- there has not been any installation, assembly or incorporation of these units on site – they were simply towed into place, and they have not been joined together, altered or added to in any way that involves building work requiring a building consent
- the units have not been put on foundations
- there has been no plumbing or drainage work or any connection to services that involves building work – the units are not attached to utility services as they have holding tanks to deal with foul water, energy is provided similarly as for a caravan (via a caravan-style lead and gas bottles), and water can be provided via a hose.

5.2.6 Therefore, as no unconsented building work was carried out on the property with regard to these units I consider that the authority incorrectly issued the notice to fix for building work carried out without a building consent.

5.2.7 Because of this conclusion I have not needed to proceed to consider whether or not the applicant's units are vehicles or buildings in terms of the Act. Regardless, I consider that requiring the applicant to "permanently found and connect the services to approved outfalls" as stated in the notice to fix would be inappropriate. In my view, it is the applicant's decision whether or not to carry out any building work in relation to these units, and the applicant has consistently stated the intention is to move these units in future. I note that the definition of "building" in the Act includes movable structures, so does not anticipate any requirements for permanent founding or connecting.

5.2.8 I also note that it is important for any notice to fix issued for building work carried out without a building consent where a consent was required, or the covering letter with such a notice, to clearly specify the building work to which the notice applies.

[11] Meaning building work as defined in section 7 of the Act and not exempt under Schedule 1 of the Act
[12] See for example Determination 2014/030: Regarding the issue of a notice to fix for the placement of two shipping containers on a property (22 July 2014).

6. The decision

6.1 In accordance with section 188 of the Building Act 2004 I hereby determine that the authority incorrectly issued the notice to fix No. 2018/057 regarding the applicant's units and I reverse that decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 9 September 2019.

Katie Gordon

Manager Determinations

Appendix A: The legislation

A1 Building Act 2004

Relevant sections of the Building Act include the following:

8 Building: what it means and includes:

(1) In this Act, unless the context otherwise requires, building–

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

(b) includes–

…

iii) A vehicle or motor vehicle (including a vehicle or motor vehicle as defined in section 2(1) of the Land Transport Act 1998) that is immovable and is occupied by people on a permanent or long-term basis; …

…

164 Issue of notice to fix

(1) This section applies if a responsible authority considers on reasonable grounds that—

(a) a specified person is contravening or failing to comply with this Act or the regulations (for example, the requirement to obtain a building consent); or

(b) a building warrant of fitness or dam warrant of fitness is not correct; or

(c) the inspection, maintenance, or reporting procedures stated in a compliance schedule are not being, or have not been, properly complied with.

(2) A responsible authority must issue to the specified person concerned a notice (a notice to fix) requiring the person—

(a) to remedy the contravention of, or to comply with, this Act or the regulations; or

(b) to correct the warrant of fitness; or

(c) to properly comply with the inspection, maintenance, or reporting procedures stated in the compliance schedule.

(3) However, if a responsible authority considers that it is more appropriate for another responsible authority to issue the notice to fix, it must—

(a) notify the other authority that it holds that view; and

(b) give the other authority the reasons for that view.

(4) The other responsible authority referred to in subsection (3) must issue the notice to fix if it considers that this section applies.

Appendix B: Responses to first and second drafts of the determination and hearing submissions

B1: The first draft

The parties' responses to the first draft of the determination and related correspondence included the following.

The Ministry (4 October 2018)
Issued a first draft of the determination which concluded: • the authority was correct to conclude the relocated units were buildings rather than vehicles in terms of the Act • the authority incorrectly issued the notice to fix as building work had not been carried out on site, and the first draft reversed that decision.
The applicant (18 October 2018)
Accepted the first draft subject to two minor corrections (which were made).
The authority (19 October 2018)
Did not accept the first draft, and considered it had correctly exercised its powers of decision in issuing the notice to fix.
Provided: • a close-up photograph taken 28 September 2018 (which I take to be at the applicant's property) showing a couple of blocks next to one of the unit's wheels, and said this showed other temporary foundations were in place to support the units • "standard technical specifications" printed from the builder's website on 19 October 2018 • a detail from the authority's hazards map showing the applicant's property, a contour map for this property, and two photographs of the relocated units taken on 13 September 2018 • a plan for a septic tank on the applicant's property stamped "approved ABA 20180026 31/01/2018".
Agreed that, in general, it was for the applicant to decide when or if to apply for building consent to permanently found a building and connect services to approved outfalls but considered circumstances dictated otherwise in this case and its requests on the notice to fix were appropriate: • the relocated units were located in a "very high" wind zone and on a sloping site, so the authority considered the current movable/temporary foundations were not appropriate and not likely to withstand the combination of loads they were likely to experience in this location so as to achieve compliance with Clause B1 Structure • the authority did not deem the units' camping waste tanks a suitable alternative solution to accommodate wastewater and said these were likely to fit the definition of "insanitary"[13]. Also said the applicant had applied for building consent to install a septic system and it might be appropriate for the applicant to consider amending this to include the connection of the units, thus achieving compliance with Clause G13 Foul water.
The applicant (25 October 2018)
Responded to the authority's submission dismissing the points raised and asking that the first draft be adopted. In the applicant's view: • no "building work" was undertaken on the applicant's property and the examples provided by the authority of what constituted building work were irrelevant • the applicant was under no obligation to provide the authority with design work or documents regarding the relocated units • the method of securing the units was appropriate given their size, and they were currently sited on flat land • the current wastewater tanks were fit for purpose; also a septic system was now in place "and with a proper sewer/waste hose kit any waste could be transferred into the system in a sanitary

[13] Refer section 123 of the Act (Meaning of insanitary building)

manner".
The applicant (4 November 2018)
Said "agreement to the draft decision" only applied if the draft remained materially the same. If it was opened up to further consideration the applicant raised the following points: • the authority had not previously mentioned the units' location in a very high wind zone, and while the units were not on Code-compliant foundations they were harnessed to the ground (with detachable cables) • described complaints about the authority's actions and concerns about broadening of the determination to include other issues and parties.
The Ministry (13 November 2018)
Advised the parties of the intention to include the builder and the responsible authority for the district where the applicants' units were constructed (i.e. the other authority) as persons with an interest in the determination, as the discussion in the next draft would include issues they should be given the opportunity to respond to.
The applicant (14 November 2018)
Repeated a request to be advised if there had been correspondence with the two authorities that the applicant was not privy to; contested adding any other persons to the determination and to the scope of the discussion; did not agree the units are buildings nor that the time taken by the authority to contact the applicant was "reasonable". Asked for a hearing on the issues outlined in the application for a determination and reserved the right to "make other claims at [the] hearing… based on the unwarranted expansion of the issue for determination".
The Ministry (14 November 2018)
Confirmed there had been no other substantive correspondence with the authority; that it was not proposed to widen the matter for determination or to add parties, but to include "persons with an interest"; and suggested it could be more beneficial to hold a hearing after issuing a second draft.
The applicant (15 November 2018)
Advised the applicant would wait to review the second draft before making any decisions or conclusions.

B2: The second draft

The parties' responses to the second draft of the determination and related correspondence included the following:

The Ministry (8 January 2019)
Issued a second draft of the determination (the second draft) to the parties for comment. Amendments included the addition of the builder and the other authority as persons with an interest in the determination. The Ministry also accepted the authority's argument that the offsite construction of the applicant's units involved building work (in another district), and the determination was amended and clarified in this regard. The second draft reached the same conclusions as the first draft in that: • the authority was correct to conclude the relocated units were buildings rather than vehicles in terms of the Act • the authority incorrectly issued the notice to fix as building work had not been carried out on site, and the draft reversed that decision.
The applicant (25 February 2019)
Did not accept the second draft determination although agreed with the draft's conclusion that the authority incorrectly issued the notice to fix, with the draft's reversal of the authority's decision, and

that in any case requiring the applicant to "permanently found and connect the services to approved outfalls" would be inappropriate. Sent an extensive submission and asked for a hearing.

Did not accept or agree with other items in the second draft including:

- its inclusion of the builder and the other authority as persons with an interest – did not consider their addition or opinions relevant as they operated outside the authority's district
- what the applicant considered the first and second drafts' insufficient attention to the authority's "undue delay" following its inspection, which the applicant believes made the matter void; quoted the authority's complaints policies that included response timeframes and referred to the June 2018 OIA request
- the second draft's discussion regarding possible actions to be taken by the other authority; objected to the draft's interpretation of section 164(3)[14] and what the applicant considered was widening the scope of what the applicant had asked to be determined.

In addition:

- said there had been no building work at the applicant's property and this had never been in question
- called a number of the authority's actions into question and deemed its visit to the property on 28 September 2018 – or any visit following the applicant's request on 12 June 2018 to provide notice of entry – as trespass
- made other allegations against entities and individuals that I do not consider appropriate to include, and covered other issues that I do not consider relevant to the matter for determination.

The authority (25 February 2019)

Accepted the second draft, acknowledged that building work had occurred in another territorial authority's district to construct the two units and that the second draft was clear that the authority could not issue a notice to fix "into another territorial authority's district where the building work occurred." However, asked for clarification regarding the exercise of its powers under section 164(3).

The authority (5 March 2019)

Responded to the allegations of trespass on 28 September 2018, reiterating that its warranted officers had delegated powers to inspect and enter premises (under section 222).

Said on the date of the alleged trespass a drainlayer had called for a drainage inspection at the applicant's property for the installation of an onsite waste water treatment system[15]; and two building control staff had attended.

> As part of officers' duty of care, it was observed there were two buildings on site in proximity to the building works. Discussion was had in relation to the possible connection of these buildings to the waste water system and the current status of the buildings. Subsequent photographs were taken of the current waste disposal system of the two buildings subject to this determination.

Confirmed that it had not conducted any further site inspections.

The applicant (5 June 2019)

Criticised the determination process, time taken, and those involved (following various emails between the Ministry, parties and persons with an interest to arrange a hearing date).
Described outstanding issues, including:

- what interest the other authority had in this matter
- why the "misuse of authority in application of the Building Code" was out of scope
- why the authority's delay in addressing this matter was not significant.

[14] Refer section 164: Issue of notice to fix.
[15] In relation to building consent ABA 20180026 – refer Appendix B1, information provided by the authority on 19 October 2018

B3: The hearing

On 12 June 2019 a hearing was held on the applicant's request. Those participating were:

- the Manager Determinations, another Ministry officer and the applicant (at the Ministry's offices), and
- the Determinations Referee and an officer of the authority (via telephone).

Three officers of the other authority were also linked via telephone for the first hour.
The parties' oral submissions and subsequent correspondence included the following:

The applicant (hearing 12 June 2019)
The only issue that had been sought in the determination was the issue of the notice to fix but the Ministry had gone beyond that in the drafts in analysing whether the units were buildings or vehicles, and added in other persons in the process. That created other matters of conflict and was unnecessary, as the notice to fix was inappropriate in any scenario given that no building work had been carried out.
Covered four main points: 1. Discussed what the applicant considered an "abuse of power" by a particular authority employee in relation to the complaint regarding the units, including the employee's knowledge of a previous application under the Resource Management Act (RMA), and the authority's subsequent actions in pursuing this complaint; and questioned why this was considered out of scope of the determination. 2. Asked why two entities had been added as persons with an interest – disputed their inclusion and argued the interpretation of "principles of natural justice". Objected to a section in the second draft which commented on the implications for issuing building consents and any subsequent enforcement given the units were constructed in another district; considered this section provided professional advice to the authorities which was not provided to the applicant in the determination, and which was not relevant to the application. 3. Questioned the timeliness of the authority's actions and considered there had been undue delay and that this had disadvantaged the applicant, including that the applicant would otherwise have had the opportunity to raise issues with the builder. Said a previous determination[16] stated that a notice to fix should be issued promptly; referred to the time limit in section 378[17]; and described various other complaints processes and timelines. 4. Made a submission regarding the interpretation of section 8 of the Act and whether the units are vehicles or buildings.
The authority (hearing 12 June 2019)
Responded to the applicant's four main points, including that: 1. Anyone was entitled to raise a "request for service", whether they were an employee or member of the public, and the authority's normal process had been followed. The authority had focussed on Building Act matters, in particular whether any building work had been carried out, not on the RMA. 2. Adding any additional persons to the process was for the Ministry to comment on. 3. Acknowledged there had been a delay between the authority's officer contacting the applicant and the issue of the notice to fix, saying this was not good customer service and was an internal performance issue it would address. However, as already stated, there was no time limit in the Act for issuing a notice to fix. Said the time limit in section 378 only applied if there was a prosecution and the authority had "no intention of doing that". 4. Made a submission regarding the interpretation of section 8 and whether the units are vehicles or buildings.

[16] Determination 2014/035: The issue of a notice to fix for weathertightness remedial work carried out by a previous owner (15 August 2014)
[17] Section 378: Time limit for filing charging document

The applicant (email 13 June 2019)
Reiterated the submission made at the hearing, that what the applicant considered the authority's "abuse of power" in issuing the notice to fix should be within the scope of the determination; said the Ministry was the appropriate authority to address this issue under section 200[18]; and provided further background relating to the applicant's assertions.

[18] Section 200: Complaints about building consent authorities