

Determination 2025/019

The issue of a notice to fix for building work carried out without a building consent

98 Southerthread Road, Brooklyn, Wellington

Summary

This determination considers an authority's decision to issue a notice to fix to property owners for two self-contained units constructed on their land. The owners disputed the notice, arguing that the units were vehicles rather than buildings and therefore did not require building consent.



Figure 1: Photos of the two units taken during the authority's inspection

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”).

The Act is available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Peta Hird, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.¹
- 1.2. The parties to the determination are:
 - 1.2.1. S Watson, C Watson and J Cardno (“the owners”), who are the registered owners of 98 Southernthread Road (“the property”) in their capacity as trustees of the Long Gully Station Trust.
 - 1.2.2. Wellington City Council (“the authority”), carrying out its duties as a territorial or building consent authority.
- 1.3. On 28 March 2024, the authority issued the owners a notice to fix No. 544795 (“the notice to fix”), in relation to two units at the property, for carrying out building work without building consent in contravention of the Act. The owners consider that the authority did not have grounds to issue the notice to fix because:
 - 1.3.1. neither of the units fall within the definition of ‘building’ and, therefore, are not regulated by the Act, or
 - 1.3.2. the owners did not carry out the work to construct the units and, therefore, did not contravene section 40.
- 1.4. The matter to be determined, in terms of section 177(1)(b) and (3)(e) of the Act, is the authority’s decision to issue the notice to fix for a contravention of section 40.
- 1.5. The determination will consider:
 - 1.5.1. whether there was building work carried out for which the notice to fix could be issued
 - 1.5.2. whether each person named in the notice to fix is a ‘specified person’ under section 163 with respect to the contravention.

¹ The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

2. The background and building work

- 2.1. The property is approximately eight hectares in a semi-rural area in Brooklyn, Wellington.
- 2.2. In August 2016 (approximately) the owners entered into a contract with a building company to construct two units.
- 2.3. The building company constructed both units next to each other on a flat asphalt site (formerly an airstrip) at the property between August and November 2016.
- 2.4. In March 2024, the property was inspected by officers of the authority, who observed the units.
- 2.5. At that time, the units were positioned approximately 120m apart on the former airstrip.
- 2.6. The units measured 9.78 x 4.38m. Each unit had a steel underfloor frame, wheels with balloon tyres fitted to three axles, springs, and a drawbar for towing. The wall framing was constructed of H1.2 treated timber, lined with building paper, and clad in corrugated iron. The units had a corrugated iron skillion roof, complete with roof guttering and a downpipe that fed rainwater to an external water tank.
- 2.7. The internal walls of the units were constructed of 9mm MDF or plywood. Each unit contained a bathroom with toilet and shower, an open-plan kitchen and living area, and a bedroom.
- 2.8. The living areas and bedrooms had carpet and underlay, while the toilet and kitchen areas had lino flooring. The units were equipped with double-glazed ranch-sliders and windows.
- 2.9. A deck, measuring 9.78 x 2m, was attached to each unit by approximately 8 to 10 screws, and was covered by a colour steel canopy.
- 2.10. The units were insulated in the underfloor, wall, and roof areas. Power was supplied by solar panels and a caravan plug connected to either mains power or a generator. Each unit had an LPG califont for heating water, a gas oven and stovetop, and was certified for electrical and gas compliance.
- 2.11. Water was supplied from rainwater tanks which hold water captured from the units' roofs. Sewage was macerated by a foul water waste pump and piped to an external holding tank, which was emptied by a pump truck when full.
- 2.12. Both units, including their decks, were levelled by resting on timber blocks and their wheels.
- 2.13. Neither unit had a registration plate or a warrant of fitness.

- 2.14. Both units were occupied at the date of the inspection. According to the owners, they had earlier been occupied at different times by relatives of the owners and by tenants.
- 2.15. Building consent was not obtained to construct either unit.
- 2.16. Following the inspection, the authority issued the notice to fix to the owners. The notice to fix described the contravention or non-compliance as:

Building work with no building consent

On 11 March 2024, the ... property was inspected by a Council officer. Building work, namely the construction of two self-contained cabins has been done without a building consent. Section 40 of the Building Act 2004 requires that a building consent must be obtained prior to undertaking any building work.

- 2.17. In the notice to fix, the authority gave the owner the following options to remedy the contravention or non-compliance:

You must either apply for either a Certificate of Acceptance, or remove the building work within 90 days of the date of this notice. Any additional work not yet undertaken must not be started until a building consent has been obtained from the Council.

- 2.18. In the cover letter which accompanied the notice to fix, the authority said that “[s]ince the cabins incorporate sanitary facilities, serves as sleeping accommodation, and includes cooking facilities, it doesn’t qualify as exempt building work [under Schedule 1 of the Act] thus requiring a building consent.”
- 2.19. On 8 April 2024, the owners responded to the notice to fix by email, disputing the alleged contravention of section 40 and provided information to support their position.
- 2.20. The owners and the authority then exchanged correspondence setting out their respective views on the matter. However, the parties were unable to resolve their dispute, and the owners applied for this determination.

3. Submissions

The owner

- 3.1. The owners submit that the authority did not have grounds to issue them with the notice to fix and so should withdraw the notice.
- 3.2. The owners consider building consent was not required to construct the units because neither unit is a ‘building’ for the purposes of the Act.

- 3.3. In support of this view, the owners say:
- 3.3.1. each unit is a vehicle and is not immovable and, therefore, is not a building for the purposes of the Act
 - 3.3.2. the units are “caravans” and are “self-contained”
 - 3.3.3. both units are “fully moveable and are not fixed to the ground”
 - 3.3.4. neither unit is connected to Council services
 - 3.3.5. the deck and canopy on each unit are designed to detach easily for regular moving (the screws attaching each deck and canopy to each unit can be removed in minutes with a battery drill)
 - 3.3.6. the units were initially constructed alongside one another; subsequently, one unit was moved 30m west to the opposite side of the airstrip, and the other moved 120m north to the top of the airstrip
 - 3.3.7. both units were moved behind a farm utility vehicle, without removing their decks or canopies
 - 3.3.8. both units can be prepared “within a half hour” for towing behind a farm utility vehicle and that this suggests they are “easily moved”; they say the steps required to do so are:
 - remove the wooden levelling blocks
 - disconnect potable water from the tap at the bottom of the water tank
 - lift downpipe outlet from the top of the water tank
 - unscrew waste pump outlet pipe
 - disconnect caravan plug, and
 - attach drawbar to farm utility vehicle.
 - 3.3.9. they intend to move the units between Lots within Long Gully Station, using a private roading network
 - 3.3.10. they have never needed to register the units for public road use as they have no intention of moving them off Long Gully Station
 - 3.3.11. the units are designed to be relocated anywhere using a car transporter or low-loader trailer.

- 3.4. In reaching their conclusion that building consent was not required, the owners say they relied on the approach taken in Determination 2015/044.² They say their intended use for the units has always been the same as within that determination.
- 3.5. The owners say the MBIE Tiny Houses guidance³ supports their view that the units are not buildings for the purposes of the Act.
- 3.6. Even if the units are found to be buildings, the owners say that they should not have been issued with the notice to fix because:
- 3.6.1. they did not carry out any building work in relation to either of the units
- 3.6.2. they did not own the units at the time they were constructed.
- 3.7. In support of this view, the owners note:
- 3.7.1. the units were constructed solely by the building company
- 3.7.2. the owners did not physically carry out, or supervise, any of the work
- 3.7.3. according to the contract, ownership of the units passed from building company to the owners upon final payment, and that payment was made shortly after the units were completed
- 3.7.4. no additional work has been carried out on either unit, except for minor maintenance and the replacement of a waste pump.

The authority

- 3.8. The authority submits the notice to fix was lawfully issued. In support of this view, it says:
- 3.8.1. the notice to fix was appropriately addressed to the owners because the owners are 'specified persons' for the purposes of section 163.
- 3.8.2. the units fall under the definition of section 8 (ie, each unit is a 'building' for the purposes of the Act) because:
- each unit is a 'vehicle' which is 'immovable' and 'occupied on a permanent or long-term basis', or
 - if it is incorrect that each unit is a 'vehicle', the units fall within the meaning of 'building' in section 8(1)(a).

² Determination 2015/044 *Regarding the issue of a notice to fix for a prefabricated unit and whether the unit is a building or a vehicle* (8 July 2015)

³ MBIE (Building System Performance branch), *Tiny House Guidance for the Building Act 2004*, First published November 2021.

3.8.3. the construction of the units is 'building work' for the purposes of the Act.

4. Discussion

- 4.1. The matter to be determined is the issuing of the notice to fix by the authority to the owners under section 164.
- 4.2. To determine this matter, I must first consider whether each unit is a 'building' for the purposes of the Act.
- 4.3. According to the Court of Appeal in *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* ("*Te Puru*"), if a person says that the unit was a vehicle, then the first thing to assess was whether it was.⁴
- 4.4. In *Te Puru*, the Court assessed the characteristics of a unit as it presented and found it was not a vehicle.⁵ In reaching that decision, the Court observed:⁶

The facts set out are not indicative of a vehicle, of something that moves. They are indicative of a small house, somewhere to live.

- 4.5. I now consider whether the units, as they presented, are vehicles. I consider the following evidence is relevant to this assessment:
 - 4.5.1. neither unit had suspensions
 - 4.5.2. neither unit had brakes
 - 4.5.3. neither unit had tail-lights
 - 4.5.4. neither unit could be towed without a special permit because of their widths (4.38m)
 - 4.5.5. neither unit had a warrant of fitness or registration plates
 - 4.5.6. each unit had a ranch-slider, opening out onto an affixed wooden deck, with separate steps down onto the ground
 - 4.5.7. each unit had a canopy/awning
 - 4.5.8. the units were plumbed
 - 4.5.9. the units were laid out like houses
 - 4.5.10. the units were occupied, and

⁴ [2010] NZCA 663, at paragraphs [10] to [12].

⁵ Those characteristics are set out in *Te Puru*, at paragraphs [39] to [41].

⁶ *Te Puru*, at paragraph [41].

- 4.5.11. the units were immovable for the time being and would take quite a lot of time to get each ready for towing.
- 4.6. I consider the facts set out above are not indicative of vehicles, of things that move. They are indicative of small houses, places to live. Therefore, I find that the units, as they presented during the inspection, were not vehicles.
- 4.7. As neither unit is a vehicle, section 8(1)(b)(iii) does not apply. That being so, I must now consider whether each unit was a 'building' within the general definition.⁷
- 4.8. The relevant words in section 8 are:

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); ...
- 4.9. I consider that each unit is a structure intended for occupation by people and, therefore, each is a 'building' according to this definition. Thus, both units are subject to the requirements in the Act.
- 4.10. Now I must consider whether, as at the date of the inspection, the units as they presented gave rise to a contravention of section 40 by the owners. That section provides, "A person must not carry out any building work except in accordance with a building consent".
- 4.11. In *Tan v Auckland Council*⁸ it was found that "the term 'carry out any building work' in section 40 is not limited to the physical carrying out of building work but includes the supervision or instruction of those who physically carry out building work."
- 4.12. Further, I note section 14B provides, among other things, that an "owner is responsible... for obtaining any necessary consents...".
- 4.13. Having considered the available evidence, I consider the work to construct each unit at the property:
- 4.13.1. is 'building work'
- 4.13.2. was carried out by owners, and
- 4.13.3. required building consent.⁹

⁷ [2015] NZHC 3299, at paragraph [42].

⁸ *Ibid*, at paragraph [73].

⁹ I note that Schedule 1 of the Act provides a range of exemptions from the requirement to obtain building consent. I have considered whether any of those exemptions apply in this set of circumstances, and I agree with the authority that none apply.

4.14. Therefore, at the time the authority issued the notice, I find that the owners were in contravention of section 40. This being so, each of the owners is a 'specified person' for the purposes of section 163. Consequentially, I find that the authority had grounds to specify each of the owners' names on the notice to fix.

5. Conclusion

5.1. Based on the evidence available to me, as at the date of the authority's inspection, I conclude that:

5.1.1. neither unit is a 'vehicle' or 'motor vehicle' for the purposes of section 8(1)(b)(iii)

5.1.2. each unit is a 'building' by way of section 8(1)(a).

5.2. Further, I conclude that each of the owners was in contravention of section 40, and each was a 'specified person' under section 163 because:

5.2.1. the construction of each unit is 'building work'

5.2.2. the owners had carried out that work without first obtaining building consent

5.2.3. the work was not exempt by way of Schedule 1 of the Act.

5.3. On this basis, I conclude the authority had grounds to issue the notice to fix.

6. Decision

6.1. In accordance with section 188 of the Building Act 2004, I determine that the authority had grounds to issue the notice to fix to the owners on the basis they carried out building work without first obtaining building consent in contravention of section 40. I confirm the authority's decision to issue the notice to fix.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 10 April 2025.

Peta Hird

Lead Determinations Specialist