

# Determination 2025/024

## An authority's decision to issue a notice to fix in relation to a unit and wastewater disposal system

**47 Ara Lane, Kerikeri**

### Summary

This determination considers a notice to fix issued for building work carried out without first obtaining a building consent, in contravention of section 40 of the Building Act. The determination discusses the particulars required in a notice to fix for a section 40 contravention.



**Figure 1: The unit the subject of the notice to fix<sup>1</sup>**

<sup>1</sup> Image reproduced from photographs provided by the authority from its inspection on 27 June 2024. The notice to fix also relates to a wastewater disposal system.

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

The Act and the Building Code (Schedule 1 of the Building Regulations 1992) are available at [www.legislation.govt.nz](http://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](http://www.building.govt.nz).

## 1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Peta Hird, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).<sup>2</sup>
- 1.2. The parties to the determination are:
  - 1.2.1. C and L Bourdin, the owners of the property who applied for this determination (“the owners”) and who were recipients of the notice to fix
  - 1.2.2. Far North District Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. The matter to be determined, under section 177(1)(b) and 3(e), is the authority’s decision to issue the owners with notice to fix NTF-2025-137/0 dated 16 September 2024 (“the notice”).
- 1.4. The authority issued the notice because it is of the view the owners have carried out building work without building consent, in contravention of section 40. The owners maintain the work is not building work as it does not relate to a building.
- 1.5. The structure in this case has been referred to by the authority in the notice as a “tiny home”, and in its submissions as a “dwelling”. The owners have referred to the structure as a “cabin” or “unit”. I will refer to it as “the unit”, except where it is clear I am quoting the parties. The notice also relates to a “wastewater and grey water [disposal] system”, which I will refer to as the “wastewater system” unless quoting the notice or parties.
- 1.6. An earlier version of the unit was the subject of a previous notice to fix issued to the owners, which was considered in Determination 2022/022 (“the first determination”).<sup>3</sup> The first determination concluded the unit as it presented at the time of the authority’s original inspection (modifications had been made to the unit during the first determination process) was a building, and also found the unit remained a building after it was modified. However, the notice to fix was reversed

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<sup>2</sup> The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

<sup>3</sup> Determination 2022/022 *Regarding the decision to issue a notice to and whether a unit constructed on a ‘skid’ formed from beams and the floor is a building* (1 November 2022).

because it did not clearly identify the building work carried out in contravention of section 40. Since the first determination the owners have carried out further modifications to the unit (as set out below).

## 2. Background

2.1. The first determination describes the features of the ‘above-floor’ part of the unit, which has not changed.<sup>4</sup> In summary, the unit is approximately 12m x 3.1m and is under 3m high. It is constructed of timber framing; the cladding and roof are corrugated metal. It is fitted with a gas hot water system and plumbed with sanitary and gas fittings. Electricity is supplied via a caravan-type plug and lead. There is a deck adjacent to the unit which is not attached.

2.2. The owners advise that following the first determination, a “3 axle trailer has been built and installed under the unit”, which includes a tow bar. The unit is levelled “using blocks of wood, no post or bolts”. The owners also advise there is an indoor composting toilet, and connection to water is via a garden hose connector.

2.3. On 27 June 2024, the authority inspected the unit and took photographs.<sup>5</sup> In its submission in support of this determination, the authority notes the unit:

... now appears to be on a makeshift trailer. Downpipes and plumbing still connected to dwelling but could not see where this was going. Makeshift trailer had no registration attached or break [sic] lights attached ...

2.4. Following the authority’s inspection, the parties exchanged correspondence about whether the unit was a building, and on 13 September 2024 they met to discuss the issues. The authority says it queried the greywater and wastewater disposal at this meeting and was advised it was a “self made system which was not designed or installed by an approved [suitably qualified person] and was not installed under a building consent”.

2.5. Later that day, the authority wrote to the owners stating:

You can remove the [wastewater] system completely and disconnect it from the [unit] and that would also resolve the problem. However if in the future you re connected it and/or had people occupying it, it would be considered a building once again and we would need to ensure it meets the building code.

2.6. The owners have provided the Ministry with sketches of the plumbing and drainage layout, together with photographs taken during construction of the unit. The sketches show four pipes – from the bathroom (hand basin and shower), kitchen, laundry, and composting toilet (liquid only) – leading to a gully trap beneath the unit, and from there a pipe to a sandstone filter.

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<sup>4</sup> Determination 2022/022 at paragraph 2.2.2.

<sup>5</sup> Prior to the inspection the authority had issued a notice to fix dated 19 June 2024 to the owners. This notice to fix is outside the scope of this determination.

- 2.7. The owners advise that connection to the drain from the gully trap is “via a 100mm pipe easily disconnected (no glue or permanent fixing)”, leading to a “sand/stone filter ... located about 20 meters down hill of the unit”. They say:

The unit is located in a paddock away from other building by several hundred meters in any direction with no public access.

The grey water pipe is directed to a sand/stone filter easily accessible for maintenance, from the filter it goes to a pit filled up with stone and covered with nonpermeable material. The Pit is about 6m long x 1m wide and about 700mm deep.

From there the water is discharged in the bush.

## Notice to fix

- 2.8. On 16 September 2024, the authority issued the notice to the owners. The ‘Particulars of contravention or non-compliance’ section of the notice states:

**Contrary to Section 40 of the Building Act 2004, the following building works have been undertaken without first obtaining a building consent:**

- Placement of a tiny home containing sanitary facilities
- Installation of a wastewater and grey water system without building consent

- 2.9. The notice specifies the following remedies:

**Choose one of the following options:**

1. Pursue legal options to make the building works compliant with the Building Act 2004 and the Building Code. This may include a Certificate of Acceptance (COA) from Council.

**OR**

2. Remove the unauthorised building works.

- 2.10. The notice had a compliance date of 10 March 2025.<sup>6</sup>

- 2.11. The notice accompanied a letter of the same date (16 September 2024), which stated “The building work undertaken is not exempt under schedule 1 of the Act, and [the authority] has no consented building record for this work”.

- 2.12. The owners subsequently applied for this determination.

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<sup>6</sup> The authority advised the owners by email on 13 September 2024 that the notice would “have 6 months on it” to allow the owners to apply for a determination, and that the time frame would be extended if necessary for the determination to be completed.

### 3. Submissions

#### Owners

3.1. The owners submit (in summary):

- 3.1.1. The unit is “now on wheels, movable and not permanently occupied”.
- 3.1.2. The “unit is not a building therefore the grey water management has nothing to do with the [Act] or any building regulation”.
- 3.1.3. The stone pit the wastewater is directed to is “only a (sophisticated) hole in the ground to avoid surface discharge of filtered grey water”.

#### Authority

3.2. The authority submits (in summary):

- 3.2.1. The trailer has no registration or brake lights; it is not a “roadworthy” trailer. As the unit “has plumbing/drainage and is also sitting on blocks we see this as a building not a vehicle and would expect the building itself to be on consented foundations with a consented waste water system”
- 3.2.2. “We ... do not view the [unit] as a moveable home on wheels and it is not an exempt building due to containing sanitary facilities and not being associated/in conjunction with a main dwelling.”

### 4. Discussion

- 4.1. Notices to fix are governed by sections 163 to 168. Section 164(1)(a) provides for an authority to issue a notice to fix if it considers, on reasonable grounds, that a specified person is contravening or failing to comply with the Act or its regulations.<sup>7</sup>
- 4.2. Section 165 sets out the requirements for the form and content of a notice to fix. The prescribed form provides a space to insert the “particulars of contravention or non-compliance”.<sup>8</sup> The courts and previous determinations have discussed the requirement that the recipient of a notice to fix be “fairly and fully informed” by the particulars in a notice, so they can address the identified issues.<sup>9</sup>

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<sup>7</sup> Section 163 defines a ‘specified person’ to whom a notice can be issued, and this includes the owner of the building.

<sup>8</sup> Form 13 of the Building (Forms) Regulations 2004. Section 165(1)(a) requires that a notice to fix be in the prescribed form.

<sup>9</sup> See *Andrew Housing Ltd v Southland District Council* [1996] 1 NZLR 589, which related to a ‘notice to rectify’ (the equivalent of a notice to fix in the predecessor to the Act, the Building Act 1991); *Marlborough District Council v Bilsborough* [2020] NZDC 9962 at [106]-[107]; and Determination 2024/029 *An authority’s decisions to issue a series of notices to fix* (27 May 2024) at [4.2]-[4.3].

- 4.3. In this case, the notice alleges the owners have contravened section 40 in two respects. Section 40(1) provides that a person must not carry out any building work except in accordance with a building consent.<sup>10</sup> I will consider each of the contraventions in turn.

### First contravention

- 4.4. The first section 40 contravention in the notice states “Placement of a tiny home containing sanitary facilities”.
- 4.5. The Oxford English Dictionary defines ‘placement’ as “The action or an act of placing (in various senses); the fact or situation of being placed; placing, arrangement, position”.<sup>11</sup>
- 4.6. Based on this definition, it appears the authority may be referring to the unit being placed into its position on the site. However, it is well established that relocation, on its own without further work such as connection to foundations or services, is not building work.<sup>12</sup> In any event, it is not for me to speculate as to what the authority had in mind; the particulars in the notice need to be able to be clearly understood by the recipient of the notice.
- 4.7. In the first determination, in relation to the use of the word “placement” in the notice to fix considered in that determination, I said:<sup>13</sup>

... it is unclear what the authority meant by “placement”. For example, this could be construed as relocating the units from another location to the property, locating the units within the property in a way that does not meet the criteria for exempt building work,<sup>14</sup> or alternatively, construction of the unit on the property. I am of the opinion language used in the provisions in the Act and associated regulations is preferable to avoid ambiguity, particularly the use of words defined in the Act. For example, with respect to unit B, where the contravention is in relation to the construction of the unit without first obtaining building consent, the defined term “construct” (instead of “placement”) is appropriate.

- 4.8. I continue to maintain this view. The word “placement” is unclear in terms of what the building work is that it is alleged has been carried out without building consent.

<sup>10</sup> Section 41(1)(b) states that a building consent is not required if the building work falls within the exemptions under Schedule 1 of the Act. Schedule 1 prescribes building work for which building consent is not required. However, the owners in this case do not rely on a Schedule 1 exemption.

<sup>11</sup> Oxford English Dictionary (online publication), accessed on 30 April 2025.

<sup>12</sup> See the definitions of ‘building work’ and ‘construct’ in section 7; *Marlborough District Council v Bilsborough* [2020] NZDC 9962 at [91]; and previous determinations, for example 2022/018 *Regarding a notice to fix issued for a relocated unit* (5 October 2022) at para 4.66.

<sup>13</sup> Determination 2022/022 at paragraph 4.54.

<sup>14</sup> Closer than the measure of its own height to any residential building or to any legal boundary.

- 4.9. The parties have made submissions as to whether the unit is a vehicle and therefore not regulated under the Act, or a building. However, because of how the notice is written, I do not need to decide that issue. A notice to fix for a contravention of section 40 can only be issued in relation to ‘building work’. The definition of ‘building work’ in section 7 (a)(i) necessarily relates the work to a building.<sup>15</sup> Because the notice refers to “placement” and not building work, I do not need to consider whether the unit is a building or not.

## **Second contravention**

- 4.10. The second contravention in the notice states “Installation of a wastewater and grey water system without building consent”.
- 4.11. In my view, this wording does not sufficiently detail or describe the building work that the authority believes has been carried out in contravention of section 40.
- 4.12. In correspondence to the owners, the authority said that if the wastewater system was removed and disconnected from the unit that would resolve the problem, but if in the future it was reconnected or people occupied it, it would be considered a building again.
- 4.13. I note the wastewater system was installed during the construction of the unit, which I previously determined was a building, and therefore the installation of the wastewater system was building work as defined in section 7.

## **Conclusion**

- 4.14. The particulars of contravention in the notice are inadequate because they do not clearly identify or describe the building work alleged to have been carried out in contravention of section 40.
- 4.15. Therefore, the notice did not fairly and fully inform the owners about the basis for the notice and does not satisfy the requirements for a notice to fix.

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<sup>15</sup> Under the paragraph (a)(i) definition of ‘building work’ in section 7, which states building work “means work ... for, or in connection with, the construction, alteration, demolition or removal of a building”.

## **5. Decision**

- 5.1. In accordance with section 188 of the Building Act 2004, I reverse the authority's decision to issue notice to fix NTF-2025-137/0.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 26 May 2025.

**Peta Hird**

**Lead Determinations Specialist**