

Determination 2025/039

Regarding a notice to fix issued for a unit the owners consider is a vehicle

18 Kent Terrace, Riverhead, Auckland

Summary

This determination concerns the issue of a notice to fix for a unit the owners consider is a vehicle. The unit was moved to the property and connected to services. The determination considers the content of the notice to fix issued for carrying out building work without building consent.



Figure 1: The unit. (Insert: the unit being placed on site)

Unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”).

The Act and the Building Code are 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, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).¹
- 1.2. The parties to the determination are:
 - 1.2.1. Tong Family Trustee Limited, the owner of the property (“the owner”), who applied for this determination.
 - 1.2.2. Auckland Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. This determination arises from the decision of the authority to issue a notice to fix for a unit that the owner considers is a vehicle. The authority issued the notice to fix because it considered that the unit met the definition of a building under section 8 of the Act, and the ‘establishment’ of the unit on the site constituted building work that required building consent.
- 1.4. The matter to be determined, in terms of sections 177(1)(b) and (3)(e), is the authority’s decision to issue notice to fix NOT21762119 for a contravention of section 40.
- 1.5. In determining the matter, I will consider whether the Act and regulations apply to the unit, and whether the notice to fix was issued for building work that was carried out in contravention of section 40.

2. The background and building work

- 2.1. The matter concerns a unit on the applicant’s property. The unit was constructed off site by a manufacturer and was relocated to the site using a truck mounted crane, which lifted the unit over a boundary fence. A freestanding timber deck has been constructed adjacent to the unit.

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

- 2.2. The unit was constructed on a galvanised steel trailer. Although originally fitted with wheels, the unit now rests on wooden blocks. It does not have a towbar, vehicle registration, or a current warrant of fitness.
- 2.3. The unit measures approximately 10m long and 3m wide, with a floor area² something less than 30m². The owner states the unit is positioned 4.2m from the nearest property boundary and is 3.7m high from the ground.
- 2.4. The unit includes two bedrooms, a bathroom hand basin, a laundry, a shower and a kitchenette, which appear to have been present from the time of its construction.³
- 2.5. The unit is connected to services on site. The potable water supply is provided to via an underground pipe from a nearby rainwater tank, with a pump located adjacent to the unit. The electricity supply is from the adjacent dwelling.⁴ The wastewater from the kitchen, bathroom and toilet facilities in the unit is pumped to the main line serving the dwelling. The owner states the wastewater connection is temporary.
- 2.6. The authority carried out a site visit on 27 February 2025, and observed the unit was occupied. Following this site visit, the authority issued notice to fix NOT21762119 on 11 March 2025 (“the notice to fix”) – refer paragraph 4.10.
- 2.7. In communication with the owner, the authority stated: “For clarification, I have identified the [unit] as a building under the Building Act 2004, so the work to establish it on your property would have required a building consent.”
- 2.8. Following the issuing of the notice to fix, the owner applied for this determination.

3. Submissions

The owner

- 3.1. The owner contends the authority should not have issued the notice to fix. The owner had reviewed the Ministry’s ‘Tiny house guidance’⁵ and previous determinations and had concluded the unit is a vehicle⁶ and not a building under the Act.

² In relation to a building, ‘floor area’ is the square meter area of all interior spaces (Clause A2 Interpretation, Schedule 1 of the Building Regulations 1992).

³ Premium tiny homes website via wayback machine. Accessed 25/6/2025

<https://web.archive.org/web/20250422003543/https://www.premiumtinyhomes.co.nz/> (22 April 2025)

⁴ I have not received any information to confirm whether a registered electrician completed work required to the main dwelling for the supply of electricity to the unit.

⁵ Tiny House Guidance, Ministry of Business, Innovation & Employment (November 2021)

⁶ As defined under section 2(1) of the Land Transport Act 1998.

- 3.2. The owner submitted that:
- 3.2.1. the unit is occupied by people on a long-term basis⁷, but it is not “immovable” because, although it does not have a towbar, it was designed to be movable and is capable of being relocated
 - 3.2.2. the unit is not fixed to the ground and is “fully movable”
 - 3.2.3. the connections to services are “temporary and detachable”.
- 3.3. The owner advised that the unit “was never intended to be towed on the road due to narrow access through our gate”, and the unit’s wheels are currently stored on-site in the garage. The wheels were removed and replaced with wooden blocks “for better stability and to extend the useful life of the wheels and tyres”.

The authority

- 3.4. The authority did not make a submission in response to the application for determination but provided copies of the notice to fix and covering letter, photographs taken during its site visit, as-built wastewater plans for the dwelling, and an aerial image of the site.
- 3.5. The photographs show:
- 3.5.1. interior aspects of the unit, including the kitchen with a plumbed in sink, bathroom with a handbasin, shower, toilet and laundry
 - 3.5.2. the wastewater pump, rainwater tank and electrical connection
 - 3.5.3. external gas bottles for hot water supply
 - 3.5.4. the unit resting on the trailer chassis and timber blocks with packers (no towbar or means of mobility is visible)
 - 3.5.5. the adjacent timber deck, including its length, width, height and subfloor structure.

4. Discussion

- 4.1. The matter to be determined is the authority’s decision to issue a notice to fix for a contravention of section 40.
- 4.2. The first consideration is whether the unit is a building⁸ and therefore regulated under the Act. This is relevant because the ability of the authority to issue a notice to fix under section 164 depends on there being building work that is regulated.

⁷ The owner noted that the unit was occupied at the time of the notice but was not currently occupied.

⁸ Under section 8(1)(b)(iii) some vehicles will be buildings, when they are immovable and occupied on a long-term or permanent basis.

4.3. Section 8 defines what ‘building’ means and includes:

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; ...

4.4. 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 “for, or in connection with, the construction, alteration, demolition, or removal of a building”. So, for the authority to issue a notice to fix for contravention of section 40, the unit must fall within the definition of ‘building’ and ‘building work’, as defined by section 7, must have taken place that required building consent.

4.5. The Court of Appeal has considered how to determine whether a structure is a building or a vehicle in *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* (“Te Puru”).⁹ According to the Court of Appeal, if a person says that the unit is a vehicle, then the first thing to assess is whether it is.¹⁰

4.6. In *Te Puru*, the Court assessed the characteristics of a unit as it presented and found it was not a vehicle.¹¹ In reaching that decision, the Court observed:¹²

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

4.7. In this case, the unit was transported to the site on a truck and craned onto the site. The unit does not have a tow bar, warrant of fitness, or vehicle registration. It is not resting on wheels and there is no indication that it is intended to be moved on its own wheels. These features indicate that the unit is not something moves or is moved, but rather is a structure intended to remain in place.

4.8. In addition, the unit is connected to services, which indicates that it is not simply being stored at the site but is being used or intended to be used.

⁹ *Te Puru Holiday Park Ltd v Thames-Coromandel District Council* HC Auckland CRI-2008-419-25 (25 May 2009).

¹⁰ *Ibid.* at [10] to [12].

¹¹ The characteristics in *Te Puru* are set out at paragraphs [39] to [41].

¹² *Te Puru* [41].

4.9. I am of the view that the unit is a building under section 8(1)(a). As such, any work associated with it may be building work regulated under the Act.

4.10. The next consideration is the contravention identified in the notice to fix. The notice stated the following particulars of contravention or non-compliance:

[The authority] conducted a site inspection in relation to unauthorised building works on 27/02/2025

As a result of this inspection, [the authority] has identified that building work undertaken would have required building consent.

Contrary to **s.40 of the Building Act 2004** (the Act), the following building works have been undertaken at

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without first obtaining a building consent:

Established a 30m² tiny house on the front boundary of the property. The tiny house contains a kitchen including a sink with associated plumbing and drainage. A bathroom with a shower, hand basin, toilet and a washing machine with associated plumbing and drainage.

4.11. The notice to fix refers to the unit being “established” on the site. This term does not correspond to any of the defined terms such as “construct” or “building work” in section 7. Further, it is well established that relocation alone, without connections to foundations or services, is not building work.¹³

4.12. The particulars describe various features of the unit. However, it appears that the kitchen, bathroom, laundry and toilet were pre-installed by the manufacturer (as confirmed by archived information from the manufacturer’s website). Meaning that work to install sanitary fixtures in the unit was carried out by the manufacturer, not the owner.

4.13. While there may have been building work undertaken onsite, such as connections to sewerage or stormwater systems, the notice does not identify that work or clearly describe what the building work was that the authority considers required building consent. In this respect I consider the notice to fix does not fairly and fully inform the owners of the basis for the notice to fix so they can address the identified issues.¹⁴

¹³ See the definition of ‘building work’ and ‘construct’ in section 7; *Marlborough District Council v Bilsborough* [2020] NZDC at [91]; and previous determinations such as 2022/018 *Regarding a notice to fix issued for a relocated unit* (5 October 2022) at [4.54].

¹⁴ See *Andrew Housing Ltd v Southland District Council* [1996] 1 NZLR 589; *Marlborough District Council v Bilsborough* [2020] NZDC at [106]-[107]; and previous determinations such as 2024/029 *An authority’s decisions to issue a series of notices to fix* (27 May 2024) at [4.2]-[4.3].

- 4.14. For these reasons, I consider that the notice is deficient as it does not adequately inform the owner of the nature of the contravention or the building work that to the authority claims required building consent.
- 4.15. In conclusion, while I have determined that the unit is a building under section 8(1)(a), which means that work carried out in connection with it may be building work regulated under the Act, the notice to fix does not clearly identify building work that the authority contends required building consent.

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 NOT21762119.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 11 August 2025.

Peta Hird

Lead Determinations Specialist