

Determination 2026/003

An authority's decision to issue a notice to fix in relation to construction of a unit without building consent

40 Niccone Place, Bombay, Auckland

Summary

This determination considers an authority's decision to issue a notice to fix for contravention of sections 40 and 17 of the Building Act 2004. The determination considers whether the unit as modified is a vehicle or a building, and whether it complies with Building Code clauses D1, E2 and G13.



Figure 1: Photograph of the unit (attached in the notice to fix)

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

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. T Tombleson, the owner of the unit and recipient of the notice to fix (“the applicant”)
 - 1.2.2. S & D Prasad, the owners of the property where the unit is located, and recipients of the notice to fix (“the property owners”)²
 - 1.2.3. Auckland Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. The matter to be determined³ is the authority’s decision to issue notice to fix NOT21762095 dated 11 March 2025 (“the notice”). The notice was issued for contraventions of sections 40 and 17 of the Act, in relation to a unit at the property (see Figure 1).
- 1.4. The determination considers whether there was building work carried out that required building consent, which turns on whether the unit as modified is a vehicle or a building. If the unit is a building, I must also consider whether the building work complies with Building Code clauses D1 *Access routes*, E2 *External moisture* and G13 *Foul water*.

2. Background

- 2.1. In 2023, the unit was constructed onsite by a cabin/tiny house manufacturing company. The unit is approximately 30m² and has two bedrooms, a living/kitchen area and a bathroom (including a hand basin, shower and chemical toilet).

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

² The property owners did not make submissions during the determination process.

³ Under section 177(1)(b) and (3)(e).

- 2.2. The unit is used for sleeping purposes and is not used in conjunction with a main dwelling.
- 2.3. A ground level deck was constructed adjacent to the unit (see Figure 1) but is not fixed to the unit. There are timber members between the unit and deck that appear to be there to stabilise the unit.
- 2.4. There are two timber steps leading from the deck to the unit. A diagram provided by the applicant shows that the stairs have uniform risers and depth of tread. However, it is apparent in the construction (see Figure 2) that the risers for the two timber steps differ. The stairs overhang the edge of the deck and are not attached to either the deck or the unit.



Figure 2: The stairs from the deck to the unit, with arrows demonstrating the difference in riser height

- 2.5. There are four solar panels on the roof and a battery and inverter inside the unit, as well as a caravan plug attached to the outside of the unit which can be plugged into to a generator. There are gas cannisters on the outside of the unit, which are placed on a platform adjacent to the unit.
- 2.6. The water supply is from rainwater collected from the roof and discharged to a nearby water tank.
- 2.7. According to the manufacturer’s website, the wall panels of the unit are “75mm thick Polystyrene steel insulated panel[s]” and the flooring is plywood.⁴ There is no information about whether there is an internal lining to the walls. Photographs show the plywood flooring visible from under the unit with no under-floor insulation, but I have received no details for the junction between the wall panels and floor.

⁴ <https://easy2build.co.nz/product/protable-cabin-kitset-10mx3m>, accessed 28/01/2026.

- 2.8. On 20 September 2024, the authority undertook a site visit at the property in response to a complaint. Following this, the authority issued the first notice to fix (NOT21741991) on 27 September 2024 (“the first notice”), for a contravention of section 40 in respect of the unit. This determination does not consider the first notice.
- 2.9. Following receipt of the first notice, the applicant made the following modifications:
- 2.9.1. The unit was put onto a trailer with two axles, four wheels and a tow bar.
- 2.9.2. The pipe that runs from the unit’s gutter into the water tank was modified so it is not fixed at either end and “[rests] on the opening of the tank”.
- 2.9.3. A 75-litre “roll away tank system” has been connected to collect foul water, with the foul water disposed of at a nearby dump station.
- 2.10. On 13 February 2025, the authority undertook a further inspection to check whether the first notice had been complied with.
- 2.11. On 11 March 2025, the authority issued the second notice (NOT21762095) which superseded the first notice; it is this second notice that is the subject of this determination. The accompanying cover letter states that compliance with the first notice had not been achieved because “the dwelling remains in place, and no COA (Certificate of Acceptance) application has been lodged”.
- 2.12. The notice identified the ‘particulars of contravention or non-compliance’ as:

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

- A building measuring approximately 30 square metres was [sic] been constructed on-site. The owner of the building has raised the building and attached a drawbar, wheels, and building levellers at each corner since last visit. The structure is now supported with the aid of timber blocking.

The building does not meet the criteria for a vehicle, as no suspension has been provided, and the wheels are directly fixed to the building. Additionally, no wiring has been provided for brake lights, taillights, turn signals, or other standard vehicle features such as shocks, springs, and brakes. The structure also lacks a warrant of fitness (WoF), vehicle registration (Rego), or an electrical fitness certificate. Also as [sic] occupied on a permanent basis.

- The building is occupied on a permanent basis as a self-contained dwelling, independent of any main dwelling. It comprises:
A living area space, bedrooms and sanitary fixtures, namely a shower, a vanity, and a provision for a toilet (pipe cut in place and sealed off) in the bathroom area, a kitchen sink, greywater from the kitchen sink and shower is discharged into a 75L waste tank.

- Associated plumbing pipework have [sic] been installed for the sanitary fixtures, but all wastewater is discharging to inappropriate outfalls (no on-site effluent system). Additionally, water was observed pooling under the building, emitting a strong odour due to inadequate stormwater management.

The structure does not meet the requirements for an exemption under Schedule 1, Clause 3A of the Building Act 2004, which applies to single-storey detached buildings not exceeding 30 square metres in floor area. Given its permanent occupancy and failure to meet compliance requirements, the structure remains classified as a building under the Act and required a building consent.

Contrary to **s.17** of the Building Act 2004, the following building work does not comply with the requirements of schedule 1 of the Building Regulations 1992 (the Building Code)

D1 – Access

Access to this building is not meeting requirements of D1 Access as stairs are required to be uniform in size.

D1.3.1 Access routes shall enable people to:

- safely and easily approach the main entrance of buildings from the apron or construction edge of a building,
- enter buildings,

E2 External Moisture

The cladding has been installed incorrectly not to manufacturers specifications with the lack of flashings/ water pooling under the building, therefore does not meet the requirement of E2 External Moisture.

E2.2 Buildings must be constructed to provide adequate resistance to penetration by, and the accumulation of, moisture from the outside

E2.3.2 Roofs and exterior walls must prevent the penetration of water that could cause undue dampness, damage to building elements, or both.

E2.3.4 Building elements susceptible to damage must be protected from the adverse effects of moisture entering the space below suspended floors.

G13 Foul water

The installation for the sanitary fixtures in the bathroom and kitchen area does not meet the requirements of G13 Foul Water as no appropriate outfall is on site.

G13.2 Buildings in which sanitary fixtures and sanitary appliances using water-borne waster disposal are installed must be provided with –

- an adequate plumbing and drainage system to carry foul water to appropriate outfalls; and
- if no sewer is available, an adequate system for the storage, treatment, and disposal of foul water.

G13.3.1 The plumbing system shall be constructed to:

- convey foul water from buildings to a drainage system,

2.13. The remedies stated in the notice were:

Choose one of the following options to achieve compliance:

- (1) Pursue any legal option to achieve compliance with the requirements of the Building Act 2004 and the New Zealand Building Code. This may include applying for and obtaining a Certificate of Acceptance (COA) in accordance with s.96 of the Act; or
- (2) Remove the unauthorised building works

3. Submissions

The applicant

3.1. The applicant submits (in summary):

- 3.1.1. the unit is a vehicle or “transportable vehicle” but is not being used on roads
- 3.1.2. the unit was “initially built as a ‘tiny home’ but has since been modified to include wheels & a drawbar etc so that it classifies and meets the legal definition of a ‘vehicle’”
- 3.1.3. they followed MBIE’s tiny house guidance⁵
- 3.1.4. because the unit is a vehicle (not a building), the construction of the unit did not need need a building consent and does not need to comply with the Building Code
- 3.1.5. all foul water is transported off site to a dump station, and the pooling of water under the unit was caused by recent rainfall.

The authority

3.2. The authority submits (in summary):

- 3.2.1. the unit, when constructed, did not have any features of a vehicle and “the addition of the four wheels and tow bar does not meet the legal or functional definition of a vehicle”
- 3.2.2. there is no main dwelling on the property, so the unit cannot be considered an “exempt accessory building (eg sleepout)”, and the presence of sanitary facilities and plumbing work means the unit is not exempt under clause 3A of Schedule 1

⁵ Building Performance *Guidance - Tiny Houses*. Ministry of Business, Innovation and Employment (first edition published November 2021).

- 3.2.3. there are “ongoing concerns regarding access, external moisture and wastewater discharge, and these compliance matters present health and safety issues for the occupants”.

4. Discussion

- 4.1. The matter to be determined is the authority’s decision to issue the notice to the applicant under section 164 of the Act. To determine this matter, I must first consider whether the unit is a ‘building’ for the purposes of the Act.

Is the unit as modified a vehicle or a building?

- 4.2. According to the Court of Appeal in *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* (“*Te Puru*”), if a person says that something is a vehicle, then the first thing to assess was whether it is.⁶
- 4.3. In *Te Puru*, the Court assessed the characteristics of a unit as it presented and found it was not a vehicle.⁷ In reaching that decision, the Court observed:⁸

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

- 4.4. I now consider whether the applicant’s unit, as it presented at the time of the notice (after modifications were made), is a vehicle. I consider the following evidence is relevant to this assessment:
- 4.4.1. the unit measures approximately 30m²
 - 4.4.2. it has wheels, axels, a chassis and tow bar
 - 4.4.3. it has a layout similar to a house
 - 4.4.4. it has two bedrooms, a living/kitchen area, shower unit, hand basin and kitchen sink
 - 4.4.5. there is a pipe that runs from the gutter into a water tank to collect water from the roof
 - 4.4.6. there is piping leading to a detachable tank system to collect foul water
 - 4.4.7. it uses a chemical toilet which has no attachment to the foul water system
 - 4.4.8. it has gas cannisters on the outside of the unit, which are placed on a platform constructed adjacent to the unit

⁶ [2010] NZCA 663, at paragraphs [10] to [12].

⁷ Those characteristics are set out in *Te Puru*, at paragraphs [39] to [41].

⁸ *Te Puru*, at paragraph [41].

- 4.4.9. it does not have any suspension, brakes, or brake/tail lights
 - 4.4.10. the width of the unit at 3.1m exceeds the maximum dimension for towing on the road (2.55m) and is subject to various restrictions and requirements⁹
 - 4.4.11. it does not have a warrant of fitness or registration plates
 - 4.4.12. there are timber blocks supporting the chassis
 - 4.4.13. the chassis has two 'legs' on the corners adjacent to the tow bar which appear to have jacks attached, which would interfere with the unit's ability to be towed other than perhaps repositioning the unit on site
 - 4.4.14. the unit would require several modifications to prepare it to be towed.
- 4.5. Having considered the available evidence, I am of the opinion the unit is not indicative of a vehicle, of something that moves. Therefore, I conclude that the unit is not a vehicle.
- 4.6. I note that the applicant has made submissions in relation to section 8(1)(b)(iii) of the Act.¹⁰ However, as I have concluded the unit is not a vehicle, section 8(1)(b)(iii) does not apply.
- 4.7. I must now consider whether the unit is a 'building' within the general definition. Section 8(1)(a) of the Act provides that the term 'building' "means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels)...".
- 4.8. The unit is a structure which is intended for occupation by people, and falls within the definition of a 'building' in section 8(1)(a) of the Act.

Was there a contravention of the Act?

- 4.9. The notice alleges contraventions of sections 40 and 17, and I consider each of these in turn.

Section 40

- 4.10. Section 40(1) of the Act provides that a person must not carry out any building work except in accordance with a building consent. As I have concluded that the unit is a building, it follows that the work to construct and modify the unit was 'building work'.

⁹ NZ Transport Agency Waka Kotahi – Tiny Homes (<https://nzta.govt.nz/vehicles/vehicle-types/vehicle-classes-and-standards/vehicle-dimensions-and-mass/tiny-homes>, accessed 28/01/2026).

¹⁰ Section 8(1)(b)(iii) provides that the term 'building' includes "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".

- 4.11. 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.¹¹
- 4.12. Therefore, the construction and modification of the unit was building work carried out in contravention of section 40. I also consider that the notice “fairly and fully” informed the applicant regarding the alleged contravention.¹²

Section 17

- 4.13. Section 17 of the Act states “All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that work”.
- 4.14. The notice alleges contraventions of Building Code clauses D1 *Access routes*, E2 *External moisture* and G13 *Foul water*, which I will address in turn.

D1 – Access routes

- 4.15. The notice states that clause D1 is not met “as stairs are required to be uniform in size”. It refers to performance clause D1.3.1 which provides:

Access routes shall enable people to :

- (a) safely and easily approach the main entrance of buildings from the apron or construction edge of a building,
- (b) enter buildings...

- 4.16. Although the specific performance clause was not referred to in the notice, D1.3.3(f)(ii) provides that access routes shall have stair treads which have uniform rise within each flight. As noted in paragraph 2.4, the risers are not uniform in height. Therefore, the stairs do not comply with clause D1.3.3(f)(ii) and there is a contravention of section 17 in this regard.
- 4.17. I also note that the stairs appear to be unsupported at the back (see Figure 2). This may result in the stairs being unstable, which I consider would not enable ‘safe and easy movement’ into and out of the unit. The authority has also raised concerns about the slip resistance of the deck and stairs in its submissions. However, these issues were not identified in the notice or in the accompanying cover letter and so I do not consider them further.

¹¹ Schedule 1A, which exempts small stand-alone dwellings, was not in force at the time this unit was constructed nor when it was modified, and I have not considered whether it would meet the criteria in Schedule 1A.

¹² Previous determinations have discussed the requirement that owners are “fairly and fully” informed by the particulars in a notice to fix, so that they can address the identified issues. See for example Determination 2024/016 *The issue of a notice to fix for building work associated with a two storey building with sanitary fixtures* (11 April 2024), at [4.12-4.13]).

E2 – External moisture

- 4.18. The notice states that clause E2 is not met as “the cladding has been installed incorrectly not to manufacturers specifications with the lack of flashings/water pooling under the building”.
- 4.19. The objective of clause E2 is to “safeguard people from illness or injury that could result from external moisture entering the building”. The functional requirement is that buildings are “constructed to provide adequate resistance to penetration by, and the accumulation of, moisture from the outside”.
- 4.20. The authority considered performance clauses E2.3.2 and E2.3.4 were not met. These clauses provide:
- E.2.3.2** Roofs and exterior walls must prevent the penetration of water that could cause undue dampness, damage to building elements, or both.
- E2.3.4** Building elements susceptible to damage must be protected from the adverse effects of moisture entering the space below suspended floors.
- 4.21. Regarding clause E2.3.2, based on the photos provided, I note:
- 4.21.1. the lack of eaves means more rain will hit the exterior surface
- 4.21.2. there is a lack of head flashings around window joinery, resulting in reduced deflection of moisture from the window penetrations
- 4.21.3. the details at panel junctions are not clear, and there may be potential for wind driven moisture to enter at these junctions
- 4.21.4. there is a crack in the sealant at the junction between the wall panels and the base of the unit on one elevation, which has potential for moisture ingress.
- 4.22. These features increase the potential of external moisture penetration. The wall panels are steel-skinned with expanded polystyrene (EPS) cores; they are load-carrying components and as well as the wall cladding system. In general terms, exterior claddings are required to last at least 15 years with normal maintenance, and structural elements 50 years. The notice to fix does not raise any issues in regard to durability of the structure, and therefore my considerations are limited to clause E2.
- 4.23. Although the EPS core is moisture-resistant, external moisture breaching the exterior skin can spread through the EPS by capillary action. The effects of such moisture ingress can include reduced insulation (R-value) and conditions that support mould growth (eg at joints). Prolonged moisture exposure may lead to damage to timber elements incorporated within panels or other adjacent or connecting building elements should accumulate.

- 4.24. As such, penetrations and joins require adequate weathertightness detailing to avoid moisture ingress into the panels at seams, corners and penetrations.
- 4.25. I have no information about whether there are timber top and bottom plates in these panels or lintels for window and door openings (and if any, what level of treatment), nor the detail of the junction between the panels and the ply flooring. Also, I have not received evidence of moisture ingress to the interior.
- 4.26. Photos indicate the panels are riveted on the external face to a channel or angle at their base, but I have no information on whether the system has been designed so that if any water does enter the panels it cannot accumulate at the junction with the ply flooring or other building elements.
- 4.27. I consider the cracked sealant can be addressed as part of normal maintenance. In all other respects in regard to the lack of flashings, based on the information available, I am unable to form a view in regard to potential damage to building elements as a result of external moisture ingress.
- 4.28. In conclusion, I do not consider there is sufficient evidence to form a view on compliance with clause E2.3.2 in respect of the panel system and lack of flashings as described in the notice.
- 4.29. Regarding clause E.2.3.4, there is evidence of water pooling on the ground beneath the unit. However, the type of plywood used underneath the unit is either treated or coated to resist damage from moisture, and there is no evidence of damage to the plywood or other subfloor elements. I also note that due to the height above ground there is sufficient ventilation to address moisture vapour that might reach those surfaces underneath the unit.
- 4.30. In my view, there is no evidence that the plywood used underneath the unit or other sub-floor elements of the unit will be susceptible to damage due to moisture entering the space below the suspended floor. Therefore, I do not consider there is non-compliance with clause E2.3.4.
- 4.31. As such, there is no contravention of section 17 with regard to clause E2.

G13 – Foul water

- 4.32. The notice states “the installation for the sanitary fixtures in the bathroom and kitchen area does not meet the requirements of [clause] G13 Foul Water as no appropriate outfall is on site”.
- 4.33. The objective of clause G13 is to “safeguard people from illness due to infection or contamination resulting from personal hygiene activities, and safeguard people from loss of amenity due to the presence of unpleasant odours or the accumulation of offensive matter resulting from foul water disposal”.

4.34. The functional requirement is:

G13.2 Buildings in which sanitary fixtures and sanitary appliances using water-borne waste disposal are installed must be provided with –

- (a) an adequate plumbing and drainage system to carry foul water to appropriate outfalls; and
- (b) if no sewer is available, an adequate system for the storage, treatment, and disposal of foul water.

4.35. The term ‘foul water’ means the discharge from any sanitary fixtures or sanitary appliances.¹³ For the unit, this includes discharge from the kitchen sink, bathroom sink and shower but excludes the toilet (which is a chemical toilet, not a plumbed system).

4.36. The notice refers to performance clause G13.3.1(a) which provides “The plumbing system shall be constructed to convey foul water from buildings to a drainage system”.

4.37. The plumbing system in the unit consists of pipes on the ground surface to convey foul water from the sanitary fixtures to the 75-litre tank.

4.38. In this case, there is no sewer connection available, and therefore performance clause G13.3.4 is also relevant. Clause G13.3.4(a) provides that “If no sewer is available, facilities for the storage, treatment, and disposal of foul water must be constructed with adequate capacity for the volume of foul water and the frequency of disposal”.

4.39. Whether the 75-litre tank provides adequate capacity for the storage of foul water is dependent on the volume produced and the frequency of disposal. I note the unit has a low occupancy (two people), the foul water collected does not include waste from the toilet system, the level in the tank can easily be monitored, and that regular disposal would be required. I consider the tank is adequate in the circumstances and that the need for regular disposal at an appropriate dump station is a matter of normal maintenance for this system.

4.40. I also note that the tank is easily accessible for removal and disposal of foul water (to comply with clause G13.3.4(b)) and permits easy cleaning and maintenance (to comply with clause G13.3.4(i)). There is no suggestion the plumbing system and tank do not comply with clause G13.3.4(g) in regard to odour nor were other issues of non-compliance with clause G13.3.4 identified.

4.41. In conclusion, I consider that clause G13 is complied with and there is no contravention of section 17 in this regard.

¹³ Building Code clause A2 *Interpretation*.

The remedy

4.42. Section 165 of the Act prescribes the form and content of a notice to fix. Section 165(1)(c) states that if a notice to fix “relates to building work that is being or has been carried out without a building consent, it may require the **making of an application** for a certificate of acceptance for the work” [my emphasis]. In this case, the notice incorrectly referred to “applying for **and obtaining**” [my emphasis] a certificate of acceptance, rather than simply “applying” for one.

Conclusion

4.43. There was a contravention of section 40 in relation to the construction and modification of the unit without building consent, and a contravention of section 17 in relation to clause D1.

4.44. However, I have found there was no contravention of section 17 in relation to clauses G13 and there is insufficient information to reach a conclusion on clause E2. Further, the remedy was not in accordance with section 165(1)(c). For those reasons, I reverse the decision to issue the notice. I leave it for the authority to make a new decision, taking into account the findings of this determination.

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 NOT21762095 dated 11 March 2025.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 30 January 2026.

Peta Hird

Lead Determinations Specialist