

Determination 2026/016

An authority's decision to issue a notice to fix for a greywater disposal system, and whether a shed is exempt under Schedule 1 of the Building Act from needing a building consent.

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Summary

This determination concerns an authority's decision to issue a notice to fix for building work it considered required a building consent. The determination considers whether the installation of a drainage system that disposes of grey water from a unit is building work, and whether construction of a shed is exempt from requiring a consent under Schedule 1 of the Building Act. It also considers the form and content of the notice to fix.



Unit B



Unit C

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 of the Act – Building work for which building consent not required.

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, 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. the owners of the property, L and C Bourdin (“the owners”), who applied for this determination and who were recipients of the notice to fix.
 - 1.2.2. Far North District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. I consider the owner of Unit B (C Coffey) is a ‘person with an interest’ in this matter.
- 1.4. This determination arises from the authority’s decision to issue a notice to fix because it is of the view the owners carried out building work without building consent, in contravention of section 40.
- 1.5. The owners’ property contains a number of units/structures. Unit A was the subject of two previous determinations.² I have retained this name for this unit for reasons of clarity, but it is not discussed in this determination.
- 1.6. Unit B was towed to the owners’ property in July 2024, and the associated greywater system was installed at the same time. In the owners’ view, the unit is a vehicle and falls outside of the scope of the definition of “building” in the Act. As a result, they contend no building work was carried out, and the authority is unable to issue a notice to fix in respect of the greywater system.
- 1.7. The matter to be determined³ is the authority’s exercise of its power of decision in issuing notice to fix NTF-2025-458/0 on 9 April 2025.

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

² Determination 2025/024 *An authority’s decision to issue a notice to fix in relation to a unit and wastewater disposal system*, (26 May 2025) and Determination 2022/022 *Regarding the decision to issue a notice to fix and whether a unit constructed on a ‘skid’ formed from beams and the floor is a building* (1 November 2022).

³ In terms of section 177(1)(b) and (3)(e).

1.8. In deciding this matter, I must consider, with regard to Unit B:

- whether the greywater drainage system is building work (section 7) in connection with a building (section 8);
- whether the greywater drainage system constitutes an ‘other system’ that is attached to a structure (for the purpose of section 8(1)(b)(i));
- this requires considering first if Unit B is a ‘building’ (section 8(1)(b)(iii)); and
- if Unit B is a ‘building’, whether the construction of the greywater drainage system required a building consent (section 40).

1.9. With regard to Unit C (“the shed”), which the owners maintain is five separate buildings, I must consider:

- whether it is one building or multiple / separate buildings.
- whether there were any exemption(s) that apply under Schedule 1.

1.10. This determination does not consider the compliance of the building work with the Building Code (section 17), nor the plumbing and drainage for the composting toilet in Unit A which has been considered in Determination 2025/024.⁴

2. Background and building work

2.1. Regarding Unit B, the relevant features and characteristics are:

- It was towed from the manufacturer’s place of business in Raglan, to the applicants’ property, in July 2024.⁵
- It is constructed on a purpose-made trailer, complete with axles, suspension system, wheels, towbar, and lights.
- It is approximately 9.1m long, 2.9m wide, and 3.2m high, and includes a bedroom, kitchen and laundry space, living / dining area.
- It has a current warrant of fitness, vehicle licence, and registration plate.
- It is not attached to any other structure, such as a veranda, deck or porch.
- Access to Unit B from ground level is via several (stacked) timber pallets, which are not attached to the unit.

⁴ Determination 2025/024 *An authority’s decision to issue a notice to fix in relation to a unit and wastewater disposal system*, (26 May 2025) at paragraph 4.13.

⁵ Google maps NZ estimates a travel distance of approximately 395 kms more or less (accessed 11 March 2026).

- It is located on a relatively flat and open space. There are no adjacent structures or other features, such as fences, retaining walls etc).
- It has a self-contained composting toilet.
- It contains a kitchen sink, shower, wash hand basin and washing machine. Associated pipework is fixed to the underside of the unit with the end discharging into a gully trap. It appears the end of the discharge pipe can be lifted out of the gully trap.
- It has a caravan / motorhome type external electrical socket.
- It has a garden hose-type external connection for the supply of water.
- Surface water from the roof is collected in a proprietary water container via some guttering and a downpipe. The water container is not attached to the unit. It appears the downpipe can be lifted out of the water container.
- Two 45kg gas cylinders are located adjacent to one end of the unit, which are connected indirectly to an external wall mounted proprietary water heater. The gas cylinders are supported on the ground and connected to the unit via a metal chain and several gas lines.
- It incorporates several proprietary stabilizers like those used on some caravans. It appears they require a person to pull a handle then lift / fold the stabilizers into a horizontal position when being stowed prior to towing.
- The wheels have been removed, and it is supported on several timber blocks. While it is not clear in the photographs, the timbers appear to be positioned on the ground and are not fixed together or fixed to the trailer chassis.

2.2. Regarding Unit C, the specific engineer design for the shed was completed in February 2022. It is made up of five parts – a three-bay pole shed and four parts that the owner describes as “lean-tos” or “carports”. It is assumed it was constructed sometime after that date but before the authority’s inspection on 27 March 2025. Relevant features and characteristics of the shed are:

- Measured externally at ground level the three-bay pole shed is approximately 18m long x 6m wide (ie 108m²).
- The other four parts are each approximately 8m long x 5m wide at ground level, (ie 40m² total)⁶. They are connected at roof level to the exposed

⁶ The dimensions exclude a 1m overhang for the roof construction which extends beyond the external walls of the four parts.

timber beams that extend down either side of the three-bay pole shed at the four corners.

- There are no walls inside the footprint of the building.
- The external wall cladding is continuous around the perimeter of the whole building.
- The roof cladding is continuous across the four parts, either side of the shed, including the 2m x 5m infill sections that join the parts together.
- Several of the wall girts for the four parts are connected to the main structural poles of the 3-bay pole shed.
- The floor layout plan shows one complete building ie none of the structures are shown separated from any adjoining structure. The designer refers to the design being a 'Proposed NEW farm shed' indicating one building.

2.3. On 9 April 2025, the authority issued a notice to fix to the owners (NTF-2025-458/0). The particulars of contravention or non-compliance as given in the notice are:

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

- Installation of a composting toilet and associated plumbing and drainage for Unit A
- Installation of drainage to discharge greywater from Unit B
- Construction of 288 square metre enclosed 3 bay Pole Shed [ie Unit C]

2.4. To remedy the contravention or non-compliance, the notice to fix instructed the owners to either:

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

OR

- Remove the unauthorised building works.

2.5. In the 'further particulars' section of the form, the notice to fix states:

You must contact the territorial authority for the district within which the building is situated on completion of the required building work.

All Building work must cease immediately until the authority that issued this notice is satisfied that you are able and willing to resume operations in compliance with the Building Act 2004 and regulations under that Act.

3. Submissions

The owners

- 3.1. The owners submit (in summary) that Unit B is a vehicle, not a building, because:
 - 3.1.1. it is on wheels with an up-to-date warrant of fitness and registration
 - 3.1.2. it has not been used to transport any goods or persons except the furniture inside
 - 3.1.3. it was towed to the location not transported on the back of a lorry
 - 3.1.4. it is on wooden blocks to give stability and to ensure longevity
 - 3.1.5. it has had its wheels removed only for security; the three axles and the wheel hubs are still in place, and the wheels could be reinstalled with ease if necessary. Likewise, the towbar is still in place.
 - 3.1.6. it is moveable and has been moved in the past. There is nothing to deconstruct in order to move the unit.
- 3.2. Regarding the greywater drainage system that serves Unit B, the owners advised there is no physical connection between the waste pipe from Unit B and the gully trap. The drainage system extends from a gully trap (adjacent to one corner of Unit B), approximately 30m horizontally and 2m vertically, below ground to three containers. The containers are filled with vetiver grass (*Chrysopogon zizanioides*), which is a plant known for water purification. The owners contend the drainage system is safe and efficient and has no adverse effect on the environment
- 3.3. Regarding Unit C, the owners submit (in summary) it is five separate buildings:
 - 3.3.1. There is one main pole shed of 108sqm² (18m long x 6m wide) in the centre, surrounded by four 'lean-to's' or 'carports' of 40sqm² each (8m long x 5m wide), with two additional 8m² sections where the 'lean-to's' meet. All together they look like one building, but each is a separate shed.
 - 3.3.2. The main pole shed meets the requirements of Exemption 4A in Schedule 1 of Act because it is less than 110sqm², it is in a rural zone, single storey, not used for storing dangerous substances, not accessible to the public, the maximum roof span does not exceed six metres, is built according to drawings prepared by a licensed building practitioner, and is located within an acceptable wind zone and more than 10m from the property's boundary.
 - 3.3.3. The four 'carports' meet the requirements of Exemption 18A in Schedule 1 of Act as they are at ground level, do not exceed 40sqm², and were designed by a licensed building practitioner.

The Authority

- 3.4. The authority submits (in summary) regarding Unit B being a building (not a vehicle), the unit was immovable at the time the notice to fix was issued because it:
 - 3.4.1. is connected to services
 - 3.4.2. has a form of stabilisation (supported on stabilising jacks) that require removal before the unit could be moved
 - 3.4.3. is connected to features that would need to be deconstructed if it was to be moved – that is, 45kg gas bottles which cannot be removed without the relevant licence.
- 3.5. The authority maintains the building work to install greywater drainage system that serves Unit B was required to be carried out in accordance with a building consent.
- 3.6. The authority submits (in summary) regarding Unit C being a single building:
 - 3.6.1. the building is “one big shed” (not individual sheds) which at 284m² exceeds the 110sqm² floor area limit of the exemption under the Schedule 1. It is also located in a “very high” wind zone.⁷
 - 3.6.2. it is not aware of an intention or allowance to “stack exceptions to achieve a larger building” without a building consent.

Owner of Unit B

- 3.7. The owner of Unit B contends the unit is a vehicle. It is movable as it is built on a trailer and can be towed and moved with a vehicle at any time.

4. Discussion

Notices to fix

- 4.1. Notices to fix are governed by sections 163 to 168 of the Act. 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.
- 4.2. Section 40(1) provides that a person must not carry out any building work except in accordance with a building consent. Section 41(1)(b) states that a building consent is not required if the building work falls within the exemptions in Schedule 1 of the Act.

⁷ The authority’s inspection record dated 27 March 2025 records a total floor area of 284m², whereas the notice to fix states an area of 288m².

- 4.3. In this case, the notice alleges the owners have contravened section 40 in three respects. The first contravention regarding Unit A has already been considered in determination 2025/024. Therefore, I will consider each of the two remaining purported contraventions in turn.

The greywater drainage system

- 4.4. Building work is defined in the Act (section 7) as “work for or in connection” with a building, and a building may include an “other system” under section 8(1)(b)(i), such as a greywater drainage system, but only if that system is attached to a structure (section 8(2)(a)).⁸
- 4.5. Accordingly, in order to determine whether the installation of the greywater drainage system was building work that required building consent, I must turn my mind to whether that work was for or in connection with a building or otherwise attached to a structure. This requires I consider whether Unit B is a structure/building.
- 4.6. The owners and the owner of Unit B contend the unit is a vehicle, not a building. Section 8(1)(b)(iii) establishes that “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” is a building for the purposes of the Act.
- 4.7. It was established in *Te Puru Holiday Park Limited v Thames Coromandel District Council*⁹ that there are two steps required to deciding whether something a person claims is a vehicle is a building in terms of this section – first to consider whether it is a vehicle, and then, if it is, to consider the other tests in that section (that is immovable and occupied by people on a permanent or long-term basis). The Court took the view in that case “...that Parliament has used the description ‘immovable’ to refer to something that cannot readily be moved. In this sense, the movable character of an item is a question of degree”.¹⁰
- 4.8. Turning first to whether Unit B is a vehicle for the purposes of section 8(1)(b)(iii), I consider the following factors are relevant:
- It is constructed on a purpose-made trailer, complete with towbar, and designed to be towed by another vehicle.¹¹

⁸ The Plumbers, Gasfitters, and Drainlayers Act 2006 regulates persons carrying out drainlaying.

⁹ *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* HC Hamilton CRI-2008-419-000025 (“*Te Puru*”) 11 May 2009, at [12] to [19]. The approach was confirmed in the Court of Appeal *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* [2010] NZCA 633, 21 December 2010, at [22].

¹⁰ *Te Puru* at [17].

¹¹ According to the manufacturer it is “built on road legal registered and warranted trailers and classed as vehicles”. Based on the dimensions of the unit, it appears it does not require an ‘overdimension’ permit from New Zealand Transport Agency (NZTA), or to be accompanied by a pilot vehicle, but there may be restrictions on travel times and requirements for additional lighting and hazard warning markings and

- It has wheels (albeit the wheels are currently removed), three axles, a suspension system, and lights.
 - It has a current warrant of fitness, vehicle licence and registration.
 - The unit was towed from its place of manufacture to the applicants' property.
- 4.9. These features show that Unit B is designed to be moved on its wheels rather than being permanently fixed in place. The trailer chassis, axles, suspension, and lights demonstrate that mobility is a core functional characteristic. Its physical relocation to the site by towing, together with its registration and warrant of fitness, confirms that Unit B operates in practice as a vehicle, not merely by design.
- 4.10. Unit B is therefore a contrivance equipped with wheels on which it is moved and falls within the Land Transport Agency definition of a vehicle.¹²
- 4.11. I must next consider whether Unit B is “immovable”. In *Dall v The Chief Executive of the Ministry of Business, Innovation and Employment*, the District Court took the view, “Whether a structure is ‘immovable’ in terms of s8(1)(b)(iii) is therefore a matter of degree and will require consideration of, for example, the design, functional characteristics, and purpose of the structure. Ultimately, each case will turn on its own facts”.¹³
- 4.12. In *Marlborough District Council v Bilsborough* the District Court took the view “the term ‘immovable’ cannot be strictly interpreted as ‘incapable of being moved’”.¹⁴
- 4.13. To relocate Unit B from its current position, the following steps would be required:
- Existing services would need to be disconnected, including unplugging the electrical cable and water supply hose and lifting the waste pipe out from the gully trap and downpipe out of the water container. It also requires disconnecting the two 45 kg gas cylinders and removing the securing chain. While the Environmental Protection Authority notes that “special training is necessary to connect or disconnect 45 kg LPG cylinders”¹⁵, there appears to be no statutory or regulatory requirement that this task must be carried out by a licensed gas fitter.¹⁶

signs (see <https://www.nzta.govt.nz/vehicles/vehicle-types/vehicle-classes-and-standards/vehicle-dimensions-and-mass/tiny-homes> and Factsheet 53a, accessed on 9 March 2026).

¹² Section 2(1) of the Land Transport Act 1998.

¹³ *Dall v Chief Executive of the Ministry of Business, Innovation and Employment* [2020] NZDC 2612, 19 February 2020, (“*Dall*”) at paragraph [39].

¹⁴ *Marlborough District Council v Molina Carolin Bilsborough and Glynn James Bilsborough* [2020] NZDC 9962, 28 October 2020, at paragraph [66].

¹⁵ ‘LPG at home’, Environmental Protection Agency website, <https://www.epa.govt.nz/everyday-environment/using-lpg-gas-at-home/> accessed 6 March 2026.

¹⁶ The Plumbers, Gasfitters, and Drainlayers Act 2006 regulates persons who carry out gasfitting.

- The wheels that were removed for safe storage would need to be reinstalled and there is no physical impediment to refitting these. This could be done with 'relative ease' and would restore the unit's ability to be towed.
- The stabilisers would need to be lifted and the timber blocks supporting the trailer chassis removed. These are simple actions to undertake prior to relocation and do not involve permanent alteration to the unit.

4.14. These steps are comparable to what would ordinarily be done to prepare a caravan or trailer for towing and can be completed using ordinary tools. Similarly, Unit B is not attached to any structure and there are no other adjacent or adjoining features that would prevent it from being moved with relative ease. Taken together, the steps required do not prevent Unit B from being readily moved within a relatively short period of time.

4.15. Therefore, I consider Unit B is capable of being readily moved and is therefore not immovable. As a result, it does not meet the definition of a building for the purposes of section 8(1)(b)(iii).

4.16. Having concluded Unit B is not immovable, there is no need to consider the next limb of the test (whether it is occupied by people on a permanent or long-term basis).

4.17. As Unit B is not a building, the greywater drainage system is not attached to a structure, and its construction is not work in connection with a building. Accordingly, the installation of the greywater drainage system is not building work, and it is not a system included in the definition of building under section 8. Therefore, in relation to the greywater drainage system there is no contravention of section 40 for which a notice to fix could be issued.

Unit C – the shed

4.18. As it currently presents, there are several features of Unit C that indicate the design intent and as-built construction is a single building.

4.19. The building functions as a single structure approximately 288m² in floor area. It has shared roof and wall connections which create one integrated structural system, and the absence of internal dividing walls and the use of continuous wall and roof cladding make the building enclosed as one building, rather than as five separate buildings.

4.20. The applicants have relied on schedule 1 clause 4A (single-storey pole sheds and hay barns) and clause 18A (carports exceeding 20 but not exceeding 40 square metres in floor area) to justify the construction of Unit C without building consent. However, reliance on Schedule 1 requires compliance with all of the criteria in the exemptions, including floor-area limits. Clauses 4A and 18A impose maximum floor areas of 110sqm² and 40sqm² respectively, with similar limits in clauses 49 and 44.

As Unit C has a floor area of approximately 288sqm², it exceeds the size limitations in clauses 4A and 18A (as well as clauses 49 and 44, which are similar).

- 4.21. I consider Unit C has been constructed as a single building and does not meet the requirements of Schedule 1 clauses 4A, 18A, 44 and 49 due to its size.
- 4.22. There are no other clauses in Schedule 1 that provide for the construction of a new single building of the size and type of Unit C. Therefore, there was a contravention of section 40 for which a notice to fix could be issued.

The form and content of the notice to fix

- 4.23. 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”.¹⁷ 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.¹⁸
- 4.24. A notice to fix is an enforcement notice that may be enforced by a prosecution for failing to comply with the notice. A person commits an offence if they fail to comply with a notice to fix and is liable on conviction to a fine of up to \$200,000. Given these serious consequences, it is important that notices to fix provide adequate information for owners to remedy the issues. The details given in a notice to fix are fundamental to the recipient being fairly and fully informed about the basis for the notice.
- 4.25. In this case:
- The notice to fix refers to Units A and B. However, there was no site plan, description or attachment identifying the units.
 - The first remedy includes making the building work compliant with the Building Code. However, the notice does not include any section 17 contravention(s) that would require such a remedy.
 - Under ‘further particulars’ in the notice, there was a requirement of the recipients to contact the authority ‘on completion of the required building work’. The notice does not include a contravention that required building work to be undertaken by the recipients of the notice. Again, under ‘further

¹⁷ Form 13 of the Building (Forms) Regulations 2004. Section 165(1)(a) requires that a notice to fix be in the prescribed form.

¹⁸ 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, 28 October 2020, 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].

particulars', it directs the recipients to 'cease work immediately' when there was no ongoing building work described in the notice.

4.26. Therefore, I consider the notice to fix did not adequately describe the alleged contraventions or include an appropriate remedy or further particulars.

5. Conclusion

- 5.1. There was no contravention of section 40 regarding the installation of the greywater drainage system, and so a notice to fix under the Building Act could not be issued for the installation of that system.
- 5.2. There was a contravention of section 40 for the construction of Unit C without first obtaining a building consent.
- 5.3. The notice to fix did not adequately describe the particulars of the contravention, remedy, or further particulars.
- 5.4. I reverse the authority's decision to issue the notice to fix, and leave the authority to make a new decision taking into account the findings of this determination.

6. Decision

- 6.1. In accordance with section 188 of the Building Act 2004, I reverse the authority's decision to issue notice to fix NTF-2025-458/0.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 4 May 2026.

Peta Hird

Lead Determinations Specialist