Determination 2026/048

An authority's decision to issue a notice to fix for a pole structure built without building consent

2 Beach Road, Flat Point, Carterton District

Summary

This determination considers an authority's decision to issue a notice to fix for a contravention of section 40 of the Building Act 2004. The determination considers whether the pole structure was exempt from requiring a building consent under Schedule 1 of the Act and the form and content of the notice.

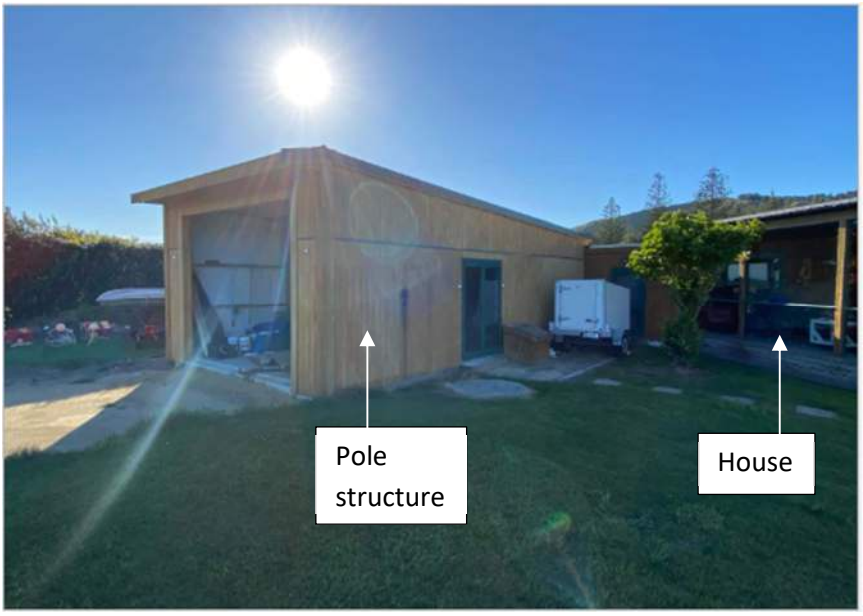

Figure 1. The pole structure (photo provided by the owners)

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 Andrew Eames, Principal Advisor Determinations, 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. J and M Harris, the owners of the property and applicants for this determination ("the owners")

1.2.2. Carterton District Council ("the authority"), carrying out its duties as a territorial authority or building consent authority.

1.3. The determination relates to a building on the owners' property ("the pole structure"), which is used for boat storage and was constructed without a building consent (see Figure 1).

1.4. The matter to be determined, under sections 177(1)(b) and (3)(e), is the authority's decision to issue a notice to fix (NF087) ("the notice"), for a contravention of section 40. In deciding this matter, I must consider whether the construction of the pole structure was exempt from requiring a building consent under Schedule 1 of the Building Act.

Issues outside this determination

1.5. The determination does not consider:

1.5.1. the Building Code compliance of the pole structure

1.5.2. compliance with the Resource Management Act 1991, District Plan requirements and/or any subdivision conditions.

2. The building work

2.1. The pole structure was built by a Licensed Building Practitioner ("the builder"), to replace and extend an existing shed. In an email to the authority, the builder states

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

the existing shed was pulled down and the new pole structure was built on the existing pad. A plan provided by the owners shows the previous shed was 6.3m by 5m (31.5m^2), and the "new extension" is 3.7m by 5m (18.5m^2).

2.2. The new pole structure is approximately 10m long and 5m wide with a footprint of 50m^2. The highest point of the roof is approximately 3.6m above its floor level.

2.3. It is constructed on a concrete slab with round timber poles bedded in concrete footings, infill timber wall framing, and profiled steel sheet roof cladding. It has plywood sheet material cladding on two sides, a garage door set into the back wall, and is partially open across the front (see Figure 1).

2.4. The rear wall of the pole structure backs onto an existing garage, which is approximately 50mm away. The garage is attached to the residential dwelling.

2.5. The owners' plan shows a distance of 5.1m between the pole structure and the property boundary, at the closest point. A separate plan shows the distance to the boundary as approximately 8.2m.

3. Background

3.1. In April 2025, the authority became aware of the construction of the pole structure, and it undertook a site visit on 12 August 2025.

3.2. On 19 December 2025, the authority issued the notice to fix. Amongst other information, the notice states:

> Council does not have any record of a building consent having been applied for or obtained in relation to this work and, for the reasons set out in this notice, considers that consent is/was required for this structure.
>
> This is in breach of section 40 of the Building Act 2004 which provides the following.
>
> *40 Building work not to be carried out without consent*
>
> *(1) A person must not carry out any building work except in accordance with a building consent.*
>
> …
>
> Council does not believe that the structure sits within any of the Schedule 1 exemptions. In particular, the structure:
>
> - is not a carport as the structure is only open on one side; and
> - does not meet the definition of a single-storey detached building exceeding 10 but not 30 square metres as it is over 3.6m high at its highest point; and
> - is immediately adjacent to an existing structure which is connected to the residential building, meaning that it is closer than its own height to the residential dwelling.

Part 3 of the exemptions set out in Schedule 1 does not apply as there is no evidence that a Chartered Professional Engineer designed or supervised the design of the structure.

As above, Council considers that as the relevant requirements of individual exemptions were not met, the work was not exempt and a building consent was required.

To remedy the contravention or non-compliance you must:

1) Make a satisfactory application for a certificate of acceptance in accordance with section 97 of the Building Act 2004 or
2) Remove the unconsented building work.

3.3. The notice had a compliance date of 1 October 2026.

4. Submissions

The owners

4.1. The owners consider the building work is exempt under Schedule 1, specifically clauses 3B, 4A, 7 and 18. They submit:

4.1.1. "the purpose of the build is as a carport for our boat" and "it is not a hay barn but could be classed as a pole shed"

4.1.2. The builder who constructed the pole structure is a Licensed Building Practitioner

4.1.3. "…the build is within height frame work. It is from datum, which is based on the floor height of the house – 3.10m from datum"

4.1.4. "…the new addition to the original footprint and structure was not exceeding 20sqm and therefore did meet the criteria of carport under 18A, b, i and ii"

4.1.5. "the extension is not physically attached to dwelling".

The authority

4.2. The authority considers that no Schedule 1 exemptions apply. It provided a table setting out its assessment of relevant Schedule 1 exemptions, which notes:

4.2.1. an email from the builder states the height of the pole structure is 3.6m off finished floor level

4.2.2. the pole structure is immediately adjacent to the garage, which is attached to the house

4.2.3. it does not believe the structure meets the definition of a carport because it is only open at one end, and therefore does not meet the criteria in Acceptable Solution C/AS1.[2] It considers this criteria is more weighted than the Ministry's exempt building work guidance, which states "at least one side of the structure must be open to the outdoors at all times".[3]

5. Discussion

Legislation

5.1. Section 164 provides for a notice to fix to be issued if "a specified person is contravening or failing to comply with this Act or the regulations (for example, the requirement to obtain a building consent)…".

5.2. Section 40(1) states "A person must not carry out any building work except in accordance with a building consent". However, section 41(1)(b) provides that a building consent is not required if the building work falls within the exemptions described in Schedule 1.

5.3. Therefore, whether there has been a contravention of section 40 turns on whether the building work was exempt under Schedule 1.

Schedule 1 assessment

5.4. The owners consider clauses 3B, 4A, 7 and 18 apply. These are assessed below.

Table 1. The Ministry's assessment of Schedule 1 exemptions

Schedule 1 exemption	Ministry's conclusion
3B Single-storey detached buildings exceeding 10, but not exceeding 30, square metres in floor area if work carried out or supervised by licensed building practitioner (1) Building work in connection with any detached building if— (a) any design or construction work is carried out or supervised by a licensed building practitioner; and	Clause 3B is not met. In particular: • The height of the pole structure is more than 3.5m from its floor level. I note that the floor level of the detached building in question is the relevant place to measure its height from (not the datum point of the house).

[2] Paragraph 5.2.3.1 states "A carport is permitted to have walls and roof with 100% unprotected area provided that all the following conditions are met: a) at least two sides are completely open to the environment; and …". (Ministry of Business, Innovation and Employment, *Acceptable Solution C/AS1: Protection from fire for buildings with sleeping (residential) and outbuildings (risk group SH)*, Second Edition).

[3] Building Performance (2025) *Building work that does not require a building consent: Exemptions Guidance for Schedule 1 of the Building Act 2004*. Ministry of Business, Innovation and Employment, at page 122.

(b) the building— (i) is not more than 1 storey (being a floor level of up to 1 metre above the supporting ground and a height of up to 3.5 metres above the floor level); and (ii) exceeds 10 square metres in floor area, but does not exceed 30 square metres; and (iii) does not contain sanitary facilities or facilities for the storage of potable water; and (iv) does not include sleeping accommodation, unless the building is used in connection with a dwelling and does not contain any cooking facilities; and (v) if it includes sleeping accommodation, has smoke alarms installed. (2) However, subclause (1) does not include building work in connection with a building that is closer than 1 metre to any residential building or to any legal boundary.[4]	• The completed pole structure exceeds 30 square metres (at approximately 50 square metres). The footprint of the entire detached building is relevant, not only the area extending beyond the footprint of the former shed. • The pole structure is closer than 1m to a residential building. It is approximately 50mm away from the garage, which is attached to the house and is therefore part of a residential building. This also means it is not the measure of its own height away from any residential building. • Accordingly, subclauses (1)(b)(i) and (ii), and (2) are not met. For completeness, I note that clause 3A is not met for the same reasons.
4A Single-storey pole sheds and hay barns in rural zones (1) Building work in connection with a pole shed or hay barn in a rural zone if— (a) any design or construction work is carried out or supervised by a licensed building practitioner; and (b) the building— (i) is not more than 1 storey (being a floor level of up to 1 metre above the supporting ground and a height of up to 4 metres above the floor level); and (ii) does not exceed 110 square metres in floor area; and (iii) is not accessible by the public; and (iv) is not used to store hazardous substances within the meaning of that term in regulation 4 of the Health and Safety at Work (Hazardous Substances) Regulations 2017; and (c) the maximum unsupported roof span in any direction does not exceed 6 metres; and	Clause 4A is not met. In particular: • The pole structure is closer than the measure of its own height to a residential building. The pole structure is approximately 50mm away from the garage, which is attached to the house and is therefore part of a residential building. • Accordingly, subclause (2) is not met.

[4] At the time the pole structure was built, clause 3B(2) stated "… subclause (1) does not include building work in connection with a building that is closer than the **measure of its own height** to any residential building or to any legal boundary" [my emphasis] (Building Act 2004, Schedule 1, as at 08 April 2025). However, clause 3B(2) is not met regardless.

(d) either— (i) the design wind speeds do not exceed 44 metres per second (calculated using Verification Method B1/VM1); or (ii) the building is located in a wind zone no greater than high (as defined in Acceptable Solution B1/AS1). (2) However, subclause (1) does not include any building work in connection with a building that is closer than the measure of its own height to any residential building, public road, railway, or legal boundary.	
7 Repair or replacement of outbuilding The repair or replacement of all or part of an outbuilding if— (a) the repair or replacement is made within the same footprint area that the outbuilding or the original outbuilding (as the case may be) occupied; and (b) in the case of any replacement, the replacement is made with a comparable outbuilding or part of an outbuilding; and (c) the outbuilding is a detached building that is not more than 1 storey; and (d) the outbuilding is not intended to be open to, or used by, members of the public.	Clause 7 is not met. In particular: • The replacement is not within the same footprint area that the original outbuilding occupied. The original outbuilding was approximately 31.5 square metres. The footprint of the completed pole structure is approximately 50 square metres. • Accordingly, subclause (a) is not met.
18A Carports exceeding 20, but not exceeding 40, square metres in floor area Building work in connection with a carport if— (a) any design or construction work is carried out or supervised by a licensed building practitioner; and (b) the carport— (i) is on the ground level; and (ii) exceeds 20 square metres in floor area, but does not exceed 40 square metres.	Clause 18A is not met. In particular: • The completed pole structure exceeds 40 square metres (at approximately 50 square metres). • Accordingly, subclause (b)(ii) is not met. For completeness, and to assist the authority, the requirements in paragraph 5.2.3.1 of C/AS1 raised by the authority apply when that Acceptable Solution is used to demonstrate compliance with the relevant Building Code provisions. They do not determine whether a structure is a carport for the purposes of Schedule 1. However, it is unnecessary for me to decide whether this structure is a carport because its approximately 50

	m² floor area exceeds the maximum permitted by clauses 18[5] and 18A.

5.5. The construction of the pole structure falls outside the exemptions described in Schedule 1. Accordingly, building work was undertaken without consent when consent was required in contravention of section 40(1), and there were grounds to issue the notice under section 164.

Form and content of the notice

5.6. Section 165 concerns the form and content of a notice to fix. Section 165(1)(c) states "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".

5.7. In this case, the notice provides that one option to remedy the contravention or non-compliance is to "Make a **satisfactory** application for a certificate of acceptance in accordance with section 97 of the Building Act 2004…" [my emphasis]. This wording does not align with section 165(1)(c). A notice to fix for a section 40 contravention can be remedied by an application for a certificate of acceptance, and the assessment of that application (and its adequacy) is a separate regulatory process under sections 97 to 99.

5.8. I also note that the notice describes the building work as "a new pole structure approximately 3.7m long and 5m wide (18.5m²)". However, the relevant building work is the completed pole structure, which has a total floor area of approximately 50m², not only the area extending beyond the footprint of the former shed. I do not consider this deficiency sufficient to warrant reversing the notice, because the building work could still be clearly identified by the owners. However, an accurate description of the completed structure may have assisted the owners to understand why the work fell outside the Schedule 1 exemptions.

5.9. I also note the authority provided approximately nine months for the owners to remedy the contravention, either by applying for a certificate of acceptance or removing the building work. I consider this an unnecessarily lengthy time to satisfy either of these remedies to comply with the notice. In my view, a shorter period would have more appropriately reflected the nature of the required remedial action and the enforcement purpose of a notice to fix.

[5] Which requires a carport to be less than 20 square metres.

6. Conclusion

6.1. The pole structure does not meet the requirements of any Schedule 1 exemptions. Therefore, there were grounds to issue the notice to fix.

6.2. The first remedy in the notice, which required a “satisfactory” application for a certificate of acceptance, does not align with section 165(1)(c).

7. Decision

7.1. In accordance with section 188 of the Building Act 2004 I modify the notice to fix to remove the word ‘satisfactory’ from the first remedy set out in the notice.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 19 November 2026.

Andrew Eames

Principal Advisor Determinations