

# Determination 2025/048

## An authority's decision to issue a notice to fix for a change of use

### 417 Stafford Loop Road, Hokitika, Westland

#### Summary

This determination considers an authority's decision to issue a notice to fix for a change of use of the building. The authority considered that the use had changed from IA (Industrial Low) to SH (Sleeping Single Home). The determination considers whether there were grounds for the issue of the notice, the particulars and remedies contained in the notice, and whether the owner is a 'specified person'.



**Figure 1: Photograph of the building (reproduced from notice to fix NF0473)**

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](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, Andrew Eames, Principal Advisor Determinations, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).<sup>1</sup>
- 1.2. The parties to the determination are:
  - 1.2.1. W Kroupa, the owner of the building (“the owner”), who applied for this determination.
  - 1.2.2. Westland District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. The matter to be determined, under sections 177(1)(b) and (3)(e), is the authority’s decision to issue notice to fix NF0473 dated 18 February 2025 (“the notice”) for a change of use of a building (“the building”). The determination will consider:
  - 1.3.1. whether there were grounds for the issue of the notice under section 164
  - 1.3.2. the particulars and remedies contained in the notice
  - 1.3.3. whether the owner is a ‘specified person’ under section 163.

## 2. Background

- 2.1. The building is located on a large bush-clad property. There is a long driveway up to the building, with several other small outbuildings/structures present, including a cottage from circa 1860.
- 2.2. One building consent has been identified as issued for the property. The owner was granted a building consent in 2004 (under the Building Act 1991) to “Erect shed & install effluent disposal system”. The “shed” is also referred to as a “barn” in the plans.
- 2.3. The plans from the 2004 building consent show a 14x8m timber-pole building which is 4.2-4.8m high, clad in corrugated iron on 3 sides and open along one side. A toilet

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

is shown located in a small room. Plans were also provided for the effluent disposal system. The only recorded inspection at the time was for the soakage field for the effluent disposal system. The authority states that no other inspections were requested for the building.

- 2.4. On 7 March 2023, the authority undertook a site visit of the property following an enquiry from a member of the public in relation to information available on a property listing website. A property listing sighted by the authority identified the property as a "two-bedroom lifestyle property" and photos showed "a mezzanine floor, kitchen, bathroom, two bedrooms, a boiler type heating system, two fireplaces and an upstairs deck".<sup>2</sup>
- 2.5. Following the site visit to the property, the authority issued three notices to fix<sup>3</sup> to the owner which alleged that building work had been undertaken in contravention of section 40.<sup>4</sup> These notices were the subject of a previous determination issued in 2024 in relation to this building.<sup>5</sup>
- 2.6. On 18 February 2025, the authority issued notice to fix NF0473 to the owner for a change of use from IA (Intermittent Low) to SH (Sleeping Single Home). This notice is the subject of this determination, and the operative parts are set out in Appendix A.

### 3. Discussion

- 3.1. This determination considers the authority's decision to issue the notice to the owner for an unnotified change of use of the building, in contravention of sections 114 and 115.
- 3.2. The building consent for the original shed and effluent disposal system was issued in 2004, under the Building Act 1991. However, there is no evidence as to when any additional building work (which was not part of the 2004 building consent) was carried out.
- 3.3. The owner states they were under the impression that all building work was undertaken under the 2004 building consent and was inspected and approved at the time. They state, "We of course maintain that any alleged changes occurred in 2004 when the building was constructed and [the authority was] aware of their existence..." and "No building work has been undertaken since around 2004, and none is being undertaken at this time".
- 3.4. The authority states there is no evidence as to when the building work was undertaken and did not receive a notification of change of use.

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<sup>2</sup> It appears that the downstairs area of the building is a shed/workshop space.

<sup>3</sup> NF0338 issued 7 March 2023, NF0532 issued 30 May 2023, and NF0367 issued 30 August 2023.

<sup>4</sup> Section 40 provides that a person must not carry out any building work except in accordance with a building consent.

<sup>5</sup> Determination 2024/029 *An authority's decisions to issue a series of notices to fix* (7 June 2024).

- 3.5. The Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (“change of use regulations”) came into force on 31 March 2005. Because it is not certain whether the building work to create the dwelling occurred before or after the change of use regulations came into force, I will consider whether there has been a change of use under both the current framework and the Building Act 1991.

### **Building Act 2004 and change of use regulations**

- 3.6. The notice to fix provisions in the Building Act 2004 are set out in 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.

#### ***Change of use provisions***

- 3.7. Section 114 of the Act provides that an owner of a building must give written notice to the relevant authority if the owner proposes to change the use of a building. Section 115 of the Act provides that an owner must not change the use of the building unless the authority gives the owner written notice that it is satisfied the building, in its new use, will comply with the Building Code to the extent required.
- 3.8. In this case, there is no dispute that written notice has not been provided in accordance with sections 114 and 115. The dispute centres on whether or not a change of use has occurred.
- 3.9. Whether a change of use has occurred is determined according to regulations 5 and 6 of the change of use regulations.<sup>6</sup> Regulation 5 and 6(1) state:

#### **5 Change the use: what it means**

For the purposes of sections 114 and 115 of the Act, **change the use**, in relation to a building, means to change the use (determined in accordance with regulation 6) of all or a part of the building from one use (the **old use**) to another (the **new use**) and with the result that the requirements for compliance with the building code in relation to the new use are additional to, or more onerous than, the requirements for compliance with the building code in relation to the old use.

#### **6 Uses of buildings for purposes of regulation 5**

(1) For the purposes of regulation 5, every building or part of a building has a use specified in the table in Schedule 2.

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<sup>6</sup> See section 114(1) of the Act.

3.10. The change of use framework is set out in several previous determinations.<sup>7</sup> To decide this matter, I must firstly consider whether the building has changed from one use group in Schedule 2 of the change of use regulations to another. If it has, I must go on to consider whether the classified use under Clause A1 has also changed, in order to determine whether there are additional or more onerous Building Code requirements in the new use.

***First step – has the use group changed in the change of use regulation?***

3.11. There is no dispute between the parties that the current use is SH (Sleeping Single Home). The dispute centres on what the old use was; the owner contends it has always been SH, while the authority states that it was IA (Intermittent Low).

**Table 1: Relevant use groups from Schedule 2 of the change of use regulations**

Use	Spaces or dwellings	Examples
<b>Uses related to sleeping activities</b>		
SH (Sleeping Single Home)	detached dwellings where people live as a single household or family, including attached self-contained spaces such as granny flats when occupied by a member of the same family, and garages (whether detached or part of the same building) if primarily for storage of the occupants' vehicles, tools, and garden implements	dwellings or houses separated from each other by distance
<b>Uses related to intermittent activities</b>		
IA (Intermittent Low)	spaces for intermittent occupation or providing intermittently used support functions – low fire load	car parks, garages, carports, enclosed corridors, unstaffed kitchens or laundries, lift shafts, locker rooms, linen rooms, open balconies, stairways (within the open path), toilets and amenities, and service rooms incorporating machinery or equipment not using solid-fuel, gas, or petroleum products as an energy source

<sup>7</sup> For example, Determination 2023/034 *An authority's decision to issue a notice to fix for a change of use of a building* (15 November 2023) and Determination 2024/038 *An authority's decisions to issue a notice to fix and a dangerous and insanitary building notice* (9 August 2024).

*Was the old use 'SH'?*

3.12. The owner submits:

3.12.1. "In this case the shed/garage /workshop /bathroom was associated with the original cottage dating from [sic] 1860's that is still on the site and was being renovated recently. This cottage established the residential SH use at this time. This is not a rural property and the bush clad property clearly not a farm operation or similar."

3.12.2. "The use of this garage workshop associated with the original detached dwelling on the site means that there has not been a movement in the SH use description in schedule 2 of the regulations. The alleged changes have occurred within the same use SH and are not of themselves causes of a change of use."

3.12.3. "The building consented in 2004 was always associated with SH use and not an IA building in its own right. As such it is still SH even if it is only now a self-contained detached dwelling (but we say this was always the case)."

3.13. The authority submits "The building consent was granted to erect a shed/barn and install an effluent disposal system... The site plan provided with the building consent application confirmed there were no other buildings on site and certainly no existing dwelling."

3.14. I think it is appropriate in this circumstance that the use group at the time the building consent was granted rely on the information that was in the building consent application. The owner was granted a consent in 2004 for a three-sided corrugated iron shed, toilet and effluent disposal system.

3.15. There is no indication from the building consent plans that the building was intended to be a dwelling, for example, no internal walls, kitchen facilities or bathroom facilities (aside from the toilet with separate external access) are noted on the plans. Nor is there any indication it was intended to be a garage associated with a dwelling, as no existing dwelling was noted on the site plan. As such, I find that the old use was not SH.

*Was the old use 'IA'?*

3.16. The authority submits that the building was consented as IA.

3.17. The owner states "We do not see that this description suits the residential association of this site in 2004 or for that matter now and you cannot apply such a use to this self contained [sic] space. Service rooms definition in the schedule 2 also pertains to the industrial nature of the activities in use "IA". We suggest that in fact these examples are incompatible with residential use and only relate to commercial/industrial operations."

- 3.18. The building consent was issued for a shed/barn and no existing dwellings were noted on the site plans. Further, the plans did not indicate a self-contained space, as there were no kitchen or bathroom facilities (other than the toilet) shown in the plans. I consider the building work set out in the plans (ie a three-sided shed, toilet and effluent disposal system) can appropriately be considered a space “for intermittent occupation or providing intermittently used support functions”. As such, I find that the old use was IA.
- 3.19. The parties do not dispute that the current use is SH. Accordingly, the building’s use has changed from one use group to another as per the uses set out in Schedule 2 of the change of use regulations.

***Second step – has the classified use changed?***

- 3.20. I must now determine whether there are additional or more onerous Building Code requirements under the new use group (SH). In order to do this, I must determine the old and new classified uses, set out in Building Code clause A1 *Classified uses*.

**Table 2: Relevant classified uses in clause A1 of the Building Code**

<p><b>2.0 Housing</b></p> <p><b>2.0.1</b> Applies to buildings or use where there is self care and service (internal management). There are three types:</p> <p><b>2.0.2 Detached dwellings</b></p> <p>Applies to a building or use where a group of people live as a single household or family. Examples: a holiday cottage, boarding house accommodating fewer than 6 people, dwelling or hut.</p> <p>...</p>	<p><b>6.0 Industrial</b></p> <p><b>6.0.1</b> Applies to a building or use where people use material and physical effort to:</p> <p>(a) extract or convert natural resources,</p> <p>(b) produce goods or energy from natural or converted resources,</p> <p>(c) repair goods, or</p> <p>(d) store goods (ensuing from the industrial process).</p> <p>Examples: an agricultural building, agricultural processing facility, aircraft hangar, factory, power station, sewage treatment works, warehouse or utility.</p>	<p><b>7.0 Outbuildings</b></p> <p><b>7.0.1</b> Applies to a <i>building</i> or use which may be included within each classified use but are not intended for human habitation, and are accessory to the principal use of associated <i>buildings</i>. Examples: a carport, farm <i>building</i>, garage, greenhouse, machinery room, private swimming pool, public toilet, or shed.</p>
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- 3.21. Clause 3(3) of the Building Regulations 1992 states how the intended use informs the classified use:

the classified use or uses of a building or part of a building shall be the ones that most closely correspond to the intended use or uses of that building or part of that building.

3.22. Section 7 provides the definition of intended use:

**intended use**, in relation to a building,—

(a) includes any or all of the following:

(i) any reasonably foreseeable occasional use that is not incompatible with the intended use:

(ii) normal maintenance:

(iii) activities undertaken in response to fire or any other reasonably foreseeable emergency; but

(b) does not include any other maintenance and repairs or rebuilding

3.23. The intended use at the time the building consent was granted relies on the information that was in the consent application. For the same reasons described in paragraphs 3.14-3.15, I do not consider the old classified use is 'Detached dwelling'.

3.24. The authority states that the building was considered to have the classified use 'Industrial'. As there were no other buildings marked on the site plan for the building consent, the authority did not consider it to be accessory to another building on the site and discounted the use 'Outbuilding'.

3.25. In my view, the old classified use of 'Industrial' is appropriate, given that the plans showed a three-sided shed that would be suitable for one of the purposes set out in the industrial use group, and there were no associated buildings marked on the building consent plans to indicate it was an outbuilding. I note the owner has now provided evidence that there is a cottage on the property, which raises the potential that the classified use could have been 'Outbuilding'. However, this does not change the basis on which the consent was granted. As such, I consider the old classified use was 'Industrial'.

3.26. As stated earlier, the parties do not dispute that the new use group is SH. The classified use is 'Detached dwelling' which falls within the 'Housing' category. It is clear there are additional or more onerous Building Code requirements associated with Housing, compared to the Industrial classified use. For example, performance clauses G3.3.1(c) and (d) apply to Housing but do not apply to Industrial (or outbuildings for that matter).<sup>8</sup>

3.27. As such, if the relevant building work was completed after 31 March 2005, the building has undergone a 'change of use' for the purposes of sections 114 and 115. This is because the use group has changed from IA to SH, and the new use group resulted in additional or more onerous Building Code requirements. The owner did not give written notice of the change of use to the authority, in contravention of section 114(2)(a). Further, in contravention of section 115(a), the owner changed

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<sup>8</sup> Clauses G3.3.1 (c) and (d) relate to food preparation facilities, and state they shall be hygienic and include means for cooking food (subclause (c)) and space and a surface for food preparation (subclause (d)).



the use of the building without written notice from the authority that the building in its new use, would comply to the extent required.

## **Building Act 1991**

3.28. The authority submits that if the work was undertaken prior to the introduction of the change of use regulations on 31 March 2005, the relevant test is based upon what a reasonable person would expect, which is that the use of a shed or barn is not the same as a dwelling.

3.29. Section 46 of the Building Act 1991, 'Change of use of buildings, etc', states:

- (1) It is the duty of an owner of a building to advise the territorial authority in writing if it is proposed—
  - (a) To change the use of a building and the change of use will require alterations to the building in order to bring that building into compliance with the building code; or ...
- (2) The use of the building shall not be changed unless the territorial authority is satisfied on reasonable grounds that in its new use the building will—
  - (a) Comply with the provisions of the building code for means of escape from fire, protection of other property, sanitary facilities, and structural and fire-rating behaviour, and for access and facilities for use by people with disabilities [(where this is a requirement in terms of section 47A of this Act)] as nearly as is reasonably practicable to the same extent as if it were a new building; and
  - (b) Continue to comply with the other provisions of the building code to at least the same extent as before the change of use.
- ...

3.30. The definition of 'plans and specifications' in section 2 of the Building Act 1991 states it "means the drawings, specifications and other documents according to which a building is proposed to be constructed..." and also includes the "intended use of the building". Section 48(1) of the Building Act 1991 provides for the making of "regulations, to be called the building code, for prescribing the functional requirements for buildings and the performance criteria with which buildings must comply *in their intended use*" [my emphasis].

3.31. The building consent plans did not indicate the building was intended to be a dwelling or a garage associated with a dwelling (as no existing dwelling was noted on the site plan). As previously described, the building consent was issued for a three-sided corrugated iron shed, along with a toilet and effluent disposal system. The plans and specifications approved by the authority indicated the intended use was a shed. This means there has been a change of use from a shed to a dwelling.

3.32. I must also consider, under section 46(1)(a), whether that change of use would have required alterations to the building in order to bring it into compliance with the Building Code.

- 3.33. The relevant classified uses in the version of Schedule 1 of the Building Regulations 1992 that was applicable in 2004, are the same as the provisions in the current version (as set out in Table 2 above).<sup>9</sup> As per paragraphs 3.20-3.26 above, I consider the classified use has changed from Industrial to Housing (specifically ‘Detached dwelling’). As there are additional or more onerous requirements associated with Housing<sup>10</sup>, this would have required alterations to the building (compared to how it was consented) in order to bring it into compliance with the Building Code under section 46(1)(a).
- 3.34. As such, if the relevant building work was undertaken prior to 31 March 2005, it was the owner’s duty to advise the territorial authority in writing that they proposed to change the use of the building. This did not occur, in contravention of section 46(1)(a). Moreover, the use of the building was changed without the authority being satisfied that the building (in its new use) would comply to the extent required, in contravention of section 46(2).

### **The issue of the notice to fix**

- 3.35. The owner submits that the authority “has failed to establish reasonable grounds for the issue of the NTF as they have not undertaken a lawful inspection of the property to satisfy themselves of the facts”. They also dispute the authority’s use of information and photos from a property listing website.
- 3.36. I note that an authority can consider any sources of information available, such as a property listing website or other publicly available information. Moreover, there is no dispute between the parties that the building is now used as dwelling, and it is clear from the building consent documentation that the building was not a dwelling.
- 3.37. Regardless of whether the change occurred during 2004 or later, I consider there has been a change of use of the building. If the change of use was prior to 31 March 2005, there was a contravention of section 46 of the former Act. If it was changed after 31 March 2005, there was a contravention of sections 114 and 115 of the current Act.
- 3.38. The building continues to be used as a dwelling, and I consider it is appropriate to issue a notice to fix for this contravention under section 164 of the current Act.

### **Other issues raised by the owner**

#### ***Remedies***

- 3.39. The owner considers that the remedies provided in notice (see Appendix A) are nonspecific and do not “relate to the allegation”. Regarding the remedy referencing a certificate of acceptance, the authority states that this was included as an option

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<sup>9</sup> Building Regulations 1992. These Regulations were revoked, as from 31 March 2005, by regulation 8(1) Building (Forms) Regulations 2004, however regulation 3 and Schedule 1 remain in force.

<sup>10</sup> For example, G12.3.5.

that the owner *may* wish to consider pursuing. The authority states it was included to advise the owner that they may need to apply for a certificate of acceptance if unconsented work is identified and is clarified with “if necessary”.

- 3.40. Section 165(1)(c) provides 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. I note that no building work requiring a building consent was identified in the notice, and an application for a certificate of acceptance does not relate to the change of use contravention. As such, it is not an appropriate remedy to include in the notice.
- 3.41. There is also a ‘further particular’ in the notice, which states “You must contact [the authority] on completion of the required building work”. Section 165(1)(e) provides that if a notice to fix *requires building work to be carried out*, it must require the relevant authority to be contacted when the work is completed. In this case, there was no building work required by the notice, and therefore this particular was not relevant.
- 3.42. Another ‘further particular’ in the notice states “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...”. The authority has not provided evidence that any work was being carried out at the time the notice was issued. Section 165(1)(f) provides that if a notice to fix *relates to building work*, it may direct that all or any building work cease immediately. However, as the notice in this case relates to a change of use rather than building work being carried out, this further particular was not relevant.

### ***Specified person***

- 3.43. Section 163 defines a ‘specified person’ to whom a notice can be issued, and this includes the owner of the building and the person carrying out the building work if the notice relates to the building work being carried out.
- 3.44. The owner states “There has been a change of legal owner and the offence if one is with that owner”, and that any change of use “occurred under a different legal entity”. I note that the current owner was a legal owner of the property over the time period when the building work was undertaken and is still a legal owner. Therefore, they have been an owner at all relevant times and are a specified person under section 163, notwithstanding that the previous joint owner is no longer an owner.

### ***Section 378***

- 3.45. The owner also considers that under section 378, the “allegation is out of time”. This argument has been addressed in previous determinations.<sup>11</sup>

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<sup>11</sup> Determination 2024/056 *An authority’s decision to issue a notice to fix in relation to building work at a residential property* (4 October 2024).

## 4. Conclusion

- 4.1. There has been a change of use of the building, and the authority had grounds to issue a notice to fix under section 164 of the Act.
- 4.2. The remedy relating to a certificate of acceptance was not appropriate, as it did not relate to a change of use contravention. The further particulars relating to the owner contacting the authority on completion of the building work and immediately ceasing all building work were not relevant in this case.
- 4.3. The owner is a specified person under section 163.

## 5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I modify the notice to remove the remedy relating to a certificate of acceptance application. I also remove the particulars relating to the owner contacting the authority on completion of the building work and immediately ceasing all building work.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 24 September 2025.

**Andrew Eames**

**Principal Advisor Determinations**

## APPENDIX A: Notice to Fix – NF0473

### This notice relates to the following building on the Property:

- The pole-shed that has been converted into a two-storey dwelling located on the northeastern boundary line (**building**)...

### Particulars of contravention or non-compliance:

1. Pursuant to sections 114, 115(a) and 164 of the Building Act 2004 (**Act**), Westland District Council (**Council**) considers on reasonable grounds that the Owner of the Property (being a specified person under the Act) is contravening or failing to comply with the Act in the following respects:
  - a. the Owner has changed the use of the building from Intermittent Low (**IA**) to Sleeping Single Home (**SH**);
  - b. the Owner failed to give written notice to the Council (being a territorial authority) under section 114(2)(a) of the Act of [their] intention to change the use of the building in the manner described in 1.a. above; and
  - c. the Owner changed the use of the building in a manner that involved the incorporation of the building in one or more household units where household units did not exist before with [sic] having first, pursuant to section 115(a) of the Act, obtaining written notice from the Council that it is satisfied that the building, in its new use, will comply, as nearly as is reasonably practicable, with the New Zealand Building Code in all respects.
2. This notice is issued on the following grounds:
  - a. On 3 March 2023, the Council received notification alleging that extensive building work had been carried out at the Property.
  - b. Upon receiving that notification of the works, the Council reviewed its system and identified that only one building consent had been issued in respect of the Property. This is BC040147 which was issued to [the owner] in 2004 and authorised the construction of a shed and the installation of an effluent disposal system.
  - c. A property listing for the Property sighted by the Council also identified the Property as a “two-bedroom lifestyle property.”...
  - d. After the inspection, the Council undertook a further search of its records and again confirmed that no additional consents had been applied for and that it had not received a written notice for a change of use as required by section 114 of the Act. We have also confirmed that you have been the owner of the Property since prior to building consent BC040147 being applied for (in 2004) and are still the owner of the Property as at the date of this notice.
  - e. Based on the information before it, the Council is satisfied on reasonable grounds that the use of the building has been changed from IA to SH. The use of the building as SH is supported as you and your representative have referred to the building as your “home”.
  - f. For this reason, the Council has never provided confirmation that it is satisfied with the new use, nor that the new use would comply, as nearly as reasonably practicable, with the New Zealand Building Code, in all respects.

...

**To remedy the contravention or non-compliance you must:**

Pursue any legal option to achieve compliance with the requirements of the Building Act 2004 and the New Zealand Building Code. This may include:

1. Providing evidence to the Council that the building in its new use (being, SH) complies with section 115 of the Act in that it complies, as nearly as is reasonably practicable, with the New Zealand Building Code in all respects.
2. If necessary, applying under section 97 of the Act for a Certificate of Acceptance for any unconsented building work that is identified in the process achieving compliance with this notice.

This notice must be complied with by: **18 August 2025**

**Further particulars**

You must contact the Westland District Council 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 (except any building work necessary to make the site safe or to comply with this notice).

...