

Determination 2026/006

An authority's decision to issue two notices to fix for building work carried out without a building consent

970 Neudorf Road, Dovedale, RD 2, Upper Moutere

Summary

This determination considers two successive notices to fix alleging the owners carried out building work to construct a sleepout without building consent, when consent was required, in contravention of section 40 of the Building Act. The determination discusses whether the building work was exempt from the requirement to obtain a building consent under Schedule 1 of the Act, and the form and content of the notices.

Select legislation discussed in this determination is contained in Appendix A. 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.

The Act and the Building Code (Schedule 1 of the Building Regulations 1992) 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, Rebecca Mackie, 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 P Batt, the owners of the property and recipients of the notices to fix, who applied for this determination (“the owners”).
 - 1.2.2. Tasman District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. The matters to be determined, under section 177(1)(b) and 3(e), are the authority’s decisions to issue notices to fix NF0548 on 12 December 2024 (“the first notice”) and NF0577 on 13 March 2025 (“the second notice” and together “the notices”) to the owners.
- 1.4. In making this determination I will consider whether there were grounds for issuing the notices, which turns on whether the building work in dispute (which I refer to as “the sleepout”) was exempt (under Schedule 1 of the Act²) from the requirement to obtain building consent. I will also consider whether the particulars of the contravention and remedies specified in the notices meet the requirements for notices to fix under the Act.

Issues outside this determination

- 1.5. The determination does not consider any of the decisions made by the authority in relation to the building consent³ (including amendments) to construct the adjacent new dwelling and nearby pole shed, or the application for certificate of acceptance for the sleepout. These are referred to in the background section for context only.

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

² Schedule 1 of the Act sets out building work for which building consent is not required.

³ Reference number BC230317.

2. Background and building work

- 2.1. On 16 May 2023, the authority granted a building consent BC230317 (“the building consent”) to the owners for the construction of a single-storey, one-bedroom dwelling with a verandah to the northern and western sides of the dwelling and a pole shed. The authority granted two amendments to the building consent on 2 October 2023 and 1 March 2024 for minor changes to the consented building work.⁴
- 2.2. Building work began in relation to the building consent sometime in 2023, with the authority’s first inspection carried out on 15 November 2023.
- 2.3. At or around the same time as the work on the dwelling, building work also began on the construction of another single-storey building with three rooms (“the sleepout”) with attached deck with verandah. In their submission, the owners refer to the three rooms as being a bedroom, office, and living room.⁵ No building consent was issued for the construction of this building.



Figure 1: The sleepout on 22 May 2024. Building work to the left of the dashed line (approximate location) is work not described in the building consent.

⁴ Reference numbers BC230317.A1 and BC230317.A2.

⁵ I note that architectural plans for the sleepout dated 29 April 2024, provided to the Ministry by the owners, show the smallest room as a bathroom containing sanitary fixtures. However, other plans (relating to the third amendment to the building consent and certificate of acceptance, see paragraphs 2.8 and 2.16) do not show sanitary fixtures. Furthermore, later photos of the room in question, dated 22 May 2024, show the room with wall and floor linings installed but no sanitary fixtures installed. It is not clear whether plumbing and drainage has been installed.

- 2.4. The sleepout is located adjacent and to the north of the dwelling subject of the building consent (see Figures 1 and 2). The sleepout is timber-framed, with a combination of steel and timber framed subfloor and timber pile foundations.
- 2.5. The owners state, along with notations on the architectural plans, that the area of the sleepout is 30m², with a 18m² veranda.⁶ I have not been provided with any observed measurements of the sleepout from the parties.
- 2.6. The veranda of the sleepout was later extended (in or around March 2024) to 20.9m², when it was connected to the dwelling's verandah.

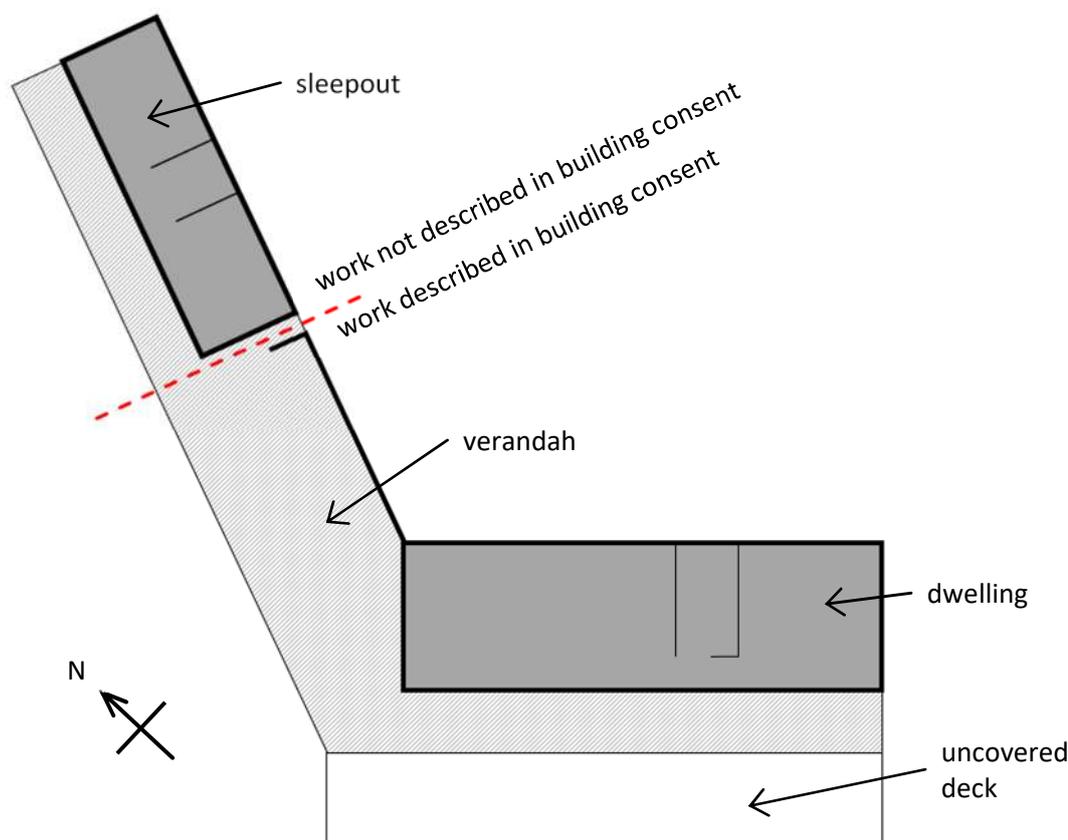


Figure 2: Floor plan diagram showing the dwelling and sleepout. Not to scale.

- 2.7. On 11 December 2023, at its second inspection of the work covered by the building consent, the authority noted that additional work was being undertaken. The inspection record states:

There is a building being constructed next to the consented work. The owner advises me this is a sleepout under 30 square meters being constructed under schedule 1 of [the Act]. It is constructed within 1 meter of the consented building there by not meeting requirements of building code clause C – protection from fire.

⁶ As stated in their application for certificate of acceptance, dated 23 February 2025 (Refer to paragraph 2.16) and by way of notations on the architectural plans.

Please have designer submit fire rated construction details or alternative solution as a formal amendment to this consent.

- 2.8. On 16 April 2024, the owners applied for a third amendment to the building consent. The application described the amendment as covering the “roof eave between covered deck and sleepout connected to remove fire rating issues”.
- 2.9. On 22 May 2024, the authority wrote to the owners referring to a meeting earlier that week, setting out the owners’ options and offering assistance with a certificate of acceptance application if the owners chose to apply for one. The authority requested the owners confirm whether they would either “remove the building work or apply for a Certificate of Acceptance”.
- 2.10. Later that day the owners requested that the application for the third amendment be withdrawn and on 29 May 2024 the authority confirmed the withdrawal.
- 2.11. The authority carried out further inspections in relation to the building consent throughout June and July 2024.
- 2.12. On 12 December 2024, the authority issued NF0548 to the owners (“the first notice”). The first notice stated:

Particulars of contravention or non-compliance:

Dwelling alteration carried out without Building Consent in breach of the Building Act 2004.

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

Remove the building work
Or
Obtain a Certificate of Acceptance

This notice must be complied with by: **1/03/2025**

- 2.13. In a letter dated 12 February, 2024 the owners wrote to the authority, stating:

As we were not sure exactly what the “*contravention or non-compliance*” as alleged by 0548 Notice to Fix referred to, we were unable to remedy any alleged non complying work. ...

...we are still not certain from the inspection records what the perceived problem may be, ...

...[the authority] is requested [to] confirm which non compliance issue noted in [the authority’s] inspection field notes is relevant to the Notice to Fix so we know what our Certificate of Acceptance application is actually covering ...

- 2.14. On 23 February 2025, the owners again wrote to the authority seeking clarification as to the basis for the first notice, stating:

We do not understand the allegation advised in the Notice to Fix for our new home. A building consent for our new dwelling was applied for and duly issued ...

We are still unable to find any breaches of the Building Act noted in those inspection records describing any alleged non compliance with the Building Act 2004 regarding the dwelling constructed pursuant to BC230317.

Due to lack of understanding as to the building work alleged to be noncompliant with the Act, we have no choice but to apply for the Certificate of Acceptance as notified to [the authority] 19 January 2025, although as already advised, we have no idea what it is [that the authority] is asking us to do or we are asking [the authority] to approve!

...we again request that [the authority] urgently clearly defines the dwelling building work which [the authority] alleges to be non compliant with [the Act].

2.15. On 25 February 2025, in a response to the owners' correspondence, the authority stated:

... [the owners' agent] had been advised of the steps required for obtaining a Certificate of Acceptance for the construction of an additional building adjacent to the originally consented structure that was not included in the initial building consent...

2.16. On or around 23 February 2025, the owners applied for a certificate of acceptance, referring to "BC 230317" as the description of building work⁷. It appears no further information was provided with the application.

2.17. On 26 February 2025 the owners received documentation from their structural engineer for a certificate of acceptance application, including design producer statement, calculations, construction review producer statement, and site inspection summary including photos. It is not clear whether this information was provided to the authority.

2.18. On 27 February 2025 the authority refused the application for a certificate of acceptance, listing several reasons including "insufficient information", such as a description of building work that was not a reference to the building consent, and "no supporting documents provided".

2.19. On 11 March 2025, the authority issued NF0557 ("the second notice") to the owners. In a cover letter accompanying the notice, the authority said it was issuing a further notice to fix pursuant to section 167.

2.20. The second notice stated:

Particulars of contravention or non-compliance:

Failing to comply with Notice to Fix NF0548.

⁷ The application also states the 'building name' is "sleep out".

An alteration to the dwelling has been carried out without Building Consent in breach of section 40 of the Building Act 2004.

To remedy the contravention or non-compliance you must:

Remove all unconsented building work

OR

Obtain a Certificate of Acceptance (COA) for building work carried out without consent

This notice must be complied with by: **12/05/2025**

2.21. The owners subsequently made an application for a determination. On 21 March 2025, the day after receiving the owners' application for a determination, the authority wrote to the owners, stating:

Following receipt of the letter dated 12 February 2025 from [the owners], our building compliance officer ... called [one of the owners] and explained to [them] what the unconsented work was.

...

An inspection revealed that [the owners] had built the additional structure within 1 metre of the (consented) 1-bedroom dwelling. This fails to comply with [clause] 3A, and also fails to comply with 3A(2)

...

Put simply, the additional (unconsented) structure needed to be at least its own height away from the main building, in order to qualify as a separate and exempt building under Schedule 1. What [the owners] have done instead, is make an alteration to the dwelling consented under BC230317, therefore breaching the conditions of their consent.

3. Submissions

Owners

3.1. The owners submit, in summary:

3.1.1. When considering whether building work has been carried out without building consent, in contravention of section 40, the exclusions of section 41, including building work described in schedule 1, must be considered first.

- 3.1.2. The sleepout and attached verandah and deck is exempt building work under clauses 3A⁸ and 24 of Schedule 1, and the veranda, including the extension, is exempt under clause 17.
- 3.1.3. While the separation between the sleepout and dwelling verandah was 1 metre, the “actual distance between [the] sleepout and dwelling habitable rooms is some 8 metres”.
- 3.1.4. The owners allege that the work to extend the verandah, connecting the sleepout and dwelling structures, was carried out due to the owners “accepting [an authority] suggested solution to fire safety concerns”. In correspondence with the authority, the owners stated they view this work as “unwanted”.
- 3.1.5. “The notice ... allege[s] either unauthorised or unconsented building work, and/or alteration[s] to the dwelling ... The owners do not accept the allegations in either form ... and deny there have been any alterations to the dwelling”.
- 3.1.6. Smoke alarms are fitted to the sleepout.
- 3.1.7. The work (sleepout, veranda and deck) has been monitored by the owners design licenced building practitioner and the owners Chartered Professional Engineer.
- 3.1.8. The application for a certificate of acceptance referred to the building consent as the scope of work, as the first notice to fix “referred to unauthorised work to dwelling”. Having made this application, the second notice to fix “incorrectly [accuses the] owners of failing to comply with [the first notice to fix]”.
- 3.1.9. The owners have “made every attempt to clarify precisely what the work in question actually is ... and what work [the owners are asking the authority] to approve by [way of the certificate of acceptance] application. ... While [the authority] has not replied to the owners’ correspondence [the authority] has advised that the owners were already aware and [the authority] did not provide further clarification despite repeated requests.”
- 3.1.10. It was not until the authority’s letter, dated 21 March 2025 (see paragraph 2.21), that it was understood that it was the sleepout that the notices to fix were referring to, not “dwelling building work”.

⁸ The owners have referred to clauses 3 and 3(a), however clause 3 relates to single-storey detached buildings not exceeding 10m² in floor area. I have taken the owners’ reference to clause 3(a) to be to clause 3A, given that the sleepout exceeds 10m² and clause 3A relates to buildings exceeding 10m² but not exceeding 30m².

Authority

3.2. The authority submits, in summary:

3.2.1. The “building work is in addition to that consented under BC230317, and not within the scope of Schedule 1. It is therefore in contravention of Section 40 of the [Act] as building work was required”.

3.3. The authority’s position as to why the building work is not exempt under Schedule 1 is set out in its letter of 21 March 2025 to the owners (see paragraph 2.21).

4. Discussion

4.1. The matters to be determined are the authority’s decisions to issue the two notices to fix on 12 December 2024 and on 13 March 2025 to the owners. The authority’s correspondence of 21 March 2025 confirms the notices relate to the construction of the sleepout with attached deck with verandah. I will now consider the notices.

Legislative requirements of notices to fix

4.2. The provisions of the Act concerning notices to fix are set out in sections 163 to 168. Section 164(1)(a) provides for an authority to issue a notice to fix to a specified person if it considers, on reasonable grounds, that a specified person is contravening or failing to comply with the Act or its regulations. Section 163 defines a ‘specified person’ to whom a notice can be issued, and this includes the owner of a building. In this case, I consider the owners are specified persons to whom a notice can be issued.

4.3. 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”.⁹ 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 remedy the identified contraventions and any relevant building work.¹⁰

Whether there has been a contravention of the Act

The first notice

4.4. The first notice does not identify the specific provision of the Act the owners are alleged to have contravened. The first notice simply states the ‘particulars of

⁹ Form 13 of the Building (Forms) Regulations 2004. Section 165(1)(a) requires that a notice to fix be in the prescribed form.

¹⁰ 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 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].

contravention or non-compliance' as "Dwelling alteration carried out without Building Consent in breach of the Building Act 2004".

- 4.5. Considering the term "without building consent" is used to describe the contravention or non-compliance, the authority must consider the relevant provision of the Act that is being contravened is section 40, which is titled "Building work not to be carried out without consent". Section 40 subclause (1) requires that a person must not carry out any building work except in accordance with a building consent.
- 4.6. Section 41(1)(b) states that, despite section 40, building consent is not required if the building work falls within the work described in Schedule 1 of the Act. Schedule 1 prescribes building work for which building consent is not required (also described as 'exempted building work'). Whether there has been a contravention of section 40 in this case turns on whether the building work to construct the sleepout with attached deck with veranda was exempt from requiring building consent by way of Schedule 1 of the Act. If not exempt and the work was carried out without building consent when consent was required, that work will be in contravention of section 40.
- 4.7. The relevant exemptions in Schedule 1 the owners rely on in this case are clauses 3A, 17, and 24 (these clauses are set out in Appendix A). Noting the owners' views on the work to extend the verandah and connect the sleepout and dwelling structures, I will first consider the building work as initially constructed, as a separate structure.
- 4.8. Clause 3A relates to "Single-storey detached buildings exceeding 10, but not exceeding 30, square metres in floor area and constructed of lightweight building products". The sleepout meets some of the criteria in clause 3A(1), such as; is not more than one storey¹¹ (subclause (a)), does not contain sanitary facilities (subclause (d)), is sleeping accommodation used in connection with the dwelling and does not contain cooking facilities (subclause (e)) and has smoke alarms installed (subclause (f)). In respect of the floor area (subclause (b)) the owners (and architectural plans) state the sleepout is 30m²; I have not been provided with any observed measurements of the sleepout to bring this into question and the authority have not identified the floor area as a reason why the work is in contravention of section 40.
- 4.9. Despite the requirements of clause 3A(1), at the time, subclause (2)¹² stated "However, 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". The authority's inspections state the sleepout is 'constructed within 1 metre of the consented building' and in their correspondence

¹¹ I have not been provided with measurements of the floor level above ground or the height above floor level.

¹² This clause was in effect at the time. Clause 3A(2) was inserted on 31 August 2020 and replaced on 23 October 2025 to state "closer than 1 metre".

of 21 March 2025 state the sleepout 'fails to comply' with clause 3A(2) for this reason. The owner's acknowledge the distance between the sleep out and the consented dwelling with attached veranda but consider the relevant consideration is the distance between the sleepout and the dwelling's habitable rooms (which is some 8 metres). With respect I disagree with this interpretation; clause 3A(2) is clear in its reference to "a building that is closer... to any residential building" and does not refer to specific *parts* of a residential building. The sleepout is more than 1m high and within 1m of the consented dwelling, so is 'is closer than the measure of its own height to any residential building' and accordingly, does not meet the criteria of clause 3A(2).

- 4.10. Further, clause 3A(1)(c) requires building work in relation to a detached building "is built using lightweight building products for the walls and roof, and in accordance with Acceptable Solution B1/AS1 for timber or steel buildings". The sleepout features a mixture of steel and timber framing for the subfloor and is designed by the owner's Charter Professional Engineer using 'Specific Engineering Design'¹³ not in accordance with Acceptable Solution B1/AS1. On this basis, the sleepout does not meet the criteria of clause 3A(1)(c).
- 4.11. Despite this, clause 3B, which relates to "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", has similar requirements to clause 3A. Clause 3B does not have any requirements about lightweight building products (as per clause 3A(1)(c)), but clause 3B(1)(a), in relation to a detached building, requires "any design or construction work is carried out or supervised by a licensed building practitioner". It is not clear to me to what extent the work has been carried out or supervised by a licensed building practitioner, however the owner's Charter Professional Engineer¹⁴ has undertaken the design of the sleepout and provided documentation supporting this. Clause 3B(2) also has the same requirements as clause 3A(2) controlling the distance of the sleepout to any residential building. It is this basis the sleepout does not meet the criteria of clause 3B.
- 4.12. Therefore, the exemption in clause 3A and 3B do not apply given the distance of the sleepout to the consented residential dwelling and accordingly required building consent.
- 4.13. Clause 17 relates to "Porches and verandas not exceeding 20 square metres in floor area". Paragraph (a) of the clause requires that the porch or verandah be on or attached to an *existing* building. As the veranda was constructed at the same time as the sleepout (and the dwelling that it was later connected to) this requirement is

¹³ Referencing AS/NZS 1170, NZS 3603 and NZS 3604. I note NZS 3604, referenced in Acceptable Solution B1/AS1 does not include designs for steel framed subfloors.

¹⁴ I note Charter Professional Engineers are automatically licenced in the 'Design' licensing class. See section 291 of the Act and section 5 of the Building (Designation of Building Work Licensing Classes) Order 2010, "Specified... engineers... treated as if licenced in specified licensing classes".

not met, and so the exemption in clause 17 does not apply¹⁵ and accordingly required building consent.

- 4.14. Clause 24 relates to “Decks, platforms, bridges, boardwalks, etc”, describing building work such as decks from which it is not possible to fall 1.5 metres, even if that structure collapses. I have not been provided with details regarding the possible fall from the deck or measurements of the height of the deck above the surrounding ground, so I am unable to conclude whether the exemption applies or not and therefore whether this work was carried out in contravention of section 40 or not.
- 4.15. Despite my findings above about the individual elements of the sleepout, deck and verandah, at the time the first notice was issued, building work had been carried out to extend the verandah and connect the sleepout and dwelling structures. Schedule 1 does not describe building work which would apply to the construction of the sleepout or verandah as an extension to the dwelling. For instance, clauses relating to buildings like the sleepout, such as clauses 3, 3A, 3B, and 43, require those buildings to be *detached*. As a result, I consider the building work to construct the sleepout and veranda was not exempt under Schedule 1 as they are connected to the consented dwelling. As discussed in paragraph 4.134.9, clause 17 (and 17A) requires that the building work for a verandah be on or attached to an existing building.
- 4.16. In conclusion, I consider the building work to construct the sleepout (see paragraphs 4.9 to 4.12 and 4.15) and veranda (see paragraph 4.13) was not exempt under Schedule 1. Accordingly, at the time the first notice was issued, building work had been undertaken without a building consent when one was required, and accordingly was carried out in contravention of section 40. Therefore, there were grounds to issue the first notice under section 164 to the owners for a contravention of section 40 of the Act. I have insufficient information to conclude whether or not the deck was carried out in contravention of section 40.

The second notice

- 4.17. The second notice alleges the owners have contravened the Act in two respects: by failing to comply with the first notice, and by carrying out “an alteration to the dwelling” without building consent in breach of section 40.
- 4.18. Regarding the first contravention, section 164(2)(a) states that a notice to fix must require the specified person “to remedy” the contravention, or to comply with, this

¹⁵ Nor does the exemption in clause 17A or clause 46. Clause 17A relates to porches and verandas exceeding 20m², but not exceeding 30m², where the design or construction work is carried out or supervised by a licensed building practitioner. Paragraph (b)(i) of the clause also requires that the porch or verandah be on or attached to an existing building. Clause 46 relates to porches and verandas exceeding 20, but not exceeding 30, square metres in floor area for which design is carried out or reviewed by chartered professional engineer. Paragraph (b) of this clause also requires the attachment be to an existing building.

Act or the regulations. As discussed in previous determinations, an authority is unable to include a remedy in a notice to fix that is beyond the control of the specified person to effect.¹⁶ In this case, the only way to remedy the failure to comply with the first notice is to have complied with the remedies in that notice by the date specified. As that date has passed, it is no longer possible to comply with the first notice, therefore there is no remedy that could be specified on the second notice in relation to the first contravention ‘failing to comply with the first notice’. Accordingly, I do not consider it appropriate to include a failure to comply with the first notice as a contravention on the second notice.

- 4.19. Notwithstanding the above, section 168 provides that it is an offence to fail to comply with a notice to fix. Where a specified person fails to comply with a notice to fix it is an enforcement matter for the discretion of the authority whether to file a charging document for an offence under section 168 or issue an infringement notice, among other options.¹⁷ Previous determinations have also explained the distinction between a contravention and an offence.¹⁸
- 4.20. Regarding the second contravention, as concluded in paragraph 4.16 the building work was not exempt by way of Schedule 1 and there had been a contravention of section 40. The owners had applied for a certificate of acceptance prior to the issue of the second notice, however the application had been rejected due to lack of information and supporting documents. As a decision had been made to refuse the certificate of acceptance,¹⁹ and the contravening building work had not otherwise been remedied, there were grounds to issue the section notice under section 164 to the owners for a contravention of section 40.

The form and content of the notices

- 4.21. An important aspect of a notice to fix is ensuring that the contravention and the contravening building work is clearly described in the notice so the recipient has full knowledge of the building work that contravenes the Act or regulations and can make an informed decision about how that specific contravention is remedied.
- 4.22. In this case, the notices simply refer to “dwelling alteration” and “alteration to dwelling” as the contravening building work. I do not consider these descriptions are sufficiently clear to identify the sleepout with attached veranda and deck as the contravening building work. The notices do not sufficiently detail or describe the building work that the authority believes has been carried out without building

¹⁶ Determination 2023/033 *Regarding the compliance of, and decisions made by an authority in relation to, building work encroaching on to a neighbouring property* (7 December 2023) at [6.82].

¹⁷ See section 371 “Proceedings for infringement offences” or section 375 “Prosecution of offences” for example.

¹⁸ Determination 2024-026 *The authority’s decision to issue a notice to fix in relation to a retaining wall* (27 May 2024) at [4.8].

¹⁹ Section 96(4) provides that, if a certificate of acceptance is issued, then it is not necessary for any person to apply for a building consent, as required by section 40, in respect of that work.

consent, in contravention of section 40. Indeed, the first notice did not even refer to the particular section of the Act the authority considered was contravened.

- 4.23. The confusion that the description “dwelling alteration” caused the owners is apparent from their correspondence to the authority in response to the first notice (paragraphs 2.13 and 2.14). The owners questioned what “dwelling building work” the first notice related to, and what to include in the application for a certificate of acceptance. However, despite the owners’ request for the authority to define the work, the authority did not amend their description of the building work in the second notice (other than to switch the order of the words) and there remained a substantial lack of details identifying the specific contravening work.
- 4.24. A notice to fix is an enforcement notice that may be enforced by a prosecution for failing to comply with the notice. As already noted in paragraph 4.19, 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 contain sufficient particulars. In this case, I consider that the notices did not fairly and fully inform the owners about the basis for the notices, and do not satisfy the requirements for a notice to fix.
- 4.25. In addition, both notices include obtaining a certificate of acceptance as an option to remedy the contravention. It is well established that a notice to fix cannot require a certificate of acceptance be *obtained*, only that one be applied for (in accordance with section 165(1)(c)).²⁰

Conclusions

- 4.26. The building work (sleepout with verandah attached to the consented dwelling) was not exempt under Schedule 1 from the requirement to obtain a building consent (see paragraph 4.16). Therefore, there were grounds to issue both notices under section 164 to the owners for a contravention of section 40. I have insufficient information to establish whether the deck was constructed in contravention of section 40.
- 4.27. Despite my above conclusion about a contravention of section 40, the particulars of contravention in both notices were inadequate (and in the case of the second notice, inappropriate in respect of the first stated contravention). Therefore, both notices did not fairly and fully inform the owner about the basis for the notices, and neither satisfy the requirements for a notice to fix set out in section 165.
- 4.28. Further, the notices incorrectly included “obtain” (rather than applying for) a certificate of acceptance in the remedies.

²⁰ 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”.

5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I determine the sleepout and veranda were carried out in contravention of section 40 as they are attached to the consented dwelling. However, given the deficiencies of the drafting of the notices, I hereby reverse the authority's decisions to issue notices to fix NF0548 and NF0557.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 2 March 2026.

Rebecca Mackie

Principal Advisor Determinations

Appendix A

Relevant clauses of Schedule 1 of the Act – Building work for which building consent not required

3A Single-storey detached buildings exceeding 10, but not exceeding 30, square metres in floor area and constructed of lightweight building products

- (1) Building work in connection with any detached building that—
 - (a) 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
 - (b) exceeds 10 square metres in floor area, but does not exceed 30 square metres; and
 - (c) is built using lightweight building products for the walls and roof, and in accordance with Acceptable Solution B1/AS1 for timber or steel buildings; and
 - (d) does not contain sanitary facilities or facilities for the storage of potable water; and
 - (e) does not include sleeping accommodation, unless the building is used in connection with a dwelling and does not contain any cooking facilities; and
 - (f) 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 the measure of its own height to any residential building or to any legal boundary.^[21]

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
 - (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

²¹ This is the version of clause 3A(2) and 3B(2) that was in force at the time the building work was carried out. Subclause (2) was replaced on 23 October 2025.

- (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 the measure of its own height to any residential building or to any legal boundary.

17 Porches and verandas not exceeding 20 square metres in floor area

Building work in connection with a porch or a veranda that—

- (a) is on or attached to an existing building; and
- (b) is on the ground or first-storey level of the building; and
- (c) does not exceed 20 square metres in floor area; and
- (d) does not overhang any area accessible by the public, including private areas with limited public access, for example, restaurants and bars.

24 Decks, platforms, bridges, boardwalks, etc

Building work in connection with a deck, platform, bridge, boardwalk, or the like from which it is not possible to fall more than 1.5 metres even if it collapses.