

# Determination 2026/008

**The authority's decision to issue a notice to fix for a  
sleepout building constructed without building consent**

**22A Glendevere Terrace, Christchurch**

## **Summary**

This determination considers the authority's decision to issue a notice to fix for a contravention of section 40 of the Building Act 2004, relating to building work carried out without building consent. The determination focuses on whether the building work required building consent, in particular whether the work was exempt under Schedule 1, clause 3B, with specific consideration of the meaning of "not more than 1 storey" and the relationship between the floor level and the supporting ground.

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 (“Schedule 1”) of the Act ‘Building work for which building consent not required’.

The Act and Schedule 1 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. B R and L H Mawson, the owners.
  - 1.2.2. Christchurch City 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) of the Act, is the Council’s decision to issue notice to fix ENF1238496/004 dated 29 October 2025 (“the notice to fix”) for contraventions of section 40 of the Act for building work undertaken without building consent.
- 1.4. In determining the matter, I will consider whether the building work was carried out without building consent in contravention of section 40, specifically whether the building work is exempt from requiring a building consent under clause 3B of Schedule 1. This determination will also consider the form and content of the notice to fix.

## 2. The background and building work

- 2.1. The building is a timber-framed sleepout where the timber subfloor cantilevers out from a slope and the poles extend down and connect to an existing retaining wall further down the slope.
- 2.2. In March, May and June, the authority issued three different notices to fix (not subject to this determination) for this building work.

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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.

- 2.3. On 29 October 2025 the authority issued a notice to fix (ENF1238496) to the owner<sup>2</sup> (“the notice to fix”). The particulars of contravention or non-compliance identified in the notice to fix identified (under s164 and s165 of the Act):

A breach against s40(1)...of the Act, namely building work in connection with a building (sleepout), where the floor level exceeds 1 metre above the supporting ground at 22A Glendever Terrace, Redcliffs, Christchurch.

Building Act 2004:

The building work, namely a building (sleepout) which exceeds 1 metre above the supporting ground to the floor level of the building is not provided for under schedule 1 exemptions of the Act.

Exemption 3B of Schedule 1 of the Act provides from 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 provides the requirements for building work to be exempt from requiring a building consent.

In particular part 1, subpart (b)(i) states, for such buildings to be exempt, the building: “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)”

- 2.4. The notice included these two photos:



**Figure 1: Building connection to downslope retaining wall**

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<sup>2</sup> I note that the notice to fix issued by the authority referenced the correct address when describing the building but elsewhere in the notice stated the work had been carried out at different erroneous address in the ‘Particulars of Contravention or Non-compliance’ section of the notice. When the owner raised the error with the authority (on 1 November 2024), the notice to fix was rectified by the authority to amend the address to the owner’s property in the notice to fix (on 6 November 2024).



**Figure 2: Building connection to downslope retaining wall**

2.5. The notice continued:

The building, as indicated by the above photographs, is supported at the outer edge by posts that extend well beyond 1 metre above the supporting ground. The height directly under the building is not relevant in this situation, as that is not where it is supported from in full, therefore does not comply with any exemption under schedule 1 of the Act.

2.6. The notice to fix stated the following remedies for the contravention or non-compliance:

1. Apply for a certificate of acceptance under s96 of the Act, for all work that can be shown to comply with the Building Code,
- And,
2. Apply for a building consent for any additional building work, if required, and carry out that work,
- Or,
3. Remove all the unapproved building work that required building approval.

2.7. The compliance date for this notice was 16 February 2026.

### **3. Submissions**

#### **The owner**

3.1. The owner submits (in summary):

- 3.1.1. The exemption rules specify a floor height, roof area, roof height and that the structure meets the Building Code. They consider they have met all these criteria.
- 3.1.2. “When standing on the site the existence of the retaining wall posts gives us a potential anchor that may be stronger than a standard pile.”
- 3.1.3. “We have run bearers between the walls, extending the posts accordingly. Our building then sits between the walls and the floor is less than 1000[mm] from the ground.”
- 3.1.4. They interpreted the supporting ground to mean “cleared ground under the building”.
- 3.1.5. “The attachment to the retaining wall on the downhill side is to the top of the retaining wall. Why not measure from the top of the retaining wall. Why is the height of the retaining wall relevant?”

## **The Authority**

- 3.2. The authority submits (in summary):
  - 3.2.1. They consider the building in question does not meet any exemption automatically covered by Schedule 1 of the Act.
  - 3.2.2. They consider the building does not meet the requirements of exemptions 3B, specifically in regard the requirement that the building is not more than one storey (being a floor level of up to 1 metre above supporting ground...) and emphasising the “1 metre above the supporting ground” as the issue here.
  - 3.2.3. The building has been constructed on a hill site and on one side the floor level is well over 1 metre above the supporting ground.
  - 3.2.4. We consider the supporting ground to be the base/ground level of the retaining wall posts below bearers that extend beyond the external wall of the building.

## **4. Discussion**

- 4.1. The matter for determination is the authority’s decision to issue the notice to fix, for a contravention of section 40, that is, carrying out building work without building consent when one was required, in relation to the construction of a sleepout building. I will consider whether there were grounds to issue the notice to fix for a contravention of section 40 and the form and content of the notice.

## The grounds for issuing the notice to fix

- 4.2. Section 40(1) provides that a person must not carry out any building work except in accordance with a building consent.
- 4.3. Section 41(1)(b) states that a building consent is not required if the building work falls within the exemptions under Schedule 1 of the Act. Schedule 1 prescribes building work for which building consent is not required. Therefore, whether there has been a contravention of section 40 in this case turns on whether the building work to construct the sleepout and veranda was exempt under Schedule 1.
- 4.4. The relevant exemption in Schedule 1 that the owners are relying on in this case is clause 3B. Clause 3B 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. The clause contains a number of conditions which must be met in order for the work to be exempt from building consent.
- 4.5. The contentious item in Clause 3B in this case is the requirement that the building "i) is not more than 1 storey (being a floor level of up to 1 metre above the supporting ground...")
- 4.6. This requires considering the relationship between the floor level and the supporting ground. For a building to be considered single storey under the exemption, the floor level must be no more than 1 metre above the supporting ground at any point.
- 4.7. The Ministry's guidance document on Schedule 1 contains a suggested definition of supporting ground, being "Ground which is bearing all or part of the loads from building work."
- 4.8. The sleepout floor in this case cantilevers out over an area of sloping ground and is supported in part by piles fixed to an existing retaining wall. The retaining wall is a separate structure. The retaining wall does not itself constitute "supporting ground" for the purposes of clause 3B.
- 4.9. Previous determinations have set out the purpose of Schedule 1 exemptions to be for simple lower risk building work<sup>3</sup>, the choice of a more complex construction involving extending bearers out and then fixing piles down into an existing retaining wall does not align with this.
- 4.10. The exemption does not contemplate a significant alteration to the supporting ground, such as this existing retaining wall. Accordingly, the building does not meet the "not more than 1 storey" requirement in clause 3B.

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<sup>3</sup> For example, Determination 2025/062 An Authority's decision to issue a notice to fix for a timber deck constructed without building consent. Issued 11 December 2025.

## Conclusion

4.11. The sleepout does not meet the requirements of Clause 3B. Accordingly, building consent was required, one was not obtained, therefore there is a contravention of section 40 and grounds on which to issue a notice to fix.

### **The form, content, particulars and remedies in the notice to fix**

4.12. Section 165 sets out the requirements and provisions for the form and content of a notice to fix. Previous determinations<sup>4</sup> have discussed the requirements that a recipient of a notice to fix must be “fairly and fully informed” by the particulars in a notice to fix, so they can address and remedy the identified issues.

4.13. The notice provided enough detail to identify the contravention (s40), the specific building work carried out without building consent and the building to which it related.

4.14. The remedies provided for two options, both of which I consider were appropriate to the contravention of section 40 identified.

4.15. The compliance date given for the notice was 16 February 2026. From the date of issue to 16 February 2026 provided a period of just under 4 months. Even taking into account, some expected delay over the summer holiday period this was more than enough time to choose and achieve one of the remedies outlined above or to suggest an alternative approach to the authority. I consider the timeframe on the notice was appropriate.

## 5. Decision

5.1. In accordance with section 188 of the Building Act 2004, I confirm the authority’s notice to fix (ENF12238496), issued 29 October 2025.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 18 March 2026.

**Andrew Eames**  
**Principal Advisor Determinations**

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<sup>4</sup> Determination 2024/029 (issued 24 September 2024) [at paragraphs 4.14]