

Determination 2026/019

An authority's decision to issue a notice to fix for building work carried out to construct a seawall without a building consent

Common marine & coastal area, Stanley Point, Auckland

Summary

This determination relates to a notice to fix where the authority considered that work to construct a seawall undertaken without a building consent was building work regulated under the Building Act. The determination also considers the content of the notice to fix.



Figure 1: the seawall in Dec 2025, during construction

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 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, Peta Hird, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).¹
- 1.2. The parties to the determination are:
 - 1.2.1. Point Seventy Limited, the recipient of the notice to fix and the owner of four properties at 70, 80, 90 and 92 Stanley Point Road (“the owner”). The owner applied for the determination.
 - 1.2.2. Auckland Council, the authority carrying out its duties as a territorial authority or building consent authority, (“the authority”).
- 1.3. This determination arises from the authority’s decision to issue a notice to fix for the construction of a seawall within the Common Marine and Coastal Area adjacent to the owner’s property without the owner first obtaining a building consent.
- 1.4. The matter to be determined, in terms of sections 177(1)(b) and 3(e), is the authority's decision to issue a Notice to Fix (NOT21802296) dated 12 January 2026 for a contravention of section 40 relating to the construction of the seawall.
- 1.5. In order to determine the matter, I must consider whether the seawall is a building (i.e. a ‘structure’) for the purposes of the Act. If the seawall is a building, I will go on to consider whether the construction of the seawall is exempt under any clauses in Schedule 1.
- 1.6. The compliance of the building work with the Building Code is not considered this determination, nor is the authority’s decision to grant the resource consent.

2. Background and the building work

- 2.1. The seawall is located in a ‘Common Marine and Coastal Area’ (“CMCA”) and is adjacent to 70, 80, 90 and 92 Stanley Point Road, Auckland. It is in an area accessible to the public.

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

- 2.2. The naturally occurring bedrock coastal cliff at this site, made up of interbedded sandstones and siltstones, varies in height but is generally 8m to 9m tall. It is eroding as a result of wave action.
- 2.3. A resource consent was granted to the owner in December 2024, prior to construction beginning. The consent provided permission “To construct a rock masonry seawall...and use of the structures for erosion protection purposes”. I have relied on the plans (dated October 2023 and March 2024) referred to in the resource consent for information about the design and construction of the seawall.
- 2.4. Construction of the seawall commenced on or about October 2025. A Chartered Professional Engineer (“CPEng”) engaged by the owner, who was responsible for the design, describes the seawall as “comprised of functional parts, foundation, facing, cemented mass [of stone/rock], drainage and capping” where “all aggregate [is] bound by concrete”.
- 2.5. The seawall is approximately 114m long and varies in height along its length between approximately 3.6m to 4.1m from the footing to the top of the wall. The plans suggest the foundation is approximately 500mm – 600mm deep and 1200mm wide.
- 2.6. Parts of the seawall retains backfill material which the CPEng describes as “greater than 1.5m in height”. The extent or location of those parts of the seawall that retain backfill material greater than 1.5m in depth is not clear from the ‘as built wall layout’ plan. Other parts of the seawall do not retain backfill material. Where backfill material (including stone and excavated material from the foundation) is placed behind the seawall it was proposed to be at a slope of 1:1.5.
- 2.7. The specific engineer design includes structural calculations prepared by the CPEng dated 7 April 2026; they state (but not limited to):
 - “the wall is founded on [a] sandstone shore platform”
 - “a [wall] surcharge of 5kPa is allowed”
 - “[d]rainage is provided in [the] construction of the wall however conservatively full hydrostatic pressure behind the wall is allowed for”
 - a footing length of 3.10m
 - a wall width (at the top) of 0.56m
 - a height of 3.3m
 - soil, surcharge, and water pressures
 - the unitary weight of the masonry wall

- a factor of safety
- sliding failure
- wave loads.

2.8. During construction, between 30 October 2025 and 18 March 2026, the CPEng undertook several site inspections as part of a construction monitoring process.

2.9. Between 1 and 15 December 2025, while the seawall was being constructed, the authority attended site.²

2.10. On 12 January 2026, the authority issued the notice to fix. The particulars of contravention or non-compliance were stated as:

...

Contrary to **s.40 of the Building Act 2004** (the Act), the following building works have been undertaken at 70, 80, 90 and 92 Stanley Point Road, Stanley Point, Auckland, 0624, without first obtaining a building consent:

The construction of a rock masonry sea wall (Sea Wall) 110m in length and approximately 2.54m in height³ and is supporting a surcharge of sloping ground consisting of a coastal cliff of approximately 7m in height.

The Sea Wall is constructed on, and adjacent to (in the common marine and coastal area), 70, 80, 90 and 92 Stanley Point Road.

2.11. The notice included a statement that the authority did not consider the work exempt under clause 20 or 41⁴. The remedies provided in the notice to fix were to choose one of the following options to achieve compliance:

(1) Pursue any legal option to achieve compliance with the requirements of the Building Act 2004 and the New Zealand Building Code. This may include applying for a Certificate of Acceptance (COA) in accordance with s.96 of the Act; or

(2) Remove the unauthorised building works. Please note that a Building Consent may be required to undertake this work.

² I have relied solely on the photographs provided by the authority as I have received no written site inspection records.

³ Measurements taken by the authority on 15 December 2025 were of the sloping face, from ground level to the top of the seawall (without the capping), and does not include the depth of the supporting foundation.

⁴ The reference to clause 40 ('plinths') in the notice to fix appears to be a typographical error. It is clause 41 that relates to 'retaining walls'.

3. Submissions

The owner

- 3.1. The owner is of the understanding a building consent was not required for the construction of the seawall and dispute the issue of the notice to fix.
- 3.2. The owner agrees the seawall is “a permanent, immovable assemblage of materials”. They characterise the work as “armouring works”, or an “inundation barrier”, that is armouring the cliff against erosion of the cliff’s siltstone layers, caused by wave action and weathering, which has resulted in undercutting of the sandstone beds of the cliff, but also argue that the cliff’s “strata are inherently stable”.
- 3.3. They concede that some coastal armouring works would require a building consent, but submit that the seawall in this case is not subject to the Act because the wall is not a retaining wall, as it was not designed to retain the slope (ie does not support a surcharge from the cliff), but instead provides protection to the slope. They contend that for much of its length the wall does not provide lateral support to, or retain, land, and that land stability is not dependent on the works. Therefore, the owner contends these components and layers “do not perform a structural role of the type ordinarily regulated under the Building Act”.
- 3.4. With regard to the issue of complexity, which previous determinations⁵ have discussed as being a factor in defining whether or not something can be considered a “structure”, the owner says the wall “is comprised of functional parts, foundation, facing, cemented mass, drainage and capping. Conversely, it is all aggregate bound by concrete in a mass so can be considered a very simple combination of parts” and therefore does not have the level of complexity required to meet the test for a “structure”.
- 3.5. The owner agrees that the limited exemptions in Schedule 1 (specifically clauses 20 and 41) related to the building of retaining walls do not apply in this example of “armouring works”. Therefore, if it is building work, they do not believe the work is exempt from requiring a building consent.

The authority

- 3.6. The authority is of the view the notice to fix was correctly issued, because the seawall is a building in terms of section 8 of the Act and the works required a building consent. The authority considers the seawall meets the definition of a ‘building’ in section 8(1)(a) because:

⁵ An example given by the owners is Determination 2023/042, *The compliance of a wall made of ponga logs with clauses B1 and B2 of the Building Code* (20 December 2023).

- 3.6.1. it is permanent and immovable, as a mass of rock/stone captured in concrete, with a foundation, facing, cemented mass, drainage voids, and capping.
- 3.6.2. it is a structure of constituent parts and complexity, as it is of layered construction, has a footing excavation and backfill in places, has engineered drainage, and is structurally integrated with the cliff face.
- 3.6.3. it is a substantial, engineered structure, designed to support a surcharge.
- 3.7. The authority argues in this case the seawall is a retaining wall as it “performs a retention/protection function along parts of its 110m length and approximately 2.5m height”, including retaining backfill from footing excavation placed behind the wall in some sections; the cliff face is armoured in other sections. Even where the bedrock is inherently stable, as stated by the CPEng, the wall “still provides physical resistance to wave erosion, undercutting, and any potential block failure”.
- 3.8. The authority also submitted that retaining walls are explicitly listed as an example of “Ancillary” structures in Building Code Clause A1 *Classified Uses* (8.0).
- 3.9. The authority believes the building work is not exempt from requiring a building consent under the Schedule 1 exemptions that can be applied to retaining walls, because the wall retains more than 1.5 metres depth of ground and supports a sloping cliff surcharge (clause 20) and is not in a rural zone (clause 41).

4. Discussion

Is the seawall a building?

- 4.1. The definition of ‘building’ in section 8(1)(a) is “a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals machinery or chattels)”.
- 4.2. The parties agree the seawall is permanent and immovable, so the issue I must consider is whether, for the purposes of s8(1)(a), the seawall is a “structure”, noting that the Act does not define this term.
- 4.3. In *Woodward v Astrograss Allweather Surfaces Ltd*,⁶ [“Woodward”] it was held “[t]he word “structure” as used in s 3(1) of the Building Act 1991⁷ must be taken to have its ordinary and natural meaning” and “[t]he method of construction may be relevant”.
- 4.4. Previous determinations have considered whether walls and driveways and could be considered a “structure” and the ordinary and natural meaning of that term. These determinations have established that for something to be considered a

⁶ High Court Auckland, HC 112/96, 25 November 1996.

⁷ The equivalent provision to section 8(1)(a).

structure for the purposes of the Act it must have some elements or constituent parts, and/or be of some complexity. Determination 2023/042 said, in relation to a ponga-log retaining wall that it was a “structure” for the purposes of the Act because the wall had several constituent parts and had complexity from the interaction between these parts plus soil retention.⁸

- 4.5. This is consistent with the content of sections 8 and 9 of the Act. The items included in the definition of “building” in section 8 or expressly excluded from the definition of “building” in section 9 are all objects composed of different parts and/or of some complexity.
- 4.6. In this case, the seawall is a permanent, substantial, continuous construction. It is an organised assembly of parts, including concrete foundation, stone facing, cemented mass, drainage, and capping, which together create a stable, load-bearing form designed to perform a specific structural function.
- 4.7. In terms of complexity, it is of a specific engineer design, where its form and function are intended to resist a combination of forces acting on it, including (but not limited to) soil and water pressure and wave action. It is engineered to retain stone, excavated material, and topsoil to withstand a surcharge of 5kPa. The specific engineer design allows for a combination of imposed loads and indicates a level of complexity in terms of its structural design and function.
- 4.8. Considering these factors, I am of the view that the seawall is a structure. The seawall does not fall within any of the exclusions in section 9, and therefore it is a building for the purposes of the Act.

Was the building work to construct the seawall exempt from requiring a building consent under Schedule 1?

- 4.9. Section 40 provides that “A person must not carry out any building work except in accordance with a building consent”. 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.
- 4.10. Schedule 1 prescribes building work for which building consent is not required. Whether there has been a contravention of section 40 in this instance turns on whether the building work to construct seawall was exempt from requiring building consent by way of Schedule 1.
- 4.11. The parties agree clauses 20 and 41 of Schedule 1, which provide exemptions from requiring building consent for certain types of retaining walls, do not apply to the construction of the seawall. The retention of backfill material is great than that

⁸ See also determination 2019/018 ‘*Regarding the code-compliance of a proposed design for a domestic driveway at 18 Orion Drive Tauranga*’ (20 May 2019), which concluded the particular driveway in that case was a “structure” because it contained sufficient elements or parts and was of sufficient complexity.

provided for in Clause 20, and Clause 41 cannot apply because the seawall is not located in a rural zone. No other clauses in Schedule 1 are applicable.

- 4.12. I note that it was open to the owner to apply to the authority for a discretionary exemption under Schedule 1, clause 2. Any such application cannot be made retrospectively, that is, after the building work has commenced or been completed. The owner did not apply for a discretionary exemption.
- 4.13. I conclude the construction of the seawall was not exempt under Schedule 1 and the building work to construct the seawall was required to be carried out under a building consent. As no such building consent was obtained, there was a contravention of section 40.

Whether the contents of the notice to fix met the requirements of section 165

- 4.14. The provisions for notices to fix are in sections 163 to 168. 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 provisions of the Act or the regulations.
- 4.15. For the purposes of section 163, the notice to fix has been issued to the person carrying out the building work (ie the owner of 70, 80, 90 and 92 Stanley Point Road who is also the owner of the structure for the purposes of the Act).
- 4.16. The notice to fix appropriately identifies, for the purposes of section 164(1)(a), the specified person failed to comply with the Act by not obtaining a building consent before carrying out the building work contrary to section 40.
- 4.17. Section 165 provides for the form and content of a notice to fix, which must be in a prescribed form.⁹ This includes spaces to describe the building and the particulars of contravention or non-compliance.
- 4.18. In describing the building, the notice to fix included the street addresses and legal descriptions of 70, 80, 90 and 92 Stanley Point Road. However, the structure is substantially located on the CMCA adjacent to those properties, not on those properties themselves.
- 4.19. Under ‘particulars’, the authority referred to clause 40, which I believe was a typographical error. However, the notice to fix also says the seawall “is supporting a surcharge of sloping ground consisting of a coastal cliff ...”. This is disputed by the CPEng. The authority submitted it “did not have any specific information and made a decision based on a visual assessment”. No evidence has been provided to me that shows the seawall is supporting a surcharge from the cliff.

⁹ Form 13 of the Building (Forms) Regulations 2004.

4.20. I therefore consider that while the notice to fix was appropriately issued for a contravention under section 40, the notice did not accurately identify the location of the building work and contained other minor errors. In this situation I consider it appropriate to modify the authority's decision to issue the notice to fix to:

- correct the street address to read 'Common Marine and Coastal Area adjacent to 70, 80, 90 and 92 Stanley Point Road, Auckland'
- correct the legal description of the land to read 'Common Marine and Coastal Area adjacent to Lot 3 DP 16721, Lot 6 DP 16721, Lot 8 DP 25872, Lot 7 DP 25872 and Lot 6 DP 25872'
- update the reference to Schedule 1, clause 41
- remove the reference to 'and is supporting a surcharge of sloping ground consisting of a coastal cliff of approximately 7m in height'.

5. Conclusion

- 5.1. I consider the seawall located in the Common Marine and Coastal Area adjacent to 70, 80, 90 and 92 Stanley Point Road, Auckland is a 'building' for the purposes of section 8 and does not meet any of the excluded criteria in section 9. The building work to construct the seawall was therefore subject to regulation under the Act.
- 5.2. The building work was not exempt under Schedule 1, so construction without building consent was in contravention of section 40.
- 5.3. The authority therefore appropriately issued the notice to fix. However, since the notice to fix contained some errors I modify the decision to issue the notice to fix as described in paragraph 4.20.

6. Decision

- 6.1. In accordance with section 188 of the Building Act 2004, I hereby modify the decision to issue the notice to fix (NOT21802296) as set out in paragraph 4.20 of this determination.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 02 June 2026.

Peta Hird

Lead Determinations Specialist