

Determination 2026/020

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

Lot 7 Deposited Plan 3072, Resolution Bay, Marlborough

Summary

This determination considers a notice to fix issued in relation to building work carried out to construct two huts and associated structures without a building consent. The determination discusses whether, at the time the notice was issued, 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 notice.



Figure 1: photo of the building work, dated 10 September 2025

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, 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. I Timpson and Stayrod Trustees (Timpson) Limited, the owners who applied for this determination (“the owners”).
 - 1.2.2. Marlborough District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. The matter to be determined, under section 177(1)(b) and (2)(f), is the authority’s decision to issue the notice to fix dated 9 February 2026 (“the second notice”).
- 1.4. In making this determination I will consider whether there was a contravention of section 40 in relation to the building work described in the second notice. This turns on whether the construction of the two huts, two sheds, a deck, a verandah, and a porch (“the huts and associated structures”), at the date the notice was issued, was exempt from the requirement to obtain a building consent under clauses 3B, 17A, and 24 of Schedule 1 of the Act. I will also consider whether the particulars of the second notice met the requirements for notices to fix set out in the Act.

Issues outside this determination

- 1.5. The determination does not consider:
 - 1.5.1. any of the decisions made by the authority in relation to an earlier notice to fix, issued 12 December 2025, (“the first notice”) including whether there was a contravention at the time that notice was issued, the form and content of that notice, or whether the contraventions outlined in that notice were remedied.

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

- 1.5.2. whether other building work at the property, noted by the authority but not listed on the second notice, required a building consent. This includes a rainwater tank adjacent to the huts and a separate sleepout to the north of the huts.
- 1.6. The first notice and other building work that is not on the second notice are referred to in the background section for context only.

2. Background and building work

- 2.1. The building work to construct the huts and associated structures at the property commenced in January 2020 and continued across the course of that year. The owners state the building work was supervised by a licensed building practitioner (“the LBP”). No building consents were applied for or granted in relation to the building work.
- 2.2. In June 2025 the authority became aware of the buildings and carried out a site inspection on 10 September 2025. At the time, the authority characterised the huts and associated structures as a single “main building”.
- 2.3. The work completed by this time, based on information provided to me both by the authority and the agent for the owners, included:
 - 2.3.1. Two single-storey huts with timber pole foundations, steel framed subfloors, walls, and roof. The owners state the huts, at this stage, were used for sleeping in. The western hut is 9m² in floor area and is connected at roof level to two small adjacent sheds, being 1.45m² and 2.9m² in floor area. The eastern hut is 9.45m² in floor area and included a fireplace. It includes 5.9m² porch and deck to its front.
 - 2.3.2. A timber framed deck, of approximately 35.3m² (see Figure 2).
 - 2.3.3. The floor level for the huts and deck is approximately 0.75m above the supporting ground. The huts have a maximum height of 3.45m above the supporting ground (approximately 2.6m above floor level).
 - 2.3.4. A veranda, covering the majority of the deck, 26.4m² in size. The veranda is attached to the western hut, sheds, and deck. At that time, it was also attached to the eastern hut and porch by a stringer and flashing at roof level.
 - 2.3.5. A bench and sink, located on the covered deck between the huts, and associated plumbing, and a small food store.
 - 2.3.6. A rainwater tank located adjacent to the western hut, receiving rainwater from guttering running the length of both hut roofs and the veranda. The owner has stated this water is stored for potential firefighting purposes.

- 2.3.7. A separate building, to the rear of the huts, contained a long drop toilet and to the north of the huts there was a separate sleepout. The construction of these buildings was not included in the second notice, and they are not included in Figure 2.

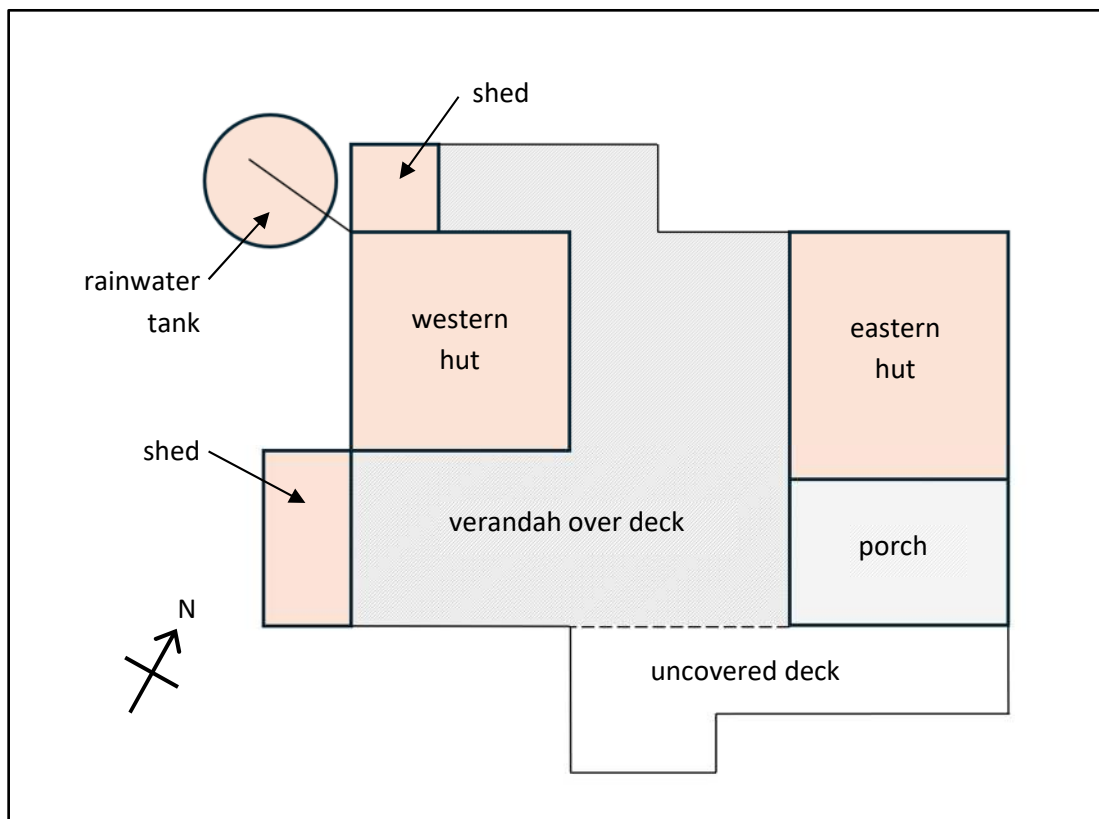


Figure 2: layout of the huts and associated structures (not to scale).

- 2.4. The authority issued the first notice to fix on 12 September 2025 for carrying out building work without a building consent in contravention of section 40.
- 2.5. Following the notice to fix the owners carried out further building work, which entailed:
- 2.5.1. Removal of the fireplace from the eastern hut.
 - 2.5.2. Removal of the bench, sink, and plumbing from the covered veranda.
 - 2.5.3. Detaching of the stringer for the veranda rafters, and the flashing, from the eastern hut and porch (and instead attaching the stringer to timber posts). However, there remains a sheet of plywood and gutter at roof level which appears to connect the eastern hut and porch to the other structures.
 - 2.5.4. Removal of the long drop toilet and building.
- 2.6. The owners also removed sleeping mats from the huts.

- 2.7. On 9 February 2026, the authority issued the second notice to fix to I Timpson for a contravention of section 40. The particulars of contravention on the notice to fix first describes the building work observed during the 10 September 2025 inspection and then summarises the subsequent work undertaken, and states that:

... the main building structure measuring approximately 77m² remains in place.^[2]

This building work is not recorded as consented in [the authority's] building records and does not meet the criteria for exemption under section 41(1) of the Building Act 2004. Accordingly, building consent was required prior to the work being undertaken.

- 2.8. The remedies for the second notice require either the “[removal] of unauthorised building works” or “...any other option(s) required to make the building works comply with the Building Act 2004 and its regulations”.

3. Submissions

Owners

- 3.1. The owners submit, in summary:

- 3.1.1. Before the issue of the second notice, work was carried out to “completely remove any physical attachment [of the deck and veranda] from one of the structures [being the eastern hut]”.
- 3.1.2. The huts are now separate structures, and are used as storage, so the exemption contained in clause 3B might apply (which deals with certain detached buildings larger than 10m² but not larger than 30m²), meaning the building work does not require building consent.
- 3.1.3. The huts having an attached deck and veranda (constructed under the exemptions contained in clauses 17A and 24) does not exclude them from being “detached” dwellings, as defined in Building Code Clause A1 – *Classified uses*.

Authority

- 3.2. The authority submits, in summary:

- 3.2.1. Because the huts, sheds, and deck are used in conjunction with one another, having shared access, “functional integration”, integrated layout and circulation patterns, they create a “single functional building”.

² While the second notice states the overall area is 77m², based on plans and dimensions provided to me by both the owners and the authority, I calculate the total area of the two huts, sheds, and deck to be approximately 64m².

- 3.2.2. This is supported by section 8(1)(c) of the Act, which states that the definition of a “single building” “includes any 2 or more buildings that, on completion of building work, are intended to be managed as one building with a common use and a common set of ownership arrangements”.
- 3.2.3. As the “overall combined footprint” is greater than 30m², Clause 3B does not apply and building consent was required.
- 3.2.4. The authority acknowledges the work carried out to remove features from the huts, but its remaining concern is about the footprint. It also acknowledges work to separate the eastern hut from the other structures but still sees the overall grouping of building work as a single building.
- 3.2.5. In response to a query regarding the 77m² area given in the notice to fix, the authority stated this figure “was derived from an early, high-level assessment of the overall building footprint and areal imagery”. Its revised calculations give a figure of 61m², excluding the shed to the north of the western hut and a portion of the adjacent deck.

4. Discussion

- 4.1. The matter to be determined concerns the issuing of the second notice on 9 February 2026.
- 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.
- 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”.³
- 4.4. I will first consider whether the work, at the time the second notice was issued, was exempt from the requirement to obtain a building consent and then consider the form and content of that notice.

Was there a contravention of the Act?

- 4.5. The authority considers section 40 has been contravened, which requires (in subclause (1)) that a person must not carry out any building work except in accordance with a building consent.

³ Form 13 of the Building (Forms) Regulations 2004. Section 165(1)(a) requires that a notice to fix be in the prescribed form.

- 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. Whether there has been a contravention of section 40 in this case turns on whether the building work to construct the huts and associated structures was exempt from requiring building consent by way of Schedule 1.
- 4.7. Schedule 1 prescribes building work for which building consent is not required. Part one of the schedule describes general exempt building work (including the construction of single-storey detached buildings), additions and alterations to existing buildings (including awnings, porches and verandas), and other structures such as retaining walls and decks. Each of the clauses has criteria to be met for that exemption to apply.
- 4.8. The relevant exemptions in Schedule 1 that were current at the time the second notice was issued are clauses 3B (single-storey detached buildings), 17A (porches and verandas), and 24 (decks, platforms etc). These clauses are set out in full in Appendix A of this determination.⁴
- 4.9. I note the owner carried out some building work to remove elements attaching the eastern hut and porch from the other structures, however it appears to still be connected by way of a sheet of plywood enclosing the deck and the gutter draining surface water to the tank.
- 4.10. 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”.
- 4.11. Considering the construction of the huts and sheds under this exemption, these are detached from other buildings on the site (3B (1)) and they are not more than one storey (clause 3B (1)(b)(i)).
- 4.12. I turn now to the maximum floor area of 30m² allowed for in clause 3B (1)(b)(ii). The term ‘floor area’ is not defined in the Act or clause 1AA of Schedule 1. That term is used in Schedule 1 for a range of building work involving an area bounded by a combination of exterior walls and/or or structural supports.⁵ Elsewhere, Schedule 1 clauses refer to “size”⁶, as compared to floor area; indicating that both terms are used for specific purposes. The Ministry has published guidance to Schedule 1 (“the Ministry’s guidance”). The ‘notes for single-storey detached buildings’ say the ‘net floor area’ is “measured to the inside of the enclosing walls or posts/columns”.⁷

⁴ Schedule 1 clause 3B and 17A were inserted on 31 August 2020.

⁵ Detached buildings, tents marquees, and similar lightweight structures, closing in verandas and patios, porches and verandas, carports, and pole sheds and hay barns.

⁶ Awnings, shade sails, solar panel arrays.

⁷ Ministry of Business, Innovation & Employment (Building Performance), *Building work that does not require a building consent*, sixth edition version 2, 15 January 2026 at page 38.

- 4.13. In light of how the term is used in Schedule 1, alongside the Ministry's guidance, I calculate the total floor area (being the internal spaces) of the two huts and two sheds together to be 22.8m², meaning the requirements of clause 3B(1)(b)(ii) was met.⁸
- 4.14. The owner has stated the construction work was carried out or supervised by the LBP (clause 3B (1)(a)). Furthermore, it does not contain sanitary facilities and the rainwater tank is not used for the storage of potable water (clause 3B (1)(b)(iii)); it does not include sleeping accommodation (clause 3B (1)(b)(iv) and (v)); and it is not closer than 1 metre from a residential building, as there are no other residential buildings on the property, and site photographs indicate it is more than 1 metre from the southwestern boundary (clause 3B (2)).
- 4.15. In summary, the building work for the construction of the two huts and two sheds met all requirements of clause 3B and was exempt from the requirement to obtain a building consent at the time the second notice was issued.
- 4.16. Clause 17A relates to "Porches and verandas exceeding 20 square metres in floor area, but not exceeding 30 square metres". The veranda and the porch each meet several requirements of this clause. The owner has stated that the construction work was carried out or supervised by the LBP (clause 17A (a)). Furthermore, the veranda and the porch are both on the ground level of the building (clause 17A (b)(ii)); they are 26.4m² and 5.9m² in floor area respectively (clause 17A (b)(iii)); and neither overhang any area accessible by the public (clause 17A (b)(iv)).
- 4.17. However, clause 17A is one of the provisions for additions and alterations to existing buildings. Clause 17A (b)(ii) requires that the veranda and the porch be 'on or attached to an existing building'. As both the veranda and the porch were constructed at the same time as the huts, sheds, and deck they are attached to, this requirement was not met.
- 4.18. As the building work to construct the veranda and the porch did not meet the requirement of clause 17A (b)(ii) at the time the second notice was issued, their construction was building work that required building consent.
- 4.19. 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. The deck has a maximum height of 0.75 meters above the supporting ground, and there is no indication a fall would be great than this if the deck collapsed (for example, there is no significantly sloping ground).
- 4.20. The deck met the requirements of clause 24 at the time the second notice was issued and the building work to construct the deck did not require building consent.

⁸ This does not include the floor areas of the veranda and the porch, which are structures provided for in clauses 17A and 24. These are considered in paragraphs 4.16 to 4.18.

4.21. In conclusion, the building work to construct the two huts and two sheds, and the deck met the requirements of clauses 3B and 24 respectively at the time the second notice was issued. This building work did not require building consent, so there was no contravention of section 40. However, the building work to construct the veranda and the porch did not meet all the requirements of clause 17A, and so required building consent, meaning there was a contravention of section 40.

The form and content of the notice

4.22. 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.⁹

4.23. In this case, the second notice does not include Stayrod Trustees (Timpson) Limited (although the cover letter was addressed to them). As with I Timpson, they are a specified person, as an owner, who was responsible under the Act for obtaining any necessary consents¹⁰ so must be listed on the notice.

4.24. It is important to accurately identify specified persons responsible for contravening the Act on a notice to fix because it imposes obligations, timeframes, and significant consequences on those persons.

4.25. The second notice describes the contravention as being related to the building having an area of 77m². This measurement relates to the collective footprint of the structures rather than the floor area, and it is the floor area that is relevant with regard to the exemption in clause 3B.

4.26. Furthermore, as I have determined, it is the work to construct the veranda and the porch at the same time as the buildings they are attached to which contravened section 40 at the time the second notice was issued, not the construction of the huts and sheds.

4.27. The remedies given on the second notice, to either remove, pursue any other options, or apply for a certificate of acceptance, are relevant to a contravention of section 40. However, because the particulars include building work that was exempt under Schedule 1 the owners are not given the correct understanding of what work contravenes the Act and so how to remedy that contravention. Therefore, the second notice does not meet the requirements of section 165.

⁹ 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].

¹⁰ Section 14B (a) of the Act.

Conclusion

- 4.28. While I have found there was a contravention of section 40 at the time the second notice was issued, the notice does not meet the requirements of section 165 with regard to accurately identifying the specified persons responsible and describing the building work that was carried out in contravention of section 40. Therefore, the second notice is reversed.
- 4.29. It is for the authority to consider whether to issue a new notice to fix in relation to the construction of the veranda and the porch (at the same time as the building they are attached to) without building consent.

5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I determine the work to construct the veranda and the porch contravened section 40 at the time the second notice was issued. However, the second notice to fix did not meet the requirements of section 165 and is reversed.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 11 June 2026.

Peta Hird

Lead Determinations Specialist

Appendix A

Relevant clauses of Schedule 1 of the Act – Building work for which building consent not required as at 15 January 2026

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
 - (iv) does not include sleeping accommodation, unless the building is used in connection with a dwelling and does not contain any cooking facilities; and
 - (v) if it includes sleeping accommodation, has smoke alarms installed.
- (2) However, subclause (1) does not include building work in connection with a building that is closer than 1 metre to any residential building or to any legal boundary.

17A Porches and verandas exceeding 20, but not exceeding 30, square metres in floor area

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

- (a) any design or construction work is carried out or supervised by a Licensed Building Practitioner; and
- (b) the porch or veranda —
 - (i) is on or attached to an existing building; and
 - (ii) is on the ground level of the building; and
 - (iii) exceeds 20 square meters in floor area, but does not exceed 30 square metres; and
 - (iv) 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.