

Determination 2026/028

An authority's decision to refuse to provide written notice under s115 for a change of use

269 Okura River Road, Okura, Auckland

Summary

This determination considers an authority's decision to refuse to provide written notice for a change of use under section 115 of the Building Act. The proposed change of use was refused because the authority considered a building consent application was required. The determination also considers whether the installation of fire-rated linings and associated framing is exempt building work under Schedule 1 of the Act.

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, Andrew Eames, 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. T Roper, R Roper and Integrity Trustees (2008) Ltd, the owners of the property and applicants for this determination (“the owners”)
 - 1.2.2. Auckland Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. The owners decided to rent out part of their house as a separate household unit and notified the authority of a change of use. The authority considered that a building consent application was required and refused to provide written notice for the change of use.
- 1.4. The matter to be determined, under sections 177(1)(b) and (3)(f), is the authority’s decision to refuse to provide written notice for the change of use under section 115 – specifically in relation to the proposed building work to install fire-rated internal linings and whether this work required a building consent.

Issues outside this determination

- 1.5. The determination does not consider the full change of use proposal itself, in terms of whether the building, in its new use, will comply with the Building Code to the extent required under section 115.
- 1.6. Whether any proposed building work complies with the Building Code.

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

2. Background

- 2.1. The owners' house is a single storey dwelling constructed in 2006. In 2010, the previous owners extended the house under a building consent to add two bedrooms, a lounge and a bathroom. Sometime after the extension was completed, the previous owners installed a kitchen in the new lounge area.
- 2.2. In 2025, the owners purchased the property. They wish to rent out the extended area where the new kitchen had been installed. They have applied for a certificate of acceptance for the kitchen, which is pending the outcome of the change of use dispute.
- 2.3. On 13 May 2026, the owners notified the authority of the proposed change of use to convert the southern portion of the house into a separate household unit. They provided a report outlining existing and proposed compliance with relevant aspects of the Building Code.
- 2.4. As part of the conversion into two household units, building work was proposed to the internal linings, in order to provide a 30-minute fire rating separating the two tenancies. As well as the installation of new fire-rated linings, this involves the removal of a doorway between the entry and laundry (of the main dwelling) and installation of framing in its place, including an 800mm bottom plate and a single stud to the height of the door lintel with two nogs.² The owners consider this work is exempt under clause 12 of Schedule 1.
- 2.5. On 10 June 2026, the authority refused the change of use notification. The letter states that the authority does not agree that the proposed installation of the fire-rated linings is exempt under Schedule 1, because "Exemption 11 does not allow building work to be carried out on internal walls (including internal doorways) if these walls are loadbearing or bracing elements". The letter stated that a building consent application was required, and that the change of use would be assessed during the processing of the building consent application.

3. Submissions

The authority

- 3.1. Regarding the interpretation of Schedule 1, the authority stated:

[The authority] accepts that each clause of Schedule 1 is to be applied as an independent, self-contained test. If building work falls fully within the description of building work in any one clause, that work is exempt, regardless of whether it

² A bottom plate is a horizontal piece of timber at the base of a framed wall. A stud is a vertical piece of timber, which in this case would run from the bottom plate up to the door lintel (the horizontal beam above the doorway that carries the weight of the wall/roof above). Nogs (or dwangs) are short horizontal pieces of timber fixed between studs.

would also fall outside another clause if that other clause were relied upon instead. Nothing in Schedule 1 links the clauses together, and there is no drafting (such as “and in accordance with clause X”) that makes any clause conditional upon, or subordinate to, another.

- 3.2. The authority clarified that it considers the work to install the new fire-rated linings is exempt under clause 12. However, it disagrees that the closing in of the existing doorway including installation of new framing (to provide fixing for the new lining) is exempt building work. It considers that because the work is located within a loadbearing wall it is excluded from clause 11 of Schedule 1, and clause 12 does not extend to such framing alterations.

The owners

- 3.3. Regarding the interpretation of Schedule 1, the owners state the clauses are standalone and that one clause does not cancel or override another. There are no connections in Schedule 1 to link individual clauses together or require consideration of other clauses when assessing whether building work is described in Schedule 1.
- 3.4. The owners consider that, in addition to the internal linings themselves, the installation of framing for the support of the linings is also exempt under clause 12. They note:
- 3.4.1. A key aspect of the exemption is “Building work in connection with...”, which they take to mean “building work that contributes to the installation of internal linings for the purpose of complying with the building code, which can, and should include the fixing of the internal lining material to a structure”.
- 3.4.2. An example given in the Ministry’s exempt building work guidance³ (as being exempt under clause 12) relating to replacement of lathe and plaster wall linings would require extra studs and nogs.
- 3.4.3. “The load bearing aspect of the wall is not changed as the load is transferred from the roof to the existing lintel and down the trimmer studs. The ‘building work’ ... is therefore in connection with the internal linings only and does not contribute negatively or positively to the existing structure”.

³ Building Performance (2025) *Building work that does not require a building consent: Exemptions Guidance for Schedule 1 of the Building Act 2004*. Ministry of Business, Innovation and Employment, at page 78.

4. Discussion

The authority's refusal of the change of use

- 4.1. The change of use provisions are set out in sections 114 and 115. Section 114 provides that an owner of a building must give written notice to the relevant authority if the owner proposes to change the use of a building.
- 4.2. Section 115 provides that an owner must not change the use of a building unless the authority gives the owner written notice that it is satisfied the building, in its new use, will comply with the Building Code to the extent required.
- 4.3. The authority's refusal letter states:

[The authority] does not however agree that the proposed installation of fire-rated linings will be exempt building work under Schedule 1 of the Building Act as Exemption 11 does not allow building work to be carried out on internal walls (including internal doorways) if these walls are loadbearing or bracing elements.

...

A building consent application will be required for the proposed fire rating to be installed according to s115(b) and Building Code Clause C requirements. When a building consent application is submitted for the proposed changes the Change of Use will be assessed during the processing of the building consent application.
- 4.4. In this case, the refusal to provide written notice was due to the authority's view that a building consent was required. The change of use proposal was not assessed by the authority in terms of whether the building, in its new use, would comply with the Building Code to the extent required under section 115.
- 4.5. The change of use process is separate to the building consent process. In some instances, a change of use may involve building work which requires building consent, and in other instances it may not, eg if the relevant building work is exempt under Schedule 1 or no upgrades to the building are required.
- 4.6. Although it may be practical to consider a change of use proposal and building consent application together in some instances, there is no requirement in the Act that a building consent (if required in the circumstances), must be applied for in conjunction with the change of use under sections 114 and 115.
- 4.7. A change of use proposal cannot be refused under section 115 solely on the basis that a building consent application has not been made. The authority's decision under section 115 must address the statutory question, whether it is satisfied, that the building in its new use will comply with the Building Code to the extent required.

The fire-rated linings and associated framing

- 4.8. Although I have already determined that the change of use proposal could not be refused for the reason given by the authority, to assist the parties I will go further within this matter for determination to consider whether the fire-rated linings and associated framing is exempt building work under Schedule 1.
- 4.9. Section 40 provides that building work must not be carried out except in accordance with a building consent. However, section 41 outlines specific cases where building consent is not required, including where the building work is described in Schedule 1 of the Act.⁴
- 4.10. Clause 12 of Schedule 1 states:

Internal linings and finishes in existing dwelling

Building work in connection with any internal linings or finishes of any wall, ceiling, or floor of an existing dwelling.

- 4.11. Clause 11 of Schedule 1 states:

Internal walls and doorways in existing building

Building work in connection with an internal wall (including an internal doorway) in any existing building unless the wall is—

- (a) load-bearing; or
- (b) a bracing element; or
- (c) a fire separation wall (also known as a firewall); or

...

- 4.12. The Ministry's exempt building work guidance states that clause 12 "allows you to replace or alter any or all of the linings and finishes of walls, ceilings or floors of an existing dwelling (whether single or multi-unit)."⁵
- 4.13. The guidance also indicates that the installation of fire-rated linings can be exempt under clause 12, stating "As wall and ceiling linings often provide bracing and fire resistance, you should seek advice from an appropriately qualified building practitioner before carrying out any such work."⁶
- 4.14. The wording in clause 12 is broad. It applies to **any** internal linings of any wall, ceiling or floor of an existing dwelling, and there are no types of internal linings excluded from the exemption. As such, clause 12 applies to fire-rated linings. I note that this is not (or no longer) disputed by the parties.

⁴ Sections 41(1)(b) and 42A.

⁵ Building Performance (2025) *Building work that does not require a building consent: Exemptions Guidance for Schedule 1 of the Building Act 2004*. Ministry of Business, Innovation and Employment, at page 77.

⁶ As above, at page 78.

- 4.15. The parties disagree about whether the framing required to install the linings is exempt building work. The owners state that the work to install the linings includes the removal of an internal doorway between the entry and laundry, and the installation of framing including an 800mm bottom plate, a single stud to the height of the door lintel and two nogs.
- 4.16. The owner considers this is building work “in connection with” the internal linings, and accordingly, it also falls under clause 12. The authority considers clause 12 does not extend to framing alterations, and the work is also excluded from clause 11 due to the relevant wall being load-bearing.
- 4.17. I note that the words “in connection with” are broad as well. This term is used in many Schedule 1 exemptions, and there are often criteria which follow to limit the broader wording. In clause 12, the only criterion which limits the wording “building work in connection with any internal linings or finishes of any wall, ceiling or floor” is that it is to occur in an existing dwelling.
- 4.18. In this instance, the installation of framing in the previous doorway is in connection to the linings as it provides members on which to fix the internal linings. It enables and is an integral part of the installation of the linings. As such, I consider it is building work “in connection with” the linings and is exempt under clause 12. However, if the framing was being installed for a purpose other than fixing the linings, it would not come under clause 12.
- 4.19. I consider this view is consistent with the approach in Determination 2024/054,⁷ in which the internal linings of two tiled showers included the backing substrate attached to timber framing, the wet area membrane applied to the substrate, the tiles adhered to the wet area membrane, and associated fixings, adhesives and grouting. The clause applies to more than just the fixing of linings themselves, and includes building work which is connected with the installation of the linings.
- 4.20. I agree with the parties’ view that the clauses in Schedule 1 are independent, stand-alone tests, and one Schedule 1 clause does not override another. Because the work to the framing is “in connection with” the linings in this instance, it can fall under clause 12, notwithstanding that it would be excluded from clause 11 due to being in a load-bearing wall.
- 4.21. As such, I confirm that the building work to remove the doorway, install the necessary framing and attach the fire-rated linings, is work “in connection with any internal linings” and is exempt under clause 12.

⁷ Determination 2024/054 *Building Code compliance of two tiled showers in a residential building and whether there was a failure to issue a notice to fix for their installation* (2 October 2024).

- 4.22. I also note that the reason why the authority considered the work was not exempt under Schedule 1 was not made very clear. It appeared that the authority considered the installation of the fire-rated linings themselves was not exempt (because of a conflict with clause 11), rather than the installation of the associated framing which was not mentioned in the letter. Consistent with written notices refusing building consents and code compliance certificates, a notice refusing a change of use notification should provide clear, specific, and valid reasons for the decision.

5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I reverse the authority's decision to refuse the notification of change of use.
- 5.2. This requires the authority to make a new decision which considers whether the building, in its proposed new use, will comply with the Building Code to the extent required under section 115.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 14 August 2026.

Andrew Eames

Principal Advisor Determinations