

Determination 2026/040

An authority's decision to issue a notice to fix in relation to building warrant of fitness obligations

146 Kokohuia Road, Omapere, Kaikohe

Summary

This determination concerns a notice to fix issued for a failure to supply a building warrant of fitness in contravention of section 108 of the Building Act. The determination considers the form and content of the notice to fix, and whether the building is being used wholly as a single household unit and so would not require a compliance schedule.



Figure 1: The first floor of the building¹

¹ Image reproduced from the Compliance Schedule issued by the authority on 12 May 2025. The ground floor is out of view.

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 (“the Building Code”) of the Building Regulations 1992.

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”).²
- 1.2. The parties to the determination are:
 - 1.2.1. A and M Muir, the owners of the property and recipients of the notice to fix, who applied for this determination (“the owners”)
 - 1.2.2. Far North District Council, the authority carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. The matter to be determined, in terms of section 177(1)(b) and (3)(e), is the authority’s decision to issue notice to fix NTF-2026-452/0 dated 15 June 2026 (“the notice”) for a contravention of section 108.
- 1.4. In deciding the matter, I will consider whether a building warrant of fitness was required to be supplied to the authority. This turns on whether the building is being used wholly as a single household unit, in which case it would not require a compliance schedule.
- 1.5. This determination does not consider any other decision of the authority, such as in relation to an application for a change of use.³ References to other decisions are included in the background for context only.

2. The building and background

- 2.1. The building, which the owners advise is 234m², was constructed in 2014 on a semi-rural property that slopes downhill towards the south and west from Kokohuia Road. The south part of the building has two storeys, with the upper level (first floor) extending to the north as a single level adjacent to a sealed driveway and hardstand area (see Figure 1).

² The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

³ Regulations 5 and 6 of the Building (Specified Systems, Change the use, and Earthquake-prone Buildings) Regulations 2005 set out how a change of use of all or part of a building is assessed.

- 2.2. The owners purchased the property in September 2025. The owners advise that the previous owners did not live in the building and used it “as a commercial enterprise”; according to the authority’s records the building was a ‘guest house’.
- 2.3. The owners reside in the building and operate a “home business” or “retreat” that includes accommodation, comprising three guest rooms on the ground floor and a fourth guest room on the first floor. The owners advise these are single rooms with one room also able to accommodate a fold-out bed, and that they provide accommodation for a maximum of between three and five “friends and paying guests”.⁴ Each of the guest rooms has an ensuite bathroom.
- 2.4. The building has one kitchen and dining area. The owners advise that guests “may use the kitchen facilities for their own meals”, and “may join [the owners] for shared meals in the kitchen”. The floor plans provided by the owners to the Ministry (which had been provided to the authority in November 2025, and which the owners advise is still the layout), shows that the building also has a lounge, a library, a meeting room and two offices, and various utility areas including a laundry.
- 2.5. The building’s last warrant of fitness, which was supplied to the authority by the previous owners, is dated 11 April 2025. It warranted that the “inspection, maintenance, and reporting procedures of the compliance schedule for the...building have been fully complied with during the 12 months prior to the date [of the warrant of fitness]” and had attached a certificate of inspection by an independently qualified person⁵.
- 2.6. On 12 May 2025, the authority issued an updated compliance schedule in relation to the building, which:⁶
- 2.6.1. notes an ‘anniversary’ date of 3 April ⁷
- 2.6.2. identifies the four ‘specified systems’ contained in the building as emergency lighting systems, final exits, fire separation, and signs for communicating information intended to facilitate evacuation.
- 2.7. Following the owners’ purchase of the property, they discussed the use of the building and compliance schedule requirements with the authority.

⁴ The owners advise “[o]ften [guests] don’t pay a fee but leave a koha”. However, I note the owners’ website <https://www.soulcareprayer.org/> (accessed 31 July 2026) specified a nightly rate per room.

⁵ An ‘Independently qualified person’ (or ‘IQP’) is a person accepted by a territorial authority as being qualified to inspect compliance schedule items (see definition in section 7).

⁶ Compliance Schedule no 1956. A history note on the schedule records “22.04.2025 Audit undertaken to update [Compliance Schedule] into new format”.

⁷ This date is the anniversary of the issue of the original compliance schedule (see section 108(3)(a)).

2.8. The authority advised the owners:

Because the building contains specified systems namely SS04, SS15/2, SS 15/3 and SS 15/4 you will need to apply for a building consent to remove the specified system or make changes. Removing a specified system requires an amendment to the compliance schedule to ensure the building remains compliant with the Building Act. The application to remove the specified systems will also require an updated fire report.

2.9. The owners outlined their position to the authority, stating:

... We have not made nor intend to make any physical alterations to any building. Accordingly, we see this as simply a residence with a small home-based business. So we'd like to a) have this property recognised by [the authority] as a residence, and b) dispense with the compliance schedule; namely, SS1, SS2, SS3 and SS4.

2.10. The authority responded, saying:

... You must continue to follow the maintenance and reporting procedures outlined in your building's compliance schedule until your change of use application has been fully processed and approved. This includes ongoing maintenance and reporting procedures of specified systems to ensure continued compliance with the Building Act. Once the change of use is approved, and if the specified systems are removed or no longer required, the compliance schedule and associated Building Warrant of Fitness obligations may be updated or cancelled accordingly.

2.11. The owners subsequently notified the authority that they intended to change the use of the building from SA (Sleeping Accommodation) to SH (Sleeping Single Home) and engaged a fire engineer to assist them with their application.

2.12. The fire engineer provided a report noting the existing building had accommodation for six paying guests. It suggested that as the owners would have "no more than 5 paying guests" they could "declare" the building to be a detached dwelling rather than accommodation, and to change the use in this way "all existing fire alarms systems must be disabled and removed, and Type 1 interlinked smoke alarms must be installed ..."

2.13. The authority refused the change of use application on 6 March 2026, advising "the appropriate compliance path" was to apply for a building consent to remove the specified systems from the building, and that the change of use would be assessed as part of the building consent process.

2.14. The owners advise they also applied to have the specified systems removed from the compliance schedule but were "directed to first submit a building consent application to remove existing [building warrant of fitness] framework". The owners

say they then applied for a building consent exemption⁸, but that was declined by the authority.

2.15. In a letter dated 23 February 2026 the authority advised the owners the building's warrant of fitness was about to expire, and then on and 4 May 2026 that it had expired.

2.16. The owners wrote to the authority on 7 April 2026 setting out their view that neither a building warrant of fitness nor building consent was necessary. The owners advise that the next contact they received from the authority, other than the reminder letter of 4 May 2026, was a phone call on 11 June 2026 enquiring whether the owners intended to reinstate the building warrant of fitness or apply for a building consent.

2.17. The following day (12 June 2026) the authority wrote to the owners, stating the building "still requires a Building Warrant of Fitness. A Building Consent is required to remove a Specified System from a building".

2.18. On 15 June 2026, the authority issued the notice to the owners. The 'Particulars of contravention or non-compliance' section of the notice states (reproduced as written):

Contrary to section 108(1) and 108(3) of the Building Act 2004, the building owner has not supplied a building warrant of fitness to the territorial authority ... on the anniversary of the issue of the building's compliance schedule BWOF 1956 The anniversary date is 03 April A building warrant of fitness for the previous 12 months ending 03 April 2026 has not been supplied.

Citation from section 108(1) and 108(3) of the Building Act 2004: ...

2.19. The notice also outlines the required remedy and date for compliance:

To remedy the contravention or non-compliance you must:

- Engage an Independently Qualified Person (IQP) to carry out the inspection, maintenance and reporting procedures for all specified systems as listed on the compliance schedule and issue a report certifying that the inspections maintenance and reporting procedures stated in the compliance schedule have been fully complied with during the previous 12 months.
- Provide a current Building Warrant of Fitness Certificate to [the authority].

This notice must be complied with by: Date: 15 July 2026 ...

2.20. The owners subsequently applied for this determination.

⁸ Under Schedule 1 clause (2) which provides for discretionary exemptions.

3. Submissions

3.1. The owners submit (in summary):

- 3.1.1. They wish to “discontinue the current [building warrant of fitness]” ... “on the basis of advice given in a fire engineer’s report that determined the new situation no longer required the [building warrant of fitness] – all about fire systems.”
- 3.1.2. All the owners “need to do is turn off power to the bright exit signs that are in place on the [first] floor where only [the owners] live. All other fire safety impositions – such as firewalls, doors and smoke alarms, [we] will keep in place.”
- 3.1.3. Acceptable Solution C/AS1⁹ “states that only [risk group] SH fire safety regulations are required”¹⁰, ie “all that is required is to have a Type 1 domestic smoke alarm system in compliance with [New Zealand Standard] 4514” (which the owners had installed on 9 March 2026).

3.2. The authority did not make a submission. However, in response to a question from the Ministry, the authority said, “it came to [the authority’s] attention that the building will be operating as ... [a] Retreat offering short-term accommodation stays ...”.

4. Discussion

4.1. The matter for determination is the authority’s decision to issue the notice for a contravention of section 108. In deciding this matter, I must consider whether there was a contravention of the Act and therefore grounds to issue the notice, and whether the notice meets the requirements of section 165.

Legislation

4.2. The provisions relating to 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 if it considers, on reasonable grounds, that a specified person¹¹ is contravening or failing to comply with the Act or its regulations.

⁹ Acceptable Solution C/AS1 *Protection from fire for buildings with sleeping (residential) and outbuildings (risk group SH)* (second edition amendment 1, effective 28 July 2025) is the current Acceptable Solution for Clauses C1-C6 of the Building Code. Under sections 19, 22 and 23 of the Act, compliance with an Acceptable Solution is deemed to be compliance with the Building Code.

¹⁰ The owners refer to C/AS1 risk group SH (Building with sleeping (residential) and Outbuildings), which includes detached dwellings where fewer than 6 people (not including members of the residing family) pay for accommodation such as homestays and bed and breakfast properties.

¹¹ Section 163 defines a specified person and this includes the owner of a building.

4.3. Sections 100 to 111 set out the requirements for compliance schedules and building warrants of fitness for buildings that are, and that are not, used wholly as a single household unit. Section 100 states:

- (1) A building not used wholly as a single household unit –
 - (a) requires a compliance schedule if –
 - (i) it has a specified system; or
 - (ii) it has a cable car attached to it or servicing it; and
 - (b) requires the schedule for all specified systems it has and any cable car it has attached to it or servicing it.
- (2) A building used wholly as a single household unit –
 - (a) requires a compliance schedule only if it has a cable car attached to it or servicing it; and
 - (b) requires the schedule only for the cable car.

4.4. Section 105 specifies the obligations of an owner of a building for which a compliance schedule has been issued. It provides:

An owner of a building for which a compliance schedule has been issued must ensure –

- (a) that each of the specified systems stated in the compliance schedule is performing, and will continue to perform, to the performance standards for that system; and
- (b) that the owner provides to the territorial authority an annual building warrant of fitness in accordance with section 108; and

...

4.5. Section 108 sets out the requirements for the annual supply and display of a building warrant of fitness. It states:

- (1) An owner of a building for which a compliance schedule has been issued must supply to the territorial authority a building warrant of fitness in accordance with subsection (3).
- (2) The purpose of a building warrant of fitness is to ensure that the specified systems stated in the compliance schedule are performing, and will continue to perform, to the performance standards for those systems that are set out in the relevant building consent.
- (3) The building warrant of fitness must –
 - (a) be supplied on each anniversary of the issue of the compliance schedule; and
 - (b) state that the inspection, maintenance, and reporting procedures of the compliance schedule have been fully complied with during the previous 12 months; and

- (c) have attached to it all certificates, in the prescribed form, issued by an independently qualified person that, when those certificates are considered together, certify that the inspection, maintenance, and reporting procedures stated in the compliance schedule have been fully complied with during the previous 12 months; and
 - (d) have attached to it any recommendation made by an independently qualified person that the compliance schedule should be amended to ensure that the specified systems stated in the compliance schedule are performing, and will continue to perform, to the performance standards for those systems; and
 - (e) be in the prescribed form; and
 - (f) contain the prescribed information.
- (4) The owner must publicly display a copy of the building warrant of fitness in a place in the building to which users of the building have ready access or, if the compliance schedule relates only to a cable car, publicly display the copy of the building warrant of fitness in or near the cable car.
- 4.6. 'Specified system' is defined in section 7 to mean a system or feature that is contained in, or attached to, a building that contributes to the proper functioning of the building (for example, an automatic sprinkler system), and that has been declared to be a specified system for the purposes of the Act.¹²
- 4.7. In summary, the owner of a building that is "not used wholly as a single household unit", for which a compliance schedule has been issued, and that contains specified systems, must (among other obligations) supply the territorial authority with a building warrant of fitness and relevant supporting information¹³ on each anniversary of the issue of the compliance schedule.

Whether the building is used wholly as a single household unit

- 4.8. As set out above, section 100 specifies when a building requires a compliance schedule. When a building is *not* used wholly as a single household unit and has specified systems or a cable car the building requires a compliance schedule; whereas when a building *is* used wholly as a single household unit it only requires a compliance schedule when it has a cable car attached to it or servicing it.
- 4.9. There is no cable car attached to or servicing the building in this case. However, the building does have several specified systems as identified in the compliance schedule dated 12 May 2025. Therefore, to determine whether the owners must adhere to building warrant of fitness obligations, I must consider whether the building is used wholly as a single household unit.

¹² Paragraph (a) of the definition of 'specified system'. Specified systems declared as such are set out in Schedule 1 of the Building (Specified Systems, Change the use, and Earthquake-prone Buildings) Regulations 2005.

¹³ Supporting information such as certification that the inspection, maintenance and reporting procedures stated in the compliance schedule have been fully complied with.

4.10. The term 'household unit' is defined in section 7:

household unit–

- (a) means a building or group of buildings, or part of a building or group of buildings, that is–
 - (i) used, or intended to be used, only or mainly for residential purposes; and
 - (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
- (b) does not include a hostel, boardinghouse, or other specialised accommodation.

4.11. The meaning of the term 'household' has been discussed by the courts and in previous determinations.¹⁴ In *Singh v Auckland City Council*, the court stated that in considering the phrase 'where people live as a single household', that the focus is on the way the people live in a building, and that it is necessary to have indications that the occupants operate and relate to each other as a unit.¹⁵

4.12. The Act does not define the term 'wholly', so I have relied on its ordinary meaning of "Completely, entirely; to the full extent or amount; altogether, totally, thoroughly. So as to exclude everything else; solely, exclusively, only, without exception"¹⁶.

4.13. In this case, the owners reside in the building and share communal areas, including the kitchen and dining area, with their guests. The information provided by the owners, which includes the floor plans, does not indicate that any part of the building is separate and self-contained or designated exclusively for guests, apart from the guest rooms themselves.

4.14. Because parts of the building (ie the guest rooms) are used for public accommodation, I consider that the building is not used wholly as a single household unit. Accordingly, the building is required to have a compliance schedule under section 100, and the owners must supply a building warrant of fitness to the authority as require under section 108.

4.15. I note the owners have referred to the fire risk groups in Acceptable Solution C/AS1. However, those classifications are for different purpose and do not alter the owners' obligations in relation to the building warrant of fitness.

¹⁴ See, for example, *Singh v Auckland City Council* [2026] NZDC 775 at [55-59]; *The Wanaka Gym Ltd v Queenstown Lake Districts Council* [2012] NZHC 2662 at [26]-[29]; and Determination 2026/029 *An Authority's decision to issue a notice to fix in relation to compliance schedule obligations* (14 August 2026) at [4.10]-[4.16].

¹⁵ *Singh v Auckland City Council* [2026] NZDC 775 at [58].

¹⁶ Oxford English Dictionary (online publication), accessed on 15 September 2026.

- 4.16. I conclude there were grounds to issue the notice for a contravention of section 108 because the building is not used wholly as a single household unit and required a compliance schedule, and a building warrant of fitness was not supplied to the authority by the anniversary date of the compliance schedule, being 3 April 2026.

Form and content of the notice

- 4.17. Section 165 sets out the requirements for the form and content of a notice to fix. A notice to fix must be in the prescribed form and sufficiently describe the particulars of the contravention so that the recipient is “fairly and fully informed” and able to address the issues identified.¹⁷
- 4.18. I have already determined there were grounds to issue the notice in respect of a contravention of section 108. While it may have assisted the owners for the notice to explain that the obligation to supply a building warrant of fitness arises from the requirement under section 100 for the building to have a compliance schedule, because it has specified systems and is not used wholly as a single household unit, I do not consider the absence of that explanation makes the notice deficient.
- 4.19. I also consider the remedies specified in the notice are appropriate, and that the timeframe for compliance, being one month, is adequate in this case.
- 4.20. Accordingly, I am of the view the notice fairly and fully informs the owners of the contravention and what is required to remedy it and meets the requirements of section 165.

5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I confirm the authority’s decision to issue notice to fix NTF-2026-452/0.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 16 October 2026.

Peta Hird

Lead Determinations Specialist

¹⁷ See *Andrew Housing Ltd v Southland District Council* [1996] 1 NZLR 589 (which related to a ‘notice to rectify’ under the Building Act 1991, the equivalent of a notice to fix in the current Act); *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].