Determination 2026/049

An authority's decisions to issue notices to fix in relation to five small buildings

22 Orion Place, Hillcrest, Auckland

Summary

This determination considers an authority's decisions to issue two notices to fix alleging that the applicants carried out building work that does not comply with Building Code Clauses B1 *Structure* and B2 *Durability.* The determination discusses the form and content of the notices to fix.



Figure 1: The five buildings the subject of the notices to fix[1]

[1] Images reproduced from photographs provided to the Ministry by the applicants: cabin 1 (left image) and cabins 2-5 (right image).

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 W Pereira, the former owners of the property and recipients of the notices to fix, who applied for this determination ("the applicants")

1.2.2. Shekinah Living Limited, the current owner of the property ("the current owner")

1.2.3. Auckland Council, carrying out its duties as a territorial authority or building consent authority ("the authority")

1.3. The matters to be determined, in terms of section 177(1)(b) and (3)(e), are the authority's decisions to issue notices to fix dated 10 April 2026 and 29 April 2026. Both notices are numbered NOT21813990 and are referred to together as "the notices". Each notice alleges a contravention of section 17.[3]

1.4. In deciding the matters, I will consider whether the particulars of contravention and remedies stated in the notices meet the requirements of section 165.

1.5. This determination does not consider whether the building work complies with the Building Code clauses specified in the notices.

2. The building work and background

2.1. In 2025 the applicants constructed five single-storey steel-framed buildings on the property, referred to by the parties as 'cabins'. One cabin is near the eastern boundary at the entrance to the property, and four are at the rear of the site between the western boundary and the existing dwelling (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] Section 17 states that all building work must comply with the Building Code to the extent required by the Act, whether or not a building consent is required in respect of that work.

2.2. The applicants describe the cabins as "simple, low-set, lightweight, single-room structures, built in accordance with the Ministry's guidance for the exemption [in clause 3A of Schedule 1 of the Act]".[4]

2.3. Other than stormwater drainage connections and some shared subfloor structures and stairs, the buildings are detached from each other and from the main dwelling on the property. Cabin 1 is located on a concrete area and sits on packers. Cabins 2 to 5 are sitting on timber piles of varying heights to accommodate the sloping site, and have timber bearers, joists, decks and stairs.

2.4. Following a site inspection, the authority issued a notice to fix to the applicants on 10 April 2026 ("the 10 April notice"). The 'particulars of contravention or non-compliance' section of the 10 April notice stated (reproduced as written):

> [The authority] conducted a site inspection in relation to unauthorised building works.
>
> As a result of this inspection, [the authority] has identified that building work undertaken are not Exempt Works under Schedule 1 of the Act.
>
> Contrary to **s.17 of the Building Act 2004**, the following building work does not comply with the requirements of schedule 1 of the Building Regulations 1992 (the Building Code):
>
> - All 5 detached cabins have been constructed on site. 1 cabin is located at the entrance of the property near the eastern boundary. The remaining 4 cabins are located at the rear of the site near the western boundary adjacent to the principal dwelling. The cabins have been constructed on site. We are unable to determine the timber grading for any of the cabins. The timber is rough sawn, Corewood, with no Grading markings identified. No subfloor bracing has been identified for any of the cabins. No Pile to bearer connections have been identified for any of the cabins. No floor to bearer connections have been identified for any of the cabins. No Building Product Specifications have been identified or provided for any of the cabins.
>
> **The Work is not complying with the following Building Code Provision(s):**
>
> - [the notice quotes from Clauses B1 *Structure* and B2 *Durability*: B1.3.1; B1.3.2; B1.3.3(a), (b), (f), (h); and B2.3.1(a)(i)]
>
> **To remedy the contravention or non-compliance you must:**
>
> Choose <u>one</u> 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

[4] The applicants state that the cabins do not contain cooking or sanitary facilities and are exempt from the requirement for building consent under clause 3A of Schedule 1 of the Act. That exemption applies to single-storey detached buildings that, among other requirements, have a floor area exceeding 10m^2 but not exceeding 30m^2, are constructed of lightweight building products, do not contain sanitary facilities, and have smoke alarms installed if they include sleeping accommodation.

applying for a Certificate of Acceptance (COA) in accordance withs.96 of the Act; or

(2) Remove the unauthorised building work.

This notice must be complied with by: Date: 14 July 2026 …

2.5. The 'further particulars' section of the notice states, "You must contact the person named below … on completion of the required building work" and refers to the offence in section 168 for not complying with the notice.

2.6. The 10 April notice accompanied a letter of the same date, which stated:

> [The authority] has identified that non-compliant building works have been undertaken at …
>
> The building work undertaken is not exempt under schedule 1 of the Act. [The authority] has no consented building records for this work.
>
> …
>
> You can also contact [the authority] and request a CoA [certificate of acceptance] pre-application meeting. …

2.7. Following correspondence between the parties, on 29 April 2026 the authority issued a further notice to fix to the applicants ("the 29 April notice"). The email attaching the 29 April notice stated: "Please find an update[d] Notice to fix. This replaces the one you currently have." Other than the date, the letter accompanying the 29 April notice was identical to the letter dated 10 April 2026.

2.8. The 29 April notice was identical to the 10 April notice, except that:

- the reference to applying for a certificate of acceptance had been removed from the first remedy; and
- the compliance date had been changed to 30 July 2026.

2.9. Several photographs of the cabins were attached to each notice. The photographs included annotations about the locations of the cabins, stormwater pipes and downpipes, the distance between two of the cabins, and the absence of sanitary fixtures or connections.

2.10. On 8 July 2026, the applicants transferred ownership of the property to the current owner.

2.11. The applicants sought clarification from the authority as to which specific parts of the cabins the authority considered did not comply in relation to each of the Building Code clauses identified. The applicants also noted the authority had previously suggested the applicants apply for a certificate of acceptance and asked why that option had been removed from the 29 April notice.

2.12. The authority responded that it had been unable to verify that the building work associated with the cabins complied with the Building Code, and in the absence of evidence demonstrating compliance the authority remained of the view work had been carried out contrary to sections 17 and 40. The authority also said:

> The questions raised in your email largely seek detailed technical assessments or compliance determinations for individual cabins and building elements. Such assessments require the [applicants] to provide sufficient evidence, plans, specifications, engineering information, and any other supporting documentation necessary to establish compliance. [The authority] is not in a position to provide design advice or undertake a compliance assessment outside the relevant statutory processes. …

2.13. The applicants subsequently applied for this determination.

3. Submissions

3.1. The applicants consider that the notices do not satisfy the requirements of section 165. They submit (in summary):

3.1.1. "We received two notices within approximately two weeks". The authority issued the 29 April notice "without explanation for what had changed or why".

3.1.2. "Our notice … describes all five cabins together in a single paragraph. It records what the [authority] could not determine and what was not provided to it. It then lists four Building Code clauses …. It does not join any clause to any element of any cabin. It does not say whether the concern is the foundations, the connections, the framing, the cladding, or something else. It does not say whether the concern applies to all five cabins or only some of them".

3.1.3. "The [authority's] own language is the language of uncertainty. It says it has been 'unable to verify' compliance and that evidence has not been provided. That is an absence of information, not evidence of a failure to meet a performance criterion".

3.1.4. "The scope of the allegation has shifted during the [notices and] correspondence. The notice we must comply with concerns section 17. In correspondence we have been told the work required building consent, which is a section 40 matter that the updated notice does not raise". "We have found this genuinely confusing".

3.1.5. Regarding the remedy options, "we are being asked to choose between demonstrating compliance against an unstated standard, and demolishing five buildings".

3.2. The current owner and the authority did not make submissions. However, the authority advised the Ministry on 30 September 2026 that it no longer relied on the notices. The authority said:[5]

> Following discussions between the parties, the [authority] has reviewed the notices and considers it appropriate to replace them with a revised Notice to Fix.
>
> The revised notice more clearly sets out the matters that remain in issue and the remedial steps sought by the [authority]. A copy of the draft notice and appendix is attached for [the Ministry's] information.
>
> In light of this, the [authority] no longer seeks to rely on the existing notices.

4. Discussion

Requirements of notices to fix

4.1. 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 person[6] is contravening or failing to comply with the Act or its regulations. A notice to fix requires the recipient to remedy the contravention or non-compliance (section 164(2)(a)).

4.2. 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,[7] which provides a space to specify the "particulars of contravention or non-compliance".

4.3. 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 address the identified issues.[8] This is important given the significant consequences that may follow from failing to comply with a notice to fix.[9]

[5] The authority sought a direction from the Ministry under section 183 to enable it to withdraw the notices and issue a new notice to fix, which the Ministry declined.

[6] Section 163 defines a 'specified person' to whom a notice to fix can be issued, which includes the owner of a building, and if a notice to fix relates to building work being carried out, the person carrying out or supervising the building work.

[7] Form 13 of the Building (Forms) Regulations 2004.

[8] 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].

[9] Under section 168, it is an offence to fail to comply with a notice to fix, punishable by a fine of up to $200,000 depending on the circumstances.

The particulars of contravention stated in the notices

4.4. The notices allege that the building work contravenes section 17 because it does not comply with certain provisions of clauses B1 and B2.

4.5. However, the notices refer to details of building materials and features of the construction that the authority was "unable to determine" or that it had not "identified", rather than describing the building work that the authority considered does not comply with the Building Code.

4.6. In addition, the notices refer to "any of the cabins" but it does not appear that all the matters set out in the particulars are relevant to all the cabins. For example, for pile to bearer connections and subfloor bracing, the notices do not distinguish between cabins 2-5 that have subfloor structures and cabin 1 which does not.

4.7. Further, the reference to 'building product specifications' is not clear what product(s) or building element(s) the authority is referring to and how this relates to the Building Code clauses set out in the notices.

4.8. The authority has attached photographs to the notices, but the photographs are not referred to in the particulars. It is also not clear how the observations and annotations on the photographs relate to the alleged contravention, most of which concern matters such as stormwater connections, separation distances, and the absence of sanitary fixtures, which do not to relate to the particulars in the notices.

4.9. The notices also state that the building work is not exempt under Schedule 1. When building work is undertaken without a building consent when one is required, the contravention is of section 40.[10] The notices state the contravention is of section 17, not section 40. The reference to the work not being exempt therefore risks conflating separate issues of whether building consent was required and whether the building work complies with the Building Code.

4.10. Notices to fix are an enforcement measure and their purpose is not to identify matters about which an authority remains uncertain or requires further information. A notice alleging a contravention of section 17 should identify the building work that the authority considers does not comply with the Building Code, as well the basis for that view. I conclude that the notices should not have been issued on the basis of matters the authority was unable to determine or had not identified.

The remedies stated in the notices

4.11. The notices set out two alternatives: pursue any legal option to achieve compliance with the Act and the Building Code or remove the unauthorised building work. The

[10] Section 40(1) provides that a person must not carry out any building work except in accordance with a building consent.

10 April notice added that the first option could include applying for a certificate of acceptance; the 29 April notice removed that reference.

4.12. A remedy must relate to the contravention identified in the notice. The prescribed form requires authorities to state as a remedy "any building work that must be carried out and whether a certificate of acceptance must be applied for".

4.13. For a contravention of section 17, what is required is for the specified person to bring non-compliant building work into compliance with the Building Code.[11] The wording "pursue any legal option to achieve compliance" with the Act and Building Code is not incorrect, but, as in this case, it does not specify the remedy for the contravention identified in the notice. In this regard I consider the notices did not fairly and fully inform the applicants of the remedy.

4.14. In addition, applying for a certificate of acceptance, as suggested in the 10 April notice, would not itself remedy non-compliance with the Building Code.

4.15. The alternative of removing the "unauthorised building work" is framed in terms of the work being unauthorised, rather than its non-compliance with the Building Code, which suggests the remedy relates to a contravention of section 40.

4.16. I note the 'further particulars' in the notices appropriately requires the applicants to contact the authority when the contravention has been remedied, as set out in section 165(1)(e).

5. Decision

5.1. In accordance with section 188 of the Building Act 2004, I reverse the authority's decisions to issue notices to fix NOT21813990 dated 10 April 2026 and 29 April 2026.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 20 November 2026.

Peta Hird

Lead Determinations Specialist

[11] As required by section 165(1)(d), if the remedy requires building work to be carried out, the notice may require an application for a building consent or an amendment to an existing building consent.