

Determination 2025/047

Regarding a notice to fix for the relocation of a building

315 St Heliers Bay Road, Auckland

Summary

This determination considers a notice to fix issued by the authority for an alleged contravention of section 40 in carrying out work without a building consent in relation to the temporary relocation of a building on site.

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, 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. La Aldea Limited, the applicant and recipient of the notice to fix.
 - 1.2.2. Bobby Lin, recipient of the notice to fix.
 - 1.2.3. Auckland Council, the territorial authority.
- 1.3. This determination arises from the authority’s decision to issue a notice to fix for the relocation of an existing building and “a new foundation.”
- 1.4. 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 NOT21775364 dated 18 June 2025. The determination will consider if there were grounds to issue the notice.

Issues outside this determination

- 1.5. Compliance with the Building Code.

2. The background and work

- 2.1. Between March and May 2025, the applicant relocated an existing building on site onto timber members to allow for site development before the building is moved offsite. The timber members are variously attached to one another and to the building (Figures 1 and 2).

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



Figure 1: Timber members under building **Figure 2: Timber members under building**

- 2.2. On 3 June 2025 and officer of the authority carried out a site visit.
- 2.3. The authority wrote to the applicant outlining that “the house has been relocated”, “no building consent has been approved for these works” and indicated a notice to fix would be issued.
- 2.4. A notice to fix with attached letter and photographs was sent by the authority to the two recipients on the 18 June 2025.
- 2.5. The notice to fix described the particulars of contravention or non-compliance as:

[the authority] conducted a site inspection in relation to unauthorised building works on 03/06/2025. As a result of this inspection, [the authority] has identified that building work undertaken would have required building consent.

Contrary to s.40 of the Building Act 2004 (the Act), the following building works have been undertaken at 315 Saint Heliers Bay Road, Saint Heliers, Auckland, 1071 without first obtaining a building consent:

The existing building on the property has been relocated within the site
 The relocated building is supported by a new foundation which comprises of timber footings that are not affixed to the ground.
 The building has been moved approximately 2.1 metres towards to (sic) eastern boundary of the property. The building was originally setback approximately 3.4 metres and is now set back approximately 1.3 metres from the eastern boundary.
 The building has been moved approximately 3.2 metres towards to (sic) the southern boundary of the property. The building was originally setback approximately 4.5 metres and is now set back approximately 1.3 metres from the southern boundary.

2.6. The notice to fix identified the following remedies:

- (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
- (2) Remove the unauthorised building works

2.7. The applicant responded to the issue of the notice in emails through June 2025 emphasising that the placement of the building was temporary while they progressed approved site works for an ongoing development on site and that the house will be relocated to a new permanent location elsewhere in 2026.

3. Submissions

The applicant (representing both recipients of the notice)

- 3.1. The applicant provided a submission and additional photographs. The owners' submissions covered (in summary):
- 3.1.1. The building was relocated by a house removal company to clear space for upcoming civil and site works associated with an approved resource consent for development of the site.
 - 3.1.2. The building is supported on temporary timber footings, not fixed to the ground and sits more than 1 metre from any boundary.
 - 3.1.3. The building is fully disconnected from all services, unoccupied and used only for dry storage of materials during the day.
 - 3.1.4. There is no intention for it to remain in site beyond the construction period and plan to have it removed by mid-2026. They state the building has been donated to the original architect's family to restore and display the building on another site.
 - 3.1.5. Requested consideration of the temporary nature of the temporary logistical purpose of the works.

The authority

- 3.2. The authority provided a copy of their investigation report which contained (in summary):
- 3.2.1. Additional photographs
 - 3.2.2. Record of site visits and communications between the parties

- 3.2.3. Correspondence between officers of the authority about potential contraventions of the Act.
- 3.2.4. Confirmation the authority considered there had been building work that required a building consent.

4. Discussion

- 4.1. Notices to fix are governed by 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 Act or its regulations.
- 4.2. The notice alleges the recipients have contravened section 40. Section 40(1) provides that a person must not carry out any building work except in accordance with a building consent.
- 4.3. Section 7 of the Act provides a definition of building work:
 - building work—**
 - (a) means work that is either of the following:
 - (i) for, or in connection with, the construction, alteration, demolition, or removal of a building;
 - (ii) on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code; and
- 4.4. Previous determinations have considered the relocation of buildings and whether this constitutes “building work” under section 7 of the Act (see for example 2011/104² and 2014/030³). I concur with the view set out in those determinations, in summary, that the act of moving or relocating a building and placing it on site is not “building work” where there is no work for, or in connection with, the construction or relocation of the units.
- 4.5. The authority identified that the “new foundation” was contravening building work and building consent should have been obtained prior. I have taken this as describing the timber members identified in Figures 1 and 2.
- 4.6. Sections 8 and 9 of the Act outline what is or is not ‘building’ for the purposes of the Act and therefore whether or not provisions of the Act apply. Section 9 outlines what is not a building:

² Determination 2011/104 *The exercise of an authority’s powers to issue a notice to fix for a commercial storage facility made up of shipping containers*. 16 December 2011.

³ Determination 2014/030 *Regarding the issue of a notice to fix for the placement of two shipping containers on a property*. 22 July 2014.

9 Building: what it does not include

In this Act building does not include –

....

(j) *Falsework*

4.7. Falsework is defined under section 7 as:

falsework, in relation to building work or the maintenance of a building,—

(a) means any temporary structure or framework used to support building products, equipment, or an assembly; and

(b) includes steel tubes, adjustable steel props, proprietary frames, or other means used to support a permanent structure until it becomes self-supporting; but

(c) does not include scaffolding or cranes used for support

4.8. The provisions of the Act related to building work requiring a building consent do not apply here if it is falsework because it is excluded under section 9.

4.9. Looking at the photos taken by the authority and applicant and the statements made by the applicant I consider the timber members placed beneath the building are temporary to allow for other site development to take place before it is moved off-site.

4.10. I consider this specific setup of timber members is similar to temporary props to support a product or assembly and is therefore falsework under s7. I note this decision is reliant on how the situation presents and the temporary nature of the supports as the structure is to be moved off site to allow further development in 2026.

4.11. In this specific circumstance, the items identified in the notice to fix, for the relocation of this building, are not building work that requires a building consent under section 40.

5. Decision

5.1. In accordance with section 188 of the Building Act 2004, I reverse the decision to issue notice to fix (NOT21775364) dated 18 June 2025.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 18 September 2025.

Andrew Eames

Principal Advisor Determinations.