

# Determination 2026/004<sup>1</sup>

**An authority's decision to issue two notices to fix for building work carried out without consent, a change of use and non-compliance with the Building Code**

**11 Laurence St, Manly, Auckland**

## Summary

This determination considers an authority's decision to issue two notices to fix for building work carried out at the owners' property. The notices allege contraventions of section 40 for building work carried out without consent, sections 114 and 115 for a change of use, and section 17 for non-compliance with the Building Code. As part of the section 40 assessment, the determination considers whether the building work included in the notice to fix was the subject of a certificate of acceptance and whether it was exempt under Schedule 1.



**Figure 1: The main building, the carport (left front) and pergola (right).**

<sup>1</sup> This determination is subject to a clarification under section 189 of the Building Act 2004. The determination was originally issued on 5 February 2026.

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 Building Act (Building work for which building consent not required).

The Act and the Building Code are available at [www.legislation.govt.nz](http://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](http://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”).<sup>2</sup>
- 1.2. The parties to the determination are:
  - 1.2.1. M & P Hiestand, the owners of the property and applicants for the determination (“the owners”)
  - 1.2.2. Auckland Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. This determination arises from building work carried out by the owners to renovate buildings on their property.
- 1.4. The matters to be determined<sup>3</sup> are the authority’s decisions to issue notice to fix NOT21764538 on 27 March 2025 and NOT21764627 on 28 March 2025 (“the notices”). In deciding this matter, I must consider:
  - 1.4.1. in relation to the section 40 contraventions, whether the relevant building work is covered by certificate of acceptance COA02590311 and whether it was exempt under Schedule 1
  - 1.4.2. in relation to the section 114 and 115 contraventions, whether there has been a change of use of the building
  - 1.4.3. in relation to the section 17 contravention, whether the barrier complies with Clause F4.3.1 of the Building Code.
- 1.5. This determination does not consider the compliance of any elements of the building work that are not identified in the notices as a contravention of section 17, the refusal of building consent BCO10340509, or the enforcement powers exercised (or not) by the authority in respect of the notices to fix.

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

<sup>3</sup> Under sections 177(1)(b) and (3)(e).

## 2. Background

- 2.1. The owners' property is an 857m<sup>2</sup> section in Manly, Auckland. There are two buildings on the property which are the subject of the determination – the “main building” (see Figure 1) and the “smaller building” (see Figure 2).



**Figure 2: The smaller building.**<sup>4</sup>

- 2.2. The main building was originally a single storey dwelling constructed on site in 1938. In 1958, it was extended (under permit no. 8655). In 1968, it was raised and a ‘basement living space’ and carport were constructed underneath (under permit no. 3805), creating a two-storey building.
- 2.3. There was another smaller building on the property which is referred to on the plans as a ‘shed’ (the “former shed”). This was constructed circa 1955 and was approximately 12m<sup>2</sup>. The owners state that each of the three existing spaces (the house, basement living space and former shed) had their own sanitary fixtures and cooking facilities.
- 2.4. In early 2018, the owners decided to renovate the buildings.
- 2.5. On 21 December 2020, the authority issued a notice to fix (NOT21526497) to the owners for building work undertaken to the main building without a building consent in contravention of section 40. This notice to fix is not the subject of this determination.
- 2.6. The owners subsequently applied for a building consent for remaining recladding and other proposed work and a certificate of acceptance (COA02377699) which was refused by the authority on 1 July 2021. This certificate of acceptance was for ‘repair drainage, building renovation, reroof, rewindow, reclad, close in the carport’.
- 2.7. In or around December 2021, the owners also reapplied for a building consent (BCO10340509) for work that remained to be carried out. This was refused on 30 March 2022.

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<sup>4</sup> Photo from the authority’s site visit on 18 March 2025.

- 2.8. The owners lodged another application for a certificate of acceptance. Included with the application was a report by a building surveyor.<sup>5</sup> On 8 April 2022 the certificate of acceptance COA02590311 was issued (“the COA”). The building work that was subject of the COA was described on the certificate as ‘close in carport, close in deck area, foundation slab for shed replacement, deck post foundations’, and was issued in relation to Building Code clauses B1 *Structure*, B2 *Durability* and E2 *External Moisture*.
- 2.9. On 22 March 2024, a further notice to fix (NOT21716954) was issued in relation to the main building and a new carport. The notice included contraventions of section 40 for building work carried out without building consent, and also of sections 114 and 115 for a change of use of the main building.
- 2.10. On 18 December 2024, a further notice to fix (NOT21753407) was issued. In addition to unresolved contraventions from earlier notices (in relation to the main building), this notice included section 40 contraventions in relation to the smaller building which was under construction. The owners considered the smaller building was the reinstatement and extension of the former shed, which had been demolished.
- 2.11. On 18 March 2025, the authority undertook a further inspection of the property to check compliance with NOT21753407.
- 2.12. On 28 March 2025, the authority wrote to the owners, confirming that it did not consider the notice to fix had been complied with, and stating that it would be issuing two further notices to fix. It is the issue of these notices that is the subject of the determination:
- 2.12.1. NOT21764538 (issued 27 March 2025) which includes unresolved contraventions from earlier notices to fix
- 2.12.2. NOT21764627 (issued 28 March 2025) which includes newly identified contraventions of section 40 and section 17, in relation to the main building.
- 2.13. The particulars of contravention or non-compliance are set out in Appendix A under each item, along with descriptions and photographs of the building work.
- 2.14. On 24 May 2024, the owners wrote to the authority responding to the notices and claiming that building work was exempt under Schedule 1 and work was undertaken ‘to the extent required by [the Act]’. The issue remained in dispute and the owners applied for this determination. The parties’ views are incorporated into Appendix A.

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<sup>5</sup> The building surveyor provided information about the scope of the COA for the purposes of the determination.

### 3. Discussion

- 3.1. The provisions concerning notices to fix are in sections 163 to 168 of the Act. 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.
- 3.2. In this case, the notices allege contraventions of sections 40, 114 and 115, and 17, which I will address in turn.

#### Section 40 contraventions

- 3.3. Section 40(1) provides that a person must not carry out any building work except in accordance with a building consent. Section 41(1)(b) states that a building consent is not required if the building work falls within the exemptions in Schedule 1 of the Act. Schedule 1 prescribes categories of building work for which a building consent is not required.
- 3.4. The notices to fix contain 15 alleged contraventions of section 40. In order to determine whether the building work was exempt from requiring consent, I have assessed each item against the relevant Schedule 1 exemptions. I have also considered whether the work contained in the notices was covered by the certificate of acceptance<sup>6</sup> – refer Appendix A.
- 3.5. My conclusions on each section 40 item are set out below:

**Building work that was carried out in contravention of section 40 (ie not exempt and so required building consent was required), and is in not included within the scope of work for which the certificate of acceptance was issued:**

- 3.5.1. Item 1: The construction of the smaller building<sup>7</sup>, with the exception of the part of the concrete floor slab that was in scope of the COA.
- 3.5.2. Item 2: The installation of the drainage pipework in the smaller building.
- 3.5.3. Item 3: The majority of the new external wall cladding, with the exception of the cladding in the former carport area which was in scope of the COA.
- 3.5.4. Item 7: The installation of the below ground surface water drainage.
- 3.5.5. Item 8: The installation of new/additional sanitary fixtures, ie the kitchen sink and extra wash hand basin on the ground floor, and toilet, shower and wash hand basin in the first-floor ensuite.

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<sup>6</sup> Section 96(4) provides that if a certificate of acceptance is issued for any work, it is not necessary for a person to apply for a building consent in respect of that work.

<sup>7</sup> Schedule 1A, which exempts small stand-alone dwellings subject to certain criteria, was not in force at the time of construction of the smaller building.

- 3.5.6. Item 9: The plumbing work associated with the installation of the kitchen sink and one of the wash hand basins on the ground floor.
- 3.5.7. Item 10: The timber deck, except for timber posts and supporting foundations that were in scope of the COA.
- 3.5.8. Item 11: The external stair and associated landing at the top.
- 3.5.9. Item 12: The carport.
- 3.5.10. Item 15: The construction of the new midfloor structure where there was previously a stairwell.

**Building work that was exempt under Schedule 1 and did not require building consent, meaning there was no contravention of section 40:**

- 3.5.11. Item 8: The alteration / relocation of plumbing associated with other existing sanitary fixtures (the toilet, and the shower and wash hand basin in the utility room, and on the first floor the shower, toilet and wash hand basin in the wash room) was exempt under clause 35.
- 3.5.12. Item 9: The plumbing work associated with the installation of the shower, toilet, and the wash hand basin in the utility room and the separate toilet in the adjacent room was exempt under clauses 32 and 35.
- 3.5.13. Item 13: The first-floor wash room (in the area that was previously a kitchen) was exempt under clause 35 as alterations to existing sanitary plumbing.
- 3.5.14. Item 14: The plumbing associated with relocation of the kitchen sink from the west to southern side of the building was exempt under clause 35.

**Building work that was within the scope of work for which the certificate of acceptance had been issued, and therefore any contravention of section 40 remedied:**

- 3.5.15. Item 1: Part of the concrete floor slab at the southern end of the small building.
  - 3.5.16. Item 3: New cladding in the former carport area.
  - 3.5.17. Item 4: Closing-in of the first-floor deck.
  - 3.5.18. Item 5: Alteration of the height of the roof above the former deck area.
  - 3.5.19. Item 6: Removal and reconstruction of the first-floor north elevation wall.
  - 3.5.20. Item 10: The timber posts and supporting foundations to the deck.
- 3.6. In regard to the description of particulars in the notice fully and fairly informing the owners of the contravention, I note:
- 3.6.1. where some aspects of the building work were included within the scope of the certificate of acceptance, it is unclear from the description in the notice

what other work the authority was alleging had been carried out in contravention of section 40.

3.6.2. the notice did not specify which sanitary fixtures were 'new' or additional to existing (as opposed to relocation of existing fixtures), nor their locations nor detail the extent of any new drainage (Item 8).

3.6.3. the notice did not specify which wash hand basin the authority was referring to (Item 9).

## Section 114 and 115 contraventions

### *Change of use provisions*

3.7. Section 114 of the Act 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. Section 115 of the Act provides that an owner must not change the use of the 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.

3.8. The authority considers there has been a change of use of the main building. NOT21764538 states:

Contrary to Section 114 of the Building Act 2004, there has been a change of use of the dwelling from single household (SH) to Sleeping residential (SR)... without giving the territorial authority (Auckland Council) prior written notice of the change. Specifically:

- You have changed the use... by creating a self-contained unit on the ground floor and have been using it as a rental unit. There are now two household units, where only one existed before.

Contrary to s.115 of the Building Act 2004 the owner must not change the use of the building unless the territorial authority is satisfied, on reasonable grounds, that it will comply (as reasonably practicable) with the Building Code. Specifically:

- You have changed the use... without receiving written authority from Auckland Council that the building complies (as reasonably practicable) with the provisions of the Building Code. In particular, access for persons with disabilities and fire rating performance.

3.9. The change of use framework is set out in several previous determinations.<sup>8</sup> To decide this matter, I must first consider whether the building has changed from one use group in Schedule 2<sup>9</sup> to another (see Table 2). If there has not been a change from one use group to another, the matter stops there as there has been no change

<sup>8</sup> For example, Determination 2023/034 *An authority's decision to issue a notice to fix for a change of use of a building* (15 November 2023) and Determination 2024/038 *An authority's decisions to issue a notice to fix and a dangerous and insanitary building notice* (9 August 2024).

<sup>9</sup> Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005.

of use for the purpose of sections 114 and 115. If the use group has changed, I must go on to consider whether the classified use has also changed in order to determine whether there are additional or more onerous Building Code requirements in the new use.

**Table 2: Relevant use groups from Schedule 2 of the change of use regulations**

Use	Spaces or dwellings	Examples
<b>Uses related to sleeping activities</b>		
SR (Sleeping Residential)	attached and multi-unit residential dwellings, including household units attached to spaces or dwellings with the same or other uses, such as caretakers' flats, and residential accommodation above a shop	multi-unit dwellings, flats, or apartments
SH (Sleeping Single Home)	detached dwellings where people live as a single household or family, including attached self-contained spaces such as granny flats when occupied by a member of the same family, and garages (whether detached or part of the same building) if primarily for storage of the occupants' vehicles, tools, and garden implements	dwellings or houses separated from each other by distance

***Was there a change of use from SH to SR?***

- 3.10. There is no dispute between the parties that the old use was SH. The authority considers that the use group has changed from SH to SR, which is disputed by the owners.
- 3.11. In reaching a decision about whether there has been a change of use, I have considered the features of the building and the occupation at the time the notice was issued.
- 3.12. The COA plans show two self-contained units. The ground floor unit containing a kitchen, utility room (which includes a shower, hand basin and laundry), toilet, one bedroom, a family room, recreation room and entry space. The plans for the first-floor unit show two bedrooms, two bathrooms (one of which is an ensuite), and a lounge. There is also a kitchen which has been moved to the area adjoining the lounge. Photos show there are laundry facilities on the ground floor but there do not appear to be any on the first floor.
- 3.13. There was previously an internal staircase between the two levels which has been converted into two bedrooms (one on each level). There are new external stairs

leading to the first-floor deck, as well as another proposed external staircase to the first floor entrance.<sup>10</sup>

- 3.14. Given there is now external access to the first-floor unit, the building could be used as ‘attached or multi-unit residential dwellings’, under the SR use group. However, the SH use group also allows for “detached dwellings where people live as a single household or family, **including attached self-contained spaces such as granny flats when occupied by a member of the same family...**” [my emphasis]. In my view, the layout of the building, with two self-contained units and separate external access to both, could lend itself to either the SH or SR use group.
- 3.15. The authority states that two self-contained units have been created where only one existed before. It considers that the removal of the internal stairs (which previously linked the ground and first floors) is evidence of building work carried out to establish separation of the dwellings.
- 3.16. In my view, the removal of the internal stairs, on its own, is not evidence of a change of use. Although the removal of the internal stairs would allow the building to be used as attached or multi-unit residential dwellings (under SR), equally the building could be occupied by a single family.
- 3.17. The owners advised there is one person living in the building, who occupies the ground floor unit, and the first floor is under renovation and is not functional. This is supported by photographs<sup>11</sup> that indicate the first-floor bathroom is not functional and rooms at that time were in use for storage.
- 3.18. Given the occupation at the time the notice was issued, with the ground floor occupied by a single person and the first floor unoccupied, I consider the use remained as SH at that time because there was a ‘single household or family’ occupying the building. As such, there was no contravention of sections 114 and 115.
- 3.19. The owners state “There is no intention to establish two separate households and the allegation is speculative”. Their intention is that “the property is to continue as a single household”, with independent living spaces “to accommodate intergenerational, age in place, and live in care...”. I note that if the two self-contained units are to be occupied by members of the same family/household, as proposed by the owners, this arrangement would fall under the SH use group.
- 3.20. However, if the owners decide to have two separate families/households occupying the units in the future, this will require notification to the authority under section 114, and the owners must not change the use until receiving written notice that the

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<sup>10</sup> The building consent application for the proposed stairs to the entrance was refused.

<sup>11</sup> Taken prior to the issue of the notice, at the authority’s site visit on 18 March 2025.

authority is satisfied that the building will comply in its new use to the extent required by section 115.

## Section 17 contravention

- 3.21. Section 17 states “All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that work”.
- 3.22. The authority considers there has been a contravention of section 17 in relation to a barrier constructed on the first-floor deck of the main building. NOT21764538 states:
- 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):
- The deck constructed along the northern side of the dwelling has not been fitted with a compliant fall barrier where there is a fall in excess of 1 meter from the deck surface; this is contrary to the performance requirements (F4.3.1) of Clause4 [sic] (safety from falling) of the New Zealand Building code.
- 3.23. The first-floor deck and barrier were constructed sometime between 2 November 2021 and 16 October 2023. The height of the deck is approximately 2.87m above finished ground level.<sup>12</sup>
- 3.24. The owners submit the barrier is a “construction safety barrier”. They state a compliant barrier is to be completed and documented by a licensed building practitioner, and that barrier details have been provided in the COA plans.
- 3.25. The COA did not include the construction of the deck or the barrier because those elements had not been constructed; it only included the supporting posts and associated foundations.
- 3.26. The COA plans do indicate a proposal for a 1m high barrier bolted to the side of the deck construction. The barrier is annotated to be constructed using two top rails, ‘balusters’ at 1.2m maximum centres, and ‘palings’ spaced a maximum 100mm apart.
- 3.27. The objective of clause F4 is to safeguard people from injury caused by falling. The functional requirement is that buildings are constructed to reduce the likelihood of accidental fall.
- 3.28. Performance clause F4.3.1 provides:

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<sup>12</sup> Based on the dimensions provided in the 1968 building permit plan (there is no corresponding vertical dimension shown in the COA plans).

Where people could fall 1 metre or more from an opening in the external envelope of floor of a building, or from a sudden change of level within or associated with a building, a barrier shall be provided.

- 3.29. Clause F4.3.1 includes 'limits on application'. I do not consider any of the limits apply in this case. A barrier would not be incompatible with the intended use of the deck. Nor do I consider this is a temporary barrier on a construction site, as I have received no information indicating that the barrier is not intended to be a permanent feature, and its construction (while incomplete) broadly aligns with the information included in the COA plans.
- 3.30. A barrier as constructed runs around the outside of the deck. However, at the time the notice was issued, there was no barrier in the area adjacent to the external access stair (see Figure 3, left).



**Figure 3: Photos indicating the area without a barrier (left) and the open spaces between the posts and rails (right), taken 16 October 2023.**

- 3.31. The barrier as constructed consists of timber balustrades and top rail, and a timber rail near the bottom of the construction. There are open spaces between the posts and rails, which I estimate to be around 1m wide and 0.8m high (see Figure 3, right).<sup>13</sup>
- 3.32. At the time the notice was issued, the barrier would not safeguard people from injury caused by falling or reduce the likelihood of accidental fall (through the open spaces to the ground below). The barrier as constructed at that time would not prevent people falling through it (see clause F4.3.4(e)) and nor would it restrict the passage of children (see clause F4.3.4(g)).
- 3.33. However, the building work to construct the barrier had yet to be completed. Because the barrier was still in the process of being constructed when the notice was issued, I do not consider there was a contravention of section 17. In reaching the view that the building work was not yet complete (as opposed to being completed work that contravenes section 17), I have taken into account:

3.33.1. the features of the barrier reflect the details provided in the COA plans for the proposed barrier (see paragraph 3.25)

<sup>13</sup> This assumes the barrier is 1m high; I have not been provided any as-built dimensions.

- 3.33.2. at the time the notice was issued, the first floor was not occupied and building work was still occurring on that level.
- 3.34. At the time the notice was issued, the barrier had been in place for at least 18 months. However, the Act does not specify a period of time for owners to complete building work, whether that work is described in a building consent or is exempt under Schedule 1 from requiring a building.
- 3.35. The owners state the barrier was not completed due to a “stop work notice” being issued. In this regard I note that the notices to fix stated “the following building work (**except building work necessary to make the site safe**) must cease immediately”; the notice did not prevent the owners from carrying out work to make the site safe.

## 4. Conclusions

- 4.1. I have reached various conclusions in relation to the section 40 items set out in both notices<sup>14</sup>, as follows:
- 4.1.1. Several items of building work were not in scope of the COA nor exempt under Schedule 1 – refer paragraphs 3.5.1 to 3.5.10. Therefore, they required building consent and there was a contravention of section 40 in carrying out that building work without first obtaining a building consent.
- 4.1.2. Some items were exempt under Schedule 1 and did not require building consent, so there was not a contravention of section 40 in respect of those items – refer paragraphs 3.5.11 to 3.5.14.
- 4.1.3. Several items involved building work that was within scope of the certificate of acceptance that had already been issued<sup>15</sup> – refer paragraphs 3.5.15 to 3.5.20
- 4.1.4. There were several items where the work was not adequately described in the notice – refer paragraphs 3.6.1 to 3.6.3.
- 4.2. In relation to NOT21764538, there was no contravention of sections 114 and 115 because at the time the notice was issued the use of the main building had not changed from SH (Sleeping single home).
- 4.3. In relation to NOT21764538, there was no contravention of section 17 because the barrier was still under construction at the time the notice was issued.

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<sup>14</sup> Items 1-12 relate to NOT21764538 and Items 13-15 relate to NOT21764627.

<sup>15</sup> Section 165(1)(c) provides for notices to fix to require the making of an application for a certificate of acceptance for building work that is being or has been carried out without building consent.

## **5. Decision**

- 5.1. In accordance with section 188, I reverse the authority's decision to issue both notices to fix (NOT21764538 and NOT21764627).

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 6 March 2026.

**Peta Hird**

**Lead Determinations Specialist**

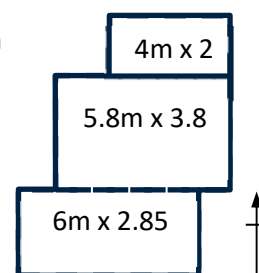
## APPENDIX A

### Item 1 - Notice to Fix NOT21764538 (dated 27 March 2025)

**Section 40 contravention:** The construction of a 38.4 square meter [sic] timber-framed structure, within its own height to a residential building and boundary and on a concrete foundation at the rear of the section

#### The building work

- This item relates to the smaller building at the property (see Figure 2), which the owners consider is a rebuild and extension of the former shed.<sup>16</sup> They state the construction has a total floor area of 29.6m<sup>2</sup>, plus a 'porch' and 'patio' within Schedule 1.
- The as-built plan notes this building is 2.5m high, and its south elevation is 200mm from the first-floor deck attached to the north side of the main building.
- The smaller building is constructed of three 'parts'. The southern end is 17.1m<sup>2</sup>, the middle is 22.04m<sup>2</sup> – this area has walls and a roof and an opening leading onto the northern part (see Figure 2, left). The northern end is 8m<sup>2</sup> and open on three sides.
- In total, the building is approximately 47.14m<sup>2</sup>.



**Figure 4: diagram showing parts of smaller building (not to scale)**

#### Ministry's assessment

- The COA did not include the timber-framed structure or the concrete laid for the middle and northern part of the building. The COA included the concrete floor slab for the southern part of the building only – with the plan indicating this was 15m<sup>2</sup>. I note the as-built measurements taken by the authority show the southern part of the building is now 17.1m<sup>2</sup>.
- The Schedule 1 exemptions relied on by the owner are clause 3B, 17A and 24.
  - Clause 3B – it is not clear whether the design or construction work was carried out or supervised by a licensed building practitioner (LBP). Moreover, the building exceeds 30m<sup>2</sup>. Despite the owners referring to it as three elements (ie 'shed', 'patio' and 'porch'), the building is founded on one continuous concrete slab, and the structure across all three areas is connected. Further, the building is closer than its own height to the main building.<sup>17</sup> Therefore, the building work does not meet the criteria in clause 3B.
  - Clause 17A – it is not clear whether the design or construction work was carried out or supervised by an LBP. However, the whole building is new, and the requirement that the porch or veranda to be on or attached to an existing building is not met. Therefore, the building work does not meet the criteria in clause 17A.
  - Clause 24 – it appears the owner is relying on this clause in relation to the northern end of the concrete slab (see Figure 2, left). However, the concrete slab is one continuous building element, and I consider it would be artificial to consider only a portion of the

<sup>16</sup> The former shed was constructed circa 1955 and was approximately 12m<sup>2</sup>.

<sup>17</sup> See Building Act 2004 version as at 8 April 2025, Schedule 1 clause 3A(2), current at the time the smaller building was constructed.

<p>slab, and do not consider the concrete slab is construction of a deck, bridge, platform or the like.</p> <ul style="list-style-type: none"> <li>I have also considered other clauses within Schedule 1 (ie clauses 1(2), 3A, and 7) and reached the view none allow for the complete replacement of the former shed with the new building as constructed (because, for example, the replacement is not in the same position or footprint area, and the building is greater than 30m<sup>2</sup>).</li> </ul>
<p><b>Ministry's conclusion</b></p> <p>The building work to construct the smaller building was not exempt under Schedule 1 and required building consent. Except for part of the concrete floor slab which is covered by the COA, there was a contravention of section 40.</p>
<p><b>Item 2 - Notice to Fix NOT21764538 (dated 27 March 2025)</b></p> <p><b>Section 40 contravention:</b> Drainage work to support sanitary fixtures for the 38.4 square meter [sic] timber-framed structure</p>
<p><b>The building work</b></p> <ul style="list-style-type: none"> <li>Photos provided by the authority indicate three drainage pipes were installed into the floor slab of the smaller building prior to the concrete being poured. These pipes broadly align with plans submitted for the COA that show a shower, toilet and wash hand basin (which were not installed at the time the notice was issued). The same plan also shows an existing 100mm diameter uPVC foul water drain passing under the new concrete slab, with the waste pipes being connected to it.</li> <li>The owner (M Hiestand) states they installed the pipework through the floor slab, but it is not connected to the existing foul water drain (the pipework is capped off adjacent to the edge of the floor slab).<sup>18</sup> The owners state that this has been done for future provisioning and no drainage connections have been made.<sup>19</sup></li> </ul>
<p><b>Ministry's assessment</b></p> <ul style="list-style-type: none"> <li>The COA did not include the drainage pipework; it only included the concrete slab and clauses B1, B2 and E2 (not G13). It is unclear why the pipework was not included when it would have been installed before the concrete slab was poured in about 2020, ie before the COA was issued.</li> <li>The owners consider the work is exempt under clauses 32, 34 and 35, which are within Part 2 of Schedule 1. Part 2 requires that the person carrying out the sanitary plumbing or drainlaying work is authorised under the Plumbers, Gasfitters and Drainlayers Act 2006 ("the PGDA"). The owner is not on the plumbers, gasfitters and drainlayers public register,<sup>20</sup> and no documentation has been provided to show they were authorised under the PGDA to carry out the work. Therefore, in the absence of any evidence that the person carrying out this work was authorised under the PGDA, I consider the work was not exempt under clauses 32, 34 and 35. Regardless, in regard to the other criteria in those exemptions, I make the following comments: <ul style="list-style-type: none"> <li><b>Clause 32:</b> The owners state the former shed contained sanitary facilities but did not clarify the number or type. I have viewed the building permit documentation, the 1988</li> </ul> </li> </ul>

<sup>18</sup> However, this is contrary to the information provided on COA plan sheet 4 of 4 which shows the new pipework is connected to the existing foul water drain.

<sup>19</sup> The owner subsequently request this statement be clarified as being in relation to "the pipework installed in the recently extended slab, ... Not to pipework in, the shed to be replaced concrete slab, subject of Dec. 2020 NTF and COA."

<sup>20</sup> Register <https://www2.pgdb.co.nz/public-register> accessed 24 November 2025.

drainage permit and the owners' photograph from 1958 (which the owner annotated 'sanitary fixtures'). and I do not consider there is sufficient evidence to support the claim that the former shed contained sanitary fixtures and associated drainage. Therefore, I cannot be satisfied that the work was repair, maintenance or replacement of existing drainage.

- **Clause 34** only applies to alterations to drains '**for a dwelling**'. The smaller building is not a dwelling, and therefore, the building work does not meet the criteria.
- **Clause 35** only applies to alterations to existing sanitary plumbing. In this case, there is no plumbing; the notice to fix is concerned with the below ground drainage work. Therefore, clause 35 is not relevant.

#### Ministry's conclusion

The building work to install the drainage pipework was not covered by the COA nor exempt under Schedule 1. It was building work that required building consent and therefore there was a contravention of section 40.

#### Item 3 – Notice to Fix NOT21764538 (dated 27 March 2025)

**Section 40 contravention:** The complete recladding of the house, including new cladding to additional areas of the building with a component that is not a comparable product or requiring comparable assembly.

#### The building work



**Figure 5: Left - photo showing the former cladding on the south elevation, including the former carport and internal stairwell area (dated 24 July 2018). Right - photo of the south elevation, showing new cladding installed (dated 13 December 2024).**

- Both floors of the building have been reclad with a horizontal vinyl weatherboard cladding system over an insulated building wrap, direct fixed to a rigid air barrier which itself is fixed to the external wall timber framing.
- The owner considers the recladding work was exempt under clause 1 and referred to Determination 2017/004.<sup>21</sup> They also consider it is covered by the COA.

#### Ministry's assessment

- The building surveyor's report states that the COA did not include the new cladding. However, I note the COA Inspection and processing checklist 'Additional Notes' refer to "...new cladding to enclose the carport..." Based on those records and the inclusion of E2 in the COA, I consider the COA covers the cladding installed in the area that was formally the carport, but not the rest of the cladding work.

<sup>21</sup> 2017/004 *Regarding the issue of a notice to fix in respect of building work undertaken without building consent* (20 January 2017).

- In assessing whether the work was exempt under clause 1, there are several areas to consider due to differing construction prior to the recladding of the building.

**1. The first floor:**

**A. The north-east corner at first floor level where the former deck has been enclosed (refer to Item 4, Figure 6):**

This part of the building relates to a short section of external wall that has been constructed across part of the north elevation and another short section across the east elevation. The construction of both sections of wall (including the external cladding) is new building work, not maintenance, repair or replacement of any existing cladding under clause 1. Therefore, the installation of the new external wall cladding in the area where the former deck has been enclosed required a building consent.

**B. The north elevation at first floor level which was removed and reconstructed:**

The building work included the complete removal and reconstruction of the first-floor north elevation wall (see also item 6 below). This was new building work which required a building consent.

**C. The remaining elevations at first-floor level (excluding the new external cladding to the area that was formerly the two-storey stair):**

The majority of the previous first-floor cladding was horizontal timber direct-fixed weatherboards, with an area of vertical cladding across part of the north elevation. The 1958 building permit suggests the former timber weatherboards were direct fixed to the external timber wall framing, and it is not clear what (if any) building wrap/paper, air seals, and flashings etc were installed at that time. Regardless, the construction of the new vinyl cladding is more complex eg being fixed over the proprietary insulated building wrap and rigid air barrier, with different junction details and flashings.<sup>22</sup>

Due to differences in the finished assembly, I consider the replacement external wall cladding is not a comparable building product or assembly under clause 1.

**2. The ground floor:**

The 1968 building permit included the 'Proposed lifting of house'. The specifications for the ground floor which was installed at that time refer to a 100mm wide proprietary cement and asbestos fibre cladding product<sup>23</sup> over 'standard grade building paper', and the plans indicate it was to be fixed as vertical external wall cladding (see Figure 5, left).

**A. The former carport to the east side of the dwelling**

In regard to clause 1, the work to close-in the carport on three sides (including the installation of the new external wall cladding) was new building work, not maintenance, repair, or replacement of any existing cladding. Therefore, the building work to construct the new external wall cladding in the area where the former carport has been enclosed required a building consent.

<sup>22</sup> Determination 2017/086 *Regarding the refusal to grant exemption from the requirement to obtain a building consent for recladding a house* (1 December 2017) discusses recladding and clause (1) from paragraphs 5.2.1 to 5.2.9.

<sup>23</sup> Asbestos removal work must be carried out by a licensed asbestos removalist who is licensed to carry out the work, unless certain conditions apply (see regulation 27 of the Health and Safety at Work (Asbestos) Regulations 2016).

However, the COA included 'Close in carport' to create a recreation room, using timber framing to form the external walls. As noted above, although not clear on the certificate itself, the authority's processing records suggest the COA did include the installation of the new cladding used to form the external walls for the new recreation room.

**B. The remaining north, west and south elevations (excluding the new external cladding to the area that was formerly the two-storey stair):**

In regard to clause 1, I consider the same rationale applies as discussed in paragraph 1C above. The replacement external wall cladding is not a comparable building product or assembly due to the differences in the finished assembly.

**3. The external cladding to the structure around the former two-storey stair at the south-west corner of the dwelling:**

When the building was lifted in 1968, the new ground and first floors were connected by a stair located at the southwest corner of the building (see Figure 5, left). The east and south walls of the stair were formed using timber framing and 'glass infills'.

The installation of the new vinyl weatherboard cladding was not a repair or maintenance of the previous glass infill panels using a comparable building product or assembly, and nor was it a replacement using a comparable building product or assembly in the same position. The size and material properties of the glass infill panels are not comparable to the vinyl weatherboard cladding, and whereas the glass was fixed between the timber framing members the new cladding is fixed to the outside of the external wall construction.

- In regard to the owner's reference to Determination 2017/004, I note it does not automatically follow that the replacement of one external cladding system with another means the work is exempt from requiring a building consent; any decision must be considered in light of the specific facts for each case.

**Ministry's conclusion**

The majority of the building work to install the new external wall cladding system was not covered by the COA nor exempt under Schedule 1, and required a building consent. However, the COA did cover the installation of the new cladding system in the former carport area. Therefore, other than in the former carport area, there was a contravention of section 40.

**Item 4 - Notice to Fix NOT21764538 (dated 27 March 2025)**

**Section 40 contravention:** The addition of a 2-storey extension to the northeastern corner of the building, this involves extending the building envelope and incorporating extra habitable space.

**The building work**



**Figure 6: Photos of the former first-floor deck area (left) and current extension of lounge (right).**

- The building work is the closing-in of the former first-floor deck area in the north-east corner of the main building. The owners consider the work was exempt under clause 15 of Schedule 1, and also that it was also covered by the COA.

#### Ministry's assessment

- The COA included "close in deck area" as being authorised by the certificate. The authority's processing notes refer to "Addition to the lounge at first floor, originally deck area..." and describe the construction of the floor, wall framing and roof. As such, the closing in of the first-floor deck is covered by the COA.
- The notice is not clear regarding elements of other building work the authority considers was carried out in contravention of section 40 (ie those elements not covered by the COA).
- In regard to whether the work was exempt under **clause 15**, the closing-in of the deck did not provide for 'an enclosed porch, conservatory, or the like', rather, it increased the floor area of the existing lounge. Therefore, the building work does not meet the criteria in clause 15.

#### Ministry's conclusion

The closing-in of the first-floor deck is covered by the COA, and the authority did not detail in the notice what other building work the owners were alleged to have undertaken in contravention of section 40.

#### Item 5 – Notice to Fix NOT21764538 (dated 27 March 2025)

**Section 40 contravention:** Altering the height of the roof.

#### The building work



**Figure 7: The former first-floor deck (left) and the roof alteration (right).**

- The notice does not state which part of the roof it is referring to (eg whether it is the whole roof or a particular part).
- The building surveyor refers to "the roof height was slightly altered".
- The owners state the overall roof height was not altered and the roof is in the same place. They consider the work was exempt under clause 1 of Schedule 1, and that it was also covered by the COA.

#### Ministry's assessment

- As per Figure 7 (left), the former first-floor deck had a lightweight roof structure above it and the roof construction above it is new. The height of the roof has been raised in this area and the adjacent existing roof above the first-floor lounge (Figure 7 (right)).
- It is not clear why the authority included this item in the notice to fix when the COA included the alteration of the roof.

- In regard to the owners' claims that the work was exempt under clause 1, I note the work to roof above the north-east corner of the dwelling was new building work, including new roof framing, roof underlay and an area of roof cladding. It was not 'repair' or 'maintenance' (under clause 1(1)) The new work altered the configuration, the form of construction, and profile of the roof. The roof has been raised to remove the change in pitch and flashing where the roofs intersected above the first-floor lounge. Therefore, the building work does not meet the criteria in clause 1.

#### Ministry's conclusion

The alteration of the height of the roof above the former deck was work covered by the COA, and the authority did not detail in the notice what other work the owners were alleged to have undertaken in contravention of section 40.

#### Item 6 – Notice to Fix NOT21764538 (dated 27 March 2025)

**Section 40 contravention:** The complete removal of exterior walls to the northern side of the building that contributes to the building [sic] structural behaviour. A new structural beam has been partially installed and extends to support the roof extension for the 2-[storey] addition.

#### The building work



**Figure 8: Photo showing the first-floor wall removed and new timber beam/lintel in place (taken 15 December 2020).**

- It appears that it was only at the first floor level of the north elevation that the wall was deconstructed, though this is not clear from the wording in the notice to fix. The authority's photographs (dated 15 December 2020) show the entire first floor external wall construction, including any previous joinery, had been removed and a timber beam(s) / lintel(s) had been installed (see Figure 8). Subsequent photographs (from 21 December 2020) show the external wall reconstructed and some door and window joinery installed.
- The owners state that work was required to replace exterior windows and doors, under clause 8 of Schedule 1. They also consider it was "...not a substantial contribution to the building's structural behaviour or fire properties and therefore exemption 1 applies". The owner also states it was covered by the COA.

#### Ministry's assessment

- It is not clear why the authority included this item in the notice to fix; the COA included the replacement of the first-floor external wall, which remedied any contravention of section 40.
- Nonetheless, I have also considered the owners' claim that the building work was exempt from requiring a building consent under clauses 1 and 8. Regarding clause 8, I note that

<p>the notice to fix concerned the removal of the external wall rather than replacement of joinery.</p> <ul style="list-style-type: none"> <li>○ <b>Clause 1.</b> The north elevation external wall and new beam(s) / lintel(s) are integral to the structural performance of the building including supporting part of the roof structure. As such, subclause (3)(b) applies and the work was not exempt under this clause.</li> </ul>
<p><b>Ministry's conclusion</b></p> <p>The work to remove and reconstruct the first-floor north elevation wall was covered by the COA, and the authority did not detail in the notice what other work the owners were alleged to have undertaken in contravention of section 40.</p>
<p><b>Item 7 - Notice to Fix NOT21764538 (dated 27 March 2025)</b></p> <p><b>Section 40 contravention:</b> The installation of new drainage and pipework to direct storm water to the road (no connection to Council assets at time of inspection).</p>
<p><b>The building work</b></p> <ul style="list-style-type: none"> <li>● The building work includes the installation of below ground surface water drainage which is capped off inside the property. The drain is shown located to the west side of the dwelling, before crossing in a southeast direction under a 'parking' area, connecting to another drain from the southeast corner of the building, and then a single drain heads in a southerly direction terminating close to the road boundary.<sup>24</sup></li> <li>● It is not clear how the surface water collected and concentrated by the roof was disposed of before the new drain was installed, and therefore whether any of the work was existing. However, 'street view' images<sup>25</sup> indicate the previous system is likely to have relied on collecting and storing water in a large concrete tank(s) located on the property.</li> <li>● The owner considers stormwater drainage and pipework was "repair and replacement of existing" under clauses 32(1)(2) and 34(1).</li> </ul>
<p><b>Ministry's assessment</b></p> <ul style="list-style-type: none"> <li>● The COA did not include this building work. Although the COA plans show the setting out of the as-built below ground surface water drainage, the COA only covers certain elements of building work associated with clauses B1, B2 and E2, and does not include building work undertaken in relation to E1.</li> <li>● In regard to the owners' view that the work is exempt under clauses 32 and 34, as discussed in Item 2 these clauses require the person(s) carrying out the work to be authorised under the PGDA. The owners state the work was carried out by an 'earthworks drainage contractor' and one of the owners (M Hiestand). The owner is not on the plumbers, gasfitters and drainlayers public register, and I have not been provided with documentation or details of the earthworks drainage contractor to verify whether they were authorised to carry out the work. Therefore, in the absence of information to support the claim, I consider the work to lay the new surface water drainage was not exempt under clauses 32 and 34.</li> </ul>
<p><b>Ministry's conclusion</b></p>

<sup>24</sup> As set out in the COA 'site plan', sheet 1 of 4.

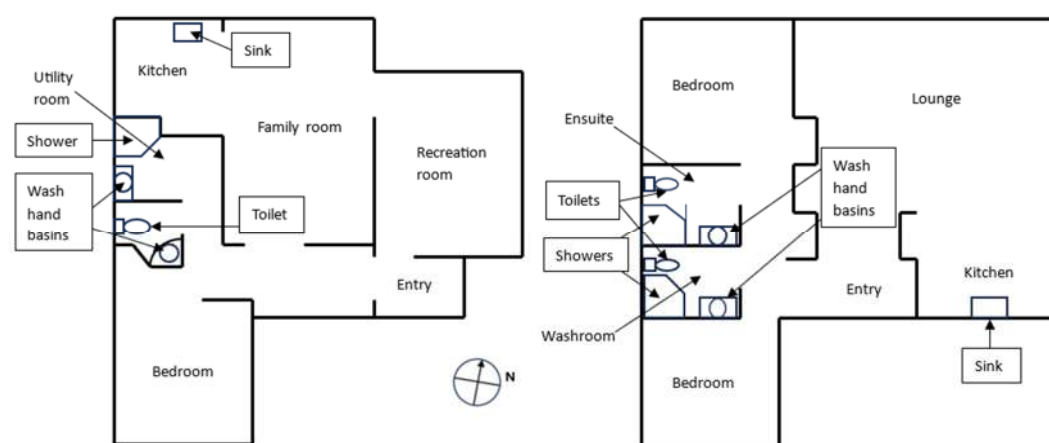
<sup>25</sup> From Google Maps, dated 2008, 2009 and 2012, accessed on 24 November 2025.

The installation of the below ground surface water drainage was not covered by the COA or exempt under Schedule 1 and required building consent. Therefore, there was a contravention of section 40.

#### Item 8 - Notice to Fix NOT21764538 (dated 27 March 2025)

**Section 40 contravention:** The installation of new plumbing and drainage to support new sanitary fixtures to the western and northern sides of the house.

#### The building work



**Figure 9: Current layout of ground floor (left) and first floor (right) showing locations of sanitary fixtures.**

- The work was undertaken between September and December 2021. It appears the plumbing work has been completed although some sanitary fixtures have not yet been installed.
- The notice to fix refers to “The installation of new plumbing and drainage to support new sanitary fixtures...”. However, it does not specify which sanitary fixtures and associated plumbing work was ‘new’ or additional (rather than being replacement, repairs or relocation of previous fixtures and plumbing) nor the extent of any new drainage.
- The owners consider there are no additional sanitary fixtures or drainage connections, only replacement of existing, and the work is exempt under clauses 32 and 35.

#### Ministry’s assessment

- The COA did not include the installation of the sanitary fixtures or associated plumbing or drainage.
- As previously discussed, clauses 32 and 35 require the person(s) carrying out the work to be authorised under the PGDA. The owners have provided information that indicates this requirement has been met.<sup>26</sup>
- Due to a lack of the information about the plumbing and drainage, I have relied on information about the location of sanitary fixtures to get a broad understanding of the extent of the plumbing and drainage work that would have been necessary (see Figure 9). I have also received conflicting information regarding exactly what was present when the building was first constructed and then ‘lifted’ in 1968 (to form the two-storey building). In the absence of clear information, I have relied on the building permit plans from 1958,

<sup>26</sup> The owners provided an invoice for work carried out by a plumbing and drainage company; the director is registered on the plumbers, gasfitters and drainlayers public register.

<p>1968 and 1988, the COA plans from September 2020, and photographs provided by the parties.</p> <ul style="list-style-type: none"> <li>• Based on the information available, I conclude that at the ground floor level, there is a new/additional sink (in the kitchen) and an extra wash hand basin, and these would have required the installation of new fixture discharge pipes. At the first-floor level, there is a new/additional toilet, shower and wash hand basin in the ensuite, a space that was previously occupied by the first-floor kitchen where there had been only a single discharge pipe for the kitchen sink. The additional fixtures would have required the installation of new fixture discharge pipes.</li> <li>• The alteration/relocation of the plumbing associated with the existing sanitary fixtures was exempt under clause 35. However, the work to install new plumbing in relation to the additional sanitary fixtures (that increase the number of sanitary fixtures in the building) does not meet the criteria in clause 32 or 35.</li> </ul>
<p><b>Ministry's conclusion</b></p> <p>The work was not covered by the COA. The plumbing work in relation to the new/additional sanitary fixtures (ie the kitchen sink and extra wash hand basin on the ground floor, and toilet, shower and wash hand basin in the first-floor ensuite) was not exempt under Schedule 1 and required building consent. Only the alteration/relocation of plumbing associated with the other existing sanitary fixtures was exempt under clause 35.</p> <p>However, the notice was not specific or clear regarding the nature of the section 40 contravention. It did not adequately describe what the new sanitary fixtures were or their locations, or details of the associated plumbing and drainage.</p>
<p><b>Item 9 - Notice to Fix NOT21764538 (dated 27 March 2025)</b></p> <p><b>Section 40 contravention:</b> The installation of a kitchen sink, toilet, tiled wet shower area and a handbasin on the ground floor (basement area) of the dwelling.</p>
<p><b>The building work</b></p> <ul style="list-style-type: none"> <li>• The owner states that six sanitary fixtures were already present on the ground floor, and most were replaced or relocated under clause 35.</li> </ul>
<p><b>Ministry's assessment</b></p> <ul style="list-style-type: none"> <li>• The work was not included in the COA.</li> <li>• As per Item 8, the requirement (under Part 2 of Schedule 1) that the person(s) carrying out sanitary plumbing are authorised under the PGDA has been met.</li> <li>• I have already reached the view (in Item 8) that the kitchen sink and one of the wash hand basins are new/additional sanitary fixtures and the associated plumbing work does not meet the criteria in clause 35.<sup>27</sup> However, the notice did not specify which of the two wash hand basins on the ground floor it was referring to.</li> <li>• The toilet on the 2020 COA plan (sheet 1 of 4) appears to be a replacement in the same or similar location to the one shown on the 1968 ground floor plan, and I consider the associated plumbing meets the criteria in clause 32(2). Based on the same plans, the shower appears to have been relocated to a different location, and the associated plumbing meets the criteria in clause 35.</li> </ul>
<p><b>Ministry's conclusion</b></p>

<sup>27</sup> The 1968 building permit plan provides for only one wash hand basin (or laundry tub).

The work was not covered by the COA. The plumbing work associated with the installation of the kitchen sink and one of the wash hand basins was not exempt under Schedule 1 and required building consent. However, the notice did not specify which wash hand basin it was referring to.

The plumbing work associated with the installation of the shower, toilet and other wash hand basin was exempt under clause 32 or 35.

#### Item 10 - Notice to Fix NOT21764538 (dated 27 March 2025)

**Section 40 contravention:** The construction of a 20 square meter [sic] deck on the northern side of the dwelling where it is possible to fall more than 1.5 meters [sic].

#### The building work



Figure 10: The former deck construction (left) and current deck construction (right).

- It appears the new deck was constructed sometime between 2 November 2021 and 16 October 2023, although the construction of the barrier is still incomplete. The new deck is 9.5m long x 2.5m wide.
- The owners consider that when finished, this will be the replacement that is exempt under clause 1(2) of an existing deck originally constructed in 1968, and that it is also the ground floor awning or veranda which is exempt under clause 16A. The owners also consider it was covered by the COA.
- The 1968 building permit plan shows a first-floor timber deck constructed across the north elevation of the main building, with a return at the north-east corner (see Figure 10, left). The deck was approximately 9.4m long and approximately 1.12m wide.<sup>28 29</sup>

#### Ministry's assessment

- The COA included the new timber posts and supporting foundations, but not the remaining structure. Because the COA includes the new support posts and associated foundations, I have only considered whether the rest of the construction of the deck was exempt from requiring a building consent.
- I consider the building work does not meet the criteria in clause 1(2) because the new deck is larger than the former deck and so it is not in the same position.
- In regard to clause 16A, I note that awnings, unlike a deck, are not intended to support loads from persons or materials placed on them. I consider this building work is not exempt under clause 16A.

<sup>28</sup> The width has been scaled from the plan as no dimension was recorded.

<sup>29</sup> In the absence of any clear information that the deck had been built/rebuilt at some later date, I have relied on the information in the 1968 plan.

- As commented on in the notice to fix, it is possible to fall more than 1.5m from the deck if it collapsed. For that reason, the building work is not exempt under clause 24, and I am of the view no other clauses in Schedule 1 apply.

#### Ministry's conclusion

The building work to construct the timber deck was not exempt under Schedule 1 and required building consent. Only the timber posts and supporting foundations are covered by the COA. Therefore, there was a contravention of section 40 in regard to the rest of the deck construction.

#### Item 11 - Notice to Fix NOT21764538 (dated 27 March 2025)

**Section 40 contravention:** The construction of an outdoor staircase with 16 risers to access the deck from the ground floor.

#### The building work



- The stair is located adjacent to the north-west corner of the main building and provides access to the first-floor deck. There is a landing at the top of the stair that is lower than the adjacent deck. It appears the stair was constructed sometime between November 2021 and October 2023.
- The owners state the stairs are 'a building site necessity for safe upper level access and escape, pending resolution of building consent refusal for the [proposed stairs to the main entrance of the first floor]'.

Figure 11: The stair to the first floor

#### Ministry's assessment

- The construction of the stair is not covered by the COA.
- The 1968 building permit plan does not include a stair in this location to the first-floor deck.
- The owners have not referred to any clause in Schedule 1 which they may have relied on. Regardless, I have considered the exemptions in Schedule 1 and I consider that none allow for the construction of an external stair in this manner.

#### Ministry's conclusion

The building work to construct the external stair (including the associated landing at the top) was not covered by the COA nor exempt under Schedule 1. Therefore, there was a contravention of section 40.

#### Item 12 - Notice to Fix NOT21764538 (dated 27 March 2025)

**Section 40 contravention:** The construction of a carport on the south-western side of the property that exceeds 20 square meters [sic].

**The building work**

- The carport was built sometime between December 2020 and October 2023.
- The outside dimensions of the carport are approximately 24.8m<sup>2</sup> (4.96m x 5m).
- The owners consider the structure is exempt under clause 18A, and state it was constructed by an LBP, according to “LBP Design and Engineer certificates”.<sup>30</sup>

**Figure 12: The carport on the south-western side of the property.**

**Ministry’s assessment**

- The COA did not include this building work.
- Regarding the calculation of the floor area of the purpose of assessing the work against clause 18A, MBIE’s guidance regarding carports provides that “the net floor area in a building is measured to the inside of the enclosing walls or posts/columns”.<sup>31</sup> It appears that the area to the inside of the corner posts is approximately 21.9m<sup>2</sup> (assuming 150mm<sup>2</sup> posts). I note this area is greater than is allowed for under clause 18 but within the limits provided for in clause 18A.
- Regarding clause 18A, the owners have provided no evidence that “design or construction work is carried out or supervised by a licensed building practitioner”.<sup>32</sup> The owner’s claim that the work was exempt has not been substantiated, and therefore I do not consider the building work exempt under this clause.
- For the avoidance of doubt, I note that the unroofed timber structure located on the driveway to the east side of the main building is a pergola and is exempt under clause 6.

**Ministry’s conclusion**

The building work to construct the carport was not covered by the COA nor exempt under Schedule 1. Therefore, there was a contravention of section 40.

**Item 13 - Notice to Fix NOT21764627 (dated 28 March 2025)**

**Section 40 contravention:** A bathroom has been installed in the area, showing as a kitchen on the consented plans. This bathroom includes a toilet, shower, sink, and associated plumbing and drainage.

**The building work**

- The building work includes the installation of a toilet, shower, sink, and associated plumbing, in the area that was previously described as a kitchen on the ground floor plan from 1958 which was subsequently lifted to form first floor (see Figure 9).
- The owners state this is a ‘temporary set up, pending resolution of the ensuite bathroom (additional sanitary fixtures) – [building consent] refusal’.

**Ministry’s assessment**

<sup>30</sup> The owner did not provide a copy of the certificates referred to.

<sup>31</sup> 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 123.

<sup>32</sup> I note also that clause 44, which also provides for carports exceeding 20, but not exceeding 40, square metres in floor area requires their design to be carried out or reviewed by a chartered professional engineer.

<ul style="list-style-type: none"> <li>• I note the first-floor plan lodged with the COA referred to this room as a ‘wash room’, however the COA was not issued in respect of this building work.</li> <li>• Information provided confirms the requirement (under Part 2 of Schedule 1) has been met, ie that the person(s) carrying out the associated sanitary plumbing for this item are authorised under the PGDA (refer item 8).</li> <li>• Although the 1958 building permit refers to the relevant space being a kitchen, it appears that when the building was lifted in around 1968, the kitchen was moved into part of the adjacent space (the bedroom) and the ‘wash room’ was created containing a toilet and wash hand basin, with a shower added at some later point. The previous toilet and shower are evident in a photo provided by the owners dated 8 January 2021. As such, the work to replace the sanitary plumbing associated with the toilet, shower and wash hand basin met the criteria in clause 35 as it did not increase the total number of sanitary fixtures in the building.</li> <li>• The owners refer to the current arrangement as being ‘temporary’. However, I have received no plans that indicate what permanent solution is proposed. Regardless, schedule 1 does not differentiate between temporary or permanent building work in association with sanitary plumbing.</li> </ul>
<p><b>Ministry’s conclusion</b></p> <p>The work was not covered by the COA but was exempt under clause 35 of Schedule 1. Therefore, there was no contravention of section 40.</p>
<p><b>Item 14 - Notice to Fix NOT21764627 (dated 28 March 2025)</b></p> <p><b>Section 40 contravention:</b> The kitchen has been moved from its consented location on the western side of the dwelling to the southern side of the dwelling. This kitchen has a sink with associated plumbing and drainage.</p>
<p><b>The building work</b></p> <ul style="list-style-type: none"> <li>• The first floor kitchen (including the sink and associated plumbing) has been relocated from a space adjacent to the first floor ‘wash room’ to its current position adjacent to the south wall of the first floor lounge (see Figure 9).</li> <li>• The owner states this is a temporary set up pending resolution of the ensuite bathroom, also maintains the building work is exempt under clause 35.</li> </ul>
<p><b>Ministry’s assessment</b></p> <ul style="list-style-type: none"> <li>• The COA did not include this building work.</li> <li>• Information provided confirms the requirement (under Part 2 of Schedule 1) has been met, ie that the person(s) carrying out the associated sanitary plumbing for this item are authorised under the PGDA (refer item 8).</li> <li>• The work to relocate the kitchen sink and associated plumbing met the criteria in clause 35 as it did not increase the total number of sanitary fixtures in the building.</li> <li>• The notice also refers to “...associated...drainage”. However, it is not clear what new drainage (if any) has been installed, or if any existing drainage has been altered (for example, in accordance with Schedule 1, clause 34), and the notice did not detail the same. Therefore, I have not considered this aspect of item 14 further</li> </ul>
<p><b>Ministry’s conclusion</b></p> <p>The work was not covered by the COA but the plumbing work was exempt under clause 35 of Schedule 1. Therefore, there was no contravention of section 40.</p>

**Item 15 - Notice to Fix NOT21764627 (dated 28 March 2025)**

**Section 40 contravention:** The conversion of an enclosed stairwell, approximately 9m<sup>2</sup> on the southwestern side of the dwelling, which enabled indoor access from the ground floor to the first floor. The stairwell has been converted into two bedrooms; the work has included the construction of a midfloor to separate the newly constructed ground floor and first-floor bedrooms. The stairwell has been completely re clad with a building product that is not comparable.

**The building work**

**Figure 12: Photo showing the previous stairwell area (dated 24 July 2018).**

- The building work to convert the enclosed stairwell into two bedrooms included constructing a new floor at first-floor level, as well alterations to the internal walls and some door openings. This work appears to have started prior to 15 December 2020, and by 18 March 2025 the stair had been removed and the new floor installed.
- The owners consider the work was internal alterations under clauses 11 and 12. They also consider that the stairwell conversion was covered by the COA.
- In regard to recladding, this has been assessed in Item 3.

**Ministry's assessment**

- The building work to remove the stair and make the subsequent internal alterations was not included in the COA.
- The building work to construct the new midfloor structure (eg the installation of the floor joists) was not exempt building work. Clauses 11 and 12 only provide for building work to internal walls and doorways, and linings and finishes in existing dwellings – the midfloor structure does not fall under either of those exemptions.

**Ministry's conclusion**

The building work to remove the stair and make the subsequent internal alterations was not included in the COA. The building work to construct the new midfloor structure (eg the installation of the floor joists) was not exempt building work. As such, the construction of the new midfloor was carried out in contravention of section 40.