

Determination 2023/009

**Regarding a proposal to issue a notice to fix and whether
thirteen transportable units are vehicles or buildings**

108 Butchers Road, Kaiapoi

Summary

This determination considers an authority's proposal to issue a notice to fix for what it considers is building work that has been carried out without building consent. The matter concerns transportable dwellings, and the determination considers whether these are vehicles or buildings that come within the ambit of the Building Act.



The legislation discussed in this determination is contained in Appendix A. 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, Katie Gordon, National Manager Building Resolution, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.¹
- 1.2. The parties to the determination are:
 - 1.2.1. Waimakariri District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority. The authority is the applicant in this determination.
 - 1.2.2. Mindspace Solutions Ltd, trading as Cosy Homes (“the owner”). Mindspace Solutions Ltd is the manufacturer of the units which are the subject of this determination and was the owner of the units at the time they were inspected by the authority. The construction of the units was carried out or supervised by the director of Mindspace Solutions Ltd, E Woods.
- 1.3. In this determination, because the dispute turns on whether the work carried out was construction of buildings or of vehicles, I have used the terms “unit” and “units”.
- 1.4. This determination arises from the authority’s proposal to issue a notice to fix to the owner for “the ongoing construction” of units without first obtaining building consent. This is on the grounds that the units are buildings (as that term is defined in section 8 of the Act), the work to construct the units is building work that requires a building consent under section 40 of the Act, and no consent for the particular units considered in this determination had been applied for or granted.
- 1.5. At the request of the Ministry, the authority identified the building work for which the notice would be issued and provided an addendum to its application with information about units under construction observed at multiple site visits. The authority confirmed that it proposed to issue a single notice to fix “to cover all of the units under construction”. This determination considers the units identified by

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

the authority as they were at the time of the authority's observations, and the proposal to issue a notice to fix at the time the application for determination was made.

- 1.6. In the owner's view, the units are vehicles and fall outside the scope of the definition of a "building" in the Act; meaning that no building work was carried out and the authority is therefore unable to issue a notice to fix.
- 1.7. The matter to be determined² is the authority's proposal to issue a notice to fix. In deciding this matter, I must consider whether the units are buildings, as defined by section 8 of the Act.

2. The units

- 2.1. The owner's property is a rural property on the outskirts of Kaiapoi in the Canterbury region. The property is the location of the owner's business, which manufactures various models of transportable units. The property contains several other buildings, including a large hangar-style building ("the hangar") where some of the units are initially constructed before being moved into the open.
- 2.2. This determination relates to thirteen different units that the authority observed in various stages of construction on the owner's property, between 5 April 2018 and 2 October 2019. These include:
 - 2.2.1. two units observed by the authority on a site visit on 5 April 2018 (see paragraph 3.1 of this determination)
 - 2.2.2. four units observed by the authority on a site visit on 12 November 2018 (see paragraph 3.2)
 - 2.2.3. two units observed by the authority on a site visit on 4 March 2019 (see paragraph 3.4)
 - 2.2.4. five units observed by the authority on a site visit on 2 October 2019 (see paragraph 3.11).
- 2.3. Most, if not all, of these units have been sold and removed from the owner's property. There is no dispute between the parties that the owner constructed these units with the intention that they would be sold and shifted to other locations. There is also no dispute that the units are designed and intended to be used as abodes or dwellings, and that the owner is continuing to construct similar units at the same location.

² Under sections 177(1)(b) and 177(3)(e) of the Act.

- 2.4. The authority has provided varying degrees of detail and evidence about the thirteen particular units it observed. This information was gathered during the various site visits.
- 2.5. The authority has also provided information about the three different models of units manufactured by the owner, which has been sourced from the owner's website. I have also independently accessed this website³ and consider that some of the generic information provided there can be assumed to apply the units that are the subject of this determination, on the basis that the units are constructed in a similar manner.
- 2.6. The owner's website shows that it manufactures three models of units. All of these models are described on the website as "portable accommodation". The website also states that the units:
 - 2.6.1. have been designed to provide a home
 - 2.6.2. "have the added flexibility of being transportable, with stand-alone adjustable concrete feet removing the need for concrete foundations"
 - 2.6.3. are "ideal for first home buyers, retired couples, holiday homes, guest accommodation or rental investment"
 - 2.6.4. construction is supervised by a licensed building practitioner.
- 2.7. The website lists three examples of the types of units that are available and shows the different features that the units might have at different price brackets; and notes that the specifications of the units can be customised.
- 2.8. Some aspects of the units' construction are common for all of the unit types. These include the unit sizes (12.1m x 4.2m for a two-bedroom unit, or 9.1m x 4.2m for a one-bedroom unit), and the construction of the steel support frame that the units are built on.
- 2.9. The support frame is formed from two 150mm high PFC⁴ beams running longitudinally, with 75mm x 50mm x 4mm RHS⁵ joists laid transversely on top of them. The edge of the support frame is enclosed by a folded metal flashing. For units constructed with axles and wheels, these are attached to a hollow steel tube clamped over the beams. The subfloor is formed from the joists, which are overlaid with an insulated panel, then sheet flooring, which is fixed by screws to the joists.
- 2.10. The walls of the units are constructed from 100mm and 150mm thick 'Structural Insulated Panels' without the use of steel or other framing. The panels are laid

³ <http://www.cosyhomes.co.nz/>. Accessed 5/11/2019, 18/02/2020, 05/05/2022, 02/06/2022, 08/07/2022 and 20/02/2023.

⁴ Parallel Flange Channel or PFC is a C-shaped steel beam.

⁵ Rectangular Hollow Sections or RHS are sections of rectangular steel with a hollow core.

horizontally on the flashing, and on top of each other, and riveted together at the ends and to the floor and ceiling. The adjacent panels (vertically) are not riveted together but are joined with adhesive and sealant. The roof cladding of the units is profiled metal.

2.11. Where the design of the various models of units differ is in relation to their joinery, insulation, finishing and fittings. The 'standard' unit is described on the owner's website as being "a 50 sqm design [with] two bedrooms, one bathroom, a full-sized kitchen and a combined dining/living area with french doors opening out onto a deck". All of the units are stated to come with "a full-sized kitchen, bathroom, wardrobe, wall linings, flooring, steps, lighting and electrical, plumbing, gas hot water and transport". The 'higher priced homes' also include "the additional features of heatpump, HRV system, a veranda with composite wood decking, rock-look external skirting, and eight adjustable reinforced concrete feet".

2.12. The 'Pricing' page on the owner's website indicates that the units can also be customised in terms of whether they will have wheels and a tow bar.

2.12.1. For the 'Basic' model, there is a list of "optional extras" which includes "building consent or wheels and towbar".

2.12.2. For the 'Premium' model, the features include "4 wheels (2 removable axles) and a retractable towbar (can avoid the need for a Building Consent) OR full Building Consent with a PS1 and PS4". The same is stated for the 'Deluxe' model, except there are 6 wheels and 3 removable axles.⁶

2.13. The owner's website also contains a link to its Trade Me listings.⁷ Of the seven listings which were viewed, six of the advertisements stated:

- All of our homes comply with the NZ Building Code and can be supplied with a building consent and code compliance certificate
- Optional wheels and towbar should you wish your home to be considered a vehicle (as an alternative to getting a building consent)

The seventh listing was titled 'New Mega Tiny Home – Premium 50sqm Home on Wheels' and stated, "Wheels and a towbar, so you don't need a building consent".⁸

⁶ <http://www.cosyhomes.co.nz/pricing/>. Accessed 05/05/2022.

⁷ https://www.trademe.co.nz/a/search?member_listing=43047&sort_order=PriceAsc&bof=6WCm9cil Accessed 04/05/2022.

⁸ <https://www.trademe.co.nz/a/motors/caravans-motorhomes/caravans/more-than-24-ft/listing/3448049457?bof=6WCm9cil>. Accessed 04/05/2022.

2.14. The price for all the units includes transport within 20km (basic) or 50km (premium and deluxe) of Kaiapoi. The owner's website states (in its 'FAQ' section):

...anything over 2.55m wide cannot be legally towed or driven on the road, so the [unit] has to be transported on the back of a truck.⁹ Therefore, our wheels and towbar are only for moving the home off-road (e.g. some movement around the site), and they also make the home qualify as a vehicle, so it does not need Building Consent...¹⁰

The owner's website also states (in its 'Details' section):

Note, because of their size and weight, Cosy Homes cannot be towed on the road – they need to travel on a truck; but that is no problem – our homes come with built-in lifting points...¹¹

2.15. There are photos on the owner's website showing a unit being transported as a load on a hiab truck and trailer unit¹², and being towed (out of the hangar where the units are initially constructed) by a tractor. In Determination 2022/001, which considered one of the owner's units that was connected to services on site, the owner claimed that the units can be towed with a tractor on the road at up to 25 km/h "with constraints" (eg visibility markings, pilot vehicle, etc).¹³ The units do not have suspension, brakes, indicators or other towing lights, and are not registered as vehicles.

2.16. Once in place, the units are designed to sit on concrete feet.¹⁴ The owner's website states that these feet are designed to:

...cradle the home and do not attach it to the ground – the home can be lifted off the feet with no detaching required whatsoever, or the feet can also be removed while the home is still in place.

The authority's consultant (see paragraph 3.5) described the feet as 'steel brackets over concrete pads'. The support frame of the unit sits on the steel brackets but is not attached to them. The owner advised there is a layer of rubber between the chassis and the U-brackets, and between the two concrete blocks, and also that the

⁹ In Determination 2022/001, the owner submitted that "[this statement] is an oversimplification for visitors to [their] website".

¹⁰ www.cosyhomes.co.nz/faq/. *What are Mega Tiny Homes?* Accessed 08/07/2022.

¹¹ <http://www.cosyhomes.co.nz/details/>. *Portable and earthquake safe*. Accessed 20/02/2023.

¹² A hiab truck and trailer unit consists of a truck mounted with a crane, which is used for the loading and unloading of freight, and a trailer, on which freight is loaded and transported.

¹³ Determination 2022/001: The authority's proposal to issue a notice to fix and whether a unit is a vehicle or a building. Issued 01 March 2022. *Note*: This determination has been appealed with the judgement issued on 09 December 2022, see *Woods v Waimakariri District Council* [2022] NZDC 24083.

¹⁴ The owner has also referred to a "ground anchoring solution" to hold the units down but did not provide details.

U-bracket is attached to a 45mm steel rod (scaffolding tube) that sits in a hole in the concrete pads.

- 2.17. With respect to connections to services, the website states that these are designed to be ‘easily detached’. Electricity is supplied using a caravan-style plug, water is supplied from a hose to an external tap, bottled gas is used to heat water and for cooking, wastewater is connected with ‘a flexible, quick-release coupling’ and plumbing fittings ‘only need one thread loosened’ in order to remove them.
- 2.18. The authority provided the following details, gathered during its site visits, of the thirteen units that are the subject of this determination:

Table 1: Units identified by the authority

Site visit	Authority’s observations
5 April 2018 Two units	Both units: <ul style="list-style-type: none"> • were unoccupied • were supported on jacks • had exterior roofing, cladding and joinery installed
12 November 2018 Four units	All units: <ul style="list-style-type: none"> • measured 12m x 4.5m • had a full kitchen and bathroom fitted, and displayed ‘a range of finishing and bedroom options’ • were finished with aluminium cladding and resin windows
4 March 2019 Two units	Both units were unoccupied
2 October 2019 Five units	Units were in various stages of construction: <ul style="list-style-type: none"> • three appeared almost complete • one had only its base and the beginning of three walls constructed • one consisted of a support frame with a number of floor panels laid on it

- 2.19. A photograph in the authority’s consultant’s report (see Figure 2) shows a chassis with wheels located immediately adjacent the inner beams of the support frame, which I understand from the consultant’s report are used to move the unit around the property during construction. The authority’s inspection records note that the units it observed were sitting “on jacks”, which is evident in some of the photographs taken by the authority. I have received no information from the parties that would suggest the 13 units identified during these site visits were completed with the wheels in line with the external support frame (as shown in Figure 3) that are optional for the purchaser.

3. Background

- 3.1. The authority advises that it first became aware of construction activities on the owner's property in April 2018. It carried out a site inspection on 5 April 2018, during which it observed two units under construction. The inspection report contained photos of these two units, including their subfloors and the location where a tow bar could be fitted. The report recorded that there was no breach of the Building Act at the time of the inspection with respect to these units. The report also recorded the presence of another unit, a possible "granny flat", that had been placed on the site without a building consent and appeared to be connected to services on site and occupied ("the granny flat").
- 3.2. The authority carried out a further site inspection on 12 November 2018 and was shown around one of the units under construction by the owner. The inspection report noted that there were four units under construction on the property at the time of the visit and detailed the particulars of their construction. The report also records that the owner explained that they had not applied for a building consent for the units because "they are manufactured and constructed as mobile structures and not fixed to the ground or services".
- 3.3. On 21 December 2018, the authority sent an advisory letter and notice to fix to the owner in respect of one of the units that was under construction on its property. The owner responded in an email dated 1 March 2019, in which they advised that the unit that was the subject of the notice to fix had been moved off the site. In this email, the owner also recorded their views that construction of the units did not require building consent because they were vehicles. Every unit was "used as a vehicle" when it was moved out of the hangar where it was constructed, at which point it would be towed on its trailer by a tractor into the site yard. The units were designed to be mobile, in the same manner as a 'static caravan', and came within the Oxford English Dictionary definition of 'mobile home', namely: "A large trailer or transportable prefabricated structure that is situated in one particular place and used as permanent living accommodation".¹⁵ The owner also detailed the difficulties that would arise if the units (and similar units) were treated as buildings.
- 3.4. On 4 March 2019, the authority again visited the owner's property and observed two units under construction and the granny flat.
- 3.5. The authority commissioned an infrastructure and construction consultancy company ("the consultant") to examine and report on the units. The consultant carried out a site visit at the owner's property on 2 April 2019, at which the owner was present. During the site visit, the consultant inspected one nearly completed unit and the support frame of another unit. The consultant provided a report dated 2 August 2019, in which it describes the construction of the units, their method of

¹⁵ *Oxford English Dictionary Online*. Third Edition, September 2002; latest version published online March 2022.

transportation, and the consultant's opinion as to their compliance with Clause B1 *Structure* of the Building Code.

- 3.6. I note that the owner disputes much of the consultant's report and provided further information on construction details. The owner engaged a chartered professional engineer to undertake a "structural design of the superstructure and the foundation" for a unit manufactured by the owner. The resulting "design features report" is dated 2018.¹⁶ The engineer also provided a Certificate of Design Work¹⁷ (dated 22 November 2019) for the "pad foundation and floor framing" and wall panels and bracing for that unit, and a Producer Statement – Design (PS1) for compliance of the structural design with clause B1 *Structure* (dated 21 November 2019)¹⁸.
- 3.7. The authority applied for a determination on 28 August 2019. This application sought a determination on two matters. The first matter related to the authority's proposal to issue a notice to fix in respect of the "ongoing construction of houses ... without building consent". The second matter related to the authority's proposal to issue a notice to fix in respect of the granny flat.
- 3.8. Following discussion with the Ministry, the authority agreed to split the two matters into two separate determinations: one relating to the construction, over time, of various units on the owner's property, which were subsequently moved to other properties; the second relating to the granny flat unit.
- 3.9. On 19 September 2019, the Ministry accepted the application for a determination relating to the granny flat. The Ministry issued a final determination in relation to this matter on 01 March 2022.¹⁹
- 3.10. With respect to the first matter (which is the matter being considered in this determination), the Ministry requested further information about the specific building work and units that the authority proposed to issue a notice to fix in respect of, including evidence of the features of their construction.
- 3.11. The authority carried out a further site inspection on 2 October 2019, during which it observed five units in various stages of construction. The site inspection report contains photos of the five units.

¹⁶ The unit that is the subject of the design features report and certificate of design work and PS1 is identified by a residential address in Auckland ("the Auckland unit"). Given the dates involved and the lack of unique identifiers of the units that are the subject of this determination, I have assumed that if the Auckland unit is not one of the subject units, it still shares the same or many of the same features of construction.

¹⁷ A memorandum from a licensed building practitioner (certificate of design work). Refer section 45(1)(e).

¹⁸ The PS1 does not include a ground anchor system.

¹⁹ Determination 2022/001: The authority's proposal to issue a notice to fix and whether a unit is a vehicle or a building. Issued 01 March 2022. *Note:* This determination has been appealed with the judgement issued on 09 December 2022, see *Woods v Waimakariri District Council* [2022] NZDC 24083.

- 3.12. The authority provided the Ministry with an ‘addendum’ to its application for determination on 14 November 2019. The authority also clarified that it proposed to issue one notice to fix “to cover all of the units under construction”.
- 3.13. On 25 November 2019, the Ministry accepted the authority’s application for a determination in relation to its proposal to issue a notice to fix for the construction by the owner, over time, of the various units identified in the addendum.

4. Submissions

The authority’s initial submission

- 4.1. In its submission, the authority stated that it was seeking a determination “so that there is clarity” about whether the units constructed by the owner are buildings for the purpose of section 8 of the Act. The authority’s ability to issue a notice to fix for the units depended on whether they come within the section 8 definition of a ‘building’ and therefore the work carried out to construct the units was ‘building work’ as defined in section 7 of the Act.
- 4.2. The authority described the background to the matter and its understanding of the process whereby the units were constructed. It also set out the specifications and elements of the three types of standard unit that owner constructed. Much of this information was derived from the owner’s website.
- 4.3. The authority also confirmed that it had seen a video of a unit being towed at walking pace by a tractor; and stated its opinion that the unit “does not appear to have the ability to be towed on any road or moved any further than around a flat building site”; there is no suggestion that it is “capable of any transport purpose”; and it “would not fit within a lane on a road”. It also notes that the units “lack any other vehicular characteristics such as brakes, lights, suspension or an internal combustion engine”.
- 4.4. The authority’s submission goes on to consider the definition of a building in section 8 of the Act, and to refer to the Court of Appeal’s interpretation of it in *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* [2010] NZCA 633 (“*Te Puru* (CA)”) and the Ministry’s application of it in various determinations.
- 4.5. The authority’s position is the units do not constitute a ‘vehicle or motor vehicle’ for the purposes of section 8(1)(b)(iii), but instead come within the definition of ‘building’ under section 8(1)(a). Alternatively, if the units are found to be vehicles, then the authority submits that they nonetheless come within the definition of a ‘building’ by being both immovable and occupied on a permanent or long-term basis, and hence satisfying all requirements in section 8(1)(b)(iii).

- 4.6. With respect to the question of whether the units are vehicles, the authority referred to Determination 2017/058²⁰ and discussed the features of the units that, in its opinion, meant that they could not be vehicles. The authority concluded that the units were not vehicles or motor vehicles as they were not:

...used to transport people or goods, nor are they capable of doing so. In any event, the durability of its construction makes the structure insufficient for use as a “vehicle” for anything more than short distances.

- 4.7. With respect to the question of whether the units are immovable, the authority referred to Determinations 2006/72²¹, 2015/044²² and 2015/067²³ and discussed the features of the units that in its opinion made them immovable. The authority concluded that the units were “designed to become immovable” when “used for their intended purpose”. The basic units were not capable of being towed at all, and for the other models, “it is not clear that [they] are capable of being towed at any substantial speed or over any substantial distance”. The authority concluded that:

...moving [the units] off the property is likely to prove extremely difficult due to the particular features of the [units], which effectively render [them] “immovable”.

- 4.8. The authority also referred to Determination 2006/72 with regard to what was meant by permanent or long-term occupancy; and concluded that the units were “designed and intended to be lived in on a permanent or long-term basis”. The authority based this opinion on how the units were marketed, their fit out, sanitation and sleeping facilities. The authority concluded that the units “meet the definition of ‘building’ under section 8 of the Act”.

The authority’s addendum

- 4.9. In response to the Ministry’s request for further information, the authority provided an addendum to its submission on 14 November 2019.
- 4.10. The addendum summarised the site inspections that the authority had carried out at the owner’s property and described the key features of the units that it had observed under construction during these visits (see paragraph 2.18 of this determination).

²⁰ Determination 2017/058: Regarding a notice to fix and whether a structure on wheels is a building. Issued 25 July 2017.

²¹ Determination 2006/72: Notice to fix in respect of certain units at Oakura Beach Camp, New Plymouth. Issued 11 August 2006.

²² Determination 2015/044: Regarding the issue of a notice to fix for a unit at 582 Josephville-St Patricks Road, Balfour, and whether the unit is a building or a vehicle. Issued 8 July 2015.

²³ Determination 2015/067: A notice to fix for three prefabricated units connected together and whether the units joined together are a building or a vehicle. Issued 29 October 2015.

- 4.11. The addendum confirmed that building consent had not been sought for the construction of any of the observed units, and that the thirteen units (which are the subject of this determination) were all unoccupied. It also noted the conversations that the authority's officers had with the owner during these site visits, including the owner's view that no building consent was required for the units as they were manufactured and sold as mobile structures and were not fixed to the ground or services.
- 4.12. The addendum referred to various correspondence that had passed between the parties about how the units were constructed and moved. It noted that the units are all constructed on the owner's property inside the hangar. They are moved out of the hangar and around the owner's property on a 'trailer', before being moved to purchasers' properties. The authority referred to Trade Me where units manufactured by the owner were advertised as having free delivery within 50km of the owner's property, with potential for them to be shipped to the North Island.
- 4.13. The authority concluded that:
- 4.13.1. an estimated 40 to 50 units had been constructed on the owner's property over the previous 18 months
 - 4.13.2. it had not received building consent applications for any of these units
 - 4.13.3. the owner has never denied that the units are being constructed at the property, but has expressed the view that the units are not buildings and therefore the owner is not carrying out building work
 - 4.13.4. a determination is the best way to establish whether the units are buildings or vehicles.
- 4.14. With the addendum, the authority provided copies of:
- 4.14.1. its site inspection reports
 - 4.14.2. photographs taken during the site inspections.

The owner's submission

- 4.15. The owner wrote to the Ministry in response to the application, setting out the view that the application for determination should be declined under section 179(2)(c), on the basis that other determinations had considered similar sorts of construction where the determination turned on the interpretation of 'building' under section 8. The Ministry advised the owner that the application would not be declined on that basis because while a question of interpretation may be common to a number of

different applications, the facts of each case must be considered on a case-by-case basis.

- 4.16. The owner also set out some of the reasons why they considered that the units were vehicles and not buildings, including:
- 4.16.1. the units are built on site, are not connected to any services and are not used as dwellings
 - 4.16.2. judgement of the unit's status was "irrelevant until they move to the client's site"
 - 4.16.3. buildings are fixed to the ground and immovable
 - 4.16.4. it is not usually possible to continue building more homes on the same site
 - 4.16.5. the units are completed and moved away before the notice to fix expires, so all notices to fix will be addressed and there is no need for a determination.
- 4.17. The owner also made a submission on 28 June 2022, in which they set out their view that there was no building work during offsite manufacture or relocation of transportable units, and their view on the authority's proposal to issue a notice to fix. The owner stated that:

...as the unit was and remained a vehicle and not a building, no "building work" was carried out and therefore [there was] no breach of section 40 which could have occasioned the issue of a Notice to Fix.

It is unclear which specific unit is being referred to in the owner's submission. I have assumed the owner's submission applies to all the units which are the subject of this determination, except where it is apparent that the owner is referring to the unit which was the subject of Determination 2022/001²⁴ (see paragraph 3.9).

- 4.18. Regarding the question of whether there was building work during the offsite manufacture of the units, the owner made the following points:
- 4.18.1. The owner referred to the unit in Determination 2022/001²⁵ (see paragraph 3.9) and argued that "everyone is in agreement that the unit in its destination... was a vehicle. Therefore, there should be agreement that the unit during its Off-site Manufacture, was also a vehicle".
 - 4.18.2. The "trailer" is built first which provides the wheels on which it moves, to make the unit a vehicle, and everything built on top of the trailer maintains the vehicle status. The trailer is always moved around the production site as

²⁴ Determination 2022/001: The authority's proposal to issue a notice to fix and whether a unit is a vehicle or a building. Issued 01 March 2022. *Note:* This determination has been appealed with the judgement issued on 09 December 2022, see *Woods v Waimakariri District Council* [2022] NZDC 24083.

²⁵ As above.

a deliberate part of the manufacturing process and it is then moved to the client's location, which proves the vehicle is "not immovable". The units are not occupied whilst at the production site, so they cannot become occupied on a permanent or long-term basis²⁶. The owner contends that "Therefore, there is no chance the vehicle can lose its vehicle status".

4.18.3. The owner also compared the units with a minivan, noting that if somebody made one immovable and occupied it permanently, the authority is unlikely to issue a notice to fix to the manufacturer of the minivan. The owner contends that if someone purchases one of the units and makes it immovable and occupies it permanently or on a long-term basis, the authority has no grounds to issue a notice to fix to the person who constructed the unit.

4.18.4. The owner submits that:

...it is clear that during off-site manufacture of the unit, it is a "vehicle" and not a building, both in terms of the Land Transport Act definition, and on the basis that it is clearly "movable" and moved. Therefore, during off-site manufacture of the unit, it cannot fall within the section 7 definition of "building work".

4.19. The owner also set out their belief that there was no building work during the relocation of the unit, including during the placement of support blocks. However, it appears that this is in reference to the unit which was the subject of Determination 2022/001.²⁷ The units in the current determination are being considered as they presented at the time of inspection (ie before they were relocated).

4.20. With regards to relocation, the owner referred to a comment in *Marlborough District Council v Molina Carolin Bilsborough and Glynn James Bilsborough* ("*Bilsborough*"), that "...there is a sound basis arguing that the relocation of a building to a site is not "building work", where there is no work undertaken in connection with the relocation".²⁸ The owner also argued that the placing of support blocks does not constitute building work, as the units are engineered to be strong enough to be solely supported by their wheels, the support blocks were not connected to the unit and were not required to maintain the structural integrity of the unit. Despite this, the owner also noted that the units "have the same superstructure, but some have no wheels if they have a building consent".²⁹

4.21. The owner also commented on the potential consequences of the authority's proposal to issue a notice to fix and the authority's request to the Ministry to

²⁶ In reference to section 8(1)(b)(iii).

²⁷ Determination 2022/001: The authority's proposal to issue a notice to fix and whether a unit is a vehicle or a building. Issued 01 March 2022. *Note*: This determination has been appealed with the judgement issued on 09 December 2022, see *Woods v Waimakariri District Council* [2022] NZDC 24083.

²⁸ [2020] NZDC 9962.

²⁹ At the time the application for a determination was made, the owner had not applied for building consent for any of the units which had been, or were being, constructed.

determine whether the units at the production site are buildings for the purposes of the Building Act. The owner contended that:

- 4.21.1. Even if the unit is found to be a building, the only grounds for issuing a notice to fix would be for contravention of section 40, which required 'building work'. The owner reiterated his view that there is no building work during the offsite manufacture or the relocation of the unit.
 - 4.21.2. If 'building work' was found, then the authority and Ministry should be able to identify the party (ie the builder) involved and should be able to explain how to remedy the contravention or to comply with the Building Act.
- 4.22. The owner also made a number of arguments in response to Determination 2022/001,³⁰ which I do not consider to be relevant to the current determination. However, I note the owner's submission that the transition of a vehicle to a building may not involve any physical work, eg if it became derelict over time and thus immovable. The owner submitted that if no building work is undertaken to convert a vehicle to a building, then there is no offence under section 40 of the Act.

The draft determination

- 4.23. A draft of this determination was issued to the parties on 16 November 2022.
- 4.24. The authority did not accept the draft determination. The authority accepted the conclusion that the units are buildings under section 8(1)(a). However, in addition to the discussion set out below, the draft contained commentary on whether the immovability and occupation tests in the "second limb" (as described in paragraph 5.10) can be applied in a manufacturing setting. The authority requested that this latter part of the determination be removed as it falls outside the facts of the current case. I have not received any evidence that satisfies me that the units in this case were completed as vehicles; and I have removed the sections that considered the "second limb" as it is not relevant to the determination I am making.
- 4.25. The owner indicated they intended to provide a submission in response to the draft determination, but no further submission was received.
- 4.26. I also note that since the draft determination was issued, the appeal of Determination 2022/001 was heard by the District Court. The judgement, *Woods v Waimakariri District Council* ("*Woods*"), was issued on 9 December 2022.³¹ As described in paragraph 3.1, that decision concerns an individual unit ("the granny flat") which was completed and appeared to be in use at the owner's property at the time it was inspected by the authority. As discussed at paragraph 5.26, the unit in Determination 2022/001 was found to be a vehicle. The District Court upheld the

³⁰ Determination 2022/001: The authority's proposal to issue a notice to fix and whether a unit is a vehicle or a building. Issued 01 March 2022. *Note:* This determination has been appealed with the judgement issued on 09 December 2022, see *Woods v Waimakariri District Council* [2022] NZDC 24083.

³¹ [2022] NZDC 24083.

determination's finding that the unit was both immovable and occupied on a permanent or long-term basis; but reversed the finding that the work to construct the unit was 'building work' and that the proposal to issue the notice to fix was correct on that basis.³² Although I have come to a different conclusion as to the status of the thirteen units in this determination, I have taken into account the District Court decision as it applies in this case.

5. Discussion

- 5.1. The matter to be determined is the authority's proposal to issue a notice to fix for the thirteen identified units. The units are being considered at the time of inspection, while they were still located at the owner's yard. As per Table 1 (paragraph 2.18), the units were at various stages of construction.
- 5.2. The determination considers:
 - 5.2.1. whether the thirteen units are 'vehicles' for the purposes of the Act
 - 5.2.2. whether the thirteen units meet the general definition of 'building' under the Act, and whether the authority's proposal to issue a notice to fix was correct.

Legislation

- 5.3. Section 40 states "A person must not carry out any building work except in accordance with a building consent". The relevant provision of the Act for issuing a notice to fix for a contravention of section 40 is section 164. Section 164 states:
 - (1) This section applies if a responsible authority considers on reasonable grounds that—
 - (a) a specified person is contravening or failing to comply with this Act or the regulations (for example, the requirement to obtain a building consent); ...
 - (2) A responsible authority must issue to the specified person concerned a notice (a notice to fix) requiring the person—
 - (a) to remedy the contravention of, or to comply with, this Act or the regulations; ...
- 5.4. For an authority to exercise its powers under section 164, a specified person must be contravening or failing to comply with the Act. A specified person is defined in section 163 as:
 - (a) The owner of a building:
 - (b) If the notice to fix relates to building work being carried out, -
 - (i) The person carrying out the building work; or

³² An application has been made for recall under the District Court Rules 11.9 and 11.10.

(ii) If applicable, any other person supervising the building work:

...

- 5.5. In this case, the authority is of the view the owner is contravening the Act by carrying out building work without building consent. I note also that the person carrying out or supervising the building work to construct the units is also a specified person under (b).
- 5.6. For the authority to have the power to issue a notice to fix, the work that is being carried out must be ‘building work’. This is defined in section 7 as work “for, or in connection with, the construction ... of a building”. However, the owner argues that the units they are constructing are vehicles not buildings, and therefore the Building Act does not apply.
- 5.7. Whether the units are vehicles or buildings turns on the definition of ‘building’ in section 8. I note that there are exclusions in section 9; none of which are applicable to the current case.
- 5.8. Section 8 states:

(1) In this Act, unless the context otherwise requires, building—

(a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and

(b) includes—

...

(iii) a vehicle or motor vehicle (including a vehicle or motor vehicle as defined in section 2(1) of the Land Transport Act 1998) that is immovable and is occupied by people on a permanent or long-term basis; and

...

The established approach for applying section 8

- 5.9. The Court of Appeal set out the correct way to apply sections 8 and 9, in cases such as the present, in *Te Puru (CA)*. The court provides a decision process that must be followed when assessing whether a particular structure or unit is a ‘building’ for the purposes of the Act, or a ‘vehicle’ which is not a building under section 8(1)(b)(iii) (and therefore not subject to the Act).³³
- 5.10. Applying the decision process in *Te Puru (CA)*, the first question to consider is whether the unit is a “vehicle or motor vehicle” (the “first limb”). If it is, then it is necessary to consider whether the unit is “immovable” *and* “occupied by people on a permanent or long-term basis” (together, the “second limb”). The unit must satisfy *both* criteria in the second limb for the limb to be met. If the unit meets both limbs, it is a ‘building’ for the purposes of the Act under section 8(1)(b)(iii). If it

³³ *Te Puru (CA)* at [22].

meets the first limb, but not the second (ie because the unit meets only one or neither of the criteria in the second limb), it is not a 'building'. If, however, the unit does not meet the first limb (ie it is not a 'vehicle' or 'motor vehicle'), then section 8(1)(b)(iii) is to be put aside, and I must then consider whether the unit comes within the general definition of 'building' in section 8(1)(a).

The meaning of 'vehicle'

5.11. The terms 'vehicle' and 'motor vehicle' are not defined in the Building Act. It is therefore appropriate to consider the dictionary meaning. The terms are defined in the Oxford English Dictionary as follows:

vehicle –

A conveyance, a form of transport.

- (a) A general term for: anything by means of which people or goods may be conveyed, carried, or transported; a receptacle in which something is or may be placed in order to be moved.
- (b) Specifically a means of conveyance or transport on land, having wheels, runners, or the like; a car, cart, truck, carriage, sledge, etc.

motor vehicle –

A road vehicle powered by an engine (usually an internal combustion engine).³⁴

5.12. However, section 8(1)(b)(iii) of the Act explicitly includes the definitions of 'vehicle' and 'motor vehicle' in section 2(1) of the Land Transport Act 1998 (LTA):

vehicle –

- (a) Means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; ...

motor vehicle –

- (a) Means a vehicle drawn or propelled by mechanical power; and
- (b) Includes a trailer; ...

5.13. In *Alan Dall v The Chief Executive of the Ministry of Business, Innovation and Employment* ("*Dall*"), the court established that the Oxford definition of the word 'vehicle' cannot be preferred over the LTA definition.³⁵ The effect of the *Dall* decision is that if a structure comes within the LTA definition, it must be considered a vehicle or a motor vehicle for the purposes of section 8(1)(b)(iii).³⁶

Are the units 'vehicles'?

5.14. The owner's view is that no building consent was required for the units because they are manufactured and sold as vehicles. As the units were still under

³⁴ *Oxford English Dictionary Online*. Third Edition, June 2017; latest version published online March 2021.

³⁵ [2020] NZDC 2612.

³⁶ In *Bilsborough* at [64] to [68] the court applied the same methodology used by the District Court in *Dall* to resolve the issue of whether a unit was a building.

construction at the time of inspection, I have considered whether the design of the units allows for them to be completed as vehicles. I have also taken into consideration the marketing of the units which indicates that some (but not all) are completed as vehicles, the owner's argument that all of the units are moved as vehicles around the yard during construction, and how the units presented at the time of inspection.

- 5.15. For eleven of the thirteen identified units, the exterior appeared to be either complete or close to completion. There were two units in the initial stages of construction; one consisted of a support frame, base and three partially completed walls, and the other consisted solely of a support frame with a number of floor panels laid across it (see Figure 1).



Figure 1: Photograph showing three units which are close to completion and two units in the initial stages of construction (middle left and front right). These units were observed on 02 October 2019.

- 5.16. Determination 2018/031 considered whether a partially completed structure was a boat or a building. In that case, features of the structure which had already been installed (such as the windows in the hull) precluded the structure from being able to be used as a boat. Simply completing the structure would not have resulted in it being a boat which was capable of being used for navigation; what was required was modification of what had already been constructed. The determination concluded that the partially completed structure was not a boat for the purposes of section 9(d), as it presented at that point in time.³⁷
- 5.17. In contrast to this, the thirteen identified units do not appear to have any features which would need to be removed for the units to be completed as vehicles under the broad LTA definition. I note that all the owner's units are built on a steel support frame which is designed to allow a retractable towbar and removable axles and wheels to be added. It appears that the addition of these parts can occur at any stage during the construction process. Because all the units share the same support

³⁷ Determination 2018/031: Issue of a notice to fix and whether a structure is a building. Issued 10 July 2018.

frame design, I consider it safe to assume that all the units are capable of being completed as vehicles under the broad LTA definition.

- 5.18. However, the owner's website and marketing indicate that it manufactures both units which are sold with and without features that vehicles have (ie towbars, axles and wheels). The owner has also submitted that the units they construct "have the same superstructure, but some have no wheels if they have a Building Consent".³⁸ The owner's website and other online listings³⁹ indicate that the units are customisable and made to order. The wheels and towbar are referred to as being "optional". Both the owner's website and other online listings state that the units can come with a building consent or with wheels and a tow bar. The website also states:

When purchasing a [unit] you may choose to have one that meets the definition of a vehicle (with wheels and a tow bar) or one with a building consent.⁴⁰

- 5.19. It is clear that the wheels and towbar are customisable or optional features and are not a necessary part of the design. It seems likely that the purchaser would have decided whether to purchase a unit with these features prior to construction commencing. However, the owner has not provided evidence that these features had been requested for the thirteen units which are the subject of this determination.
- 5.20. The owner's key argument in support of the units being vehicles is that all units "are moved as vehicles around the production site...". In their submission on 28 June 2022, the owner stated:

As it is the trailer that is built first, and the trailer provides the "wheels on which it moves" to make it a "vehicle", then everything that is built on top of the trailer still maintains the "vehicle" status.

The trailer is always moved around the "Production site" (aka the location of the Off-Site Manufacture) during the course of its manufacture (as a deliberate part of its manufacturing process).

- 5.21. It appears that the mechanisms which enable the units to be towed (ie wheels, axles and towbars) are attached temporarily for the purpose of shifting units around the yard and are subsequently removed. The consultant's report provided by the authority (refer to paragraph 3.5) shows a photograph of a completed support frame (see Figure 2), and states "The wheels have been installed for the purpose of moving the chassis (and structure) around the yard during construction". The photograph shows a support frame with only two wheels attached (one on

³⁸ It appears that the owner is now selling some units with building consent. However, at the time the application for a determination was made, the owner had not applied for building consent for any of the units which had been, or were being, constructed.

³⁹ https://www.trademe.co.nz/a/search?member_listing=43047&sort_order=PriceAsc&bof=6WCm9cil Accessed 04/05/2022, and <http://www.cosyhomes.co.nz/> Accessed 5 November 2019 and 18 February 2020.

⁴⁰ [Details – Cosy Homes http://www.cosyhomes.co.nz/details/](http://www.cosyhomes.co.nz/details/). Accessed 02/06/2022.

each side), and the wheels are located immediately adjacent the inner beams of the support frame. In contrast to this, the completed premium and deluxe models come with 4 or 6 wheels (respectively), located in line with the exterior of the support frame (see Figure 3, for example). The unit being towed by the tractor, in the video provided by the owner, had 8 wheels.



Figure 2: Photograph of a completed support frame with two wheels installed for the purpose of moving the support frame (and structure) around the yard during construction.



Figure 3: Photograph of a unit (which is not one of the thirteen units identified for this determination) being towed on its wheels behind a tractor.

- 5.22. Considering the information available, my understanding is that mechanisms to enable towing on site, such as wheels and axles, are attached temporarily to move partially completed units into the desired location in the yard. The authority observed completed units sitting “on jacks”; any wheels which may have been temporarily attached had been removed.
- 5.23. I am not satisfied that the units can be considered vehicles solely by virtue of having been moved around the yard on temporary wheels. In my opinion, the temporary wheels that are attached to the internal frame during construction are akin to

falsework⁴¹ in that they are not a permanent feature of the units but are temporarily attached to manoeuvre the units on the owner's property during construction. The attachment of these wheels for the purpose of construction is not a basis to conclude that the units will meet the definition of a vehicle once completed, or that this temporary use of wheels reflects the completed construction.

- 5.24. I also note that during the authority's initial inspection on 5 April 2018, it photographed the part of the support frame of a unit (referred to as Unit B) where a tow bar could be fitted. There is also what appears to be a removable axle located approximately half-way down this unit. Although the photograph shows the location where a towbar could be attached, there was no tow bar fitted at the time of inspection. While it may be straight-forward to attach a tow bar and wheels via these mechanisms, I do not consider this to be sufficient evidence to conclude that this unit meets the definition of a vehicle. As per the discussion above, the axle may have been used temporarily to move the unit around the yard.
- 5.25. Turning to the units as they presented during the authority's inspections, the thirteen units photographed by the authority were located in the yard. None of the identified units were fitted with wheels or towbars at the time of the authority's inspections. Where it is possible to view the underside of the units in the photographs, they appear to be sitting on jacks or concrete blocks.
- 5.26. The owner has submitted that as the unit that was the subject of Determination 2022/001 was found to be a vehicle, "...there should be agreement that the unit during its off-site manufacture, was also a vehicle" (see paragraph 4.18.1). However, the unit discussed in Determination 2022/001 was a completed unit. Although it presented without wheels at the time of the authority's inspection, the owner submitted that the wheels had been detached for security reasons and to prevent them from perishing, and they were subsequently reattached.⁴² The units in the current determination did not have features that vehicles have at the time of inspection, and the owner has not provided any evidence that they had these features by the time they were completed.
- 5.27. In this case, the owner has not provided evidence that the thirteen units identified in this determination were intended to be, or were in fact, completed with features that vehicles have. Accordingly, I do not consider that these thirteen units meet the definition of 'vehicle' under either the LTA or Oxford dictionary definitions. Therefore, I conclude that the thirteen units identified by the authority are not vehicles for the purpose of section 8(1)(b)(iii). To conclude otherwise would mean that something without wheels at the time it presents and without evidence of

⁴¹ Section 7 Interpretation: 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; ...

⁴² Determination 2022/001: The authority's proposal to issue a notice to fix and whether a unit is a vehicle or a building, at [5.22]. Issued 01 March 2022. *Note:* This determination has been appealed with the judgement issued on 09 December 2022, see *Woods v Waimakariri District Council* [2022] NZDC 24083.

wheels being attached at completion of construction is a vehicle on the basis the generic designs provide an option for wheels to be fitted at some point in the future.

Are the units ‘buildings’ under section 8(1)(a)?

5.28. For the authority to be able to issue a notice to fix, the units must fall within the definition of a ‘building’ under section 8, and the work to construct the units must not be exempt under Schedule 1 of the Act.⁴³ As I have concluded that the thirteen identified units are not vehicles for the purpose of section 8(1)(b)(iii), I must go on to consider whether they fall within the general definition of ‘building’ in section 8(1)(a). Section 8(1)(a) defines a ‘building’ as:

a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels)

5.29. In an email to the Ministry on 30 September 2019, the owner argued that the units are not buildings as they are not connected to any services or used as dwellings while on site. The owner also argued that buildings are fixed to the ground, immovable, and that it is “not usually possible to continue building more homes on the same site”.

5.30. However, the term ‘building’ in s 8(1)(a) also includes a movable structure. The wording of section 8(1)(a) shows Parliament clearly intended that ‘building’ include movable structures. Further, as noted in Determination 2022/001,⁴⁴ the argument that a building must be fixed to the ground was rejected by the District Court in *Christchurch City Council v Smith Crane & Construction Ltd*.⁴⁵ In that case, the court stated:

... it is not open to me to add words to section 8 that are not there. I would not so much be interpreting, but rather judicially amending, that section.

... This approach [that structures that are not fixed to the ground are not buildings] would give rise to significant policy consequences, particularly in relation to the purpose of section 3 and the principles that are to be applied when performing functions or duties or exercising powers under the Act (section 4).

5.31. I also note that in *Te Puru* (CA), the Court of Appeal found that two units “sitting on concrete blocks and timber packers” were both ‘buildings’ within the general definition in section 8(1)(a).⁴⁶

⁴³ Schedule 1: Building work for which building consent not required.

⁴⁴ Determination 2022/001: The authority’s proposal to issue a notice to fix and whether a unit is a vehicle or a building, at [5.8]-[5.10]. Issued 01 March 2022. *Note*: This determination has been appealed with the judgement issued on 09 December 2022, see *Woods v Waimakariri District Council* [2022] NZDC 24083.

⁴⁵ CIV-2009-009-12480, 19 February 2010, at [27].

⁴⁶ *Thames-Coromandel District Council v Te Puru Holiday Park Ltd* [2010] NZCA 633 at [31]-[32] and [39]-[42].

- 5.32. For the reasons set out above, I do not accept the owner's argument that for a unit to be a 'building' it must be fixed to land.
- 5.33. Whether the units are connected to services, 'immovable', or used as dwellings, are relevant considerations under the 'immovability' and 'occupation' tests under section 8(1)(b)(iii). However, under section 8(1)(a), a building may be temporary or permanent, immovable or movable, and may be intended to be occupied merely by chattels or used as a dwelling. The fact that the owner continues to build multiple units on the same site also does not affect whether the units can be classed as 'structures' and 'buildings' for the purposes of section 8(1)(a).
- 5.34. Previous determinations have considered the meaning of 'structure' as it appears in section 8(1)(a).⁴⁷ Determination 2016/002 states:
- 4.2.4 "Structure" is not defined in the Act and must be taken to have its usual or ordinary meaning: 'A building or other object constructed from several parts'...⁴⁸
- 4.2.5 For something to be a "structure" for the purposes of the Act, it must have some elements or constituent parts and/or be of some complexity.⁴⁹
- 5.35. I consider the thirteen identified units consist of a number of elements and are of sufficient complexity to be considered 'structures'. At the point of manufacture, these are movable structures which are ultimately intended for occupation by people. Therefore, as the units presented at the time of the authority's inspection and without evidence to the contrary, I find that they are 'buildings' by way of section 8(1)(a). As noted previously, they are not excluded from being buildings by way of section 9.
- 5.36. To issue a notice to fix, the authority must have enough information to identify building work and establish that it is not exempt from requiring building consent under Schedule 1. The units will not fall under any of the categories of exempt building work in Schedule 1, including sections 3A and 3B⁵⁰, as all the units are larger than 30m² and contain sanitary facilities. The smallest unit being manufactured is 38m², and the size of the units would be evident early in the construction process, from the size of the floor area.
- 5.37. In the owner's submission received on 28 June 2022, they contend that as the units were vehicles and not buildings, no 'building work' was carried out, and therefore there was no breach of section 40 and no reason to issue a notice to fix. I note that this line of argument was considered by the District Court in *Woods*.⁵¹ The Court

⁴⁷ As discussed in Determination 2021/022: Regarding two notices to fix and whether work carried out is building work, at [5.70-5.71]. Issued 30 September 2021.

⁴⁸ "Structure", n: *Oxford Dictionary*. Web Oct. 2015.

⁴⁹ Determination 2016/002: Regarding the issue of a dangerous building notice in respect of a damaged shared driveway. Issued 20 January 2016.

⁵⁰ Clauses 3A and 3B were inserted in Schedule 1 on 31 August 2020.

⁵¹ *Woods v Waimakariri District Council* [2022] NZDC 24083, at [66]-[67].

found it is important to establish whether particular work was building work at the time it was undertaken, stating:

The vehicle only became a building at the earliest when it was placed at its outside location and became immovable. Only work which falls within the definition in s 7 and which was carried out then or later could be building work.

As discussed at paragraph 5.26, the unit in that case was considered to be a vehicle. However, in this case, I have concluded that the thirteen units are buildings under section 8(1)(a), rather than vehicles. Therefore, the work to construct the units was 'building work' at the time it was carried out.

- 5.38. The owner also submitted that should somebody purchase a minivan and decide to make it immovable and permanently occupied, the authority would not approach the manufacturer of the minivan with a notice to fix. In my opinion, at the point that mini vans are being manufactured, they are clearly intended to be vehicles. In this case, I have reached the conclusion that the units are buildings and not vehicles.
- 5.39. The owner also submitted there was no building work during off-site manufacture of the units, suggesting that the fact the construction of the units occurs off-site means it is not building work. The owner's line of argument amounts to the distinction as to whether something is building work or not turning on *where* the work takes place. In my view, this would result in a number of anomalies in terms of the application of the Act, and it is inconsistent with the definition of 'building' in section 8, which includes moveable structures.
- 5.40. As I have found that the units are buildings for the purposes of the Act, the work carried out to construct these units was 'building work' as defined in section 7 of the Act. As the building work was not exempt under Schedule 1, building consent was required under section 40. Because no building consents had been applied for or granted, the authority was able to issue a notice to fix in respect of these units, under section 164.
- 5.41. At the time, the authority was able to issue a notice to fix to the owner for carrying out building work without a building consent for the construction of the units.
- 5.42. The owner has also submitted that if building work is found, the authority and Ministry should be able to identify the 'party' and builder involved. I note that under section 163, both the owner of a building and the person carrying out or supervising the building work are considered 'specified persons', to whom a notice to fix can be issued.
- 5.43. For completeness, I note that the authority cannot issue a notice to fix for the 'ongoing construction' of the units, as was initially proposed. Any notice to fix must clearly identify the specific building work to which the notice applies, and the units must be considered on a case-by-case basis. I also acknowledge that due to the amount of time which has passed since the units were identified, it is likely that the

thirteen identified units have now been sold and relocated to various purchasers' properties.

6. Conclusion

- 6.1. Based on the features of the units as they presented at the time of inspection and with no evidence to the contrary, I conclude that the thirteen units are buildings by way of section 8(1)(a). Therefore, the authority was correct, at the time, in its proposal to issue a notice to fix to the owner for carrying out building work without a building consent for the construction of the units.

7. Decision

- 7.1. In accordance with section 188 of the Building Act 2004, I determine that:
 - 7.1.1. the thirteen units identified by the authority for the purpose of this determination are buildings under section 8(1)(a). Therefore, building work to construct these units is subject to regulation under the Act and the authority was able to exercise its powers under the Act.
 - 7.1.2. at the time, the authority was correct in its proposal to issue a notice to fix for the thirteen identified units under section 164 of the Act on the grounds that building work was carried out without building consent when building consent was required.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 27 April 2023.

Katie Gordon

National Manager, Building Resolution

Appendix A

Relevant sections of the Building Act 2004

7 Interpretation

building work—

- (a) means work—
 - (i) for, or in connection with, the construction, alteration, demolition, or removal of a building; and
 - (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
- (b) includes sitework; and
- (c) includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act (see subsection (2)); and
- (d) in Part 4, and the definition in this section of supervise, also includes design work (relating to building work) of a kind declared by the Governor-General by Order in Council to be building work for the purposes of Part 4 (see subsection (2))

8 Building: what it means and includes

(1) In this Act, unless the context otherwise requires, *building*—

- (a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and
- (b) includes—
 - (i) ...
 - (iii) a vehicle or motor vehicle (including a vehicle or motor vehicle as defined in section 2(1) of the Land Transport Act 1998) that is immovable and is occupied by people on a permanent or long-term basis; and ...

40 Buildings not to be constructed, altered, demolished, or removed without consent

(1) A person must not carry out any building work except in accordance with a building consent.

(2) A person commits an offence if the person fails to comply with this section.

(3) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.

163 Definitions for this subpart

specified person means –

- (a) the owner of a building;
- (b) if a notice to fix relates to building work being carried out, -
 - (i) the person carrying out the building work; or
 - (ii) if applicable, any other person supervising the building work:

...

164 Issue of notice to fix

- (1) This section applies if a responsible authority considers on reasonable grounds that—
- (a) a specified person is contravening or failing to comply with this Act or the regulations (for example, the requirement to obtain a building consent); or
 - (b)...
- (2) A responsible authority must issue to the specified person concerned a notice (a notice to fix) requiring the person—
- (a) to remedy the contravention of, or to comply with, this Act or the regulations; or
 - (b) ...

Schedule 1 Building work for which building consent not required**3 Single-storey detached buildings not exceeding 10 square metres in floor area**

- (1) Building work in connection with any detached building that—
- (a) is not more than 1 storey (being a floor level of up to 1 metre above the supporting ground and a height of up to 3.5 metres above the floor level); and
 - (b) does not exceed 10 square metres in floor area; and
 - (c) does not contain sanitary facilities or facilities for the storage of potable water; and
 - (d) does not include sleeping accommodation, unless the building is used in connection with a dwelling and does not contain any cooking facilities.
- (2) However, subclause (1) does not include building work in connection with a building that is closer than the measure of its own height to any residential building or to any legal boundary.

3A Single-storey detached buildings exceeding 10, but not exceeding 30, square metres in floor area and constructed of lightweight building products

- (1) Building work in connection with any detached building that—
- (a) is not more than 1 storey (being a floor level of up to 1 metre above the supporting ground and a height of up to 3.5 metres above the floor level); and
 - (b) exceeds 10 square metres in floor area, but does not exceed 30 square metres; and
 - (c) is built using lightweight building products for the walls and roof, and in accordance with Acceptable Solution B1/AS1 for timber or steel buildings; and
 - (d) does not contain sanitary facilities or facilities for the storage of potable water; and
 - (e) does not include sleeping accommodation, unless the building is used in connection with a dwelling and does not contain any cooking facilities; and
 - (f) if it includes sleeping accommodation, has smoke alarms installed.
- (2) However, subclause (1) does not include building work in connection with a building that is closer than the measure of its own height to any residential building or to any legal boundary.

Schedule 1 clause 3A: inserted, on 31 August 2020, by clause 5 of the Building (Exempt Building Work) Order 2020 (LI 2020/171)

3B Single-storey detached buildings exceeding 10, but not exceeding 30, square metres in floor area if work carried out or supervised by licensed building practitioner

- (1) Building work in connection with any detached building if—
- (a) any design or construction work is carried out or supervised by a licensed building practitioner; and

(b) the building—

- (i) is not more than 1 storey (being a floor level of up to 1 metre above the supporting ground and a height of up to 3.5 metres above the floor level); and
- (ii) exceeds 10 square metres in floor area, but does not exceed 30 square metres; and
- (iii) does not contain sanitary facilities or facilities for the storage of potable water; and
- (iv) does not include sleeping accommodation, unless the building is used in connection with a dwelling and does not contain any cooking facilities; and
- (v) if it includes sleeping accommodation, has smoke alarms installed.

(2) However, subclause (1) does not include building work in connection with a building that is closer than the measure of its own height to any residential building or to any legal boundary.

Schedule 1 clause 3B: inserted, on 31 August 2020, by clause 5 of the Building (Exempt Building Work) Order 2020 (LI 2020/171).