

# Determination 2023/014

## **The requirement for a building consent for building work to a relocated building**

**16A Anderson Street, Kakanui, Oamaru**

### **Summary**

This determination considers the authority's decision to require a building consent for work carried out to a relocated dwelling to extend a kitchen into an area that was previously an enclosed veranda and close in an area that was previously the entrance to a back door. The decision turns on whether the building work falls within the scope of building work exempt under clause 15 of Schedule 1 of the Building Act 2004 from the requirement to obtain building consent.

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 of the Building Act 2004.

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, 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.<sup>1</sup>
- 1.2. The parties to the determination are:
  - 1.2.1. B Reading, the licenced building practitioner concerned with the relevant building work (“the designer”), who applied for the determination
  - 1.2.2. the owner of the house, W Byers (“the owner”)<sup>2</sup>
  - 1.2.3. Waitaki District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. The matter to be determined, under section 177(1)(b) and (2)(a), is the authority’s decision to require a building consent for the closing in of two “porch” areas of a relocated house.
- 1.4. The decision concerns two areas of work; the extension of a kitchen into an area that was previously an enclosed veranda, and the closing in of an area that was previously the entrance to a back door. In deciding this matter, I must consider whether the building work falls within the scope of exempted building work in clause 15 of Schedule 1 of the Act.

### Matters outside this determination

- 1.5. No application for an exemption from building consent requirements under clause 2 of Schedule 1 was made to the authority. As such, I am not making a determination<sup>3</sup> about whether an exemption could have been granted by the authority under that clause. However, as the authority has made a submission on this issue I have offered general comments about discretionary exemptions under this clause.

---

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

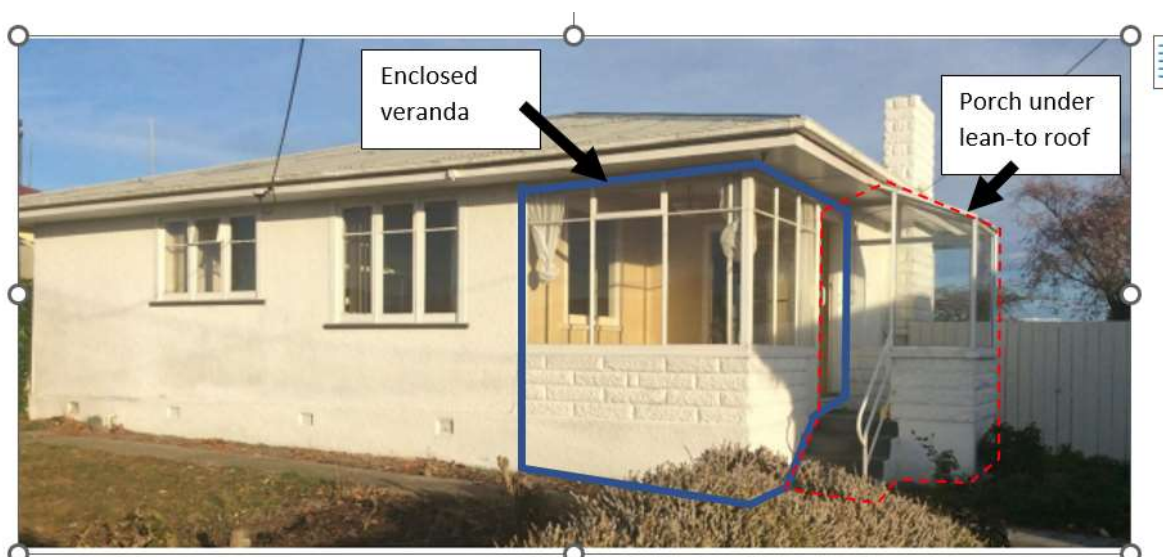
<sup>2</sup> The owner did not make any submissions during the determination process.

<sup>3</sup> Under section 177(1)(b) and (3)(c).

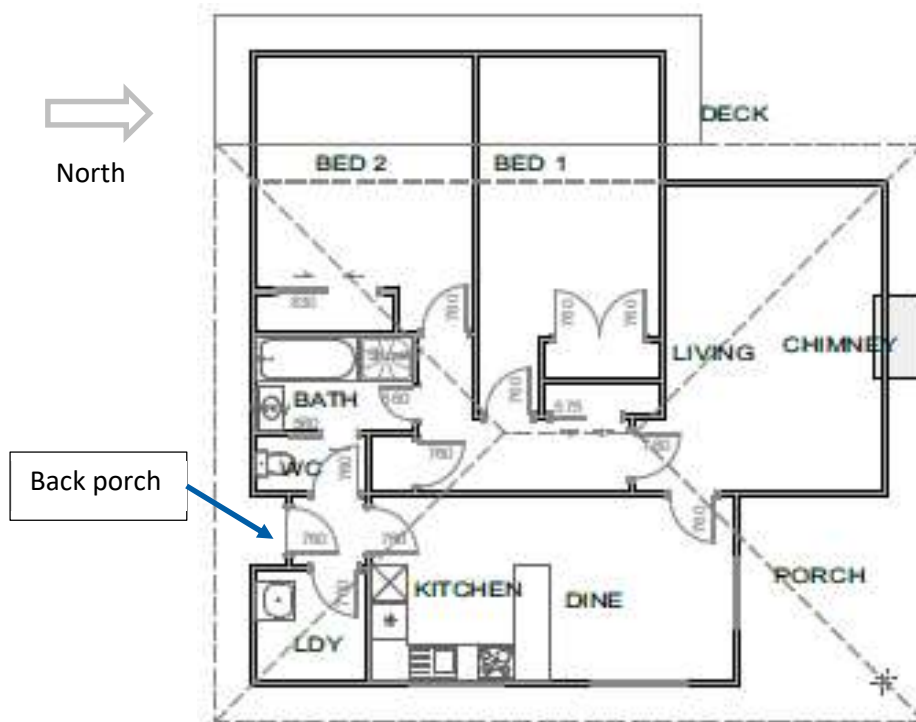
- 1.6. I have not considered issues relating to building consent fees or other matters that fall outside section 177, which sets out the matters that can be considered in a determination.

## 2. The building work and background

- 2.1. The dwelling is a single storey stucco over weatherboard house, originally constructed in the 1950s.
- 2.2. The previous owners applied for a building consent to “relocate existing 2 bedroom dwelling... and connect to services”. This building consent (reference number 19006314) was approved in November 2019 and covered the building work to construct new foundations, decks and stairs where there were previously porches.
- 2.3. The original dwelling contained two porch areas:
- 2.3.1. The original front porch was located on the corner of the house, adjacent to the dining and living areas. It consisted of an enclosed veranda and small, open porch. The enclosed veranda sat under the roof line of the house, while the open porch sat partially under a lean-to roof. These areas contained a concrete floor, brick half walls and windows (see Figures 1 and 2).
- 2.3.2. The original back porch sat under the roof line of the house, between the laundry and bathroom (see Figure 2). It is described by the designer as “a tiny back porch typical of the homes in the [1950s]... it would have had a concrete step to a concrete porch...”.



**Figure 1: Photograph of the original dwelling, showing the original front porch including the enclosed veranda (in blue) and the open porch (in red).**



**Figure 2: Plan showing original layout of dwelling (not to scale). Note: the area labelled as “porch” is the enclosed veranda, and the small porch with lean-to roof is not shown.**

- 2.4. As part of the relocation work, the building elements that formed the front and back porches were removed. For the front porch, this included the removal of the external walls, floor and foundations that formed the enclosed veranda, and the removal of the steps, landing, walls and roof that formed the open porch (see Figure 3). For the back porch, this involved the removal of the concrete step and landing.

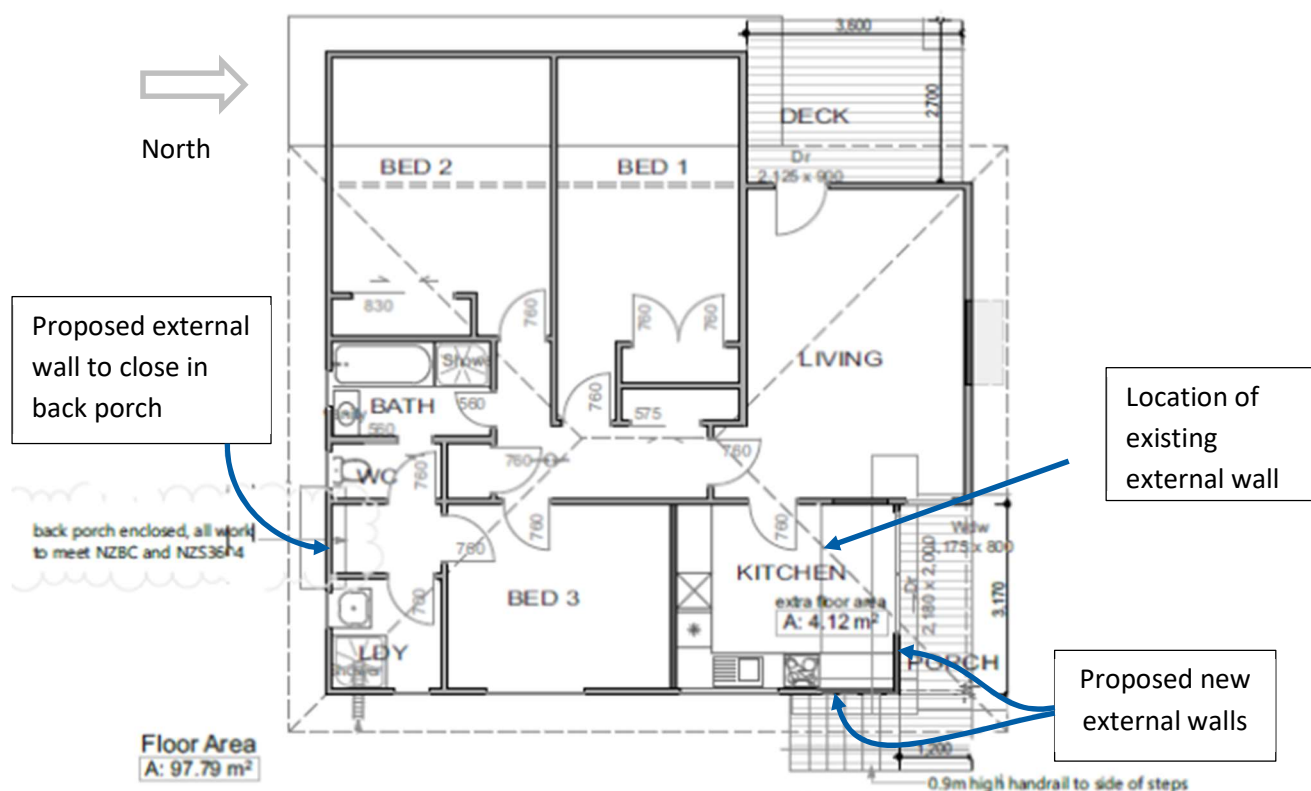


**Figure 3: Photograph of the dwelling following relocation.**

- 2.5. The current owner purchased the relocated dwelling and property before a code compliance certificate had been issued for the building consent relating to the foundations. In February 2022, the owner applied for an amendment to the building consent to add a new shower to the laundry, remove the back door and incorporate the porch area into the dwelling, alter the internal layout of the kitchen/dining to create a third bedroom, and extend the new kitchen area.
- 2.6. The plans submitted for the amendment (refer to Figure 4) show:
- 2.6.1. In the area that was previously the front porch:
- (1) new external walls extending the new kitchen area (previously the dining area) 1.3m into the area where the enclosed veranda was previously located (creating 4.12m<sup>2</sup> of additional floor area in the kitchen)
  - (2) removal of an existing external wall and a new strutting beam in its place
  - (3) new flooring in the area where the kitchen is extended
  - (4) a new deck and steps adjacent to the kitchen extension (labelled “porch” in Figure 4).
- 2.6.2. At the back porch:
- (1) a new section of cladding to enclose the landing area at the back door (creating 0.77m<sup>2</sup> of additional floor area), as well as new flooring
  - (2) removal of the back door and surrounding wall, with the remaining external walls remaining in place
- 2.7. The authority states that the plans submitted for the amendment noted that all work associated with the amendment is covered under Schedule 1. The authority did not consider that the proposed building work came within the scope of exemptions in either clause 2 or clause 15<sup>4</sup> of Schedule 1 and sent a series of requests for further information.
- 2.8. In April 2022, the building consent amendment (reference number 19006314-2) was approved for the proposed building work, described as “move kitchen, extend kitchen into existing porch, alter laundry to include existing back porch and new shower”.
- 2.9. The designer considers that the building work in the front and back porch areas, including the extension of the kitchen, is work that falls within Schedule 1 and that building consent should not have been required.

---

<sup>4</sup> Clause 2 of Schedule 1 is the only exemption in Schedule 1 which requires a territorial or regional authority to make a decision about any proposed building work. For all the other exemptions, it is up to the owner to decide whether an exemption in Schedule 1 applies.



### 3. Submissions

#### The designer

- 3.1. The designer noted that the purpose of lodging the building consent amendment was to have correct plans in the property file and the new owner on the building consent.
- 3.2. The designer submits that the proposals to enclose the front and back porches appear to meet the purpose of Schedule 1, given that for both proposals:
  - 3.2.1. less than 5m<sup>2</sup> of porch will be enclosed
  - 3.2.2. the porch area can be enclosed with matching cladding<sup>5</sup>
  - 3.2.3. the risks are low and it is “very standard work”
  - 3.2.4. it would avoid a costly consent, with the consent value being higher than the actual work.

<sup>5</sup> The designer noted that the original consent had no cladding details for the repair of the cladding, “so any new cladding would be done to match existing”.

- 3.3. In terms of enclosing the front porch area to create an extended kitchen, they also noted:
- 3.3.1. The wall which would be removed or relocated is not a “roof loaded wall, as the perimeter walls and the beams of the porch support the main roof. The ceiling will need to be supported as per NZS 3604:2011”<sup>6</sup>.
  - 3.3.2. Although Schedule 1 uses the example of enclosing a porch for a conservatory, it could also be for other purposes. Schedule 1 does not state that the enclosed porch cannot be part of an adjoining room.
  - 3.3.3. Clause 11 of Schedule 1 provides for work to be carried out to internal walls. Once the porch was enclosed, the exterior wall would become “a most likely non-loadbearing internal wall”, and bracing requirements would be added to the new external wall.
  - 3.3.4. In terms of flooring, Schedule 1 does not state that the floor needs to be left at a lower level or that it cannot be made level. The installation of flooring over an existing floor or porch floor does not need consent.
- 3.4. The designer noted that the building work needs to meet the requirements of the Building Code. However, they consider that the closing in of the two porch areas falls under Schedule 1 and that requiring building consent for this work defeats the purpose of Schedule 1.

### **The authority**

- 3.5. The authority stated that it was initially unclear why consent was being sought for work that the designer believed was exempt under Schedule 1. It was also initially unclear whether the designer’s proposal related to an exemption under clause 2 or clause 15 of Schedule 1. However, the authority did not consider that the proposed building work fell within the scope of either clause, noting that:
- 3.5.1. Clause 2 relates to “low-risk, repetitive-type building work, such as that relating to farm buildings, proprietary garages or bus shelters”. These are typically buildings of importance level 1<sup>7</sup>. The proposed building work related to residential construction, including “the removal and construction of structural elements and elements that form critical aspects of the building’s external envelope”.
  - 3.5.2. The authority referred to the external wall of the existing dining room as being a loadbearing wall, and the authority considers the proposal to “remove the external wall, and construct new loadbearing elements to

---

<sup>6</sup> Standards New Zealand. NZS 3604:2011 Timber-framed buildings.

<sup>7</sup> From Building Code clause A3 – Building importance levels.

create a new larger kitchen and new smaller patio would not fit within the scope and intent of [clause] 15”.

- 3.5.3. In terms of the back porch area, the proposal to “alter the existing external envelope by removing the external door/wing walls and constructing a new external wall to create a larger internal hall area...” would also not fit within the scope of clause 15. The authority noted that “...the work was not being undertaken, ‘so as to provide an enclosed porch, conservatory, or the like””.

## 4. Discussion

- 4.1. Section 17 states that all building work must comply with the Building Code to the extent required by the Act, whether or not a building consent is required in respect of that work. Section 41 sets out those cases in which building consent is not required and includes any building work described in Schedule 1.<sup>8</sup>
- 4.2. The designer claims that the work associated with extending the kitchen into the original front porch area and at the back porch is exempt building work under clause 15 of Schedule 1. Clause 15 states:

Building work in connection with the closing in of an existing veranda, patio, or the like so as to provide an enclosed porch, conservatory, or the like with a floor area not exceeding 5 square metres.

- 4.3. The Act does not provide a definition for the words ‘veranda’ or ‘porch’. However, the Ministry’s guidance document *Building work that does not require building consent* (“the Ministry’s guidance”) contains the following descriptions:

Porches and verandas are usually made from permanent materials and often extend over raised decks or patios.

Porches are roofed structures which project from the face of a building. They may have sides but they are open at the front. Porches are generally used to protect a building entrance and to provide shelter.

A veranda is typically a long porch and can extend along the full length, or even around more than one side, of a building.<sup>9</sup>

- 4.4. With regard to the removal of the existing exterior kitchen wall, the designer claims this falls under the exemption in clause 11 of Schedule 1:

Internal walls and doorways in existing building

Building work in connection with an internal wall (including an internal doorway) in any existing building unless the wall is—

---

<sup>8</sup> As per section 41(1)(b).

<sup>9</sup> Ministry of Business, Innovation and Employment *Building work that does not require building consent* (fifth edition, August 2020) at page 110.



- (a) load-bearing; or
- (b) a bracing element; ...

## The kitchen extension

- 4.5. The building work included extending the new kitchen area 1.3m into the area where there was an enclosed veranda prior to the dwelling being relocated. This would create an additional floor area of 4.12m<sup>2</sup> in the kitchen. To determine whether this is exempt by way of clause 15, I must assess whether the proposed work can be considered “the closing in of an existing veranda, patio, or the like so as to provide an enclosed porch, conservatory, or the like...”.
- 4.6. In terms of whether there is an “existing veranda, patio, or the like”, I note that the front porch area of the original dwelling consisted of an enclosed veranda and open porch (see Figure 1). However, the veranda was already enclosed at that point, and was then demolished as part of the work to relocate the building. Following relocation, the building elements that made up the original enclosed veranda (ie the foundations, flooring and walls) were not reinstated.
- 4.7. The designer submits that the porch still existed because “...the roof/beams and corner post of the porch still exists” (see Figure 3). I note that steps and a new timber deck for the porch had been designed as part of the initial building consent to relocate the building, but as far as I am aware, these had not been installed at the time the amendment application was made. Nonetheless, given the area sits under an existing roof, provides shelter and protects the building entrance, I am satisfied this area can be considered an “existing veranda, patio or the like” (my emphasis).
- 4.8. I note that clause 1 of Schedule 1 could have provided for the original enclosed veranda to have been replaced after the building’s relocation, subject to the replacement consisting of a comparable assembly and in the same position. However, this is not what was proposed. Instead, the enclosed veranda that existed prior to relocation was to be replaced with an extension of the kitchen area and a new deck, albeit in the same location under the existing roof.
- 4.9. However, I do not consider that the work was being undertaken “so as to provide an enclosed porch, conservatory, or the like”. The designer has referred to a description of clause 15 in the Ministry’s guidance, which states “This exemption allows you to close in an existing veranda, patio or similar structure in order to convert an area into an enclosed space (eg a conservatory)”.<sup>10</sup> The designer submits that this does not suggest the clause is limited to that use only, and the words “enclosed space” could mean “any typical habitable room expected to be found in a residential home”.

---

<sup>10</sup> Ministry of Business, Innovation and Employment *Building work that does not require building consent* (fifth edition, August 2020) at page 120.

- 4.10. While the description in the guidance only lists one example of an enclosed space (a conservatory), it needs to be read in conjunction with clause 15 itself, which refers to “an enclosed porch, conservatory, or the like”. A kitchen is substantially different to a porch or a conservatory in terms of its fit out and use. It cannot be reasonably said to fall within the category of “enclosed porch, conservatory, or the like”.
- 4.11. Further, I consider that the removal of the external wall of the kitchen goes beyond the scope of “closing in” as contemplated in clause 15. The “closing in” of a veranda or patio involves the construction of additional walls (and sometimes a roof), not the removal of external walls.
- 4.12. The designer has submitted:
- As per 3.3 [of the Ministry’s guidance<sup>11</sup>] internal walls can be altered, removed. Once the porch was enclosed the exterior wall became a most likely non-loadbearing internal wall. Bracing would not be an issue, as a new brace was able to be added to the new external wall.
- 4.13. I acknowledge that internal walls can be removed as exempt building work under clause 11 (provided they are not load-bearing or a bracing element, amongst other criteria). However, I do not consider that this was the removal of an internal wall.
- 4.14. Clause 11 refers to “building work in connection with an internal wall... in any *existing* building...” (my emphasis).
- 4.15. The removal of the external wall was part of the construction work to extend the kitchen and was carried out together with the building work to install the new external wall. I consider that the “existing building” is what was there when the amendment application was made, prior to any construction work to extend the kitchen. At that point, the wall was external.
- 4.16. Regardless, based on the designer’s submission regarding load bearing and bracing, I am not satisfied that the original external wall would have met the criteria of clause 11. Clause 11 doesn’t provide for a bracing wall to be removed on the basis that a new bracing element can be added to another wall or to a new wall; rather, it excludes walls that are bracing elements from the exemption. In addition, the authority’s request for further information indicates the external wall was loadbearing.<sup>12</sup>
- 4.17. In summary, I am not satisfied that the removal of an external wall and installation of a strutting beam in its place can be considered part of the “closing in” of a space. I am also not satisfied that the resulting extension to the kitchen falls within the category of “enclosed porch, conservatory, or the like”. For these reasons, I agree

---

<sup>11</sup> Ibid., page 79.

<sup>12</sup> RFI 13 of 1 April: “New 190x90 strutting beam shown in place of removed external wall to support existing under-purlin strut.”

with the authority that the proposed work to extend the kitchen area does not fit within the scope and intent of clause 15.

- 4.18. In terms of the construction of a new deck and steps, I note that this is exempt building work under clause 24, providing it is not possible to fall more than 1.5m even if they were to collapse.

### **The back porch area**

- 4.19. Following relocation of the dwelling, the back porch area consisted of an inset area that sat under the roofline and provided access to the back door (refer to Figure 2).
- 4.20. As with the front porch area, new timber steps and decking had been designed as part of the initial building consent to relocate the building, but it appears they had not been installed at the time the amendment application was made. While the area was inset rather than projecting from the face of the building, it was open at the front, sat under an existing roof, and provided shelter and protection at the entrance to the back door. Therefore, I am satisfied it can be considered an “existing veranda, patio, or the like” (my emphasis).
- 4.21. The proposal in the consent amendment was to remove the back door and small areas of external wall around it and to construct a small section of external wall, enclosing the area that was the back porch and extending the interior space. I do not consider the newly enclosed space is an enclosed porch – a porch usually provides shelter at a building entrance and the closing in removed the entrance in this case – and nor is it a “conservatory, or the like”. Instead of creating a new room from what was previously an exterior space by simply enclosing it, the removal of the exterior wall has extended the existing internal space.

### **Commentary on discretionary exemptions**

- 4.22. The matter to be determined does not include consideration of clause 2. However, the relocation of buildings of this type is commonplace in New Zealand, and the following comments may assist others in similar circumstances.
- 4.23. Clause 2 enables an authority to use their discretion to exempt any proposed building work from the requirement to obtain a building consent, if:
- (a) the completed building work is likely to comply with the building code; or
  - (b) if the completed building work does not comply with the building code, it is unlikely to endanger people or any building, whether on the same land or on other property.
- 4.24. The authority is of the view that the proposed building work which is the subject of this determination was outside the type of work that they can consider a discretionary exemption for, based on examples included in the Ministry’s guidance. However, the examples in the guidance are not an exhaustive list and do not limit

the authority from granting exemptions for other types of work that are not included in the examples provided the criteria in clause 2 are met. I note that a discretionary exemption cannot be granted after the building work has been done.

## **5. Decision**

5.1 In accordance with section 188 of the Building Act 2004, I determine that the building work considered in this determination was not exempt under clause 15 of Schedule 1 and I confirm the authority's decision to require a building consent for this building work.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 31 May 2023.

**Katie Gordon**

**National Manager Building Resolution**

# Appendix A

## **Building Act 2004**

### **17 All building work must comply with building code**

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 building work.

### **41 Building consent not required in certain cases**

(1) Despite section 40, a building consent is not required in relation to—

...

(b) any building work described in Schedule 1 for which a building consent is not required (see section 42A); or ...

## **Building Act 2004 - Schedule 1: Building work for which building consent not required**

### **1 General repair, maintenance, and replacement**

...

(2) Replacement of a building product or an assembly incorporated in or associated with a building, provided that—

- (a) a comparable building product or assembly is used; and
- (b) the replacement is in the same position.

...

### **2 Territorial and regional authority discretionary exemptions**

Any building work in respect of which the territorial authority or regional authority considers that a building consent is not necessary for the purposes of this Act because the authority considers that—

- (a) the completed building work is likely to comply with the building code; or
- (b) if the completed building work does not comply with the building code, it is unlikely to endanger people or any building, whether on the same land or on other property.

### **11 Internal walls and doorways in existing building**

Building work in connection with an internal wall (including an internal doorway) in any existing building unless the wall is—

- (a) load-bearing; or
- (b) a bracing element; or
- (c) a fire separation wall (also known as a firewall); or
- (d) part of a specified system; or
- (e) made of units of a building product (such as brick, burnt clay, concrete, or stone) laid to a bond in and joined together with mortar.

Schedule 1 clause 11(e): amended, on 7 September 2022, by section 99(10) of the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021 (2021 No 21).

### **15 Closing in existing veranda or patio**

Building work in connection with the closing in of an existing veranda, patio, or the like so as to provide an enclosed porch, conservatory, or the like with a floor area not exceeding 5 square metres.

**24 Decks, platforms, bridges, boardwalks, etc**

Building work in connection with a deck, platform, bridge, boardwalk, or the like from which it is not possible to fall more than 1.5 metres even if it collapses.