Department of Building and Housing
Te Tari Kaupapa Whare

Determination 2011/068

The issuing of a notice to fix to a body corporate for a multi-storey commercial and residential unit-titled building at 2 Queen Street, Auckland

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1. The matter to be determined

1.1 This is a Determination under Part 3 Subpart 1 of the Building Act 2004[1] ("the Act") made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing ("the Department"), for and on behalf of the Chief Executive of that Department.

1.2 The parties

1.2.1 The parties to this determination are:

- CBD Investments (NZ) Ltd, the proprietor of six commercial units in the building ("the applicant") acting through an agent ("the applicant's agent")
- the Auckland City Council[2] ("the authority") carrying out its duties and functions as a territorial authority and a building consent authority
- the proprietor of one commercial unit at ground floor
- G Wilson and M Marris, two of the joint-proprietors of Units 6D and 6E ("the joint-proprietors")
- the individual proprietors of a total of 30 residential units.

1.2.2 I consider Body Corporate 95035 ("the body corporate") to be a person with an interest in this determination.

1.3 This determination arises from the decision of the authority to issue a notice to fix for a multi-storey, high-rise commercial and residential unit-titled building ("the building"), because it was not satisfied that the building work carried out under four separate building consents complied with certain clauses[3] of the Building Code (First Schedule, Building Regulations 1992).

1.4 The matter to be determined[4] is therefore whether the authority was correct in its decision to issue the notice to fix to the body corporate. In making my decision, I have considered the submissions of the parties and the other evidence in this matter.

2. The building work

2.1 The building work consists of staged alterations to a seven-storey commercial building; to form its present configuration consisting of retail units on the ground floor and individual residential units on the upper floors.

[1] The Building Act, Building Code, Compliance documents, past determinations and guidance documents issued by the Department are all available at www.dbh.govt.nz or by contacting the Department on 0800 242 243.
[2] After the application was made, and before the determination was completed, Auckland City Council was transitioned into the new Auckland Council. The term authority is used for both.
[3] In this determination, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.
[4] In terms of section 177(b)(iv) of the Act (Prior to 7 July 2010).

3. Background

3.1 The building consents

3.1.1 The authority issued four building consents under the Building Act 1991 between November 1993 and July 1995, with the first three issued to the developer of the building ("the developer"). The building consents are shown in the following table:

Date issued	Consent number (with subsequent re-number)	Consented work	Issued to
"the first building consent"			
9 Nov. 1993	**B/1993/3805092** (renumbered as HC/93/5092)	Renovations for commercial and residential use	The developer
"the second building consent"			
18 Jan 1994	**B/1993/3806741** (renumbered as HC/93/6741)	Addition of seventh floor with specified fire egress (noted as revision to first building consent)	The developer
"the third building consent"			
9 June 1994	**B/1994/3800182** (renumbered as HC/94/0182)	Additional plumbing to ground floor mezzanine (noted as revision to first building consent)	The developer
"the fourth building consent"			
12 July 1995	**B/1995/3804792** (renumbered as HC/95/4792)	Internal alterations to toilet basin cupboards in residential units	The body corporate[5]

3.1.2 On 9 June 1994, the authority issued an interim code compliance certificate in regard to the first consent. The sprinkler system was specifically excluded from this certificate.

3.2 The notice to fix

3.2.1 Following an inspection of the building on 25 August 2008, the authority wrote to the body corporate on 23 February 2009, stating that certain elements of the building did not comply with the Building Code.

3.2.2 The authority attached a notice to fix dated 23 February 2009, which was issued to the body corporate under the Building Act 2004. The notice listed a number of contraventions and non compliances.

3.2.3 The notice to fix was in respect of the four building consents. However, there was no allocation of the listed contraventions and non compliances to any specific consent or to the individual proprietors.

3.3 Since the notice to fix was issued, consultants have been engaged on behalf of the body corporate to respond to the notice ("the consultants"). It would appear that any recommendations that have been made are yet to be pursued. In addition, issues have arisen between the various individual owners relating to the role of the body corporate.

[5] **I**n a letter to the authority dated 15 October 1993 the architects noted the upper floors were to be subdivided into individual titles and owners would be required to obtain consents for fitouts.

3.4 The Department received an application for a determination on 10 November 2009. There have been lengthy delays in obtaining full information from the parties subsequent to the application.

4. The submissions

4.1 The applicant's submission

4.1.1 The applicant considered the notice to fix had been issued to the wrong persons because it should have been issued to the persons who own the previously executed building work that requires remediation. The application described the matters for determination as:

> As described in Notice to Fix No 3078, reissue to limit Body Corporate responsibility to common areas only, and/or issue notice to all unit proprietors for work in common areas, and reissue notices to fix not relating to individual unit proprietors owning units and accessory units in respect of which repairs/work are/is required.

4.1.2 The applicant forwarded copies of:

- a letter from the developer describing the intention for the division and titling of the building
- a letter from a firm of surveyors dated 5 October 2009 explaining the surveying process for dividing the building into unit titles
- the notice to fix dated 9 November 2004
- a set of three plans showing the unit title divisions.

4.2 The joint-proprietors' submissions

4.2.1 In a letter to the Department, dated 16 December 2009, the joint-proprietors outlined some of the background to the issues arising between the unit-title holders and the body corporate.

4.2.2 The joint-proprietors emailed the Department on 16 February 2010, noting that not all the proprietary owners supported the newly constituted body corporate decision that notices to fix be issued to all the individual owners. The joint-proprietors also stated that the building consents No's 5092 and 6741 were issued in relation to 'the base building' prior to the subdivision of the building some months later, and an interim code compliance certificate was issued for both these consents. Accordingly, it was 'both logically and legally impossible to attempt to reassign the [notices to fix] to individual owners when the building did not have that legal status (or indeed structural status) when those consents were issued'.

4.2.3 These comments were reiterated in an email to the Department dated 9 April 2010. The email noted the building consents were issued to the developer and as the successor in title, the notice to fix should now be issued to the body corporate.

4.2.4 The joint-proprietors forwarded copies of:

- the notice to fix
- a list of the unit title owners

- the consultants' outline of works
- other relevant correspondence.

4.3 The body corporate's submissions

4.3.1 A firm of barristers and solicitors wrote to the Department on 13 November 2009 on behalf of the body corporate. The letter noted that the ownership requirements were complex and it was suggested that the application was made without the consent of the body corporate committee. The barristers and solicitors forwarded copies of:

- a brief chronology of events from 1994 to 2009
- legal opinions in respect of the exterior building envelope
- other relevant correspondence.

4.3.2 The committee of the body corporate wrote to the Department on 7 January 2010, noting that the barristers and solicitors who wrote to the Department on 13 November 2009 no longer acted for the body corporate. The committee stated that it supported the applicant in seeking a determination. It also held the same opinion as the applicant that the notice to fix as issued should be withdrawn and new notices be issued to each of the owners to whom the notice to fix applies.

4.4 The authority's submission

4.4.1 In an email to the Department dated 9 April 2010, the authority stated that it issued notices to fix to the owner of the building because it is in effect the owner of the building consents, and in the current case the owner of the building is the body corporate.

4.4.2 The authority forwarded copies of:

- documentation relating to the four consents issued for the building and the interim code compliance certificate relating to the first building consent
- the notice to fix
- other relevant details and correspondence.

5. The first draft determination

5.1 A first draft determination was issued to the parties for comment on 6 May 2010. I was provided with a list of all the registered unit holders of the property by one of the joint-proprietors. Subsequently, copies of the draft determination were forwarded to the applicant, the authority, and all the other individual unit owners.

5.2 The first draft determination concluded that the notice to fix should be modified and separate notices to fix should be issued to the relevant unit owners for the work concerned: being all the owners for works to common property, the 30 residential owners having equal shares in Accessory Unit 7, and individual unit owners where the work falls within the boundaries of their individual units.

5.3 The applicant's response

5.3.1 The applicant did not accept the draft. Although 'largely in agreement with the Determination', concerns were raised by the applicant's legal advisers in a letter to the Department dated 19 May 2010. This was in regard to those owners that I considered should be included on the notice to fix. It was submitted that the notice should only be issued to those owners whose property required repairing

5.3.2 The proprietor of Unit C authorised the applicant to make the above response on their behalf.

5.4 The joint-proprietors' response

5.4.1 In a letter to the Department dated 27 June 2010, the lawyers acting on behalf of the joint-proprietors ("the joint-proprietors' lawyers") stated that these proprietors did not accept the draft determination. The lawyers were of the opinion that a valid application for a determination had not been made and, without prejudice to that opinion, queried whether the correct subsections of the section 177 had been applied and whether extra provisions could be determined that were additional to those set out in the original application. The submission also requested that some minor amendments be made to the wording of the determination and that all relevant documentation be forwarded to the lawyers.

5.4.2 The joint-proprietors' lawyers wrote again to the Department on 5 July 2010. It was submitted that the Chief Executive did not have the power to instruct the authority to issue a notice to fix. In addition, an authority may only issue a notice to fix to a "specified person", who was the owner of the building. In present circumstances, the owner was all the registered proprietors of the building. In a further letter to the Department, dated 14 July, the lawyers were of the opinion that the applicants had not complied with the requirements of sections 178(1)(b) and (c).

5.5 Other proprietors' responses

5.5.1 Unit 6C proprietors emailed the Department on 9 July 2010, stating that they endorsed comments made by the joint-proprietors' lawyers. These proprietors also queried why they had to now comply with a notice to fix despite having received a code compliance certificate for their apartment. In addition, as the apartment had met the 'Performance test', the proprietors did not accept they had to correct a problem set out in the draft determination that did not exist under such a test. As there is no "single owner" and a complex such as this cannot be a "specified person", the building cannot be subject to notice to fix issued to selected owners.

5.5.2 Unit 6F proprietor accepted the draft, subject to the unit not being included with the other sixth floor apartments, 'because it is part of the original building and has common ground roof'.

5.5.3 Unit 5D proprietor accepted the draft, subject to two minor amendments, and that the description "upper floor units" in paragraph 6.5(2) of the first draft be amended to "sixth floor units".

5.5.4 Units 3C, 3E, 3G, 4D, 5C and 4C proprietors accepted the draft, subject to the description "upper floor units" in paragraph 6.5(2) of the draft being amended to "sixth floor units". Also that the following wording 'excluding that covered in

categories (1) and (2)' be inserted after the words 'a separate notice to fix' in paragraph 6.8 of the first draft.

5.5.5 Unit 5G proprietor did not accept the draft and was of the opinion that the body corporate, as the representative of all the owners, needed to take responsibility for all the items set out on the notice to fix.

5.5.6 Units 1D, 1H, 2D and 4F, 3D, 1G, 1F and 2C proprietors accepted the first draft determination without further comment.

5.5.7 Unit 4G proprietor noted that he wished to 'abstain' from commenting on the draft and the proprietors of remaining units did not respond to the draft determination.

5.6 The authority's response

5.6.1 In a letter to the Department dated 7 July 2010, the authority stated that it did not accept the first draft determination. Giving reasons for its decision, the authority submitted that 'a unit is merely a separate dwelling within a building' and that 'it is the whole building containing all units and common property that constitutes a "building" for the purpose of issuing a notice to fix'. In addition, the authority was of the opinion that the body corporate, being a collective of all the owners of a unit title development, was the "specified person" to whom the notice to fix should be served.

6. The second draft determination

6.1 After consideration of the parties' submissions, I amended the draft determination as I deemed appropriate, and issued a second draft determination to the parties for comment on 20 August 2010. The second draft determination came to the same conclusion as the first (refer paragraph 5.2).

6.2 The applicant's response

6.2.1 The applicant's legal advisers wrote to the Department on 8 September 2010, noting that the applicant accepted the draft determination in its entirety without any further amendment. The applicant did not require, and objected to, the requirement for a hearing and reasons were given for this decision.

6.2.2 The applicant also attached two responses to the first determination that had not previously been provided to the Department. I have included these within the responses outlined in paragraph 5.5.

6.3 The authority's response

6.3.1 In a letter to the Department dated 10 September 2010, the authority stated that it did not accept the draft determination and requested a hearing. I summarise the authority's comments as follows:

- While the authority accepted that it erred in issuing the notice to fix to the Body Corporate, it was of the view that a single notice to fix should be issued to all the proprietors as tenants in common.

- The "owner" as defined in the Act is the person entitled to the rack rent of the "land", not to the "building".
- If the substitution of "building" for "land" is accepted, the change made by section 8 of the current Act means that "building" no longer means "part of a building".
- There are overwhelming policy reasons why a plain reading of the Act should be preferred. No countervailing policy issues have been put forward by the Department and the other parties.
- The draft determination is inconsistent with the Act, the current and proposed Unit Titles Acts, and the relevant Body Corporate rules.

6.4 The proprietors' responses

6.4.1 The joint-proprietors did not accept the second draft determination for the reasons that had previously been expressed on their behalf. These proprietors also requested a hearing.

6.4.2 Unit 6C proprietors did not accept the draft determination on the grounds that they considered that the notice to fix should be issued to the Body Corporate rather than to individual owners and that the items noted on the notice were not correctly stated. It was also noted that the unit in question had been given a code compliance certificate. These proprietors also requested that a hearing be held.

6.4.3 The following proprietors accepted the second draft determination without comment:

o Unit C	o Units 2C and 1F	o Unit 1D
o Unit 1G	o Unit 2F	o Unit 3D
o Unit 3E	o Unit 3G	o Unit 4C
o Unit 4D	o Unit 5D	o Unit 6F

6.4.4 The proprietors of remaining units did not respond to the draft determination.

6.4.5 I carefully considered the submissions of the parties and amended the draft determination as I consider appropriate.

7. The hearing

7.1 General

7.1.1 I arranged a hearing at Auckland on 20 January 2011, where I was accompanied by a Referee engaged by the Chief Executive under section 187(2) of the Act, together with two consultants. The hearing was attended by:

- three officers from the authority
- two legal advisers representing the applicants and 16 individual unit proprietors, together with a planning consultant
- two legal advisers representing the two joint-proprietors of Units 6D and 6E
- ten individual unit proprietors

- A representative of one individual unit proprietor.

7.1.2 The attendees spoke at the hearing and the evidence presented by those present enabled me to amplify or clarify various matters of fact and was of assistance to me in preparing this determination. The parties also provided me with post-hearing submissions.

7.1.3 As I have carefully considered all the evidence presented at the hearing, including the written submissions and the authorities and legislation referred to in these, I have only paraphrased the main issues raised by the attendees as set out below.

7.2 Submissions on behalf of the applicants and 16 unit proprietors

7.2.1 Two written synopses of submissions were provided on behalf of these proprietors, together with a written "brief of evidence" from a planning consultant, and I summarise the additional evidence provided for consideration:

- The main focus should be on the 'owner' rather than on the term 'building' and a Body Corporate was not entitled to the rack rent from the land. A notice to fix should be forwarded to the building owner, which in this case is each individual proprietor of unit. Section 8(1) refers to a structure and this covers a unit in a building. In addition, section 117 relates to "part of a building" and the exclusions set out in section 9 do not relate to units or apartments. Proprietors own individual units but do not co-own the whole building.
- If the argument put forward on behalf of the proprietors of Units 6D and 6E was that the application of section 50(5) of the Unit Titles Act 1972 ("UTA 72") meant that a notice to fix could never be served on individual proprietors, section 50(5) of the Unit Titles Act 1972 would have no effect.
- Section 164(2) requires a responsible authority to issue a notice to fix to a specific person and the notice must be sent to each individual owner not to a combination of owners. An authority can issue a notice to fix relating to specific areas and to cover multiples of units but should not issue them to proprietors whose units had suffered no damage.
- It was considered that the references made in regard to the UTA 72 were not relevant as there was no suggestion that damage had occurred in the building and proprietors whose units were not damaged would be unfairly compromised and be initially responsible for a major monetary input.

7.2.2 The planning consultant's "brief of evidence" was dated 14 January 2011 and this described the plans that had been marked-up in relation to the different building consents. The consultant had reviewed the original Unit Title Plans and the notice to fix, which he considered was deficient as it did not 'identify the level of the building at which each recorded breach/defect occurs'. The consultant was of the opinion that it would be possible for the authority to identify which aspects of the notice to fix relate to each specific unit/owner within the building and issue individual notices accordingly. A set of marked-up plans was provided by the consultant as were various relevant appendices.

7.2.3 The planning consultant stated that he had undertaken a desktop review only of the unit title division but had not carried out a site inspection. The consultant was of the opinion that the walls of the various units must have been framed up when the

original survey took place and accepted that remedial work was required on the building. However, the consultant was unable to confirm whether the drawings were accurately drawn.

7.3 Submissions made on behalf of the joint-proprietors

7.3.1 Two written submissions were provided on behalf of the joint-proprietors, and I summarise the additional evidence for consideration that was provided:

- As it was not possible to carry out isolated repairs, it was therefore impossible to remedy defects in individual units. For example, as the roofing cannot be laid in 3 sections, it was not practicable to carry out discrete repairs. The photographs shown on the notice to fix dated 23 February2009 illustrated this type of problem.
- Section 48 of the UTA 72, as upheld by the High Court, gave the Body Corporate the power and obligation to carry out repairs that are in parts. The Building Act and the UTA 72 should be read together to arrive at a logical and straightforward proposition.
- A mandatory direction in the draft determination for the authority to issue new notices to fix was not a modification and was contrary to the powers set out in the Act, which are to confirm, reverse or modify an exercise of power. From the evidence produced by the authority, it was apparent in terms of the draft, that neither the recipients nor the authority can respond to the requirements set out, nor will the authority grant building consents or code compliance certificate for isolated work.
- The argument put forward on behalf of the applicants regarding the application of section 50(5) of the UTA 72 was 'circular' and ignored the term "notwithstanding anything" in the Act.
- One of the joint-proprietors described relevant features that were shown on the photographs that were attached to the authority's notice to fix dated 23 February 2009. The validity of the photographs was confirmed by the authority. This proprietor also provided an additional photograph of a section of the building.

7.4 Submissions made on behalf of the authority

7.4.1 The authority was of the opinion that the matters at issue were not technical and noted that section 8 of the current Act did not include the "part of a building" aspect set out in the former Act.

7.4.2 The Act is structured in terms of a whole building as evidenced by sections 71, 75 and 76. Section 117 relates only to those specific requirements listed in that section. Accordingly, if "building" does not relate to part of a building then only one notice to fix is required. It was accepted that the requirements of the UTA 72 should be considered in order to correctly define the term "owner".

7.4.3 The division of the work required to be rectified has not been clearly defined, nor can it be divided into the three parts set out in the draft determination. Defects observed at one location can effect other locations.

7.4.4 If more than one notice to fix has to be issued, the work set out in each will impinge on that described in the other and there would also be a subsequent overlapping of the building elements. It was unlikely that licensed applicators would provide certificates or warranties for partial work only. In addition, the visual inspection process available to the authority would not define the unit boundaries and the authority lacked the expertise and resources to carry out more detailed inspections.

7.5 Submissions made on behalf of other proprietors

7.5.1 The proprietor of Unit 6C pointed out various building elements and structures that related to the building as a whole and in particular the atrium. It was also noted that elements such as sprinklers, alarms, ventilation and air conditioning were common systems throughout the building and impacted on all the owners. The insurance policy and the warrant of fitness were issued in terms of the entire building. It was believed that the estimate for the allocation of costs was inaccurate and that all the remedial work should be carried out at the same time.

7.5.2 The proprietor of Unit 6C also produced a set of photographs illustrating aspects of the building.

7.5.3 One of the proprietors of Unit 5C noted that the roofs were situated at locations at various levels and that any work carried out on them could be carried out separately. In addition, parts of the building had been replaced as complete entities.

8. Further submissions following the hearing

8.1 At the conclusion of the hearing, the parties indicated that they would be forwarding further submissions. Three separate submissions were forwarded to the Department on behalf of the applicants and 16 other individual unit proprietors, the authority and the owners of Units 6D and 6E.

8.2 I have carefully read these submissions and the various attachments appended to them. I have summarised what I consider to be the salient points raised by the parties.

8.3 The applicant's and 16 individual unit proprietors' submission

8.3.1 The submission made on behalf of the applicant and 16 individual unit proprietors was dated 18 February 2011 and various Court decisions and determinations made by the Department were also attached. Main issues set out in the submission were:

- The only issue to be determined was whether the notice to fix was validly issued to the Body Corporate under the Act.
- The narratives given on behalf of the joint-proprietors at the hearing supported, rather than opposed, the concept that it was possible for persons to comply with individual or grouped notices to fix.
- Where there are issues that relate to more than one unit, group notices can be issued.
- Owners below the 6th floor have no right to use and enjoy the roof areas, and there is virtually no work required to any areas below the 6th floor. There is

therefore no justification for imposing a de facto liability on them to fix non-compliant works to areas above the 6th floor through the Body Corporate.

- In a previous determination (2010/68), the Department had decided that the remedial work required to 12 townhouses was not discretely located within a single owner's title boundary.
- Based on the cited cases, it was submitted that the responsibility for principal and accessory units lies with the individual owners, while common property is administered by the Body Corporate. As the authority cannot impose an obligation on a body corporate, a notice to fix would have no effect. Hence, the notices to fix need to be served on the individual owners, who are legally able to comply with them.
- Regarding the notice to fix, section 50 of the UTA 72 cannot validate a notice to fix that is invalid under the Act. Consequently, if the authority was not authorised under the Act to serve the notice to fix on the Body Corporate, then section 50 has no application.
- The authority had not addressed the applicant's submission that each unit was a 'building' in its own right within the section 8 definition. It was submitted that unit owner is an owner of a building under the Act, because each unit fits within the section 8 definition of a building.
- The decision in Determination 2007/91 concluded that a Body Corporate did not come within the section 7 definition of "owner" and this was consistent with the UTA 72 and the weight of authorities decided regarding the issue of a body corporate's responsibility for the repair and maintenance of common property compared with private property.
- The authority's claim that they did not have the expertise and resources to comply with the draft determination was not one that should be a concern of the Department. It was not accepted that the UTA 72 was relevant to the current situation. It was unjust to expect owners whose units did not require repairs to fund repairs carried out on private property over which they have no rights and from which they derive no benefit.
- The Department had not exceeded its powers when it reversed or confirmed the various notices to fix.
- The authority had identified various items on the notices to fix that were not correctly installed but had not provided any adequate explanation as to 'why it would be unable to identify where these items are located in relation to unit boundaries and it was not accepted that such an exercise would be impossible'.

8.4 The authority's submission

8.4.1 The submission made on behalf of the authority was dated 18 February 2011, and I summarise this as follows:

- The question before the Department was 'who is the owner of the building for the purposes of the [Building Act 2004]'. It was submitted that the Department's interpretation of a "building" including "part of a building" was incorrect.

- The Act removed the description "part of a building" from the definition of a building and the references in section 117 to this description are only relevant in terms of sections 118 to 120
- Accordingly, there was no need to look beyond the statute as a complete answer in this case. However, the submission noted that if this was not the case, other matters would be relevant.
- Analyses and legal arguments were set out concerning these other matters, which I have carefully perused and considered. The matters discussed and analysed in the submission related to the definitions of:
  - "building"
  - "owner"
  - "Land"
  - "unit"
  - the scheme of the UTA 72.
- The authority was of the opinion that there was strong evidence of a clear intention by parliament that notices to fix are to be dealt with by (and therefore issued to) the Body Corporate.
- The interpretations as set out in the draft determination would result in authorities making inconsistent interpretations. The differing body corporate rules and the effects that the non-compliance of an individual unit had on an entire building were examples of problems facing authorities and the impracticalities of issuing individual notices to fix.
- As noted at the hearing, it is impossible for reasonable inspectors to 'divvy up' the issues as suggested in the draft determination and even experienced surveyors had been unable to reach a consensus on this matter.
- The evidence provided by the authority showed that it would be impossible to issue three contemporaneous consents for three scopes of work. Accordingly, as the notices to fix could not be complied with, the notices would be invalid.

8.5 The joint-proprietors' submission

8.5.1 The submission from the joint-proprietors was dated 18 February 2011, and I summarise the main matters raised in this document as:

- Evidence provided by the applicant's planning consultant should be considered to be a submission rather than the opinions of an expert witness. It was not accepted that it was possible to 'isolate with precision the scope and extent of defects requiring remediation and thus match 'defects' to particular units'.
- The owners supported the authority's arguments regarding the issuing of the notices to fix and accordingly, rejected the arguments put forward by the applicant. The owners noted that the authority did not have the required expertise to distinguish the work applicable to each individual owner and the authority's approach was supported by the relevant legislation.
- The owners did not accept that the reference in section 48 of the UTA 72 to 'a building being damaged or destroyed' could not also include situations where there was non-compliance with the Building Code. In addition, section 48

provided a mechanism for that enabled a body corporate to deal effectively with any notice to fix served on it. A body corporate had the power to raise funding for all necessary repairs, even when these relate to unit property.

- The authority's approach did not unfairly impact on the individual unit owners. There was always the potential for inter-owner conflict in multi-storey complexes but this conflict should not be passed onto the authority.
- Owners would always be required to contribute to the costs of works relating to areas not directly associated with their units. The only issue was how much has to be paid, and that is not a matter that could be determined or be subject to a notice to fix.

9. The third draft determination

9.1 Following the submissions from the parties, I amended the second draft determination and issued copies of a third draft determination to the parties on 30 March 2011.

9.2 The third draft determination concluded that the issue of the notice to fix is determined by the application of section 50(5) of the UTA 72 and that the authority correctly issued the notice to fix to the body corporate.

9.3 The authority and the proprietors of Units 3F and 5F accepted the third draft determination without comment.

9.4 The applicant's and 17 individual proprietors' submission

9.4.1 The applicant and 17 individual proprietors did not accept the third draft determination and engaged a legal adviser to present a submission on their behalf. The individual proprietors in question were owners of the following units:

- Unit C
- Unit 1C
- Unit 1D
- Units 1F and 2C
- Units 2D and 4F
- Unit 2F
- Unit 3C
- Unit 3D
- Unit 3E
- Unit 3G
- Unit 4C
- Unit 4D
- Unit 4E
- Unit 4G
- Unit 5C
- Unit 5D
- Unit 6F

9.4.2 The legal adviser's submission, which was dated 15 April 2011, provided a detailed analysis of the following in the context of the matter at issue:

- Statutory interpretation.
- The purposive approach as to the meaning of an enactment.
- The UTA 72.
- The Act.
- The perceived inconsistency in the Department's interpretation of section 50(5) of UTA 72.

9.4.3 The submission concluded:

> The Applicant accepts the DBH's interpretation of the relevant provisions under the Building Act. It disputes the DBH's construction of s 50(5) of the 1972 Act and strongly opposes the DBH's conclusion that the particular wording of the phrase 'the owner of a building' under the Building Act requires a different conclusion due to s 50(5) of the 1972 Act and that a notice to fix should be issued to all the owners not just the owners responsible for the non-compliant building work.

9.4.4 The proprietor of Unit 2E did not accept the third draft determination. She did not provide a submission but stated that she would 'back' the legal adviser's submission.

9.5 The joint-proprietors' submission

9.5.1 The joint-proprietors did not accept the third draft determination and a submission dated 14 April was made by their legal adviser on their behalf. I summarise that submission as:

- The reasons for non-acceptance, which had already formed part of an earlier submission, were reiterated in summary.
- If an authority considered that section 164(1)(a) of the Act had been beached, then the correct approach was for the authority to issue a notice to fix to the specified person concerned, who is the owner of the building, to require that specified person to comply with the Act.
- By section 7, "person" includes a body of persons and by section 163, "specified person" means the owner of a building (and not part of a building).
- The most straightforward and applicable definition of "owner" was the owner of the land.

9.6 Other proprietors' submissions

9.6.1 The proprietors of Unit 6C did not accept the third draft determination and attached a submission, which I summarise as:

- The conclusions reached were not accepted for the reasons previously stated.
- If the position taken at paragraph 9.34 of the third draft determination is wrong, then it could only be concluded that ultimately the single notice to fix should be a 'single notice addressed to all those persons as tenants in common in the land'.
- The proprietors of Unit 6C did not accept that the notice to fix as issued was correct as to the matters of contravention and non-compliance in respect of their unit.

9.7 I have carefully read and considered all the listed submissions and have amended the determination as I consider appropriate.

10. Discussion

10.1 The legislation

10.1.1 The relevant sections of the legislation are included in Appendix A.

10.2 Procedural matters

10.2.1 The joint-proprietors' lawyers are of the opinion that the applicant has failed to comply with the service requirements of section 178(2) and has queried section references set out in the determination. In addition, the lawyers submitted that the determination could only consider those provisions that the applicant set out on the determination application form.

10.2.2 In respect of the service requirements under section 178(2), while the applicant may not have forwarded the required document, the joint-proprietors' lawyers have noted that the owners of Units 6D and 6E did receive the form from another source. While the section 178(2) requirements were not exactly followed, I am of the opinion that the owners in question were ultimately not unduly affected.

10.2.3 With respect, I believe that the joint-proprietors' lawyers, when referring to sub clause reference errors in the determination, may have overlooked the misprint in section 177(b) (prior to 7 July 2010) where subsection reference (ii) has been omitted. I have referred to the actual subclause references set out in the Act in this determination and not to any implied correction.

10.2.4 I accept that the applicant erred when defining which subclause was relevant to the determination. However, I accept that the other information supplied by the applicant left me in no doubt as to what matters were to be determined. I do not consider that an error in checking a box on the application form is sufficient to set aside the whole determination. As previously discussed, the numbering error in section 177(b) can easily lead to confusion.

10.3 Scope of the matter for determination

10.3.1 I have received information from one of the parties regarding the background concerning the relationship of the body corporate with the individual unit-title holders as discussed in paragraph 4.2.2. However, as this determination is in terms of the Act, the determination can only address the issuing of the notice to fix (under section 177(b)(iv) of the Act prior to 7 July 2010). This determination is based on the requirements for a notice to fix in sections 163-166 and the definition of "owner" in section 7 of the Act. This determination does not concern the contributions each unit owner may be required to make to the remedial work. Such contributions are covered by other legislation in respect of which I have no jurisdiction.

10.3.2 Based on the application for determination, I have only considered whether the decision of the authority to issue the notice to fix to the body corporate was correct. I have received no evidence that the content of the notice to fix, in terms of the contraventions and non-compliances, are in dispute.

10.4 The notice to fix

10.4.1 The authority has issued one notice to fix to the body corporate that relates to four building consents. Three of these consents were issued to the original developer and all relate to the first building consent issued. A fourth building consent covering minor joinery work was issued to the body corporate. Some time in 1993, the building was divided into unit titles, seven of which related to commercial and retail ownership and thirty of which related to residential ownership. In addition, a range of property that in a unit title building would normally be designated as common property was designated as accessory unit AU7, which is owned on an equal share basis by the thirty residential owners.

10.4.2 I note that the letter dated 15 October 1993 from the architects for the developer, to the authority, regarding the second building consent stated that the upper floors were to be 'subdivided into individual titles and sold to individuals who will be required to obtain separate consents for fitouts'. I have not received any documentation relating to building consents issued in regard to the individual titles as noted by the architects. If any such consents have been issued, then the notices to fix should also relate to these.

10.5 In respect of a unit title building, who is "the owner of a building" under section 163 of the Act?

10.5.1 I have considered below who is "the owner of a building" under section 163 of the Act and therefore to whom the Act requires a notice to fix to be issued. Section 164(2) of the Act provides that the authority may issue a notice to fix to a "specified person". Section 163 of the Act defines a specified person as including "the owner of a building". "Owner" is defined in section 7 as.

> **owner**, in relation to land and any buildings on the land,—
>
> (a) means the person who—
>
> (i) is entitled to the rack rent from the land; or
>
> (ii) would be so entitled if the land were let to a tenant at a rack rent; and...

10.5.2 The rack rent represents the full rent of a property. Essentially, this means that under the Act an owner of the building for the purposes of issuing a notice to fix is the person who has the greatest ownership interest in respect of the land[6].

10.5.3 In my view, "the owner of a building" in respect of a unit title building is the unit proprietors who hold a stratum estate in freehold. It is the unit proprietors who are entitled to the rack rent of the land (assuming the unit proprietors all decided to lease the land and building to a tenant). It is also the unit proprietors who will be entitled to the estate in the land and the fee simple estate in the shares proportional to their unit entitlement upon the cancellation of the unit plan (section 45(5) of the UTA 72). Therefore, in my view, the owner of the building in terms of who is a "specified

[6] I note there are some difficult aspects about the phrase "the owner of a building". The term "owner" is defined in section 7 by reference to a person's interests in the land. Thus, interpreting the phrase "the owner of a building" is determined by the person with the greatest interest in the land. This would clearly be inappropriate where ownership is separated between the owner of the land and the owner of the building. For example, the unit proprietors of a stratum estate in leasehold will be the owners of the building but the lessor will be the owner of the land entitled to the rack rent. In these circumstances, the use of the definition of "owner" in section 7 would be inappropriate. I note that section 7 expressly contemplates such a situation as the definitions in section 7 apply "unless the context otherwise requires". In my view, when considering the phrase in section 163 of the Act "the owner of a building" where ownership of a building is separated from ownership of the land the context of the provision will require the ordinary meaning of "owner" to be applied and not the definition in section 7 of the Act.

person" under section 164 of the Act in respect of a unit title building is all of the unit proprietors.

10.5.4 The next question that arises in respect of a unit title building where there are multiple owners is does section 164 of the Act require a notice to fix be issued to all of the unit proprietors or only those responsible for the non-compliant building work?

10.6 In respect of a unit title building, must a notice to fix under section 164 of the Act be issued to all the owners or just the owners responsible for the non-compliant building work?

10.6.1 The authority submitted that the term "building" in the definition of "specified person" in section 163 excludes part of a building and that section 163 requires a notice to fix to be issued to all of the unit proprietors not just the unit proprietors responsible for the non-compliant building work.

10.6.2 The authority cites section 3(2) of the Building Act 1991 that referred to "part of a building" but was dropped from the definition of "building" in section 8 of the Act. The authority submitted that as Parliament must have made a deliberate decision that "building" not include "part of a building" it would be inappropriate to interpret "building" as including "part of a building". Further, section 117 refers to "part of a building" but only for the purposes of sections 118 to 120. Taking the authority's approach the owner of a building is all the unit proprietors even if only one unit proprietor is affected by the notice to fix (for example, an issue involving an internal fit-out). However, I'm not persuaded this is the best interpretation of "building" for the following reasons.

10.6.3 Firstly, the definition of "building" in section 3 of the Building Act 1991 expressly included in section 3(2) of that Act "any part of a building" but only applied this definition in respect of Part 9 of the Act relating to legal proceedings and miscellaneous provisions.

10.6.4 Secondly, section 117 of the Act refers to "part of a building" not for the purpose of including "part of a building" within the definition of building for the purposes of sections 118-120 but for the purpose of including a range of matters in the definition of building that would otherwise be excluded from the definition such as 'driveways, access ways, passages within and between complexes and developments, and associated landscaping'.

10.6.5 Thirdly, the purpose of section 164 is to ensure that a notice to fix is served on the person responsible for the non-compliant building work and responsible for remedying the non-compliance. Where a building such as a unit title building is owned by multiple owners in my view it is consistent with the purpose of section 164 to issue a notice to fix just to the owners who are responsible for the building work and therefore the persons who will be responsible for remedying the non-compliant building work.

10.6.6 Fourthly, the term "building" is not defined by a particular form of building (which might distinguish the type of building from its parts and so exclude part of a building from the definition of "building"). Instead, "building" is defined by reference to whether it is a "structure". The term "building" is broad enough to comprise

different structures and a reference to a building could be a reference to just one of those structures (a part of a building) or all of the structures (the whole of a building).

10.6.7 Finally, the Building Act 1991 and the Act refer to "part of a building" inconsistently and in my view little weight can be placed on the different approaches in each Act to the terms "building" and "part of a building". I have set out below some examples of the inconsistent use of these terms in the Act:

- Section 115 of the Act applies where there is a change of use of a "building" but makes no reference to a change of use applying to part of a building. However, the regulations explicitly provide that a change of use includes a change of use of part of a building (regulations 5 and 6 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005). Similarly, section 46(1)(a) of the Building Act 1991 applied to a change of use of a "building". However, regulation 3(2) and (3) of the Building Regulations 1992 explicitly provided that the classified use or uses of a building applied to the building or "part of that building".
- In contrast to both these provisions, the definition of "household unit" in section 7 means a building used for a residential purpose but section 7 goes on to expressly state it includes the use of "part of a building" for a residential purpose. Similarly, if a subdivision affects a "building" section 116A of the Act provides that this also includes "part of a building".
- There are provisions where the Act refers to "part of a building" when in the context such a reference is unnecessary. For example, section 223 refers to the duty of certain persons to assist an officer to inspect "all or part of a building" but the reference to part of a building is unnecessary. A duty to assist a person to inspect a building would include a duty to assist a person to inspect only part of a building. Similarly, section 112 of the Act refers to the alteration of a "building or part of a building" but the reference to part of a building is unnecessary. By definition an alteration to a building may be an alteration to part of a building.
- In contrast, there are a number of provisions where the Act refers to a "building" but the context requires the reference to include part of a building. For example, section 116B of the Act applies to the dangerous use of a "building" but in the context also applies to the dangerous use of part of a building. The context for the respective definitions of a building that is dangerous, earthquake-prone or insanitary in sections 121-123 of the Act also require each provision to be applied to part of a building that may be dangerous, earthquake-prone or insanitary (*Queenstown Lakes District Council v The Wanaka Gym Ltd*[7], etc). This is confirmed by section 127 that provides that work carried out in respect of a dangerous, earthquake-prone or insanitary building may include the demolition of all or "part of a building". Similarly, section 38 of the Building Act 1991 referred to the alteration of a "building" but the context required this to include an alteration to part of a building.

[7] (*Queenstown Lakes District Council v The Wanaka Gym Ltd*, District Court, Queenstown, Judge Holderness, 19 April 2010, CRN08059500156

10.6.8 As it is not possible to discern a consistent approach to the use of the terms "building" and "part of a building" in the Act, I consider the preferable approach is that the meaning of the term "building" and whether it includes "part of a building" "must be ascertained from its text and in the light of its purpose" (section 5 of the Interpretation Act 1999).

10.6.9 For the reasons set out above I disagree with the authority's submission that the definition of "building" in section 163 excludes a reference to "part of a building".

10.6.10 In my view, if a notice to fix is issued to an owner of a building where different parts of a building are owned by different persons section 163 allows a notice to fix to be issued just to the owner responsible for the non-compliant building work as long as the part of the building owned by the person is a 'temporary or permanent moveable or immoveable structure'.

10.6.11 I acknowledge that, in cases such as the present, the authority faces practical difficulties identifying the owners in a multi-unit building responsible for the non-compliant building work. It is well known that the nature and scope of leaks in a leaky building cannot be properly determined until significant parts of the cladding and/or roofing are removed and an inspection of the full extent of the defects is possible.

10.6.12 However, the authority can only be expected to identify the non-compliant work that is readily apparent. The authority regularly carries out this type of inspection function across a range of buildings. The physical inspection and identification of non-compliant building work is no different if there is one owner or many owners.

10.6.13 The complicating feature in respect of unit title buildings is that the authority must associate the information about the non-compliant building work with the relevant owners whose units are affected. While it is not for the authority to determine precisely the owners responsible for remedying the non-compliant building work as that will not be possible at such an early stage, the authority can at least make a reasonable approximation of the owners most likely to be responsible for the non-compliant building work based on the location of that work.

10.6.14 Therefore, I have concluded above that in respect of a unit title building, the owner of a building in terms of who is a specified person under section 164 of the Act and to whom a notice to fix should be issued, is all of the unit proprietors. Where the non-compliant building work only affects some of the unit proprietors, the notice to fix does not need to be issued to all the unit proprietors but may be issued just to those unit proprietors responsible for the non-compliant building work.

10.6.15 However, section 164(2) of the Act is not the only provision relevant to the issue of a notice to fix. Section 164(2) of the Act is supplemented by a specific provision in the UTA 72 regarding who should be served with a notice requiring work to be carried out on a unit title building.

10.7 Issue of a notice to fix to a body corporate

10.7.1 Section 50 of the UTA 72[8] concerns of the service of documents on a body corporate. Subsection (1) requires a body corporate to have a clearly designated letterbox at the front of the main building or to prominently display its address for service. Subsection (2) specifies how service on a body corporate may be effected and provides that it is sufficient compliance with any enactment if service on a body corporate is carried out in accordance with subsection (2). Subsection (3) concerns a change in a body corporate's address and subsection (4) defines the term "document" for the purposes of the section. Section 50(5) of the UTA 72 applies to the service of notices requiring repairs or work to be performed and provides:

> A notice or order requiring repairs to or work to be performed in respect of the land or any building or other improvements thereon which a local authority or public body is required or authorised by any Act, regulation, or bylaw to serve shall, notwithstanding anything in the Act, regulation, or bylaw, be served on the body corporate in the manner provided by this Act, and thereupon the notice or order shall be deemed to have been duly served and the body corporate shall be deemed to be the person bound to comply therewith.

10.7.2 The provision can be broken down into a number of requirements that make it easier to understand how the provision applies and what it requires:

- The provision applies to "a notice or order requiring repairs to or work to be performed in respect of the land or any building or other improvements thereon";
- The person who issues such a notice or order is "a local authority or public body required or authorised by any Act, regulation, or bylaw to serve [such a notice or order]";
- The provision requires that such a notice or order "be served on the body corporate in the manner provided by this Act";
- The effect of the provision is that if the notice is served on the body corporate as required above "the notice or order shall be deemed to have been duly served and the body corporate shall be deemed to be the person bound to comply therewith";
- The provision applies "notwithstanding anything in the Act, regulation, or bylaw [that requires or authorises the notice or order]".

10.7.3 It is my view that section 50(5) of the UTA 72 is also applicable to the issue of the notice to fix by the authority in respect of the building. A notice to fix is a notice requiring repairs to the building. The authority is authorised by the Act to serve such a notice. Section 50(5) of the UTA 72 applies "notwithstanding" the requirements of section 163 of the Act that provides for a notice to fix to be served on "the owner of a building" – that is, the responsible unit proprietors. Therefore, in serving the notice to fix on the body corporate, I conclude that the authority acted correctly, albeit in accordance with section 50(5) of the UTA 72.

[8] I note that the Unit Titles Act 1972 has been repealed from 20 June 2011 by 218 of the Unit Titles Act 2010.

10.7.4 I note that the effect of section 50(5) of the UTA 72 is consistent with section 15 of the UTA 72 that sets out the duties of a body corporate and provides in subsection (1)(g):

> (1) The body corporate shall—
>
> (g) Comply with any notice or order duly served on it by any competent local authority or public body requiring repairs to, or work to be performed in respect of, the land or any building or improvements thereon:

10.7.5 I note the applicant's submission that considers this interpretation of section 50(5) of the UTA 72 is inconsistent with clause 1(c) of Schedule 2 of the UTA 72 that provides:

> 1. A proprietor shall—
>
> (c) Forthwith and at all times carry out all work that may be ordered by any competent local authority or public body in respect of his unit to the satisfaction of that authority or body:

10.7.6 In my view there is nothing inconsistent about section 50(5) of the UTA 72 and clause 1(c) of Schedule 2 of the UTA 72. Section 50(5) of the UTA 72 provides for any notice under any Act relating to repairs or work to be performed in respect of the land, buildings or improvements to be served on the body corporate whereas clause 1(c) of Schedule 2 of the UTA 72 sets out a proprietor's general obligation to comply with orders requiring work on a proprietor's unit.

10.7.7 The applicant also submitted that, as the body corporate cannot be "the owner of a building" under section 163 of the Act, the notice to fix cannot be one that the authority is "required or authorised" to serve and section 50(5) of the UTA 72 cannot apply. The reference to the notice or order the authority is 'required or authorised' to serve only refers to the notice or order, not to the person on whom it must be served as section 50(5) is silent on that point. The reason for this is because it is the purpose of section 50(5) to provide that regardless of who the Act requires the notice or order to be served on, section 50(5) provides the notice or order must be served on the body corporate.

10.7.8 The applicant also submitted that section 50(5) of the UTA 72 is a mechanical provision concerning only the manner of serving documents on a body corporate. However, such an interpretation would make section 50(5) redundant as section 50(2) of the UTA 72 already concerns the manner of serving documents on a body corporate. Section 50(2) provides that regardless of any rules in any other enactment relating to the service of documents on a body corporate, the serving of documents on a body corporate will be validly carried out if service is effected in accordance with section 50(2). Section 50(2) of the UTA 72 provides:

> It shall be sufficient compliance with any enactment which relates to the manner of service of any document which has to be served by any person on the body corporate or the committee, if any person authorised to serve the document—
>
> (a) Sends it by registered letter addressed to the body corporate or the committee, as the case may be, at its address the service; or
>
> (b) Places it in the letterbox referred to in subsection (1) of this section

10.7.9 It is important to note that section 50(5) of the UTA 72 is not a substitute for the requirement in section 164 of the Act that a notice to fix be served on the owner of the building but is an additional requirement to section 164. Section 50(5) of the UTA72 doesn't go so far as to 'deem' one type of notice such as a notice to fix to be another type of notice that is served on the body corporate. For section 50(5) of the UTA72 to apply the notice or order must first be served on the body corporate in accordance with the requirements of section 50(2) of the UTA 72. The effect of section 50(5) of the UTA 72 is then to 'deem' the body corporate to be the person who must comply with the notice or order notwithstanding the original Act doesn't provide for the notice or order to be served on the body corporate. In this way the deeming part of section 50(5) of the UTA 72 makes the consequences of the notice or order under the Act the consequences for the body corporate

10.7.10 I acknowledge that in respect of a unit title building it is somewhat cumbersome and unsatisfactory to have two different provisions that potentially require at least two notices to fix to be issued to two different groups of persons. However, that is simply an outcome of having two different regulatory regimes applying to the issue of notices to fix in respect of a unit title building. I note that section 50(5) of the UTA 72 has not been carried over to the Unit Titles Act 2010 and therefore, any issues associated with the overlapping requirements of these two regimes will come to an end in the not too distant future.

10.8 Conclusion

10.8.1 I conclude that the authority acted correctly in serving the notice to fix on the body corporate, albeit in accordance with section 50(5) of the UTA 72 and not the Act.

10.8.2 I note that section 50(5) of the UTA 72 applies in addition to the requirements of section 164 of the Act that provides for a notice to fix to be issued to the "owner of a building" which for the purposes of a unit title building means the unit proprietors with responsibility for the non-compliant building work. The authority should consider whether to issue a further notice to fix in accordance with section 164 of the Act to those unit proprietors with responsibility for the non-compliant building work.

11. The decision

11.1 In accordance with section 188 of the Act, I hereby confirm the decision of the authority to issue the notice to fix to the body corporate for four separate building consents.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 30 June 2011.

John Gardiner
Manager Determinations

Appendix A: The legislation

A1 The relevant sections of the Building Act 2004 are:

7 Interpretation

In this Act, unless the context otherwise requires,—

owner, in relation to land and any buildings on the land,—

(a) means the person who—

(i) is entitled to the rack rent from the land; or

(ii) would be so entitled if the land were let to a tenant at a rack rent; and

(b) includes-

(i) the owner of the fee simple of the land; and

(ii) for the purposes of sections 32, 44, 92, 96, and 97, any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, and who is bound by the agreement because the agreement is still in force.

Subpart 8 – Notices to fix

163 Definitions for this subpart

In this subpart, unless the context otherwise requires,—

responsible authority means, as the context requires,—

(a) a building consent authority; or

(b) a territorial authority; or

(c) a regional authority

specified person means—

(a) the owner of a building; and

(b) if the 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) a building warrant of fitness or dam warrant of fitness is not correct; or

(c) the inspection, maintenance, or reporting procedures stated in a compliance schedule are not being, or have not been, properly complied with.

(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) to correct the warrant of fitness; or

(c) to properly comply with the inspection, maintenance, or reporting procedures stated in the compliance schedule.

A2 The relevant sections of the Unit Titles Act 1972[9] are:

15 Duties of body corporate

(1) The body corporate shall—

(a) …

(g) comply with any notice or order duly served on it by any competent local authority or public body requiring repairs to, or work to be performed in respect of, the land or any building or improvements thereon:

(h) …

50 Service of documents

(1) …

(5) A notice or order requiring repairs to or work to be performed in respect of the land or any building or other improvements thereon which a local authority or public body is required or authorised by any Act, regulation, or bylaw to serve shall, notwithstanding anything in the Act, regulation, or bylaw, be served on the body corporate in the manner provided by this Act, and thereupon the notice or order shall be deemed to have been duly served and the body corporate shall be deemed to be the person bound to comply therewith.

Schedule 2
Rules that may be amended by unanimous resolution
Duties of proprietor

1 A proprietor shall—

(a) …

(c) forthwith and at all times carry out all work that may be ordered by any competent local authority or public body in respect of his unit to the satisfaction of that authority or body:

(d) …

[9] Unit Titles Act 1972: repealed (with section 37 and schedules 2 and 3 continued in force until 1 October 2012), on 20 June 2011, by section 218 of the Unit Titles Act 2010 (2010 No 22)