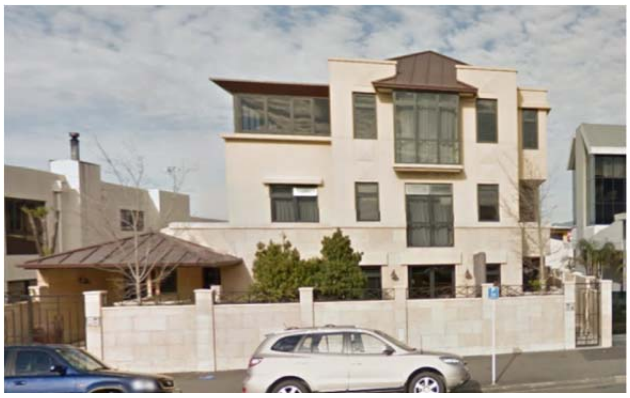
MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Determination 2015/074

Regarding the installation of a lift without building consent, and a request to remove the compliance schedule, for a multi-unit residential building at 424-426 Church Street, Palmerston North



Summary

This determination discusses whether two residential units and one car parking area can be considered three separate buildings for the purpose of section 100 and whether a compliance schedule is required for lifts serving the residential units that are located within 3-dimensional freehold titles. The determination also discusses the authority's requirement for a 'full fire report' to support a building consent application for an alteration to install a new lift, the building code obligations for the alterations and the building as a whole.

1. The matters to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004[1] made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment ("the Ministry"), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties

1.2.1 The parties to the determination are:

- the owner of the combined Units 2 and 3 / 426 Church Street, The Fourus Trust acting through one of the Trustees as its agent ("the applicant")
- the owners of Unit 1 / 424 Church Street, J and H Dean, ("the neighbours") as owners of an adjacent other property, also represented by the applicant as their agent
- the owner of part of the basement level car parking area, Higgins Group Holdings Ltd ("the commercial neighbour")

[1] The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.building.govt.nz or by contacting the Ministry on 0800 242 243.

- Palmerston North City Council ("the authority"), carrying out its duties as a territorial authority or building consent authority.

1.3 The process of the determination

1.3.1 In making my decision I have considered the submissions of the parties, the report of the independent expert engaged by the Ministry ("the expert"), and the other evidence in this matter.

1.3.2 In this determination, I have referred to the following legislation, the relevant parts of which are included in full in Appendix A:

- The *Building Act 2004* ("the Act"), with sections referred to as sections of the Act
- The *Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005* ("the Regulations") [2]
- The Building Code (First Schedule, *Building Regulations 1992*), with clauses referred to as clauses of the Building Code.

1.4 The dispute

1.4.1 This determination arises from the decisions of the authority to issue two notices to fix (refer paragraphs 3.4 and 3.6) and to refuse to grant building consent for additions and alterations to install a new lift. The applicant went ahead and installed the lift without having obtained building consent. The dispute centres on whether a current fire design report was required to support the building consent application, and whether the applicant's unit can be considered a building wholly used as a single household unit and accordingly whether a compliance schedule is required.

1.5 The matters to be determined

1.5.1 In respect of the matters to be determined, the applicant has requested I determine a large number of issues. I have set out the issues the applicant requested be determined as follows:

Building consent matters

- The decision of the authority to suspend the building consent application on the basis that the fire design analysis provided was not acceptable and a new fire design analysis was required.
- The authority's refusal to lift the suspension when the applicant disputed that the information requested exceeded what could be reasonably required.
- The authority's failure to act by not reviewing the suspension when requested.
- The decision of the authority to refuse to issue the building consent some 11 months after the application was made.

The notices to fix

- The issue of notices to fix in respect of unconsented building work that the applicant contends was carried out under urgency and that had formed the scope of the building consent application.

[2] Specified system means a system or feature that is contained in, or attached to, a building; and contributes to the proper functioning of the building (for example, an automatic sprinkler system); and is specified in Schedule 1 of the Regulations

- The issue of a notice to fix in respect of a warrant of fitness when the applicant had previously applied for an amendment to remove the compliance schedule.

The compliance schedule

- The authority's failure to process an application for an amendment to a compliance schedule.
- The authority's refusal to accept that the dwellings at 424 and 426 are 'sleeping single homes' under the Regulations[3] and so do not require compliance schedules for the lifts.

1.5.2 The Building Act is particular about the matters for which a party can apply for a determination, and many of the issues the applicant has raised are not matters that I can determine under the Building Act.

1.5.3 Based on the requests of the applicant and those matters that can be determined under the Act, I therefore consider the following are the matters for determination[4]:

Matter 1: The refusal to issue a building consent in respect of the provisions for fire safety

1.5.4 The authority's exercise of its powers of decision in refusing to issue the building consent based on the view that insufficient information had been provided in the building consent documentation. I have considered this matter in paragraph 7.2.

Matter 2: The amendment to the compliance schedule

1.5.5 The authority's failure or refusal to exercise its powers of decision in respect of an application for an amendment to the compliance schedule. I have considered this matter in paragraph 7.3.

Matter 3: The issue of the notices to fix

1.5.6 The authority's exercise of its powers of decision in issuing the two notices to fix. I have considered this matter in paragraph 7.4.

2. The building work

2.1 The original building

2.1.1 The building was constructed in 2008 over two Lots: 424 and 426 Church Street. The building has four levels: the basement level provides covered car parking to an adjacent commercial building, and garaging and direct lift access for the residential units above; the three remaining levels contain residential units.

2.1.2 The fire safety design report, dated 18 January 2007, filed with the building consent application described the above-ground levels as containing three residential units as separate firecells:

- Unit 1 – northwest levels 2 & 3 /424 Church Street, with a lift and stairs
- Unit 2 – south levels 2 & 3 / 426 Church Street, stairs only
- Unit 3 – northeast level 3 & entire level 4 / 424 Church Street, with a lift and stairs

2.1.3 The property is split by a 3-dimensional title ownership as below.

[3] Uses as set out in Schedule 2 of the Regulations
[4] In terms of sections 177(1)(b), 177(2)(a), 177(2)(f) and 177(2)(e) of the Act

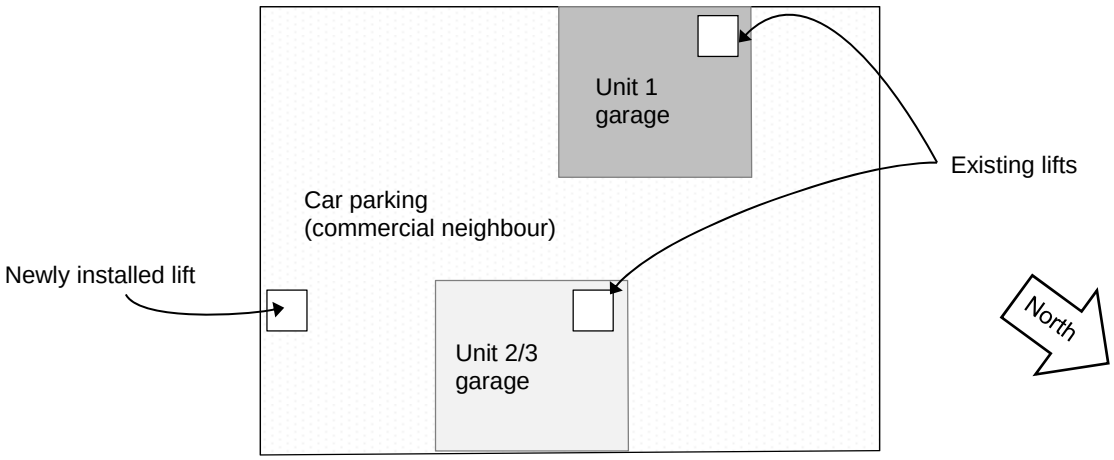


Figure 1 – Level 1 plan (approx): car parking/garaging (not to scale)

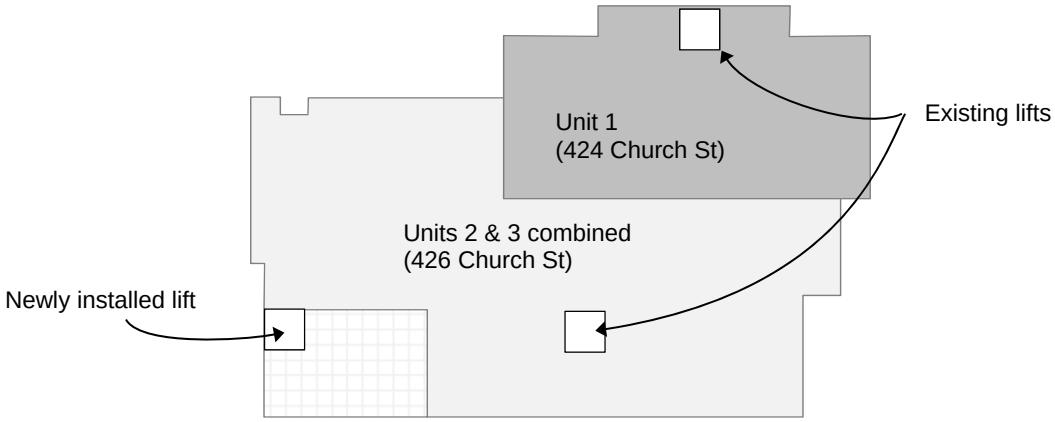


Figure 2 – Level 2 plan (approx): residential units (not to scale)

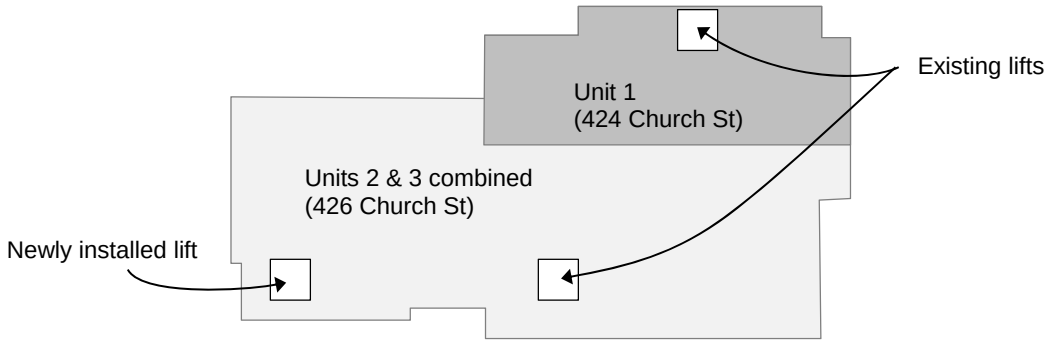


Figure 3 – Level 3 plan (approx): residential units (not to scale)

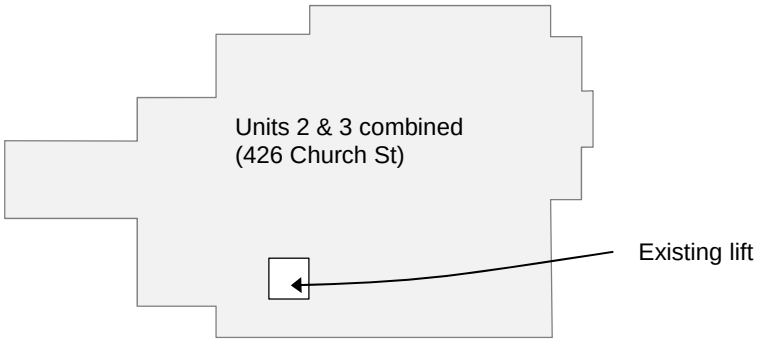


Figure 4 – Level 4 plan (approx): residential unit (not to scale)

2.1.4 All of the lifts are accessed via the basement car park area; two from the enclosed garages and the third being the newly installed lift that is the subject of this determination.

2.2 The additions and alterations

2.2.1 The subject building work is additions and alterations to Unit 2 associated with the installation of a lift to the southeast corner of the building to provide access to levels 2 & 3 from the basement car park area.

2.2.2 The alterations included:

- The addition of timber framed walls to the southeast of the basement level and roofing over – partially closing in the basement at the southeast corner.
- The installation of a lift shaft and lift serving Unit 2.

3. Background

3.1 The original building and fire report

3.1.1 The fire safety design report, dated 18 January 2007, filed with the building consent application described the purpose group and fire hazard category for the residential units as SR / FHC1, and for the car park, service rooms/lifts etc. ID / FHC3. The term "purpose group" was used in the Acceptable Solution for the Fire Safety clauses that was in force at the time the building consent was issued (refer Appendix A.3): the purpose groups were aligned with the uses set out in Schedule 2 of the Regulations. In my view IA was the appropriate purpose group for the basement carpark, not ID.

3.1.2 An amendment to the report, dated 31 March 2009 ("the 2009 report"), refers to the fire separation requirements between two units if Unit 2 was to be used as a separate occupancy from Unit 1. The analysis set out the alterations since the original design and noted that the purpose group remained SR.

3.1.3 In the 2009 report, the fire separation remained between Unit 2 and Unit 3 on level 2, but on level 3 internal alterations provided access between Units 2 and 3. The report noted that a fire door between the units on level 3 would be required if Unit 2 was to be used as a separate occupancy to Unit 3.

3.1.4 In a letter dated 2 August 2009 in response to questions raised by the authority, the author of the 2009 report confirmed there was no fire door between Units 2 and 3 and the units cannot be used as separate units; the applicant had advised that both areas were to be used as a single private residence.

3.1.5 A code compliance certificate was issued for the original building in October 2009.

3.2 The application for building consent

3.2.1 An application for building consent (No. 36715) for the installation of a lift was made to the authority in February 2014. The application described the building work as 'minor external addition and interior alteration to accommodate new [lift]'.

3.2.2 On 27 February 2014, the authority wrote to the applicant advising that it was seeking additional information and that the application was suspended. The information required was stated as follows:

> 1. The fire report you have provided is out of date, you are required to provide a fire report to address the new fire code clauses (C1 – C6 Protection from fire).

> 2. You are also required to provide the inspection performance standards – what standard they are to be maintained to and also the reporting frequency's (sic) for each of the specified systems that are in the building including the lift.
>
> 3. How may (sic) apartments is this lift servicing.

3.2.3 There was subsequent correspondence between the parties regarding the authority's processing of the application.

3.2.4 It appears that the applicant responded to the request for information in an email on 28 February 2014. The applicant noted that:

- the original fire design report had been provided with the application and 'the proposed alterations had no effect on the original fire design'; no fire design is required with the application
- the proposed lift is located wholly within a single occupancy – it does not pass through any adjacent property and therefore does not create any alterations to any fire separations; there is therefore no requirement to address Clauses C1 – C6
- the proposed lift will comply with D2/AS2 and will be subject to annual surveys by an Independent Qualified Person (IQP)
- the only other specified system within the property is an automatic fire alarm comprising a combination of heat and smoke detectors.

3.2.5 The authority responded on 28 February 2014, stating that in its view the building falls under the use SR (Sleeping residential) and not SH (Sleeping single home) – the building contains more than one sleeping residential occupancy and could not be classed as SH. The authority went on to note that on that basis the applicant was required to provide a supporting fire report addressing compliance with C/AS2 SM Risk group[5] or the Verification Method[6]. The authority noted that the fact there was a compliance schedule for the building also supported the view that the use was SR, and that there had been no notification of a change of use under the Regulations since construction was completed.

3.2.6 The authority's response also stated that it was not clear on the plans where the lift and the structure around the lift was located, and requested a scaled site, ground, and first floor plan showing:

- the floor layout and set out of the lift
- separation distances from other residential apartments in the building.

3.2.7 On 4 March 2014 the applicant wrote to the authority regarding prior correspondence between the parties. The applicant stated that (in summary):

- the original use of the dwelling was as a sleeping single home and it has been occupied by a household unit since that time; no change of use has been made or required
- the definition of SH is "a detached dwelling…"; detachment is not defined in the Regulations but can be fire rated boundary walls, and in this case the detachment is fire rated boundary walls
- the original requirement for a compliance schedule was based on an incorrect interpretation declaring the building to be SR.

[5] Risk groups are described in Table 1.1 of Acceptable Solutions C/AS1 to C/AS7
[6] C/VM2 Verification Method: Framework for Fire Safety Design: For New Zealand Building Code Clauses C1-C6 Protection from Fire

3.2.8 On the basis that the applicant considered a compliance schedule was not required, the applicant attached an application for amendment to the compliance schedule, effectively removing the compliance schedule for the building. (I take the attachment referred to as being the amendment described at paragraph 3.3.1 of this determination).

3.2.9 On 5 March 2014 the applicant wrote to the authority regarding the requirement for a new fire safety report. The applicant referred to the Ministry's Guide[7] and set out the applicant's assessment, noting that based on that assessment reasonable documentation would be 'a list of the building's fire safety features and a statement of what will change as a result of the additional work'. The applicant noted that

- the original fire design report had been provided with the application and there had been no changes that would invalidate that report
- the alteration 'makes no change to any of the existing fire safety features' except the addition of one new heat detector to the circuit [to] protect the proposed new lift shaft and [lift]'.

The applicant requested the authority recommence processing the consent application.

3.2.10 The authority responded to the letter of 5 March 2014, noting that the gap assessment is a guidance document for the authority to use to help it make a decision under section 112 of the Act with regards to means of escape from fire. The authority went on to note that under section 112 an assessment was required for the building, and reiterated its request for a fire report.

3.2.11 On 6 March 2014 the applicant emailed the authority regarding the requirement for a new fire report for what the applicant considered to be minor work that had no effect on the existing fire safety systems. The applicant requested the authority review the documentation in light of the Ministry's guidelines.

3.3 The amendment to the compliance schedule

3.3.1 The applicant has provided a copy of a completed application for amendment to compliance schedule, dated 14 March 2014. The application records the current use as 'sleeping single home', and listed the following specified systems be deleted on the basis that in terms of section 100(2) of the Act the building was used wholly as a single household unit:

2 Automatic and manual emergency warning systems

Electromagnetic or automatic doors or windows
3/1 Automatic doors

7 Automatic back-flow preventers

Lifts, escalators, or travelators or other systems for moving people or goods within building
8/1 Passenger-carrying lifts

Emergency power systems for, or signs relating to, a system or features specified in any clauses 1-13
14/2 Signs

Other fire safety systems or features
15/2 Final exits

15/4 Signs for communicating information intended to facilitate evacuation

[7] Requesting information about means of escape from fire for existing buildings: A guide for Building Consent Authorities and Territorial Authorities, *Ministry of Business, Innovation & Employment*, December 2013

15/3 Fire separations

3.3.2 The applicant did not provide a building warrant of fitness ("BWOF") for the year ending October 2014 , and on 3 February 2015 the authority wrote to the applicant noting that the building warrant of fitness had expired, the warrant and associated 12a certificates were required, and the authority would undertake an audit of the premises. (The letter refers to 424 Church Street, and I take it that the compliance schedule was in respect of the specified systems for the entire building consisting of 424 and 426 Church Street.)

3.3.3 The applicant subsequently emailed the authority on 9 February 2015, noting that an application for amendment had been made in March 2014 and, because no further communication had been received, it was understood the specified systems had been removed from the compliance schedule effectively 'cancelling' the compliance schedule.

3.3.4 By email on 9 February 2015 the authority advised that it did not have a copy of the application, and that

> To have the Compliance Schedule cancelled you would need to obtain a Building Consent to have the specified systems removed from the building until a Consent has been issued for the removal of these systems a current Building Warrant of Fitness is required.

(In response to the first draft of the determination the authority has stated it did not receive the application for amendment.)

3.3.5 The applicant responded to the authority by email on 9 February 2015, stating that there was no intention to obtain a warrant of fitness and the application for amendment should be processed.

3.4 The first notice to fix

3.4.1 On 11 February 2015 the authority wrote to the applicant enclosing a notice to fix dated 10 February 2015 ("the first notice to fix") for 426 Church Street. The notice set out the 'particulars of contravention or non-compliance' as

> [Email advice received from the applicant] implies specified systems may have been removed or altered in the building. In addition to this is a refusal to provide a building warrant of fitness for the building. Also claims have been made about the compliance schedule that cannot be backed up with legislation or a building consent for altering specified systems. Building work requiring a building consent may also have been carried out on the specified systems. [The authority is] concerned that a potential for a dangerous building may existing. This is not in accordance with the Building Act 2004 sections, 17, 40, 100, 101, 103, 105, 106, 108, 110 and 116B.

3.4.2 The notice set out the remedy as follows:

> Provide a fire design report from a fire engineer outlining the current fire safety systems in place and detailing what is required to ensure compliance with the Building Act 2004 and building code. And;
>
> Apply for and obtain a certificate of acceptance for any work done on the specified systems and apply for and obtain a building consent for remedial work that is required. And;
>
> Provide full descriptions including make and model, type, and location of each specified system and each primary component for the system. E.g. location of fire alarm etc And;
>
> Provide the full inspection, maintenance and reporting requirements specific to each specified system in this building. And;
>
> Provide all paperwork required by legislation for a period of two years including all form 12a's for each specified system. And;

> Provide a current building warrant of fitness.

3.4.3 The authority has noted in its response to the first draft determination that on 11 February 2015 it confirmed with the IQP that the specified systems had not been removed from the building.

3.5 The refusal to grant building consent

3.5.1 In a letter dated 16 February 2015 the authority formally refused to grant the building consent, noting that the applicant had advised the building work had already been carried out.

3.6 The second notice to fix

3.6.1 The authority issued a notice to fix dated 16 February 2015 ("the second notice to fix" to the applicant. The notice set out the 'particulars of contravention or non-compliance' as

> [A lift] was installed into a building without building consent. The building is also not used wholly as a single household unit. The building has a potential to be unsafe due to this installation. This is not in accordance with sections 17, 40, 100 and 116B of the Building Act 2004. Other sections may be included in this work done.

3.6.2 The notice set out the remedy as follows:

> Apply for and obtain a certificate of acceptance for the work already done and apply for a building consent for the remedial work required. And;
>
> Apply for an amendment to the compliance schedule and include full information as required by the Building Act 2004. And;
>
> Provide a full fire report from a fire engineer and detail the current situation in regards to fire safety for the building.

3.7 Continuing correspondence between the parties

3.7.1 The authority and the applicant held a meeting on 24 February 2015, to discuss the compliance schedule and the building work that had been carried out.

3.7.2 On 2 March 2015 and 3 March 2015 the authority sent reminders to the applicant regarding the first and second notices to fix.

3.7.3 On 6 March 2015 the applicant wrote to the authority to summarise the meeting held on 24 February. In regards to the notices to fix, the applicant noted that

- no items on the compliance schedule have been removed or disconnected since the building was constructed
- in the absence of any correspondence from the authority the applicant understood that the amendment to the compliance schedule had been processed, and accordingly the applicant did not submit any warrant of fitness documentation
- the application for amendment was provided to the authority on 6 March 2014; with the last correspondence from the authority being received on 21 March 2014
- the applicant is a 'fully qualified owner-builder'
- the installation of the lift was carried out with urgency as two elderly and infirm relatives were moving in

- the building work was done without consent first being obtained because there was an unresolved issue between the applicant and the authority regarding the information being sought by the authority.

3.7.4 In an email response also of 6 March 2015, the authority set out its own summary of the meeting held on 24 February, noting that

- the building consent application was refused because the work was already done
- a certificate of acceptance will be required
- the applicant's opinion in regards to the classification SH as opposed to SR is not supported up by the definitions in legislation
- there is an option to apply to the Ministry for a determination on the issue in dispute
- the notices to fix remained in force

3.8 The Ministry received an application for a determination on 19 March 2015.

4. The submissions

4.1 The applicant

4.1.1 In a submission to the application for determination, the applicant set out those matters that the applicant considered to be the matters to be determined (refer paragraph 1.5.1) and provided background information to the dispute.

4.1.2 The applicant has provided a large volume of material to support the application for determination. I have provided a list of the documents provided in Appendix B.

4.1.3 The applicant submitted, in summary, that:

- The applicant's property is a single lot of land, occupied by a dwelling which is, and always has been, a single household unit and therefore a 'Sleeping Single Home'[8]; no part of the freehold land is shared with any of the adjacent freehold titles
- A 'sleeping single home' requires a compliance schedule only if it has a cable car attached to it or servicing it; this home does not have such a cable car.
- The compliance schedule was issued on the basis of the definition of the dwelling as 'Sleeping residential', and the authority has issued a notice to fix on the grounds that a warrant of fitness has not been provided.
- In terms of the definition of a sleeping single home, the term "detached" is not defined but can be fire-rated boundaries and/or distance.
- The lift is located wholly within freehold property and does not require fire rating nor does it have an impact on existing fire safety performance of the dwelling it services or the adjacent dwelling.
- Based on the Ministry's Guide (refer paragraph 3.2.9) and the applicant's assessment, the request for information exceeded what was reasonable.

[8] As set out in Schedule 2 of the *Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005*

4.2 The neighbours

4.2.1 The neighbours provided a submission on 8 April 2015, noting that

- the three unit numbers recorded in the fire report represents the maximum degree of subdivision of the building that was proposed at the time the original building consent was applied for
- the building did not change during construction but the subdivision was finalised and titles were obtained for only two freehold properties; units 2 and 3 were combined into a single freehold property which became 426 Church Street
- 'for simplicity's sake' the application to amend the compliance schedule was made in respect to 426 Church Street only but it clearly relates to and affects both properties
- identical notices to fix were issued in respect to the compliance schedules, to both owners.

4.3 The authority

4.3.1 The authority acknowledged the application for determination but made no submission in response.

4.4 The first draft determination and subsequent submissions

4.4.1 A draft determination was issued to the parties for comment on 30 July 2015.

4.4.2 The authority responded by email on 1 September 2015, noting it did not accept the draft and provided a submission on the issue of the notices to fix. The authority also attached an email of 6 March 2015 following a meeting held with the applicant on 24 February 2015.

4.4.3 In the authority's response to the first draft determination, it noted (in summary):

- The authority had not received the application for amendment (refer paragraphs 3.3.4, 7.4.3 and 7.4.4), but the amendment would have been formally refused if it had been received.
- The authority interpreted the email from the applicant on 9 February 2015 (refer paragraphs 3.3.5) as meaning that the specified systems had been removed from the building.
- At the time of the meeting between the parties (refer paragraph 3.7), no audit of the building had been carried out.
- The authority considers it had reasonable grounds for the issue of the first notice to fix, and the use of the word "may" in relation to a breach was because it had not received confirmation of the removal or alteration of the specified systems.
- The authority is of the view the concerns regarding the potential for the building to be dangerous could be 'easily deduced' from the particulars of contravention or non-compliance set out in the first notice to fix.
- The first draft confuses the notices to fix; the first notice did not relate to the lift.

4.4.4 The applicant sought an extension on the time in which to respond to the draft determination which was received on 1 September 2015. The applicant did not

accept the first draft and requested a hearing be held on the following (in summary):

- The applicant requested the determination 'establish, define and limit' the documentation the authority can require in regards to the application for a certificate of acceptance.
- The dwellings as designed, consented, and used in respect of section 100, and the need for a compliance schedule.
- The classification of the dwelling as "multi-unit", which the applicant submits arises from an error in regards to 426 Church St being two separate units.

4.4.5 In a letter dated 15 September 2015, the applicant further requested 'absolute finalisation of all matters under consideration' and noted concerns regarding protraction of the process after the determination being made.

4.4.6 The parties agreed to attend a hearing, and paragraph 6 sets out a summary of that hearing.

5. The expert's report

5.1 As mentioned in paragraph 1.3.1, I engaged the services of an expert who is a consultant with expertise in building controls and the regulatory environment to assist me. The expert reviewed the documentation available, and carried out a site visit on 11 May 2015 and assessed the building work that is the subject of this determination. The report itself was sent to the parties by email on 16 July 2015, with the Appendices following by post.

5.2 The expert noted in his report that he was allowed only limited access to the site and was unable to carry out a full assessment of the building and alterations that are the subject of this determination. Regardless of the limited access the expert observed

> …significant discrepancies with all of the sources of information provided and made available. This was corroborated with the observations made on site which confirmed that the original building consent records and supporting documentation to the determination application show multiple inaccuracies and contradictions.

5.3 The expert reviewed the application for building consent for the additions and alterations, describing the application as 'substandard and provided very little accurate detail for the proposed work'; noting in particular:

- The application contained photocopies of the original 2007 fire design report and original plans and specifications; it did not include the amended 2009 report or updated floor plans.
- Neither the 2007 or 2009 report are specific assessments of the requirements under section 112 necessary for the proposed scope of work.
- The applicant's use of the Ministry's Guide was 'incorrect', and it may be appropriate that a full assessment of the existing building's means of escape from fire is required.
- The building work reduces the open ventilation of the carpark, which was considered as specific engineering design as part of the original fire design.
- There is no assessment in regards to the new lift shaft creating a passage way for fire through the building. The original fire report requires appropriate fire separation where there are penetrations through the Level 1 concrete slab.

5.4 The expert concluded that

> The scope of work proposed was significant in relation to the ongoing compliance for the existing building and [the authority was] correct to suspend the building consent application on the basis that the [section 112] assessment documentation was not acceptable.

5.5 The expert also considered that as there was conflicting and contradictory information in the records, and discrepancies between the approved plans and the as-built construction (prior to the alterations), the compliance of the existing building could not be relied on in making a decision regarding compliance after the alterations.

5.6 The expert commented on the compliance schedule requirement, noting that in his view the compliance of the building in its entirety is reliant on the ongoing compliance of all the specified systems on the compliance schedule. The expert advised that the applicant had confirmed that all BWOF obligations were 'up to date', and the expert recommended that these be provided to the authority.

5.7 In regards to the current use the expert observed that Units 2 and 3 appeared to be used as one dwelling, but that the building consent documentation, specification, code compliance certificate and compliance schedule 'have continued to treat all units separately'. The expert noted that all three units appeared to be fully functioning household units with separate facilities and entrances.

5.8 The expert also noted that the applicant's need to provide access for family members did not meet the Building Act criteria (section 41(1)(c)) for work permitted under urgency.

6. The hearing and second draft determination

6.1 The hearing and the submission made

6.1.1 I arranged a hearing to be held in Palmerston North on 30 September 2015. I was accompanied by a Referee, together with two officers of the Ministry. The trustees for the applicant were present, along with one of the neighbours. The authority was represented by three of its officers. Until the hearing was held I was not aware that the commercial neighbour was a part owner of the car parking level of the building.

6.1.2 The attendees visited the subject property as part of the hearing process. All the attendees spoke at the hearing and the information presented enabled me to amplify and clarify various matters of fact and was of assistance to me in preparing this determination, and I have summarised the views put forward at the hearing below.

6.1.3 There was discussion between the parties about the following topics: the subdivision of the property[9] and ownership, the three-dimensional title as a basis for establishing that there are three separate buildings within the structure, the fire separations between the three properties that make up the building, inter-dependence or independence between the three properties in terms of code-compliance.

6.1.4 The applicant:

Ownership, occupancy, and classified use

- The fire separation between what is described in the fire report as Units 2 and 3 in the planning stage was to allow for the potential at some possible future date for two separate units within 426 Church St. However the applicant's intention

[9] This determination does not address the authority's exercise of its powers of decision in regards to section 116A

was that the unit would be occupied by the applicant as one single dwelling (the combined units being 426 Church St). The applicant holds the view that this issue has caused confusion in regards to 426 Church St not being considered a single household unit for the purpose of section 100.

- At the time the original building was constructed the applicant disputed the requirement for a compliance schedule but accepted the authority's approach due to time pressures.
- The three titles are 3-dimensional and accordingly there are three separate "buildings" within the one structure; the applicant's residence, the neighbour's residence, and the commercial neighbour's car parking area.
- The classification of the residential units as SH as opposed to SR should be considered in the same light as a series of connected townhouses would be.

Fire safety and code-compliance

- The applicant had not removed any of the specified systems listed on the compliance schedule and intends to retain the systems to ensure the building continues to be safe.
- There is no fire separation between the car park area and the newly installed lift. The lift shafts of the two existing lifts consist of concrete block walls, however it is not confirmed whether the lift doors are fire rated to 60/60/60. The garages in which the existing lifts are located are not fire rated to 60/60/60.
- There is a smoke detector installed at the top of the lift shaft as an added fire safety measure.
- Some finishing work is required, for example the top of the lift shaft, but work was halted when the first notice to fix was issued.
- In regards to the lift shaft penetrating the slab between the car parking level and the residential unit above, this was constructed on the basis of it being equivalent to the existing lifts inside the applicant's garage in the basement level.
- An engineer's certificate has been provided in regards to the structure of the concrete slab penetrated by the new lift shaft.

6.1.5 The applicant read from a letter provided by a fire consultant which stated:

> … provided ownership of this title [the applicant's unit] is not shared with the adjacent title and provided you are not using the building for more than one group of people living together as a single family unit, then the building must be considered wholly as a single household unit detached from other property by fire rated boundary walls and therefore the building will not require a compliance schedule. As a single household unit mid floors do not require fire rating provided they do not form horizontal separation from other property, therefore the lift would not require fire rating if it only penetrated floors within the household unit

6.1.6 The neighbours:

- There is no cross-over of services between the residences and the residences are also fire separated.
- The ventilation of the car park is not reduced by the minor enclosure associated with the lift.

6.1.7 The authority

- The refusal to grant building consent occurred after the building work to install the lift was carried out.
- The correct classification for the residential units is SR; the circumstances are unlike those of connected townhouses, which would fall within SH.
- The authority interpreted the applicant's emails of 9 February 2015 as indicating that the specified systems had been removed from the building.

6.2 The second draft determination and submissions received

6.2.1 The draft determination was amended to take into account the parties submissions received at the hearing. A second draft determination was issued to the parties for comment on 16 October 2015.

6.2.2 The authority accepted the second draft without further comment in a response received on 2 November 2015.

6.2.3 The applicant provided a submission in response to the second draft on 2 November 2015, accepting that a compliance schedule is and will continue to be required. On 20 November 2015 the applicant confirmed the submission was also made on behalf of the neighbours. I summarise the amendments sought by the applicant below:

- The determination decision should address the authority's failure or refusal to exercise its powers of decision in respect of the applicant's request to review the authority's requirement for a full fire report.
- The determination should be amended to provide 'a complete record of the very detailed advice provided [at the hearing]' regarding the issue of notices to fix and the exercise of the authority's powers under the Act throughout the certificate of acceptance process.
- The applicant also had concerns regarding how the authority carried out its duties during the events that lead to the dispute coming to a determination, particularly with regard to its interpretation of the requirements of the Act, and the general approach taken by the authority's officers.

6.2.4 In a response received on 18 November 2015 the commercial neighbour also accepted the second draft without comment.

6.2.5 In response to the applicant and neighbour's submission, I make the following comment (in the order of the bullet points at paragraph 6.2.3)

- The subject of the determination is the exercise of the authority's power of decision in refusing to grant the building consent. While the authority's views on the need for the applicant to provide a full fire report may have formed a ground for the authority's decision, the determination is not a 'judicial review' type assessment of how the authority reached its decision. I have included the issue to provide context to the dispute, and provided comment to assist the parties with its resolution after the determination is issued.
- The determination is in respect of an earlier decision of the authority and does not address possible future actions of the parties, though some commentary is included in paragraph 8 to assist the parties. The determination provides only a summary of the discussions that were had during the hearing. The parties were offered an audio recording of the hearing if they required it.

- The issues raised by the applicant regarding the way the authority conducted itself and carried out its functions is not a matter for determination and is more appropriately addressed by way of a complaint under section 200 of the Act.

7. Discussion

7.1 Is there one "building" or three "buildings" within the one structure?

7.1.1 The applicant's approach is based on the view that there are three separate buildings within the one structure. The building is divided by three 3-dimensional titles, establishing the two residences, and the car parking area owned by the commercial neighbour. The applicant's view is that the two residences fall within the classified use SH and each is 'a building wholly used as a single household unit' for the purposes of section 100.

7.1.2 Division of the building into three separate titles has the effect of establishing legal boundaries in terms of other property. Other property is defined in section 7:

> (a) means any land or buildings, or part of any land or buildings, that are—
>
> (i) not held under the same allotment; or
>
> (ii) not held under the same ownership; and
>
> (b) includes a road

I accept that the three separate titles mean that there are three properties within the one structure; however it does not necessarily follow that the three titles equate to three separate "buildings" for the purposes of section 100 the Act. I have addressed this issue in regards to the application of section 100 in paragraph 7.3.

7.1.3 The Act and Building Code include a number of obligations in respect of protection of other property. The obligations under the Act are in relation to building on land subject to a natural hazard, code compliance requirements in respect of a change of use or subdivision, and dangerous or earthquake-prone buildings.

7.1.4 This determination does not address the authority's exercise of its powers of decision in respect of the subdivision, however section 116A(a)(iii) provides the authority must be satisfied on reasonable grounds that the building will comply with the provisions of the Building Code that relate to the protection of other property. I discuss the relevant provisions of the Building Code in relation to the lift as built in paragraph 8.1.4.

7.2 Matter 1: The refusal to issue a building consent in respect of the provisions for fire safety

7.2.1 The authority refused to issue the building consent based on the view that insufficient information had been provided in the building consent documentation and the authority required a 'new fire design safety report' be provided.

7.2.2 The expert has concurred with the authority's view that there was insufficient information, and has set out a number of deficiencies in the documentation (refer paragraph 5.3).

7.2.3 The drawings provided in support of the consent application are rudimentary and inadequate for the purposes of establishing whether the building work would meet the requirements of the Building Code to the extent required under the Act. The proposed building work was required to comply fully with the relevant clauses of the Building Code, and the building as a whole after the alteration was required to comply to the extent set out in section 112 of the Act. An assessment under section

112 was required to address: a) whether the building would comply, as nearly as is reasonably practicable, with the provisions of the Building Code that relate to means of escape from fire; and b) whether the building would continue to comply with the other provisions of the Building Code or comply at least to the same extent as it did prior to the alterations.

7.2.4 In regards to the drawings provided and in respect of fire safety provisions I agree with the expert that there were a number of deficiencies, and in addition to those identified by the expert I note the following:

- A part of the basement car park area that was previously open has been enclosed; no revision of the calculations for smoke extraction was provided. While it is likely that there was sufficient redundancy in the original design to allow for the partial closing in that has occurred, this should be confirmed by the applicant.
- There is no indication of how fire separation was to be achieved in respect of the lift; either by way of separation of the lift shaft to the relevant boundary, or from the basement level to Unit 2.
- It was unclear from the documentation provided whether any of the escape routes have been altered.

7.2.5 In conclusion I consider there was insufficient information provided in the building consent application to establish that the building work, if completed in accordance with the plans and specifications, would comply with the Building Code to the extent required by the Act.

7.3 Matter 2: The amendment to the compliance schedule

7.3.1 The applicant applied to the authority for an amendment to the compliance schedule on the basis that the applicant's units were "used wholly as a single household unit" in terms of section 100(2) of the Act (refer Appendix A.1), and that therefore a compliance schedule was not required for the specified systems.

7.3.2 The requirements for a compliance schedule are set out in section 100 of the Act as follows:

> (1) A building not used wholly as a single household unit—
>
> (a) requires a compliance schedule if—
>
> (i) it has a specified system; or
>
> (ii) it has a cable car attached to it or servicing it; and
>
> (b) requires the schedule for all specified systems it has and any cable car it has attached to it or servicing it.

7.3.3 The applicant holds the view that the combined Units 2 and 3, being 426 Church St and which is on a separate freehold title from Unit 1, can be considered a "building used wholly as a single household unit" for the purpose of section 100. Taking the applicant's approach the part of the building that constitutes the applicant's household unit would have to be considered a "building" in its own right for the purpose of section 100.

7.3.4 The term "household unit" is defined in section 7 as:

> (a) means a building or group of buildings, or part of a building or group of buildings, that is—
>
> (i) used, or intended to be used, only or mainly for residential purposes; and

(ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but

(b) does not include a hostel, boarding house, or other specialised accommodation

7.3.5 The applicant's unit forms "part of a building" that is used only for residential purposes and therefore falls within the definition of household unit. This is true also of the neighbour's unit.

7.3.6 So the question is whether the part of the building consisting of the applicant's household unit can be considered a "building" in itself for the purposes of section 100. In Determination 2011/068[10] I concluded that whether a reference to a building includes a reference to a part of a building "must be ascertained from its text and in the light of its purpose" (section 5 of the Interpretation Act 1999), that is it could only be determined by the specific context of the provision in which the reference to the term "building" appears. I am of the view that this applies in respect of the use of the term "building" in the phrase "building not used wholly as a single household unit" in section 100.

7.3.7 The phrase "wholly as a single household unit" can only be interpreted as a applying to an entire building. If the intention of section 100 was that it could not be applied to part of a building containing a household unit, then the term "wholly as a single household unit" would be redundant. This view is also supported by the exclusion in Specified System 2 (SS2) – 'Automatic or manual emergency warning systems for fire or other dangers': such a system is not required where it is located "entirely within a household unit and serves only that unit". If a household unit could be considered a "building" separate from other household units under section 100, then this exclusion would not be required.

7.3.8 In this case the "building", which I take to be the entire structure, contains two household units and a basement car parking level used by the occupants of both households as well as the adjacent commercial neighbour. I am of the view that for the purposes of section 100 the parts of the building that consist of household units cannot be said to be used "wholly as a single household unit".

7.3.9 In conclusion, I am of the view that a compliance schedule is required for the newly installed lift in addition to the existing lifts, and that the application for an amendment to remove the existing specified systems from the compliance schedule is to be refused.

7.3.10 In defining the combined Units 2 and 3 as a single household unit, the applicant has also referred to the units as falling within the use "SH"; I have discussed the various use classifications in paragraph 7.5.

7.4 Matter 3: The issue of the notices to fix

7.4.1 In the following paragraphs I consider the authority's exercise of its powers of decision in issuing the two notices to fix, both in terms of the notified breaches as well as the content and wording.

The first notice to fix 10 February 2015

7.4.2 The authority included in the particulars of contravention or non-compliance where it was implied that 'specified systems may have been removed or altered in the building' and 'Building work requiring a building consent may also have been carried out on the specified systems' (my emphasis).

[10] 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' *Department of Building and Housing* , dated 30 June 2011

7.4.3 In this case the authority misinterpreted communication from the applicant which stated 'all specified systems have been removed from the compliance schedule' (my emphasis) as meaning that the specified systems had been removed from the building.

7.4.4 An inspection by the authority prior to issuing the notice to fix would have been appropriate to establish what building work, if any, had been carried out and whether there was a breach for which a notice to fix should be issued. In this case an inspection would have confirmed that the specified systems were in fact still in place.

7.4.5 The first notice to fix referred to the applicant's refusal to provide a building warrant of fitness for the building. While the authority maintained its view that a compliance schedule was required, the reasoning provided did not address the grounds on which the application for amendment was made. I note that in response to the draft determination the authority has stated that the amendment would have been formally refused if the application had been received.

7.4.6 The notice to fix also stated that the authority was 'concerned that a potential for a dangerous building may exist'. I am of the view the authority did not clearly indicate the reasons for its concern in respect of the definition of a dangerous building under section 121. I do not consider that a notice to fix is appropriate to deal with specific concerns relating whether the building is dangerous. It is for an authority to investigate and make a decision as to whether the building is dangerous in terms of section 121, then the authority is able to give written notice under section 124 to 'reduce or remove the danger' if it considers the building is dangerous.

7.4.7 The authority has since stated it confirmed with the IQP that the specified systems had not been removed from the building and accordingly the authority does not consider the building dangerous under section 121 (refer paragraph 4.4.3).

7.4.8 The first notice to fix was issued on the authority's belief that an alteration to the building had been carried out in that specified systems had been either altered or removed from the building. In regards to the remedies listed (refer paragraph 3.4.2) I note that:

- In respect of the fire design report – the requirement is for sufficient and adequate information to allow the authority to form a view on reasonable grounds that compliance with the Building Code to the extent required by the Act (section 112) has been achieved.
- The authority can require the owner "apply for" a certificate of acceptance, but cannot require the owner "obtain" a certificate of acceptance. Once an application for a certificate of acceptance is received it will be for the authority to make a decision whether or not to issue the certificate. (I address the certificate of acceptance further in paragraph 8.2).

The second notice to fix 16 February 2015

7.4.9 The authority has included in the particulars of contravention or non-compliance that the lift was installed without building consent having been obtained. I consider the authority was correct to issue the notice to fix in respect of this item.

7.4.10 In regards to the remedies listed in the second notice to fix, I comment as follows:

Remedy	My comment
Apply for and obtain a certificate of acceptance for the work already done	Applies in respect of building work carried out without consent having been obtained when consent was required, including the newly installed lift and associated alterations.

Apply for a building consent for the remedial work that is required.	It is unclear to what this applies to; no remedial work was identified in the notice. Remedial work may be required if the building work carried out does not comply with the Building Code to the extent required by the Act.
Apply for an amendment to the compliance schedule and include full information as required by the Building Act.	The newly installed lift is a specified system for which a compliance schedule is required. The application for amendment in respect of existing specified systems to be addressed in a formal refusal.
Provide a full fire report from a fire engineer and detail the current situation in regards to fire safety for the building.	The owner is required to provide sufficient information to establish compliance with the Building Code to the extent required by the Act. (See also paragraph 8.1).

7.5 The purpose groups, risk groups, classified uses, and use under the Regulations

7.5.1 While the matters to be determined do not turn on the issue of clarifying the purpose groups (or risk groups), this issue has been raised by the applicant in the quest for the applicant's Units to be identified as a single household for the purposes of section 100, and so I address the various uses in the following paragraphs.

Use under the Regulations

7.5.2 The uses set out in Schedule 2 of the Regulations are for the purposes of sections 114 and 115 of the Act which relate to upgrade work that may be required when the uses of buildings are changed. Where an owner intends to change the use of a building, as defined in Schedule 2 of the Regulations, the owner must inform the authority (section 114) and ensure that the building in its new use will comply with the requirements of the Building Code to the extent set out in section 115.

7.5.3 In this case it is my understanding that there has been no change of use since construction. Accordingly the uses remain SR for the residential units and IA for the basement level car parking.

Risk Groups

7.5.4 The Acceptable Solutions for Clause C are based around the concept of different buildings, or parts of buildings, belonging to different Risk Groups; the Risk Groups are allocated depending on the activities that will occur within the building or part of the building and are for the purposes of the Acceptable Solutions relevant to Clause C. There are seven Risk Groups, each with a corresponding Acceptable Solution (C/AS1 to C/AS7), and the Risk Groups are set out in Table 1.1 of C/AS1 to C/AS7. I have included the relevant parts of Table 1.1 in Appendix A.5.

7.5.5 The term "purpose groups" was used in the previous edition of the Acceptable Solution, and those purpose groups were aligned with the uses set out in Schedule 2 of the Regulations. The 2007 fire design analysis was based on the purpose groups being SR for the household units and ID[11] for the carpark, and this was subsequently confirmed in the 2009 report.

7.5.6 In the Acceptable Solutions C/AS1 to C/AS7 effective from 10 April 2012 there is no longer a direct correlation between the Risk Groups and the uses set out the Regulations.

7.5.7 For the purposes of the current Acceptable Solution, the residential units fall within Risk Group SM as a building consisting of more than one household unit. While the

[11] I consider the correct purpose group was IA, refer paragraph 3.1.1.

Acceptable Solutions C/AS1 and C/AS2 allow for multi-unit dwellings to be considered under Risk Group SH under certain circumstances (see 1.1.1 of C/AS1 and 2.2.10 of C/AS2), paragraph 1.1.2 of C/AS1 states that 'Buildings or parts of buildings in risk groups other than SH are outside the scope of this Acceptable Solution'. Given that the basement car parking level is not wholly used by the residential units, it falls within the Risk Group VP as vehicle parking within a building, and accordingly SM is the correct Risk Group for the residential units.

Classified uses

7.5.8 Classified uses are for the purposes of the Building Code and are defined in Clause A1. The requirements set out in Clause C of the Building Code refer to "buildings", with the limits on application of some C clauses referencing particular classified uses; for example, Clause C3.4 does not apply to '*detached dwellings*, within *household units*, in *multi-unit dwellings*, or *outbuildings* and *ancillary buildings'* (though I acknowledge that part of Clause C3.4 refers to wall/ceiling materials including within household units).

7.5.9 In this case the classified uses under Clause A1 are "multi-unit dwelling" for the residential areas and "commercial" for the basement car parking areas.

8. What happens next?

8.1 The Building Code obligations

8.1.1 In regards to the additions and alterations, the obligations under the Building Code come into effect when building work is carried out and in relation to "other property" include, for example, Clause C3 – Fire affecting areas beyond the fire source.

8.1.2 The building work associated with the newly installed lift includes a penetration through the structural and fire-rated concrete slab, the installation of the domestic lift, new external walls and roof, and associated junctions with the existing building.

8.1.3 The relevant clauses of the Building Code for the building work include:

- B1 and B2 in regards to the penetration through the structural concrete slab and new building elements
- C3 in regards to fire spread to other property and vertical spread of fire
- D1.3.1 & D1.3.3 in regards to the lift as an access route
- D2 for the installation of the lift
- E2 for the additions and alterations to the external envelope
- G8 in regards to adequate artificial lighting for the access route

8.1.4 In regards to the C Clauses, the obligations are such that I consider a "full fire report" as requested by the authority is not necessary. However, sufficient information is required to establish compliance in respect of the fire separation of the applicant's unit and other property; in this case the relevant other property being the commercial neighbour's car parking area and the relevant boundaries as have been established by the titles.

8.1.5 If building work is needed to bring the additions and alterations into compliance with the Building Code, an application for building consent may be required.

8.1.6 Although not a matter considered in this determination, the question of whether the existing lifts have fire rated doors was raised at the hearing – the applicant has stated the new lift was constructed on the basis of it being equivalent to the existing lifts in

regards fire separation. Given that the code compliance certificate has been issued for the original construction, the authority can take no action in this regard unless any non-compliance meant the building was dangerous under section 121. However, as this is a life-safety issue I strongly suggest that the applicant and the neighbours satisfy themselves as to the adequacy of fire separation in regards the existing lift shafts.

8.2 A certificate of acceptance

8.2.1 It is not disputed that there was building work carried out without consent when consent was required under the Act. The applicant has stated that the building work was carried out in reliance on section 41(1)(c); accordingly section 42 applies and the applicant must apply for a certificate of acceptance under section 96.

8.2.2 With respect to an application for a certificate of acceptance, the applicant is required to provide plans and specifications, and any other information that the authority reasonably requires. It is the applicant who must provide sufficient information to the authority to establish the level of compliance achieved. The authority may inspect the building work and this information, along with that supplied by the owner, would assist the authority in forming a view as to compliance with the Building Code.

8.2.3 In response to the applicant's request that the determination 'establish, define and limit' the documentation the authority can require in regards to the application for a certificate of acceptance; this request is outside the ambit of the determination. However, the Ministry has issued guidance that describes the minimum documentation that should be supplied to demonstrate compliance with relevant clauses of the Building Code[12], and what would be appropriate in terms of a gap assessment in respect of the fire separations was canvassed during the hearing.

8.2.4 With appropriate assessment of the submitted information together with a site inspection, the authority should be able to come to a decision on compliance of the building work 'insofar as it could ascertain', while limiting that conclusion to work it was able to reasonably assess.

8.2.5 Form 9 requires an authority to list the building work that complies with the Building Code and thereby provides the basis for the authority to list only the building work that can be ascertained complies with the Building Code. The description of the work covered by Form 9 could be:

- a description of the physical building work, or
- a description of the Building Code clauses the building work complies with, or
- a combination of both.

8.2.6 A certificate of acceptance can exclude those clauses or building elements which the authority cannot ascertain complies with the Building Code. The fact that compliance may not be able to be determined in respect of certain Building Code clauses does not of itself mean that the work concerned is non-compliant. However, any exclusion should only relate to the building work for which compliance cannot be determined and should not include building work that is not compliant; a certificate of acceptance cannot be issued if the building work does not comply with the Building Code.

[12] Guide to applying for a building consent (residential buildings) *Department of Building and Housing*, 2nd ed. October 2010

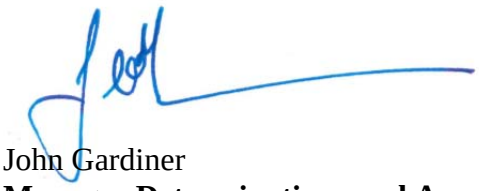
8.2.7 Building work undertaken to an existing building without consent may also affect the extent to which the existing building complies with the provisions of the Building Code (in this case Clause G4 in respect of the basement level). Where the building work is an alteration to an existing building, the territorial authority may wish to consider whether the building's existing performance has been adversely affected, and may wish to note this on the certificate of acceptance[13].

9. The decision

9.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:

- insufficient information had been provided in the building consent application, and the building work was carried out before the consent was granted, accordingly I confirm the authority's refusal to issue the building consent
- the authority failed or refused to exercise its powers of decision in respect of the application for an amendment to the compliance schedule
- while the authority was correct to issue the notices to fix in respect of building work carried out without consent when consent was required and in respect of the requirements for a BWOF, the notices are to be modified to take into account the findings of this determination.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 30 November 2015.



John Gardiner
Manager Determinations and Assurance

[13] See Determination 2009/113: The refusal to issue a certificate of acceptance for building work to a relocated house at 896 Owhiwa Road, Parua Bay, Whangarei *Department of Building and Housing*, 24 December 2009

Appendix A

A.1 The relevant sections of the Building Act 2004

7 Interpretation

household unit—

(a) means a building or group of buildings, or part of a building or group of buildings, that is—

(i) used, or intended to be used, only or mainly for residential purposes; and

(ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but

(b) does not include a hostel, boardinghouse, or other specialised accommodation

41 Building consent not required in certain cases

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

…

(c) any building work in respect of which a building consent cannot practicably be obtained in advance because the building work has to be carried out urgently—

(i) for the purpose of saving or protecting life or health or preventing serious damage to property; or

(ii) in order to ensure that a specified system in a building that is covered by a compliance schedule, or would be covered if a compliance schedule were issued in respect of the building, is maintained in a safe condition or is made safe; or

…

100 Requirement for compliance schedule

(1) A building not used wholly as a single household unit—

(a) requires a compliance schedule if—

(i) it has a specified system; or

(ii) it has a cable car attached to it or servicing it; and

(b) requires the schedule for all specified systems it has and any cable car it has attached to it or servicing it.

(2) A building used wholly as a single household unit—

(a) requires a compliance schedule only if it has a cable car attached to it or servicing it; and

(b) requires the schedule only for the cable car.

…

A.2 The relevant uses as set out in Schedule 2 of the *Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005*

Schedule 2 - Uses of all or parts of buildings

Uses related to sleeping activities

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

A.3 The purpose groups relevant to the original construction as set out in Table 2.1 of the Approved Document for New Zealand Building Code Clauses C1, C2, C3, C4 effective from 1 June 2001

Table 2.1: Purpose groups			
Purpose group	Description of intended use of the building space	Some examples	Fire hazard category
Sleeping activities			
SR	Attached and multi-unit residential dwellings.	*Multi-unit dwellings* or flats, apartments, and includes *household units* attached to the same or other *purpose groups*, such as caretakers' flats, and residential accommodation above a shop	1
SH	Detached dwellings where people live as a single household or family.	Dwellings, houses, being *household units*, or *suites* in purpose group SA, separated from each other by distance. Detached dwellings may include attached self-contained *suites* such as granny flats when occupied by a member of the same family, and garages whether detached or part of the same *building* and are primarily for storage of the occupants' vehicles, tools and garden implements.	1
Intermittent activities			
IA	Spaces for intermittent occupation or providing intermittently used support functions – *low fire load*.	Car parking, garages, carports, enclosed corridors, unstaffed kitchens or laundries, lift shafts, locker rooms, linen rooms, open balconies, stairways (within the open path), toilets and amenities, and service rooms incorporating machinery or equipment not using solid-fuel, gas or petroleum products as an energy source.	1
ID	Spaces for intermittent occupation or providing	Maintenance workshops and service rooms incorporating machinery or equipment using solid-fuel, gas or petroleum products as an energy source.	3

	intermittently used support functions – medium *fire load*.		

A.4 The relevant clauses of the Building Code include:

Clause A1—Classified Uses

1.0 Explanation

1.0.1 For the purposes of this building code buildings are classified according to type, under seven categories.

1.0.2 A building with a given classified use may have one or more intended uses as defined in the Act.

2.0 Housing

2.0.1 Applies to buildings or use where there is self care and service (internal management). There are three types:

2.0.2 Detached dwellings

Applies to a building or use where a group of people live as a single household or family. Examples: a holiday cottage, boarding house accommodating fewer than 6 people, dwelling or hut.

2.0.3 Multi-unit dwelling

Applies to a building or use which contains more than one separate household or family. Examples: an attached dwelling, flat or multi-unit apartment.

2.0.4 Group dwelling

Applies to a building or use where groups of people live as one large extended family. Examples: within a commune or marae.

A.5 Table 1.1 from Acceptable Solutions C/AS1 – C/AS7

Table 1.1 Risk groups and Acceptable Solutions

	Acceptable Solution	*Risk group*	Applies to
C/AS1	Buildings with sleeping (residential) and outbuildings	SH	Houses, townhouses and small *multi-unit dwellings* Outbuildings
C/AS2	Sleeping (non institutional)	SM	Permanent accommodation eg, apartments Transient accommodation eg, hotels, motels, hostels, backpackers, refuge shelters Education accommodation

…

			height)
C/AS7	Vehicle storage and parking	VP	Vehicle parking – within a *building* or a separate *building*

Appendix B

B.1 Documents provided by the applicant:

Date received Documentation (date)	Attachments
Application	
Received 25 March 2015 Application form D1 and supporting documents listed adjacent.	Cover letter dated 12 March 20015 (sic)
	'Statement' (summarised at paragraph 4.1.3)
	Letter to the authority dated 6 March 2015
	A completed application for amendment to compliance schedule, dated 4 March 2014
	Various items of correspondence between the parties
	The first notice to fix, dated 10 February 2015
	The refusal to issue the building consent, dated 16 February 2015
	The second notice to fix, dated 16 February 2015
	The documentation provided in support of the building consent application, including: - Material specification - Fire design report for the original construction, dated 18 January 2007 Undated drawings indicating where the lift shaft was to be installed