



Determination 2020/029

Regarding the issue of a notice to fix for building work to a sprinkler system carried out without a building consent at 21 Cashew Street, Wellington

Summary

This determination considers whether a territorial authority was correct to issue a notice to fix for building works that involved the alterations and modifications of an existing specified system – an automatic sprinkler system – where a building consent was not obtained prior to the works commencing. The determination also considers if the building works could have been undertaken in accordance with clause 10 of Schedule 1 of the Building Act.

1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004 (“the Act”) made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.¹
- 1.2 The parties to the determination are:
 - Goodman Fielder New Zealand Ltd, a recipient of a notice to fix for building work at a building where it was a tenant (“the applicant”)
 - Nazko Properties Ltd, the owner of the building who was also the recipient of the notice to fix (“the owner”)
 - Prendos New Zealand Ltd, the applicant’s project manager who was also the recipient of the notice to fix (“the project manager”)
 - Pharaoh Construction Ltd, the applicant’s builder who was also the recipient of the notice to fix (“the builder”)
 - Wellington City Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3 As this determination concerns fire safety and fire-engineering practice I am also required to consult with Fire and Emergency New Zealand (FENZ) under section 170(a) of the Act.
- 1.4 The determination arises from the authority’s decision to issue a notice to fix for building work carried out without a building consent when one was required; namely, changes to the automatic sprinkler system (a specified system²) at the owner’s building. These changes, which were initiated by the applicant, were

¹ The Building Act and Building Code (Schedule 1 of the Building Regulations 1992) are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents and guidance issued by the Ministry, is available at www.building.govt.nz.

² Specified systems are certain safety and essential systems within a building that require ongoing inspection and maintenance. The Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 prescribes these systems.

associated with the removal of some internal coolstores at the building and other “make good works”³ at the end of the applicant’s tenancy.

- 1.5 The applicant considers that the changes to the sprinkler system were exempt from requiring a building consent under clause 10 of Schedule 1 of the Act⁴. However, the authority’s view, which is shared by the owner, is that a specified system was modified or affected by these changes and therefore the exemption does not apply.
- 1.6 The matter to be determined⁵ is whether the authority was correct in its decision to issue the notice to fix dated 1 July 2020 for alterations to a specified system (the sprinkler system at the owner’s building) without a building consent when one was required.
- 1.7 In making my decision I have considered the information provided to me by the parties and the other evidence in this matter. I have not considered the completeness of the notice to fix or who it was issued to, or the Building Code compliance of the sprinkler system and other specified systems in the building either before or after the applicant’s building works. These issues are outside the scope of the determination.
- 1.8 Unless otherwise stated, references to sections in this determination are to sections of the Act and references to clauses are to the clauses of Schedule 1. Appendix A has relevant extracts from the legislation.

2. The building work

- 2.1 The owner’s building is located at 21 Cashew Street in Wellington’s Grenada North. It is a single storey commercial building (including storage facility) with steel portal frames, and contains warehouse areas as well as some office space (refer to Figure 1).
- 2.2 The building was constructed in 1983 and bought by the owner in 2008. The applicant was the building’s tenant under a deed of lease dated 23 May 2008, which expired on 30 June 2020.
- 2.3 Shortly before moving out of the building, the applicant initiated various building works, including (but not limited to) removal of some internal coolstores and some changes to the automatic sprinkler system (which is the matter that prompted the issue of a notice to fix by the authority, and subsequently this determination). These works were organised by the project manager and carried out by the builder and other contractors.

The existing coolstores

- 2.4 Before the applicant’s building works began, warehouse areas 13, 14, 15 and 16 of the building contained coolstores⁶ (shaded in red, teal, green and yellow respectively in Figure 1). These coolstores had walls and ceilings made from expanded polystyrene (EPS) panels. There was a gap between the top of the coolstores and the warehouse roof space, as shown in Figure 2.

³ The description used by the project manager and other parties

⁴ Schedule 1 of the Act: Building work for which building consent not required, clause 10: Interior alterations to existing non-residential building

⁵ Under section 177(1)(b) and (3)(e) of the current Act

⁶ Also referred to by the parties as chillers or cold stores



Figure 1: Floor plan (Not to scale)

The existing sprinkler system

- 2.5 The sprinkler system is one of several specified systems at the building (the others include an emergency warning system, emergency lighting, final exits and signage).
- 2.6 I have not been provided with any evidence by way of original plans and specifications to confirm when the sprinkler system was first installed. However, the owner has advised that no changes were made to this system during the current period of ownership of the building (i.e. from 2008) up until the applicant's building works which began in June 2020.
- 2.7 According to the building's compliance schedule⁷ the sprinkler system meets the performance requirements of New Zealand Standard NZS 4541:1987 Automatic Fire Sprinkler Systems and is subject to monthly inspection and testing and regular maintenance to that standard. This testing and maintenance is carried out by an independently qualified person, or IQP⁸ ("the current IQP").
- 2.8 Before the applicant's building works began, the sprinkler system included the following features in the warehouse areas (refer to Figure 2):
- an upper part which included steel pipework and sprinkler heads close to the roof space of the building ("the upper part")
 - a lower part which included pipework branching off the upper part, passing through the coolstore ceilings, and terminating in glass bulb sprinkler heads located inside the coolstores ("the lower part").

⁷ Compliance schedule for the building (which lists all the specified systems), original issue date 4 August 1994, last amended 29 May 2013

⁸ Specified systems must be inspected and maintained by a registered IQP, who submits an annual certificate of compliance to show the requirements of the building's compliance schedule have been met. This certificate then forms part of the building's annual warrant of fitness (BWOFF). Refer to sections 100-111 of the Act regarding compliance schedules and building warrants of fitness.

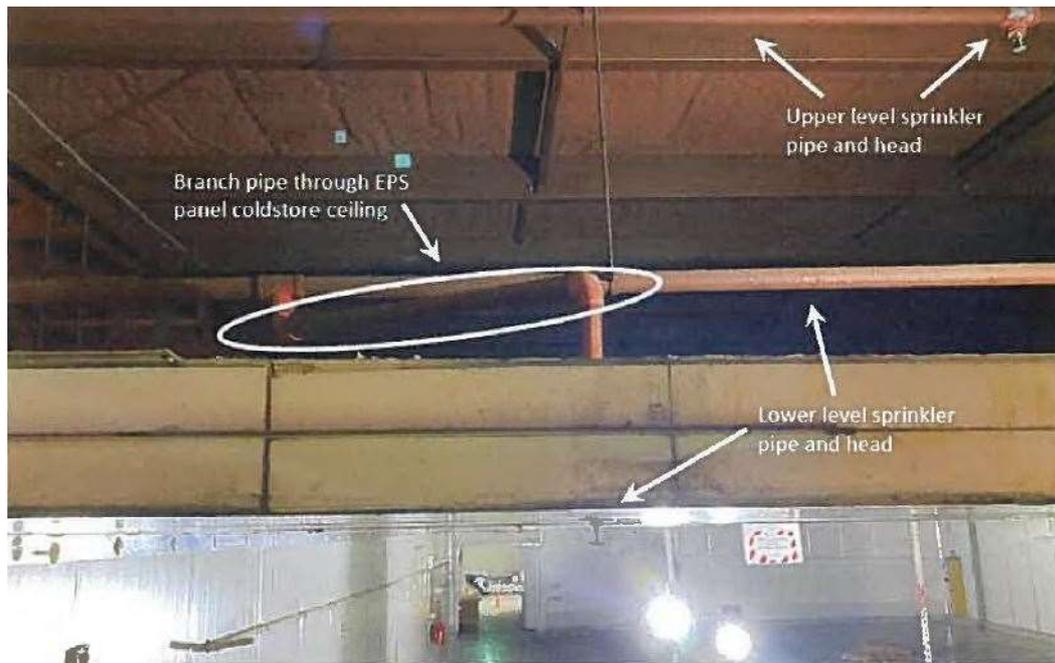


Figure 2: Cross-section view of a coolstore, showing details of the existing sprinkler system

Removal of some coolstores, and changes to the sprinkler system (“the sprinkler works”)

2.9 As proposed, in a letter from the project manager to the applicant dated 25 June 2020), the building works in the warehouse areas were to include:

- removing EPS panels comprising the coolstore walls and ceilings, and
- changes to the lower part of the sprinkler system in the warehouse areas to enable the coolstores to be dismantled (“the sprinkler works”).

2.10 The sprinkler works were to include:

- draining the lower part of the sprinkler system, removing the sprinkler heads and branch pipes in the lower part to isolate the system, and plugging off the lower part above the coolstore ceilings
- isolating manual call points and sounders in the coolstores
- once the coolstore ceiling panels were removed, “removal of the redundant lower level fire safety systems associated with the [coolstores] by a suitably qualified person”, and
- associated safety procedures for carrying out this work: these were described by the project manager and also listed in an attached methodology (undated) from the builder.

2.11 In a letter from the project manager dated 25 June 2020 it was advised:

Reinstatement of the sprinkler system to maintain coverage to the warehouse will be maintained to the upper ceiling areas to the extent as it did before removal of the cold stores and the sprinkler system will be independently certified when reinstated as required.

2.12 In the event, the building works were only partially completed before the applicant vacated the building on 7 July 2020. According to the project manager (in a letter to the applicant dated 21 August 2020):

- regarding the coolstores – the EPS wall and ceiling panels were removed in most of area 14, including a wall adjoining area 15, but EPS panels were not removed in areas 13 or 16
- “consequential works due to the removal of the EPS panels” were also carried out including: the removal of some egress signage, a fire alarm sounder and a manual call point; and the removal of some concrete nibs at the base of the EPS panels, and
- regarding the sprinkler works – the lower sprinkler heads and branch pipes servicing the coolstores (i.e. components of the lower part of the sprinkler system) were permanently removed within “coolstore 14” and partially removed between the ceiling and wall line between areas 14 and 16. This was done by a specialist fire services firm (“the specialist contractor”).

3. Background

3.1 Events leading to the issue of the notice include the following.

Date	Event
12 June 2020	The first phase of the applicant’s building works begins. This involves some minor work in the office areas (this is completed by about 28 June 2020).
26 June 2020	<p>The owner emails the applicant’s lawyer to say that the owner considers a building consent is required to remove or make any changes to the firefighting / sprinkler system, which is a specified system at the building. The owner refers to discussions on this issue with the current IQP and with the authority’s building consents team.</p> <p>The owner also forwards an email from the authority to the applicant’s lawyer. This email (from the authority to the owner earlier that day) says: “As discussed, because the removal of the fixtures affects the sprinklers, which is a specified system, a [building] consent would need to be applied for.”</p>
26 June 2020	<p>Also on 26 June 2020 a building consultancy firm engaged by the applicant (“the building consultant”) sends a letter to the project manager regarding the proposed coolstore removal and the sprinkler works, and the “requirements” of Schedule 1 with respect to this. The building consultant concludes that “a building consent is not required for the capping of redundant sprinkler heads in this instance” and also says:</p> <ul style="list-style-type: none"> • the area over the coolstores was covered with sprinklers in the roof space “and this coverage is maintained after the [coolstore] demolition meaning that the coverage continues to comply to the requirements of NZS 4541” • the relevant exemption is clause 10 Interior alterations to non-residential buildings • further, a building consent is not required for sprinkler head alterations that maintain coverage to NZS 4541 “and in this instance the fire load is being reduced and the level of compliance for the building overall is improved”.

Date	Event
28 June 2020	<p>The next phase of make good works begins: this includes removing the coolstores and the sprinkler works (as described earlier in the determination). The sprinkler works are carried out by the specialist contractor.</p> <p>The owner and an officer of the authority visit the site. The authority's officer issues a notice to fix ("the initial notice") to the owner and the builder onsite. The initial notice states:</p> <p style="padding-left: 40px;"><u>"Particulars of contravention or non-compliance</u> Building work carried out to specified system without building consent All works to stop until [the authority] is satisfied"</p> <p>(NB: the initial notice is replaced by the notice to fix issued on 1 July 2020.)</p>
29 June 2020	<p>The applicant's lawyer writes to the authority enclosing a copy of the building consultant's 26 June 2020 letter and requesting the initial notice to be withdrawn as the applicant considers it is incorrect. The applicant's lawyer also describes the relevant building work and associated safety measures and says (in summary):</p> <ul style="list-style-type: none"> • the applicant had received advice from – and agreed with – the building consultant that a building consent was not required for the sprinkler works • the capping of "redundant" sprinkler heads does not modify or affect the specified system • also, just as the replacement of sprinkler heads is exempt from requiring a building consent (an example given in the Ministry's guidance on Schedule 1⁹ - "the Ministry's guidance"), so is the capping of redundant sprinkler heads • all existing higher level fire safety systems above the coolstores (i.e. the upper part) "will be maintained in their current condition and in accordance with the applicable compliance schedule".

The notice to fix

3.2 On 1 July 2020 the authority issued the notice to fix that is the subject of this determination ("the notice") to the owner, the applicant, the project manager and the builder. The authority sent a covering letter with the notice which was addressed to the applicant and dated 30 June 2020. In this letter the authority said the initial notice was "not as clear as it could have been" and it was issuing a replacement notice to "fully detail what was discussed on site".

3.3 The notice gave the particulars of contravention or non-compliance as:

Building work with no building consent

On 28 June 2020 the above property was inspected by [an officer of the authority]. Building work, namely alterations to a specified system, the sprinkler system, has been done without a building consent. Section 40 of the Building Act 2004 requires that a building consent must be obtained prior to undertaking any building work.

3.4 The notice gave the required remedial action as:

You must apply for and take all reasonably required steps to gain a Certificate of Acceptance¹⁰, for the building work within 20 days of the date of this notice. Any additional work not yet undertaken must not be started until a building consent has been obtained from [the authority].

The following inspections are required with respect to the remedial work:
Any inspections required to confirm compliance with this notice.

⁹ A reference was provided to the Ministry's guidance document: "Building work that does not require a building consent", Fourth Edition 2014, amended July 2019 (the applicant's lawyer referred to an example on page 16 of this document).

¹⁰ Under section 96 a territorial authority may, on application, issue a certificate of acceptance in certain circumstances for building work that has been carried out without a building consent when one was required.

This notice must be complied with by: 21 July 2020.

3.5 Also on 1 July 2020 the authority wrote in response to the applicant’s lawyer’s letter of 29 June 2020 (refer to paragraph 3.1, last row of the table). Key points of the authority’s response included (in summary):

- The authority considered the notice to fix was appropriate in the circumstances.
- The authority did not agree that an exemption under clause 10 applied. The authority said it did not follow the building consultant’s advice that the performance of the specified system would be unaffected; nor did it agree that capping “redundant” sprinkler heads did not “modify or affect” the specified system (with reference to clause 10(b)) – which the authority said appeared to be the core of the issue.

The Act does not give any guidance on how “modify or affect” should be interpreted. In light of the principles and purposes of the Act a broad interpretation is appropriate. The removal and capping of a number of sprinkler heads physically changes the nature of the system in such a way that can be considered as the system having been modified or affected.

- Further, the authority did not consider the example in the Ministry’s guidance of removing and replacing a single sprinkler head (which does not require building consent) was relevant. That was because, in this example, the specified system would still be “substantially the same” as water could still be discharged from the sprinkler head in the same location and at the same rate.

In this case, more than one sprinkler head has been removed and the pipes capped, reducing the number of outlets for water. In this case, the Work has physically changed the nature of the specified system, bringing it within the ambit of “modify or affect” and out of the scope of the exclusion given in [the Ministry’s guidance]. ...

Whether the heads are considered “redundant” or not is not relevant. The sprinkler system is a specified system for the purposes of the Act.

3.6 On 7 July 2020 the applicant vacated the building. By that stage (as described in paragraph 2.12) the sprinkler works had been carried out in area 14, and some coolstore EPS panels had been removed, and changes had been made to other specified systems in the building.

3.7 Around this time the owner sought advice from the current IQP on the sprinkler works and related issues. The current IQP replied on 7 July 2020 and again on 13 July 2020 saying (among other things) that in their view the sprinkler system would not continue to comply with NZS 4541 in the areas of the building where the EPS panels had been removed as:

- the low level sprinklers in these panels (i.e. in the lower part of the sprinkler system), which had now been removed, were to Ordinary Hazard 3 (OH3) class¹¹, but
- the sprinklers above protecting the upper space (i.e. the upper part), and which remained, were only Extra Light Hazard (ELH) class.

3.8 On 15 July 2020 the owner’s lawyer referred to the current IQP’s advice in an email to the applicant’s lawyer, saying:

The fire system in Area 14 was at “Ordinary Hazard (OH3)” standards and is now “Extra Light Hazard (ELH)” standard. This is a change from 18 sprinklers with water

¹¹ OH3 and ELH are hazard classifications under New Zealand Standard NZS 4541.

flow of 1350 litres per minute at OH3 to 4-6 sprinklers at 270 litres per minute at ELH, and so is a material difference.

More fundamentally, [the current IQP] advises that the works done to date (i.e. the alteration of the OH3 system to an ELH system) will not comply with the building code, because the ELH sprinkler system is inconsistent with the legal use of the building as an office/warehouse space.

3.9 On 21 July 2020 the Ministry received an application for a determination.

4. The submissions

4.1 The parties' submissions are summarised below. Neither the authority nor the builder made a submission.

The applicant

4.2 The applicant's lawyer sent a submission on the applicant's behalf which included a summary of events, description of the sprinkler works, and other information including copies of the building consultant's 26 June 2020 letter, the initial notice, the second notice, photographs, a site plan and relevant correspondence. Following the Ministry's request for further information the applicant's lawyer also provided an update from the project manager (described in paragraphs 4.11 to 4.14).

4.3 The applicant submitted that the authority erred in issuing the notice as a building consent was not required for the sprinkler works, and the applicant had not sought building consent in advance for the sprinkler works on the building consultant's advice that a consent was not required.

4.4 The applicant acknowledged that the sprinkler system was a specified system but did not consider that the sprinkler works had modified or affected that system – which would mean the exemption under clause 10 would not apply – because (in summary):

- the sprinkler works comprised the removal of “only the redundant lower level sprinkler branch pipes and heads” serving the coolstores to allow these coolstores to be removed
- removing a “redundant” part of the sprinkler system was different from a modification, which would remain in place after work was complete
- the removal of EPS panels had reduced the building's fire risk profile, and the remaining sprinkler system “remains compliant”, as advised by the building consultant
- this was consistent with the Ministry's guidance, including with an example in that guidance that said replacing a sprinkler head as exempt work, and
- the upper part of the sprinkler system had not been modified or affected.

The owner

4.5 The owner provided information about the building and copies of the compliance schedule, the most recent building warrant of fitness (dated 4 August 2019), relevant reports and correspondence.

4.6 The owner stated there had been no changes to the sprinkler system since buying the building in 2008. Also, to the best of the owner's knowledge, the parts of the sprinkler system removed during the applicant's building works had been installed when the building was originally constructed. The owner also said the applicant

vacated the building fully on 7 July 2020 and that no contractors engaged by the applicant were returning to undertake any further work.

4.7 The owner agreed with the authority’s decision to issue the notice and that there was an intention to comply with this notice by applying for a building consent “for the entire sprinkler system”.

4.8 The owner also submitted:

- The owner had advised the applicant, the project manager and the builder that a building consent was required before undertaking the sprinkler works. This included sending copies of written advice from the authority (via email) that stated building consent was required.
- The current IQP had confirmed that the sprinkler works carried out had “significantly altered” the sprinkler system; this system would no longer comply with NZS 4541 to the same extent as before; and the applicant’s proposition that the lower part of the sprinkler system was redundant was incorrect.

4.9 Regarding the effect of the changes to the sprinkler system, the owner said:

When it was built in the 1980’s the hazard level of the sprinklers was OH3 (1278 litres per minute) in the warehouse area and ELH (270 litres per minute) in the roof ceiling space. What now remains in the area of unconsented works is now a hazard level of ELH (270 litres per minute) based on the advice we have received from [the current IQP]. The ELH class is appropriate for non-industrial occupancies only.

4.10 The owner also referred to the proposed methodology for work relating to the coolstores (referred to in paragraph 2.10) and various aspects of this which did not appear to have been carried out, including that no inspection was undertaken by an “accredited company” after the notice to fix was issued and the sprinkler system refilled.

The project manager

4.11 The project manager provided further details of the building works including photographs and a floor plan indicating where these works had been completed.

4.12 The project manager also provided a copy of a report by the building consultant dated 23 June 2020 and titled “Fire Report to Section 112¹², New Zealand Building Act 2004 (and associated regulations) for Certificate of Acceptance for Alterations to Existing Factory”. This report stated: “Given that the internal demolition of the coolstore does not require a consent and that it is clear from the Building Act that maintaining the sprinkler system within the factory does not need consent to maintain the system in a safe condition, it is arguable that no consent is required”.

4.13 In response to the Ministry’s request for details of any certification for the completed building works (e.g. producer statements or independent certifier documentation) the project manager said no certification was available currently but would be provided “on completion of the make good works”.

4.14 The project manager also confirmed that work had been undertaken to isolate and remove a manual call point, a fire alarm sounder and some exit signage at the building but said that this was outside the scope of the determination.

¹² Section 112: Alterations to existing buildings

The draft determination and responses received

- 4.15 The draft determination was issued to the parties for comment on 30 September 2020.
- 4.16 The authority responded on 5 October 2020 accepting the draft determination without comment.
- 4.17 Fire and Emergency New Zealand (FENZ) responded on 14 October 2020 agreeing with the analysis and conclusions in the draft determination and had no other comments in relation to it.
- 4.18 The owner responded 14 October 2020 accepting the draft determination without comment.
- 4.19 The applicant’s lawyer responded on 15 October 2020 accepting the draft determination without comment.
- 4.20 The Ministry contacted the builder on 16 October 2020 who gave a verbal acceptance of the draft determination without comment.
- 4.21 The Ministry contacted the project manager on 16 October 2020 who confirmed acceptance of the draft determination in line with the earlier response from the applicant’s lawyer.

5. Discussion

- 5.1 The matter for determination concerns the authority’s decision to issue the notice to fix dated 1 July 2020 for “building work, namely alterations to a specified system, a sprinkler system” without a building consent when one was required.
- 5.2 Under section 40 of the Act a building consent must be obtained before undertaking any “building work”, which is work “for, or in connection with, the construction, alteration, demolition, or removal of a building”¹³.
- 5.3 I consider the sprinkler works at the building to be building work – noting that this point does not appear to be in dispute.
- 5.4 Despite section 40 there are some cases where building work does not require a building consent. These cases and the associated Building Code compliance requirements are set out in sections 41 and 42A¹⁴ and include the types of building work described in Schedule 1.
- 5.5 Clause 10 of Schedule 1 has been relied on in this case. This exemption states:

10 Interior alterations to existing non-residential building

Building work in connection with the interior of any existing non-residential building (for example, a shop, office, library, factory, warehouse, church, or school) if the building work—

- (a) does not modify or affect the primary structure of the building; and
- (b) does not modify or affect any specified system; and
- (c) does not relate to a wall that is—
 - i) a fire separation wall (also known as a firewall); or
 - ii) made of units of material (such as brick, burnt clay, concrete, or stone) laid to a bond in and joined together with mortar; and

¹³ Refer to section 7: Interpretation

¹⁴ Section 41: Building consent not required in certain cases, and section 42A: Building work for which building consent is not required under Schedule 1

- (d) does not include sanitary plumbing or drainlaying under the Plumbers, Gasfitters, and Drainlayers Act 2006.
- 5.6 I have not been provided with any evidence to suggest the criteria in clause 10(a), (c) or (d) would not be met, and as these criteria do not appear to be in dispute, I have not considered them further.
- 5.7 At issue is whether the sprinkler works met the remaining criterion in clause 10(b), which is that they must not “modify or affect” the sprinkler system (a specified system at the building).
- 5.8 As “modify” and “affect” are not defined in the Act I have considered the normal and ordinary meaning of these terms¹⁵:
- modify – “make partial or minor changes to (something)” and
 - affect – “have an effect on; make a difference to”.
- 5.9 In considering whether the sprinkler works that were carried out at the building have modified or affected the sprinkler system, I note that I have not received any evidence by way of plans, specifications or other relevant documents to establish definitively when the sprinkler system was first installed or if there have been any changes to this system before the building works by the applicant. However, the owner has stated that there have been no changes to the sprinkler system since purchasing the building in 2008. Also, the compliance schedule for the building describes this system as in accordance with NZS 4541:1987, and the most recent building warrant of fitness before the sprinkler works began (dated 4 August 2019) confirms compliance with this schedule (refer to paragraphs 2.7 and 4.5).
- 5.10 I also consider that this system was operating, before the sprinkler works began, as one complete system, albeit with two parts in those areas where the coolstores were located: the upper part located in the roof space (above the EPS panels that formed the ceilings to the coolstores), and the lower part branching off the upper part, extending down through the EPS panel ceilings, and terminating in sprinkler heads inside those coolstores (refer to Figure 2).
- 5.11 In considering whether the sprinkler works as carried out modified or affected the sprinkler system I note the applicant contends this was not the case as the lower part of the sprinkler system was “redundant”. The authority stated that whether or not this was redundant was immaterial. I agree with the authority; the sprinkler system was one complete system, albeit with an upper and lower part, and there are no provisions within Schedule 1 that allow for the partial removal of any redundant parts of a specified system (including sprinklers).
- 5.12 I am of the view that removing the sprinkler heads and branch pipes is modifying the system; the system is being changed regardless of whether the changes are partial or minor. Indeed, such is the extent of the building works to alter the sprinklers, this is clearly more than minor in nature, and has had effect on, and made significant difference to the system as a whole.
- 5.13 Accordingly I consider the sprinkler works have modified and affected the sprinkler system and therefore the criterion in clause 10(b) is not met.
- 5.14 Further, I do not consider that the sprinkler works meet the criteria of any other exemption under Schedule 1. The authority did not grant a discretionary exemption

¹⁵ From the Oxford English Dictionary at www.lexico.com

under clause 2¹⁶ – as is obvious from its issue of the notice – so this exemption does not apply.

- 5.15 The applicant considers an example of a clause 1 exemption (in the Ministry’s guidance) is relevant in this case. The example given in the guidance describes replacing a damaged sprinkler head in the same position within the context of the repair, maintenance or replacement of any component or assembly within a building. However, in the current case no sprinkler heads were replaced, repaired or maintained, rather the low level sprinkler heads were removed altogether in area 14.
- 5.16 Therefore, I disagree with the applicant’s submission in this respect and I consider that the exemption under clause 1 does not apply in this case.
- 5.17 Further, I have also considered clause 31: Removal of building element. This exemption from requiring a building consent includes for “the removal of a building element from a building that is not more than 3 storeys, provided that the removal does not affect – (b) any specified system”. The removal of the coolstores, and associated sprinkler works, has affected a specified system (refer to paragraph 5.12), notwithstanding the other building works undertaken to some other specified systems as noted in paragraphs 2.10 and 2.12. Accordingly, I consider that clause 31 does not apply in this case.
- 5.18 As stated in paragraph 1.7, the Building Code compliance of the sprinkler system or of the other specified systems in the building either before or after the sprinkler works is not the matter for determination. However, I draw attention to the fact that any exemption from requiring a building consent under Schedule 1 is contingent on meeting the conditions in section 42A; namely:
- 42A (2)...**
- (a) the building work complies with the building code to the extent required by this Act:
- (b) after the building work is completed, the building,—
- i) if it complied with the building code immediately before the building work began, continues to comply with the building code; or
- ii) if it did not comply with the building code immediately before the building work began, continues to comply at least to the same extent as it did then comply: ...
- 5.19 In this regard, I have noted that the current IQP had confirmed that the sprinkler works carried out had “significantly altered” the sprinkler system, and this system would then no longer comply with NZS 4541 to the same extent as before the building work began.
- 5.20 I also draw attention to the changes made to other specified systems at the building during the “make good works”, which included the part removal of a fire alarm (manual call point and sounder) and some illuminated exit signage. These building works were not described in the notice and are outside the scope of the matter for determination. Regardless, these are important features for ensuring that persons can escape safely, and alert others, in the event of a fire.

¹⁶ Schedule 1(2): Territorial and regional authority discretionary exemptions

Conclusion

- 5.21 In conclusion, it is my view that the sprinkler works have altered and modified the sprinkler system (a specified system) and therefore that these works do not meet the criteria for an exemption under clause 10 of Schedule 1.
- 5.22 As I do not consider any other exemption under Schedule 1 is applicable in this case, I consider that a building consent was required to carry out the sprinkler works (in accordance with section 40), and the authority was correct to issue the notice for the reasons stated.

6. The decision

- 6.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:
- The authority was correct to issue the notice to fix dated 1 July 2020 for alterations to a specified system (the sprinkler system at the owner's building) without a building consent when one was required.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 27 October 2020.

Katie Gordon
Manager Determinations

Appendix A: Extracts from the legislation

Relevant extracts from the legislation include the following.

A1 Building Act 2004

7 Interpretation

building work—

- (a) means work—
 - i) for, or in connection with, the construction, alteration, demolition, or removal of a building...

14B Responsibilities of owner

An owner is responsible for—

- (a) obtaining any necessary consents, approvals, and certificates:
- (b) ensuring that building work carried out by the owner complies with the building consent or, if there is no building consent, with the building code:
- (c) ensuring compliance with any notices to fix.

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

- (1) A person must not carry out any building work except in accordance with a building consent.
- (2) A person commits an offence if the person fails to comply with this section.

...

41 Building consent not required in certain cases

- (1) Despite section 40, a building consent is not required in relation to—...
 - (b) any building work described in Schedule 1 for which a building consent is not required (see section 42A);...

42A Building work for which building consent is not required under Schedule 1

- (1) Despite section 40, subject to the conditions set out in subsection (2) and whether or not a building consent would otherwise have been required, a building consent is not required for building work in the following categories:
 - (a) building work described in Part 1 of Schedule 1; ...
- (2) Subsection (1) is subject to the following conditions:
 - (a) the building work complies with the building code to the extent required by this Act:
 - (b) after the building work is completed, the building,—
 - i) if it complied with the building code immediately before the building work began, continues to comply with the building code; or
 - ii) if it did not comply with the building code immediately before the building work began, continues to comply at least to the same extent as it did then comply: ...

...

A2 Schedule 1 of the Building Act 2004 – Building work for which building consent not required**Part 1 Exempted building work*****General*****1 General repair, maintenance, and replacement**

- (1) The repair and maintenance of any component or assembly incorporated in or associated with a building, provided that comparable materials are used.
- (2) Replacement of any component or assembly incorporated in or associated with a building, provided that—
 - (a) a comparable component or assembly is used; and
 - (b) the replacement is in the same position.
- (3) However, subclauses (1) and (2) do not include the following building work:
 - (a) complete or substantial replacement of a specified system; or
 - (b) complete or substantial replacement of any component or assembly contributing to the building's structural behaviour or fire-safety properties; or
 - (c) repair or replacement (other than maintenance) of any component or assembly that has failed to satisfy the provisions of the building code for durability, for example, through a failure to comply with the external moisture requirements of the building code; or
 - (d) sanitary plumbing or drainlaying under the Plumbers, Gasfitters, and Drainlayers Act 2006.

10 Interior alterations to existing non-residential building

Building work in connection with the interior of any existing non-residential building (for example, a shop, office, library, factory, warehouse, church, or school) if the building work—

- (a) does not modify or affect the primary structure of the building; and
- (b) does not modify or affect any specified system; and
- (c) does not relate to a wall that is—
 - i) a fire separation wall (also known as a firewall); or
 - ii) made of units of material (such as brick, burnt clay, concrete, or stone) laid to a bond in and joined together with mortar; and
- (d) does not include sanitary plumbing or drainlaying under the Plumbers, Gasfitters, and Drainlayers Act 2006.