Determination 2025/058

An authority's decision to issue a dangerous building notice, and whether the notice has been satisfied

26 Burnley Terrace, Mount Eden, Auckland

Summary

This determination relates to an authority's decision to issue a dangerous building notice for a building which the authority considers is dangerous in the event of a fire. The determination analyses the features of the building in relation to the dangerous building test under section 121(1)(b). It considers whether the authority had grounds to issue the dangerous building notice under section 124, and the authority's power of decision in relation to whether the notice has subsequently been satisfied.

Figure 1: Photo of the building dated October 2024, taken from Google maps.

In this determination, unless otherwise stated, references to "sections" are to sections of the Building Act 2004 ("the Act") and references to "clauses" are to clauses in Schedule 1 ("the Building Code") of the Building Regulations 1992.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

1.1. This is a determination made under due authorisation by me Andrew Eames, Principal Advisor Determinations, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment ("the Ministry").[1]

1.2. The parties to the determination are:

1.2.1. Burnley Lodge (2009) Ltd, the owner of the building and recipient of the dangerous building notice, and the applicant for the determination.

1.2.2. Auckland Council, carrying out its duties as a territorial and building consent authority ("the authority").

1.3. The matter to be determined[2] is the authority's decision to issue a dangerous building notice[3] on 19 January 2024 ("the dangerous building notice") in respect of the owner's building, and its power of decision in relation to whether the notice has subsequently been satisfied.

1.4. In deciding this matter, I must consider whether the building was dangerous in the event of a fire, as defined by section 121(1)(b):

1.4.1. at the time the dangerous building notice was issued, and

1.4.2. at the time the application for determination was made.

1.5. I have consulted with Fire and Emergency New Zealand (FENZ) on this matter as required under section 170(a) of the Act.

1.6. This determination does not consider the authority's decision to issue a previous dangerous and insanitary building notice[4] on 15 September 2022, or the issuing of any earlier notices.

[1] The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.
[2] Under sections 177(1)(b) and (3)(f).
[3] NOT21708290.
[4] NOT21630923.

2. The building

2.1. The building is a three-storey structure built around 1912 on a flat 516m^2 property in what is now an established residential neighbourhood. It is currently used as a boarding house and appears to have been used as a boarding house since at least the early 2000s. The owner purchased the property in 2009.

2.2. There are three levels in the building; a basement level, ground floor and first floor. The ground floor contains seven bedrooms, a bathroom, a lounge, a kitchen/dining room, a laundry and a hallway. There are two entry/exit points: a door at the end of the hall facing the street ("the front exit") and a door from the laundry onto the backyard ("the back exit") (see Figure 2).

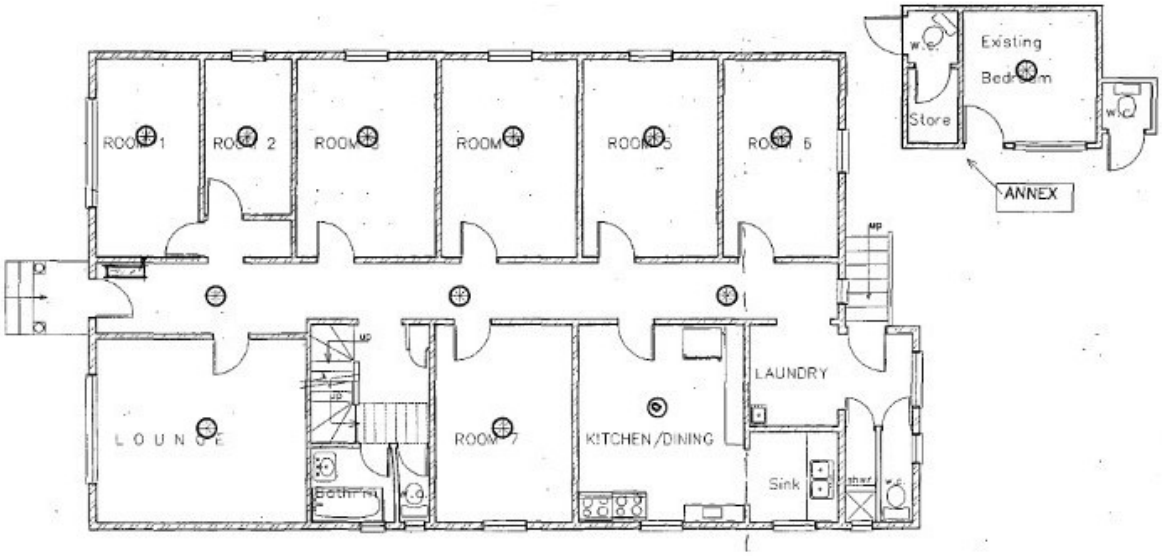

Figure 2: Ground floor layout taken from fire report dated July 2000

2.3. The basement level contains one bedroom and a storage area, and is accessible via internal stairs from the ground floor and external stairs to/from the basement bedroom (see Figure 3). The owner has advised the basement bedroom has been unoccupied since 2020.

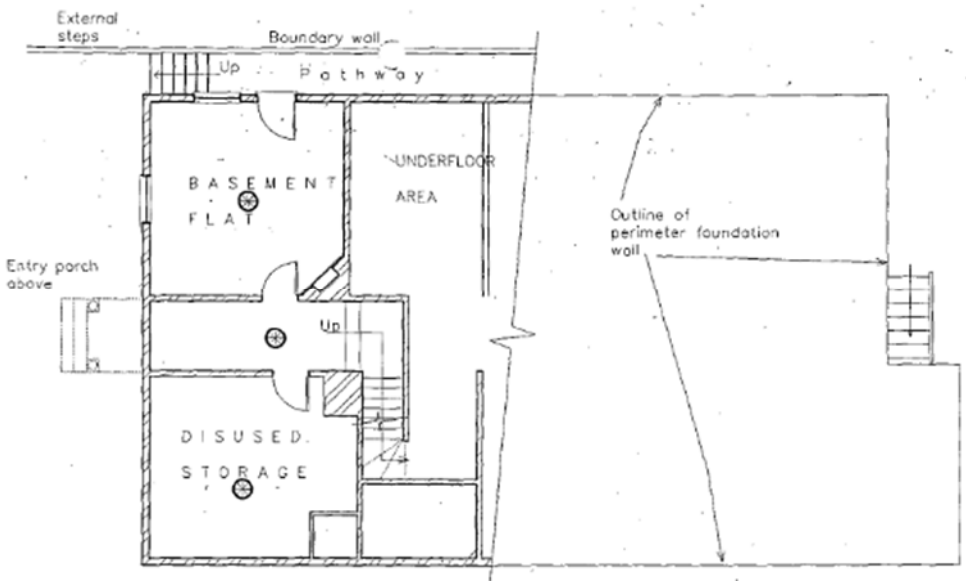

Figure 3: Basement layout taken from fire report dated July 2000

2.4. The first floor contains two bedrooms, a dining room, kitchen, bathroom and roof space storage ("the upstairs flat") (see Figure 4). Access to the first floor is via internal stairs from the ground floor. There is a fire escape ladder from the north bedroom's deck, and a fire escape landing and ladder from the south bedroom.

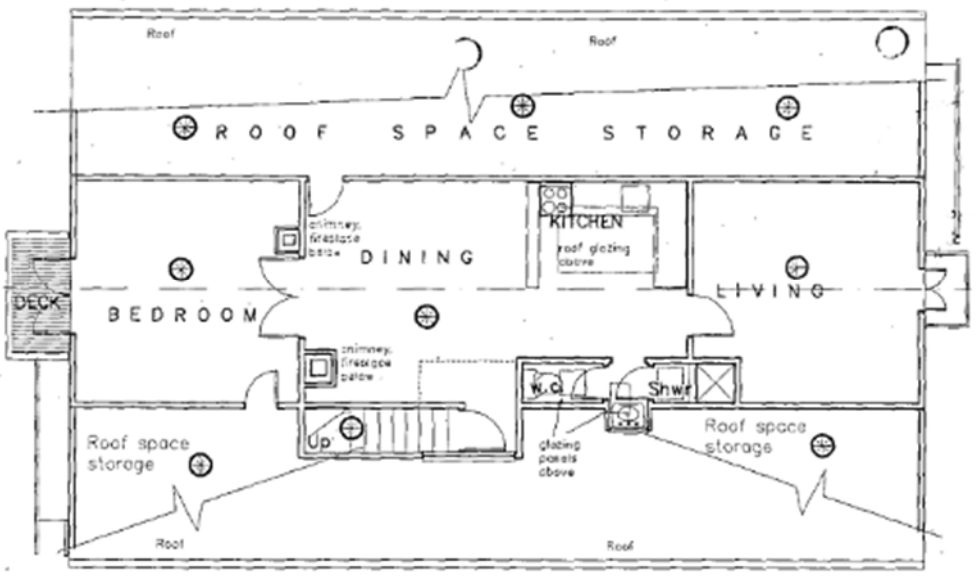

Figure 4: First floor layout taken from fire report dated July 2000[5]

2.5. The property also includes a detached one bedroom sleep-out in the backyard; however this structure is not included in the matter being determined.

[5] The living area shown in the July 2000 architectural floor layout is now used as a bedroom.

3. Background

3.1. On 13 July 2000, a building management services company issued a fire design report ("the 2000 report") to the building's former owner as part of the design and installation of a hardwired smoke detector system. The system's design was based on an SA use group with an occupancy of 6-10 persons.

3.2. On 30 August 2012, the authority issued an amended compliance schedule[6] ("the compliance schedule") for the building.

3.3. FENZ undertook several site visits at the property between July 2019 and June 2023 and issued Building Fire Safety Reports[7] following each visit.

3.4. In November 2019 and September 2022, the authority issued the owner with two dangerous and insanitary building notices ("the previous notices").

3.5. In response to the previous notice issued in 2022[8], the owner engaged a Chartered Professional ("CPEng") fire engineer ("the owner's engineer") who produced a fire safety report on 8 November 2022 ("the owner's report"). This report referenced the Fire Safety Design Guide Residential Community Housing 2018[9] ("the 2018 design guide") and concluded the owner's building was compliant with the Building Code via an alternative solution and was not dangerous[10] to occupy.

3.6. The authority subsequently engaged another CPEng fire engineer ("the authority's external engineer") to review the owner's report. This second report ("the authority's external report"), dated 26 February 2023, concluded the owner's report did not provide a viable solution, and recommended the authority reject the owner's report.

3.7. On 8 June 2023, a CPEng fire engineer employed by the authority ("the authority's engineer") and FENZ undertook a further inspection at the owner's property. The authority's engineer subsequently issued a site visit report on 7 July 2023 ("the authority's report") which included photographs and observations and took into account design requirements identified in the 2000 report.

3.8. A follow-up report by FENZ on 6 July 2023 ("the follow-up FENZ report") confirmed fire safety deficiencies remained unresolved.

3.9. In correspondence dated 16 August 2023, the authority's engineer confirmed they considered the building dangerous under section 121.

[6] RCS/93/00402.
[7] Dated 3 July 2019, 24 May 2021, 24 May 2022 and 8 June 2023.
[8] NOT21630923.
[9] This guide was issued by MBIE under section 175 of the Building Act 2004 as a framework to develop an alternative solution to demonstrate compliance for the range of Community Housing types.
[10] The owner's engineer used the Building Act 1991 section 64 test rather than the current section 121 test.

The disputed dangerous building notice

3.10. On 19 January 2024, the authority issued the dangerous building notice, which is the subject of this determination, under section 124. In the notice, the authority identifies issues raised in the authority's report and by FENZ. The notice states the authority is satisfied the building "is dangerous for the purposes of section 121(1)(b) of the Act in that in the event of fire, injury, or death to any persons in the building or to persons on other property is likely". In particular, the authority noted:

3.10.1. Some bedrooms "are not approved for accommodation".

3.10.2. Residents are "all mental health patients under the Community Mental Health Unit. Most (if not all) ... receive medication, which may affect their mental and physical capacities and they may be unable to self-evacuate without assistance".

3.10.3. There have been "numerous issues with fire safety systems at the property between 1986 and present day".

3.10.4. The specified fire safety systems within the building do not comply with the Building Code.

3.11. In addition, the dangerous building notice stated FENZ had observed[11]:

3.11.1. Escape routes via the stairs are very low, hindering safe and efficient evacuation of occupants and posing a risk to firefighters.

3.11.2. There are deficiencies in passive fire protection, eg no smoke seals on smoke stop doors, which can allow rapid smoke travel throughout the building.

3.11.3. The nature of the occupancy demands early warning and fire suppression systems to facilitate early fire detection for evacuation and fire suppression, and more time for firefighting operations and potential rescues.

3.11.4. There is inconsistency with the FENZ approved evacuation scheme and the operation of the building.

3.11.5. Combustible material is stored in escape routes.

3.11.6. Several final exits have significant change of level, creating a potential trip or fall hazard for evacuating occupants.

3.12. The dangerous building notice cited a compliance date of 19 April 2024, requiring work to be carried out by that time to "prevent the building from remaining dangerous in terms of section 121".

[11] FENZ property inspection report dated 6 July 2023 following a 8 June 2023 site visit.

3.13. On 5 July 2024, the most recent building warrant of fitness ("BWoF") was issued for the building with an expiry date of 29 June 2025.

3.14. On 17 July 2024, the owner's engineer issued a fire engineering review addendum report ("the owner's addendum report") which took the authority's report into consideration and provided its own assessment for each concern identified. It agreed some remediation was required to achieve compliance.

3.15. On 4 October 2024, the authority inspected the building to assess compliance with the dangerous building notice, and subsequently noted the owner had not addressed any of the issues identified.

3.16. On 9 December 2024, the owner's engineer confirmed[12] their opinion was:

3.16.1. the building complied with clauses C1-C6 to the extent required by section 121

3.16.2. the building was not dangerous as defined in the Act relating to fire safety

3.16.3. the 2018 design guide was applicable for assessing the building.

3.17. The owner subsequently applied for a determination.

3.18. Between 15 August 2024 and 1 March 2025[13], the owner undertook certain remedial work at the property, which is detailed in paragraph 9.85.

4. Submissions

The owner

4.1. The owner's view is that the building "has never been a dangerous building for the purposes of the Act" and the dangerous building notice was issued in error. Their submission (in summary) is:

4.1.1. Their view is based on two reports by the owner's engineer (that is the owner's report and the owner's addendum report).

4.1.2. The differing views of the various fire engineers "appear to hinge on the appropriate building classification" of the building.

[12] Produced as a brief of evidence for a tenancy tribunal decision ([2024] NZTT 4584090, 9 December 2024).
[13] The owner's builder provided an estimate of works on 15 August 2024, and an invoice for works undertaken on 1 March 2025.

4.1.3. They agree with the 2000 report that the building's risk group is use group[14] SA 'Sleeping Accommodation' with up to 10 occupants, not SI 'Care or detention'[15].

4.1.4. The fire alarm system was upgraded to type 4 in compensation for the difficulty of providing full firecell separation between building levels.

4.1.5. It is not reasonably practicable to upgrade the internal concrete stairway because this would require significant work and building reconfiguration.

4.1.6. The building has a current BWoF and fire evacuation scheme.

4.1.7. The authority's view that occupants may be unable to evacuate/respond to a fire is unfounded. Occupants are able to evacuate in the event of a fire and have been assessed by mental health services as being fit to live in the community independently.

4.1.8. Items identified in the owner's report have been fixed or remediated.

The authority

4.2. The authority maintains its view that the building is dangerous in terms of the Act. Their submission (in summary) is:

4.2.1. The building does not comply with the original 2000 consented design.

4.2.2. Some bedrooms have not been approved for accommodation.

4.2.3. The building primarily houses mental health patients under the Community Mental Health Unit. Many occupants receive medication that may impair their ability to self-evacuate in an emergency.

4.2.4. Despite multiple inspections, notices and specialist reports, the owner has failed to undertake the required remedial work.

4.2.5. The most significant concerns include:

- Inadequate fire separation and passive fire protection
- Blocked or insufficient escape routes
- Combustible materials stored in escape paths

[14] The 'use groups' are found in the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005. The use groups under the Regulations and the risk groups under the Acceptable Solution do not contain the same groups.

[15] Risk group *care or detention* as identified in Table 1.1 of C/AS2 Acceptable Solution for Buildings other than Risk Group SH – amendment 3, 2 November 2023.

- Lack of compliance with fire suppression and early warning system requirements
- Exit signage deficiencies.

4.2.6. The non-compliances increase the risk of injury or death in the event of fire.

4.2.7. The owner's reliance on its engineer's reports does not invalidate the multiple independent findings indicating serious fire risks in the building.

5. Fire and Emergency New Zealand's opinion

5.1. I consulted with FENZ under section 170(a) about the fire safety and fire engineering aspects of the determination.

5.2. FENZ reviewed the information provided by the parties, and confirmed it supports the authority's assessment that the building poses a significant risk to life safety in the event of fire based on multiple deficiencies observed during site inspections and as documented in the authority's reports.

6. Expert's report

6.1. The Ministry engaged a CPEng fire engineer ("the expert") to review the fire reports and provide an independent opinion on fire safety compliance and any issues of concern in relation to a person's ability to escape from the building in the event of fire.

6.2. The findings of the expert's report[16] are based on a desktop review of the documentation provided by the parties for the determination application. No site visit was undertaken.

6.3. The expert assessed the building's compliance with Approved Documents C2 and C3 (2000) and the current Acceptable Solution C/AS2 (2023), and concluded the building does not meet the fire safety requirements of either standard.

Key compliance concerns

6.4. The expert noted the building's use classification was SA (Sleeping Accommodation) for the basement and ground floor and SR (Sleeping Residential) for the upper level, and that this "influences the applicable fire safety benchmarks".

[16] The expert's report is dated 23 June 2025 and was shared with the parties on 25 June 2025.

6.5. The expert noted the following key compliance concerns:

6.5.1. **Fire separations**: The building lacks adequate fire cell separation between bedrooms, corridors and levels. The basement is not fire separated from the internal stairs, and the internal stair door on the ground floor that accesses the upper level is not fire rated. These deficiencies deviate from both the 2000 and 2023 requirements which mandate an FRR (Fire Resistance Rating) of (30)/30/30 for such separations.

6.5.2. **Internal escape routes**: Escape routes do not meet minimum width and height requirements. The internal stair is less than 1000 mm wide and the south external stair width is less than 850 mm. These dimensions fall short of the 1.0m width and 2.1m height required for safe paths under both historical and current standards.

6.5.3. **Emergency lighting and exit signage**: The building lacks adequate emergency lighting and illuminated exit signage. These omissions contravene both historical and current Building Code requirements.

6.5.4. **Escape route obstructions**: Repeated inspections by FENZ and the authority have identified obstructions in stairwells and escape paths, indicating poor building management. These issues persist despite declarations of compliance in evacuation scheme submissions.

6.5.5. **Smoke detection system**: The building's smoke detection system has a history of frequent false alarms which undermines occupant responsiveness and increases evacuation delays.

6.6. The expert observed some remedial measures had been implemented, including photoluminescent strips on ladders and partial smoke sealing on doors, but noted these are "incremental safety improvements" and do not address the core fire and smoke separation deficiencies.

6.7. The expert reiterated the 2018 design guide relied on by the owner's engineer is not appropriate in this case due to the boarding house configuration and lack of household-like social cohesion.

Conclusions

6.8. The expert concluded:

6.8.1. The cumulative impact of inadequate compartmentation, unreliable alarm systems, poorly defined egress paths, and persistent obstructions presents a heightened risk to occupants in the event of fire.

7. FENZ additional comments on expert report

7.1. FENZ generally concurred with the expert's report[17], adding the following comments:

7.1.1. It maintains the authority was correct in issuing the dangerous building notice, based on legitimate concerns regarding occupant safety in the event of fire.

7.1.2. The combined fire safety deficiencies at the time the dangerous building notice was issued posed a credible risk of injury or death to occupants and potentially to individuals on adjacent properties.

7.1.3. The validity of the dangerous building notice is unaffected by any subsequent remediation efforts.

7.1.4. The ongoing safety of the building is contingent on completion of effective remediation. The authority's inspection report dated 4 October 2024 states none of the identified issues had at that time been addressed. In the absence of evidence demonstrating satisfactory remediation, it maintains the building remained dangerous at the time the application for determination was made.

7.1.5. The continued high incidence of false alarms compounds safety concerns at the property[18] as it reflects a poorly designed or maintained alarm system, undermines occupant responsiveness and increases evacuation delays.

7.1.6. Due to the ongoing false alarms, it lacks confidence in the reliability and effectiveness of the building's fire alarm system.

8. The owner's engineer's additional comments

8.1. The owner's fire engineer made the following comments in response to the expert's report and FENZ' additional comments:

8.1.1. Based on their site inspections and historical involvement with the owner's building, they consider the application of current compliance standards to a legacy building consented in 2000 is inappropriate and the original fire safety design is adequate under the performance-based framework of the Building Act 2004.

8.1.2. They dispute the expert's assertion the ground floor hallway requires a 30-minute fire resistance rating (FRR) under C/AS2 and consider the 2000 report's proposal to upgrade existing timber doors to smoke control

[17] Copies of the FENZ consultation were provided to the parties on 11 July 2025.
[18] FENZ states there have been five additional false alarms since its initial response on 3 February 2025.

standard under an "as nearly as is reasonably practicable" approach supported by a type 4 automatic fire alarm system is adequate.

8.1.3. Their site inspections confirm the hallway doors were retrofitted with smoke seals, closers and leaf thickening in line with the 2000 consent, although these are now in poor repair and require maintenance to restore their smoke control function.

8.1.4. The building's original fire safety strategy was based on early fire detection and rapid evacuation, and the type 4 alarm system is designed to activate within approximately one minute of fire growth. "A total available safe egress time of 8.5 minutes is calculated, contingent on the integrity of the smoke control doors."

8.1.5. They refute the need to modify the stair geometry as the internal stair to the upstairs flat has three escape options: the internal stairs and two external escape ladders, all of which are in good condition with photoluminescent lighting. They acknowledge none of the paths individually meet current C/AS2 standards but consider the redundancy of escape paths and the director's physical capability mitigates the risk.

8.1.6. The building's concrete construction, which includes floors and internal/external load-bearing walls, provides critical passive fire protection, materially reduces the risk of fire spread, and would enhance structural integrity during an evacuation and FENZ search operation.

8.1.7. Regarding concern about external escape paths passing within two metres of unprotected walls, they consider the building's concrete subfloor walls and elevated window openings provide sufficient protection, enabling the backyard to not be a dead-end location under C/AS2. They note this detail would not be evident from a desktop-only inspection.

8.1.8. They agree the type 4 system's frequent false alarms are problematic, and recommend an investigation to upgrade to a type 5 system or multi-criteria detectors.

8.1.9. In conclusion, they consider the owner's building is not dangerous under section 121 provided its fire safety systems are maintained in accordance with the 2000 consent.

9. Discussion

9.1. The matter to be determined is the authority's decision to issue the dangerous building notice under section 124, and its power of decision in relation to whether the notice has subsequently been satisfied.

Legislation

9.2. The provisions of the Act relating to dangerous building notices can be found in subpart 6, with the relevant sections in this case being 121, 124 and 125.

9.3. Section 121 sets out the meaning of a 'dangerous building':

> **121 Meaning of dangerous building**
>
> (1) A building is dangerous for the purposes of this Act if, –
>
> (a) ...
>
> (b) in the event of fire, injury or death to any persons in the building or to persons on other property is likely.
>
> (2) For the purpose of determining whether a building is dangerous in terms of subsection (1)(b), a territorial authority –
>
> (a) may seek advice from employees, volunteers, and contractors of Fire and Emergency New Zealand who have been notified to the territorial authority by the board of Fire and Emergency New Zealand as being competent to give advice; and
>
> (b) if the advice is sought, must have due regard to the advice.

9.4. Under section 121(1)(b), a building is dangerous for the purposes of the Act if 'in the event of fire, injury or death to any persons in the building or to persons on other property is likely' ("the section 121(1)(b) test").

9.5. Section 121(2)(a) allows for an authority to seek advice from FENZ in determining if a building is dangerous, which the authority did in this case when it carried out the site inspection with FENZ on 8 June 2023 (as discussed in paragraph 3.7). FENZ subsequently issued a written opinion which the authority relied on in issuing the dangerous building notice, as provided for in section 121(2)(b).

9.6. Section 124 provides that if a territorial authority is satisfied a building is dangerous (as set out in section 121) it may, among other things, issue a notice "that complies with section 125(1) requiring work to be carried out on the building to ... reduce or remove the danger" as per section 124(2)(c)(i).

9.7. In order to address whether the building was dangerous at the time the dangerous building notice was issued and at the time the application for determination was made, I must first consider the section 121(1)(b) test, the meaning of the term 'likely', and the use of the building.

The section 121(1)(b) test

9.8. Previous determinations[19] have discussed that a building can be dangerous in terms of section 121(1)(b) for any reason relating to fire, and this may include likely fire hazards and sources and the building's occupancy, among other matters.

9.9. I consider it is appropriate, as one evaluation tool, to first consider whether the building complies with the Building Code, as many of the performance requirements of the Code relate to life safety in the event of fire. If the answer is no, then the next consideration will be whether the features of the building which do not comply fully with the Building Code contribute to and meet the test of a building being dangerous in terms of section 121(1)(b).

9.10. It is important to note that although a building may not comply with particular aspects of the Building Code, this does not automatically mean that the building is dangerous. There is always some level of risk that in the event of a fire death or injury to persons will occur, but there must be particular features of a building for this risk to be 'likely' to occur. Additional analysis of the particular configuration and features of the building needs to be carried out to establish if the non-compliance amounts to 'dangerous' so as to warrant the seriousness of issuing a dangerous building notice.

9.11. There are two further points to note in respect of the test in section 121(1)(b). The first is that the phrase 'in the event of fire' should be taken to refer to a credible fire scenario. This need not be the worst credible fire scenario, nor should it be a trivial fire scenario. The analysis should be aligned to a fire scenario that might be considered usual or typical for the building's type and occupancy.

The meaning of 'likely'

9.12. There is always a risk that in the event of a fire a person may be injured or die. However, s121(1)(b) requires the risk of this to be 'likely' and there must be particular features of the building that create or contribute to a likelihood.

9.13. I note the term 'likely' was considered in Determination 2006/119[20] in the context of the dangerous building test under section 64 of the Building Act 1991. The relevant paragraph of that determination states:

> The word 'likely' in the context of section 64 of the Building Act 1991 ("the former Act"), now section 121, has been interpreted as follows:

[19] Determination 2015/014 *Regarding the issue of a dangerous building notice for a house*, 13 April 2015, at paragraph 8.2.4, and Determination 2025/046 *Regarding an authority's decision to issue a dangerous building notice*, 16 September 2025, at paragraph 5.10.

[20] Determination 2006/119 *Dangerous building notices for houses in Matata, Bay of Plenty*, 7 December 2006.

> "likely" does not mean "probable", as that puts the test too high. On the other hand, a mere possibility is not enough. What is required is "a reasonable consequence or [something which] could well happen". *Auckland CC v Weldon Properties Ltd* 7/8/96, Judge Boshier, DC Auckland NP2627/95, [1996] DCR 635.

9.14. I take the view that this decision is good law in respect of the word 'likely' in section 121 and that 'likely' means something that could well happen.

The 'classified use' of the building

9.15. To establish what would be required of the building if it were to comply with the Building Code, the classified use[21] needs to be established to determine the level of compliance required.

9.16. A key concern of the authority and FENZ was the perceived ability of the residents to self-evacuate in the event of fire while medicated. This led the authority and FENZ to assume a risk group classification[22] of SI (Care or detention) when assessing the building. However, evidence provided from Auckland District Health Board confirms residents are capable of self-evacuating in the event of fire and are not considered institutionalised.

9.17. At the time the dangerous building notice was issued, there were 10 bedrooms in the building, seven on the ground floor[23], two on the first floor and one in the basement.[24] There is also an additional bedroom in the sleepout.

9.18. I note there is no collective tenancy agreement in place and tenants do not occupy the building as a single household unit. Rather, individual tenancy agreements provide for room and board, including meals.

9.19. The director lives onsite in the upstairs flat (described at paragraph 2.4), which is separated from residents.

9.20. Under Clause A1 *Classified uses*, I consider the building's current use is communal residential accommodation:

> **3.0.2 Community service**
>
> Applies to a residential building or use where limited assistance or care is extended to the principal users. Examples: **a boarding house** *[my emphasis]*, hall

[21] Building Regulations 1992 Schedule 1 The Building Code clause A1 Classified uses.

[22] Risk groups are the classification of a building or firecells within a building according to the use to which it is intended to be put as defined in C/AS2 Acceptable Solution for Buildings other than Risk Group SH – amendment 3, 2 November 2023.

[23] It is noted that several reports and the notice itself reference six bedrooms on the ground floor. However, architectural plans detail seven bedrooms on this level.

[24] The dangerous building notice states there are two bedrooms in the basement, however photos show there is one bedroom and one storeroom.

of residence, holiday cabin, backcountry hut, hostel, hotel, motel, nurses' home, retirement village, time-share accommodation, a work camp, or camping ground.

9.21. In my view, based on the evidence provided, at the time the notice was issued, the building was being used as a boarding house, with a manager living onsite on the first floor and other occupants on the ground floor and in the sleep-out.[25] The tenants have separate tenancy agreements, and while they do partially share facilities such as kitchen and laundry areas, they are not living as a single household unit. The following analysis is therefore based on the building being a community service building under Clause A1.

Building Code compliance

9.22. To determine whether the building is dangerous in terms of the Act, I must first consider whether the building complied with the Building Code at the time the dangerous building notice was issued.

9.23. In this case, the relevant Code clauses for protection from fire are clauses C1-C6.

9.24. As I only need to understand the potential deficiencies of the building, the most direct approach is to compare it to the Acceptable Solution notwithstanding this is only one way of satisfying Code compliance. This is a method used in previous determinations.[26]

9.25. Under the Acceptable Solution for clauses C1-C6[27], the Risk Group for a boarding house is SM – Sleeping (non-institutional)[28] and is covered by C/AS2, the Acceptable Solution for Buildings other than Risk Group SH

Fire separations

9.26. The authority has stated the building has inadequate fire separation and deficiencies in passive fire protection, including no smoke seals on smoke-stop doors, ineffectiveness of fire rated construction between occupied spaces and exits, and the external escape route via a balcony on the first floor lacks a fire resistance rating.

9.27. C/AS2 Table 2.1 provides firecell floor limits are 500m^2 for buildings in risk group category SM. However, C/AS2 paragraph 4.6.9 requires each suite (ie each accommodation room) to be a separate firecell with fire separations with an FRR in accordance with the provisions of C/AS2 paragraph 2.3 (ie 60/60/60 as per Table 2.4

[25] The basement bedroom was vacant at the time the dangerous building notice was issued.
[26] Such as Determination 2025/046 Regarding an authority's decision is issue a dangerous building notice. 140 Belvedere Road, Carteron. Issued 25 September 2025.
[27] I have chosen for this purpose the Acceptable Solution effective at the date the determination application was made. C/AS2 Acceptable Solution for Buildings other than Risk Group SH – amendment 3, 2 November 2023.
[28] Table 1.1 of C/AS2 Acceptable Solution for Buildings other than Risk Group SH – amendment 3, 2 November 2023.

for unsprinklered risk group SM). In this case, the bedrooms do not have fire separated construction meeting 60/60/60, or even 30/30/30, meaning they do not comply with this requirement.

9.28. Paragraph 3.9.4 of C/AS2 specifies escape routes from firecells must enter directly into a safe path or final exit, and paragraph 3.9.5 requires safe paths to be separated from each other and from all spaces by fire separations. In addition, paragraph 4.6.8 requires communal service functions, such as laundries and kitchens, to be separated from suites with fire separations having an FRR in accordance with paragraph 2.3 of C/AS2. In this case, the hallway (as the safe path) and laundry are not separated from other spaces by fire separations, and therefore the building does not comply with these requirements.

9.29. In addition, numerous deficiencies have been observed regarding fire and smoke separations in the building, including visible gaps around fire doors, missing smoke seals on doors, multiple instances of hollow-core bedroom doors instead of solid doors, and penetrations in firecells without fire stopping (recorded in the basement).

Escape routes

9.30. The authority's onsite assessment also identified concerns relating to blocked or insufficient escape routes, in particular:

9.30.1. Egress widths and the height of the escape route via the internal stairs hinder safe and efficient evacuation.

9.30.2. Door fastenings and locking devices are either missing or require adjustment, and non-compliant locking devices were observed on egress routes (eg a first floor bedroom has locks on both sides of the internal double entry doors).

9.30.3. Vision panels are missing from some doors.

9.30.4. Final exits include changes in level.

9.30.5. The first floor escape route via a window is non-compliant.

9.30.6. There are also inconsistencies with the FENZ-approved evacuation scheme.

9.31. I acknowledge egress widths and heights remain unchanged from those in the approved 2000 consent and the 'as nearly as reasonably practicable'[29] assessment completed at that time. However, I am looking at them as anywhere they fall short

[29] Section 112(1)(i) states 'A building consent authority must not grant a building consent for the alteration of an existing building, or part of an existing building, unless the building consent authority is satisfied that, after the alteration the building will comply, as nearly as is reasonably practicable, with the provisions of the building code that relate to means of escape from fire'.

of full compliance they may contribute to a cumulative set of issues to create a likelihood of danger.

9.32. Table 3.1 provides the minimum number of escape routes from a floor level or firecell in risk group SM with 50 or fewer occupants as being 1 (with additional conditions described in paragraphs 3.13.1 to 3.13.6).

9.33. The building's ground floor has two escape routes (being doors from the hallway to the street and backyard), the basement has two escape routes (being an external escape via the bedroom and the internal stairs), and the first floor has three escape routes (being the internal stairs and external window/ladder escapes from north and south bedrooms).

9.34. However, ladders are not permitted in the Acceptable Solution for risk group SM buildings. This means the first floor balcony egress ladders are outside scope for the purposes of C/AS2 and the first floor consequently has one permitted escape route under the Acceptable Solution.

9.35. Table 3.1a from C/AS2 details minimum clear widths required for escape route compliance:

Table 3.1a	Minimum clear width of escape routes, excluding ladders (mm) Paragraphs 3.3.2 and 3.15.5				
Risk group	Element	Open path[1]		Exitway	
		Horizontal	Vertical	Horizontal	Vertical
SM	Escape Route	850	1000	1000	1000
	Door	760	760	875	875

9.36. Paragraph 3.3.1(a) of C/AS2 specifies the minimum height of escape routes to be as described in D1/AS1 (ie 2100mm).

9.37. During its 7 July 2023 inspection, the authority noted the width of the building's south exit stair was 700-850mm, the height of the basement internal stair was less than 2100mm, and the widths of the internal stairs for the first floor and both balcony exits and ladders were less than 1000mm.

9.38. For the first floor, only the internal stairs can be considered an escape route for the purposes of C/AS2, and given they measure less than 1000mm in width they do not comply with Code requirements.

9.39. Paragraph 3.15.1(b) of C/AS2 requires fire and smoke control doors to be actively self-closing at all times. In addition, paragraph 3.15.2(a) requires locking devices to be clearly visible, located where they would normally be expected and designed such that in the event of a fire they can be easily operated without a key or other security device and allow the door to open in the normal way.

9.40. The authority noted self-closing mechanisms were missing on the doors for Room 2 on the ground floor and the basement storeroom, or required remediation at the time the dangerous building notice was issued. In addition, the first floor double doors have keyed bolt locks installed which are not compliant with C/AS2.

9.41. Paragraph 3.15.6(c) of C/AS2 requires vision panels for doors leading into exitways, except where the door is the egress for a sleeping space.

9.42. The authority has identified both the ground floor kitchen and living room doors, which lead into the ground floor exitway, as lacking vision panels and as such these would not comply with the requirements of C/AS2.

9.43. Paragraph 3.1.4 of C/AS2 requires escape routes to comply with Clause D1 *Access routes*, such that ramps, stairs, ladders, landings, handrails, doors, vision panels and openings shall comply with Acceptable Solution D1/AS1, which under paragraph 4.1.3, requires uniformity of riser height and tread depth for all steps in one flight.

9.44. During its onsite assessment, FENZ recorded differing stair heights for the internal basement stairs which would not comply with D1/AS1.

9.45. In addition, FENZ and the authority both noted concerns in the dangerous building notice relating to combustible materials being stored in escape paths. This is a site-specific feature which is not covered under C/AS2.

Warning systems

9.46. The authority states the building does not comply with fire suppression and early warning system requirements, and the dangerous building notice details FENZ' concerns relating to the nature of the occupancy which requires these systems to be installed. This in turn relates to the building's perceived risk group being 'SI' and the ability of residents to self-evacuate. As noted above, I consider the building is risk group 'SM'.

9.47. Under C/AS2 the building is considered three storeys[30] with an escape height of less than 10m.

9.48. While it has been stated the residents are generally longer term occupants, the building operates as a boarding house with individual tenancies and as such residents are considered transient for assessment under C/AS2 Table 1.1, risk group SM.

9.49. Table 2.2 specifies minimum fire safety systems by type required for each risk group. For SM transient accommodation with an escape height of 4 to 10 metres, a

[30] I acknowledge the owner's engineer considers the building to be two storeys with a basement, while the authority's external engineer and the Ministry's expert consider the building to be three storeys for fire safety assessment purposes.

minimum Type 5[31] system would be required[32]. Type 5 would be required as per Table 2.3.

9.50. The building currently has a Type 4 automatic fire alarm system activated by smoke detectors and manual call points. As such, the system would not achieve the compliance specified in C/AS2.

Emergency lighting and exit signage

9.51. Lastly, the authority has identified exit signage deficiencies with emergency lighting and exit signs deemed non-compliant as signage "does not meet specific requirements"[33]. Site inspection records state final exit signage is non-illuminated stickered signage only.

9.52. Under Clause C4 *Movement to place of safety*, functional requirement C4.1(a) states 'buildings must be provided with visibility in escape routes complying with clause F6 [*Visibility in escape routes*]'. In addition, functional requirement F6.2 states 'specified features in escape routes must be made reasonably visible by lighting systems, other systems, or both, during failure of the main lighting'. F8.3.3 states:

> F8.3.3 Signs to facilitate escape to *a place of safety* must be provided and
> (a) be located to identify the *escape routes*, and
> (b) continue to meet the performance requirements in clause F8.3.1 during failure of the main lighting for the period required by performance F6.3.4 and performance F6.3.5.

9.53. Existing floor plans[34] reference emergency lighting in both bedrooms on the first floor, in the stairs connecting the first floor and ground floor, in the ground floor hallway and laundry, and on the south external stairs. Emergency lighting appears to be missing from the south egress stairs and basement external safe path stairs, the first floor kitchen, the ground floor hallway adjacent to the main final exit, and the internal stairs between ground floor and basement.

9.54. During the 2023 site visits, the authority identified inadequate emergency lighting on the south external stair and missing illuminated exit signs throughout the building. What non-illuminated signage had been provided was confusing in where it pointed persons.

9.55. As such, at the time the dangerous building notice was issued, the emergency lighting and exit signage did not meet the requirements of Clause F6 or F8.

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[31] Type 5 is an automatic fire alarm system with modified smoke detection and manual call points, as specified in C/AS2 Appendix A.

[32] Type 18 is not required where the height from FENZ vehicular access to any floor is less than 15m and FENZ' hose run distance to any point on any floor is less than 75m, as measured from FENZ vehicular access.

[33] As stated in the dangerous building notice.

[34] The floor plans are stamped BC01036722034 by the authority with a received date of 2 May 2023.

Application of the section 121(1)(b) test

9.56. The second analysis that is undertaken is what particular non-compliances identified above in combination could result in the building being dangerous for under section 121(1)(b).

The particular features of the building to analyse include (but are not limited to) the:

- outbreak and spread of fire (such as nature, number and location of any ignition sources)
- means to escape the building
- warning systems to alert occupants of fire and initiate evacuation
- building's use
- occupancy.

Nature, number and location of ignition sources

9.57. Floor plans indicate there are three potential sources of fire within the building, being the ground floor kitchen, ground floor laundry and first floor kitchen.

9.58. The number and type of these communal services do not significantly raise the risk of a fire above that of a typical residential household but I am concerned that several of the rooms have appliances that indicate kitchenette setups with more potential sources of fire but the extent of this was unclear in the information.

Means of escape

9.59. The number, availability and protection of escape routes from the effects of fire, in providing sufficient time to allow safe escape, are all factors that should be taken into consideration in an analysis.

9.60. The basement has two escape routes: a final exit in the basement bedroom, and internal stairs leading up to the ground floor.

9.61. The ground floor has two escape routes: a final exit via the front door, and a final exit through the laundry onto the backyard.

9.62. The first floor has three escape routes: internal stairs to the ground floor, an exit through the north bedroom to a balcony and ladder, and an exit through the south bedroom window to an external landing and ladder.

9.63. The authority and FENZ have identified several factors that could affect the ability of occupants to safely exit the building in the event of fire:

- Reduced escape route widths and heights
- Trip or fall hazards on escape paths
- Non-compliant or absent fire and smoke separation between occupied spaces and exit ways
- Blocked or insufficient escape routes.

9.64. The authority has identified several areas where combustibles are stored in exitways. The ground floor exitway adjacent to rooms 1 and 2 has items such as books and appliances stored in the corridor, the laundry contains multiple appliances (such as clothes dryers) within the exitway adjacent to the rear final exit, the ground floor internal stair has a storage cupboard adjacent to a fire door, and the upstairs flat has a desk and cupboard partially blocking the double doors leading to the bedroom balcony exit.

9.65. While certainly a risk in the event of a fire, I acknowledge features such as cupboards, appliances and materials are not permanent features of a building and can easily be removed and FENZ have powers under their own regulations to ensure the safety of evacuation procedures. These items should be removed.

9.66. While reduced heights and widths may not achieve the level of compliance required for C/AS2, the escape routes available do offer multiple options for the low number of occupants in the building. These routes do allow for egress and would not in themselves contribute to the building being considered dangerous.

9.67. A trip hazard appears to be in relation to the internal stairs between the basement and ground floor and relates to inconsistent riser heights rather than an isolated step. Again, while not fully complying with C/AS2 and D1/AS1, this feature alone would not contribute to the building being dangerous with a secondary means of escape available to basement occupants.

9.68. In my view, the key issue impacting a person's escape is the inadequate fire and smoke separations throughout the building. As discussed earlier, fire and smoke separation is either missing or deficient for a number of occupied rooms. The basement was also observed to have pipework penetrations without any visible fire stopping.

9.69. The ability of occupants to safely use escape routes is essential to avoid injury or death in the event of fire. Inadequate fire separations will affect safe paths and escape routes were a fire to occur. Speed and spread of fire are also significantly increased when fire and smoke separation is deficient.

9.70. The first floor bedroom door was observed with keyed bolt locks on either side of the door leafs and lockable from both the bedroom and the dining/common area. Were a fire to occur blocking other means of escape from the first floor, a locked door impeding escape significantly increases the risk of injury or death to occupants in this area.

9.71. The south final exit door on the ground floor is recorded as having a missing handle and door latch which may be difficult to operate in the event of fire.

9.72. Further instances of deficient door fastenings and locking devices were observed in some ground floor bedrooms and the ground floor living room.

9.73. In the basement, the storeroom door's self-closing device was missing, reducing the effectiveness of it functioning as a fire or smoke separation.

9.74. In addition, exit signage deficiencies and a lack of emergency lighting in some areas, as discussed above, could also increase the risk of injury to occupants who may be unfamiliar with the building.

Warning systems

9.75. The building has a type 4 automatic fire alarm system, which gives early warning to building occupants. However, numerous false activations have been recorded (averaging one per month) which indicates shortfalls in alarm design, maintenance and/or occupant activities.

9.76. Frequent false alarms may lead to complacency in the event of fire.

9.77. While such false alarms indicate the alarm system needs to be maintained and inspected, this in itself would not trigger a building being considered dangerous. There is no evidence the alarm system is deficient or faulty, and the evidence presented demonstrates occupants are responding to it. Testing certificates for the alarm have been provided to support the Building Warrant of Fitness.

The use of the building

9.78. The building is being used as a boarding house. Residents are on individual contracts as noted in Paragraph 9.19, and no evidence has been provided of any social cohesion between tenants.

Occupancy

9.79. As discussed in paragraph 9.17, the authority recorded 11 bedrooms in the building and sleep-out at the time the dangerous building notice was issued. A smaller number of bedrooms would not necessarily reduce the risk, rather social cohesion would be required which has not been demonstrated by the supporting evidence or submissions.

Conclusion

9.80. It is clear there were several matters of concern relating to the life safety features in the building at the time the dangerous building notice was issued.

9.81. Aspects of the building's physical configuration, such as reduced egress widths and heights, while not meeting current compliance requirements, do not automatically render the building 'dangerous'. These elements of the building's physical layout have not been altered since the 2000 consent was approved by the authority.

9.82. The lack of adequate fire and smoke separation in many of the occupied spaces and communal areas in the building's basement and ground level is a significant danger to occupants should a fire occur. The ability for fire and smoke to spread rapidly through these areas means that in the ordinary course of events, the building is likely to cause injury or death in the event of fire.

9.83. I also consider the keyed bolt locks, and lack of or confusing exit signage would also delay escape from the building and contribute to it being 'dangerous'.

9.84. I therefore consider the test under section 121(1)(b) is met, and there were grounds for the authority to issue the dangerous building notice.

Has remedial work addressed the likelihood of injury or death in the event of a fire at the date of the application for determination?

9.85. Between 15 August 2024 and 1 March 2025, the owner undertook the following remedial work at the property:

- photoluminescent stair nosing on south stairs, basement external escape path stairs and the south balcony
- new smoke door for ground floor laundry
- "intermesent" [sic] door seals[35] for ground floor living room and ground floor room 6
- new smoke door and "intermesent" [sic] door seals on basement stair door
- new solid core smoke door with luminescent seals on internal stair door
- fire hatch for subfloor access
- new smoke door (leaf only) on first floor internal stair door

[35] It is assumed that this reference refers to intumescent door seals, but it is unclear what system has been installed.

- exit signage at front fire door.

9.86. It is unclear whether the work described above was underway or completed when the determination was applied for[36], although I understand the owner's builder provided an estimate of works on 15 August 2024 and an invoice for "completed works on fire report" on 1 March 2025.

9.87. I also note the work described above relates to recommendations by the owner's engineer rather than non-compliant items from the dangerous building notice.

9.88. The authority has recorded multiple instances of non-compliant hollow core doors throughout the building, being bedroom doors and the two doors on the internal stairs connecting the three levels. However, the owner has only replaced the basement stair door and the first floor stair door. In addition, a new fire door has been fitted to the laundry which the photographs provided indicate is of an unknown design.

9.89. I also note the new fire and smoke separation works have been installed without an approved building consent[37] and little information has been provided on how it has been done. As such it is unclear whether they meet Building Code requirements. No verification has been undertaken by the authority.

9.90. Given the information provided to me, I consider the remedial work described in paragraph 9.85, even if it has been undertaken, does not adequately address the non-compliances in the dangerous building notice. As such, I consider the building was still dangerous under section 121(1)(b) at the time the determination was applied for.

Form and content of the dangerous building notice

9.91. Having found the authority had grounds for concluding the owner's building was dangerous and for issuing a dangerous building notice under section 124, I will now consider the form and content of that notice.

9.92. A notice issued under section 124 is not a prescribed form under the Building (Forms) Regulations 2004. What is required under section 124(2)(c)(i) is for the notice to require work to be carried out to reduce or remove the danger. In other words, it is the reduction or removal of the danger that is the required outcome from the issue of such a notice.

9.93. The authority's dangerous building notice was issued under section 124(2)(c)(i) requiring work to be carried out to reduce or remove the danger. The authority has

[36] The application for determination was accepted on 8 January 2025.
[37] Complete or substantial replacement of a specified system is outside the scope of Schedule 1 exempt building work as noted in Schedule 1 clause 1(3)(a).

specified the owner "carry out all necessary work to prevent the building from remaining dangerous in terms of section 121 of the Act".

9.94. The dangerous building notice further elaborates by suggesting the owner obtain expert advice on how to meet the above requirement, as how they achieve compliance is a matter for them and their advisors to determine. The notice states that the owner may wish to consider carrying out the following building work and/or undertake the following actions:

(1) Reducing the building occupancy by only permitting for occupation rooms that have an adequate means of escape in the event of fire. The rooms deemed unsafe for occupancy are marked in the attached floor plan.

(2) Obtaining a full Building Code compliance review of the building (including all other structures on site) to identify the extent of remediation works required and demonstrate an appropriate occupancy figure for the building.

(3) Undertaking work to ensure that any occupied rooms have an adequate means of escape for occupants in the event of fire.

9.95. The dangerous building notice identifies six elements of concern from FENZ and eight from the authority which the authority has grouped as five areas of non-compliance in its submissions, being:

9.95.1. Inadequate fire separation and passive fire protection

9.95.2. Blocked or insufficient escape routes

9.95.3. Combustible materials stored in escape paths

9.95.4. Lack of compliance with fire suppression and early warning system requirements

9.95.5. Exit signage deficiencies.

9.96. The remedies in the notice only relate to reducing occupancy numbers and ensuring occupied rooms have adequate means of escape rather than addressing all areas of concern.

9.97. For these reasons, the remedies proposed in this case are not appropriate to 'reduce and remove' the danger identified in the dangerous building notice and fully achieve the requirements of section 124(2)(c)(i).

9.98. Section 125 specifies the requirements for a notice issued under section 124(2)(c)(i). Section 125(1)(e) requires a notice issued under section 124(2)(c) to state "whether the owner of the building must obtain a building consent in order to carry out the work required by the notice".

9.99. In this case, the dangerous building notice states any work recommended in the notice **may** *[my emphasis]* require a building consent. The notice therefore gives uncertainty around consent requirements and does not satisfy the requirements of section 125(1)(e).

9.100. The dangerous building notice identifies non-compliances in fire and smoke separations throughout the building. These features are classified as specified systems under schedule 1 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005. Any complete or substantial replacement of a specified system requires a building consent as this work is not exempt under schedule 1 of the Act[38].

Determination remedy

9.101. A determination under section 177(1)(b) is in respect of an authority's exercise of its powers of decision. Section 188(1) provides that a determination can confirm, reverse, or modify that decision, or determine the matter to which it relates.

9.102. The District Court, in *Estate Properties Ltd v Hastings District Council*, stated "The Chief Executive's choice of remedy under s 188(1) is an exercise of discretion"[39] and that it was open to the Chief Executive to not apply one of the positive steps required by section 188(1)(a).[40] Further, the court took the view that declining to reverse a decision did not have the effect of confirming the decision.[41]

9.103. I agree the building was dangerous at the time the dangerous building notice was issued. I consider it is not appropriate, in this instance, to confirm the decision to issue the notice due to the identified inadequacies of the form and content of the notice. Further, the timeframe in which to satisfy the notice is now expired, so I do not consider it necessary to modify the notice. I also consider it not appropriate to reverse the notice as I agree the building was dangerous and therefore there were grounds to issue the notice. As such, I have elected not to exercise a remedy in respect of section 188(1)(a) in this determination.

10. Decision

10.1. In accordance with section 188 of the Building Act 2004, I determine the building was dangerous under section 121(1)(b) at the time the notice was issued, and the authority had grounds to issue the dangerous building notice under section 124. I

[38] Acknowledging that the authority has not recommended that building works be undertaken urgently under section 41(1)(c)(i) or 41(1)(c)(ii).
[39] *Estate Properties Ltd v Hastings District Council* [2021] NZDC 17000, at [21].
[40] The court dismissed an appeal against a decision of the Chief Executive that a code compliance certificate had been wrongly issued but declining to reverse the certificate (refer to Determination 2020/034 *Regarding the compliance of fire safety precautions in a motel*, 16 December 2020). See [2021] NZDC 17000 at [30].
[41] [2021] NZDC 17000 at [29].

also determine that the building was still dangerous at the time the determination application was made.

10.2. The dangerous building notice is deficient in its content with regard to the requirements of sections 124(2)(c)(i) and 125(1)(e); however as the dangerous building notice relates to a risk of injury or death in the event of fire, I elect to neither confirm, reverse nor modify the notice.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 2 December 2025.

Andrew Eames

Principal Advisor Determinations