BUILDING PERFORMANCE

# Determination 2025/063

## Compliance of a diesel boiler and flue with Building Code clause G4.3.4 as it relates to other property

## 1 Morepork Way, Arthurs Point, Queenstown


**Summary**

This determination considers whether the installation of a diesel boiler and flue complies with clause G4.3.4 of the Building Code, in terms of whether the emissions from the flue avoids creating a nuisance or hazard to the neighbouring property. The determination discusses the terms 'nuisance' and 'hazard' in the context of compliance with clause G4.3.4.

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, 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. P Davies and P May, the owners of the property at 1 Morepork Way, where the building work was carried out ("the owners")

1.2.2. D Childs and P Byrne, the owners of the neighbouring property at 3 Morepork Way, and the applicants in this determination ("the applicants")

1.2.3. Queenstown Lakes District Council, carrying out its duties as a territorial authority or building consent authority ("the authority").

1.3. This determination arises from the installation of a diesel boiler and flue at the owners' property. The applicants, as owners of the property next to the owners' house, consider the building work does not comply with clause G4 *Ventilation*, as the contaminated air being discharged from the flue is creating a nuisance and/or hazard on their property.

1.4. The matter to be determined, under section 177(1)(a), is whether the installation of the diesel boiler and flue system complies with Building Code clause G4.3.4 as it relates to the protection of other property. Specifically, the determination will consider the requirement to dispose of contaminated air in a way that avoids creating a nuisance or hazard to people and other property.

## Issues outside this determination

1.5. The scope of this determination is limited by the applicants' party status. Under section 176(e)(i), the applicants are parties only in respect of Building Code clauses that relate to protection of "other property". In the circumstances of this case, this means the determination is limited to clause G4.3.4, which is concerned with the

[1] The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

impact of "contaminated air" generated by the boiler and flue system on "people and other property".

1.6. I note that in their submissions the applicants have also raised concerns about the noise generated by the boiler and flue system. However, the relevant Building Code clause for noise – G6 *Airborne and impact sound* – does not include any provisions relating to 'other property'. As such, the limit in section 176(e)(i) means that clause G6 and issues relating to it are excluded from the determination.

1.7. This determination does not consider the authority's decisions to grant a minor variation of the building consent and a code compliance certificate for the building work.

# 2. The building work

2.1. The owners' property is in a residential area of Queenstown. A dwelling was constructed on the property in 2017. The authority issued a building consent on 31 March 2017 (BC170074) for the construction of the dwelling.

2.2. In or around July 2017, building work was carried out to install a condensing[2] boiler in the owners' house. The boiler uses liquid diesel fuel, which is stored in a tank located against the external wall of the house nearby to the boiler. The flue for the boiler passes through the external western wall of the house directly behind and above the boiler, at a height of approximately 1.6m above the external ground level. The flue extends 400–500mm horizontally outwards from the external wall and is terminated with a rain-exclusion cowl ("the cowl"), the opening of which directs the emissions from the flue downwards towards the ground.[3]

2.3. The building work to install the boiler and flue did not form part of the building consent. However, photos were taken of the boiler and flue during the final inspection, and they were included as part of the final inspection report.

2.4. The authority issued a code compliance certificate for the consented work on 9 October 2017.

# 3. Background

3.1. The applicants' property is the neighbouring property to the owners' property. The applicants' dwelling was constructed in 2016 and has been occupied by the applicants throughout the time that the building work to construct the owners' dwelling was consented, constructed and granted a code compliance certificate, including while the boiler was installed.

[2] A condensing boiler is a heating system that captures and reuses heat from exhaust gases, normally lost up a flue, by cooling them until water vapor condenses, releasing latent energy to preheat incoming water.
[3] I have not been provided with measurements for the installation of the boiler, fuel tank or flue; all measurements given are approximations.

3.2. The applicants' property has a shared boundary with the owners' property along its eastern boundary. The window of the applicants' bedroom is on the eastern side of their house, and opens at the base approximately 1.5m above ground level toward the shared boundary.

3.3. On the owners' property, the flue of the boiler extends out from the western external wall of the owners' house across from the applicants' bedroom window. The parties advise the distance between the end of the flue and the wall of the owners' house is around 5.5–6m. In the space between the houses there is an approximately 1.8m high boundary fence, a shed and vegetation. The distance between the cowl at the end of the flue and the boundary fence is approximately 3m. See Figure 1.

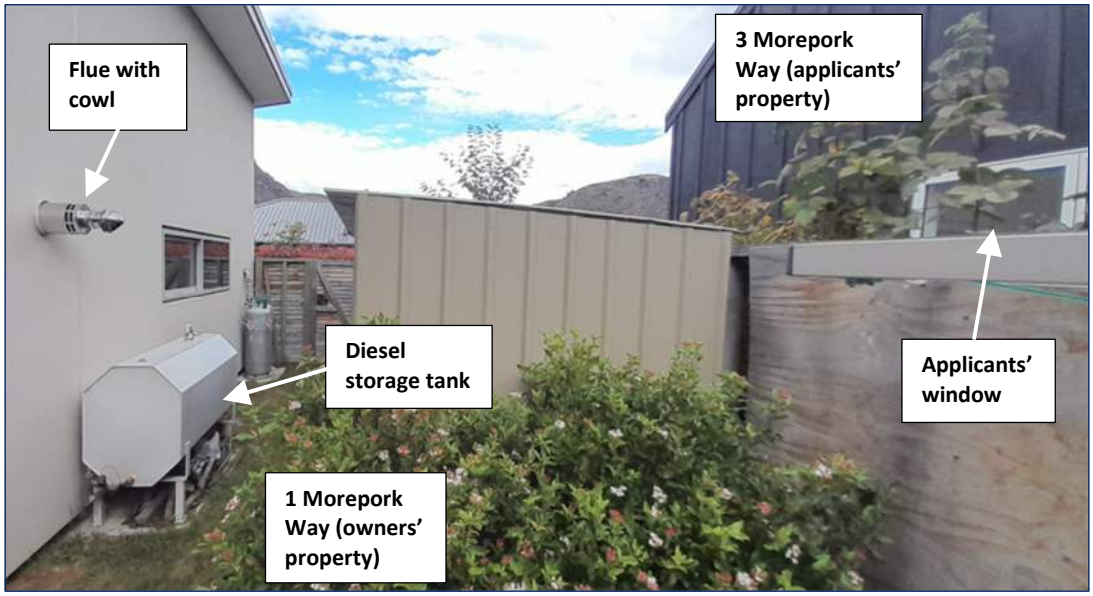


**Figure 1: Photograph looking south between the two dwellings from 1 Morepork Way**

3.4. In 2021, the applicants made a complaint to the authority about the noise and emissions from the boiler flue. They stated the flue is pointed directly at their bedroom window, and that the noise and emissions from it were disrupting their sleep and adversely affecting their physical and mental health. They also queried whether the boiler had been installed pursuant to a building consent.

3.5. With respect to the query about the building consent, the authority stated in internal correspondence that:

> The building consent did not specify a diesel boiler or storage tank and no minor variation was applied for.
>
> However, as it was noted, checked and approved at the final inspection this is enough to constitute the minor variation as being accepted. [The Ministry] is clear on this point that there is no prescribed method for approving a minor variation. Although not ideal and this is not [the authority's] standard practice, it is acceptable as it can be seen that the inspector did consider the installation and

ensured it was compliant. I can see no reason why, if a formal application had been received, it would have been rejected.

3.6. With respect to the emissions, the authority suggested the applicants contact the Otago Regional Council as the relevant responsible agency.

3.7. The Otago Regional Council then engaged an air quality expert ("the expert") to undertake a "brief technical assessment of the potential effects" of the emissions from the boiler in relation to the Otago Regional Air Plan. The expert conducted a site visit and provided a report dated 13 October 2022.

3.8. The expert's report noted that:

3.8.1. the boiler operation cycled on and off during winter according to heating demand

3.8.2. the combustion products discharged in the boiler emissions would include sulphur oxides, nitrogen oxides, carbon oxides, particulate matter and volatile organic compounds, with the 'contaminants of primary interest' being $PM_{10}$,[4] nitrogen dioxide ($NO_2$), carbon monoxide (CO), and sulphur dioxide ($SO_2$)

3.8.3. good practice for diesel fired boilers is to discharge above the roof of the building and neighbouring buildings to allow for adequate dispersal of contaminants

3.8.4. the discharge for the owners' boiler would result in "poor contaminant dispersion", because the "discharge occurs near ground level without upwards momentum, into a cavity between two dwellings (each approximately 5m high) that are only approximately 5m apart"

3.8.5. the screening modelling undertaken indicated that there was potential for "cumulative $NO^2$ concentrations to approach or exceed" the New Zealand *National Environmental Standards for Air Quality* and the *Ambient Air Quality Guidelines* ("the NESAQ"),[5] due to the "proximity of the [applicants'] window, the poor dispersion of the discharge (directed downwards) and the low height of the discharge that is similar to the neighbouring window height"

[4] $PM_{10}$ is the symbol for inhalable particulate matter less than 10 microns in diameter.

[5] Ministry for the Environment. (2021). *National environmental standards for air quality.* Retrieved from: https://environment.govt.nz/acts-and-regulations/regulations/national-environmental-standards-for-air-quality/; Ministry for the Environment. (2002). *Ambient air quality guidelines*. Retrieved from: https://environment.govt.nz/publications/ambient-air-quality-guidelines-2002-update/2-health-based-guideline-values/

3.8.6. the modelling also indicated that there is potential for the emissions "to make a significant contribution to $PM_{10}$ concentrations" at the applicants' window

3.8.7. the modelling "predicts concentrations of $NO_2$ and $PM_{10}$ at the [applicants'] property that are sufficiently high to warrant further mitigation"

3.8.8. during the site visit there was no odour detectable from the applicants' property while the boiler was operating and no "visible particulate matter" in the emissions

3.8.9. there is "significant uncertainty" associated with the modelled predictions, due to the emissions being discharged into a cavity between buildings meaning the effects are likely to be underestimated and "there is potential for concentrations to exceed the values predicted".

3.9. Following the expert's report, Otago Regional Council staff made four site visits to the owners' property during which "no odours [were] detected at or beyond the boundary of the property that would be deemed offensive or objectionable", and accordingly the regional council decided to take no further action.

3.10. The applicants applied for a determination and this was accepted by the Ministry on 18 March 2025.

# 4. Submissions

## The applicants

4.1. The applicants applied for a determination about:

> The compliance of a solid [sic] fuel heater and flue system with Building Code clause G4.3.4 as it relates to the protection of other property. Contaminated air is being disposed of in a way that creates a nuisance and hazard too [sic] neighbouring property. Outlet for contaminated air points directly at bedroom of neighbouring property which was built prior to Building Consent was issued and was present at time Code Compliance Cert was issued.

4.2. The applicants made a submission stating:

- they became aware of the issue with emissions from the flue on the first day the boiler was used; the flue points directly at their bedroom window, and emissions from it are disrupting their sleep and affecting their mental and physical health
- "the correct procedure for installation and code compliance has not been followed"; there are no producer statements on file for the boiler, and no evidence to suggest it has been correctly installed and is to code

- the authority should have more detailed records of the boiler's installation; there is no indication the authority considered its compliance with clause G4.3.4; the boiler was not part of the original consent and has "been treated as a minor variation in [an] ad hoc way at the time code compliance was sought"

- the expert's report established that "contaminated air is causing a hazard and nuisance at our property"

- the boiler as currently installed doesn't comply with the Building Code, and the authority should not have issued a code compliance certificate for it

- altering the flue "to a vertical option" would address the current issues.

## The owners

4.3. The owners made a submission stating:

- multiple investigations have been carried out over seven and a half years, including by the Otago Regional Council, but the applicants' "claims have been dismissed"

- there is over 5m between the flue and the applicants' house; "It is not a direct line and the flue points downwards"

- the owners have taken mitigation measures, including plantings, building a shed, and adding "extra barriers on [the] fence line"

- the location of both the properties is in a high wind area, with the prevailing winds blowing either from the applicants' property towards the owners', or "directly South to North being between the properties"

- the type of boiler has an efficiency of over 90%; has been maintained and confirmed to be running at 92%; is only operated during winter; is thermostat controlled and turns off once up to temperature.

4.4. With their submission, the owners provided an email from the regional installer for the boiler manufacturer/distributor summarising the results of a combustion test carried out on 24 January 2023. The email confirmed that the boiler was "running clean" and had been "setup to the manufacturer's specifications"; and that the test results showed the boiler discharged lower rates of contaminants than stipulated in the manufacturer's specifications, and at 91.9% was more efficient than required by the Otago Regional Council (90%).

### The authority

4.5. The authority provided information in which it confirmed that it did not have any plans or specification for the boiler and flue, but had photos taken at the final inspection.

4.6. The authority submitted that, as the acceptable solution G4/AS1 does not reference diesel boiler installations, it must look to the boiler manufacturer's installation manual for guidance on whether the boiler and flue are compliant:

> The … installation manual only requires a minimum of 1000mm to a vent or window and 2500mm to another structure … to alleviate the effect of plume nuisance.
>
> [The authority] understand[s] there is some 6m between the flue termination and the neighbour's house therefore [its] opinion is that the installation meets the performance requirement G4.3.4.

## 5. Discussion

5.1. The applicants have applied for a determination as to whether the building work to install the boiler and flue system complies with clause G4.3.4 as it relates to the protection of other property.

5.2. Clause G4.3.4 aims to protect people and other property from nuisance or hazard created by the disposal of contaminated air. The applicants claim their property is other property and is subject to a nuisance and hazard as a result of contaminated air from the flue discharging onto their property.

### The legislation

5.3. Section 17 specifies that:

> All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

5.4. As stated, the provision of the Building Code at issue is clause G4.3.4, although clause G4.3.3 is also relevant:

> **Objective**
>
> G4.1 The objective of this provision is to safeguard people from illness or loss of amenity due to lack of fresh air.
>
> **Functional requirement**
>
> G4.2 Spaces within buildings shall be provided with adequate ventilation consistent with their maximum occupancy and their intended use.

> **Performance**
>
> G4.3.1 …
>
> G4.3.3 Buildings shall have a means of collecting or otherwise removing the following products from the spaces in which they are generated:
>
> (a) …
> (i) products of combustion.
>
> G4.3.4 Contaminated air shall be disposed of in a way which avoids creating a nuisance or hazard to people and other property.

5.5. It follows that the "contaminated air" noted in clause G4.3.4 can be defined by the list provided in clause G4.3.3.

5.6. Therefore, the disposal of "products of combustion" should be done in a manner that avoids creating a nuisance or hazard to people and other property.

5.7. In addition, the term contaminant is defined in clause A2 as having the meaning ascribed to it by the Resource Management Act 1991. Section 2 of that Act defines a contaminant (in precis) as including gases and odorous compounds that when discharged into air change, or are likely to change, the physical, chemical or biological condition of the air into which it is discharged.[6]

5.8. In the case of the owners' boiler and flue, the expert and the manufacturer's regional installer both noted that the flue was discharging gases that would change the chemical composition of the air they were being discharged into, namely $PM_{10}$, $NO_2$, CO and $SO_2$. I understand that the parties do not dispute that these are the usual products of diesel combustion, or that they are being discharged by the flue.

5.9. The term "other property" is likewise defined in clause A2 (and in section 7) as:

> **other property** means any land or *buildings* or part thereof which are—
> (a) not held under the same *allotment*; or
> (b) not held under the same ownership—
> and includes any road

5.10. In this case, the applicants' property constitutes 'other property' in relation to the property (or allotment) where the building work was carried out, namely the owners' property. So the issue I consider is whether the contaminated air being discharged from the flue on the owners' property is being disposed of in such a way as to constitute a nuisance or hazard to the applicants' property.

[6] Section 2 of the Resource Management Act 1991, defines contaminant to include "any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat— … (b) when discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged."

## Compliance with Clause G4

5.11. G4/AS1 is the acceptable solution for clause G4. However, the version of the acceptable solution that was in force in 2017, at the time that the boiler and its flue were constructed,[7] did not include a solution for liquid fuel heating systems.

5.12. Accordingly, I must assess the boiler and flue system's compliance directly with the Building Code as an alternative solution. This requires me to consider whether the contaminated air from the flue is being disposed of in a way which avoids creating a nuisance or a hazard to the applicants.

**Nuisance**

5.13. The question of what is meant by nuisance has been considered in the courts. In *Hawkes Bay Protein Ltd v Davidson*,[8] the High Court stated:

> [15] The essence of nuisance is an activity or condition which unduly interferes with the use and enjoyment of the land. In cases of private nuisance … the conduct will be a nuisance if the consequences extend to the land of a neighbour by:
> …
> (c) unduly interferes with the neighbour in the comfortable and convenient enjoyment of his land.

5.14. The question of what constitutes a nuisance in terms of the Building Code has also been considered in previous determinations, including in relation to clause G4. For example, determination 2016/033[9] stated that:

> 9.1.11 …the term "nuisance" is not defined in the Act or the Building Code, and it appears only in clause E1.3.1 and G4.3.4. The term "nuisance" has a particular common law meaning which is 'the unreasonable interference with an individual person's use or enjoyment of land or some right connected with that land'. The tort of nuisance seeks to strike a balance between the conflicting land use rights of neighbouring occupiers …
>
> 9.1.12 It is the interference to an "unreasonable" degree with a neighbour's right to use and enjoy their land that is the essential element of the tort of nuisance. It is no defence to claim that the owner's use of their land and their actions were reasonable …
>
> 9.1.13 The position is summed up in The Law of Torts in New Zealand at [10.2.03] as follows:
>
> > So the critical question in every case is whether the interference complained of is unreasonable in the sense that it exceeds the level that a

[7] *G4/AS1 Ventilation of buildings* (3rd edition amendment 4).
[8] [2003] 1 NZLR 536 at [15].
[9] *Determination 2016/033: Regarding the code compliance of a solid fuel fire appliance installed in a three-year-old house* (issued 22 July 2016).

> reasonable occupier, tolerant of the reasonable activities of his or her neighbour, would regard as acceptable.
>
> 9.1.14 The question of whether a nuisance is reasonable is a question of fact and must be considered in relation to factors such as the nature of the harm and the location in which it occurs, and the time, duration and intensity of the interference.

5.15. Specifically in relation to clause G4.3.4, determination 2016/033 went on to state:

> 9.1.20 Whether odour from a neighbouring property constitutes a nuisance in terms of the Building Code will depend on a range of criteria, such as the frequency, intensity (perceived strength), duration, and character/offensiveness of the discharge, and whether an ordinary reasonable person would experience a significant nuisance effect.

5.16. I consider that the reasoning in this determination continues to hold true, and it is clear both from this reasoning and from that of the court in *Hawkes Bay Protein Ltd v Davidson* that to constitute a nuisance, there must be undue or unreasonable interference with a person's use or enjoyment of their land. In relation to clause G4.3.4, this undue or unreasonable interference must specifically arise from the way contaminated air is being disposed of.

5.17. In this case, the applicants refer to the noise and fumes that the owners' boiler emits. They submit that as the flue for the boiler is "directed directly at our bedroom window" and is only approximately 5.5m away, "the boiler continues to disrupt the sleep from both [the applicants] and is having effects on both our health and mental health."

5.18. The applicants rely on the expert's report in support of their submission. It is important to note that this report was commissioned for a different purpose, in relation to legislation other than the Building Act 2004,[10] and records its limitations.[11] However, I have had regard to it, to the extent it is relevant, in relation to the question of whether the disposal of contaminated air from the boiler amounts to a nuisance or hazard.

5.19. In considering whether the disposal of contaminated air from the boiler amounts to undue or unreasonable interference with the applicants' use and enjoyment of their property, I have taken the following points into account.

5.19.1. The expert's report notes it is "good practice for diesel fired boilers … to discharge above the roof of the building" to achieve "adequate dispersion"

[10] The Otago Regional Air Plan requires that discharge of smoke, odour, particulate matter or gas is not noxious, dangerous, offensive or objectionable at or beyond the boundary of the property. The Plan relates to the Resource Management Act 1991, which has a different purpose and threshold.

[11] The report notes screening modelling results are based on assumptions regarding output and other factors, and stresses there is a large margin or uncertainty attached to screening modelling results, but a risk of underpredicting worst case effects.

of contaminants. In the expert's opinion, the circumstances in which the contaminated air from the owner's flue is being disposed of "will result in poor contaminant dispersion. The discharge occurs near ground level without upwards momentum, into a cavity between two dwellings (each approximately 5m high) that are only approximately 5m apart".

5.19.2. The flue extends horizontally from the side of the building at a height of 1.6–1.8m from the ground, and the cowl directs the contaminated air towards the ground. The flue is approximately 5–6m from the applicants' bedroom window, which opens 1.5m above ground level.

5.19.3. There is a 1.8m high timber fence on the boundary between the two properties, which is located approximately 3m from the flue. There is a continuous strip of land between the owners' house and this fence, which runs the length of the property. The western end of this strip is open, allowing any contaminants emitted into this space to disperse sideways as well as vertically. There is also a similar strip of land between the applicants' house and the fence, although it is not as wide and does not extend for the full length of the applicants' property.

5.19.4. The boiler is not in continuous use. The owners stated to the expert that "the boiler turns on and off sporadically during winter operation, according to heating demand" and "typically operates for no more than 15 minutes during any hour in winter".

5.19.5. The expert's report noted there was "potential" for cumulative $NO_2$ concentrations at the applicants' window to approach or exceed the national air quality standards (the NESAQ); and also "potential" for the discharge from the flue to make a significant contribution to $PM_{10}$ concentrations at the applicants' window. Both of these possibilities are only expressed as potential occurrences, because the expert's report is based on modelling, rather than on observed levels of contaminants measured with equipment.

5.19.6. During their site visit (which was noted to be on a clear day, with near calm conditions) the expert stood near the applicants' window for at least 5 minutes while the boiler was operating, yet could not detect any odour typical of diesel combustion (this odour was detected, however, next to the flue). The expert also observed that there were no "visible particulate matter emissions".

5.19.7. Otago Regional Council undertook a further four site inspections, during various weather conditions and times of day, to assess any odour discharge from the boiler and flue. The council noted that no odours had been detected at or beyond the boundary of the owners' property that would be deemed offensive or objectionable in terms of the Regional Air Plan.

5.19.8. It is unclear to what extent the applicants' sleep disruption is due to the contaminated air being disposed of from the owner's flue, as they have also raised concerns about excessive noise associated with the boiler's operation. However, as discussed in paragraphs 1.5 and 1.6, this is not something that can be considered through the determination process in relation to other property.

5.19.9. The boiler manufacturer's manual includes an option for the flue to exit horizontally through the wall, in the manner that the owners' flue has been installed. In this situation, the manual stipulates that there must be clearances of at least 600mm from a surface facing the flue "terminal". In this case, the flue terminal is the cowl at the end of the flue, and the distance from this to the nearest surface (being the fence) is approximately 3m.

5.19.10. The manual also states:

> The terminal must be positioned so as to avoid products of combustion accumulating in stagnant pockets around the buildings or entering into buildings. Care should be taken that the plume from condensed flue gases does not cause a nuisance.

5.19.11. The owners' and applicants' properties are located in a high wind zone, which will contribute to the dispersal of contaminated air.[12]

5.20. Based on the information presented to me, it is my view that the discharge from the boiler and flue is not of such frequency, intensity, duration and character that it will create a nuisance at the applicants' property.

5.21. I acknowledge it may not be the usual or best practice to dispose of contaminated air from a boiler horizontally, rather than above the roofline, and that some of the contaminants in the air will reach the applicants' property. However, given the distance between, and layout of, the two properties, and based on the information provided to me, I consider the contaminated air from the flue is not concentrated at or directed to the applicants' property in such a way that it will create a nuisance. There is no evidence that the boiler emits visible particles, and the expert could not detect any diesel odour at the applicants' window. The expert's opinions as to possible contaminant levels were based on modelling, rather than actual observed levels. The space between the two properties is not stagnant or enclosed, and the distances involved significantly exceed the manufacturer's recommendations.

5.22. In addition, no information or evidence has been presented to me to demonstrate that the nature and circumstances of the disposal of the contaminated air in this

[12] Climate conditions influence the amount and types of particulate matter and gases in the air. Stable weather allows pollutants to accumulate, while wind and rain can disperse them (Talbot, 2019; UCAR Center for Science Education, nd; Waikato Regional Council, nd). 5. Air | Ministry for the Environment

case is causing undue or unreasonable interference with the applicants' use or enjoyment of their land.

5.23. Accordingly, I consider the contaminated air from the boiler is being disposed of in a way which avoids creating a nuisance to people and other property.

**Hazard**

5.24. Clause G4.3.4 also requires the contaminated air to be disposed of in a manner that avoids creating a "hazard" to people and other property.

5.25. The term "hazard" is not defined in the Act or Building Code, but Clause A2 of the code defines "hazardous" as "creating an unreasonable risk to people of bodily injury or deterioration of health".

5.26. In the context of the requirements of clause G4.3.4, hazard can therefore be taken to mean that contaminated air must be disposed of in a way that does not "create an unreasonable risk to people of bodily injury or deterioration of health". I take this requirement to relate to both the nature of the contaminated air being disposed of, and also to the need to avoid concentrating the contaminated air to the extent that it creates such a risk.

5.27. The expert's report states that $NO^2$ is the main pollutant of concern (among the contaminants being disposed of from the owner's flue) with regard to human health, and that exposure can result in increased susceptibility to infections and asthma. As above, the report notes the potential for concentrations of $NO_2$ at the applicants' window to approach or exceed the air quality standard.

5.28. However, based on the factors identified above, which are also relevant to the question of whether the discharge creates a hazard, I consider that there are no physical features present which concentrate the contaminated air from the flue or direct it to the applicants' window to the extent where it creates an unreasonable risk of injury or deterioration of health (in other words, a 'hazard').

5.29. As with the question of the nuisance, I also think there are mitigating circumstances, such as the distance of the flue from the window and the open ended nature of the space between the two houses that mean the contaminated air is unlikely to so concentrate.

## Conclusion

5.30. Based on the information presented to me, I do not consider that the contaminated air being disposed of from the owners' flue causes interference to an unreasonable degree with the applicants' use or enjoyment of their land, or unreasonable risk of bodily injury or deterioration of health to the applicants. I therefore conclude that the building work to install the boiler and flue complies with the performance requirements in clause G4.3.4.

# 6. Decision

6.1. In accordance with section 188 of the Building Act 2004, I determine that the installation of the diesel boiler and flue system at the owners' property complies with Building Code clause G4.3.4 as it relates to the protection of other property, in that the contaminated air from the boiler and flue is being disposed of in such a manner that it avoids creating a nuisance or hazard to people and other property.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 19 December 2025.

**Andrew Eames**

**Principal Advisor, Determinations**