

# Determination 2026/018

**The authority's decision to grant a building consent in relation to the importance level of a building being structurally strengthened**

**209 Trafalgar Street, Nelson**

## **Summary**

This determination considers the authority's decision to grant a building consent for seismic structural strengthening work on a commercial building where it considered the building to be of Importance Level 2 in terms of structure. The determination considers whether there are any factors that would make it instead Importance Level 3.

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](http://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](http://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”).<sup>1</sup>
- 1.2. The parties to the determination are:
  - 1.2.1. Nelson City Council, carrying out its duties as a territorial authority or building consent authority, and the applicant for this determination (“the authority”),
  - 1.2.2. Pascoe Properties Ltd, the owner of the property (“the owner”).
- 1.3. This determination arises from the authority’s decision to grant building consent BC250300 (“the building consent”) for seismic strengthening work to an existing commercial building in central Nelson. In the building consent, the building has been considered as Importance Level 2 (“IL2”)<sup>2</sup>.
- 1.4. Having issued the building consent, the authority applied for a determination to consider whether the building should instead be considered Importance Level 3 (“IL3”) for structural performance.
- 1.5. Therefore, the matter to be determined, under section 177(1)(b) and (2)(a), is the authority’s decision to grant building consent BC250300 for seismic strengthening work, with a building classification of Importance Level 2, as established via Australia/New Zealand Standard AS/NZS 1170.0<sup>3</sup> as a means of compliance with Building Code Clause B1 by way of Verification Method B1/VM1<sup>4</sup>.
- 1.6. No submissions were received from the owners. The authority’s views have been incorporated into the discussion section below.

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<sup>1</sup> The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

<sup>2</sup> See discussion section for a detailed explanation of Importance Levels in AS/NZS 1170.0.

<sup>3</sup> Australia/New Zealand Standard AS/NZS 1170.0:2002 Structural design actions Part 0: General principles

<sup>4</sup> Verification Method B1/VM1 *Structure* (first edition, amendment 21, effective 2 November 2023 until 31 July 2026).

- 1.7. In the building consent documentation and in the authority's submission, mention of Importance Levels set out in Clause A3 *Building importance levels* have been made. As these importance levels relate to establishing the level of compliance requirements with Building Code Clauses C1 - C6 *Protection from Fire*, the building's importance level under Clause A3 is outside the scope of this determination.

## 2. Background and building work

- 2.1. The building, first constructed in 1974, is a two storey (a ground floor and a first floor mezzanine) commercial building, containing a retail store ("the retail store") on the ground floor of approximately 1,700m<sup>2</sup>, and a public arcade (serving as a covered footpath) allowing pedestrian access between the street and carpark behind the building and to other smaller retail spaces, storage and staff areas across both levels. The retail store is broken up with several part-height partition walls throughout the floor plan. This area is the primary consideration of this determination.
- 2.2. In June 2025, the building consent application was made with the authority, for alterations to the building for 'seismic strengthening, smoke detection enhancement of Type 2 alarm system, upgrade accessible door hardware'.
- 2.3. During the processing of the consent, the authority sent a series of requests for further information (RFIs) to the owner in relation to the importance level of the building, with regard to both structure and fire.
- 2.4. In relation to structure, the owner provided a report by a structural engineer dated July 2025, ("the engineer's report"), considering the occupancy and use, alongside the floor areas of the building, to determine the importance level for the building, using tables 3.1 and 3.2 of AS/NZS 1170.0.
- 2.5. The report calculated the occupancy of the retail store ground floor footprint, using table 1.2 Building Code C Protection from Fire Acceptable Solution C/AS2, comparing the occupancy under three different uses for retail. The table gives a calculation for 'retail spaces and pedestrian circulation spaces including malls and arcades' of 3.5m<sup>2</sup>/person; for 'bulk retail (trading stores, supermarkets etc)' of 5m<sup>2</sup>/person and for 'retail spaces for furniture, floor coverings, large appliances building supplies and manchester' of 10m<sup>2</sup>/person. Given the area (excluding counters, stairs, plant room and the like) is approximately 1500m<sup>2</sup>, the report states the occupancy for the area could range from 428, 300 or 150 persons (respectively), depending on which of these calculations was used.
- 2.6. The report also considered the definition of the word 'congregate' as 'To come together; assemble, especially in large numbers. People waiting for rooms congregated in the hotel lobby. Synonyms: cluster, throng, collect, gather'. Having considered this definition, the report argues that 'less than 300 persons will congregate in the [ground floor] footprint'.

- 2.7. The report's conclusion was that the building is IL2 because it 'houses less than 5000 persons and has a gross floor area of less than 10,000m<sup>2</sup>. And [sic] has areas where less than 300 persons will congregate'.
- 2.8. On 17 November 2025, the authority granted the building consent. It subsequently applied for this determination as in its opinion, based on the information provided and available, the building should be considered IL3 for structure.

### 3. Discussion

- 3.1. The matter for determination is the authority's decision to grant the building consent for an IL2 building. Section 49 requires that a building consent authority must grant a consent if it is satisfied that the building work, if carried out as per the plans and specifications, will comply with the Building Code. For establishing compliance, section 19 allows the use of various means such as acceptable solutions and verification methods that authorities must accept as demonstrating compliance.
- 3.2. The authority has applied for this determination as in its opinion, based on the information provided and available, the building should be considered IL3 for structure because:
  - 3.2.1. As in Table 3.2 of AS/NZS 1170.0, the building is a structure that 'as a whole may contain people in crowds', as it meets one of the examples provided in the table, being 'where more than 300 people can congregate in one area'.
  - 3.2.2. It meets the requirements of IL3 in Table 3.1 of AS/NZS 1170.0: the consequences of failure are 'High', with the description of 'High consequence for loss of human life'.

#### The importance level framework

- 3.3. Previous determinations have discussed Importance Levels as per AS/NZS 1170.0, for the purpose of complying with B1 *Structure* by way of Verification Method B1/VM1, notably Determination 2020/030.<sup>5</sup> That determination outlined AS/NZS 1170.0 uses importance levels, among other factors, to determine the loadings for earthquake, snow and wind that a building and building work needs to be designed for, and that the determination of the applicable importance level on a building should be in accordance with its occupancy and use, as well as considering the consequence of failure, for loss of human life and any economic, social or environmental consequences.<sup>6</sup>

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<sup>5</sup> Determination 2020/030, *Regarding the purported refusal to grant a building consent because of a dispute about the importance level of the building, at 2 Bangor Street, Christchurch* (25 November 2020)

<sup>6</sup> See paragraphs 5.2.1 – 5.2.2 of Determination 2020/030.

- 3.4. Table 3.1<sup>7</sup> of AS/NZS 1170.0 sets out the consequences of failure for different importance levels. The description of IL2 in Table 3.1 is ‘**medium** consequence for loss of human life, or considerable economic, social or environmental consequences’, with a comment that this is ‘normal structures and structures not falling into other levels’.
- 3.5. The description of IL3 and importance level 4 (IL4) is ‘**high** consequence for loss of human life, or very great economic, social or environmental consequences’, with an additional comment for IL3 that this is ‘major structures (affecting crowds)’ [my emphases]. Therefore, a building with a higher consequence of failure will have a higher importance level that in turn is required to be designed for higher structural loading.
- 3.6. Table 3.2<sup>8</sup> of AS/NZS 1170.0 sets out importance levels for different types of buildings. This table repeats the Table 3.1 comment for IL2 buildings, that these buildings are those that are normal and not in any other importance level, and for IL3 buildings comments that these are ‘Structures that as a whole may contain people in crowds or contents of high value to the community or pose risks to people in crowds.’ Therefore, the assessment of whether a building is IL2 or IL3 will consider whether any features or factors exist within the building to make it IL3.
- 3.7. Table 3.2 includes example features of buildings for each importance level. Examples for IL3 buildings include ‘where more than 300 people can congregate in one area’ and ‘Multi-occupancy residential, commercial (including shops), industrial, office and retailing buildings designed to accommodate more than 5000 people and with a gross area greater than 10000m<sup>2</sup>.’
- 3.8. However, it should be considered that this list of examples is not exhaustive and other features or factors may exist in a building that align with specific importance levels. Rather, section 3.3 of AS/NZS 1170.0 states that for those buildings not specifically mentioned in the tables, the designer will need to exercise judgment in assigning the appropriate level. It also states ‘Structures that have multiple uses shall be assigned the highest importance level applicable for any of these uses’.

## **The application of the importance level framework to the building**

- 3.9. The building contains several different sized tenancies. In its submissions, the authority’s view is that ‘for the purposes of determining importance level for Clause B1, the retail area of [the retail store] is one area, and its occupancy should be a key input into determining importance level’. Since the authority has not commented in relation to any other area other than the large retail store, and the arcade (covered footpath) and shops on the south of building are of a size, layout and use that do not have features outside IL2, I consider that this determination is based on the

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<sup>7</sup> See appendix A.

<sup>8</sup> See appendix A.

ground floor area of the retail store. I will therefore consider whether this has any features that would classify this area as IL3, and in turn, the building as a whole.

- 3.10. The authority's submission and reasons why it considers the building should be classified as IL3, as stated above, are it believes that the building is a structure that 'as a whole may contain people in crowds' and 'where more than 300 people can congregate in one area', being one of the examples provided in Table 3.2.
- 3.11. The word 'crowds' is not a defined term in the tables, nor in the Regulations or the Act. The numbers given in the examples for types of IL3 buildings indicate crowd numbers that apply to different uses (day care, hospitals etc). Determination 2020/030<sup>9</sup> discusses this range of examples given in the table, and the numbers of people associated with each of the examples given. The determination indicates that what constitutes a crowd depends on *both* the nature of the building in terms of size and the type of areas available, and how the building is used.
- 3.12. In the engineer's report that accompanied the building consent, the maximum occupancy loading of the ground floor of the retail store was calculated at 428 for a standard retail use, excluding the area taken up by counters, stairs, plant room and the like. The authority has considered this calculation as the occupancy of this area.
- 3.13. While this can be a useful starting point for consideration on how many people may congregate in one area, the purpose of this calculation is primarily to assist in demonstrating compliance with Clause C4 *Movement to a place of safety* in respect of fire. Therefore, in considering the importance level of a building, these types of occupancy calculations should be weighted alongside other building features, including its actual use.
- 3.14. I consider the wording of the example 'where more than 300 people can **congregate** in one area' (my emphasis) implies a high density of people adjacent to one another. The use of the space is retail, and for the purposes of the structure and its load paths, the ground floor is generally open plan. However, in terms of how the space is used, I consider a key relevant feature is that the retail space is partitioned into smaller discrete areas emphasised by in-built partition walls and segmentation into women's-ware, men's-ware, children's-ware, cosmetics, etc.
- 3.15. With this retail layout there will not be a high concentration of occupants adjacent to one another in this area. 300 persons would not naturally congregate in this particular retail space and therefore would not create a 'high' consequence of structural failure in terms of loss of human life.
- 3.16. The other consideration for whether a building is IL3 is if there would be 'very great economic, social and environmental consequences' from structural failure (Table 3.1). This building does not contain features such as emergency facilities, water or wastewater treatment or hazardous materials or any other similar feature that

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<sup>9</sup> See paragraph 5.3.6 of Determination 2020/030.

would lead to a very great economic, social or environmental consequence in a structural failure.

- 3.17. Therefore, as there is not a high consequence for loss of human life nor are there very great economic, social and environmental consequences should structural failure of the building occur, I consider the building is Importance Level 2.

## **4. Decision**

- 4.1. In accordance with section 188 of the Building Act 2004, I determine that the building is Importance Level 2 in accordance with AS/NZS 1170.0, and I confirm the authority's decision to grant building consent BC250300.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 20 May 2026.

**Andrew Eames**

**Principal Advisor Determinations**

## APPENDIX A

The relevant paragraphs of AS/NZS 1170.0 are:

### 3.3 IMPORTANCE LEVELS

The important level of the structure shall be determined in accordance with its occupancy and use, as given in Tables 3.1 and 3.2. The Table describes, in general terms, five categories of structure and gives some examples of each. For those buildings not specifically mentioned, the designer will need to exercise judgement in assigning the appropriate level.

Structures that have multiple uses shall be assigned the highest importance level applicable for any of those uses. Where access to a structure is via another structure of a lower importance level, then the importance level of the access structure shall be designated the same as the structure itself.

**Table 3.1 Consequences of failure for importance levels**

Consequence of failure	Description	Importance level	Comment
	Low consequence for loss of human life, or small or moderate economic, social or environmental consequences	1	Minor structures (failure not likely to endanger human life)
Ordinary	Medium consequence for loss of human life, or considerable economic, social or environmental consequences	2	Normal structures and structures not falling into other levels
High	High consequence for loss of human life, or very great economic, social or environmental consequences	3	Major structures (affecting crowds)
		4	Post-disaster structures (post disaster functions or dangerous activities)
Exceptional	Circumstances where reliability must be set on a case by case basis	5	Exceptional structures

**Table 3.2 Importance levels for building types – New Zealand structures**

Importance level	Comment	Examples
1	Structure presenting a low degree of hazard to life and other property	Structures with a total floor area of <30m <sup>2</sup> Farm buildings, isolated structures, towers in rural situations Fences, masts, walls, in-ground swimming pools
2	Normal structures and structures not in other importance levels.	Buildings not included in Importance levels 1, 3 or 4. Single family dwellings Car parking buildings
3	Structures that as a whole may contain people in crowds or contents of high value to the	Buildings and facilities as follows: (a) Where more than 300 people can congregate in one area

	community or pose risks to people in crowds	<ul style="list-style-type: none"> <li>(b) Day care facilities with a capacity greater than 150</li> <li>(c) Primary school or secondary school facilities with a capacity greater than 250</li> <li>(d) Colleges or adult education facilities with a capacity greater than 500</li> <li>(e) Health care facilities with a capacity of 50 or more resident patients but not having surgery or emergency treatment facilities</li> <li>(f) Airport terminals, principal railway stations with a capacity of greater than 250</li> <li>(g) Correctional institutions</li> <li>(h) Multi-occupancy residential, commercial (including shops), industrial, office and retailing buildings designed to accommodate more than 5000 people and with a gross area greater than 10000m<sup>2</sup></li> <li>(i) Public assembly buildings, theatres and cinemas of greater than 1000m<sup>2</sup></li> </ul> <p>Emergency medical and other emergency facilities not designated as post-disaster  Power-generating facilities, water treatment and waste water treatment facilities and other public utilities not designated as post-disaster  Buildings and facilities not designated as post-disaster containing hazardous materials capable of causing hazardous conditions that do not extend beyond the property boundaries</p>
4	Structures with special post-disaster functions	<p>Buildings and facilities designated as essential facilities  Buildings and facilities with special post-disaster function  Medical emergency or surgical facilities  Emergency service facilities such as fire, police stations, and emergency vehicle garages  Utilities or emergency supplies or installations as required as backup for buildings and facilities of Importance Level 4  Designated emergency shelters, designated emergency centres and ancillary facilities  Buildings and facilities containing hazardous conditions that extent beyond the property boundaries</p>
5	Special structures (outside the scope of this Standard – acceptable probability of failure to be determined by special study)	<p>Structures that have special functions or whose failures poses catastrophic risk to a large area (e.g., 100km<sup>2</sup>) or a large number of people (e.g., 100 000)  Major dams, extreme hazard facilities</p>