BUILDING PERFORMANCE

Determination 2026/042

Regarding a proposed change of use from former Plunket Rooms to a residential dwelling

36 Union Street, New Brighton, Christchurch

Summary

This determination considers an authority's decision to refuse to provide a written notice for a change of use under section 115 of the Building Act due to concerns regarding the structural performance of the existing building.



Figure 1: View of the north elevation of the building

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. D Hancock, the owner of the property ("the owner") who applied for this determination

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

1.3. This determination arises from a decision by the authority to refuse to provide a written notice under section 115 for a proposed change of use of a building from former Plunket Rooms to a residential dwelling (refer to figure 1). The item of dispute being the structural performance of the existing building. The authority considers the whole building requires to be seismically strengthened, whereas the owner only intends to carry out building work to strengthen the external unreinforced masonry (brickwork) walls.

1.4. The matter to be determined, under section 177(1)(b) and (3)(f), is the authority's exercise of power of decision regarding the proposed change of use.

1.5. In deciding this matter, I must consider whether the building in its new use will comply, as nearly as is reasonably practicable ("ANARP"), with the provision of the Building Code relating to structural performance to allow the existing building to comply with Clause B1 *Structure*.

Issues outside this determination

1.6. The determination will not consider:

1.6.1. The Building Code compliance of the proposed seismic strengthening with clause B1 as described in a report titled 'Structural Assessment for Change

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

of Use, 36 Union Street' prepared by a Chartered Professional Engineer ("**the engineer's report**").[2]

1.6.2. The compliance of the building in its new use with any other Building Code clauses. The authority has requested a report from the owner on "the benefits and sacrifices" for all other relevant Building Code clauses but this has not yet been provided by the owner. This remains for the parties to resolve.

2. The building work and background

2.1. The single storey building was first constructed in the 1940's.It was used as Plunket Rooms up until the September 2010 earthquakes.

2.2. The original construction consists of unreinforced masonry external walls with the east, west and south elevations being double leaf brickwork with cavities, and single leaf brickwork to the north elevation forming a veranda, and reinforced concrete bond beams. The internal walls are predominantly single leaf brickwork. A concrete block extension is located to the west side of the building. The floor construction is timber with perimeter reinforced concrete foundations and ordinary piles. The roof construction is also timber framed and has profiled metal cladding.

2.3. On 26 October 2022, the authority obtained a 'detailed seismic assessment' (DSA) for the building; this stated "…the strength of this building is considered to be 10% [New Building Standard] and as such it is classified as Grade E, having a high seismic risk".[3] The critical structural weakness was the unreinforced masonry external and internal walls. The DSA stated, "For this particular building, the most likely mode of failure would be under face load, i.e. load perpendicular to the face of the wall as opposed to in-plane load along the length of the wall…".

2.4. In or about April 2024, the owner purchased the property, and on 30 September 2024 notified the authority (under section 114(2)) of a proposed change of use from "Vacant Plunket Rooms" to a "Residential Dwelling".

2.5. On 1 November 2024, the authority advised the owner it had "received confirmation that this building is a residential dwelling and no longer falls within the earthquake prone building legislation. [The authority] will now remove this building from the National [earthquake-prone building] register[4]".

[2] The report is dated 10 March 2026 (following a site visit by the engineer on 4 June 2025) and was commissioned by the owner.

[3] MBIE guidance (dated July 2022), issued under section 175, includes (at section 3.3) 'What %NBS means' [available at https://www.building.govt.nz/assets/Uploads/getting-started/seismic-risk-guidance-for-buildings.pdf (accessed 22 September 2026)].

[4] While outside the scope of the determination I would recommend in future the authority carefully confirm the building use before committing to such an action.

2.6. In early 2025 the owner completed some internal alterations to the building, including the installation of a new shower room and smoke detectors.[5]

2.7. The engineer's report (referred to in paragraph 1.6.1) stated the authority "has advised that they will accept a minimum of 35% [New Building Standard]" and the engineer recommended the following work be carried out to meet that percentage; in summary:

2.7.1. The roof purlin and rafter fixings and checking of connections of the roof structure to the walls; however, "this work would require most of the roof cladding to be removed and [the owner has] advised us that…this is not reasonable".

2.7.2. Strengthen the existing ceiling runner over the main living / dining area by installing two 190mm x 45mm timbers, one each side of the runner.

2.7.3. Strengthen the single leaf internal to the south side of the living / dining area and bedroom[6], and the north elevation external brickwork wall, with 90mm x 45mm timber studs at 400mm centres, lined with plywood or a proprietary plasterboard product to act as bracing, complete with "associated hold down fixings to the floor". The brickwork is to be secured to the timber-framed wall with proprietary screws. A similar form of construction is required to the external wall to the east side of the building (at the north end of the wall).

2.7.4. Strengthen the external double leaf external brickwork walls, "fixed together with [proprietary] screws".

2.7.5. Reline the existing internal wall between the bedroom and the living / dining area as bracing elements including hold down fixings to the floor.

2.8. The owner obtained a cost estimate from a builder to carry out the proposed strengthening work; the total cost was approximately $55,000.00.

2.9. Between October 2024 and May 2025, the parties exchanged correspondence regarding the proposed change of use; however, the item of dispute regarding the strengthening of the existing building remained unresolved.

[5] The work was carried out under a discretionary exemption granted by the authority (in accordance with Schedule 1, clause 2, of the Act).

[6] The engineer's report states, "There is a residual risk of partial collapse of some of these bricks in an earthquake where not strengthened, but as they are not load bearing it would not result in collapse of the main structure."

3. Submissions

The owner

3.1. The owner submits upgrading the building to meet clause B1 “would be financially unviable” and “has become a rather large scale and costly endeavor [sic]”. The owner intends “to do the external wall fixing only as that’s probably it’s weakest point” and states, “Bracing and [plaster boarding] a lot of the internal walls will decrease [an] already small internal space particularly in the only bedroom approximately 8 square meters. It will remove a lot of it's [stet] character and its intended function [and] thermal mass”.

The authority

3.2. The authority submits (in summary):

3.2.1. The building requires to comply with all building code clauses on an ANARP basis. Where compliance cannot be achieved, a balancing exercise needs to be carried out between the benefits and sacrifices to decide what is reasonable.

3.2.2. The building has been removed from the earthquake-prone building register but that does not alter its structural condition. The issue is the strength of the building being only 10% of New Building Standard, and there is no justification to accept fixing the external walls only.

3.2.3. The strength of the building was not a consideration when it was altered to install the shower room.

4. Discussion

4.1. The matter to be determined is the authority’s decision regarding a proposed change of use at the owner’s property. The owner has given written notice to the authority of their intention to change the use of the building (in accordance with section 114(2)(a)), and it is clear the owner intends to use the building as their residential dwelling where previously it was ‘Plunket Rooms’. However, the authority is of the view the test under section 115, as it relates to structural performance and compliance with Clause B1 *Structure*, has not been met.

4.2. Section 115 ‘Code compliance requirements: change of use’ provides:

> An owner of a building must not change the use of the building, -
>
> (a) in a case where the change involves the incorporation in the building of 1 or more household units where household units did not exist before, unless the territorial authority gives the owner written notice that the territorial authority is satisfied, on reasonable grounds, that the building, in its new use,

> will comply, as nearly as is reasonably practicable, with the building code in all respects …

4.3. The term 'as nearly as is reasonably practicable' (ANARP) is not defined in the Act or the Regulations. The Courts[7] and previous determinations[8] refer to ANARP as an objective balancing or weighting exercise that considers whether the benefits of achieving Building Code compliance outweigh the sacrifices involved in doing so (for example, disproportionate cost, physical constraints, and loss of building functionality), including where matters affect human safety.

4.4. In this regard, it is important to consider the purposes and principles of the Act. Section 3(a) provides for the regulation of building work and setting of performance standards for buildings to ensure that people who use buildings can do so safely and without endangering their health. Section 4(2)(a) provides when dealing with a matter relating to a household unit, and the role it plays in the lives of people who use them, it reflects the importance of the Building Code and the need to ensure the household unit complies with the Code.

4.5. The test of ANARP needs to be assessed on a case-by-case basis and this can be achieved by applying a risk-based approach. Relevant risk criteria can include the nature and types of risk that can occur and any resulting consequences, the likelihood of those risks occurring, available mitigation measures, whether the situation is temporary or permanent, the level of risk created by the proposed use, the threshold at which risk becomes acceptable or tolerable, and the characteristics of the building such as its size, complexity, location, occupancy and public access. These factors can help determine the extent to which non-compliance affects life safety and other Building Code requirements, and therefore the weight that should be given to achieving compliance

4.6. In this case, the item of dispute relates to whether the building in its new use will comply, as nearly as is reasonably practicable, with the Building Code, specifically structural performance (clause B1) where the owner only intends to carry out work to strengthen the existing external brickwork walls in line with their engineer's report (refer to paragraphs 2.7.3 and 2.7.4); this is likely to address (in part) the critical structural weakness identified in the 'detailed seismic assessment' obtained by the authority (refer to paragraph 2.3). However, the authority considers there is no justification to just carry out that work when other risks remain.

4.7. The owner does not intend to carry out all the other work detailed the engineer's report; for example, the proposed strengthening of several of the existing internal walls and the ceiling runner through the living / dining area.

[7] For example, *Auckland City Council v New Zealand Fire Service* 19/1095 AP 336/93, dated 19 October 1995 at page 27, and *Royal Forest & Bird Protection Society of New Zealand v Whakatane District Council* [2017] NZEnvC 51, ENV-2016-AKL-14, dated 6 April 2017, at paragraph [51].

[8] For example, determinations 2015/070 and 2017/006.

4.8. The owner's reasons for not carrying out all the works indicated in the engineers report are based on it being "financially unviable", that it will decrease the floor area of an already small space and affect the character of the building and its thermal mass.

4.9. Conversely, the authority has focused on ensuring the building, in its new use, will need to achieve a certain percentage of the 'new building standard' to comply with clause B1; however, that is not the test under section 115.

4.10. Therefore, I need to consider if the owner's proposal to only strengthen the four existing external brickwork walls comply ANARP with Clause B1 in its new use, while ensuring that people who use the building can do so safely.

4.11. The strengthening design proposal prepared by the owner's engineer implies that if other work to the unreinforced internal brickwork wall, existing ceiling runner, and internal wall between the bedroom and living / dining area, was not carried out there remains a risk to life safety of persons in the building in the event an earthquake causes those building elements to become unstable, loose equilibrium, and collapse. Although those building elements are likely to be affected, it appears structural failure would not cause the whole building to collapse; for example, the engineer suggests "There is a residual risk of partial collapse of some of these bricks in an earthquake where [they are] not strengthened, but as they are not load bearing it would not result in collapse of the main structure".

4.12. In terms of a weighting exercise, the benefits of only strengthening the external brickwork walls is that those building elements are less likely to become unstable, loose equilibrium, or collapse, meaning the risk to the owner, future occupiers or visitors to the property in the event of an earthquake is reduced. It is also likely to increase the improvement value of the property and unlikely to affect the overall function of the building as a dwelling. The sacrifice for the owner is the available floor areas of the living / dining room and bedroom will be decreased slightly since the design proposal detailed by their engineer relies on the construction of new timber-framed walls and associated linings to the internal side of the north wall and north-east corner of the bedroom.

4.13. However, a similar weighting exercise for the other strengthening work detailed by the owner's engineer, that the owner does not intend to carry out, raises other issues. The benefit to the owner is the cost of the work is reduced, the existing internal brickwork wall remains the same thickness, along with minimising the disruption and time to carry it out. The sacrifices are the reduced structural performance of those building elements which remain unaltered and still pose a risk (ie the existing internal walls and ceiling construction). Further, in the event the strengthening work to the internal building elements is not carried out, these may have an adverse effect of the external walls where they connect and provides reduced bracing capacity in both longitudinal and lateral directions.

4.14. In terms of the proposed strengthening work as detailed by the engineer's report this does not appear onerous or disproportionally costly compared to the benefits of carrying out the work. For example, to strengthen the internal wall between the living / dining room and the bedroom requires removing linings from one side of the wall and then installing (in the same place) either a proprietary plywood or plasterboard product as bracing elements. Similarly, for the strengthening of the ceiling runner requires fixing two new timber elements, one to either side of the existing runner; this does not affect the available floor space but does increase the structural performance of the ceiling construction.

4.15. Regarding the proposed strengthening to the single leaf internal brickwork wall this will require installing a timber-framed wall to the north side, screw fixing the brickwork to the framing, then lining the wall. The benefits are the brickwork is less likely to become unstable, loose equilibrium and collapse during an earthquake event, provide a measure of bracing in the east – west direction across the building, and improve life safety for the owner, future occupiers and visitors. The sacrifices are the available floor area of the living / dining room and bedroom will be reduced by the thickness of the new timber-framed wall construction, plus the additional cost, time and disruption to carry out the work.

4.16. However, it is not clear what other options the owner or their engineer may have considered for strengthening the brickwork walls that does not involve constructing additional timber-framing. For example, if consideration has been given to using a specialist proprietary reinforced plaster coating to reduce face loadings, or other similar alternatives that could be investigated as part of the ANARP process.

4.17. In this case there are no obvious impediments to the owner to reasonably carry out all the work recommended by their engineer; for example:

4.17.1. The cost to carry out the work does not appear to be disproportionate to the value of the property.

4.17.2. It will somewhat improve the structural performance of the building in the event of an earthquake, but there remains a risk to life safety if only part of the proposed strengthening recommended by the engineer is carried out (ie just to the external walls).

4.17.3. The level of risk posed by the building (if it was not strengthened to the extent recommended by the engineer) is higher for the owner and future occupiers where it is intended to be used as a dwelling.

4.17.4. The nature and type of risk is likely to be where the existing unreinforced masonry (ie the single leaf internal brickwork wall) was to become unstable, loose equilibrium and collapse, affecting any persons in the building during an earthquake.

4.17.5. The building work recommended by the owner's engineer is not complex or onerous. There are no physical constraints to carry out all the work.

4.17.6. The size of the building and the extent / scope of the building work recommended by the owner's engineer means there is unlikely to be any significant disruption to the owner, and the benefits of carrying out the work outweigh the sacrifices in terms of the overall structural performance of the building.

4.18. On balance, taking into consideration the items discussed above and how these may affect life safety of the owner and future occupiers, the benefits of carrying out all the work proposed by the owner's engineer, outweigh the sacrifices and risks of not completing all the work, meaning the ANARP test under section 115 in relation to the structural performance of the building has not been met.

5. Decision

5.1. In accordance with section 188 of the Building Act 2004, I confirm the authority's decision to refuse to issue a written notice under section 115(a) for the proposed change of use of the owner's property to a dwelling because compliance with the Building Code to the extent required, specifically in relation to structural performance, has not been demonstrated.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 30 October 2026.

Andrew Eames

Principal Advisor Determinations