

Determination 2023/041

Date: 18 December 2023

Regarding the compliance of a mechanical kitchen ventilation system with Building Code clause G4.3.4 as it relates to the protection of other property

86 Elizabeth Street, Mt Victoria, Wellington

Summary

This determination considers whether the installation of a domestic kitchen ventilation system complied with Building Code Clause G4 Ventilation at the time it was installed. The determination considers whether the system's vent was installed in a way that avoids creating a nuisance to other property in accordance 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, Manager Advisory, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.¹
- 1.2. The parties to the determination are:
 - 1.2.1. the owner of the property, B. Guy (“the owner”) at 86 Elizabeth Street (“the property”), where the ventilation system is installed.
 - 1.2.2. the owner of the neighbouring property at 90 Elizabeth Street, K Wilson who is the applicant in this determination (“the applicant”)
 - 1.2.3. Wellington City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. This determination arises from the applicant’s concerns that the manner of disposal of contaminated air from the mechanical ventilation system installed in the owner’s kitchen, does not comply with *Clause G4 Ventilation*, specifically G4.3.4, as it relates to the protection of other property.
- 1.4. The matter to be determined, under section 177(1)(a), is therefore whether the ventilation system complied with Clause G4.3.4 of the Building Code at the time that it was installed.

Matters outside this determination

- 1.5. I have not considered any other aspects of the Act or of the Building Code, other than that set out in the matter for determination. In particular, I have not considered:
 - 1.5.1. the authority’s decision to grant a building consent (240688) for the building work
 - 1.5.2. the authority’s decision to issue a code compliance certificate for building consent 240688

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

- 1.5.3. the compliance with the Building Code of any other building work associated with building consent 240688.
- 1.6. In addition, both the applicant and the authority refer to the external wall in which the vent is installed as being built on (or very close to) the eastern boundary of the owner's property at 86 Elizabeth Street (ie along the western boundary of the applicant's property). Figure 1 and the site plans contained within the approved building consent documents confirm this.



Figure 1. Location of the exhausts from the ventilation system in relation to the neighbour's entrance pathway and living room window.

2. The building work

- 2.1. The owner's property is a pre-1900's dwelling and is situated very close to the eastern boundary of the lot.
- 2.2. The applicant's property is also a pre-1900's dwelling and is set back approximately 1.2 metres from the western boundary of the lot (ie the owner's eastern boundary)
- 2.3. On 2 November 2011, the authority granted a building consent (240688) for alterations to the existing dwelling on the owner's property.
- 2.4. The building consent was issued to a previous owner of the property and included work to relocate the kitchen from the rear of the dwelling to its middle. New

kitchen fittings including a cooktop with an extractor hood were to be installed along the eastern external wall.

- 2.5. The approved building consent drawings show the mechanical ventilation on the eastern external wall adjacent to the kitchen hob, and a construction note on the drawings states “Hob with Range Hood over”: see Figure 2.



Figure 2. Detail from approved consent plans showing the location of the hob with rangehood and vent.

- 2.6. The East Elevation in the approved building consent drawings show the vent, noted as “rangehood vent” in Figure 3, and it appears that it was installed in the location indicated on the approved drawings.

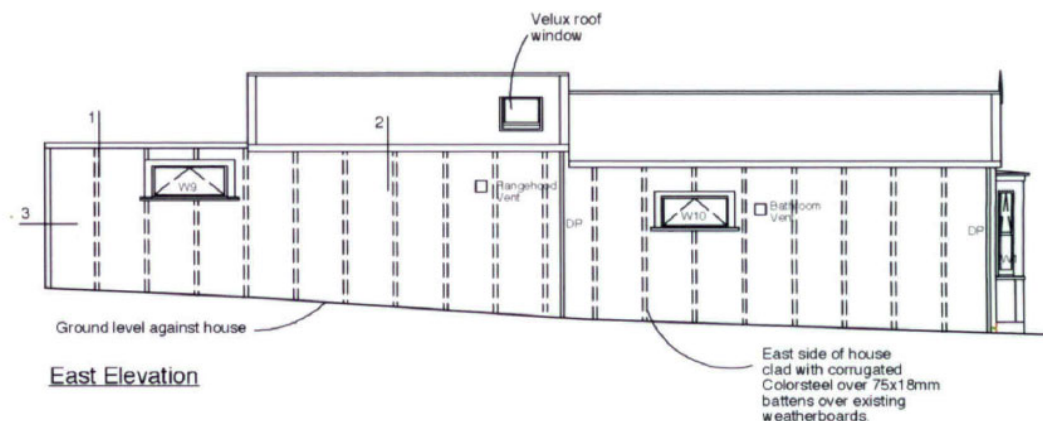


Figure 3. Detail from approved consent plans showing the location of the vent, noted as “Rangehood Vent”.

- 2.7. The consented specifications refer to the ventilation system, with item 4.23 (relating to “vents”) noting that kitchen vents were to be installed “as shown complete with flexi ducting. All to vent to the outside”. Item 6.12 (relating to “extracts”) says “allow to install extract fans to...kitchen...as shown on the drawings”; and item 7.19 (relating to “bathroom, laundry and kitchen ventilation”) says “allow to supply and connect up all duct work required for extract fans to Kitchen...All vents are to run to exterior of the [dwelling]”.
- 2.8. The specifications do not confirm the specific means of compliance for the ventilation system, and the “electrical certificate of compliance” does not mention the ventilation system either. The specifications also do not provide any detail of the type of system to be installed or its extraction or exhaust components.
- 2.9. The Ministry sourced information from the manufacturer of the installed ventilation system, including information about the system’s specifications, installation, air flow rates.
- 2.10. The manufacturer confirmed the model of the ventilation system and provided copies of its operating and installation instructions. The instructions showed that the system was designed to be installed as an “extractor hood” mounted above a kitchen hob. The ventilation system incorporated a washable aluminium grease filter and was manufactured to be connected to the exhaust outlet via a 120mm to 150mm diameter air outlet pipe. It generates a noise level of “59dB(A) re 1 pW” and was “suitable for ducted or recirculated operation”. The instructions state that when used in “exhaust-air mode”, the system extracts the kitchen vapours and conveys them through the grease filter into the atmosphere, and in the process, removes the solid particles, keeping the kitchen “almost free of grease and odours”. The exhaust air extracted by the system is discharged upwards through a ventilation shaft or directly through the outside air into the open, and should only be discharged “in accordance with official and statutory regulations”.
- 2.11. The manufacturer also confirmed that:
- 2.11.1. the minimum air flow from the exhaust for the ventilation system was 210m³/h (58.5 l/s) and the maximum flow was 420m³/h (117 l/s)
 - 2.11.2. the ventilation system had been tested and approved to standards AS/NZS 60335.1 (for general safety requirements) and AS/NZS 60335.2.31 (for specific safety requirements for hoods).

3. Background

- 3.1. On 2 November 2011, the authority granted a building consent (240688) to a previous owner of the property for alterations to the existing dwelling on the owner’s property.
- 3.2. On 12 December 2012, the authority issued a code compliance certificate for the building work carried out under building consent 240688. As part of this process,

the previous owner supplied photos of the building work including of the dwelling's eastern wall containing the vent from the ventilation system.

- 3.3. The property was sold to the owner in March 2022. Following the sale, the applicant noticed that the ventilation system was now in more regular use, and that the contaminated air from the system was discharging into their entrance pathway, into their living room and throughout their dwelling.
- 3.4. The applicant considered that this constituted a nuisance and on 20 November 2022, contacted the authority, advising it of the issue and seeking advice on what could be done to address the situation.
- 3.5. The authority replied in an email, advising that the location of the exhaust complied with the minimum separation distance specified in AS 1668.2², which was referenced in acceptable solution G4/AS1 as the standard that applied to discharges from mechanical ventilation systems at the time. The authority stated:

The standard cited [sic] in the clause G4, AS 1668.2 sets out the minimum distances that vents need to be from boundaries and opening windows, (AS1668:2002 table 5.4 notes airflow rates less than 200l/s no less than 1m from the boundary). Due to the location of the building, the exterior wall on the boundary it would not be possible to meet the boundary requirement, however it would meet the required distance from your window, as such the standard allows for the greatest possible distance to apply, this would be the case in this situation.

- 3.6. The Ministry received an application for a determination, which was accepted on 14 February 2023.

4. Submissions

The applicant

- 4.1. The applicant made submissions setting out their view that contaminated air discharged from the vent from the ventilation system was creating a nuisance on their property and within their dwelling, and the system therefore did not comply with clause G4.3.4 of the Building Code. The main points from these submissions can be summarised as follows.
- 4.2. The vent from the ventilation system is located directly opposite the applicant's lounge window, at a distance of approximately 1200mm. As the owner's dwelling is located on the shared boundary the ventilation system discharges "entirely into the entry path" of the applicant's property and directly into their lounge window.

² AS 1668.2—2002: Australian Standard: The use of ventilation and air conditioning in buildings. Part 2: Ventilation design for indoor air contaminant control (excluding requirements for the health aspects of tobacco smoke exposure).

- 4.3. The applicant has not given their permission for the contaminated air to be discharged on their property.
- 4.4. The window directly across from the ventilation system is the only source of external ventilation for the applicant's lounge.
- 4.5. The ventilation system is now in regular use. The applicant cannot use their lounge while the ventilation system is being used, due to the fumes and noise.
- 4.6. The contaminated air discharged by the vent "contaminates the small volume of clean ventilation air" provided to the neighbour's living room window, front door/entrance and kitchen window, all of which open onto the entry path to their property and rely on this air for ventilation.
- 4.7. The ventilation system also pushes contaminated air to the front and rear of the applicant's property, where it enters the bedroom windows and rear courtyard.
- 4.8. The applicant's dwelling has no other source of ventilation on its other (eastern) side as it is located "hard against" the dwelling at number 92 Elizabeth Street.
- 4.9. In addition to the odour, the discharge is creating heating issues for the applicant because they must ventilate their dwelling after every time the ventilation system is used.
- 4.10. This issue has "allowed contaminated waste air originating at one property to be transferred to the adjacent property, without [the applicant's] permission, and in a way that creates a nuisance".

The owner

- 4.11. The owner supplied information in response to the Ministry's requests, including:
 - 4.11.1. details of the model of the ventilation system installed in their property and its air flow rates.
 - 4.11.2. photos of the ventilation system as installed.

The authority

- 4.12. The authority made a submission, in which it repeated its view, expressed in its email to the applicant (see paragraph 3.5) that the location of the vent complied with AS 1668.2:2002, which was cited in G4/AS1.
- 4.13. The authority considered that as the exterior wall of the owner's dwelling was located on the boundary, the boundary requirement in clause 5.10.2 and Table 5.4 of the AS1668.2 could not be met. However, the vent met the requirement by which the "greatest possible distance" applied.

5. Discussion

- 5.1. The applicant has applied for a determination as to whether the building work to install the ventilation system in the owner's property complied with clause G4.3.4 of the Building Code 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 applicant claims their property, which is other property, is subject to a nuisance as a result of contaminated air from the ventilation system discharging onto their property.
- 5.3. The building work that this determination is concerned with is the work to install the mechanical ventilation system in the new relocated kitchen.

The legislation

- 5.4. Section 17 of the Act 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.

- 5.5. As stated, the provision of the Building Code at issue is clause G4.3.4, although clause G4.3.3 is also relevant. The version of Clause G4 that applied at the time that the building consent was issued read:

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) cooking fumes and odours, ...

G4.3.4 Contaminated air shall be disposed of in a way which avoids creating a nuisance or hazard to people and *other property*.

Compliance with Clause G4

- 5.6. Clause 4.3.4 requires contaminated air from this mechanical ventilation system to be disposed of in a way that avoids creating a nuisance or hazard to people and other property.
- 5.7. The applicant considers this requirement is not being met because fumes from the ventilation system are being discharged onto their property, and are entering their house causing a nuisance.
- 5.8. The authority is of the view that the system complies via the Acceptable Solution that was in force at the time that the building consent was issued and the system installed.
- 5.9. Clause G4.3.3 provides a helpful list of products which shall be collected and removed from the spaces in which they are generated.

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) cooking fumes and odours,
- (b) moisture from laundering, utensil washing, bathing and showering,
- (c) odours from sanitary and waste storage spaces,
- (d) gaseous by-products and excessive moisture from commercial or industrial processes,
- (e) poisonous fumes and gases,
- (f) flammable fumes and gases
- (g) airborne particles,
- (h) bacteria, viruses or other pathogens, or
- (i) products of combustion.

- 5.10. Clause G4.3.4 states:

G4.3.4 Contaminated air shall be disposed of in a way which avoids creating a nuisance or hazard to people and other property.

- 5.11. It follows that the “contaminated air” noted in G4.3.4 can be defined by the list provided in G4.3.3.
- 5.12. Therefore, the disposal of “cooking fumes and odours” should be done in a manner that avoids creating a nuisance or hazard to people and other property.
- 5.13. Through correspondence with the applicant and their submissions, the authority has assessed the compliance of the ventilation system with acceptable solution G4/AS1³ which applied at the time the consent was granted, and the system was

³ Department of Building and Housing. (2011). Compliance document for the New Zealand Building Code Clause G4 Ventilation – Third edition, amendment 2 [effective 10 October 2011 to 14 August 2014].

installed. The authority is of the opinion that the ventilation system complies, and therefore considers that the building work avoids creating a nuisance.

5.14. Paragraph 1.5 of G4/AS1 covers mechanical ventilation systems, with paragraph 1.5.1(f) specifying:

Contaminated air discharge systems shall discharge contaminated air in a way that complies with AS 1668.2 Clause 5.10, and ...

5.15. AS 1668.2—2002, Part 2 relates to ventilation design for indoor air contaminant control⁴ (“the standard”). Clause 1.1. defines the scope of the standard as “setting out design requirements for natural ventilation systems and mechanical air-handling systems that ventilate enclosures”, with Section 5 of the standard applying to “mechanical ventilation – exhaust systems”.

5.16. Clause 5.10 of AS 1668.2, referred to in G4/AS1, relates to air discharges, with the relevant provisions of clauses 5.10.1 and 5.10.2 being as follows.

5.10 AIR DISCHARGES

5.10.1 General

All exhaust air shall be discharged to atmosphere in such a manner as not to cause danger or nuisance to occupants in the building, occupants of neighbouring buildings or members of the public...

5.10.2 Discharges not deemed objectionable

Air discharges that are not deemed to contain objectionable effluent (see Clause 5.10.1) shall be—

- (a) located and arranged so that the effects of wind, adjacent structures or other factors do not cause the exhaust airflow rates to be reduced below the minimum requirement of this Standard;
- (b) not less than the distance given in Table 5.4 from any outdoor-air intake opening, natural ventilation device or opening;
- (c) emitted to the outside at velocities and in a direction that will ensure, to the extent practicable, a danger to health or a nuisance will not occur; and
- (d) not less than the distance given in Table 5.4 from the boundary to an adjacent allotment, except that where the dimensions of the allotment make this impossible, then the greatest possible distance shall apply.

⁴ Standards Australia. (2003). AS 1668.2—2002: Australian Standard. The use of ventilation and airconditioning in buildings. Part 2: Ventilation design for indoor air contaminant control (excluding requirements for the health aspects of tobacco smoke exposure) – Fourth edition, incorporating amendment Nos 1 and 2.

NOTES:

1 The choice of a suitable method of discharging air depends on a number of local and environmental factors as well as the nature and quality of the effluent and the direction and velocity of the discharge. Generally, it is preferable to discharge exhaust air upwards in a vertical or near vertical direction above the roof.

Discharges that extend less than 2 m above a thoroughfare or roof subject to regular traffic are not recommended. Where discharge extends less than 3 m above a pedestrian thoroughfare, the discharge should not create a nuisance.

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TABLE 5.4
MINIMUM SEPARATION DISTANCES FROM
DISCHARGES TO INTAKES, BOUNDARY
OR NATURAL VENTILATION DEVICE

Airflow rate L/s	Minimum distance m
< 200	1
< 400	2
...	

- 5.17. In its correspondence to the applicant and its submissions, the authority has focused on the provisions in sub-clauses 5.10.2(b) and (d) of the standard, which relate to the minimum separation distances that air discharges from mechanical ventilation systems should be located from a natural ventilation opening (such as a window) or boundary of an adjacent allotment, respectively.
- 5.18. The provisions in clause 5.10.2 relate to air discharges from ventilation systems that do not contain “objectionable effluent”, which for the purposes of the standard, would include the discharges from the owner’s ventilation system. The minimum distances specified in sub-paragraphs (b) and (d) vary depending on the discharge airflow rates of the ventilation system in question, as specified in Table 5.4 of the standard. At 117l/s, the maximum discharge airflow rate for the owner’s ventilation system falls within the <200l/s category in the table, meaning the minimum distance that the system’s vents must be from the applicant’s boundary are, in the first instance, 1m.
- 5.19. However, AS1668.2:2002, item 5.10.2 (d) states “not less than the distance in Table 5.4 from the boundary to an adjacent allotment, except that where the dimensions of the allotment make this impossible, then the greatest possible distance shall apply”.
- 5.20. In the authority’s view, while the 1 metre distance requirement from Table 5.4 is not met the ventilation system complies with the standard and hence G4/AS1, for the following reasons:

- 5.20.1. Clause 5.10.2(b) specifies that the vent must be located not less than 1m from any natural ventilation opening. The owner's vent is located 1.2m from the closest of the applicant's windows, being the living room window, and hence this subclause is complied with.
- 5.20.2. Clause 5.10.2(d) specifies that the vent must be located not less than 1m from the boundary of the neighbour's property. This is not met in the first instance, but the clause contains a proviso that "where the dimensions of the allotment make this impossible, then the greatest possible distance shall apply". The authority considers that in the owner's case, the dimensions of the allotment, and in particular the location of the external wall of dwelling on the shared boundary mean that "it would not be possible to meet the boundary requirement, ... as such the standard allows for the greatest possible distance to apply". In the authority's view, this requirement is met and hence this subclause is also complied with.
- 5.21. However, there are other provisions in clause 5.10.2 which also need to be complied with, in particular the requirement in clause 5.10.2(c) that air discharges shall be "emitted to the outside at velocities and in a direction that will ensure, to the extent practicable, a danger to health or a nuisance will not occur".
- 5.22. Paragraph 1.5.1(f) of G4/AS1 requires air to be discharged in a way that complies with Clause 5.10 of the standard. This requirement is not limited to particular subclauses but applies to Clause 5.10 as a whole. Similarly, the use of "and" between the subclauses of clauses 5.10.2 indicates that air discharges need to comply with all the subclauses, not just one or two of them. The general provisions in clause 5.10.1 of the standard must also be met. In particular, the requirement that exhaust air is discharged in a way that does not "cause danger or nuisance to occupants in the building, occupants of neighbouring buildings or members of the public".
- 5.23. In other words, it is not enough to point to compliance with one aspect of clause 5.10 of the standard as evidence of compliance with paragraph 1.5.1(f) of G4/AS1, and hence clause G4.3.4 of the Building Code. All the relevant provisions in clause 5.10 of the standard must be met if it is to be relied on as an acceptable solution.
- 5.24. Achieving the 1m distance from the boundary is possible, and therefore 5.10.2 (d) does not apply. The discharge from the rangehood could have been ducted vertically through the roof to discharge at least 1m from the boundary.
- 5.25. The minimum separation distances in table 5.4 for intakes or natural ventilation devices are intended to apply to buildings on the same property, or the same building, as a means of satisfying the 5.10.1 provision to not cause nuisance to occupants in the building. The boundary separation distance is to satisfy the 5.10.1 provision for occupants of neighbouring buildings (who may use any part of the adjacent property) or members of the public.

- 5.26. I consider the mechanical ventilation system did not meet the requirements of AS1668.2 and therefore did not comply by way of G4/AS1.
- 5.27. I will now consider whether the ventilation system complied by way of an alternative solution. The question therefore becomes whether the ventilation system is installed in a way which avoids creating a nuisance or hazard to people and other property.
- 5.28. Turning first to the question of what is meant by a nuisance, I note that the term “nuisance” is not defined in either the Act or the Building Code but is a term that is common in legal usage. The Oxford English Dictionary defines nuisance as:

A source of annoyance or irritation; an irksome situation or circumstance; trouble, annoyance.

- 5.29. The question of what is meant by nuisance has been discussed in the courts. In *Hawkes Bay Protein Ltd v Davidson*⁵, the High Court stated that in considering the “nature of nuisance” in relation to odours emitting from a meat and fish processing plant...

[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.

- 5.30. I have also discussed the question of whether a particular matter constitutes a nuisance in several previous determinations. Of particular relevance are determinations 2016/033⁶ and 2020/016⁷, which both looked at nuisance in the context of compliance with clause G4.3.4. The former with respect to emissions from a fire appliance, the latter with respect to the exhaust discharge from a mechanical ventilation system installed in a commercial kitchen.
- 5.31. In determination 2016/033, I discussed at length what was meant by nuisance as a common law concept, focussing in particular on what was meant by “unreasonable interference”.

9.1.11 ...the term “nuisance” is not defined in the Act or the Building Code, and it appears only in clauses 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

⁵ AP 30/01 T015047, 28 June 2002, Gendall J, at paragraph 15.

⁶ Determination 2016/033 Regarding the code-compliance of a solid fuel fire appliance installed in a three-year-old house at 27 Mo Street, Cambourne, Porirua [issued 22 July 2016].

⁷ Determination 2020/016 Regarding the authority’s exercise of its powers in issuing of a code compliance certificate in respect of the mechanical ventilation system to a restaurant kitchen at 1/7 Tennyson Street, Wellington [issued 20 July 202].

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 owners’ 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 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.

- 5.32. I consider these sentiments continue to hold true, and that what is required for a nuisance to be established is interference to an unreasonable degree with any person’s use or enjoyment of their land. For this determination, the applicant has used the effect on their individual use or enjoyment within their house to describe the nuisance. However, the building code is concerned with protection of other property, and so the nuisance must be assessed within the broader context of the land at 90 Elizabeth Street, not just within the confines of the house. Therefore, I must consider whether there is nuisance originating at 86 Elizabeth Street that crosses the boundary and thereby affects the land that comprises 90 Elizabeth Street.
- 5.33. The issue of establishing whether a nuisance is created to any one individual is a tricky one and is often subjective and related to an individual’s tolerance or otherwise to certain discomforts. The current owner’s tolerance for the cooking fumes and odours currently being disposed of onto their property is a difficult issue to quantify, although they are clear in their submissions that their use or enjoyment of the land has been interfered with to an unreasonable degree. Therefore, I must consider the circumstances of the ventilation system’s installation, alongside its impact on the applicant.
- 5.34. Properties in New Zealand change ownership frequently and current ownership cannot be considered as a sole factor in the assessment of compliance. As a result, it is possible that a future owner may choose to use the applicant’s property in a different way or construct new buildings in a different arrangement which could potentially increase the magnitude of the nuisance for that future owner.
- 5.35. Because the external wall of the owner’s house is located on the boundary, the ventilation system exhausts directly and wholly onto the applicant’s property.

- 5.36. The purpose of a kitchen ventilation system is to remove air contaminated with cooking odours, grease and steam from the interior of a dwelling. It should not then be directed on to an adjoining property, nor require the occupants of that property to alter their use of the property to avoid the contaminated air.
- 5.37. Its impact is worsened by the fact that these dwellings are built on narrow allotments and at very close proximity to each other. This makes it difficult for the discharged air to disperse.
- 5.38. Any future owners use of the applicant's property, which may be different to the current owner's, must not be impacted by the position of the ventilation system.
- 5.39. I also consider it relevant that the vent's current location is not the only option for where it could be located.
- 5.40. Clause 5.10 of AS1668 includes a note which states:

“Generally, it is preferable to discharge exhaust air upwards in a vertical or near vertical direction above the roof”.

- 5.41. In addition, the manufacturer's literature advises (at page 7) that the exhaust air can be:

“discharged upwards through a ventilation shaft”

- 5.42. By choosing to exhaust directly across the boundary at such a close proximity to the applicant's property, there is minimal attempt to avoid causing a nuisance. Discharging upward through the roof space as outlined in the manufacturer's documentation and as recommended in AS/1668.2 would have been clear examples of seeking to avoid a nuisance, and the discharge could also have been located at least 1m from the boundary in accordance with table 5.4 of the standard. No other compliance pathway has been presented to me and I consider that in this scenario, utilising a direct discharge toward the boundary at this close proximity is at odds with the concept of avoidance.
- 5.43. The kitchen discharge is direct across the boundary and does not seek to avoid causing a nuisance on the other property and therefore I consider this as-built ventilation system did not comply with G4.3.4.

Conclusion

- 5.44. I conclude that the ventilation system did not comply via G4/AS1 by way of the cited standard AS1668.2:2002, nor by way of an alternative solution. Therefore, the ventilation system did not comply with Clause G4.3.4 at the time it was installed.

6. Decision

- 6.1. In accordance with section 188 of the Building Act 2004, I determine that the ventilation system constructed pursuant to building consent 240688 did not comply with Clause G4.3.4 of the Building Code at the time it was installed.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 18 December 2023.

Andrew Eames

Manager Advisory, Building Resolution