



## Determination 2020/034

# Regarding the compliance of fire safety precautions in a motel at 2 Arataki Road, Havelock North

### Summary

This determination considers the issue of a building consent and code compliance certificate for a motel in respect of a fire alarm system. The matter turns on whether the building work as approved in the building consent complied with Clauses C2 Means of escape and F7 Warning systems, and whether the construction of the motel without a fire alarm system being installed met the performance requirements of those clauses when the code compliance certificate was issued.

## 1. Preliminaries

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“the Act”) made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.

### 1.2 The parties to the determination

1.2.1 The parties to the determination are:

- the owner of the motel, Estate Properties Ltd (“the applicant”)
- Hastings District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority and acting via its legal advisor (“the authority’s lawyer”).

1.2.2 This determination concerns certain fire safety matters and so I am required to consult with FENZ<sup>2</sup> under section 170 of the Act<sup>3</sup>.

1.2.3 FENZ was previously the New Zealand Fire Service. The Hawke’s Bay office of the New Zealand Fire Service provided various reports and advice to the authority regarding the fire alarm system in the motel. I have used the term “NZFS” and “fire service official” to distinguish between that historic involvement, and “FENZ” for the current consultation role described above.

<sup>1</sup> The Building Act and Building Code (Schedule 1 of the Building Regulations 1992) are available at [www.legislation.govt.nz](http://www.legislation.govt.nz). Information about the legislation, as well as past determinations, compliance documents and guidance issued by the Ministry, is available at [www.building.govt.nz](http://www.building.govt.nz).

<sup>2</sup> Fire and Emergency New Zealand, previously the New Zealand Fire Service.

<sup>3</sup> In this determination, unless otherwise stated, references to sections and clauses are to sections of the Act and clauses of the Building Code (Schedule 1, Building Regulations 1992).

### 1.3 References

1.3.1 The matter at issue relies on a building consent issued in 2001, accordingly I have needed to consider the compliance documents that were relevant at the date of application for building consent and when the code compliance certificate was issued.

1.3.2 The Approved Documents<sup>4</sup> discussed in this determination for establishing compliance with the Building Code in relation to fire safety that were current at the time the building consent was issued are:

**Approved Document F7 Warning systems** (3<sup>rd</sup> edition, dated 1 December 2000, effective from 1 June 2001). Included in this approved document was the Acceptable Solution F7/AS1.

**Approved Document for New Zealand Building Code “Fire Safety” Clauses C1, C2, C3, C4** (1<sup>st</sup> published December 2000, effective from 1 June 2001). Included in this approved document was the Acceptable Solution C/AS1, Part 4. I refer to this herein as the “**new**” Approved Document.

**Approved Document C4**, (3<sup>rd</sup> edition effective from 1 December 1995), relating to a manual fire alarm system, is referred to as the “**old**” Approved Document. This was superseded by the new approved document.

*Note: between the original building consent being applied for in ‘early 2001’ and when the building consent was issued in September 2001 the Approved Documents changed. The proposed change was confirmed in a Building Industry Authority newsletter (No. 107) dated October 2000. The new Approved Document was first published in December 2000 (prior to the consent application) and came into effect on 1 June 2001.*

1.3.3 In relation to the building consent considered in this determination, the alarm “Types” discussed are those described in the old Approved Document C4 and Approved Document F7, and Acceptable Solution C/AS1 Appendix A, generally as set out below. These have not been copied verbatim, but are summarised table below for ease of reference.

<b>Fire Alarm Type</b>	<b>Approved Document C4, Appendix B, item B3.3, dated December 1995 (superseded by C/AS1 effective from 1 June 2001)</b>
<b>1</b>	<p><i>Note: The description of a Type 1 fire alarm system {copied below} in the ‘old’ versions of the Approved Documents up to June 2001, was deleted in those versions that came into effect on 1 June 2001.</i></p> <p><b>Non-monitored manual fire alarm system</b> A manual alarm used only in buildings with no more than 3 floors and limited occupant load, for selected purpose groups.</p>
	<b>Approved Document F7 [F7/AS1] and Acceptable Solution C/AS1 Appendix A Effective from 1 June 2001</b>
<b>2</b>	<p><b>Manual fire alarm system</b> A single or multiple zone system with an alarm panel to provide a zone index diagram and defect warning and suitable for connection to the Fire Service. The fire alarm shall comply with the relevant sections of NZS 4512<sup>5</sup> [F7/AS1, item 1.2.2].</p>

<sup>4</sup> Approved Documents were non-mandatory guidance documents offering one method of compliance with specific performance criteria of the New Zealand Building Code and a design in accordance with an Approved Document must be accepted as compliant with the relevant clauses of the Building Code. The previous Approved Documents F7 and C4 were discontinued when the new amalgamated Acceptable Solution C/AS1 and the Third edition of F7/AS1 became effective from 1 June 2001.

<sup>5</sup> New Zealand Standard NZS 4512 Fire detection and alarm systems in buildings

	An alarm system which is activated only by someone operating a manual call point...{as per F7/AS1 above, excluding reference to NZS 4512} [C/AS1, Appendix A, item A2.1, A2.1.1]
<b>4</b>	<p><b>Automatic fire alarm system activated by smoke detectors and manual call points</b></p> <p>This system comprises a Type 2 system plus smoke detectors and shall be installed in accordance with NZS 4512. [F7/AS1, item 1.2.4].</p> <p>A detection and fire alarm system which activates automatically in the presence of smoke, and can be activated manually at any time. Type 5 is an optional alternative to this system for purpose groups Sleeping Accommodation (SA) and Sleeping Residential (SR). [C/AS1, Appendix A, item A2.1, A2.1.1].</p>
<b>5</b>	<p><b>Automatic fire alarm system with modified smoke detection and manual call points</b></p> <p>This system provides an optional alternative to the smoke detection part of Type 4 and Type 7 systems, and is restricted to single firecells containing sleeping accommodation, being household units in purpose group SR, or individual suites in purpose group SA.</p> <p>A Type 5 system requires heat detectors or sprinklers (Type 3 or Type 6) in addition to the local smoke alarm system in each household unit or suite firecell [F7/AS1, items 1.2.5 and 1.2.6].</p>

## 1.4 The matter to be determined

- 1.4.1 The application for this determination arose from a decision by the authority to undertake enforcement action in 2015<sup>6</sup> in relation to fire safety systems in a motel. The motel had been constructed under a building consent issued by the authority in September 2001 (“the original consent”). A code compliance certificate for that building work was issued by the same authority in May 2002. Given later (2015) enforcement action, the applicant has raised the question of whether the authority had reasonable grounds to be satisfied that the construction of the motel complied with certain fire safety clauses of the Building Code that were in force at time the original consent was approved and the code compliance certificate issued.
- 1.4.2 The matters to be determined<sup>7</sup> are therefore the authority’s exercise of its powers of decision in issuing the original consent in September 2001 and the code compliance certificate in May 2002 for the construction of the motel, specifically in respect of compliance of the fire alarm system. In deciding these matters, I must consider:
- whether the building work as approved in the original building consent complied with Building Code Clauses C2 Means of escape and F7 Warning systems that were in force at the time the building consent was issued in September 2001, and
  - whether the building work as constructed complied with Clauses C2 and F7 when the code compliance certificate was issued in May 2002.
- 1.4.3 When considering these questions, I have given due regard to the legislation under which the original building consent had been issued, and the requirements of the Building Code at the date that the code compliance certificate was issued, and the approved documents as noted in the references section above.

## 1.5 Matters outside this determination

- 1.5.1 This determination is limited to the building’s compliance with Clauses C2 and F7 and only in regard to the adequacy of the fire alarm system for the guest units

<sup>6</sup> The authority issued a dangerous building notice under section 124 of the Act and a notice to fix under section 164 of the Act.

<sup>7</sup> Under sections 177(1)(b), 177(2)(a) and 177(2)(d) of the Act

(“suites”)<sup>8</sup> of the motel, because this is the particular matter that was raised in the authority’s enforcement action. I have not considered the fire alarm and warning systems of the manger’s unit, kitchen, or the conference room, and this determination also does not consider the fire alarm system installed under a new building consent in 2015 (see paragraph 2.7.1). I have not considered any other aspects of the Building Code or the Act, such as (but not limited to), fire separations, fire resistance ratings, or requirements relating to compliance schedules or building warrants of fitness, beyond those required to decide on the matter to be determined.

- 1.5.2 In the application for determination, the applicant originally requested I examine the matter of the authority’s enforcement actions in 2015, specifically a dangerous building notice issued May 2015. This notice was withdrawn and a notice to fix issued November 2015. The authority issued a building consent in September 2015 for the installation of a Type 5 fire alarm system which was proposed to address that enforcement action, and a code compliance certificate was issued for the completed work in August 2016. The authority has also advised that the decision to issue the dangerous building notice was based on incorrect information. Given these circumstances and that the authority’s enforcement action has been superseded, it was agreed with the applicant that a full examination of the enforcement action was no longer material.
- 1.5.3 The applicant’s submissions also raised questions of financial redress. I am unable to consider matters beyond the scope of section 177 of the Act and this determination is limited to the matters outlined in paragraph 1.4.2. I refer to the enforcement action undertaken by the authority in the context of events leading up to this determination, but the authority’s decisions relating to those enforcement actions do not form part of the matter to be determined and I therefore do not consider them further.

## **1.6 The evidence**

- 1.6.1 Evidence considered in this determination includes various reports as set out in Table 1. In making my decision, I have considered submissions from the parties insofar as they relate to the matter to be determined, the reports provided by the parties, and the other evidence in this matter.

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<sup>8</sup> The use of the term “suites” is that which is defined in the Approved Document Fire Safety C1, C2, C3 and C4, that came into effect on 1 June 2001 – A firecell providing residential accommodation for the exclusive use of one person or of several people known to one another. It comprises one or more rooms for sleeping and may include spaces used for associated domestic activities such as hygiene and cooking.

**Table 1: The relevant reports**

Date	Report provided by:	Report for:	Title in this determination
May 2001	the fire design engineer	The applicant - in support of the original consent application for construction of the motel.	"the original fire design"
May 2015	the fire consultant	The authority - a review of the original fire alarm system design.	"the consultant's review"
Aug 2015	the fire service official	The authority.	"the NZFS report"

## 2. The buildings and background

### 2.1 The buildings

- 2.1.1 The building consists of a motel development ("the complex") situated on a near-level corner site. The complex includes one and two-storey linked buildings sited adjacent to the property boundaries, with a swimming pool at one corner of the site. The reception area to the complex is on Arataki Road, with vehicle access into the central car parking area. The complex consists of motel guest units, a conference room and a self-contained residential unit for the motel manager.
- 2.1.2 In the 2-storey units, the upper level units each have access to an external escape route (an open balcony) which allows travel in two separate directions, with a maximum travel distance<sup>9</sup> of about 20m. Ground floor units each have access directly to the outside.
- 2.1.3 The following information regarding occupant loads and escape routes is derived from a review commissioned by the authority in 2015. I note that for 'purpose group' SA ("Sleeping Accommodation"), it is the number of "beds" that is used for determining the number of occupants (reference Table 2 below). In the Acceptable Solution C/AS1 the term "bed" is used to denote the number of people expected to be sleeping in the firecell. Therefore, a double bed counts as two "beds" (i.e. two occupants). For the motel, I have not been provided with any plans of the individual units; I have therefore relied on the report provided to the authority by the fire consultant.

<sup>9</sup> The length of the *escape route* as a whole from the furthest point to the final exit.

**Table 2: Occupant numbers and escape routes<sup>10</sup>**

Location	No. of double beds	Occupants per bed	No. of occupants	Escape routes
<b>Block A</b>				
Ground floor	10	2	20	Egress for each unit direct to exterior
First floor	5	2	10	Egress onto external corridor, with alternate direction of escape to stairs at each end
<b>Block B</b>				
Ground floor	12	2	24	Egress for each unit direct to exterior
First floor	7	2	14	Egress onto external corridor, with alternate direction of escape to stairs at each end
		Total	68	

## 2.2 The original fire design and original building consent

- 2.2.1 The original building consent was applied for in 2001 under the Building Act 1991 (“the former Act”). Included in the application for building consent was the original fire design by the fire design engineer, dated 10 May 2001.
- 2.2.2 The original fire design called for “type 4 fire alarms (smoke detectors and call points)”. A notation refers to Type 4ef to the upper level, and Type 4aef to the lower level (see Appendix A for special applications for alarm types). The original fire design did not confirm the stated means of compliance (for instance, which version of the Approved Documents were used in the drafting the original fire design). Regardless, the conclusions reached in the original fire design align with Table 4.1/5, of the new Approved Document for purpose group SA. The reference to Type 4ef relates an escape height of <4m (or 2 floors), and Type 4aef relates to an escape height of 0m (or single floor).
- 2.2.3 If the fire design engineer had intended to use the ‘old’ Approved Documents (Table B1/6 for purpose group SA) a different conclusion would have been reached (i.e. a Type 2ae or Type 4ab alarm system). I discuss the significance of this further at paragraph 4.2.6.
- 2.2.4 The authority issued building consent No. ABA 20010692 under the former Act on 21 September 2001 to the applicant to ‘erect new visitor accommodation’.

## 2.3 Construction and the code compliance certificate

- 2.3.1 The building work was carried out in 2001 and 2002. I have not seen copies of any of the authority’s inspection records associated with the construction of the motel.
- 2.3.2 According to the fire design engineer, the requirement for a Type 4 alarm system was ‘discussed extensively’ with the authority in 2002 for the purposes of possibly reducing the requirement to a Type 2 alarm system. I have not seen any evidence of the authority’s approval of that change, and no alarm system was installed prior to the issue of the code compliance certificate.
- 2.3.3 The authority issued a code compliance certificate under section 43(3) of the former Act on 24 May 2002 in respect of all the building work carried out under the building consent.

<sup>10</sup> Excluding the conference room, kitchen, and manager’s accommodation as these are outside the matter to be determined.

2.3.4 In a letter dated 17 July 2002, NZFS advised the authority (under section 29 of the Fire Service Act 1975<sup>11</sup>) that ‘this type of complex requires a type 4 alarm system with an alternative being a type 5’. The fire service official had inspected the motel on 15 July 2002 and stated:

On the day of inspection it was noted that the complex did not have any form of alarm system that complies with the Building Code.

## 2.4 The consultant’s review

2.4.1 Following advice received from an Independently Qualified Person<sup>12</sup> in November 2014, the authority engaged a specialist fire consulting company (“the fire consultant”) to review the original fire engineering design requirements and confirm what type of alarm system, if any, was required in 2001 for the motel. The authority was provided with a report dated 19 May 2015, which noted that the fire design engineer had been notified of the review and given the opportunity to comment on the report.

2.4.2 In regard to the fire alarm system, the report described the ‘Type 4ef’ system called for in the original fire design dated 10 May 2001, which the fire consultant described as:

**Table 3: Type 4ef alarm system**

Type	Description	Special Applications
4	Automatic fire alarm system with smoke detectors and manual call points	a) Not required when: <ul style="list-style-type: none"> <li>i) The exit doors from firecells (including suites) open onto an external escape route, or</li> <li>ii) The number of beds in a building is no greater than 20.</li> </ul> e) A means of communicating with the Fire Service is not required, provided that, an audible defect warning (complying with NZS 4512 clause 208, or clause 219.12) is incorporated. f) A means of communicating [to] the Fire Service is not required provided a telephone is installed and freely available at all times to enable “111” calls to be made.

(I note here that although the fire consultant refers to the minimum requirements when the building consent was issued, preceding sections of the report refer to the ‘old’ Approved Document (dated 1995), and not the ‘new’ Approved Document that was published in December 2000 and that came into effect from 2001.)

2.4.3 The fire design engineer responded to the review, noting that alarms were proposed to be reduced from Type 4 to Type 2 ‘when further escape routes were added’ and this change ‘was discussed extensively’ with the authority in 2002.

2.4.4 The fire consultant considered the above comments and the relevant features of the motel against requirements of the ‘old’ Approved Document, concluding that “heat or smoke detectors would have had to be installed throughout the building as the minimum requirement for the motel at the time the building was consented”.

<sup>11</sup> The Fire Service Act 1975 was repealed, on 1 July 2017, by section 195(a) of the Fire and Emergency New Zealand Act 2017.

<sup>12</sup> An Independently Qualified Person (IQP) is a person accepted by the territorial authority as being qualified to carry out or supervise all or some of the inspection, maintenance, and reporting procedures for a specified system stated in a compliance schedule (such as fire alarm systems).

- 2.4.5 The fire consultant's review recommended each motel unit be fitted with Type 1 Domestic smoke alarms<sup>13</sup> as a bare minimum, as a matter of urgency and as an interim measure if the building was to remain occupied.

## **2.5 The 2015 Dangerous Building Notice and ongoing correspondence**

- 2.5.1 The authority issued a Dangerous Building Notice ("the dangerous building notice") on 29 May 2015 under section 124(2)(c) of the Act, requiring work to reduce or remove the danger. The required work was described in terms of temporary measures (discontinue using the motel or install 'Type 1 smoke detectors' in all units) and permanent measures (installation of a compliant fire alarm system under a building consent).
- 2.5.2 According to the applicant, the authority official who delivered the notice 'did look at all the rooms' and noted that they all had smoke detectors, which would constitute the 'temporary measures' called for in the notice. This is evidenced by a letter from the authority dated 6 July 2015 which confirmed the building was indeed inspected on 28 May 2015 and 'Type 1 smoke detectors are already installed and therefore the temporary measures component of the Dangerous Building Notice has been satisfied'. I have not been provided evidence to confirm when the Type 1 smoke detectors were installed.
- 2.5.3 Correspondence followed between the parties in relation to the dangerous building notice. The authority sought confirmation on 6 July 2015 that a design compliant with the current standards would be installed. The applicant's lawyer noted that the original building consent should not have been issued if the fire design did not comply with the Building Code and furthermore the issue of the code compliance certificate confirmed compliance of the building work.

## **2.6 The NZFS report**

- 2.6.1 The authority sought advice from NZFS under section 121(2)(a) of the Act. In correspondence to NZFS on 11 August 2015 the authority confirmed that Type 1 alarms were installed, which satisfied the interim measure required by the notice. The authority remained of the view that a compliant alarm system was still required.
- 2.6.2 NZFS inspected the motel on 17 August 2015 and reported to the authority on 31 August 2015, confirming that the first requirement of the dangerous building notice had been complied with by installing Type 1 alarms in all accommodation units and noting fire procedures were displayed in a prominent place, but there was no form of automatic fire alarm system. NZFS concluded that the current state of the building was not dangerous in terms of section 121(1)(b) and set out the reasons for that view in the report.
- 2.6.3 In a further letter from the NZFS dated 17 September 2015, the NZFS stated it had reported to the both the owner and authority (under section 29(5) of the Fire Service Act 1975) in 2002 that it 'believed the building may not comply with the Building Act' and that it 'recommended the installation of a Fire Alarm System that complied with the Acceptable Solutions for the Building Code'. That being 'either a type 4 or alternatively a type 5 alarm system' and 'that opinion remains unchanged'.

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<sup>13</sup> The Acceptable Solution F7/AS1 current at the time of the fire consultant's review defined a Type 1 alarm system as a domestic smoke alarm with an integral alerting device. This is different to the 'Type 1' alarm system in the earlier Approved Documents discussed in this determination.

## **2.7 The installation of the Type 5 alarm system**

- 2.7.1 A building consent application was lodged on 4 September 2015 for the installation of a Type 5 alarm system and exit signs. On 8 September 2015 the authority issued building consent No. ABA 20151220 to the applicant. This building work is not considered in this determination.
- 2.7.2 On 12 November 2015 the authority lifted the dangerous building notice, notifying the applicant and manager that ‘temporary measures’ were in place and ‘permanent measures’ to address the fire alarm system requirements were included in a notice to fix. On the same date the authority issued the notice to fix (No. NTF 201550015). The authority’s decision to issue that notice to fix is not considered in this determination.
- 2.7.3 The new fire alarm system was installed, and following a final inspection on 23 December 2015 the authority issued a code compliance certificate on 19 August 2016.

## **2.8 The application for determination**

- 2.8.1 The Ministry received an application from the applicant on 24 August 2018 and sought additional information from the parties. The parties continued to discuss the matter outside of the determination process and the application was placed on hold while the parties discussed a possible remedy.
- 2.8.2 The applicant subsequently advised that no resolution had been reached between the parties and correspondence followed between the applicant and the Ministry as to what matters are determinable under section 177 of the Act. The matter to be determined was confirmed on 17 July 2019.

## **3. The submissions**

### **3.1 The applicant’s submission**

- 3.1.1 The applicant’s submission dated 22 August 2018 set out a detailed history of the situation.
- 3.1.2 The applicant was of the view that the authority erred in granting and issuing the original building consent in 2001, and the associated code compliance certificate in 2002, on the basis the authority could not have been satisfied on reasonable grounds that certain provisions of the Building Code relating to fire safety were met as it had later taken enforcement action in relation to this.

3.1.3 With and following the application, the applicant forwarded copies of:

- the original fire design dated 10 May 2001
- the code compliance certificate dated 24 May 2002
- the fire service official's letter dated 17 July 2002
- the compliance schedule dated 28 June 2006
- the fire consultant's review dated 19 May 2015
- the dangerous building notice dated 29 May 2015
- correspondence between the parties
- the authority's correspondence with the fire service official
- the fire service report dated 31 August 2015
- the notice to fix dated 12 November 2015.

### **3.2 The authority's submissions**

3.2.1 The authority's lawyer made a submission dated 7 December 2018 on the authority's behalf, which summarised relevant background facts since 2014.

3.2.2 In response to a request from the Ministry, the authority provided a copy of the original building consent on 30 July 2019, which included:

- the project information memorandum dated 21 September 2001
- the issued building consent form dated 21 September 2001
- two drawings (ground floor plan and elevation A and B of the buildings) stamped on 21 May 2001 as approved for Resource Management Act purposes
- a letter from the authority to the applicant dated 6 December 2001 in respect of the Building Code compliance of the building in proximity to the boundary and the requirement for fire-rated construction
- a fax message from the applicant to the authority dated 6 December 2001 and calculations from the fire design engineer dated 11 December 2001 in response to the authority's 6 December 2001 letter
- various other correspondence and the authority's internal memos regarding requirements under the Resource Management Act
- a letter from the authority to the applicant confirming the applicant's request to mark the building consent plans as 'confidential' as per section 27(3) of the former Act dated 1 June 2001.

### **3.3 The draft determination and further submissions**

3.3.1 A draft of this determination was issued to the parties and FENZ for comment on 8 September 2020. The draft concluded that: the authority was correct in its decision to issue the original building consent because the fire safety precautions proposed complied with Clauses C2 and F7 of the Building Code that applied at the time the building consent was issued in 2001; but the authority was incorrect to issue the code compliance certificate because the completed building work did not comply with the relevant provisions of the Building Code. However, because a compliant fire alarm

system has since been installed, the draft proposed not reversing the authority's earlier decision to issue the code compliance certificate.

- 3.3.2 The authority responded on 20 September 2020, accepting the draft without further comment.
- 3.3.3 The applicant responded on 21 September 2020. With regard to the authority's decision to issue the code compliance certificate, the applicant was of the view that because the building work was not compliant the certificate was "invalid" and the determination should reverse that decision.
- 3.3.4 FENZ provided comment on 24 October 2020, noting that it agreed with the analysis in the draft determination and had no other comment.

## 4. Discussion

### 4.1 Framework

4.1.1 This determination considers whether the authority was correct in its exercise of powers of decision in issuing the building consent No. ABA20010692 in 2001 and the subsequent code compliance certificate in 2002 in respect of the fire alarm system. In order to make this decision I have considered whether there were reasonable grounds for the authority to be satisfied that, in regard to the relevant provisions of Clauses C2 and F7 of the Building Code that applied at those times:

- the requirements of the Building Code would be met if the building work were properly built in accordance with the 2001 building consent documentation, and
- the completed building work complied with the Building Code requirements in 2002 when the authority issued the code compliance certificate.

### 4.2 The original building consent

4.2.1 In this case the relevant provision under the former Act for granting a building consent was section 34(3):

#### 34 Processing building consents

- (3) After considering an application for building consent, the territorial authority shall grant the consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work was properly completed in accordance with the plans and specifications submitted with the application.

4.2.2 The relevant requirements of the Building Code at the time the building consent was issued (21 September 2001) were:

#### Clause C2 – Means of escape

**C2.3.1** The number of *open paths* available to each person escaping to an *exitway* or *final exit* shall be appropriate to:

...

- (d) The *fire safety systems*<sup>[14]</sup> installed in the *firecell*.

**C2.3.2** The number of *exitways* or *final exits* available to each person shall be appropriate to:

<sup>14</sup> As defined in the Building Code current at that time: **Fire safety system** The combination of all methods used in a building to warn people of an emergency, provide for safe evacuation, and restrict the spread of fire, and includes both active and passive protection.

...

(e) The fire safety systems installed in the building.

#### **Clause F7 – Warning systems**

**F7.2** Buildings shall be provided with appropriate means of warning people to escape to a safe place.

**F7.3** A warning system shall consist of a combined fire detection and warning system that will alert people in adequate time for them to reach a safe place.

- 4.2.3 In order to form a view about the compliance of the proposed alarm system that formed part of the application for the original building consent, I need to consider the available evidence, which includes:
- the original fire design notes by the fire design engineer
  - the compliance requirements and standards applying at that time.
- 4.2.4 The original approved fire design called for the alarm system to be “type 4 fire alarms (smoke detectors and call points)”, with notation referring to Type 4ef to the upper level, and Type 4aef to the lower level. Given these references in the original fire design report notes, it appears the fire design engineer used the appropriate ‘new’ Approved Document as the means of establishing compliance with Clauses C2 and F7.
- 4.2.5 Based on the Approved Documents that were applicable at the time the application for building consent was granted and issued, I am of the view that the fire alarm system, if installed in accordance with the original approved fire design, would have complied with Clauses C2 and F7.
- 4.2.6 In reaching this view, I have also considered that fact that between the time the original building consent was applied for, in ‘early 2001’, and when the building consent was issued in September 2001 the Approved Documents changed. I note the proposed change was confirmed in a Building Industry Authority newsletter (No. 107) dated October 2000. The ‘new’ Approved Document was first published in December 2000 (prior to the consent application), and came into effect on 1 June 2001.
- 4.2.7 The fire engineer appears to have chosen to use the ‘new’ Approved Document, instead of the ‘old’ Approved Document C4 “Structural Stability During Fire”, 3<sup>rd</sup> edition, dated December 1995, which was still current up to June 2001 (thereafter the ‘new’ Approved Document superseded all previous versions).
- 4.2.8 If the fire engineer had written the original fire design report based on the ‘old’ Approved Document, a Type 2ae or Type 4ab fire alarm system would still have been required (depending on the configuration of the motel blocks, for which I have not received any construction plans) in accordance with Table B1/6 of the Approved Document for purpose group SA (notwithstanding the related limitations and ‘special applications’ stated in Appendix B which I have not considered further).
- 4.2.9 In respect of the means of compliance against the ‘new’ Approved Document, I refer to Part 4 of C/AS1, with the relevant Tables being 4.1 “Fire safety precautions – Key to table references”, and 4.1/5 “Fire safety precautions for sleeping purpose group firecells – occupant load 40 maximum” (see Appendix A).
- 4.2.10 The original fire report stated: ‘All units are separate firecells: Occupancy <40p’ (I have assumed ‘p’ is an abbreviation for persons or people). I have not received any construction plans to indicate the extent and construction of the individual firecells.

On this basis, I have made a reasonable assumption that the appropriate fire separations have been formed, and therefore the occupant load in each firecell is <40 persons.

- 4.2.11 Turning to Table 4.1/5: for purpose group SA, for an escape height of 0m (or a single floor) the fire safety precautions require a Type 4aef fire alarm system. For an escape height of <4m (or 2 floors), the fire safety precautions require a Type 4ef fire alarm system. This assessment aligns with the original fire report.
- 4.2.12 The abbreviations ‘a’, ‘e’, and ‘f’, are detailed in Table 4.1. Under the column titled ‘Special applications’, the letter ‘a’ means certain fire safety precautions are ‘not required where...ii) the escape routes are for purpose group SA and serve no more than 10 beds...or, iii) exit doors from purpose group SA...firecells open directly onto a safe place or an external safe path’. Although this special application may have been applied to the motel ground floor units, the same can’t be said for those on the upper floor. The letter ‘e’ means a ‘Type 5 is permitted as an alternative alarm system within firecells containing sleeping accommodation’. Letter ‘f’ means ‘A direct connection to the Fire Service is not required provided a telephone is installed and freely available at all times to enable “111” calls to be made’.
- 4.2.13 I also note paragraph 4.5.11 of C/AS1 states, ‘Where any upper floor contains a sleeping purpose group, all floors below shall have an appropriate alarm system which will activate alerting devices in all sleeping areas within the building’. It goes on to state: ‘For SA group all lower floors shall, regardless of the purpose group contained, have heat or smoke detectors or sprinklers (Types 3, 4 or 6)’.
- 4.2.14 I have not been provided with any information from the authority that relates to their processing and consideration of the construction plans and specifications (including the original fire report) that formed part of the original building consent documentation against the relevant provisions of the Building Code (specifically Clauses C2 and F7). Regardless, it is reasonable to assume that the authority must have satisfied itself that ‘the provisions of the Building Code would be met if the building work was properly completed in accordance with the plans and specifications submitted with the application’ when it granted the original building consent, and issued the same in September 2001.
- 4.2.15 As described in paragraphs 2.4.4 and 2.6.3 respectively, both the fire consultant (acting on behalf of the authority) and NZFS subsequently concluded that a fire alarm system was required for that type of building (purpose group SA ‘Sleeping Accommodation’: motel).
- 4.2.16 Taking all of the above into account, and only in relation of the matter to determined (i.e. the fire alarm system), I am of the opinion that the authority had reasonable grounds to be satisfied that the relevant provisions of Clauses C2 and F7 of the Building Code applying at the time would be met if the building work were properly built in accordance with the 2001 building consent documentation, and that the authority was correct to grant the building consent under section 34(3) of the former Act.

### **4.3 The code compliance certificate**

- 4.3.1 I now turn to the question of whether the authority was correct in its decision to issue the code compliance certificate. The relevant provision of the former Act that was in force at that time was section 43(3)(a):

#### **43 Code compliance certificate**

(3) ... the territorial authority shall issue to the applicant in the prescribed form...  
...a code compliance certificate, if it is satisfied on reasonable grounds that –

(a) The building work to which the certificate relates complies with the building code...

- 4.3.2 The original fire report stated that ‘Type 4 fire alarms (smoke detectors & call points)’ were required, and this formed part of the original building consent documentation in 2001. I have not been provided with any evidence by the applicant, authority, NZFS, the fire engineer, or fire consultant, which disputes the fact that a fire alarm system should have been installed.
- 4.3.3 I have already reached the conclusion above that the authority was correct to issue the building consent in respect of the Type 4 alarm system as stated in the original fire report (to comply with Building Code Clauses C2 and F7).
- 4.3.4 However, I have not been provided with any evidence or explanation as to why the fire alarm system was not installed by the owner (in accordance with the original building consent No. ABA 20010692).
- 4.3.5 I have not received copies of any site records of the inspections by the authority for that building consent.
- 4.3.6 The authority issued the code compliance certificate against the original building consent on 24 May 2002. I have received no evidence to confirm what prompted the issue of the code compliance certificate or the reasons reached by the authority to decide to issue the certificate under section 43(3) of the former Act.
- 4.3.7 There is no dispute that a fire alarm system was not installed prior to the issue of the code compliance certificate. The reports and correspondence received from both parties during this determination affirm the specified Type 4 fire alarm system was not installed, nor was any other alternative system.
- 4.3.8 Therefore, in accordance with section 43(3) of the former Act, the authority could not have been satisfied on reasonable grounds that the building work to which the code compliance certificate related (specifically in respect of the fire alarm system) complied with the Building Code. This would have been obvious to the authority at the time of the issue of the code compliance certificate. In my view, therefore, the authority incorrectly exercised its powers of decision to issue the code compliance certificate on 24 May 2002 for the original building consent (No. ABA 20010692).
- 4.3.9 As a compliant fire alarm system has since been installed, I have not reversed the authority’s earlier decision to issue the code compliance certificate in this determination.
- 4.3.10 The applicant submitted that the code compliance certificate issued on 24 May 2002 should be reversed and the authority directed to issue a new code compliance certificate for the original building consent (No. ABA 20010692) that is effective from 19 August 2016 (when the Type 5 alarm system was installed pursuant to building consent No. ABA 20151220).
- 4.3.11 The authority does not have the power to back date a code compliance certificate so could not be directed to issue a code compliance with effect from 19 August 2016. Further, the work covered by the original building consent has now been overtaken by the 2015 building consent. This is a not uncommon situation where work covered by a building consent is subsequently altered or removed by a new building consent. The property file will record each of the building consents and code compliance certificates, as well as this Determination, which will ensure that anyone inspecting

the property file will be able to ascertain the current status and history of the buildings under the Building Act.

## **5. The decision**

5.1 In accordance with section 188 of the Act, I hereby determine that:

- the authority was correct to issue building consent No. ABA 20010692 as the fire safety precaution proposed for the motel complied with Clauses C2 and F7 of the Building Code that applied at the time the building consent was issued in 2001; and I confirm the decision to issue the building consent
- the authority was incorrect to issue a code compliance certificate for building consent No. ABA 20010692 because the completed building work did not comply with the relevant provisions of the Building Code Clauses C2 and F7; however given the actions by the applicant to correct the non-compliance, there is no need for me to direct that this decision be reversed.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 16 December 2020.

Katie Gordon  
**Manager Determinations**

## Appendix A: Relevant tables set out in Approved Document for New Zealand Building Code 'Fire Safety', Clauses C1, C2, C3, C4, Acceptable Solution C/AS1, Part 4 "Requirements for firecells"

(1<sup>st</sup> published December 2000, effective from 1 June 2001).

Acceptable Solution C/AS1

PART 4: REQUIREMENTS FOR FIRECELLS

**Table 4.1: Fire safety precautions**

**Key to table references**

<b>Part 2</b>	Paragraph 2.4.2
<b>Part 3</b>	Paragraphs 3.1.5, 3.13.1 and 3.19.2
<b>Part 4</b>	Paragraphs 4.3, 4.3.1, 4.3.3, 4.4.1, 4.5.2, 4.5.3, 4.5.4, 4.5.7, 4.5.9, 4.5.10, 4.5.13, 4.5.14, 4.5.15, 4.5.19
<b>Part 5</b>	Paragraphs 5.5.1, 5.6.5, 5.6.7, 5.9.4 (c)
<b>Part 6</b>	Paragraphs 6.2.1, 6.4.1, 6.7.1, 6.8.1, 6.8.5, 6.8.6, 6.10.1, 6.11.1, 6.15.1, 6.19.9, 6.21.2, 6.23.1 (d), 6.23.2, 6.23.3
<b>Part 8</b>	Paragraphs 8.2.1, 8.2.2, 8.2.3
<b>Appendix A</b>	Paragraphs A1.1.1 and A1.1.2

Fire safety precautions		Special applications
<b>Type</b>	<b>Description</b>	
1	No Type 1 currently specified.	a Not required where:
2	Manual fire alarm system.	i) the <i>escape routes</i> serve an <i>occupant load</i> of no more than 50 in <i>purpose groups</i> CS, CM, WL, WM, WH and WF, or
3	Automatic fire alarm system with heat detectors and manual call points.	ii) the <i>escape routes</i> are for <i>purpose group</i> SA and serve no more than 10 beds, (or 20 beds for trampers huts, see Paragraph 6.20.6), or
4	Automatic fire alarm system with smoke detectors and manual call points.	iii) exit doors from <i>purpose group</i> SA and SR <i>firecells</i> open directly onto a <i>safe place</i> or an external <i>safe path</i> (see Paragraph 3.14).
5	Automatic fire alarm system with modified smoke/heat detection and manual call points.	b Where only a single <i>escape route</i> is available, no less than a Type 4 alarm is required. See Paragraph 3.15.3 for situations where sprinklers are required.
6	Automatic fire sprinkler system with manual call points.	c Required where Fire Service hose run distance, from the Fire Service vehicular access (see Paragraph 8.1.1) to any point on any floor, is greater than 75 m.
7	Automatic fire sprinkler system with smoke detectors and manual call points.	d Emergency lighting extended to <i>open paths</i> throughout the <i>firecell</i> .
8	Voice communication system.	e Type 5 is permitted as an alternative alarm system within <i>firecells</i> containing sleeping accommodation. (See Appendix A for description of Type 5.)
9	Smoke control in air handling system.	f A direct connection to the Fire Service is not required provided a telephone is installed and freely available at all times to enable "111" calls to be made.
10	Natural smoke venting.	
11	Mechanical smoke extract.	
12	No Type 12 currently specified.	
13	Pressurisation of safe paths.	
14	Fire hose reels.	
15	Fire Service lift control.	
16	Emergency lighting in exitways.	
17	Emergency electrical power supply.	
18	Fire hydrant system.	
19	Refuge areas.	
20	Fire systems centre.	

## PART 4: REQUIREMENTS FOR FIRECELLS

Acceptable Solution C/AS1

Table 4.1/5: Fire safety precautions for sleeping purpose group firecells					Occupant load 40 maximum			
Purpose Group	Escape height							
	0 m (or single floor)	<4 m (or 2 floors)	4 m to <10 m (or 3 floors)	10 m to <25 m	25 m to <34 m	34 m to <46 m	46 m to <58 m	over 58 m
SC SD (Note 6)	F0	F30	F30	F30	F30	F30	F30	F60
	7 16d 18c	7 16d 18c	7 16d 18c	7 9 15 16d 18	7 8 9 13 15 16d 18 20	7 8 9 13 15 16d 18 20	7 8 9 13 15 16d 18 20	7 8 9 13 15 16d 17 18 19 20
SA (Note 5)	F0	F30	F30	F45	F30	F30	F30	F60
	4aef 16a 18c	4ef 16a 18c	4e 14 16a 18c	4e 14 15 16 18	7e 8 9 15 16 18	7e 8 9 13 15 16 18 20	7e 8 9 13 15 16 18 20	7e 8 9 13 15 16 17 18 20
SR (Note 7)	F0	F30	F30	F45	F30	F30	F30	F60
		2a	2f 16a	4e 14 16 18	7e 15 16 18	7e 15 16 18	7e 15 16 18 20	7e 13 15 16 18 20
Column	1	2	3	4	5	6	7	8
<b>Notes:</b> <ol style="list-style-type: none"> <li><b>Use of Table:</b> Refer to Paragraph 4.4 for instructions on using this table to determine the <i>fire safety precautions</i> in <i>firecells</i>.</li> <li><b>Adjoining firecells having a F0 rating:</b> Paragraph 6.2.1 requires adjoining <i>firecells</i> to be separated by a <i>fire separation</i> with <i>FRR</i> no less than 15/15/15, or 30/30/30 for <i>purpose group</i> SR.</li> <li><b>Intermediate Floors:</b> Where a <i>firecell</i> contains <i>intermediate floors</i> a 15/15/15 <i>FRR</i> shall apply to the <i>intermediate floors</i> and supporting elements, and smoke control systems, Type 9 and either Type 10 or Type 11, are required (see Paragraphs 4.5.16 to 4.5.18, 6.14.3 and 6.21.5 to 6.22.14).</li> <li><b>Car Parking:</b> Refer to Paragraphs 6.10.3 to 6.10.6 for car parking provisions within <i>buildings</i>.</li> <li><b>Sprinklered firecells:</b> <i>Purpose group</i> SA may have an <i>occupant load</i> up to 160 beds in <i>firecells</i> with a Type 7 alarm (see Paragraph 6.7.2).</li> <li><b>Occupant load in SC and SD firecells:</b> The <i>occupant load</i> in a <i>group sleeping area firecell</i> is limited to 12 or 20 beds and in a <i>suite</i> to 6 beds (see Paragraphs 6.6.3 to 6.6.5). For <i>firecells</i> (such as an operating theatre) required to remain occupied during a <i>fire</i>, see Paragraphs 5.6.8 and 5.6.9.</li> <li><b>SR household units:</b> See Paragraph 6.8.6 which describes where <i>household units</i> containing upper floors may be treated as single floor <i>firecells</i>.</li> </ol>								