



## Determination 2017/006

# Regarding the refusal to issue a building consent for the change of use from commercial to residential of one level in a multi-level building at 7 Ratanui Street, Henderson, Auckland

### Summary

This determination considers the assessment required under section 115 when there is a change of use to only part of a building, particularly in respect of Building Code clause B1 Structure and whether a Detailed Seismic Assessment is required for the whole building.



## 1. The matter to be determined

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, John Gardiner, Manager Determinations and Assurance, 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 are:

- Mr B and Mrs J Walters, the owners of Unit A, assigned Accessory Units 1, 4-5, 24 and 26-27, and all the associated common areas (“the applicants”)
- Auckland Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.

1.3 I consider the following to be persons with an interest in the matter:

- the owners of the other Units and common areas in the building, represented by Henderson Body Corporate BC166875 (“the other owners”)
- Unitec (who is also an owner of some of the units), as the applicant for building consent ABA 2015-2022 for alterations to Unit A.

<sup>1</sup> The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at [www.building.govt.nz](http://www.building.govt.nz) or by contacting the Ministry on 0800 242 243.

- 1.4 This determination arises from the authority's refusal to grant building consent to the applicants for building work to convert the ground floor to residential units. The authority is of the view that a Detailed Seismic Assessment (DSA)<sup>2</sup> is required to establish compliance with Clause B1 of the Building Code to the extent required by section 115 of the Act<sup>3</sup>.
- 1.5 I therefore take the matter for determination<sup>4</sup> as the authority's exercise of its powers of decision in refusing to grant building consent on the basis that a DSA is required for the whole of the building (refer paragraph 3.12). In making this decision I must consider whether there was sufficient evidence provided to the authority to establish that the building will comply with Clause B1.3.3(f) and B1.3.4(a) to the extent required by section 115.
- 1.6 In this determination, I will refer to the following legislation, the relevant parts of which are set out in Appendix A:
- The *Building Act 2004* with its sections referred to as sections of the Act.
  - *Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005*, referred to as "the Regulations"
  - Building Code Clause B1 – Structure.
- 1.7 In making my decision I have considered the submissions of the parties and the other evidence in this matter.

## 1.8 Matters outside this determination

- 1.8.1 The applicants included in their submission a number of details that relate to contractual arrangements and issues under the *Resource Management Act (1991)*. Those issues are outside the matters that I can determine under section 177 of the Act, and are not considered any further in this determination other than as providing context to the dispute.
- 1.8.2 I have not considered any other aspects of the Act or of the Building Code, nor have I considered compliance of the proposed building work otherwise than as outlined in paragraph 1.5.

## 2. The existing building and proposed building work

- 2.1 The building was originally constructed under permits issued in 1974 as an office building with basement car parking. The following description of the building's physical attributes is taken from a report produced by a firm of structural and civil engineers (refer paragraph 3.3).
- 2.2 The building is six storeys high, with the basement level providing car parking. It is rectangular in plan, and approximately 44m long and 15m wide. It is joined by pedestrian bridges on three levels to the adjacent building at 5 Ratanui Street.
- 2.3 The building is predominantly of cast-in situ reinforced concrete construction with 150mm thick in situ concrete floor slabs supported on two-way reinforced concrete moment frames. Perimeter columns are 510mm square and the internal columns are 560mm square. Structural drawings indicate the concrete beams are approximately

---

<sup>2</sup> A Detailed Seismic Assessment is a detailed quantitative appraisal undertaken by earthquake engineers to establish the seismic performance of a building.

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

<sup>4</sup> Under sections 177(1)(b) and 177(2)(a) of the Act

600mm deep. Perimeter basement walls are 150mm thick and the building is founded on board concrete piles. Concrete block infill panels have been used at the perimeter of the suspended levels to form part of the façade.

- 2.4 The proposed building work is associated with a conversion of the applicants' Unit A ("the ground floor") to a mix of food/retail and six one-bedroom apartments. The conversion constitutes a change of use under the Regulations and section 115 of the Act applies.

### 3. The background

- 3.1 The applicants purchased Unit A ("ground floor" of 7 Ratanui Street) in July 1995 and at that time it was leased as office space.
- 3.2 In 2001 the ground floor and levels 2, 3 and 4 were leased to Unitec to establish an educational facility and internal fit outs were undertaken. In 2004 a pedestrian link was installed at ground floor level between the subject building and the adjacent building at 5 Ratanui Street. Another pedestrian link bridge was constructed in 2009 at level 3.
- 3.3 In October 2009 a firm of structural and civil engineers ("the first engineers") carried out a structural review of proposed modifications to the subject building and adjacent building that involved wall penetrations and roofing over an existing light well. The report concluded that the subject building was 'unlikely to be earthquake-prone', and that there were no requirements for supplementary structural strengthening to either building as a result of the proposed modifications, but the subject building was found to have a 'moderate seismic risk' (seismic Grade-C)<sup>5</sup>. The report noted:
- One seismic issue that does not appear to have been considered in the original structural design is possible interaction between the concrete block infill panels and the perimeter reinforced concrete frames. In a new building a seismic gap would typically be provided between the columns and the sides of the infill panel, and at the panel head, to ensure that the frame could move independently of the infill panel i.e. contact between the frame and the panel would be avoided in an earthquake.
- 3.4 In May 2012 a firm of civil and structural engineers ("the second engineers") carried out an 'evaluation of earthquake prone buildings' on behalf of Unitec. In regards to the subject building, the provisional grading for seismic risk, based on the Initial Evaluation Procedure ("IEP"), was stated as C-Grade for the transverse direction and B-Grade for longitudinal direction.
- 3.5 On 11 May 2015 Unitec advised the applicants that it would opt not to renew its lease of the ground floor but sought instead to purchase the applicants' property; the sale was not agreed to by the applicants.
- 3.6 On 20 August 2015 an informal Body Corporate meeting was held to discuss the works proposed by Unitec on Level 2 and to discuss the proposed change in the applicants' unit to a mix of food/retail and six one-bedroom apartments. The meeting decided that the license agreement to be granted by the Body Corporate to Unitec for a proposed link at Level 2 required a full engineering report and confirmation that by creating the opening there would be no detrimental seismic effects on 7 Ratanui Street.
- 3.7 In November 2015 Unitec applied for a building consent (No ABA 2015-2202) for reinstatement and refurbishment work ("the reinstatement work") on the ground floor

<sup>5</sup> C-Grade is 67% to 33% NBS, and B-Grade is 80% to 67% NBS.

area, and to construct a link to the adjacent property on Level 2. The reinstatement work to the ground floor included removal of the pedestrian link to the adjacent property, the construction of a concrete block infill panel, and the reinstatement of a light well; and the removal of a full height glazed section and the construction of a concrete block infill panel to reinstate the eastern wall. The consent application was supported with a fire engineering gap analysis report dated 16 October 2015; the application did not involve a change of use to residential use.

- 3.8 In May 2016 the applicants applied for building consent (No ABA 2016-1205) for the building works associated with the conversion of the ground floor.
- 3.9 On 17 June 2016 the authority wrote to the applicants with a request for further information (“RFI”), noting that the authority must be satisfied that the building in its new use would comply as nearly as reasonably practicable with Clause B1. To that end the authority stated:

The issues involved and some of the possible actions you need to consider are given below.

- The engineer’s report ..., submitted with this consent was intended for an earlier building consent for an alteration of this building. It indicates the building has about 50% NBS.<sup>[6]</sup> The 50%NBS falls below the expected structural performance of a building when subjected to Change of Use. A new structural assessment report is required giving a more accurate %NBS. The report should also include critical structural weaknesses of the building, seismic gap issues, seating and movement of precast stairs, seating of precast floors, how to bring the building to the required level and any reason for not being able to bring the structural improvements necessary

...

- We are prepared to discuss structural strengthening constraints when the structural issues of the building are identified and reported.

- 3.10 The authority further clarified its request for information on 24 June 2016, noting that the first engineer’s report was scoped in relation to alterations proposed at that time and that it did not address ‘the structural performance requirements for a “Change of Use” situation’. The authority also stated:

...the change of use situation demand[s] structural assessment and the proof that the building has a structural performance closer to current level of the building standard.

- 3.11 The second engineers provided an updated IEP dated July 2016, which concluded that the building was not potentially earthquake prone but had a %NBS of less than 67%. (I note here that the updated IEP does not specifically refer to the subject building, but in the documents provided to this determination has been attached to the earlier report dated May 2012 – refer paragraph 3.4).
- 3.12 Further correspondence ensued between the parties, with the authority clarifying its stance regarding the requirement for further information relating to structural performance with regard to the change of use, noting that it ‘generally look[s] for 80%NBS’<sup>7</sup>. The authority also noted it considered the reinstatement works on the ground floor under building consent application No ABA 2015-2202 (refer paragraph 3.7) did not involve a change of use under the Regulations.

<sup>6</sup> % of New Building Standard using the Initial Evaluation Procedure (a nationally standardised engineering tool for carrying out an Initial Seismic Assessment)

<sup>7</sup> Email from an officer of the authority to the applicants, 4 July 2016

- 3.13 The applicants set out their views of the matter as follows (in summary):
- The building had undergone a change of use in 2001 when the offices were converted for use as an educational facility; as no structural upgrading was required at that time, the authority could not now require a DSA for the purpose of supporting the applicants' current building consent application. (I note here that when the offices were converted to educational facilities in 2001, consideration of compliance would have fallen under section 46(2) of the *Building Act 1991*.)
  - The current change of use proposal is for part of the ground floor only and is less than 13% of the total building and will cater for 12 people; it will reduce the load on the building.
  - There will no longer be a thoroughfare through the ground floor or public use of toilets.
  - The authority had considered the 50%NBS sufficient for the consent relating to the pedestrian bridge at Level 2 (No ABA 2015-2202) and at Level 3.
  - The fire engineering gap analysis report (dated 16 October 2015) supporting the consent application (No. ABA 2015-2022) for the removal of the ground floor pedestrian link and reinstatement works noted that a new ground floor tenant is yet to be appointed and it could not be confirmed that the occupants therein would be of the same "purpose group"<sup>8</sup>.
- 3.14 The applicants also questioned what the process would be if the applicants did not have the right to undertake building works that were outside their property, or if the cost of the required building work was 'prohibitive'. The applicants referred the authority to a previous determination<sup>9</sup> issued by the Ministry that considered the assessment required under section 115 when there is a change of use to only part of a building, particularly in respect of Building Code clause B1 Structure.
- 3.15 The applicants sought a fee proposal from a firm of structural engineers ("the third engineers") to carry out a Detailed Seismic Assessment ("DSA"), which resulted in an estimated cost of \$21,500 + GST.
- 3.16 A body corporate committee meeting was held on 26 July 2016 to discuss the requirement for a DSA to support the applicants' building consent application. The minutes note:
- numerous sources have established the cost of a DSA would be an estimated \$30,000 + GST
  - the other owners did not want to contribute to the cost of a DSA.
- 3.17 The dispute remained unresolved and the Ministry received an application for a determination on 15 August 2016.

---

<sup>8</sup> Prior to amendments to the compliance documents for Clause C, the use categories in Schedule 2 of the Regulations used to align with the "purpose groups" set out in the compliance documents; this is no longer the case.

<sup>9</sup> Refer *Determination 2015/070 Regarding the refusal to issue a building consent for the change of use from commercial to residential of one level in a multi-level building*, (6 November 2015) Ministry of Business, Innovation and Employment

## **4. The submissions**

### **4.1 The applicants**

4.1.1 With the application for determination, the applicants provided a detailed submission setting out the history and background to dispute. The applicants noted that:

- the conversion is for only part of one level of the building, i.e. <12% of the total area of the building
- the fee for a DSA is over \$25,000 and the body corporate has declined to contribute
- there is a favourable (i.e. lesser) loading when converting from the current educational facility to the proposed residential use
- the ground floor would no longer be a public thoroughfare through to the adjacent building
- on a number of previous occasions the authority has failed to request a DSA when structural work has been carried out, including when it was originally converted to an educational facility, when the links were constructed, and during internal fitouts on other levels
- there remains the question of what would happen should the DSA identify critical structural elements and strengthening was required that involves building work outside of the applicants control.

4.1.2 The applicants included copies of a number of documents relevant to the matter for determination (see Appendix B).

4.1.3 On 23 August 2016 I requested further information in relation to the ownership structure. The applicants provided this information on 24 August 2016.

4.1.4 On 16 September 2016 I requested clarification of the building reference numbers used in the first and second engineers' reports, with responses received the same day.

### **4.2 The authority**

4.2.1 On 17 August 2016 I sought input from the authority on the issues involved in the determination application. This was followed by a reminder on 5 September 2016 which further clarified that request and sought the authority's view on why a DSA was required for the whole of the building.

4.2.2 The authority's response was received on 14 September 2016. The authority provided a copy of "Appendix A" from a report by the first engineers and a brief submission setting out its views on the matter (in summary):

- In light of the IEP seismic capacity rating for the building as noted in the first engineer's report, the authority is of the view it does not have sufficient information to be satisfied the building in its proposed new use will comply to the extent required.
- More information is required regarding the seismic performance of the building, and probably the estimated costs of potential strengthening strategies and possibly the increase in value of the property in its new use.

### **4.3 The draft determination and submissions in response**

- 4.3.1 A draft of this determination was issued to the parties and persons with an interest for comment on 20 October 2016. The draft concluded that a DSA of the whole building was not required and in respect of the proposed alterations that it would not be reasonably practicable to structurally upgrade the building.
- 4.3.2 The applicants provided a response to the draft determination, accepting the decision and clarifying some details.
- 4.3.3 The authority responded on 4 November 2016; it did not accept the findings in the draft determination and submitted the following (in summary):
- Given the limitation of the first engineer's 2009 report and the assessed seismic capacity of 50% NBS, the applicant was requested to obtain a review.
  - The fact that the first engineer was not available to undertake the review is not a valid justification for dispensing with the requirement for information or for placing undue reliance on the second engineer's IEP report.
  - New assessment procedures have been developed since that time to address inconsistency in assessment of %NBS ratings.
  - It may reasonably be anticipated that the increased value of the part of the building being converted to apartments will be significant and may even be significantly greater than the cost of the currently contemplated building work and additional seismic strengthening work. The authority is of the view that depending on the circumstances this should be a consideration in making a decision under section 115(a).
  - The matter concerns the safety of the future occupants in an earthquake scenario, and the authority is concerned the determination places more weight on the profit position of the applicants than the safety of the occupants.
  - The authority is of the view that the process should be firstly the provision of a reliable seismic assessment for the building, identification of the spectrum of strengthening works technically feasible to bring the building 'up to code' or to reduce the deficit, and then a cost/benefit analysis that also factors in the increase in value of the building as a result of the change of use.
  - While the approach set out in the draft determination may well be reasonable, the authority is not in a position to exclude the requirement for additional work without first having a 'reliable seismic assessment' of the building.
- 4.3.4 No response was received from the other owners or Unitec.
- 4.3.5 After taking account of the submissions, I have amended the determination as I consider appropriate.

## 5. Discussion

### 5.1 Change of use

- 5.1.1 Section 5 of the Regulations defines the term “change the use” specifically for the purposes of sections 114 and 115 of the Act.
- 5.1.2 The applicant has referred to the existing use as an “educational facility”. I note here that for the purpose of establishing the use under the Regulations and any resulting change of use, it is the uses defined in Schedule 2 of the Regulations that should be referenced.
- 5.1.3 The use of Unit A as part of the educational facility falls under a use related to crowd activities, and the proposed apartments would fall under a use relating to sleeping activities (see Appendix A.1). The obligations under the Building Code relating to the new use would be more onerous; accordingly the conversion of some or all of Unit A to apartments constitutes a change of use under the Regulations.
- 5.1.4 Section 115 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<sup>10</sup>, will comply, as nearly as is reasonably practicable, with the building code in all respects;
- 5.1.5 The clause of the Building Code relevant to structural performance is Clause B1, in this case specifically Clause B1.3.3(f) and B1.3.4(a):
- B1.3.3 Account shall be taken of all physical conditions likely to affect the stability of *buildings, building elements* and *sitework*, including: (f) earthquake, ...
- B1.3.4 Due allowance shall be made for: (a) the consequences of failure, ...

### 5.2 The application of section 115

- 5.2.1 The dispute centres on whether the authority can require a DSA for the whole of the building when the building consent application is for the conversion of part of the ground floor only.
- 5.2.2 The authority’s approach in this case appears to be that under section 115 a change of use of part of the building requires an assessment of the whole of the building for compliance with the Building Code as nearly as reasonably practicable.
- 5.2.3 A similar issue was considered in Determination 2015/070 where an owner proposed to convert a unit on the top level of a multi-storey office building to a residential unit. In that determination I concluded that the levels of the building below the subject unit effectively acted as the foundation to that unit. The assessment under section 115 therefore had to take into account the entire existing building and whether the structural strength/serviceability of the levels below the subject unit would be sufficient to meet the performance requirements of Clause B1 as a foundation to the subject unit.
- 5.2.4 In this case the proposed change of use and the alterations is to the ground floor only, and it is this level and the foundations that support it, including the underlying basement level, that must be assessed for the purpose of 115(a).

<sup>10</sup> Determination 2015/070 discusses the term “the building, in its new use” in circumstances where the change of use is to part only of a building, and the assessment of the relevant performance requirements of the Building Code.



- 5.2.5 A structural evaluation is a key part of that assessment in regards to the supporting structure, with the IEP being one step in that process which may indicate whether or not further information is required.
- 5.2.6 The authority has raised the concern that the first engineer's report was undertaken for a different purpose (refer paragraph 3.10) and it would not be appropriate to rely on the findings for the purpose of the building consent for the change of use.
- 5.2.7 The engineers' reports, while commissioned for a different purpose, could provide sufficient information regarding the buildings attributes which determine the seismic performance of the building as a whole and those building elements, details or features that apply at the ground floor only. The two seismic assessments do not indicate any critical structural weaknesses; the only issue noted appears to be the lack of separation between seismic frames and block infill partitions. I note that without having, for example, preliminary calculations to address issues such as the short column effect arising from this feature, there is a risk that the %NBS derived through a DSA could be significantly less than the %NBS arrived at previously. The authority may require further information on this particular aspect.

### **5.3 Compliance as nearly as is reasonably practicable**

- 5.3.1 In correspondence with the applicants (refer paragraph 3.12) the authority has stated that it that generally requires the building achieve 80%NBS in situations where an office building is undergoing a change of use to residential.
- 5.3.2 The legislation does not set a particular level of seismic performance to which buildings undergoing a change of use are to be upgraded. The level of performance in this case is established by meeting the requirements of sections 115(a) and 112(1)(b); section 115(a) requires compliance 'as nearly as is reasonably practicable', and section 112(1)(b) requires that the building after the alterations will remain compliant to the extent it did prior to the alterations.
- 5.3.3 In the following paragraphs I consider the matter of whether it would be considered 'reasonably practicable' to upgrade the entire building to bring Unit A into compliance with Clause B1.3.3(f), and B1.3.4(a).
- 5.3.4 The reference to compliance "as nearly as is reasonably practicable" recognises that it may be both unreasonable and impracticable to require an existing building to be made to comply to the extent a new building would.
- 5.3.5 The application of the as nearly as is reasonably practicable test has been considered extensively in previous determinations. These determinations have established an approach for deciding if a building complies as nearly as is reasonably practicable with the Building Code that follows the approach taken by the High Court<sup>11</sup>. The approach involves weighing the benefits of requiring compliance (such as life safety<sup>12</sup>) against the sacrifice of doing so (such as disproportionate cost<sup>13</sup>).
- 5.3.6 The estimated total value of the proposed building work in this case, as noted in the building consent application, is \$475,000. The applicants have received an estimate for a DSA of the whole building to be \$21,500 + GST, representing approximately 5% of the estimated building work cost.

---

<sup>11</sup> *Auckland City Council v New Zealand Fire Service*, 19/1095, Gallen J, HC Wellington AP 336/93.

<sup>12</sup> See for example Determinations 2010/043, 2008/006 and 2006/078

<sup>13</sup> See for example Determinations 2010/028, 2009/027

- 5.3.7 The authority has submitted that the increase in value of the applicants' property after the conversion should also be taken into account in a cost/benefit analysis i.e. that the cost of upgrading the seismic performance of the building may not be disproportionate when taking into account the increase in value resulting from the conversion.
- 5.3.8 I accept that in some circumstances it would be appropriate to consider an increase in value of a building resulting from a change of use or alterations. For example: when an owner proposes alterations to establish units for the purpose of selling those units for a greater value there is an increase in the value that is directly relevant to the cost of the alterations. However taking the increased value into account will depend on having some reasonable evidence of what the increased value would be.
- 5.3.9 Clearly building work associated with structural upgrading of the building itself in this case would increase the cost over and above the cost of a DSA for the whole of the building. In my view, in addition to the costs for the evaluation, a structural upgrade of the whole of the building would be disproportionate to the cost of the proposed building work. I note also that there is the question of whether the applicants would have the legal right to carry out building work associated with the structural upgrading where that work extended to other areas of the building.
- 5.3.10 While I have come to the conclusion in this case that it would not be reasonably practicable to require upgrading of the entire building, I note that there are circumstances where I would have formed the opposite view. For example if:
- the IEP identified critical structural weaknesses that would have a severe effect on the structural performance of that part of the building containing the area affected by the change
  - the costs of upgrading (whether by a limited scope of upgrading required or for some other reason) were reasonable.
- 5.3.11 In regards to seismic upgrading, the two types of work contemplated in respect of the conversion of the ground floor would be the removal of critical structural weaknesses where these are located on the ground floor and the addition of strength and/or robustness where these can be incorporated at the ground floor. In addition, the requirements of section 112(1)(b) must also be met if any alterations are proposed (see paragraph 5.3.13).
- 5.3.12 I note that if the lack of separation between seismic frames and block infill partitions was attended to throughout the building, then along with any other improvements suggested following a structural assessment of the ground floor and basement level, this may improve the %NBS significantly. I consider that undertaking building work to address the lack of separation would fall within what can be considered reasonably practicable in the circumstances.
- 5.3.13 However, the requirements of section 112(1)(b) must also be met if any alterations are proposed – meaning that any building work carried out must not reduce the level of compliance of the other parts of the building, either directly or indirectly. Accordingly any alterations proposed at ground floor to address upgrading of the building's structural performance must be considered in light of the building as a whole.

5.3.14 I note that in this case, if the infill blockwork around the building was to have seismic separation introduced at ground floor level but not at higher levels, this would:

- introduce a non-uniformity of stiffness at ground floor which would have the effect of concentrating earthquake deformation at that level and at the expense of other levels; and
- likely reduce the earthquake resistance of the building as a whole as compared with what benefits might accrue if the seismic separation was introduced at all levels throughout the building.

## 5.4 Conclusion

5.4.1 Taking into account the discussion above, I conclude that:

- the conversion of some or all of Unit A to apartments constitutes a change of use under the Regulations
- it is the ground floor of the building and the foundations that support it, including the basement level, that must be assessed for compliance to the extent required by section 115(a)
- proposed alterations to Unit A, including any strengthening work required therein, must meet the requirement of section 112(1)(b) in that the alterations cannot reduce the level of compliance of other parts of the building
- it is for the applicants to provide sufficient information to inform the authority's assessments under section 115(a) and 112(1)(b), by way of an assessment of the structural performance of the ground floor and foundations (including the basement level) and an opinion from a suitably qualified engineer in respect of the effect of any proposed alterations on the seismic performance of the building as a whole.

## 6. The decision

6.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the authority incorrectly exercised its powers of decision in refusing to grant building consent on the grounds that a DSA was required for the whole building; accordingly I reverse the authority's decision, thus requiring the authority make a new decision taking into account the discussion in this determination.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 3 February 2017.

John Gardiner  
**Manager Determinations and Assurance**

## Appendix A: The legislation

### A.1 Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005

#### 5 Change the use: what it means

For the purposes of sections 114 and 115 of the Act, change the use, in relation to a building, means to change the use (determined in accordance with regulation 6) of all or a part of the building from one use (the old use) to another (the new use) and with the result that the requirements for compliance with the building code in relation to the new use are additional to, or more onerous than, the requirements for compliance with the building code in relation to the old use.

#### 6 Uses of buildings for purposes of regulation 5

(1) For the purposes of regulation 5, every building or part of a building has a use specified in the table in Schedule 2.

(2) A building or part of a building has a use in column 1 of the table if (taking into account the primary group for whom it was constructed, and no other users of the building or part) the building or part is only or mainly a space, or it is a dwelling, of the kind described opposite that use in column 2 of the table.

#### Schedule 2 Uses of all or parts of buildings

Uses related to crowd activities		
Use	Spaces or dwellings	Examples
CS (Crowd small)	Enclosed spaces (without kitchens or cooking facilities) where 100 or fewer people gather for participating in activities	cinemas (with qualifying spaces), art galleries, auditoria, bowling alleys, churches, clubs (non-residential), community halls, court rooms, dance halls, day-care centres, gymnasia, lecture halls, museums, eating places (excluding kitchens), taverns, enclosed grandstands, indoor swimming pools
CL (Crowd large)	enclosed spaces (with or without kitchens or cooking facilities) where more than 100 people gather for participating in activities, but also enclosed spaces with kitchens or cooking facilities and where 100 or fewer people gather for participating in activities	cinemas (with qualifying spaces), schools, colleges, and tertiary institutions, libraries, night-clubs, restaurants and eating places with cooking facilities, theatre stages, opera houses, television studios (with audience)
Uses related to sleeping activities		
Use	Spaces or dwellings	Examples
SA (Sleeping accommodation)	spaces providing transient accommodation, or where limited assistance or care is provided for people	motels, hotels, hostels, boarding houses, clubs (residential), boarding schools, dormitories, halls, wharehousi
SR (Sleeping Residential)	attached and multi-unit residential dwellings, including household units attached to spaces or dwellings with the same or other uses, such as caretakers' flats, and residential accommodation above a shop	multi-unit dwellings, flats, or apartments

A.2 The relevant sections of the Building Act 2004 discussed in this determination:

**114 Owner must give notice of change of use, extension of life, or subdivision of buildings**

(1) In this section and section 115, change the use, in relation to a building, means to change the use of the building in a manner described in the regulations.

(2) An owner of a building must give written notice to the territorial authority if the owner proposes—

(a) to change the use of a building; ...

**115 Code compliance requirements: change of use**

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;...

A.3 The relevant clauses of the Building Code discussed in this determination:

**B1.3.3** Account shall be taken of all physical conditions likely to affect the stability of buildings, building elements and sitework, including:

...

(f) earthquake,

...

**B1.3.4** Due allowance shall be made for:

(a) the consequences of failure,

...

## Appendix B: Documents provided in submissions

- B.1 The applicants provided copies of the following documents in support of the determination application:
- correspondence between the applicants and the authority (including the authority's requests for information)
  - the certificate of title
  - an aerial photograph
  - a Producer Statement PS2 Design, dated 16 December 2008, for the construction of a pedestrian link
  - the structural review from the first engineers, dated 30 October 2009
  - the earthquake prone evaluation from the second engineers, dated May 2012 with an attached IEP dated July 2016
  - minutes of the informal body corporate meeting 20 August 2015
  - the fire engineering gap analysis report, dated 16 October 2015
  - correspondence from the Body Corporate to all owners, regarding those elements of the ground floor reinstatement works that extended into common property
  - documents relating to the applicants' resource consent application (LUC 2015-1951)
  - the building consent application for the conversion of the ground floor offices to six residential apartments
  - compliance schedule for the specified systems
  - drawings showing the layout of the proposed apartments
  - correspondence between the applicants and Unitec
  - minutes of the 26 July 2016 committee meeting
  - various RFIs relating to Unitec's building consent application for reinstatement works (refer paragraph 3.7)