
From: Davis, Simon
Sent: Monday, 1 May 2017 10:03 AM
To: Cornor, Ashley
Cc: Hermouet, Etienne; Richards, Paul; Pauga, Esitone
Subject: FW: Application for determination - 'Customs Residential' 71 to 77 and 87 Customs Street East, Auckland 1010
Attachments: EC-1502-DET-01 - Application for determination.pdf; EC-1502-DET-01.06 - Supporting document 6 - Q&A-(7).xlsx; EC-1502-DET-01.07 - Supporting document 7 - Matrix-(1).xlsx; EC-1502-DET-01.14 - Supporting document 14 - Q&A-(8).xlsx; EC-1502-DET-01.00 - Application for determination - Covering Letter.pdf
Importance: High

FYI

From: Tony Enright [mailto:tony@enrightconsulting.com]
Sent: Sunday, 30 April 2017 8:46 p.m.
To: determinations@mbie.govt.nz
Cc: 'John Gardiner' <John.Gardiner@mbie.govt.nz>; simon.ma@shundi.co.nz; ian.mccormick@aucklandcouncil.govt.nz; Davis, Simon <Simon.Davis@fire.org.nz>
Subject: Application for determination - 'Customs Residential' 71 to 77 and 87 Customs Street East, Auckland 1010
Importance: High

To the Determinations Manager,

Please find enclosed my application for a determination, including a covering letter and supporting documents.

One file is too large to send by email. You can download this file "EC-1502-DET-01.01 - Supporting documents.pdf" at: <https://files.acrobat.com/a/preview/65ca669c-a69b-4064-823a-041ebdd4feca>

Please do not hesitate to call or email with any questions or if further information is necessary.

Regards,

Tony Enright, PhD
Chartered Professional Engineer
Fellow, Engineers Australia



PO Box 84
Black Rock, VIC 3193
AUSTRALIA

Phone: +61 (0)458 111 022
www.enrightconsulting.com

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From: Cornor, Ashley
Sent: Monday, 1 May 2017 10:15 AM
To: Davis, Simon
Subject: RE: Application for determination - 'Customs Residential' 71 to 77 and 87 Customs Street East, Auckland 1010

Thanks Simon.

I sense from the covering letter that there is a backstory to this – perhaps we should arrange a VC to discuss? How are you placed this week?

Cheers,

Ashley

From: Davis, Simon
Sent: Monday, 1 May 2017 10:03 AM
To: Cornor, Ashley <Ashley.Cornor@fire.org.nz>
Cc: Hermouet, Etienne <Etienne.Hermouet@fire.org.nz>; Richards, Paul <Paul.Richards@fire.org.nz>; Pauga, Esitone <Esitone.Pauga@fire.org.nz>
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From: Davis, Simon
Sent: Monday, 1 May 2017 10:18 AM
To: Cornor, Ashley
Subject: RE: Application for determination - 'Customs Residential' 71 to 77 and 87 Customs Street East, Auckland 1010

Yes we've also been issued an OIA on this as well, How are you placed for Tomorrow afternoon?

From: Cornor, Ashley
Sent: Monday, 1 May 2017 10:15 a.m.
To: Davis, Simon <Simon.Davis@fire.org.nz>
Subject: RE: Application for determination - 'Customs Residential' 71 to 77 and 87 Customs Street East, Auckland 1010

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From: Cornor, Ashley
Sent: Monday, 1 May 2017 10:23 AM
To: Davis, Simon
Subject: RE: Application for determination - 'Customs Residential' 71 to 77 and 87 Customs Street East, Auckland 1010

I'm free anytime from 2.30 onwards.

From: Davis, Simon
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To: Cornor, Ashley <Ashley.Cornor@fire.org.nz>
Subject: RE: Application for determination - 'Customs Residential' 71 to 77 and 87 Customs Street East, Auckland 1010

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Subject: RE: Application for determination - 'Customs Residential' 71 to 77 and 87 Customs Street East, Auckland 1010

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From: Davis, Simon
Sent: Tuesday, 27 June 2017 4:28 PM
To: Cornor, Ashley
Subject: FW: Application for determination - 'Customs Residential' 71 to 77 and 87 Customs Street East, Auckland 1010

Importance: High

Hi Ashley

How are you going with preparing a submission to this determination. Have you heard anything further from the Ministry?

Regards

Simon Davis

From: Tony Enright [mailto:tony@enrightconsulting.com]
Sent: Sunday, 30 April 2017 8:46 PM
To: determinations@mbie.govt.nz
Cc: 'John Gardiner' <John.Gardiner@mbie.govt.nz>; simon.ma@shundi.co.nz;
ian.mccormick@aucklandcouncil.govt.nz; Davis, Simon <Simon.Davis@fire.org.nz>
Subject: Application for determination - 'Customs Residential' 71 to 77 and 87 Customs Street East, Auckland 1010
Importance: High

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Fellow, Engineers Australia



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AUSTRALIA

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From: Cornor, Ashley
Sent: Wednesday, 28 June 2017 2:57 PM
To: Davis, Simon
Subject: RE: Customs Street East determination

I have to deliver a presentation at 2.00pm on Friday, so a 1.00pm start would be better for me if it fits in with others.

From: Davis, Simon
Sent: Wednesday, 28 June 2017 2:47 PM
To: Cornor, Ashley <Ashley.Cornor@fire.org.nz>
Subject: RE: Customs Street East determination

Hi

I know your very busy so I'll arrange [redacted].
Are you ok for a 1.30 pm meeting on Friday?

Regards

simon

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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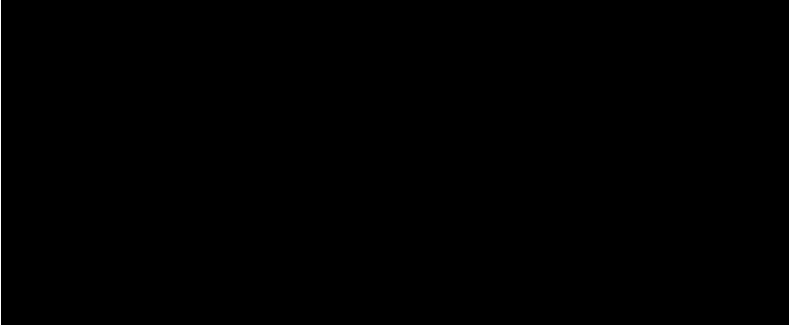
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



Released under the Official Information Act

From: Davis, Simon
Sent: Wednesday, 28 June 2017 3:03 PM
To: Cornor, Ashley
Subject: RE: Customs Street East determination

Ok will send invite once arranged others

From: Cornor, Ashley
Sent: Wednesday, 28 June 2017 2:57 PM
To: Davis, Simon <Simon.Davis@fire.org.nz>
Subject: RE: Customs Street East determination

I have to deliver a presentation at 2.00pm on Friday, so a 1.00pm start would be better for me if it fits in with others.

From: Davis, Simon
Sent: Wednesday, 28 June 2017 2:47 PM
To: Cornor, Ashley <Ashley.Cornor@fire.org.nz>
Subject: RE: Customs Street East determination

Hi

I know your very busy so I'll arrange [REDACTED].
Are you ok for a 1.30 pm meeting on Friday?

Regards

simon

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

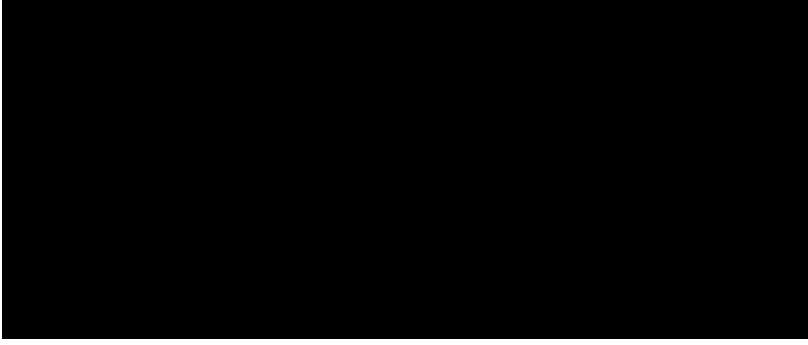
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Released under the Official Information Act

From: Hermouet, Etienne
Sent: Tuesday, 11 July 2017 9:21 AM
To: Menzies, Glenn
Subject: FW: Copy of Customs Residential - Determination 2943 - FENZ Responses - Ops.xlsx
Attachments: 2017-07-12 Initial submission in response to determination application -....docx

Glenn,

FYI. I got back to Ashley suggesting the VC for this afternoon (I'm in Rotorua tomorrow), will keep you posted on time. Geoff says he should be able to make it.

Etienne

Etienne Hermouet
Engineering Team Leader – Auckland
Fire Engineering Unit
2 Poynton Terrace – Auckland
PO Box 68444 – Newton 1145



M: 027 563 0611
P: 09 354 5106
etienne.hermouet@fireandemergency.nz
www.fireandemergency.nz

[Redacted content]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Released under the Original Information Act

From: Davis, Simon
Sent: Wednesday, 5 July 2017 9:38 AM
To: Christine Duncan <Christine.Duncan@mbie.govt.nz>
Subject: Building Design

Hi Christine

Late last week we received a letter from John Gardiner re the Customs Street West determination requesting a submission from us by the 12th July.
The content of the letter seems to indicate that John considers that Dr Enright is correct and that the building design does comply.
Needless to say an outcome of this nature would likely mean seeking legal remedies and even more media attention.

We have our regular catch up next week but I am in Melbourne discussing the same issues with our Australian colleagues.

Is it possible to either reschedule for Friday this week (7th) or less desirable, the week after next (17th onwards)?

I am sure your aware of the media interest (some links below), Fire and Emergency are currently keeping a very low profile at present but the pressure is building.
Some very influential people are weighing in and Alan Moule has been vocal in pushing the Bankside determination as an example of legislative failure (2005/109)

<http://www.radionz.co.nz/news/national/334398/expert-warns-of-nz-s-wild-west-fire-design>

<http://www.radionz.co.nz/news/national/333987/concerns-raised-over-nz-fire-regulations>

As a footnote you may know we have now moved into the new FENZ organisation.

Regards

Simon Davis

B.E.(mech), M.Bld.Sc(dist), M.E. (fire engineering)
Fire Engineering Manager



DDI: (09) 354 5104
Fax: (09) 309 0483
Mobile: 0274 712 075
Email: simon.davis@fireandemergency.nz
National Headquarters, 2 Poynton Terrace, Newton, Auckland
PO Box 68 444, Auckland 1145

From: Cornor, Ashley
Sent: Tuesday, 11 July 2017 11:53 AM
To: Hermouet, Etienne; Pauga, Esitone
Cc: Hou, Jessie; Davis, Simon
Subject: FW: Application for determination at 71 - 77 and 87 Customs Street East, Auckland (Ref 2943) [UNCLASSIFIED]

Hi all,

Here's Auckland Council's response/submission. It is much more focussed on the process than the substance of the issues arising. Some material to discuss at this afternoon's VC.

Kind regards,

Ashley

Ashley Cornor
Lawyer



M: 027 228 1342
P: 04 463 4947

www.fireandemergency.nz

From: Malcolm McCluskey [mailto:Malcolm.McCluskey@aucklandcouncil.govt.nz]
Sent: Tuesday, 11 July 2017 10:51 AM
To: Sue.Brown@mbie.govt.nz
Cc: Cornor, Ashley <Ashley.Cornor@fireandemergency.nz>; Ravaji, Nick <Nick.Ravaji@fireandemergency.nz>; simon.ma@shundi.co.nz; tony@enrightconsulting.com
Subject: Application for determination at 71 -77 and 87 Customs Street East, Auckland (Ref 2943) [UNCLASSIFIED]

Dear Ms Brown

My Instructing Officer further comments on the application/process are set out below:

Auckland Council does not accept the proposed framework for dealing with this determination. This view is based on the following:

- MBIE have previously advised that they would engage an external independent party to advise on this matter, Council supports this approach as per Section 187 of the Act.
- In accordance with Section 188 of the Act, the chief executive must confirm, reverse, or modify the decision or exercise of a power to which it relates; or determine the matter to which it relates. Auckland Council consider that the requirements of the Act need to be followed.
- In the email of Tuesday, 20 June 2017 4:46 p.m. MBIE acknowledged the "...potential for a perceived conflict of interest that may arise from..." the relationship between John Gardiner and the applicant (designer). It

was for that reason that MBIE stated “...that the determination will be reviewed by an independent referee before being finalised”. This is the only approach that will be accepted by the Auckland Council.

- Auckland Council has not yet been able to determine compliance with C/VM2. The applicant continues to refuse to provide answers to the questions raised by the Auckland Council and NZFS/FENZ as part of the consenting process. Many of these questions and outstanding issues have been raised during the FEB process which the applicant abandoned given that they would not answer the questions or provide sufficient details of the proposed design during that process. MBIE were involved with the FEB process because of concerns raised by the Council during that time regarding the applicability and potential for a C/VM2 fire design to provide an unacceptable outcome for a tall building design such as this. Council note that the designer has confirmed in writing that the design was completed in December 2015 and has not been prepared to engage in any dialogue that could have resulted in design changes post that date. It is apparent that the design was a *fait accompli* since that time.
- MBIE do not appear to be referencing Council’s request for further information with regards to the proposed framework. Until responses are received Council will not be able to complete its technical review and do not accept that the design has been shown to comply with the minimum requirements of C/VM2 let alone meet the necessary requirements of internationally recognised guidance, including design and stakeholder consultation practices for such buildings.
- Council has made its position clear with regards to the peer review process on this particular project, concerns with the reviewer chosen, their impartiality, failure to follow appropriate process, failure to follow Councils PS2 policy requirements and expectations. Council do not accept that what has been provided so far constitutes a ‘regulatory review’. It is also worth noting that MBIE also recognised issues with regards to the extent of Peer reviewer involvement during the FEB meeting held and their lack of involvement and contribution to that process. The coordination issues raised during the limited reviews undertaken to date have further raised questions about the peer review process, what the extent of that review is and ability to accept it given Councils concerns regarding process and continued refusal to answer questions of the design. If nothing else the submitted design documents are inconsistent and are not complete. Council welcome MBIE’s considered review on this matter.

Auckland Council has been in discussions with MBIE for some time regarding known concerns with the application of C/VM2 for tall buildings. MBIE has regularly acknowledged these concerns, including publically, and also specifically identified to the Council and Fire Service that C/VM2 would not be withdrawn or limited on the grounds that specific guidance was to be provided to the designers of the tall buildings that had been identified that time. MBIE has acknowledged that this included the applicant (designer). It is apparent that this advice is not being adhered to, is being challenged and that stakeholders views are not being adequately considered.

The concerns relating to firefighting operations at height, internal to tall buildings and inadequacy of the compliance documents to address firefighting needs is of particular concern to the Council. This design presents obvious challenges with regards to the single stair, its lift, lobby and stair configuration as well as supporting specifications for those services. The Auckland Council is currently in the process and has consented a number of buildings of similar height to that in question. Whilst the many other tall buildings currently being considered, including the others that exceed 50 stories in height present specific challenges, none of those have been undertaken in such a manner as this design. Claims of Acrophobia and not engaging with the FEB process are incorrect and not true.

It is the view of the Auckland Council that MBIE continue with their engagement of a suitability qualified and experienced person to undertake a complete and impartial review of the proposed design with regards to compliance with the requirements of the NZ Building Code. Council also urges that such a review and person provide specific comments with regards to whether the proposed building, taking into account its proposed design and supporting fire design features, as currently submitted for building consent, can be considered to provide an appropriately safe outcome for a building of this height.

Malcolm McCluskey | Senior Solicitor
Civil Litigation, Legal Services

DDI 09 890 2967 | EXT (46) 2967 | Mob 021 246 9861
Auckland Council, Level 11, 135 Albert Street, Auckland
Private Bag 92300, Victoria St West, Auckland
Visit our website: www.aucklandcouncil.govt.nz



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