



Determination 2018/058

Regarding the refusal to issue a building consent for a modular house and the use of modules designed locally but prefabricated offshore at 1380A Hibiscus Coast Highway, Puhoi

Summary

This determination considers the authority's refusal to grant building consent for a house designed with modular units that are manufactured off-shore. The design of the modular units was not supported by a MultiProof certificate at the time the application for building consent was made, but the authority maintained its refusal after a MultiProof certificate was issued. The determination discusses the range of information available on which the authority could rely in making its decision.

1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ ("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 this determination are:
 - T Brackebush for KMFMS Trustee Ltd, which owns the property ("the applicant")
 - Auckland City Council, carrying out its duties as a territorial authority or building consent authority ("the authority").
- 1.3 The determination arises from the authority's refusal to grant a building consent so the applicant could erect a modular house on the property. The prefabricated building modules for this house were designed in New Zealand and manufactured offshore. The supplier of these modules currently has national multiple-use approval (otherwise known as MultiProof certificates) for 12 modular house designs, and the applicant is the sales manager for the regional distributor of the modules.
- 1.4 Having a MultiProof certificate means a building consent authority must accept the plans and specifications for each of these designs as showing that, if the building work is carried out and the components are assembled, installed or incorporated in accordance with the plans and specifications matching the MultiProof certificates, the building work is deemed to comply with the Building Code².

¹ The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.building.govt.nz or by contacting the Ministry on 0800 242 243. Note that references to sections in this determination are to sections of the Building Act and to clauses are to clauses of the Building Code unless otherwise specified.

² Under section 30A of the Act

- 1.5 The plans and specifications for the modules in the applicant's proposed house are currently covered by a MultiProof certificate. However, they were outside the scope of the MultiProof in March 2016, when the applicant was first refused building consent.
- 1.6 In August 2016 Determinations 2016/039 and 2016/040³ found that the authority correctly granted building consents for two other houses incorporating prefabricated modules from the same supplier. These decisions were confirmed on appeal at the District Court⁴, which also noted (at paragraph 46 of that judgement) that the authority had undertaken a full compliance inspection and issued code compliance certificates in respect of the buildings on both properties.
- 1.7 In the applicant's view this established case law for the use of the prefabricated modules, and the applicant expected the authority to reconsider its previous decision to refuse to grant building consent for the applicant's house. However, the authority stands by its earlier refusal (refer paragraph 3.2).
- 1.8 Accordingly, the matter to be determined⁵ is the authority's exercise of its power of decision in refusing to grant the building consent, as confirmed in correspondence on 21 September 2018 (refer paragraph 0).
- 1.9 In making my decision I have considered the parties' submissions, the information available to the authority in making its decision and the other evidence in this matter.

2. Building work and background

- 2.1 The applicant's property is located at 1380a Hibiscus Coast Highway, in a rural area near the Puhoi River.
- 2.2 The proposed modular house is on a sloping part of the property and facing northwest. It is surrounded by 120m² of raised timber decking and an adjacent swimming pool.
- 2.3 The house has a floor area of 64m² and contains two bedrooms, a bathroom, and open plan kitchen/living/dining. It incorporates two prefabricated building modules that were manufactured overseas and which have been and delivered to the building site.
- 2.4 These modules are constructed from a heavy steel alloy. The roofs are flat with channels for water flow, while the external walls have a profile similar to weatherboards. Temporary bracing and protective coverings are provided to large openings until the modules can be bolted together onsite.
- 2.5 The proposed building work onsite includes the erection of the house, including insulating the joints and bolting together the two modules which make up the final structure (at the roofline and base of the walls). The joints are covered by steel plates, floor joins are covered, and eaves are bolted on.

³ Determination 2016/039: Regarding the grant of a building consent for a modular house, and the use of modules designed locally but prefabricated offshore (25 August 2016), and Determination 2016/040: Regarding the grant of a building consent for a modular house, and the use of modules designed locally but prefabricated offshore (26 August 2016)

⁴ *Auckland Council v S Liaw [2017] NZDC 13532, 30 June 2017*

⁵ Under sections 177(1)(b) and 177(2)(a) of the Act

2.6 According to the supplier’s “Statement of conformity” dated 4 March 2016 and submitted as part of the building consent application made on that date, the plans and specifications for the applicant’s modular house conformed with the requirements of the relevant MultiProof certificate⁶ at that time – apart from the following:

- the balcony was removed to enlarge the living space
- the window in the balcony area was now floor to ceiling
- the dining room window was now a swing door
- a services duct was replaced with laundry facilities, and
- there was an extra kitchen cupboard.

2.7 Figure 1 shows the proposed layout based on the plans submitted with the building consent application.

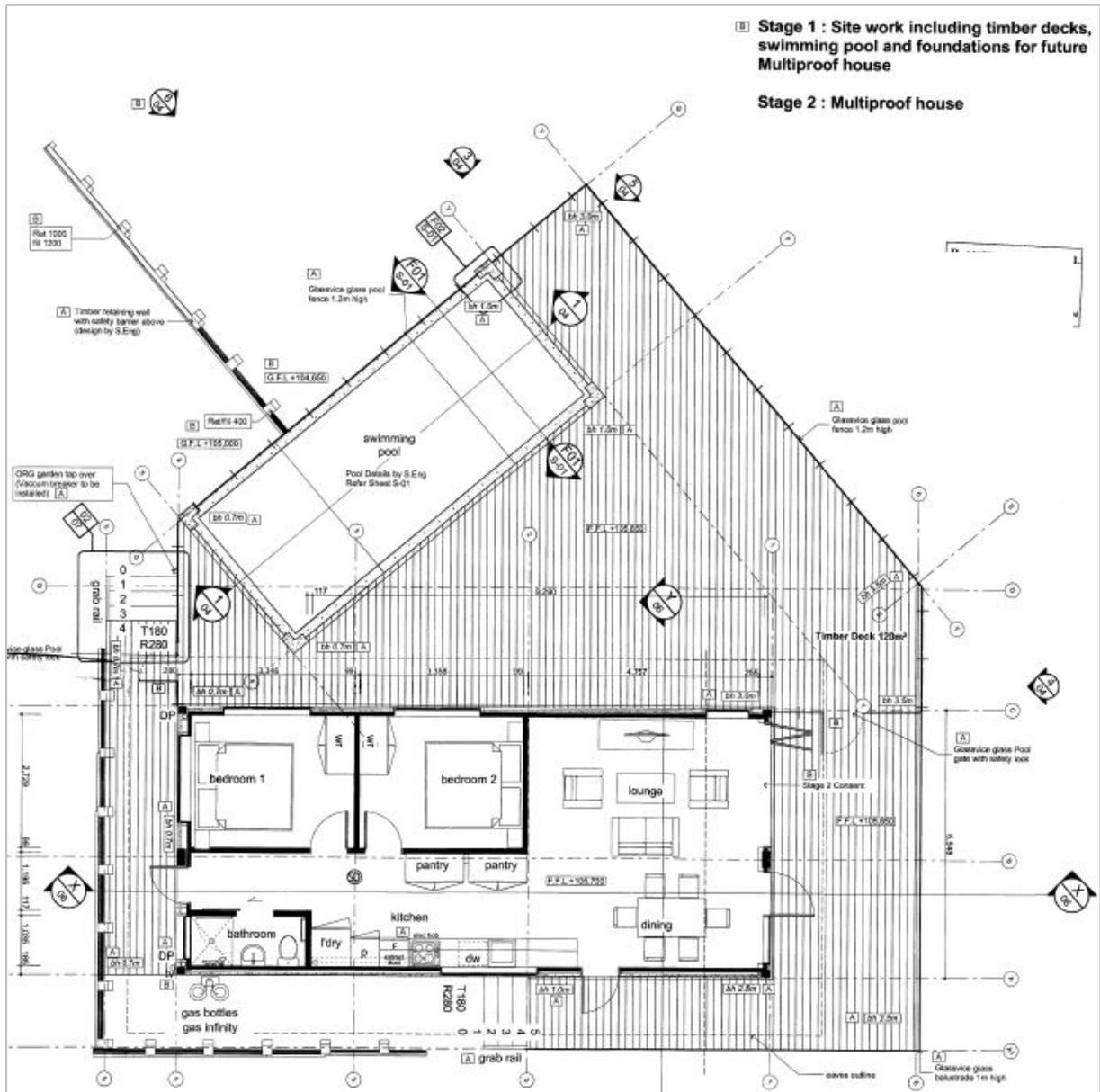


Figure 1: Detail of proposed dwelling layout submitted for stage 2 building consent (not to scale)

⁶ MultiProof certificate A10067 issued 6 August 2013 for “Apartment – single level prefabricated building”

- 2.8 On 1 July 2015 the applicant attended a building consent pre-application meeting with the authority. The applicant explained that the modular house had some variations from MultiProof A10067 and that the supplier was in the process of applying for a revised MultiProof certificate to cover these variations.
- 2.9 The authority recommended applying for building consent in two stages:
- Stage 1 – site work including the decking, swimming pool and foundations for the proposed house
 - Stage 2 – installation of the modular house, including connections to foundations and services.
- 2.10 On 8 July 2015 the applicant emailed the authority with information about the supplier’s quality assurance system, saying: “these forms get filled out for every house that is constructed in the factory”. I have not seen the attachment to this email.
- 2.11 On 21 July 2015 the applicant contacted the authority again to ask what more was required. The authority replied the same day, referred to the pre-application meeting on 1 July, and said it had expressed concerns about the proposed quality control system and its ability to carry out inspections given the modules were manufactured offshore. The authority said the supplier would need to provide a quality assurance plan with the building consent application, which the authority said was necessary to validate the compliance of the finished building with the MultiProof approved plans and specifications.
- 2.12 The authority also said it would need to approve and agree the quality assurance plan in order to rely on this as a substitute for the normal inspections that would be carried out or producer statements provided for buildings constructed in New Zealand.
- 2.13 The authority gave details of what it considered the quality assurance plan should address and contain. It said factory inspections alone were insufficient to verify compliance and that an authority-approved third party inspection would always be required.
- Also note that the [authority] will not issue building consent for foundation and site works until satisfied on reasonable grounds that the superstructure constructed overseas under [the national multiple-use approval] has been constructed to meet New Zealand Building Code compliance.
- 2.14 The applicant then applied for building consent for stage 1 of the project, which the authority granted on 25 February 2016. This building consent, BCO20442890, describes the approved building work as “[Restricted building work] – Stage 1: Site work including timber decks, swimming pool and foundations for future [house using MultiProof certified modules]”.
- 2.15 On 4 March 2016 the applicant applied for building consent for stage 2, describing the proposed building work as “Prefabricated building to be located on site”. This was to cover the installation of the modular house as described in paragraph 2.5 (including insulating the joints, bolting together the modules, adding eaves etc) and connections to foundations and services.
- 2.16 Information supplied with the consent application included the statement of conformity with MultiProof A10067 aside from the listed exclusions, as described in paragraph 0. The authority noted that this MultiProof certificate had not been included with the stage 2 application but was provided for stage 1. I note here that

MultiProof certificates can be viewed on the Ministry's website⁷ and that the approved documents associated with this particular MultiProof certificate were available to the authority via secure log-in to the Ministry's website with the intention they are used when checking for conformity.

- 2.17 On 29 March 2016 the authority emailed to say it had decided to refuse the building consent application (number ABA 1023413) "based on the fact the building is manufactured overseas hence a product rather than a building". It also said that because the building was manufactured offshore the authority was unable to carry out inspections as required by section 90 of the Act.
- 2.18 On 30 March 2016 the authority wrote to the applicant and gave further reasons for this refusal. It said:
- MultiProof A10067 required the applicant to provide a number of items that were missing from the application. These included plans and specifications for the proposed building so the authority could compare these with the MultiProof approved documents; identification of any permitted alternatives that had been chosen; and a statement confirming that the design complied with the MultiProof, with no changes having been made aside from those permitted in the approved design, and that the consent application met all the conditions of the MultiProof for the proposed site.
 - The proposed floor layout and size did not match that in the approved MultiProof documents and the authority did not consider this change to fall within the scope of permitted variations.
 - The authority had raised concerns at the pre-application meeting regarding quality control and its inability to carry out inspections at the offshore manufacturing site, and the applicant had not provided the information requested. In the absence of a quality assurance plan and given the inability to inspect during construction, it could not be established that compliance with the requirements of the MultiProof had been met.
- 2.19 On 31 March 2016 the applicant replied, disputing the authority's reasons for refusing the consent and saying:
- The modules were shipped to New Zealand in container-sized portions and trucked to site, where they were put together to form "a completed MultiProof consented house". This was not a product as they were modules that formed a completed house once they were installed. The supplier had gone through a lot of effort and expense to obtain MultiProof certificates and this had been the best way forward at the time.
 - The applicant had explained at the pre-application meeting exactly what variations the house would have from the national multiple-use approval that was current at that time. The authority had advised the consent could be staged so the ground works could proceed and to apply for stage 2 consent as soon as possible so the issues could be sorted out.
 - The applicant disputed the various items the authority said were missing from the building consent application including site-specific plans and specifications, which the applicant said had been provided along with a letter from the supplier identifying and noting the alternatives.

⁷ See <https://www.building.govt.nz/building-code-compliance/product-assurance-and-multiproof/multiproof/multiproof-register/>

- Regarding the authority’s comment that the proposed building’s size and layout did not match the MultiProof approved plans, the applicant said: “this was explained to [the authority] at our pre-construction meeting graphically and again we were advised to submit”.
 - Regarding the quality assurance plan, the applicant had supplied a small part of this to the authority on 7 July 2015 “with the explanation that we were not prepared to hand over our full QA plan as it contains a lot of IP and we are having issues with [the authority’s] confidentiality or lack of it”.
- 2.20 On 11 April 2016 the supplier emailed the authority with copies of the company’s “Inspection and Test Plan” used at the factory which manufactured the building modules. The supplier advised that this document was followed for all the company’s buildings and that copies are made available on completion.
- 2.21 This Inspection and Test Plan was a detailed inspection spreadsheet designed to check the modules were manufactured in accordance with the relevant plans and specifications. It included a review of relevant Building Code clauses and Standards, checks required for documentation review, material verification and module manufacture (including visual inspections and measurement checks). It also gave relevant acceptance criteria; and provided separate requirements for checking the modules’ steel structure, hydraulics (hot/cold and drainage), fire services (sprinklers), electrical, mechanical/ventilation, service rise, and interior fit out.
- 2.22 By email, the supplier said it had been some time since the company had had any feedback from the authority on the level of third party inspections and/or processes it required. The supplier asked for the authority’s comments on the Inspection and Test Plan and for its confirmation that the third party inspections company identified by the supplier would be acceptable to the authority.
- 2.23 On 25 August 2016 the Ministry sent the supplier the amended and reissued MultiProof A10067 (certificate A10067 Rev 1 dated 19 July 2016)⁸. The amended MultiProof now covered two floor plans: the original floor plan and an alternative to this (as a permitted variation)⁹.
- 2.24 On 8 August 2018 the authority issued a code compliance certificate for the applicant’s stage 1 building consent BCO20442890; i.e. for site work including decks, pool and foundations.
- 2.25 The applicant applied for a determination on 21 August 2018.

3. The submissions and draft determination

3.1 The applicant

- 3.1.1 The applicant provided the following information with the application for determination and following my later request for more details of the stage 2 building consent application:
- a submission and summary of events
 - the stage 2 building consent application form dated 4 March 2016 (ABA 1023413); and supporting documents stamped “refused” by the authority, including four pages of house and site plans, and a statement of conformity

⁸ MultiProof certificate A10067 Rev 1 dated 19 July 2016

⁹ MultiProof certificate A10067 Rev 1 lists permitted variations to the floor plan as: “Basic floor plan (A101) can be replaced with Type B Variation (A101b), either floor plan as 2 bedroom or 1 bedroom & office”

from the supplier dated 4 March 2016 that the modular building conformed with MultiProof A10067 and/or documentation included in the consent application subject to the listed exclusions (refer paragraph 0)

- MultiProof certificate A10067 issued 6 August 2013 plus the associated plans and specifications
- MultiProof certificate A10067 Rev 1 issued 19 July 2016 and the Ministry's letter of 25 August 2016 regarding this approval
- the supplier's "Inspection and Test Plan" spreadsheet for the building modules' offshore manufacture
- correspondence with the authority 8-21 July 2015 and 29 March-11 April 2016.

3.1.2 The applicant said the supplier had applied to the Ministry to amend its MultiProof certificate A10067 to include a new floor layout, but because this amendment had not been approved when the applicant approached the authority regarding building consent for the house, the authority advised the applicant to stage the application. However, the authority had then refused the consent saying the modules were a product¹⁰.

3.1.3 The applicant said the authority had issued building consents and code compliance certificates for similar houses using the same supplier's prefabricated building modules on Waiheke Island and West Harbour¹¹.

The above houses were manufactured in the same factory and using the approved Quality Assurance Plan that has been passed by [the Ministry]: we believe this now shows case law.

...

In conclusion we have received successful code of compliance on the above two properties and we thought this would have set the case moving forward for the balance of our buildings to receive [consents and code compliance certificates].

(See discussion at paragraph 4.3.11 regarding the Quality Assurance Plan.)

3.2 The authority

3.2.1 On 29 August 2018 I asked the authority if it had revisited its decision to refuse to grant the applicant's building consent in light of the June 2017 District Court judgement regarding two similar modular houses (refer paragraph 1.6).

3.2.2 As I understood it, the applicant had staged the building consent application in order to obtain a MultiProof to support the consent application. As this MultiProof had been issued in July 2016¹², I also asked the authority if it stood by its refusal of the stage 2 consent and to provide its reasons if it did so.

3.2.3 The authority replied on 31 August 2018 that it had granted building consent and a code compliance certificate for the foundations, and provided a copy of this certificate. It said it had declined to grant the consent for the building work associated with the modular unit.

¹⁰ The issue of whether the prefabricated modules are "building products" was addressed in *Auckland Council v S Liaw* [30 June 2017] (refer paragraph 42 of that judgement) and accordingly I have not considered further in this determination this reason given by the authority as part of its refusal to grant building consent.

¹¹ The houses that were the subject of Determinations 2016/039 and 2016/040, referred to in paragraph 1.6

¹² MultiProof certificate A10067 Rev 1 issued 19 July 2016

3.2.4 On 21 September 2018, in response to my further enquiry, the authority said in its view the stage 2 refusal remained valid.

The reason for refusal is clearly stated in the refusal letter where compliance to the Building Code could not be ascertained. The building consent plan differed substantially to the [MultiProof], and the Offshore Fabrication was not covered within the [MultiProof] which meant that there was insufficient information with respect to assessing the relevant Quality Assurance regime.

3.2.5 The authority also listed information it said had been requested in its 30 March 2016 letter to the applicant but had not been provided. This was the information regarding a quality assurance plan to cover the inspection and site observation by qualified third parties to verify compliance with the MultiProof, and details of what this plan should contain.

3.3 The draft determination

3.3.1 A draft of this determination was issued to the parties for comment on 25 October 2018. Both the applicant and the authority accepted this draft without further comment in responses received on 30 October 2018 and 16 November 2018 respectively.

4. Discussion

4.1 General

4.1.1 The matter to be determined is the authority's exercise of its power of decision in refusing to grant the building consent.

4.1.2 The authority originally refused to grant this consent on 30 March 2016. After the application for this determination was made, the authority confirmed to me that it stands by this refusal.

4.1.3 Accordingly, I will consider the reasons the authority has given recently for this refusal (paragraph 3.2), which are:

- as stated in its letter to the applicant of 30 March 2016, Building Code compliance could not be ascertained, the plans submitted for building consent differed substantially to the MultiProof certificate, and offshore fabrication was not covered within the MultiProof which meant there was insufficient information with respect to assessing the relevant quality assurance regime
- the applicant did not provide information requested regarding a quality assurance plan to cover the inspection and site observation by qualified third parties, and what this plan should contain.

4.1.4 In making my decision I have considered the evidence provided by the applicant and the information available to the authority when it confirmed the refusal on 21 September 2018.

4.2 Compliance with the Building Code

4.2.1 As the applicant and authority were both aware, the plans and specifications submitted for building consent in February 2016 and refused in March 2016 had some changes from the floor plan covered by the MultiProof certificate A10067 (issued 6 August 2013) at that time.

- 4.2.2 Since then, this MultiProof has been amended and reissued as MultiProof A10067 Rev 1 (issued 19 July 2016). The current certificate permits a variation to the original floor plan, as detailed on the associated plans and specifications.
- 4.2.3 I have compared the applicant's proposal with these plans and specifications and consider that the proposal is in accordance with the plans and specifications now covered by MultiProof A10067 Rev 1 as a permitted variation. I note that the approved plans and specifications for this revised MultiProof design were available to the authority via the Ministry's website.
- 4.2.4 A building consent authority must accept plans and specifications covered by a MultiProof certificate as complying with the performance requirements of the Building Code, under section 30A of the Act.
- 4.2.5 It follows that the authority must now accept the applicant's proposal, i.e. the plans and specifications submitted with the stage 2 building consent application, as complying with the performance requirements of the Building Code, subject to conditions relating to the provision of a satisfactorily completed Inspection and Test Plan for the prefabricated modules and any additional inspections the authority requires as discussed in paragraphs 4.3.5 to 4.3.17 of this determination.

4.3 Construction in accordance with the consented plans and specifications

- 4.3.1 Under section 49 of the Act a building consent authority must grant a building consent if satisfied on reasonable grounds that the provisions of the Building Code will be met if building work is properly completed in accordance with the "plans and specifications".
- 4.3.2 Plans and specifications are defined in section 7 as "the drawings, specifications, and other documents according to which a building is proposed to be constructed, altered, demolished, or removed" and can include "the proposed procedures for inspection during the construction, alteration, demolition, or removal of a building". "Inspections" are in turn defined in section 90 as "the taking of all reasonable steps to ensure that building work is being carried out in accordance with a building consent".
- 4.3.3 Plans and specifications usually comprise drawings of the proposed building and specifications for the components that will be used in the construction or erection of the building, and they identify the standards the building work and components will comply with.
- 4.3.4 Accordingly, the plans and specifications submitted with a building consent application provide the authority with the information to decide whether, if the building work is carried out and these components are assembled, installed or incorporated in accordance with those plans and specifications, the building will meet the performance requirements in the Building Code.
- 4.3.5 When deciding whether to grant a building consent, the authority must also specify a method for checking that the building work will actually be carried out and components assembled, installed or incorporated in accordance with the consented plans and specifications, i.e. the "proposed procedures for inspection".

4.3.6 As stated in Determination 2016/039:

4.3.8 While BCAs [building consent authorities] usually stipulate a list of inspections in a building consent (i.e. progress points at which the building work will be checked and components inspected), there is nothing in the Act that requires BCAs to restrict themselves to inspections. Inspections are a condition of a building consent and are provided for in section 90, but a BCA may supplement or substitute these inspections with other measures to satisfy itself that the building work will be carried out in accordance with the plans and specifications. For example, a BCA may be prepared to rely on other evidence such as product technical statements, manufacturers' quality assurance plans, third party oversight and statements, plant audits, project records, Licensed Building Practitioner (LBP) supervision and the like.

4.3.7 The plans and specifications and any conditions associated with a particular MultiProof may include an inspection schedule or construction record that must be completed to confirm that construction has been carried out in accordance with that MultiProof¹³. This can provide some useful assurances for building consent authorities that construction has been completed in accordance with the MultiProof plans and specifications and will therefore meet the performance requirements of the Building Code.

4.3.8 There is nothing to prevent a building consent authority from requiring its own inspections or putting other conditions on the building consent, such as those described above (paragraph 0). In other words, a building consent authority is still entitled to ask how the compliance of components manufactured offshore (for example) and then incorporated/installed into the building would be checked against the MultiProof approved plans and specifications.

4.3.9 In this case, the authority has repeated its request for a quality assurance plan "to cover the inspection and site observation by qualified third parties to verify that all components used in building and the final products have been manufactured and built to provide compliance with the approved MultiProof". It has also listed its requirements for this plan.

4.3.10 As noted earlier, I consider that the applicant's proposal is now covered by MultiProof A10067 Rev 1. The approved documents associated with this MultiProof, to be used by the authority when checking for conformity and available to it via secure log-in to the Ministry's website, are plans and specifications for the modular house design.

4.3.11 However, these approved documents do not include a specific "Quality Assurance Plan that has been passed by [the Ministry]", as stated by the applicant (refer paragraph 3.1.3). While the supplier provided additional quality assurance information to the Ministry when applying for the MultiProof, this is not part of the Rev 1 approval and therefore does not form part of the approved documents available to the authority.

4.3.12 Having said that, the specifications associated with MultiProof A10067 Rev 1 do contain some information regarding quality assurance, including a requirement to provide certification with the prefabricated modules that their Building Code aspects are compliant. The specifications also refer to some shipping requirements (such as temporary bracing) and require a certificate from a laboratory accredited by IANZ¹⁴ for the modules' windows and doors.

¹³ See also *Auckland Council v S Liaw [2017] NZDC 13532, 30 June 2017, 44*

¹⁴ International Accreditation New Zealand

- 4.3.13 Of more substance, however, is the quality assurance information that the supplier emailed the authority on the applicant's request (paragraphs 2.20 to 2.22). This was a spreadsheet containing the detailed "Inspection and Test Plan" the supplier said was completed and supplied for each modular building. As well as providing this document, the supplier asked the authority to provide feedback and to confirm that the third party inspections company identified would be acceptable.
- 4.3.14 I have not seen the authority's response to this email or any further information supplied by the applicant regarding this. However, I consider that this Inspection and Test Plan provides information directly relevant to the applicant's proposal and which was not acknowledged by the authority when it confirmed its refusal to grant the building consent.
- 4.3.15 It is my view that the authority had enough relevant information made available to it following its request for quality assurance and verification details. In particular, agreement was sought on a third party to oversee the inspections (I note that one was proposed) and the authority could require satisfactory certificates of completion as a condition of the building consent (as outlined in the Inspection and Test Plan).
- 4.3.16 The authority could also inspect the modules onsite and before they are installed if it wanted further assurances that these had been manufactured to the MultiProof plans and specifications. For example, it could perform useful visual inspections of the modules and their construction (noting that the modules have some openings which have temporary covers until they are joined together onsite), observe the joint insulation and overall module assembly, and carry out further inspection and testing (e.g. taking off electrical plates, testing for insulation etc) if it considered this necessary.
- 4.3.17 I note that the authority has already undertaken a compliance check of at least two other modular houses incorporating modules from the same supplier (as described in paragraph 1.6) and has issued code compliance certificates for these, so I am not aware why it could not pursue a similar framework in this case.
- 4.3.18 In conclusion, it is my view that when the application was first submitted to the authority for building consent for stage 2, there was insufficient information in the application consent for the authority to establish compliance. The plans and specifications were not in accordance with Multiproof A10067, the revised certificate (MultiProof A10067 Rev 1) had not been issued at that time, and the authority had not been provided with the Inspection and Test Plan.
- 4.3.19 I note that before proceeding directly to its refusal to grant a building consent on 30 March 2016, the authority had the ability to go back to the applicant to ask for further details, including the impact of the variations from the MultiProof plans and specifications on Building Code compliance, and to include other checks on the building consent.
- 4.3.20 The applicant had also been told by the authority on 21 July 2015 that it would not issue building consent for foundations and site works until it was satisfied on reasonable grounds that the building modules had been constructed to meet New Zealand Building Code compliance. I note that the authority then issued such a building consent (the stage 1 consent) on 25 February 2016, shortly before the applicant applied for the stage 2 consent on 4 March 2016, and the authority was aware that an amendment to the MultiProof certificate was being applied for to cover the plans and specifications of the modular components for stage 2.

- 4.3.21 In regards to the authority's recent confirmation of its refusal to grant building consent, I consider that the authority has not correctly exercised its powers of decision in refusing to grant the building consent. The plans and specifications are now covered by the revised MultiProof certificate (issued in July 2016) and the authority is able to grant the consent subject to conditions such as the provision of a satisfactorily completed Inspection and Test Plan for the prefabricated modules and any additional inspections the authority requires. I note that additional inspections would also likely include inspections of the modules onsite before their incorporation into the completed building and of the building work carried out onsite to complete the modular house.
- 4.3.22 I also note that it is my understanding the applicant advised the authority, prior to making this application for a determination, that the revised MultiProof certificate had been issued. The applicant had already indicated in the original building consent application that consent was sought on the basis that the modules proposed to be used would be covered by a MultiProof certificate.
- 4.3.23 In my view, the authority could have requested confirmation of the stated means of compliance by way of a minor modification of the building consent application, and as the applicant has already received the modules onsite, the authority could have also requested the certificate of conformity.
- 4.3.24 I suggest that the applicant now provides the authority with an updated statement of conformity from the supplier in relation to the current MultiProof A10067 Rev 1 and updates the building consent application to reflect this as the stated means of compliance. I also suggest that the applicant provides the authority with the completed Inspection and Test Plans for the two prefabricated modules that will be incorporated into the building, or undertakes to provide these once they are available.

5. The decision

- 5.1 In accordance with section 188 of the Building Act 2004 I hereby determine that the authority has not correctly exercised its powers of decision in refusing to grant building consent ABA 1023413. I hereby reverse this decision, thus requiring the authority to make a new decision taking into account the additional information now available to it as described above and including the amended MultiProof A10067 Rev 1.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 23 November 2018.

Katie Gordon
Manager Determinations