

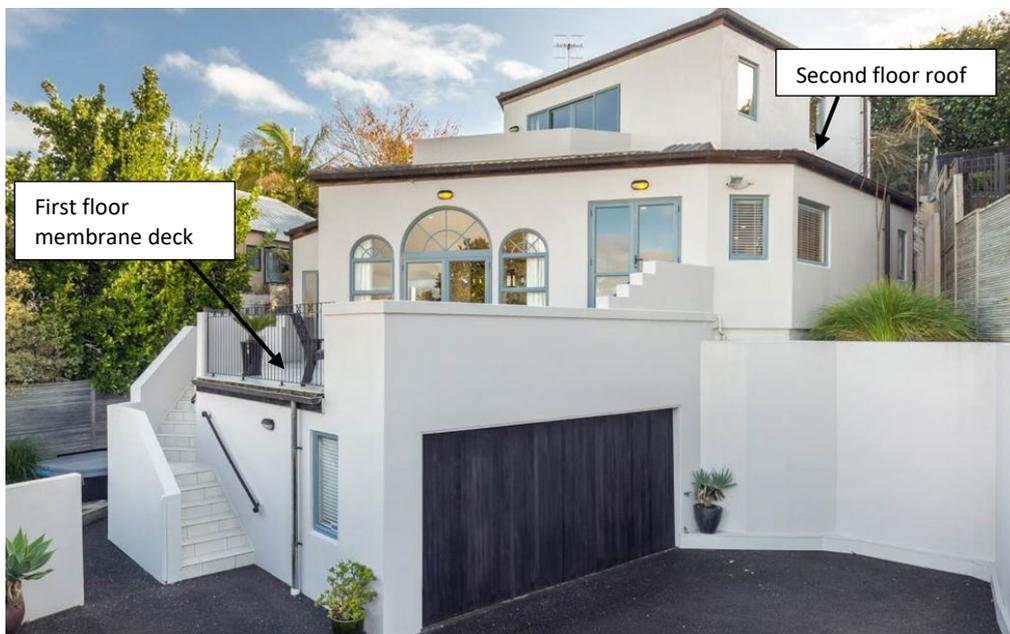
Determination 2024/023

Regarding the refusal to grant a building consent for alterations to an existing dwelling

25A Baddeley Avenue, Kohimarama, Auckland

Summary

This determination considers the authority's refusal to grant a building consent for alterations to an existing dwelling. The authority considered that the building consent could not be granted for a range of reasons, including a lack of documentation, non-compliance with the Building Code, and conflicting information in the plans. This determination considers the reasons for refusal set out by the authority in its letter.



In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg, Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Peta Hird, Principal Advisor Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.¹
- 1.2. The parties to the determination are:
 - 1.2.1. H and A Watkins, the owners of the house (“the owner”), who applied for this determination.
 - 1.2.2. D Dawson, the licensed building practitioner concerned with the relevant building work (“the designer”)
 - 1.2.3. Auckland Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. This determination arises from the decision of the authority to refuse to grant a building consent, reference BCO10325742, for alterations to an 11-year-old house. The refusal arose because:
 - 1.3.1. the authority was not satisfied that the proposed cladding system, first-floor membrane deck, or new concrete tiled roof on the second floor would comply with the Building Code, because of insufficient documentation and missing and/or unclear construction details.
 - 1.3.2. the plans provided in the building consent application contained inconsistencies regarding the scope of work to be carried out.
 - 1.3.3. the authority disagreed about assumptions made in the plans and specifications regarding the dwelling’s existing features and structure.

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

- 1.4. The matter to be determined, under section 177(1)(b) and (2)(a), is therefore the authority's decision to refuse to grant a building consent for proposed building work.
- 1.5. In deciding this matter, I will consider the reasons outlined in the authority's refusal letter dated 7 June 2021.

2. The building work and background

- 2.1. The existing building is a three-storey dwelling on a sloping site. The ground floor consists of blockwork retaining walls and timber framed construction. The upper two floors are timber framed with a concrete tile roof, and there are membrane decks at both levels. The existing building is clad in a monolithic direct-fix plaster cladding.
- 2.2. On 9 April 2021, an application for building consent BCO10325742 was accepted for processing by the authority.
- 2.3. The authority sent requests for information on 29 April and 31 May 2021. The updated plans submitted to the authority in response to those requests for information were noted as revision A, submitted 28 May 2021, and revision B, submitted 2 June 2021, respectively.
- 2.4. The responses to the authority's requests resulted in minor changes to the scope of proposed building work. The final scope of building work proposed included:
 - 2.4.1. The removal of existing monolithic cladding and recladding in new uPVC extruded weatherboard profile cladding ("the proposed cladding system").
 - 2.4.2. Alterations to the first-floor membrane deck, including recladding in a new membrane, and adding a porch roof over an entryway door.
 - 2.4.3. The closing-in of a second-floor membrane deck with new walls and roof to create a sunroom.
 - 2.4.4. Installing a new concrete tile roof over the top of an existing membrane roof on the second floor.
 - 2.4.5. Extending roof eaves on the upper two levels of the property.
 - 2.4.6. Minor alterations to existing windows and doorways, including the replacement of existing glass with double glazing.
- 2.5. On 7 June 2021, the authority refused the building consent. In the refusal letter the authority stated that the reasons were based on a review of the latest response, revision B of the plans. The reasons given were as follows (numbering as per the

authority's letter):

- 1) The design proposes alternative solution cladding (outside the scope of E2/AS1) and full supporting construction details have not been provided to assess the architectural details
 - 2) The construction details do not follow the manufacturers requirements, or where E2/AS1 reference, has not been followed either [examples noted]
 - 3) There is still inconsistency on the plans (membrane upstand noted from high point of deck however detailed from low point of membrane gutter on sheets 42 & 48)
 - 4) Critical junction details not provided [example noted]. These need detailing to demonstrate compliance and for the builders to follow accurately on site.
 - 5) Over cladding to existing membrane roof proposed not generally accepted as [the authority] cannot verify how the underlying structure is performing...
 - 6) Membrane deck doesn't confirm methodology for checking what existing fall is, doesn't clarify the fall required from the proposed membrane manufacturer and the steps on the deck proposed to be separated with repair work that appears to require consent. This is an alternative solution/design proposal that does not include sufficient detailing or investigation to demonstrate how compliance will be achieved.
 - 7) Copy-paste details are provided that do not reflect the true scope of work proposed. This makes it difficult to assess the intended construction for the builders to follow accurately on site (...).
 - 8) Using the legacy plans, it appears there are some block walls at garage [level] which have been documented as timber framed walls. Questions were raised for compliance where new cladding proposed in relation to existing concrete steps adjacent to timber frame walls. ...
 - 9) In the RFI, reference materials were provided which appears to have not been followed/checked to demonstrate compliance [identified building tape]
 - 10) Other high risk junctions (post penetration to parapet barrier, metal barrier reconnection) have not been detailed or deemed do not demonstrate compliance with the NZ Building Code.
- 2.6. Subsequently, the parties met to discuss the refusal on 23 July 2021. The parties agreed that one reason for refusal listed on the letter, item 9 regarding the building tape proposed to be used, was not in dispute and so I have not considered that item in this determination.

3. Submissions

The owners

- 3.1. The owners are of the view that the plans and specifications provided as part of the building consent application are of a sufficient quality that the building consent should have been able to be granted.
- 3.2. The owners consider that the number of questions asked across the two requests for information letters are excessive, and the authority has asked for information beyond what is necessary to confirm that the proposed building work complies with the Building Code.
- 3.3. New issues were raised by the authority at the refusal stage of the building consent application. This meant the owner and designer were not able to provide information to respond to those issues.
- 3.4. Parts of the proposed building work that the authority is questioning are products and systems that are commonly used across a high number of construction projects. The authority was not clear about why the products did not comply in this context.

The designer

- 3.5. The designer submitted that they generally followed E2/AS1 for the building's weathertightness design. Design details outside the scope of E2/AS1 were reviewed by the cladding manufacturer.
- 3.6. The construction details referred to in a request for information by the authority in regard to E2/AS1 are unclear, and the proposed building work does not feature the issues raised by the authority. The proposed building work follows the manufacturer's and, where relevant, E2/AS1 requirements.
- 3.7. The designer acknowledged drafting errors, but is of the view that these are minor, correct information is provided elsewhere, and that the errors do not meet the threshold of refusing to grant a building consent.
- 3.8. Relevant details regarding the wall cladding, joinery and the first-floor membrane deck have been provided, and, where relevant, reviewed by the cladding manufacturer. The authority has not been clear on what specifically does not meet Building Code requirements.
- 3.9. The owners had proposed to remove internal ceiling linings under the deck to allow for inspection of the supporting structure, and that is sufficient to ensure the existing structure's performance.

- 3.10. Work that is outside the scope of the building consent has been clearly marked as such.
- 3.11. Details that have been pulled from reference material have been edited to reflect site specific requirements.
- 3.12. The ground floor plans accurately reflect the wall types on site and relevant details for junctions between wall types have been provided. Furthermore, this point was not raised in earlier requests for information, so the designer was not given an opportunity to respond.

The authority

- 3.13. The authority submitted that it is the responsibility of the building consent applicant to provide relevant manufacturer's details for reference, where a product proposes compliance with the Building Code as an alternative solution. This is to enable the authority to compare the proposed scope of use and detailing of the product against the manufacturer's requirements, as part of assessing the overall alternative solution proposal.
- 3.14. The correspondence from the cladding manufacturer is not sufficient evidence to show that the details, outside scope of the appraisal and E2/AS1, comply with E2 as an alternative solution.
- 3.15. While variations may happen on site, the consented plans need to accurately reflect the existing building and show how compliance with the Building Code will be achieved. Generic details with inconsistent elements or multiple options do not meet this requirement. Construction, and authority inspections, should be in relation to consented plans.
- 3.16. The work to the first-floor membrane deck creates potential non-compliances, for instance with the existing stairs or with the existing barrier. Further details are required to confirm how compliance with the Building Code will be achieved.
- 3.17. Referencing details from standards and compliance documents only, rather than including them in the building consent documentation, is not sufficient to ensure those details will be referenced and followed correctly.

4. Discussion

- 4.1. The matter to be determined is the authority's decision to refuse to grant the building consent. In the following paragraphs, I consider the authority's decision in terms of both the provisions of the Act that relate to deciding whether to grant a building consent (section 49(1)) and the provisions that concern giving reasons for refusing to grant the building consent (section 50(b)).

The decision to refuse to grant the building consent

4.2. The relevant provision for granting a building consent under the Act is section 49(1):

49 Grant of building consent

- (1) A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

4.3. In considering whether the authority had grounds to refuse to grant the building consent, I have not carried out an exhaustive review of all the proposed building work. Rather I have focused on specific examples that that were given by the authority as reasons for it to refuse to grant the building consent. I have grouped these together as follows:

- Compliance of the new building work
- Ongoing compliance of the existing building after the alteration
- Documentation

Compliance of new building work

4.4. Section 17 of the Act states:

17 All building work must comply with the building code

All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

4.5. The Building Code is performance based. Compliance with a particular clause of the Building Code can be demonstrated using an Acceptable Solution or Verification Method developed for that clause (where one exists)². Another way of showing compliance is by proposing an alternative solution and providing evidence about the performance of the particular design or product.

The cladding system

4.6. In item (1) of the refusal letter the authority states that it requires “full supporting construction details” in order to assess the details shown on the plans for the proposed cladding system.

² Section 19 provides a building consent authority must accept compliance with an Acceptable Solution or Verification Method as establishing compliance with the Building Code.

- 4.7. The proposed cladding system is a proprietary product that is outside the scope of the Acceptable Solution E2/AS1. The cladding system has a BRANZ appraisal³, which outlines the scope for which the product has been tested and appraised as suitable for use.
- 4.8. Appraisals are technical opinions of a building product or system's fitness for purpose. They involve testing, assessment, and verification of Building Code compliance, and are carried out and issued by an independent appraisal organisation (not the product's manufacturer or distributor). An appraisal will look at any specific installation systems or processes and will recognise any limitations on a product's intended scope of use. It may also cite technical literature which provides further details regarding the product, to be read in conjunction with the appraisal itself.
- 4.9. The original building consent application did not include the BRANZ appraisal or the manufacturer's construction details for the cladding system that were cited in that appraisal. The authority requested these details on 29 April. The designer submits that the cladding system is widely used, and the authority should be able to assess compliance without those details.
- 4.10. Plans and specifications submitted with a building consent application allow building consent authorities to assess, for the purpose of section 49(1), whether the building work will comply with the Building Code if it is carried out in accordance with those plans and specifications. "Plans and specifications" are defined in section 7 of the Act as "the drawings, specifications, and **other documents** according to which a building is proposed to be constructed, altered, demolished or removed" [my emphasis]. Supporting documents, such as manufacturer's technical literature, are often necessary for an authority to establish the compliance of the proposed building work.
- 4.11. In this case, the information required to assess compliance as an alternative solution extends to the appraisal and manufacturer's technical literature that is cited in the appraisal. This ensures the authority can confirm the proposal falls within the scope of the appraisal and to compare details in the plans with the requirements of the manufacturer. In my opinion, without these details, the compliance assessment for the purpose of section 49(1) could not be satisfied.

The second-floor roof structure

- 4.12. Item (5) in the refusal letter concerns how the performance of the existing second-floor roof structure can be confirmed given the proposal was amended to retain the existing membrane roof and over-clad with a concrete roof.

³ BRANZ Appraisal 491, issued 7 May 2021.

- 4.13. Sheet A12 revision B of the plans note that the existing second-floor membrane roof is to remain in place.⁴ New timber furrings, or strips, are to be laid over the top of the existing membrane roof to achieve the necessary fall for the new concrete tile roof. This means that the new concrete tile roof will be relying on the structure of the existing second-floor membrane roof in achieving compliance with clause B1.
- 4.14. Revision B did not include any further details regarding this area of the proposed building work, such as the framing layout of the existing second-floor membrane roof or structural fixings.
- 4.15. A concrete tile roof is heavier than a membrane roof and, without the details of the existing second-floor membrane roof, it is unclear whether it will comply with clause B1 in supporting this additional weight.
- 4.16. In addition, I note that the plans do not include details of the existing second-floor membrane roof barge and eave details where the new concrete roof is proposed over the deck or proposed new barge and eave details for the new concrete roof for the purpose of compliance with clause E2 External moisture.
- 4.17. As the plans do not include further details regarding the existing second-floor membrane roof structure, I am of the view that section 49(1) is not satisfied with regard to clauses B1 Structure, nor E2 External moisture.

The first-floor membrane deck

- 4.18. In item (6) of the refusal letter, the authority notes that the plans do not include details regarding the existing fall of the first-floor membrane deck and the building work required, should this need to be altered when recladding with a new membrane.
- 4.19. Regarding the first-floor membrane deck, the framing set out plan on sheet A13 revision B notes that the “existing plywood substrate to remain in place over existing timber sub floor framing. Existing falls adjusted (if required) to comply with the new [membrane product].”
- 4.20. The fall of the membrane deck is an important detail in showing compliance with clause E2.3.1, which states that, “roofs must shed precipitated moisture”.
- 4.21. As the plans do not include these details, I am of the view that section 49(1) cannot be satisfied with regard to clause E2.3.1.

⁴ The original and revision A plans included the removal of the existing membrane roof and plywood substrate, whereas revision B of the plans show the existing membrane roof was to be left in place and a new concrete tile roof was to be constructed over top.

Ongoing compliance of the existing building

4.22. As the building work involves alterations to an existing building, I must section 112 is also relevant, and for the purposes of this determination specifically section 112(1)(b):

112 Alterations to existing buildings

- (1) A building consent authority must not grant a building consent for the alteration of an existing building, or part of an existing building, unless the building consent authority is satisfied that, after the alteration,—
- ...
- (b) the building will,—
- (i) if it complied with the other provisions of the building code immediately before the building work began, continue to comply with those provisions; or
- (ii) if it did not comply with the other provisions of the building code immediately before the building work began, continue to comply at least to the same extent as it did then comply.

The first-floor membrane deck

- 4.23. I note the authority's submission regarding potential flow on effects which may arise if the fall on the existing first-floor membrane deck needs to be adjusted – see paragraph 3.16.
- 4.24. The first-floor membrane deck is triangular in shape. On its western side it adjoins the existing dwelling. To the northeast and southeast it is bordered by an existing balustrade. At its northern point is a set of existing stairs, five risers in height. Sheet A13 revision B of the plans note that the “existing stairs and structure are to remain in place.”
- 4.25. As the existing fall of the first-floor deck has not been established for the purpose of the plans, the designer has noted that the fall may need to be adjusted. I note that should the fall need to be adjusted this may raise compliance issues with regard to section 112(1)(b). For example:
- 4.25.1. The height of the lowest riser on the stairs could be reduced, resulting in stairs that are no longer uniform in height (clause D1.3.3(f)).
- 4.25.2. The existing balustrade is not dimensioned on the plans. An increased fall to the first-floor membrane deck could reduce the height of the balustrade and would need to be assessed for compliance with clause F4.3.4(b).
- 4.26. However, as the plans are unclear on what the fall of the existing first-floor membrane deck is, and whether it needs to be adjusted, I cannot reach a conclusion

on whether the plans and specifications meet the requirements of section 112(1)(b) in this regard.

Documentation requirements for building consent applications

- 4.27. The authority must consider the proposed building work in the context of the plans and specifications that accompany the application. (See also paragraph 4.10)
- 4.28. An authority is entitled to set reasonable requirements for the documentation that accompanies a building consent application (section 45(1)(b)(ii)). These requirements are to ensure that the building consent application clearly demonstrates and documents how compliance with the Building Code is to be achieved.
- 4.29. Section 48(2) also provides that a building consent authority may require further reasonable information in respect of the application.
- 4.30. Where there is inadequate documentation to enable the authority to make a decision under section 49(1), an authority is required to provide written notification under section 50 of its refusal to grant the building consent. Such a refusal is on the basis that the authority requires adequate documentation to be satisfied on reasonable grounds that the provisions of the Building Code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.
- 4.31. The Ministry's guidance that was current at the time the building consent application was lodged was titled "Guide to applying for a building consent (residential buildings)" ("the Ministry's guidance").⁵ This guidance described an acceptable minimum standard of documentation to be supplied with an application for building consent to demonstrate compliance with relevant clauses of the Building Code. The guidance stated that a building consent application needed to:⁶
- 4.31.1. be in the prescribed form
 - 4.31.2. include plans and specifications
 - 4.31.3. include any other information the building consent authority reasonably requires

⁵ Second edition, dated October 2010, issued under section 175 by the former Department of Building and Housing. I note the guidance was subsequently replaced by the Third edition, dated October 2022.

⁶ The items listed are not intended to be exhaustive. For information about how to apply for building consent, refer to section 45.

- 4.31.4. include a brief description of how the project will comply with the Building Code
- 4.31.5. include information about the materials, products, and systems to be used in constructing the building.
- 4.32. Determination 2011/096⁷ also considered what can be required in terms of the standard of documentation to be provided for a building consent application. It stated:

In my view plans and specifications submitted in support of a consent, or alterations to a consent, must:

- a) Provide a compliant solution, and
- b) Must also be sufficient clear to describe how that solution is to be achieved through the construction process.
- c) Detail critical features.

Inconsistencies in the plans

- 4.33. Item (3) of the refusal letter concerns an inconsistency in the plans regarding differing membrane upstand heights shown on the plans.
- 4.34. I note as well as smaller inconsistencies such as the membrane upstand heights noted in item (3), the plans also have a more significant inconsistency concerning the scope of work to the existing second floor membrane roof. One drawing in the plans show this membrane roof is to be retained⁸, while another notes that the membrane and substrate is to be removed⁹. It is necessary to ensure plans are consistent for clarity because the inconsistency in scope raises the issue of whether the building work can be “properly completed in accordance with the plans and specifications”.¹⁰
- 4.35. The scope of the building work in a building consent application must be clear, so that it can be determined at the building consent processing stage whether the proposed work will comply with the Building Code.
- 4.36. In this case, because of the inconsistency regarding the scope of work, I am of the view that the section 49(1) cannot be satisfied.

⁷ Paragraph 8.1.2 of Determination 2011/096: The refusal to grant an amendment to a building consent for proposed remedial work, and the issuing of a notice to fix for a 13-year-old house with monolithic cladding. Dated 16 November 2011.

⁸ Sheet A12 revision B.

⁹ Sheets A20 revision A and A22 revision A. I note updated versions of these plans were not provided as part of the set titled revision B.

¹⁰ Section 49.

Missing and/or unclear details provided in the plans.

- 4.37. Regarding the construction details, item (2) of the refusal letter references some details the authority considers “do not follow the manufacturers (sic) requirements or where [referenced] E2/AS1,” The authority gave the following examples: “roof underlay over antipond boards, cavity closers missing, no membrane upturns on sheets 43-49.”
- 4.38. Detail 1 on sheet A44 revision B shows the junction of the concrete tiled roof with the gutter and external wall below. It notes an “anti ponding board as per E2/AS1” and shows the roofing underlay running underneath the anti-ponding board.¹¹ However, this detail is inconsistent with the Acceptable Solution cited. Detail 25(b) of E2/AS1 *External Moisture* shows the roofing underlay running over the top of the anti-ponding board.
- 4.39. I have considered the compliance of this detail as shown in the plans as an alternative solution. The relevant performance requirement that applies to the anti-ponding board and roofing underlay is E2.3.5, which states:
- Concealed spaces and cavities in buildings must be constructed in a way that prevents external moisture being accumulated or transferred and causing condensation, fungal growth, or the degradation of building elements.
- 4.40. As the proposed detail has the roofing underlay running underneath the anti-ponding board there is a risk that external moisture in this concealed space will accumulate in the dip created by the unsupported roofing underlay. This may cause condensation, fungal growth or degradation of building elements around it. I am therefore of the view that this detail does not show compliance with E2.3.5.
- 4.41. Regarding the cavity closers and membrane upturns, I note that revision B of the plans show cavity closers on relevant details across sheets A43 though to A49, and membrane upstands are shown on the membrane deck details shown on sheets A48 and A49.
- 4.42. Item (4) of the refusal letter, with reference to the two requests for information, also lists some details the authority considers are missing from the drawings. For instance, junctions between the proposed cladding system and existing block work walls, the head junction for the curved window included in door DL7, the first-floor membrane deck gutter junction where a metal post balustrade is used, and junctions between the roof and adjacent walls.

¹¹ An anti-ponding board is defined in Acceptable Solution E2/AS1 *External Moisture*, amendment 10, as “a board laid under the lowest row of concrete and clay roof tiles and supports the roof underlay. The board is sloped to ensure moisture under the tiles is directed to the exterior of the roof.”

- 4.43. The plans do not include a detail of the curved head junction for door DL7. The designer submitted that the curved flashing “would fall under E2/AS1.” However, paragraph 9.1.10.1(a) of E2/AS1 notes that the Acceptable Solution applies to windows and doors with horizontal heads only. The curved head junction is outside the scope of E2/AS1. While this junction could be assessed as an alternative solution, the plans do not include the information necessary to make this assessment. I am therefore of the view that the plans and specification do not establish compliance for the purpose of section 49(1).
- 4.44. Notwithstanding the above, I note that the other specific cladding, membrane deck, and roof junctions referenced in item (4) are shown on revision B of sheets A40/42, A54, and A52 respectively.
- 4.45. In item (10) of the refusal letter the authority states that there are “high risk junctions” where there are missing details, or the details do not demonstrate compliance with the Building Code. The authority included as examples the junction between a post supporting the first-floor porch junctions and the top of an enclosed balustrade, as well as a “metal barrier reconnection”.
- 4.46. I note that details for the post to balustrade connection are provided on sheet A53 revision B, and a detail for the metal balustrade connection is shown on sheet A54 revision B.
- 4.47. Though the refusal letter notes the authority has reviewed revision B of the plans before setting out their reasons for refusal, as noted in paragraphs 4.41, 4.44 and 4.46 of this determination, items (2), (4), and (10) concern details that have been revised or provided. With respect to these details the authority has not explained why it is not satisfied that compliance with the Building Code would be met if the proposed building work was carried out in accordance with those details.

The provision of generic construction details in the plans

- 4.48. Regarding construction details, item (7) of the refusal letter refers to “copy-paste” details that do not accurately reflect the building work proposed.
- 4.49. The refusal letter does not include references to the specific details the authority views as being “copy-paste.” However, I note that section A-A on sheet A50 revision B references that an alternative detail, “MTC-28267,” could be used instead of the one shown in section A-A. This alternative detail is not included in the plans and specifications provided.
- 4.50. As noted in paragraphs 4.34 and 4.35 above, inconsistent, unclear or insufficient details raise issues with how the building work is to be carried out in accordance with the plans.
Plans and specifications accompanying a building consent application need to be

specific to the building work proposed and if there are options provided for how a given detail could be constructed these must be adequately detailed in the plans and specifications.

- 4.51. Section 40(1) requires that building work is carried out in accordance with a building consent, and the plans and specifications need to be specific to the proposed building work.
- 4.52. As the building consent application lacks detail about how the alternative option would be constructed, I am of the view that section 49(1) cannot be satisfied.

Accurate recording of the existing ground floor wall construction on the plans

- 4.53. In item (8) of the refusal letter the authority states that “there are some block walls at garage which have been documented as timber framed walls.”
- 4.54. When proposing alterations to an existing building it is important that the plans accurately reflect the layout and details of the existing building as best as can be established, because incorrect information may affect the compliance of the proposed work.
- 4.55. The existing plans for the dwelling show the ground floor wall to the southern side of the garage is blockwork construction, not a timber-framed wall as shown on sheet A10 revision B. This affects the details provided for this area of the proposed building work.
- 4.56. I note that this reason was not raised during earlier requests for information, so the owners did not have an opportunity to amend the plans prior to the authority’s refusal.
- 4.57. Notwithstanding this, as the plans did not include details that accurately reflected the existing construction on site, I am of the view that section 49(1) cannot be satisfied.

Provision of reasons for the refusal

- 4.58. If the authority is to refuse a building consent, then section 50 states:

50 *Refusal of application for building consent*

If a building consent authority refuses to grant an application for a building consent, the building consent authority must give the applicant written notice of—

- (a) the refusal; and
- (b) the reasons for the refusal.

4.59. The obligation to provide reasons for decisions made under the Act have been discussed in previous determinations. Various court decisions have also discussed statutory provisions requiring reasons, noting that:

- the extent of the obligation to give reasons is dependent on the function and the purpose for which reasons are required¹²
- reasons provided must be “proper, adequate and intelligible”¹³
- the reasons must be appropriate to the nature of the decision-making¹⁴
- the reasons must be adequate to enable proper consideration of the decision on appeal or review¹⁵.

4.60. The obligation to give reasons for refusing to grant a building consent also needs to be considered in respect of the authority’s obligations under section 22(1) of the Local Government Official Information and Meetings Act 1987 (“LGOIMA”).

4.61. I hold the same view as discussed in Determination 2021/010¹⁶ regarding what is expected of an authority when giving reasons for refusing to grant a building consent. In this respect, I reiterate the following key points:

4.61.1. The authority will need to consider those aspects of the design that it believes do not comply with the Building Code or the Act.

4.61.2. An authority is required to provide reasons in writing for refusing to grant a building consent, so that an owner is made aware of any shortcomings with the plans and specifications to obtain that building consent.

4.61.3. It is important that an owner is given sufficiently explicit, specific, clear, and valid reasons why an authority believes compliance has not been achieved, so the owner can consider what is necessary to remedy the situation.

¹² *Hollander v Auckland Council* [2017], Heath J, CIV 2016-404-2322 NZHC 2487, dated 11 October 2017.

¹³ *Chan v Minister of Immigration* HC Auckland CP80/89, 08 May 1989 at 14.

¹⁴ *R v Awatere* [1982] 1 NZLR 644 (CA) at 649.

¹⁵ *Singh v Chief Executive, Department of Labour* [1999] NZAR 258 (CA) at 263.

¹⁶ Determination 2021/010, “Regarding the refusal of a building consent for alterations to an existing students’ hall of residence at 217 Willow Park Drive, Masterton”, issued 31 May 2021. Refer to paragraphs 6.12 to 6.18 inclusive.

The refusal letter

- 4.62. Having considered whether there were grounds to refuse to grant the building consent, I now consider whether the authority has met its obligations under section 50.
- 4.63. There are areas where the letter does not clearly connect the reasons for refusal with relevant clauses of the Building Code. This means it is difficult for the owner to ascertain what evidence might be necessary to address these reasons, as they do not know what performance requirements that evidence would be assessed against. While the introduction to the letter references the Building Code in general, no specific clauses of the Building Code are cited.
- 4.63.1. In item (5) the authority states that it needs to verify “how the underlying [roof] structure is performing.” However no further context is given as to the reasons for this is why this verification is necessary, or what clauses of the Building Code would be relevant.
- 4.63.2. Item (10) notes that two junctions, one between a post supporting the first-floor porch junctions and the top of an enclosed balustrade, as well as “metal barrier reconnection[s],” are not “detailed or [have been] deemed do not demonstrate compliance with the NZ Building Code.” The refusal letter does not provide any further explanation as to what clauses of the Building Code these junctions do not comply with, or why the authority is of the view that they do not comply.
- 4.64. In addition, the reasons given in the letter do not clearly address new information provided in response to the request for information 31 May 2021.
- 4.64.1. The letter references the requests for information issued on 29 April and 31 May 2021, stating that “the majority of points still remain unresolved.” It goes on to state “the items listed in the latest RFI remain applicable if the application [for a building consent] is resubmitted.” The letter also states that the authority has reviewed revision B of the plans, provided in response to the 31 May 2021 request for information. However, it is not clear why the same requests, with the same wording from the 31 May 2021 request for information, would still apply given that new information has been provided to and reviewed by the authority.
- 4.64.2. Furthermore, items (2), (4), and (10) state that details have not been provided. However, these are shown on revision B of the plans¹⁷. The letter does not provide further explanation as to why the authority believes these details have not been provided.

¹⁷ Refer to paragraphs 4.41, 4.44, and 4.46.

4.65. As the refusal letter is not sufficiently explicit, specific, or clear in its reasons, and does not sufficiently explain why those reasons are valid, I am of the view that the letter does not meet the requirements of section 50. Accordingly, although I conclude there were grounds for refusing to grant the building consent, I am reversing that decision. It is now for the authority to make a new decision, taking into account the findings in this determination.

5. Decision

5.1. In accordance with section 188 of the Building Act 2004, I determine that:

- the authority had grounds for refusing to grant the building consent because it could not be satisfied that the building work would comply with the Building Code if properly completed in accordance with the plans and specifications provided with the building consent application
- the letter dated 7 June 2021 refusing to grant the building consent did not adequately detail the authority's reasons for refusal.

5.2. I reverse the authority's decision, requiring it make a new decision taking into account the findings in this determination.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 15 May 2024.

Peta Hird

Principal Advisor Determinations