

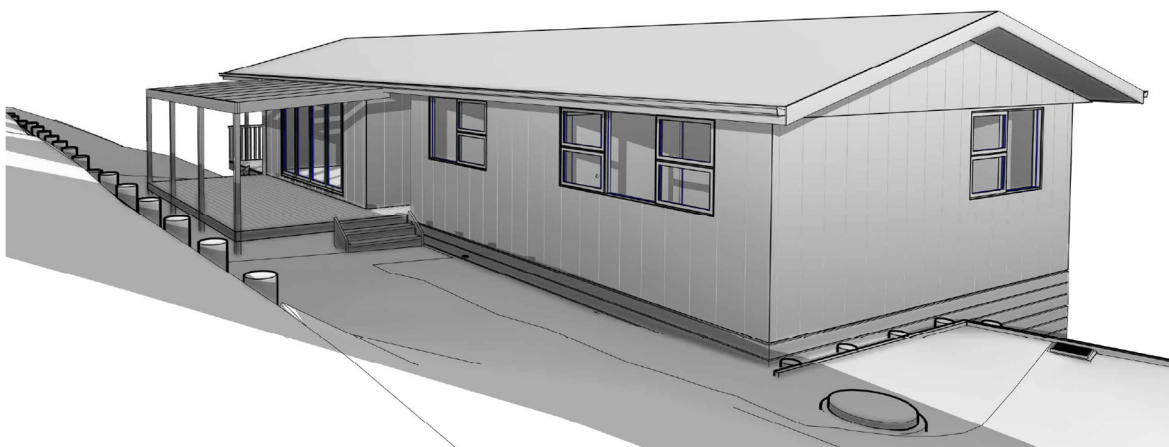
# Determination 2025/032

**Regarding the proposed refusal to grant a building consent amendment for the recladding of a relocated dwelling**

**89A Fairclough Road, Beach Haven, Auckland**

## Summary

This determination considers the proposed decision to refuse to grant a building consent amendment for the recladding of a relocated dwelling. The determination considers whether the proposed amendment to retain existing timber window joinery alongside new plywood and batten cladding would comply with Building Code clause E2 *External moisture* to the extent required by the Building Act.



**Figure 1: The designer's render of the proposed relocated dwelling.**

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](http://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](http://www.building.govt.nz).

## 1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Peta Hird, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).<sup>1</sup>
- 1.2. The parties to the determination are:
  - 1.2.1. A Blythe and K Cameron, the owners of the property who applied for this determination (“the owners”)
  - 1.2.2. I Fussell, the Licensed Building Practitioner builder concerned with the design work (“the designer”)
  - 1.2.3. Auckland Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. The matter to be determined<sup>2</sup> is the proposed refusal to grant building consent amendment BCO10347592-B (“the amendment”). This determination considers whether the proposed building work to retain existing timber joinery alongside new plywood cladding, as outlined in the plans and specifications accompanying the application for the amendment, would comply with clause E2 *External moisture* to the extent required by the Act.
- 1.4. This determination does not consider any other aspects of the Act or Building Code, or any building work beyond the elements which directly contribute to the matter as described above.

## 2. Proposed building work and background

- 2.1. The owner’s property is a rear section sloping down from the road in an established residential neighbourhood. The section is located in a low wind zone.<sup>3</sup>

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

<sup>2</sup> Under sections 177(1)(b) and 177(2)(a).

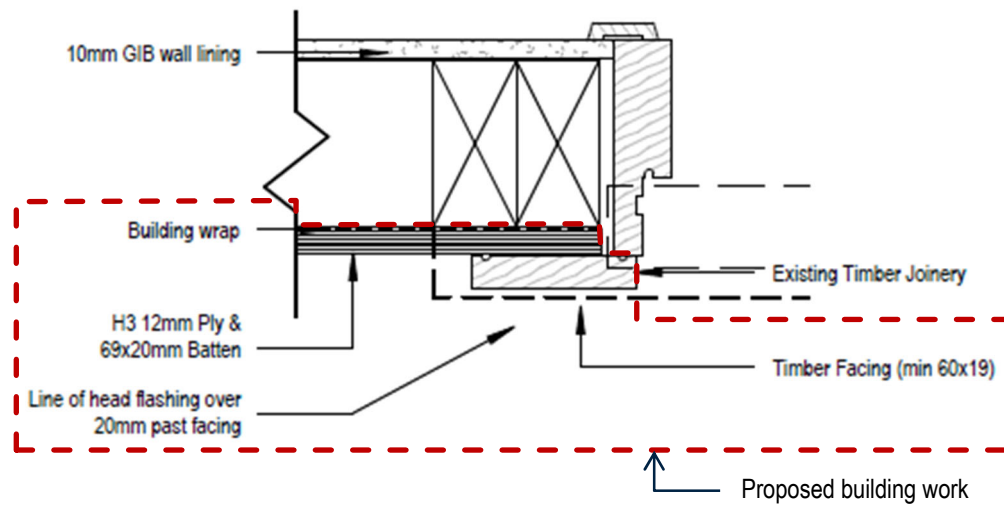
<sup>3</sup> The wind zone refers to the degree of wind force experienced on a given site and is determined in accordance with section 5 of New Zealand Standard 3604 *Timber-framed buildings*. It affects aspects of a building’s design such as its structure or weathertightness. A low wind zone is the lowest category, being a wind speed of 32 m/s.

- 2.2. On 1 September 2022, the authority granted a building consent<sup>4</sup> for relocation of a dwelling on to the site at 89A Fairclough Road. The building being relocated was single-level, timber-framed dwelling constructed in 1973. The building was clad with direct-fixed fibre-cement/asbestos sheet cladding and had timber joinery.
- 2.3. As well as relocation of the existing building on site, the building consent also included (but was not limited to) the replacement of existing cladding with new direct-fixed plywood and batten cladding and the replacement of all existing timber joinery with new aluminium joinery.
- 2.4. The proposed new cladding is a 12mm plywood and batten system fixed directly to the building's existing timber framing. The plywood cladding is a proprietary product which the designer has stated is being installed "in accordance with ... E2/AS1".
- 2.5. In June 2023, the owners applied for an amendment<sup>5</sup> to the building consent to retain existing timber window joinery, as originally constructed, in the three bedrooms and the bathroom ("the existing timber windows"). It is the application of sections 17 and 112 to the jamb and sill junctions of the existing timber windows that is in dispute between the parties.
- 2.6. The proposed jamb and sill details for the existing windows are detailed in the plans for the amendment as follows:
  - 2.6.1. The jamb detail (figure 2) shows the existing timber wall framing, with double studs forming the side of the window opening. The existing timber window jamb is shown abutting the studs. The proposed building work includes new building wrap and plywood and batten cladding fixed directly to the existing framing. The building wrap is not shown dressed into the window opening (because of the retained jamb). A new 60mm x 19mm timber batten with weather grooves to the rear is to cover the junction where the new building wrap and plywood and batten cladding abuts the existing window jamb.

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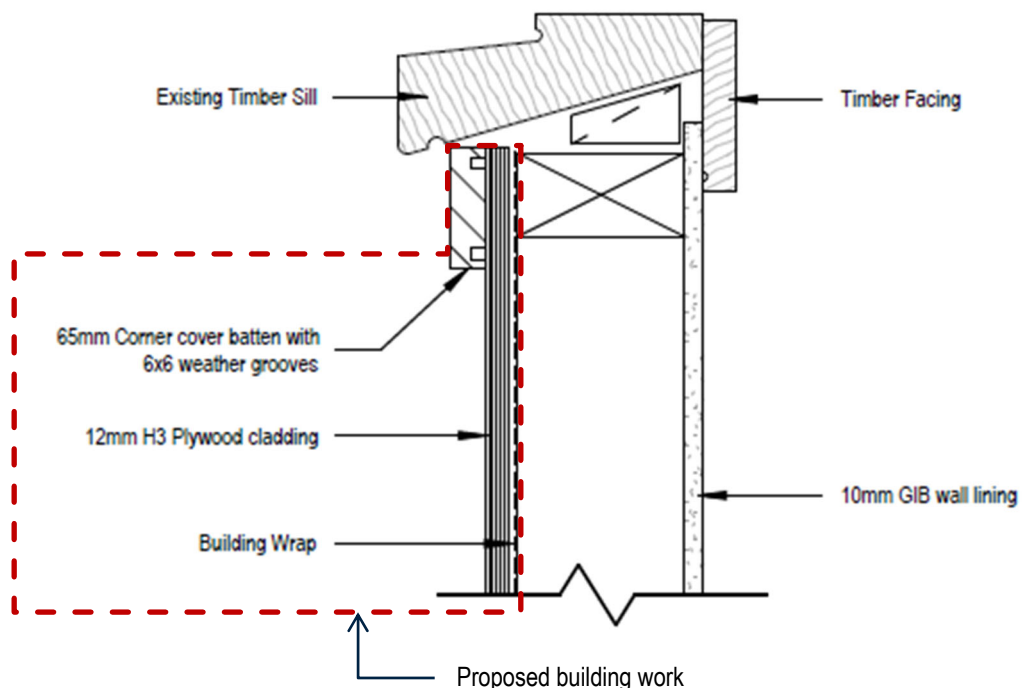
<sup>4</sup> BCO10347592.

<sup>5</sup> BCO10347592-B.



**Figure 2: the jamb detail as shown in the plans.**

- 2.6.2. The sill detail (figure 3) shows the existing timber wall framing and timber packer supporting the sill of the existing timber window. The existing window sill is shown to have a weather groove to the underside of its outside edge. As with the jamb detail, the proposed building work includes building wrap and plywood and batten cladding fixed directly the existing wall framing. A new 65mm wide timber batten with weather grooves to the rear is fixed to the face of the plywood cladding, directly underneath the existing window sill.



**Figure 3: the sill detail as shown in the plans.**

2.7. On 24 June 2024, the authority advised the owners ...

As per site meeting inspection record dated 16.05.2024 the existing joineries have been removed and new joineries have been installed (possibly mixture of existing reused and new timber joineries, as there are few enlarged openings)

... and requested further information regarding the proposed “amendment to change plans to install timber joineries in new ... cladding”:

Please provide supporting evidence for means of compliance for timber joinery in direct fixed [proposed new cladding] system with no sill tray flashings and no jamb battens. (Please note that as the [proposed new cladding] system is new and joineries are to be reinstalled, compliance with clause E2 will need to be established.

2.8. The builder disputed the existing timber windows had been removed and reinstated, and in a 26 June 2024 letter to the authority stated:

... the existing joinery was never removed from their openings. Under s112(1)(b) we would consider that these would continue to comply to at least the same extent as they did once comply

...

As above, the joinery was never removed, therefor[e] compliance with s112(1)(b) assumes compliance. ... As E2/AS1 does not include timber joinery in its scope, this therefore falls as an Alternative Solution. As such, we have added details ... from the BRANZ Weathertight Solutions guidance. Also, based on a history of use, similar details have been used for the past 100+ years for timber joinery installation.

2.9. The parties continued to correspond but were unable to resolve the matter. In an email dated 26 August 2024, the authority advised the builder:

... the installation of the timber joinery in new cladding (without flashings) cannot be assessed under [section 112 of the Act].

The flashing and installation of the joinery penetrations in the new cladding must comply fully with building code as per [section 17 of the Act].

This is our final decision, please revise and demonstrate compliance to E2 for timber joinery installation and flashing in new plywood cladding or we will have to refuse this amendment application.

### 3. Submissions

#### The owners and designer

3.1. The owners and designer are of the view that the application of section 112 of the Act means that the existing timber windows can remain in place without requiring

additional elements like jamb battens or sill flashings, and that “the proposed joinery flashing details will continue to comply to at [least] the same extent as they did once comply”. They have submitted, in summary:

- 3.1.1. The proposed new plywood and batten cladding system is to be installed in accordance with E2/AS1.
- 3.1.2. “[T]he retention of existing timber joinery in replaced cladding ... was an aesthetical change [as] opposed to any weathertightness issue”.
- 3.1.3. The proposed details are no different to existing details, and the old sheet cladding is being replaced with new sheet cladding. There is a wide body of evidence of in-service performance in New Zealand for timber joinery, with very few issues arising.
- 3.1.4. The existing timber windows in this case are pre-existing and will remain in place (with the exception of the new joinery in the living area), therefore section 112 applies.
- 3.1.5. The installation of new timber windows would require features such as sill flashings and jamb battens to be fitted. However, with reference to the requirements of section 112(1)(b)(ii), as sill flashings and jamb battens are not part of the existing joinery, it is not necessary to install those features in order to ensure that the junctions will continue to comply to the same extent as they did prior to the proposed alterations.

## **The authority**

- 3.2. The authority is concerned with how moisture will be prevented from getting into the junction between the existing joinery and the new building work (the cladding, building wrap etc) and if it gets in, how it will be managed. In addition to the correspondence referenced in paragraphs 2.7 and 2.9 they submitted, in summary:
  - 3.2.1. The authority accepts the timber joinery windows are existing and that they “can be assessed against s112”. However, their concern is with preventing moisture getting into the area between the existing timber windows and the new building work and, if it does so, how that moisture will be managed.
  - 3.2.2. The non-compliance of jamb and sill junctions could lead to moisture ingress which affects the new building work, being building wrap and the cladding, resulting in the new work not complying with the Building Code.
  - 3.2.3. If it is found that the current framing around the existing windows opening is not decayed as a result of the lack of the sill tray, and therefore is able to support the new cladding, the authority would accept the lack of a sill tray would not negatively impact compliance of the new building work.

- 3.2.4. Some synthetic wrap has been used elsewhere in the alterations and appraisals for synthetic wrap include the requirement for it to be taped into the openings. However, the authority would accept that where black paper has been used, tape flashings would be optional.
- 3.2.5. The email sent on 26 June 2024 is not a refusal and it remains open to the owners to provide further information on how the proposed details comply. Removing existing joinery units is not the only solution; there are “alternative means” by which the junctions can be appropriately detailed to enable the new building work to perform<sup>6</sup>.

## 4. Discussion

- 4.1. The matter for determination is the authority’s proposed decision to refuse to grant the amendment. In summary, the parties dispute the application of sections 17 and 112 to the existing building and proposed building work relating to details for the jamb and sill junctions for retained timber windows.

### The relevant legislation

- 4.2. Section 45(4)(b) of the Act sets out that amendments to building consents, other than minor variations, are made in the same manner as a building consent.
- 4.3. Section 49 sets out the conditions that must apply for granting a building consent; this also applies to the granting of an amendment:

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.

- 4.4. The test in section 49 relates to the overarching requirement of section 17, which states that “all **building work** must comply with the building code to the extent required by this Act” (emphasis mine).
- 4.5. The proposed building work involves alterations to an existing building therefore section 112 also applies. As the dispute does not relate to means of escape from fire or access and facilities for persons with disabilities the relevant part of this section is 112(1)(b) (emphasis mine):
- (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, –

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<sup>6</sup> Regarding the “alternative means”, the authority referred to previous Determination 2010/113: *Refusal to issue a code compliance certificate for the re-cladding of a house at 54 Levley Lane, Katikati*, issued 15 November 2010.

- (a) ...
- (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 application of section 17 and 112

- 4.6. As discussed in previous determinations<sup>7</sup>, section 17 requires compliance with the Building Code for **building work** while section 112 sets out compliance requirements for **the building** as a whole after the alterations.
- 4.7. As set out in paragraph 2.6, the new building work (which will form junctions with the retained timber windows) consists of the building wrap, the direct fix plywood and batten cladding, and the timber batten covering the junction between the cladding and existing timber windows.
- 4.8. The relevant Building Code clause is E2 *External moisture*, with the applicable performance criteria for the jamb and sill junctions in question being E2.3.2 and E2.3.5:
  - E2.3.2** Roofs and exterior walls must prevent the penetration of water that could cause undue dampness, damage to *building elements*, or both.
  - E2.3.5** 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.
- 4.9. I agree with the parties that the proposed details for the jamb and sill junctions are alternative solutions for establishing compliance with E2.3.2 and E2.3.5<sup>8</sup>. The information or evidence which might support an alternative solution proposal depends on the complexity of the design. It may include expert judgement, comparison to compliance documents, use of other documents (eg standards, technical trade literature, test results, determinations etc) and in-service history. In this case I consider in-service history of the detail is relevant.

<sup>7</sup> For example, paragraphs 5.17 and 5.24-5.25 of Determination 20122/017: *Regarding the refusal to issue a code compliance certificate for weathertightness remedial work on a townhouse* (30 September 2022).

<sup>8</sup> Section 19 of the Act sets out various pathways by which compliance with the Building Code can be established, with a building consent authority having to accept those pathways as establishing compliance. Where a proposal does not involve follow one of those pathways it is considered to be an 'alternative solution'.



- 4.10. The proposed building work and the jamb and sill junctions are comparable to the previous cladding arrangement, which consisted of a direct-fixed sheet cladding with timber battens covering the junction between the cladding and existing timber windows. While I have not been provided evidence about the performance of the existing jamb and sill junctions, this detail is comparable to jamb and sill junctions with proven use over for decades in dwellings similar to this one, being a single storey timber-framed dwelling in a low wind zone.
- 4.11. On this basis I am of the opinion the new building work will achieve compliance with E2.3.2 and E2.3.5 if constructed in accordance with the plans and specifications. This means that the test in section 49 has been met in relation to these details. Therefore, this is not a reason for which to refuse to grant the amendment.
- 4.12. Section 112, in this case specifically 112(1)(b), applies to the building as a whole after the alterations, including those building elements that will be retained. These include the timber wall framing, the existing timber windows, and secondary elements such as the timber sill packer (refer paragraph 2.6).
- 4.13. How the new components work together with the existing building elements is comparable to what was there before. As the new building work will not detrimentally affect the performance of the cladding system at the jamb and sill junctions, I conclude the building as a whole, after the alteration, will continue to comply to the same extent as prior to the alteration.
- 4.14. Accordingly, the requirements of section 112(1)(b)(i) or (ii) have been met in relation to the building. As such, this is not a reason to refuse to issue the amendment.
- 4.15. In conclusion, there is not a valid reason for refusal in relation to the compliance of the proposed building work or the building as a whole as shown in the details for the jamb and sill junctions.

## 5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I determine that there were not grounds on which to propose to refuse to grant the amendment to the building consent in relation to the jamb and sill details as shown on the plans.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 4 July 2025.

**Peta Hird**

**Lead Determinations Specialist**