

# Determination 2025/034

## Refusal to grant a building consent amendment for the installation of uPVC joinery

**8B Glenvale Place, Totara Vale, Auckland**

### Summary

This determination considers an authority's decision to refuse to grant an application for an amendment to a building consent for the installation of new uPVC joinery installed as part of building work to alter to an existing building. The determination considers the authority's reasons for the refusal.



**North elevation**



**West elevation**

**Figure 1: Installed uPVC joinery**

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, Andrew Eames, Principal Advisor Determinations, 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. M Eltantawi, the owner of the property who applied for this determination (“the owner”)
  - 1.2.2. M Prasad, the licenced building practitioner concerned with the relevant building work (“the designer”)
  - 1.2.3. Auckland Council, carrying out its duties as a building consent or territorial authority (“the authority”).
- 1.3. This determination arises from a decision by the authority to refuse to grant an amendment to a building consent (number BCO10361217)<sup>2</sup> for the installation of new uPVC<sup>3</sup> door and window joinery as part of an alteration to an existing building. The original building consent granted by the authority specified the installation of aluminium joinery.
- 1.4. The matter to be determined, under section 177(1)(b) and (2)(a), is the authority’s decision to refuse to grant the amendment to the building consent.
- 1.5. In deciding this matter, I must consider the reasons given by the authority in a written notice<sup>4</sup> it issued to the owner under section 50 regarding the compliance of the replacement uPVC joinery.

### Issue outside this determination

- 1.6. In correspondence to the Ministry dated 17 January 2025 the authority raised additional items of concern regarding compliance with Clause B1 *Structure*,

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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> Amendment A.

<sup>3</sup> uPVC: Unplasticized Polyvinyl Chloride.

<sup>4</sup> Dated 20 November 2024.

specifically “forces being applied through wind exposure”<sup>5</sup> and Clause F2 *Hazardous Building Materials*, regarding “the (safety) glass”. Neither of these items were included in the authority’s written notice when it refused the application to amend the building consent and have not been considered further.

## 2. The building work and background

- 2.1. The building work involved an alteration of an ‘existing garage’ to convert it to a habitable space (‘studio unit’) incorporating a combined dining, living room, kitchen and laundry space, a bedroom, and a separate shower room. The building is in a medium wind zone<sup>6</sup> and the external wall cladding is direct fixed horizontal fibre-cement weatherboards.
- 2.2. The existing garage had four windows, two ‘shutter doors’, and one single-leaf door, all of which are to be removed as part of the proposed building work. The new ‘studio unit’ is to incorporate six new uPVC windows and one uPVC sliding entry door all in lieu of the previously specified aluminium joinery. Refer to figure 1.<sup>7</sup>
- 2.3. On 28 February 2023, the authority granted and issued building consent BCO10361217. After that decision was made by the authority, the owner chose to replace the specified aluminium joinery with new uPVC joinery.
- 2.4. On 5 August 2024, the authority advised the owner to apply for an amendment to the building consent<sup>8</sup> for the new uPVC joinery.
- 2.5. However, sometime between 5 August 2024 and 16 August 2024 the owner installed the new uPVC joinery.
- 2.6. On 22 August 2024, the owner applied to the authority to amend the building consent to ‘Replace aluminium window and door with uPVC windows and door joinery’. The application confirmed the ‘means of compliance’ with the Building Code relied on (but was not limited to) Acceptable Solutions B1/AS1<sup>9</sup>, B2/AS1<sup>10</sup>, and E2/AS1<sup>11</sup>.
- 2.7. Between September and November 2024, the owner and authority exchanged correspondence, and met, to discuss matters related to the amendment application.

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<sup>5</sup> The actual concerns raised by the authority regarding compliance with clause B1 are summarised in paragraph 3.2.2 below.

<sup>6</sup> As noted on building consent plans A01 and A03, and New Zealand Standard NZS 3604:2011 *Timber-framed buildings*, section 5, table 5.4 (maximum wind speed of 37 m/s).

<sup>7</sup> Figure 1 has been reproduced from photographs attached to an authority inspection record dated 16 August 2024.

<sup>8</sup> Section 45(4)(b).

<sup>9</sup> B1/AS1, first edition, amendment 21, effective 2 November 2023.

<sup>10</sup> B2/AS1, second edition, amendment 12, effective 28 November 2019.

<sup>11</sup> E2/AS1, third edition, amendment 10, effective 5 November 2020.

- 2.8. However, on 20 November 2024, the authority refused to grant the application to amend the building consent.

### 3. Submissions

#### The owner

- 3.1. The owner submits and has relied on:

- 3.1.1. The authority's "refusal is unjustified, given the extensive evidence provided".
- 3.1.2. The uPVC joinery installed is the same product referred to in previous determination 2016/059<sup>12</sup> ie "the joinery in the determination is from the same manufacturer and for the same joinery".
- 3.1.3. Compliance of the uPVC joinery with various standards<sup>13</sup>, as well as independent test reports conducted by others on behalf of the manufacturer, and several SAI Global 'Standardsmark' licences issued to the manufacturer.<sup>14</sup>
- 3.1.4. A previous CodeMark certificate<sup>15</sup>, in the name of the uPVC joinery manufacturer regarding particular models and sizes of doors and windows, which references several performance clauses associated with B1 *Structure*, B2 *External Moisture*, E2 *External Moisture*, F2 *Hazardous building materials*, and H1 *Energy efficiency*.
- 3.1.5. Amended building consent plans B03 and B04<sup>16</sup> which include construction details of the head, jamb, and sill of the window and door openings.
- 3.1.6. A 'draft' (undated) CodeMark certificate to the joinery manufacturer regarding six specific models of uPVC joinery.<sup>17</sup> The certificate refers to specific performance clauses related to B1, B2, E2, F2, G4, G7 and H1.
- 3.1.7. However, on 21 July 2025, the owner provided a copy of a CodeMark certificate<sup>18</sup> referring to the joinery manufacturer as the certificate holder

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<sup>12</sup> Determination 2016/059 *Regarding compliance of uPVC window and door joinery installed to a house*, dated 2 December 2016.

<sup>13</sup> For example, New Zealand Standard NZS 4211:2008 *Specification for performance of windows and Australian / New Zealand Standard AS/NZS 4666:2012 Insulating glass units*.

<sup>14</sup> For example, licence numbers SMK41165 and 40451, issued by SAI Global Certification Services Pty.

<sup>15</sup> Original issue date 3 December 2018, version number 2 dated 6 March 2023. The certificate was withdrawn by the manufacturer in September 2023.

<sup>16</sup> Dated 8 August 2024, revision R1, the version accompanying the application to amend the building consent.

<sup>17</sup> It is not clear the relevance of this certificate in a 'draft' form.

<sup>18</sup> Number CMNZ25015, version 01, dated 14 July 2025. The date of registration on the Ministry's 'Product Certificate' register is 21 July 2025.

for six specific models of uPVC joinery.<sup>19</sup> The certificate refers to compliance of the uPVC joinery with performance clauses B1, B2, E2, F2, G4, G7 and H1.

## The authority

- 3.2. The authority's reasons for refusing to grant the application to amend the building consent are provided in a written notice to the owner dated 20 November 2024. The reasons are summarised as follows<sup>20</sup>:

- 3.2.1. **CodeMark certificate.** The authority is not required to accept the certificate as establishing a means of compliance "if the certificate is suspended, expired or not on the [Ministry's] register". The authority "has not considered the CodeMark which, according to [the Ministry] was withdrawn in September 2023".
- 3.2.2. **Clause B1 Structure.** Regarding the steel reinforcing to the joinery framing with steel straps and fixing system "[t]here is a lack of detailed specific engineering design calculations and PS1"<sup>21</sup>. The building consent application included information regarding "reinforcement" in the uPVC framing but "the test reports....[have] not been provided with New Zealand equivalence".
- 3.2.3. **Clause B2 Durability.** Claims "in the CodeMark cannot be relied on". The product manufacturer and product supplier have responsibilities under the Act "to provide the information or evidence".<sup>22</sup> "The determination does not mention the uPVC manufacturer" so "it is not reasonable to directly use the history of use" noted "in the determination" and the authority had "concerns about UV resistance". The product manufacturer or supplier have not provided examples that demonstrate uPVC can be used "in New Zealand" or provided "tests to determine [the] titanium dioxide content".
- 3.2.4. **Clause E2.3.2<sup>23</sup> and consequence of failure.** The "overseas" test "results only cover the joinery and glass and not the interface with the cladding". "The location of the joinery with little to no eaves with directly fixed cladding" means "any failure of the product [is] a high risk of damage to the building". It appears there are no "test results to demonstrate weathering around the joinery will comply with the building code".

<sup>19</sup> It is not clear if some or all of the windows and door installed by the owner are the same product models listed in the CodeMark certificate.

<sup>20</sup> The summary is based on the authority's "comparison with determination 2016/059" against the information provided by the owner in the application to amend the building consent BCO10361217.

<sup>21</sup> PS1: Producer Statement – Design.

<sup>22</sup> In the absence of any information to the contrary, I have assumed the authority was referring to section 14G and Part 4B of the Act.

<sup>23</sup> E2.3.2: Roofs and exterior walls must prevent the penetration of water that could cause undue dampness, damage to building elements, or both.

- 3.3. On 11 November 2024, the authority sent an email to the owner stating the “UPVC windows are located in a high-risk situation due to limited eaves, directly fixed cladding and consequence of failure (damage to timber framing with health/wellbeing consequences due to mould)”. The email included a “summary of findings” that identified several Building Code performance clauses<sup>24</sup>, and included comments’ on compliance (eg regarding issues with the design detailing around the ‘window joinery’).
- 3.4. In a letter to the Ministry dated 17 January 2025, the authority stated:
- 3.4.1. The previous determination “is of limited value” and “makes no reference to any specific manufacturer or type (other than uPVC)” and “the Applicant has failed to explain how they have used the previous Determination 2016/059 to support their application”.
- 3.4.2. The CodeMark certificate that “was submitted with the amendment to building consent application” was “withdrawn by the manufacturer in September 2023...prior to the Proposed Amendment to the Building Consent having being applied for”.
- 3.4.3. uPVC joinery is not included in E2/AS1, and the applicant failed to identify which parts of E2/AS1 he relied on or provided the information necessary “to support an alternative solution<sup>25</sup>”. Nevertheless, the authority “does not object to the use of uPVC joinery per se, provided that [the authority] can be satisfied on reasonable grounds that compliance with the Building Code has been demonstrated”.
- 3.4.4. Compliance with sections 17 and 49(1) have not been demonstrated, and consequently, the application to amend the building consent was refused under section 50.

## The designer

- 3.5. The designer submits in summary:
- 3.5.1. Copies of the details from another supplier of uPVC joinery were used to develop the details used in the amended building consent plans.
- 3.5.2. The manufacturer of the uPVC joinery provides “no specific [construction] details” including “fixing details”.<sup>26</sup>

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<sup>24</sup> For example, clauses B2.3.1 b) i) and ii), E2.3.2, and E2.3.3. However, I note it is only performance clause E2.3.2 that was referred to in the authority’s written notice dated 20 November 2024.

<sup>25</sup> An alternative solution is all or part of a building design that demonstrates compliance with the Building Code, but differs completely or partially from the Acceptable Solutions or Verification Methods.

<sup>26</sup> I accessed the manufacturer’s website on 11 June 2025 and noted information is available on the different types of uPVC joinery available, installation instructions, and drawn details for direct fixed cladding and an industry fixing guide, including for timber-framed buildings and different wind pressures.

- 3.5.3. He has relied on (in part) BRANZ Appraisal number 543 [2022] regarding uPVC joinery issued in the name of a different manufacturer.

## 4. Discussion

### Legislation

- 4.1. The test for granting a building consent (or amendment to a building consent) is set out in section 49(1), which provides:

#### **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.

- 4.2. Section 50 provides that if an authority refuses to grant an application for a building consent, it 'must give the applicant written notice of – (a) the refusal; and (b) the reasons for the refusal'.
- 4.3. In this case, the authority gave the owner written notice of the refusal, in its letter of 20 November 2024. The issue is whether the authority has fulfilled its obligation in section 50(b) to give reasons for the refusal.
- 4.4. Previous determinations have considered what is expected of an authority when refusing to grant a building consent,<sup>27</sup> and I hold the same views. The requirement to provide reasons in writing gives an applicant notice of the particular issues that need to be resolved.
- 4.5. Therefore, it is important an applicant is given sufficiently explicit, specific, clear and valid reasons why the authority considers compliance with the Building Code has not been met so the applicant can consider what is required to address the issues and obtain building consent. A generalised refusal is not sufficient for an authority to meet its obligations under section 50.

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<sup>27</sup> For example, Determination 2023/007 *Regarding the authority's decision to refuse to grant a building consent for alterations to an existing building* (28 March 2023) at paragraph 5.11, and Determination 2024/007 *An authority's refusal to grant a building consent for construction of a new dwelling and compliance of a proposed foundation design with Clause B1 Structure* (28 February 2024) at paragraphs 4.2 to 4.7 inclusive.

## The reasons for the refusal

### Previous CodeMark certificate

- 4.6. Section 19(1)(d) provides an authority must accept a **current** registered product certificate as establishing compliance with the Building Code if every relevant condition in that product certificate is met [my emphasis].
- 4.7. The authority notes the previous CodeMark certificate relied on by the owner was withdrawn by the manufacturer in September 2023, this being before the authority received the application to amend the building consent (on 22 August 2024). Therefore, the owner cannot rely on compliance with the Building Code being demonstrated pursuant to section 19(1)(d).

### Previous determination 2016/059

- 4.8. The parties have referred to previous determination 2016/059 and the similarities between that case and this one. However, a decision reached in a previous determination does not automatically establish compliance at another property where site specific characteristics and construction differences need to be factored in.
- 4.9. After comparing the information provided in support of determination 2016/059, and the information provided by the parties in this case, it does appear the uPVC joinery used similar uPVC extrusions from the same company, and the door and windows were manufactured by the same company. There are other similarities in terms of the height and timber-framed construction of the respective buildings, and their locations in medium wind zones.
- 4.10. However, there are also some important differences, for example, in terms of the types of the external cladding and how they are constructed, and the way in which the uPVC joinery is installed.<sup>28</sup>
- 4.11. Therefore, demonstrating compliance based (in part) on determination 2016/059 might be relevant when considering the uPVC joinery product, but not the building work to install the same into the exterior wall construction.

### Clause B1 Structure

- 4.12. In this case, the authority did not identify which performance clause(s) were relevant, and neither did it clarify what was meant by “New Zealand equivalence”. Further, as established in previous determinations, an authority may request a

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<sup>28</sup> The external wall cladding in determination 2016/059 was a brick veneer and horizontal fibre-cement weatherboards over drained and vented cavities. The external cladding in this determination is horizontal fibre-cement weatherboards direct fixed to the timber framing.



producer statement as an option, but it cannot require that one is to be provided.<sup>29</sup> Therefore, this reason given by the authority for refusing to grant the application to amend the building consent was not specific, valid or clear.<sup>30</sup>

### **Clause B2 Durability**

- 4.13. In this case, the authority did not identify which performance clause(s) was relevant.
- 4.14. Regardless, determination 2016/059 did consider compliance with clause B2 for the same uPVC joinery and reached the conclusion that compliance was met<sup>31</sup>; I have been provided with no additional information by the parties that would change my view for this case.
- 4.15. This reason given by the authority is not specific, valid or clear.

### **Clause E2.3.2**

- 4.16. The authority referred directly to non-compliance with clause E2.3.2; it provides *‘Roofs and exterior walls must prevent the penetration of water that could cause undue dampness, damage to building elements, or both’*.
- 4.17. The authority’s reasons for refusal in respect of E2.3.2 related to minimal protection being provided by roof eaves and a requirement for test results to demonstrate “weathering around the joinery”.
- 4.18. The extent of the roof eaves is one factor in assessing the ‘risk matrix’ score for each elevation of a building envelope and the type of external wall cladding to be constructed and whether it can be direct fixed to the framing or fixed over a cavity<sup>32</sup>. Although the method of constructing the external wall cladding (either direct fixed or over a cavity) affects how any joinery is installed, it does not automatically follow the extent of the roof eaves, on their own, has a direct impact on demonstrating compliance with the Building Code.
- 4.19. The roof eaves can affect, for example, the amount of external moisture being directed onto or around any door and window openings, but it is the construction of the exterior walls that must prevent the penetration of water that could cause

<sup>29</sup> For example, refer to previous determination 2021/023 *Regarding the purported refusal by an authority to grant a building consent for proposed new timber retaining walls* (dated 6 October 2021), paragraphs 4.9 and 4.10.

<sup>30</sup> To assist the parties, I note the amended building consent plans B03 and B04 dated 20 August 2024 do not specify any fixings (other than a general reference ‘to refer to window manufacturer for method of support and fixing’). Further, amended plan B03 dated 28 November 2024 does show several nail fixings for securing the timber lining around the window and door openings to the wall framing, and screw fixings to secure the uPVC extrusions to the timber lining; however, no specifications have been provided for these fixings. Therefore, I am of the view there is insufficient information provided in the plans accompanying the application to meet the test under section 49(1).

<sup>31</sup> See 2016/059, section 2.3 and paragraphs 6.4.4 and 6.5.2.

<sup>32</sup> Reference Acceptable Solution E2/AS1, tables 1 to 3.

undue dampness, damage, or both. It is unclear why the authority has singled out the eaves in isolation in this instance.

- 4.20. The owner has relied on compliance with Acceptable Solution E2/AS1 in his application to amend the building consent, however E2/AS1 does not include specific information on installing uPVC windows and doors. The installation details in this case are shown on the building consent plans B03 and B04 dated 8 August 2024; these include information on the installation of the windows and doors using head and sill flashings, flashing tape, air seals, sealant, and vertical scribes etc.
- 4.21. Acceptable Solution E2/AS1 refers to the use of aluminium joinery (see paragraph 9.1.10.1 of E2/AS1), therefore the use of uPVC joinery is an alternative solution. However, that does not automatically follow that testing “around the joinery” to “demonstrate compliance” is necessary.<sup>33</sup> It is for the owner to decide how they demonstrate compliance with the Building Code, and this may include any testing conducted in accordance with Verification Method E2/VM1 or other similar pathways; the authority cannot require a specific form of testing is conducted.
- 4.22. Nevertheless, to assist the parties, it is not clear if the authority considered the similarities between the details in the building consent plans (B03 and B04) against Acceptable Solution E2/AS1 (Figure 90), as well as the construction details available from the weatherboard manufacturer and manufacturer of the uPVC joinery.<sup>34</sup>
- 4.23. The authority’s reasons for refusal of the application to amend the building consent based on non-compliance with clause E2.3.2 were not clear or valid.

## 5. Conclusion

- 5.1. Although there may be grounds to refuse the application to amend the building consent BCO10361217<sup>35</sup>, the reasons for the refusal given by the authority were not specific, valid or clear.

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<sup>33</sup> Regardless, I note the authority did not indicate what tests it expected to be conducted.

<sup>34</sup> Similarly, although it appears the authority did consider aspects of the proposed design detailing around the window and door openings (refer to paragraph 3.3) it is not clear if the parties had considered the weathertightness design principles, including ‘The ‘4Ds approach’ (deflection, drying, drainage and durability) as explained in the document ‘External moisture - An introduction to weathertightness design principles’ published in August 2006 by the Ministry as guidance under section 175 (available at [www.building.govt.nz](http://www.building.govt.nz); accessed on 2 July 2025).

<sup>35</sup> For example, refer to the footnote accompanying paragraph 4.12 regarding the absence of a fixing specification.

## **6. Decision**

- 6.1. In accordance with section 188 of the Building Act 2004, I determine the authority did not adequately specify its reasons for refusing to grant the amendment to building consent BCO10361217. I therefore reverse the authority's decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 22 July 2025.

**Andrew Eames**

**Principal Advisor Determinations**