

# Determination 2025/040

**An authority's purported decision to refuse to grant a building consent in respect of a bamboo cladding system and the accompanying appraisal.**

**6 Parua Bay Drive, Kaukapakapa, Auckland**

## **Summary**

This determination considers an authority's purported decision to refuse to grant a building consent for a new dwelling with a proposed bamboo cladding system. The reasons for the purported refusal come from the authority's requests for further information and correspondence and relate to a BEAL appraisal certificate provided in respect of the bamboo cladding system.

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. A and C Loretz, as owners of the property (“the owners”)
  - 1.2.2. G Olivier, as an owner of the property and the licensed building practitioner concerned with the design of the relevant building work (“the designer”)
  - 1.2.3. Auckland Council, carrying out its duties as a territorial and building consent authority (“the authority”).
- 1.3. This determination arises from the authority’s purported decision to refuse to grant a building consent for a dwelling on the owners’ property. The authority considered that in respect of the proposed bamboo cladding system, which was an alternative solution<sup>2</sup> accompanied by a building product appraisal certificate, it could not be satisfied the system’s compliance with the Building Code had been established.
- 1.4. The matter being determined, in terms of section 177(1)(b) and (2)(a), is the authority’s purported decision to refuse to grant building consent BCO10387092 in relation to the compliance of a bamboo cladding system accompanied by an appraisal certificate.
- 1.5. In determining this matter, I will consider the authority’s reasons for its purported refusal, as far as they relate to the proposed bamboo cladding system, given its requests for information and in its additional email communication, all dated October 2024.
- 1.6. This determination does not consider the compliance of the bamboo cladding system with the Building Code, the adequacy of the appraisal certificate issued with respect to the cladding, or the processes undertaken to issue the certificate.

---

<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> Refer to paragraphs 4.6-4.7 regarding alternative solutions.

## 2. The building work and background

- 2.1. The owners' property is a lifestyle block in a rural-residential area north of Auckland. On 5 September 2024, the owners lodged a building consent application (BCO10387092) to construct a new single-level three-bedroom detached dwelling, comprising two wings connected by a hallway, to be built in two stages.
- 2.2. The dwelling was proposed to be clad in a mix of sealed masonry blocks, vertical profiled metal, fibre cement panels and a vertical bamboo weatherboard cladding system on a cavity. It is the documenting of the bamboo cladding system that is the subject of this determination.
- 2.3. The system comprised bamboo tongue and groove weatherboards installed vertically over 20mm fluted cavity battens, a 10mm rigid air barrier acting as the wall underlay to protect the timber framing and insulation within the wall cavity, and matching fascia boards.
- 2.4. The building consent application was accompanied by the manufacturer's technical specifications and an appraisal certificate for the bamboo cladding system. The appraisal certificate had been issued by product and system certification company BEAL, and was dated June 2023, with a stated expiry date of 31 March 2024 (although the designer states the certification company's website listed the certificate as current at the time it was lodged).
- 2.5. The appraisal certificate stated that, "when designed, installed and maintained in accordance with the statements and conditions of this Appraisal Certificate..." the system would comply with clauses B2.3.1(b) for durability and E2.3.2 for external moisture, among other clauses of the Building Code, as an alternative solution to compliance.
- 2.6. On 1 October 2024, the authority sent the designer a request for information (RFI) relating to (among other things) the bamboo cladding ("the first RFI"). The request stated that, under the heading of clause E2—External moisture, the authority "cannot accept" certificates from BEAL, and included a link to a building control update on the Ministry's website that it considered supported this position.<sup>3</sup>
- 2.7. I have not been provided with a copy of the designer's response to this first RFI.
- 2.8. On 10 October 2024, the authority sent a further RFI to the designer ("the second RFI"). This RFI expanded on the first RFI, stating "As [the bamboo cladding system] is an alternative solution, please provide testing report/certificates".
- 2.9. I have not been provided with a copy of the designer's response to this second RFI.

---

<sup>3</sup> The building controls update concerned a notification that BEAL, trading under a different company name at the time, had been suspended as a CodeMark product certification body and from all accreditation activities.

2.10. Various correspondence then passed between the authority, the designer, BEAL and the cladding supplier about the status of the appraisal certificate and whether or not it established compliance.

2.11. This included an email from the authority on 21 October 2024, which acknowledged that BEAL was able to “issue appraisal certificates”, but stated:

It is... important to note that:

- Product appraisals have no legal status under the Building Act that require a Building Consent Authority to accept them
- Product appraisals are not registered on the [Ministry’s] product certification register (because they are not issued under the Act).

2.12. The email went on to state that, where a consent application relied on an appraisal, the authority needed to be “satisfied on reasonable grounds” that the provisions of the Building Code will be met; “As the proposed cladding is an alternative solution it is the responsibility of the [designer] to provide evidence about how the product will comply with the Building Code requirements”.

2.13. The authority suggested “providing additional evidence demonstrating how the proposed bamboo cladding will comply with Building Code requirements as recommended on [the Ministry’s website] which could be considered in conjunction with the BEAL appraisal...”. The authority also suggested “providing in-service history” as evidence of the cladding system’s compliance, with a later email of the same date also suggested providing examples of whether the bamboo cladding system has been installed on houses in NZ which had complied with the 15-year durability requirement of B2.3.1(b).

2.14. BEAL and the cladding supplier emailed the authority on 21 and 22 October, respectively, both pointing to the supplied appraisal certificate as evidence that the bamboo cladding system complied. BEAL noted that the appraisal certificate covers the system’s in-service history, and the cladding supplier stated it considered the appraisal certificate to be an expert opinion demonstrating that the bamboo cladding system complied with the requirements of the Building Code.

2.15. On 23 October 2024, the authority sent a final email to the owners, designer, and BEAL requesting further information to address the following matters.

[The authority] is not at the point of being ‘reasonably satisfied’. The evidence provided for durability and the test result provided in support for the alternative cladding method have some apparent gaps, namely:

1. The long-term performance of the bamboo cladding in the New Zealand environment – UV light resistance. The coatings have a 5 year lifespan. Do coatings need to be re-applied every 5 years? Have the coatings on the product fixed to timber framing, been tested for durability?

2. History of use – 9 years and 45 years mentioned [on the appraisal certificate], but the supporting evidence is missing.

3. The test report does not appear to state the New Zealand standard that it is based on.

4. Tested details and shop drawings – given the product has been tested at room temperature, how has the gap between test and real-life conditions been addressed? Also, how close to reality are the tested details to construction details? And are field tests envisaged during the inspection process (post consent)?

2.16. This final email and the authority's two earlier RFIs together constitute its purported refusal to grant the building consent in relation to the bamboo cladding system.

2.17. Subsequently, the owners altered the building consent application to include a different cladding system, and this was granted by the authority on 13 November 2024.

### **3. Submissions**

3.1. In this case, the owners and designer, who is also an owner, have been represented by the same agent. The below submissions attributed to the owners includes the submissions received from this agent on behalf of the owners and designer (who is also an owner).

#### **The owners**

3.2. The owners believe the information provided with the building consent application in respect of the bamboo cladding system, particularly the appraisal certificate, demonstrates compliance with the Building Code and the application should not have been purportedly refused. Their submissions in summary are as follows.

3.2.1. In the authority's first RFI, in which it stated that it could not accept the supplied appraisal certificate as evidence of compliance, the authority was misidentifying product appraisal certificates with CodeMark certificates, stating that "There appeared to be a lack of understanding about the difference between [a] appraisal and a Code Mark certificate".

3.2.2. With respect to the authority's reasons for not being "reasonably satisfied" that the appraisal certificate established the cladding system's compliance, as set out its RFIs and final email of 23 October 2024, the owners stated "The applicant [of the building consent] was given no 'technical reasons' for not accepting the [product certification company's] appraisal certificate and the evidence of compliance that it contained", and to the owners' knowledge, the authority did not seek advice either internally or from the product certification company about "the status of an appraisal certificate".

- 3.2.3. The owners' state they understand many other authorities have approved the use of the bamboo cladding system, based on the appraisal certificate "without issue", and that the authority has accepted other appraisals made by BEAL in relation to other building projects in its area.
- 3.2.4. The designer indicated there was a 'verbal encounter'<sup>4</sup> with an officer of the authority claiming they were not going to approve the building consent with the proposed Bamboo Cladding system. The owner considered there was a belief from the authority, that BEAL certificates were inadequate to show compliance with the Building Code.

## The Authority

- 3.3. The authority did not make a substantive submission in response to the application for a determination. In correspondence to the Ministry, it stated that it did not refuse to grant the building consent that included the bamboo cladding, and that its emails of 23 October contained its "...requests for information relating to the cladding". The authority submitted that "the information was necessary for it to decide whether the cladding proposed would meet the requirements of the Building Code."

## 4. Discussion

- 4.1. The matter to be determined is the authority's purported decision to refuse to grant the building consent for the owners' dwelling in relation to the compliance of a proposed bamboo cladding system with the Building Code by way of an alternative solution using, in part, a BEAL appraisal certificate.

## Legislation

- 4.2. The provisions in the Act relating to building consents can be found in sections 40 to 52. Section 49 concerns granting a building consent and states:

(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. I note that under section 49 an authority is only required to be satisfied on reasonable grounds that the proposed building work will comply, not beyond all reasonable doubt.
- 4.4. Sections 45 and 48 relate to applying for and processing an application for a building consent, respectively, and establish the expected level of documentation to

---

<sup>4</sup> A phone call, undated.

be provided with an application. Section 48(2) allows an authority to require “further reasonable information” while a consent application is being processed to enable it to be satisfied that the consent will adequately demonstrate compliance with the Building Code.

- 4.5. Where there is inadequate documentation for an authority to be satisfied that compliance will be achieved, it is entitled to refuse to grant the building consent with reasons. Section 50 states that an authority must give an applicant written notice of both the refusal and the reasons for the refusal.
- 4.6. Establishing compliance with the Building Code is set out in Section 19, and states that an authority must accept building work’s conformance with certain solutions, being considered as ‘deemed to comply’ solutions, such as acceptable solutions, verification methods, and current registered product certificates (known as CodeMark certificates<sup>5</sup>).
- 4.7. However, these are not the only ways that compliance can be established. Building work can also be shown to comply with the Building Code by way of an alternative solution, which provides evidence about the performance of a particular design or product. This evidence can include appraisals or assessments of products.
- 4.8. In the current case, the proposed bamboo cladding system aims to achieve compliance with the Building Code as an alternative solution. The appraisal certificate issued by BEAL makes up part of the evidence provided to establish compliance, as does the cladding manufacturer’s technical information.
- 4.9. 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 done by an independent appraisal organisation (not the product’s manufacturer or distributor). An appraisal will look at a specific installation systems or processes and will recognise any limitations on a product’s intended scope of use.
- 4.10. It is important to note that this appraisal has no specific legal standing under the Act and do not have to be accepted by authorities. This differentiates them from CodeMark certificates, which as discussed in paragraph 4.6 are covered under section 19, and are registered by the Ministry. Appraisals can, however, form part of the evidence establishing compliance of a particular product or system.

---

<sup>5</sup> CodeMark is a voluntary product certification scheme, administered by the Ministry, which provides an easily understood way to show a building product or building method meets the requirements of the Building Code. A CodeMark certificate must be accepted by building consent authorities as demonstrating compliance with the Building Code, provided the certificate is current and the product or method is used in accordance with details noted on the certificate.

## The authority's requirements

- 4.11. Firstly, I note regarding the submissions at 3.2.4 about a phone conversation perceived as communicating a refusal to the owner - while I encourage discussion between applicants and the authority when they are considering a building consent, any communication regarding a refusal of a building consent and its reasons should be put in writing as required by section 50.
- 4.12. The authority's purported refusal of the building consent in this case is made up of its requests for further information and email correspondence with the owners', designer and BEAL in October 2024.
- 4.13. In its RFI letters of 1 and 10 October 2024, the authority initially stated that it could not accept certificates from BEAL and provided a link to the Ministry's website relating to CodeMark certificates. In its second RFI, the authority clarified that as the system was an alternative solution, it required "testing report/certificates".
- 4.14. As discussed above, under section 49, an authority must consider when making a decision to grant a building consent whether, when the building work is carried out in accordance with the plans and specifications, it will comply with the Building Code. An appraisal is one form of evidence to demonstrate this. It can provide a technical opinion as to how a particular product or system complies in New Zealand environments, supported by testing, assessment, and verification.
- 4.15. While an authority can consider whether the person providing an appraisal has a relevant background, qualifications, processes and quality assurance systems in place to be able to make the appraisal, the decision should not be based solely on the identity or perceived credibility of the individual or organisation. Such decisions require a thorough and objective evaluation of the underlying evidence and context and identify the specific perceived deficiencies in the evidence.
- 4.16. As discussed in previous determinations<sup>6</sup>, an authority's reasons for refusal under section 50 should clearly state why it does not believe particular building work will not comply, so the applicant understands and can rectify the issue if they wish.
- 4.17. In this case, the authority's requests on 1 and 10 October, while made under a heading of "E2—External Moisture", do not indicate what concerns the authority had in relation to the performance criteria in clause E2, which the alternative solution needed to comply with, so that the applicant could provide a sufficient response.
- 4.18. The second RFI of 10 October did provide some form of clarification, in stating that the authority was assessing the cladding system as an alternative solution and

---

<sup>6</sup> For example, Determination 2021/027 'Regarding the authority's refusal to grant building consents for the construction of new residential dwellings' (16 December 2021) at paragraph 5.7, and 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.



required additional information to support the evidence already provided. The authority was entitled to request this information, as it was not required to accept the appraisal certificate on its own. However, because the authority did not specify where its concerns around non-compliance lay, it is difficult for the owners to know exactly what additional information would meet the authority's requirements.

- 4.19. The owners have also indicated they consider the email from the authority on 23 October 2024 to constitute the remainder of its purported refusal decision. In this email, the authority stated that it considered the evidence provided for the alternative solution was lacking information to establish compliance with the durability provisions of the Building Code (clause B2). It cited four points where it considered there were "gaps" in the evidence, namely how the bamboo cladding system performed in the New Zealand environment, particularly the cladding coatings when exposed to high UV light; the supporting evidence for the history and durability of the system noted in the appraisal certificate; testing in relation to New Zealand standards; and the reliability of the product testing against real-life conditions and construction methods.
- 4.20. As discussed above, appraisals are technical opinions, which are supported by testing, assessment and verification of Building Code compliance. Where an authority has concerns about a certificate or considers it does not sufficiently demonstrate compliance with a particular clause, and the applicant is not able to provide information to satisfy the authority's requests for further information, the authority is entitled to refuse to grant the building consent, in writing, with reasons.
- 4.21. Considering the two RFIs and the later email together, I consider the authority did not clearly state why it considered the bamboo cladding system would not comply, so the applicant could rectify the issue. Notably, the authority did not reference any specific performance criteria that it believed the alternative solution did not comply with, and it was inconsistent about which Building Code clause it was concerned about, as the RFIs indicated clause E2 while the email discussed clause B2.
- 4.22. To assist the parties further, I do consider the authority's email of 23 October with the four listed gaps and the information the authority has indicated it would like to see to address these, does go along way to explaining its concerns in relation to the evidence provided, however was at odds with the requests for information, leading to a lack of clarity and specificity in the purported refusal.
- 4.23. Accordingly, I conclude that the authority did not provide clear reasons for its purported refusal of the building consent in relation to the bamboo cladding system as required by section 50.

## 5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I determine the authority provided insufficient reasons to purportedly refuse to grant building consent

BCO10387092 in respect of the bamboo cladding system and I therefore reverse the authority's purported decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 12 August 2025.

**Andrew Eames**

**Principal Advisor Determinations**