BUILDING PERFORMANCE

Determination 2025/051

Compliance of an altered timber retaining wall with Clause B1 *Structure* and an associated surface water management system with Clause E1 *Surface water* for protection of other property

50A, 52 and 52A Jackson Terrace, Ranui, Porirua

Summary

This determination considers whether a retaining wall on two properties complies with the provisions of Building Code Clause B1 *Structure* following strengthening work and additions, and whether an associated surface water management system complies with Clause E1 *Surface water* for the protection of other property.

Figure 1: The retaining wall (left) and surface water management system (right)

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.

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").[1]

1.2. The parties to the determination are:

1.2.1. AJ and NR Brunton, the owners of other property at 52 Jackson Terrace and one of the applicants for the determination ("the owners of 52")

1.2.2. MM and RYN Shariff, the owners of the part of the retaining wall at 50A Jackson Terrace and one of the applicants for the determination ("the owners at 50A")

1.2.3. Main Will Limited, the owner of the part of the retaining wall at 52A Jackson Terrace ("the owner at 52A")

1.2.4. Porirua City Council, carrying out its duties as a territorial authority or building consent authority ("the authority").

1.3. I consider J Devine ("the structural engineer") is a person with an interest in this determination, as the engineer responsible for the design and construction monitoring and who provided a Producer Statement – Construction Review ("PS4") in relation to the building work for a retaining wall.

1.4. The matter to be determined, under section 177(1)(a), is the compliance of the timber retaining wall at 50A and 52A Jackson Terrace, following strengthening work and additions to the original retaining wall[2], and compliance of the associated surface water management system in regard to protection of other property. The determination considers:

1.4.1. The compliance of the retaining wall at 50A and 52A Jackson Terrace with Clause B1 *Structure,* including for the purpose of protection of other property, being 52 Jackson Terrace.

1.4.2. The compliance of the surface water management system located above the retaining wall with E1 *Surface water* for protection of other property, being 52 Jackson Terrace.

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

[2] References to "the retaining wall" are to the wall following the building work in 2018, with the references to the wall prior to the building work being identified as "the original retaining wall".

1.5. As part of the determinations process, the parties were invited to make submissions on the compliance matters. I did not receive substantive submissions from the owners of 50A and 52A Jackson Terrace, the authority, or the structural engineer. The submissions and comments I have received include those from the owners of 52 Jackson Terrace and the authority respectively, which relate to either the compliance of the retaining wall and/or the associated surface water management system and these are referred to at the relevant points within the discussion.

1.6. I acknowledge that there have been other concerns raised by the parties and their agent which are outside the scope of the matter being determined. In determining this matter, I have not considered decisions made by the authority in relation to the building consent and code compliance certificate[3] for the construction of the dwelling and associated work at 52A Jackson Terrace, or decisions made in relation to the Resource Management Act.

2. The building work

2.1. In 2009, a subdivision was completed to create four new allotments being 50, 50A, 52 and 52A Jackson Terrace. The subdivision created a right of way easement ("ROW") over 50A Jackson Terrace to allow for access to the existing dwelling at 50 Jackson Terrace and the vacant allotment at 52A Jackson Terrace. Over the allotments, the land falls from west to east, with the properties 50A and 52 in the east being relatively flat land compared to the slope on 52A (figure 2).

2.2. Around the same time, a retaining wall ("the original retaining wall") running in a north-south direction, was constructed on the eastern boundary of 52A Jackson Terrace.

2.3. The original retaining wall appears to have been less than 1m in height with 150mm-diameter timber posts spaced approximately 1.5m apart. Timber lagging was installed horizontally behind the posts to retain the earth. The construction work carried out behind the wall at this time to manage any subsurface water is unknown.

[3] Sections 116A and 112 would be relevant for the authority to consider in relation to subdivision affecting a building and a building consent application for the alteration of the existing retaining wall. However, as this is outside the scope of this determination, I have not considered these sections of the Act.

Figure 2: Site Plan of 50A, 52, and 52A Jackson Terrace, including the locations of the building work (not to scale)

2.4. In 2018, during construction of the new dwelling 52A, it was identified that strengthening and additions were required to the original retaining wall. The structural engineer provided a construction detail (figure 3) specifying new 150 mm diameter timber poles at 1.1 metre centres "to fit in between existing poles". These were to be set in 400mm diameter concrete piles to a minimum depth of 1.3m, supporting the existing 200mm x 50mm lagging to a height of 1.1m. Behind the lagging, there was to be drainage metal above and around a 100mm diameter drainage coil.

2.5. The extent of the work to alter the original retaining wall was strengthening along the full length adjacent to 52 Jackson Terrace and a maximum of 2 metres horizontally into 50A Jackson Terrace. The remainder of the wall constructed to the north along the ROW in 50A Jackson Terrace was a new extension to the structural engineer's specifications.

2.6. Along with the additional timber poles and wall extension, one to two new lagging boards (depending on location along the wall), of approximately 250mm in width, were added above the existing lagging to increase the retained height. A fence extending above the wall (not designed or specified by the structural engineer) was fixed to the new and existing lagging (figure 1).

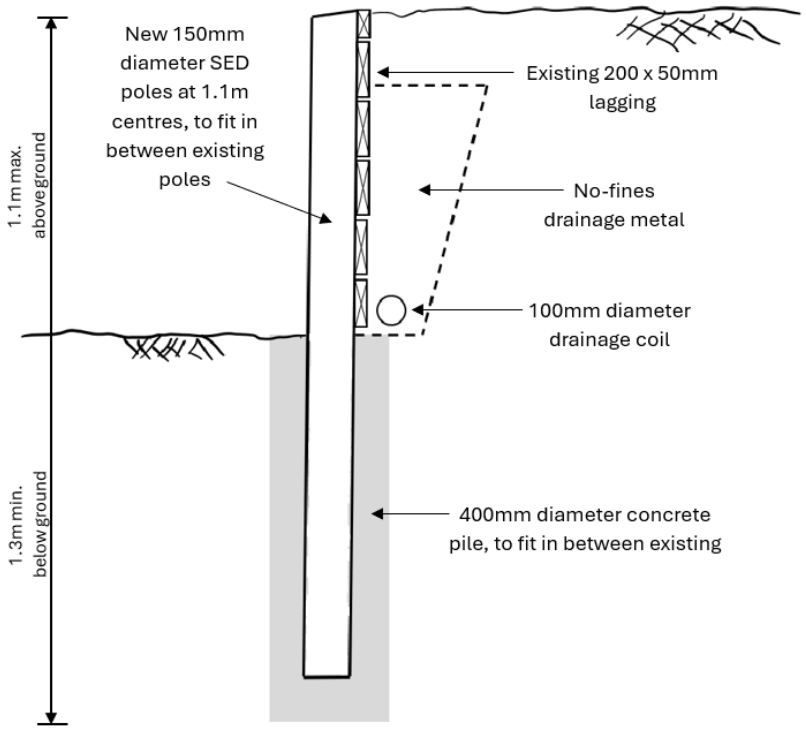

Figure 3: Structural Engineer detail for the strengthening and addition to the original retaining wall (not to scale)

2.7. The driveway providing access to 52A Jackson Terrace was finished with concrete, from the southeast corner of 52A Jackson Terrace along the ROW to the northwestern corner of 50A Jackson Terrace. Along the eastern edge a new surface water management system was constructed (figure 4). This includes:

2.7.1. A shallow concrete dish channel along the top edge of the retaining wall, to collect and concentrate surface water runoff from the building work at 52A Jackson Terrace and from the ROW on 50A Jackson Terrace.

2.7.2. A sump to collect and dispose of the surface water collected by the dish channel. The sump is located at the midpoint of the retaining wall in the northeast corner of 52A Jackson Terrace, being the low point along the north-south concrete driveway for 52A Jackson Terrace.

2.7.3. Within 52A Jackson Terrace, the site falls towards the east-northeast, that is towards the dish channel and retaining wall. The section of the ROW within 50A Jackson Terrace falls to the south. The surface water management system, including the sump, is therefore collecting surface water from both the building work at 52A and area of concrete driveway on 50A Jackson Terrace. The sump's disposal location is unknown.

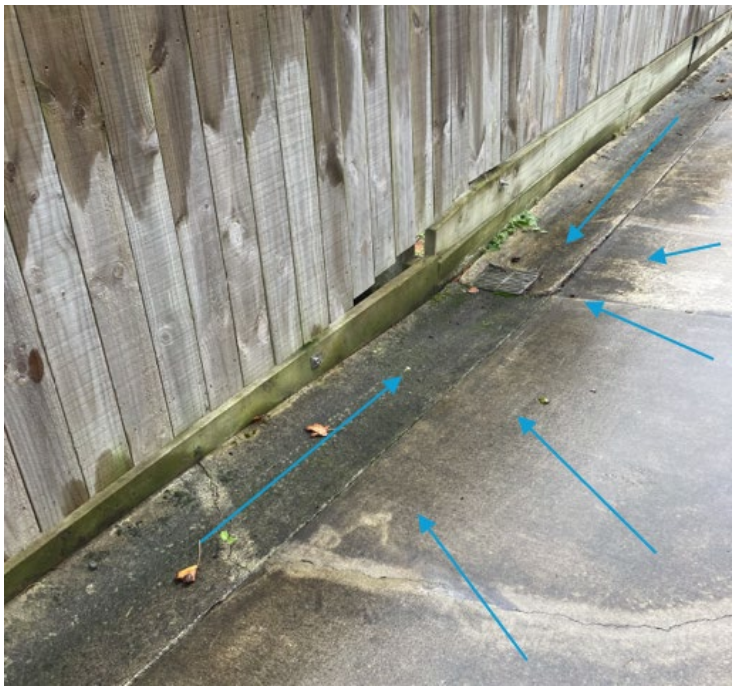

Figure 4: Surface water management system dish channel falling from two directions to the disposal sump

3. Background

3.1. In November 2017, a building consent was issued by the authority for construction of a new dwelling at 52A Jackson Terrace. The consent documentation included plans for two retaining walls at the property, one to the west of the proposed dwelling and the other beneath the dwelling ("the western retaining walls"). The documentation did not show the original retaining wall on the eastern boundary or any proposed work relating to it. The issued building consent noted a resource consent was required in relation to the proposed driveway and parking on the property adjacent to and above the original retaining wall.

3.2. A resource consent was granted on 27 April 2018 with the following specification being part of the proposal in the approved resource consent for 52A Jackson Terrace:

> A 1m high barrier is proposed to be constructed on top of the existing retaining wall, which has a maximum height of just under 1m and is situated on the eastern side of the subject site [ie 52A Jackson Terrace] and right of way over 50A Jackson Terrace. It is proposed to form the currently unsealed portion of the right of way servicing the subject site with a 3m wide concrete surface and **to strengthen the existing retaining wall** along the eastern side of the right of way and subject site so that it is capable of accommodating vehicle surcharge. [My emphasis]

3.3. The structural engineer, who was involved in the design and construction monitoring of the western retaining walls in the building consent, produced the construction detail dated 16 July 2018 for the "strengthening of [the original] retaining wall parallel to driveway". There is no record of this information having

been provided to the authority as an amendment to the building consent or as a new building consent application.

3.4. The authority carried out two inspections for the building consent, on 21 August and 10 September 2018, where notes regarding retaining walls on 52A Jackson Terrace were made. While the inspection notes discuss the information required from the structural engineer in respect of retaining walls, the photos attached to the inspections are of the western retaining walls. While one inspection did include a photo showing that the authority sighted a plan denoting a retaining wall along the eastern boundary with 52 Jackson Terrace, the photo was not of the entire plan and it is unclear whether this was an approved building consent plan. No notes were made in these first two inspections about any building work to the retaining wall on the eastern property boundary having been carried out.

3.5. On 12 September 2018, the authority inspected drainage in the location of the proposed retaining wall addition on 50A Jackson Terrace as a result of "neighbouring properties [sewer system] connection also damaged during drilling ..." and made other notes in relation to the western retaining walls.

3.6. A subsequent inspection by the authority on 27 September 2018 confirmed pile holes for the retaining wall along the eastern boundary had been drilled and requested in its notes to "[p]lease confirm proposed driveway retaining wall is to be constructed under engineer supervision and has building consent…". This note does not appear to have been addressed throughout the remainder of the authority's inspections or correspondence.

3.7. Concurrently, correspondence was occurring between the construction company and the authority with some input from the engineer. However, this only related to the western retaining walls.

3.8. On 28 September 2018, an associate on behalf of the structural engineer inspected the building work being carried out for the retaining wall post holes, prior to the concrete being poured, and made the following notes. There are no records of the structural engineer or their associate observing any subsequent construction work in relation to the retaining wall.

> …
>
> 3. About half of the retaining wall has been constructed at this point. A few poles had been placed in the holes but they were not braced yet.
>
> 4. Piles were drilled to the correct diameter and at the correct centres as per detail sent through on 16/07/18. The depths are much deeper than specified on the detail as it was advised by the contractor that the piles were to be below the invert of the public drain [running north-south through the rear yard of 52 Jackson Terrace]. There [sic] piles depths are about 2.5m.

...

7. The remainder of the retaining wall is to be constructed in a similar manner.

3.9. The authority continued its standard inspections of the dwelling, with the same wording appearing on all records: "engineer's site report required" for "all items mentioned in site inspection".[4]

3.10. The structural engineer issued a PS4 on 30 April 2019 in respect of the "new house" at 52A Jackson Terrace and the "authorised instructions / variation(s)... additional retaining wall parallel to driveway (dated 16/07/2018)... have been issued during the course of the works".

3.11. The first final inspection by the authority occurred on 30 May 2019 with the only note relating to the retaining walls being about falls greater than 1m. On 4 July 2019, a second final inspection resulted in a 'pass' with no mention of the retaining wall, and the code compliance certificate for the building consent was subsequently issued.

3.12. In the years following the construction of the dwelling at 52A and the work carried out to the retaining wall, concerns about the performance of the retaining wall arose and various investigations into the issues began in 2024.

3.13. In August 2024, a builder undertook a site inspection and completed an inspection report ("the builder's report"), dated 14 August 2024, with the following relevant findings:

3.13.1. The full height/new posts are leaning away from the vertical (towards the lower property) by between 6.8 – 8.9 degrees along the length of the retaining wall, when the "standard requirement at time of construction was… 4 [degrees] leaning into [the] supported land".

3.13.2. There are gaps in the lagging boards, particularly between the top of the existing boards and the bottom edge of the new board/s (which were added to increase the height of the retaining) and at the base of the retaining wall.

3.13.3. The dish channel was not cast as one piece and "was not tied to the driveway by reinforcing starter bars. The water runs [off] the driveway and runs into the gap created when the [retaining] wall has moved and separated from the [dish channel]."

[4] The authority undertook multiple 'site' inspections, and it is unclear whether one or all were being referenced.

3.13.4. Cracks in the concrete driveway and gaps/voids can be seen under and between the concrete driveway and dish channel in multiple locations, with a vertical displacement between the driveway and dish channel in the southeast corner of 52A Jackson Terrace.

Figure 5: Separation of the dish channel of the surface water management system (left) and leaning posts (right)

3.14. Subsequently, the owners of 52 and the owners at 50A, through the builder, engaged a draughting and engineering company to complete "a high level assessment of the retaining walls [sic] beside the driveway at 52A Jackson Terrace". The company's engineer undertook a site inspection on 23 September 2024 and produced a subsequent report on 29 January 2025 ["the 2025 report"]. This assessment included a visual inspection of the retaining wall and scala penetrometer testing "to verify the quality of the soil behind the retaining walls [sic]", and references both the structural engineer's design detail and the "history and recorded performance" of the wall from the builder's report. The 2025 report noted:

> …the walls have been observed to already lean forward…
>
> … [d]rainage is not designed or constructed properly as some Stormwater is going to the adjacent properties. Gaps between the concrete stormwater channel and the driveway is allowing water to enter the wall.

3.15. The 2025 report concluded:

> the overall performance of the wall is poor for its relatively young age (<6 years) and it is likely not constructed as per the original design… or in accordance with sound practices in construction of retaining walls.

…

If the wall is not remediated soon, it is likely to sink further ...

3.16. Following the builder's and the 2025 reports, on 16 January 2025 a site report was written by the structural engineer. While the site report commented "…that the initial issue, that the retaining wall was failing, has been concluded…", among other matters, it also noted the following issues, with additional remediation options:

3.16.1. "The dish drain to the driveway at 52A Jackson Terrace has settled due to it being placed on top soil."

3.16.2. "The water discharging from the driveway at 52A Jackson Terrace onto the rear yard of 52 Jackson Terrace should be resolved with the repaired dish drain…".

3.16.3. "The concrete slab adjacent to the sump [in the northeast corner of 52A Jackson Terrace] is cracked and a segment … is able to move under pedestrian movement."

3.17. Subsequently, in March 2025 the application for a determination was lodged. Advisors of the Ministry undertook a site visit to the properties and observed the following:

3.17.1. There is active moisture/water seepage through the retaining wall lagging at various heights, with full widths of boards being damp in some places.

3.17.2. There is active water seepage under the bottom lagging board along the length of the retaining wall and ground saturation on the land at 52 Jackson Terrace.

3.17.3. Posts along the length of the retaining wall are leaning away from the vertical, towards other/lower property.

3.17.4. The way the contours of the land run, the sump in the northeast corner of 52A Jackson Terrace, at the low point along the north-south concrete driveway, collects surface water from a significant area across both 52A Jackson Terrace and the ROW on 50A Jackson Terrace, as well as a portion of run-off from the driveway accessing 50 Jackson Terrace where it intersects with the ROW at the northern end.

3.17.5. The shallow form of the dish channel relies in part on the fall of the driveway within 52A Jackson Terrace and the ROW on 50A Jackson Terrace to direct the surface water to the sump.

3.17.6. There is evidence of cracking and slumping in the concrete driveway, particularly in the northeast corner of 52A Jackson Terrace near the low point, with separation between the concrete driveway and the dish channel.

3.17.7. There is a missing section of dish channel at the south end of the surface water management system within 52A Jackson Terrace, leaving exposed earth behind the retaining wall. There has also been a hole dug against the back of the retaining wall in this location. I assume both are from other onsite investigations.

4. Discussion

4.1. The matter to be determined is the compliance of the retaining wall, following strengthening work and additions, at 50A and 52A Jackson Terrace with Clause B1 *Structure*, including the protection of other property at 52 Jackson Terrace, and the compliance of the associated surface water management system with Clause E1 *Surface water* in relation to protection of other property, being 52 Jackson Terrace.

4.2. While there are two separate matters of compliance they are interconnected in that the performance of the surface water management system with clause E1 in turn affects the performance of the retaining wall with clause B1, and vice versa.

Legislation

4.3. Section 17 requires all building work must comply with the Building Code to the extent required by the Act, and the Building Code sets out the performance criteria for the assessment of building work.

4.4. Section 7 of the Act defines 'other property' as:

> (a) means any land or buildings, or part of any land or buildings, that are –
>
> (i) not held under the same allotment; or
>
> (ii) not held under the same ownership; and
>
> (b) includes a road ...

4.5. The objectives of clause B1 and clause E1 are to, in part, protect people on the same property as the building and to protect other property.

> **B1.1** The objective of this provision is to:
>
> (a) safeguard people from injury caused by structural failure,
>
> (b) …
>
> (c) protect other property from physical damage caused by structural failure.

> **E1.1** The objective of this provision is to:
>
> (a) safeguard people from injury or illness, and other property from damage, caused by surface water, and…

4.6. In considering the compliance of the retaining wall and surface water management system, the building work must demonstrate compliance with the relevant performance criteria and by doing so, the objective and functional requirement of the Building Code clause will be achieved. Therefore, I will assess the compliance of the building work against the relevant performance criteria.

Compliance with Clause B1 *Structure*

4.7. Between the two applicants, being the owners of 52 and 50A, they believe the retaining wall as constructed is failing and therefore does not comply with performance criteria B1.3.1 and B1.3.3. Should the retaining wall not comply with these performance criteria, it will not achieve the functional requirement of B1.2, in that buildings must withstand a combination of loads likely to be experienced during construction or alteration and throughout their lives, nor the objective of B1.

4.8. The relevant performance criteria that must be met are:

> **B1.3.1** Buildings, building elements and sitework shall have a low probability of rupturing, becoming unstable, losing equilibrium, or collapsing during construction or alteration and throughout their lives.
>
> **B1.3.3** Account shall be taken of all physical conditions likely to affect the stability of buildings, building elements and sitework, including:
>
> (a) self-weight,
>
> (b) imposed gravity loads arising from use,
>
> (c) …
>
> (d) earth pressure,
>
> (e) water and other liquids,
>
> …

4.9. With respect to the term "low probability" in clause B1.3.1, I refer to and continue to agree with the reasoning in *Auckland City Council v Selwyn Mews Ltd*[5] ("*Selwyn Mews*"):

> [47] ... in cl B1.3.3. "a low probability of becoming unstable or collapsing" means that the risk of such events is no more than an appreciable risk (as distinct from a slight risk) or is at most a low risk (as distinct from a very low risk); ...[6]

4.10. As discussed in previous determinations such as Determination 2015/003,[7] I consider "other property" is not limited to the protection of buildings and the land itself must also be protected from the likelihood of damage. With respect to the "likelihood of damage" I refer to the reasoning in *Selwyn Mews*:

[5] District Court Auckland CRN2004067301-19, Judge McElrea, 18 June 2023, [2003] DCR 671.
[6] I note the judgment refers to clause B1.3.3, but the quoted and abbreviated text is in clause B1.3.1.
[7] Determination 2015/003 *Compliance of a retaining wall between two properties* (10 February 2015).

> [47] ... in cl B1.3.6 "the likelihood of damage to other property" refers to a real and substantial risk of such damage.

4.11. The building elements[8] that provide structural stability for the building (the wall in this case), are required under Clause B2 *Durability* to satisfy the performance criteria of the Building Code for no less than 50 years.

4.12. The retaining wall is required to have a low probability of rupture, loss of equilibrium or collapse under B1.3.1. The 2025 report provides a comment about the soils behind the wall being "…likely to sink further…" and the evidence provided in other reports and seen during the site visit shows resultant cracking in the concrete driveway above the retaining wall, allowing surface water into the soils behind the wall. While retaining walls of this type have allowance for subsurface water placing lateral pressures on the structure, soils with an increased consistent saturation over significant periods of time create an increased lateral loading on the structure of the wall which will contribute to its eventual collapse.

4.13. The evidence in this case demonstrates that the retaining wall was constructed near vertical, and I consider the evidence of the posts now being up to 170mm from the vertical in various locations along its length demonstrates the wall is deforming and losing equilibrium.

4.14. Should the retaining wall remain as is, I consider the combined loadings from the lateral saturated soil pressures, vehicle movements above, and the self-weight of the retaining wall will progress the existing deformation and loss of equilibrium, leading to the probability of the retaining wall rupturing and/or collapsing throughout its life being greater than low.

4.15. Given the location of the retaining wall adjacent to 52 Jackson Terrace, the collapse of the southern section of wall will cross the boundary line into other property and physically damage the land, being material spilling onto the other property.

4.16. Therefore, I consider the retaining wall, as constructed, does not comply with clause B1.3.3 in regard to the physical conditions likely to affect the stability of the retaining wall, and does not comply with the requirements of clause B1.3.1 in having a low probability of rupturing, losing equilibrium or collapsing throughout its life.

Compliance with Clause E1 *Surface water*

4.17. The owners of 52 Jackson Terrace have submitted that surface water originating from 52A Jackson Terrace is entering their property and believe protection of their property from the nuisance of this surface water, as required by clause E1, is not being provided.

[8] 'Building element' is defined in clause A2 of the Code as 'any structural or non-structural component and assembly incorporated into or associated with a building. Included are fixtures, services, drains, permanent mechanical installations for access, glazing, partitions, ceilings and temporary supports'.

4.18. The relevant performance criteria in clause E1 requires:

> **E1.3.1** Except as otherwise required under the Resource Management Act 1991 for the protection of other property, surface water, resulting from an event having a 10% probability of occurring annually and which is collected or concentrated by buildings or sitework, **shall be disposed of in a way that avoids the likelihood of damage or nuisance to other property**. [My emphasis]

4.19. Previous determinations[9] have considered the term 'nuisance' as it relates to E1.3.1 and I agree with the approach in those determinations. 'Nuisance' has a common law meaning which is 'the unreasonable interference with an individual person's use or enjoyment of land or of some right connected with that land'. Whether a nuisance is unreasonable goes beyond the occurrence of surface water on other property being merely minor or trivial, in that it must be considered in relation to factors such as locality in which it occurs, and the frequency, duration and intensity of the interference.

4.20. In complying with clause E1.3.1, and other performance criteria, the building work will in turn satisfy the functional requirement of E1, being that buildings are constructed in a way that protects people and other property from the adverse effects of surface water, as well as the overall objective of the clause E1.

4.21. Above the retaining wall on 50A and 52A Jackson Terrace, the surface water management system has been constructed to collect and dispose of surface water resulting from the building work associated with the construction of the dwelling at 52A Jackson Terrace.[10]

4.22. Considering the evidence as to how the system has been constructed, I am of the opinion the dish channel is inadequately sized and formed, and it is not sufficient to collect the surface water from an event having a 10% probability of occurring annually that is collected and concentrated by the building work on 52A Jackson Terrace. The dish channel is shallow and collects little water before overflowing, causing surface water to over-top of the retaining wall and flow down into the neighbour's property. Therefore, I consider the surface water management system as constructed above the retaining wall does not perform to the level required by E1.3.1 with regard to avoiding likelihood of damage or nuisance to other property.

4.23. However, there is an ongoing structural failure of the retaining wall and, as I have already discussed in paragraph 4.12, the surface water system is also not functioning as intended when it was constructed.

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[9] Such as Determination 2015/059 *Regarding the compliance of proposed building work …, in respect of adjacent other property* (12 August 2015), and Determination 2010/059 *Disposal of surface water collected behind a retaining wall* (12 July 2010).

[10] I note that in addition to the building work associated with the construction of the dwelling at 52A Jackson Terrace, the north end of the dish channel receives water from concreted areas of the ROW where it connects to driveway to 50 Jackson Terrace.

4.24. In their submission, the owners of 52 Jackson Terrace have submitted the dish channel and concrete driveway were poured separately and there was no reinforcing included to connect the two elements so "…the two surfaces acted independently".

4.25. In addition to this, the authority has also commented:

> The final inspection site notes [for the building consent] approve the 'Stormwater and site drainage' and gallery photographs show that a channel and sump were in place to collect surface water runoff [but the authority acknowledges] that sometime after the final inspection, the Stormwater channel on the driveway edge slumped and became ineffective.

4.26. The evidence provided as well as what has been seen on the site visit shows that the deformation of the retaining wall has caused more space behind the wall for soils to settle and slump, causing cracking in the concrete driveway, and separation between the driveway and the dish channel, and between the dish channel and the top of the retaining wall.

4.27. The failure of the retaining wall is contributing to the failure of the surface water management system by limiting the amount of surface water able to reach the dish channel to then be appropriately disposed of to the sump. The dish channel is no longer collecting the surface water from the building work associated with the construction of the dwelling at 52A Jackson Terrace, with that water instead saturating soils behind the retaining wall before seeping out along the length of the front of the retaining wall onto 52 Jackson Terrace.

4.28. While some subsurface water seepage through a retaining wall of this type is a normal and anticipated occurrence, excessive seepage can result in a nuisance for owners of other property. The evidence indicates that the seepage along the retaining wall is collecting on the back lawn of 52 Jackson Terrace, which is the primary outdoor area for the owners, and causing this area to be unusable following rainfall events.

4.29. Given the evidence that the dish channel is no longer collecting the surface water from 52A Jackson Terrace, the intensity and duration of the surface water being present on 52 Jackson Terrace would be significant, and during wet times of year such as winter, it would likely not dry out to allow for the owners of 52 to enjoy their outdoor space.

4.30. I therefore consider the surface water management system is not performing in a way that protects other property, namely 52 Jackson Terrace, from the adverse effects of the surface water.

4.31. The owners of 52 Jackson Terrace have also raised concerns about the performance of the subsoil drain behind the retaining wall and the drainage metal around it. Evidence shows the drain is visible beneath the bottom lagging board with drainage metal appearing to have been eroded away. I consider this has occurred due to the

saturation of the back-filled soils from the failed surface water management system above and will be contributing to water discharging onto 52 Jackson Terrace, in that the anticipated subsurface water is not being collected by the subsoil drain.

4.32. I consider the surface water management system above the retaining wall to collect and surface water from the building work associated with the dwelling at 52A Jackson Terrace as constructed, and with associated consequences of the structural failure of the retaining wall, does not comply with clause E1.3.1 in respect of protection of other property.

5. Decision

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

5.1.1. the section of retaining wall on 50A Jackson Terrace, following strengthening and additions, does not comply with clauses B1.3.1 and B1.3.3

5.1.2. the section of retaining wall on 52A Jackson Terrace, following strengthening and additions, does not comply with clauses B1.3.1 and B1.3.3 in regard to the protection of other property

5.1.3. the surface water management system above the retaining wall does not comply with clause E1.3.1 for protection of other property.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 13 October 2025.

Peta Hird

Lead Determinations Specialist