

Determination 2025/052

An authority's decision to refuse to issue a code compliance certificate for a relocated dwelling

1650 State Highway 10, Whangaroa

Summary

This determination considers an authority's decision to refuse to issue a code compliance certificate for building work carried out to relocate a dwelling. The determination considers the reason for the authority's decision, which related to inspections that were not carried out.



Figure 1: The relocated dwelling.

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”).

The Act and the Building Code (Schedule 1 of the Building Regulations 1992) are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg, Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Andrew Eames, Principal Advisor Determinations, 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. B and R Archibald, the owners of the property who applied for this determination (“the owners”)
 - 1.2.2. Far North District Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. The matter to be determined, under section 177(1)(b) and (2)(d), is the authority’s decision to refuse to issue a code compliance certificate for building work, being foundations, services, and associated work to relocate a dwelling onto the owner’s property, carried out under building consent EBC-2023-558/0.
- 1.4. In deciding this matter, I will consider the reason for refusal given by the authority, and whether the requirements of section 95A have been met.
- 1.5. This determination does not consider the compliance of the building work with the building consent; in particular, the construction of the internal wall bracing as described in the approved plans and specifications. The owners acknowledge this part of the work had not been undertaken prior to the authority’s refusal to issue the code compliance certificate.

2. Background and building work

- 2.1. On 2 December 2022, the authority granted building consent (number EBC-2023-558/0) to the owners for the construction of “Foundations for Relocated Dwelling and Install On-Site Waste Water System”.

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

2.2. The approved building consent plans and specifications:

- Include a 'Wall Bracing Plan' showing the layout for wall bracing to the dwelling,² and calculations for the wall bracing.
- State "Refer to the wall bracing plan calculations, and provide and install any new wall bracing required to make the building compliant for a high wind zone".

2.3. In a schedule to the building consent, the authority specifies four inspections as being "required under [section] 90". Those inspections are "Bored Pile Foundation", "Subfloor Framing", "Drainage (conventional)", and "Final Inspection - Residential Buildings".

2.4. Over the following two years the building work progressed. The authority carried out a final inspection on 18 November 2024. The authority's inspection notes record the inspection was "Failed". Under "Site rectifications" the authority noted "Preline and postline [inspections are] required to inspect all wall brace elements as per brace plan."³

2.5. On 25 November 2024, the owners wrote to the authority, stating:

The preline and postline inspection was not requested for the following reasons:

- Building work authorised by the [building consent] was only for "*foundations for relocated dwelling and install on-site wastewater system*".
- The *schedule* of inspections required by the [authority] and 3rd parties within the [building consent] did not require a preline or postline inspection.
- No *internal* linings were removed or replaced other than those undertaken under Schedule 1 of the Building Act 2004.

...

... it is from our understanding the bracing elements were shown on sheet 2 of 4 for the purposes of the [geotechnical] engineering review ...

2.6. The owners sought a review of the final inspection as they considered they had met their obligations under the building consent. They requested that a code compliance certificate be issued.

2.7. On 2 December 2024, the authority replied to the owners, stating:

The consented documents clearly show the additional bracing to be installed or completed. I can't state why the processing officer did not add the preline or postline inspection to the Schedule of Inspections but the engineers have clearly included it in

² On sheet 2 of 4.

³ There is also a second, unrelated 'site rectification', however this was subsequently conceded by the authority.

their bracing calculations. The engineers have initialed the plan meaning they have checked the plans. This is standard practice.

- 2.8. On 20 March 2025, the owners applied for a code compliance certificate.
- 2.9. On 25 March 2025, the authority refused to issue the code compliance certificate. The authority's letter to the owners ("the refusal letter") stated:

Due to non-completion of the section 90 inspections, completion of building work cannot be confirmed. Obtain a passed final inspection and reapply for your Code compliance certificate.

3. Submissions

The owners

- 3.1. The owners submit (in summary):
 - 3.1.1. There is "no ambiguity" in the schedule of authority inspections required in the building consent, which lists four inspections. "There is no suggestion that fewer inspections would be acceptable, just as there is no suggestion that more inspections outside this list may be required".
 - 3.1.2. "No internal linings were removed or replaced other than those undertaken under Schedule 1 of [the Act]. The irrelevance of internal lining was confirmed in the final inspection where to the question of 'are you completing an internal inspection' the [authority] responded 'existing, **doesn't apply to this consent**'." [owners' emphasis].
 - 3.1.3. The authority "should not be entitled to unilaterally change the schedule of required inspections, and at a time which would otherwise be the end of the works".

The authority

- 3.2. The authority has not made a submission. However, its position is set out in its correspondence with the owners in the background.

4. Discussion

Legislation

- 4.1. The test for issuing a code compliance certificate is set out in section 94. Section 94(1)(a) provides that an authority must issue a code compliance certificate if it is

satisfied, on reasonable grounds, that the building work complies with the building consent.

- 4.2. Section 95A applies where an authority refuses to issue a code compliance certificate. It provides:

If a building consent authority refuses to issue a code compliance certificate, the building consent authority must give the applicant written notice of—

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

- 4.3. Numerous previous determinations have considered the requirements for notices issued under section 95A.⁴ In summary:

- 4.3.1. An authority must provide reasons in writing for refusing to issue a code compliance certificate.
- 4.3.2. A generalised refusal, or a refusal which does not adequately indicate the specific failures is not sufficient for an authority to meet its obligations under section 95A.
- 4.3.3. The reasons provided by the authority must identify the areas of building work that the authority does not believe comply with the building consent.
- 4.3.4. It is important that an applicant is given sufficiently explicit, specific, clear and valid reasons why compliance has not been achieved, so they can consider what is required for a certificate to be obtained.

The authority's reason for refusal

- 4.4. The reason given by the authority in the refusal letter was: "Due to non-completion of the section 90 inspections, completion of building work cannot be confirmed."
- 4.5. This reason does not relate to the test for issuing a code compliance certificate in section 94(1)(a). The authority's reason relates to inspections that were not carried out, rather than the building work not complying with the building consent.
- 4.6. As discussed in previous determinations⁵, lack of inspections, whether at the time of construction or later, is not a reason (on its own) to refuse to issue a code

⁴ See, for example, Determination 2022/007 *Regarding the proposed or purported refusal by an authority to issue two code compliance certificates and grant two certificates of acceptance for building work in respect of alterations to an existing building, timber deck, and several retaining walls* (30 May 2022) at [6.11]-[6.14].

⁵ See, for example, Determination 2023/018 *An authority's refusal to issue a code compliance certificate for a 27-year-old house* (22 June 2023) at [4.19]-[4.23].

compliance certificate. While inspections can assist an authority in establishing whether work complies with a building consent or not, simply stating that it cannot be confirmed building work has been completed because inspections were not completed, is not a sufficient or valid reason.

- 4.7. In addition, the authority has not identified the building work in question. As no details of the particular building work or non-compliance with the building consent are provided to the owners, they cannot consider their options to rectify the issue (noting that having the authority carry out an inspection may be one option among others to resolving the issue).
- 4.8. As a result, I consider the authority's reason for refusal of the code compliance certificate is not sufficiently specific or valid and therefore, does not satisfy the requirement set out in section 95A(b).

Where building work does not comply with the building consent

- 4.9. While outside the scope of the matter to be determined, I note that, as described in paragraph 2.2, the approved plans and specifications for the building consent includes building work to install wall bracing. Where building work has not been carried out in accordance with a building consent an authority would have grounds to refuse to issue a code compliance certificate until changes to the building consent have been made.

5. Decision

- 5.1. In accordance with section 188 of the Building Act 2004, I determine that the authority's reasons for refusing to issue the code compliance certificate in relation to building consent EBC-2023-558/0 did not meet the requirements of section 95A(b). I therefore reverse that decision and the authority should make a new decision, taking into account the findings of this determination.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 24 October 2025.

Andrew Eames

Principal Advisor Determinations