Determination 2026/046

The decision to issue a code compliance certificate and compliance of building work with clause E1.3.1 in relation to the protection of other property

575 Don Buck Road, Massey, Auckland

Summary

This determination considers an authority's decision to issue a code compliance certificate for building work carried out at 575 Don Buck Road, and whether it complies with clause E1 *Surface water* in relation to protection of other property. The matter turns on an assessment of whether surface water collected and concentrated by the building work is being disposed of in a way that avoids the likelihood of nuisance or damage at 579 Don Buck Road.



Figure 1: Aerial view of 575 Don Buck Road with 579 Don Buck to the north.

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. 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, 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. T Phillips and Kiwitahi Trustee Limited (as Trustees of TRP Woodhill Trust), the owners of 'other property' at 579 Don Buck Road and applicants[2] ("the applicant")

1.2.2. Body Corporate 187316, the owner of common property at 579 Don Buck Road ("the first body corporate")

1.2.3. E Al-Jubbawey, the owner of the property at 575 Don Buck Road ("the owner")

1.2.4. Body Corporate 508459, the owner of common property at 575 Don Buck Road ("the second body corporate")

1.2.5. Auckland Council, the authority carrying out its duties as a building consent or territorial authority ("the authority")

1.2.6. Frontier Properties Limited, the former owner of 575 Don Buck Road that was owner and developer at the time the building consent was issued and during construction ("the developer")

1.2.7. N Ashley, the licenced building practitioner concerned with the relevant building work ("the drainlayer").

1.3. I consider Beca Limited is a person with an interest in this determination as the civil engineering designer of the stormwater detention and infiltration systems ("the civil engineer").

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

[2] Under section 176(e) where the determination relates to a provision of the Building Code that has the purpose of protecting other property

1.4. This determination arises from the applicant's concerns about flooding events at their property and their belief that building work carried out at 575 Don Buck Road is not compliant with Building Code requirements relating to disposal of surface water.

1.5. The matters to be determined, in terms of section 177(1)(a), (1)(b) and (2)(d), are:

1.5.1. the authority's decision to issue a code compliance certificate for building work carried out under building consent ABA-2015-2812 [BCO10087972][3] at 575 Don Buck Road regarding compliance with clause E1 *Surface water*; and specifically

1.5.2. whether the building work carried out under that building consent complies with clause E1.3.1 as it relates to protection of other property.

1.6. The determination does not consider the authority's decision to grant and issue the building consent or compliance of any other building work, nor other clauses of the Building Code.

2. The building work

2.1. The property at 575 Don Buck Road is approximately 0.40 hectares in area. Prior to development, it contained a two-storey residential dwelling constructed around 1959 and an outbuilding. The land sloped gently down to the east from the road, forming a moderately steep slope (approximately 20° to 26°) at what is now the eastern edge of the new commercial building.

2.2. The existing site utilised two overland flow discharge points: one at the northeast corner of the property to a 225mm private stormwater pipe and the other via the overland flow path to the property's southeast corner and from there to adjacent property. Approximately three-quarters of the overland flow was directed to the site's southeast corner.

2.3. Development of 575 Don Buck Road included construction of a building in an L-shape along the southern end and east side of the lot, containing retail stores and a childcare facility respectively – see Figure 1. There is a playground in the northeast corner, and the remainder of the site is surfaced for carparking.

Resource consent

2.4. Reports were provided for the purpose of the resource consent, including an 'environmental effects assessment' dated 28 July 2015 and a geotechnical investigation report dated 24 August 2015. The latter noted 'Groundwater was recorded at a depth of 1.0m to 2.0m below ground level', underlying soils were

[3] The building consent had an original reference number of ABA-2015-2812 which was subsequently updated by the authority to BCO10087972.

'clayey silts of moderate plasticity'. The report included a notation that disposal of stormwater should not be carried out via soakage pits or other subsoil drains.

2.5. In an undated 'resource consent civil infrastructure works' report by the civil engineer, which outlined drainage infrastructure works associated with the development of 575 Don Buck Road, the civil engineer provided the following calculations for the site:

> Rainfall depths over 24 hours were derived using the program HIRDS[4] Ver. 3.0. with consideration for future climate change (2.1°C increase in temperature) to comply with cl.4.2.10 of Chapter 4 – Auckland Council COP (2013). The table below summarises the rainfall intensities used.

Rainfall Intensity	10%AEP	1%AEP
24-hour Rainfall Depth	147.2	222

2.6. In their report, the civil engineer proposed to:

> Retain the runoff from a 8mm, 24hr rainfall event,
>
> Attenuate the runoff from the 10%AEP events and,
>
> Provide treatment of the water quality flows from the carpark area.

2.7. The civil engineer's stormwater design was based on the following (in summary):

- Storm water flows from the carpark area (~1,635m^2) discharging to a modular stormwater tank via two double-back entry catchpits, three stormwater manholes (referred to as SWMH1, SWMH2 and SWMH3) and an integrated stormwater filter system.
- The retail facility roof area (~880m^2) discharging to the modular stormwater tank via SWMH3.
- A 195m^3 modular stormwater tank system (and base infiltration system) connected to the stormwater network via another manhole (SWMH4) with a double weir to restrict flow rates.
- The childcare roof area (~700m^2) discharging to a 4,000-litre rainwater storage tank, with overflow to the modular stormwater tank.

2.8. The weir associated with SWMH4 was designed with two outlets to reduce flow rates for both 10% AEP and 1% AEP events to 33 litres/second. The peak volume of storage generated by the restriction was calculated at 123m^3 for a 10% AEP event and 183m^3 for a 1% AEP event.

[4] High Intensity Rainfall Statistics (HIRDS) available through Earth Sciences NZ (formerly NIWA). HIRDS v3 was current at the time the building consent was issued, while the current version is HIRDS v4.

2.9. The design for the modular stormwater tank included:

- the tank being situated approximately 2m from the boundary
- a maximum capacity of 195m^3
- the bottom of the stormwater tank being at RL 57.72m and the top being at RL 58.92m [5]
- measured from the base of the tank, weir orifice 1 at 100mm, weir orifice 2 600mm, and the top of the weir 1200mm
- weir orifice diameters were to be 130mm (bottom) and 100mm (top).

2.10. The two catchpits receiving surface water from channel drains and the carpark area have 50 litre/second capacity to SWMH2, and 225mm diameter pipework to SWMH1 with a four-cartridge filter system (each cartridge having a peak flow of 1.4 litres/second) connecting to SWMH3 and then to the stormwater tank. In addition, SWMH2 has a 300mm diameter overflow pipe connecting directly to SWMH3.

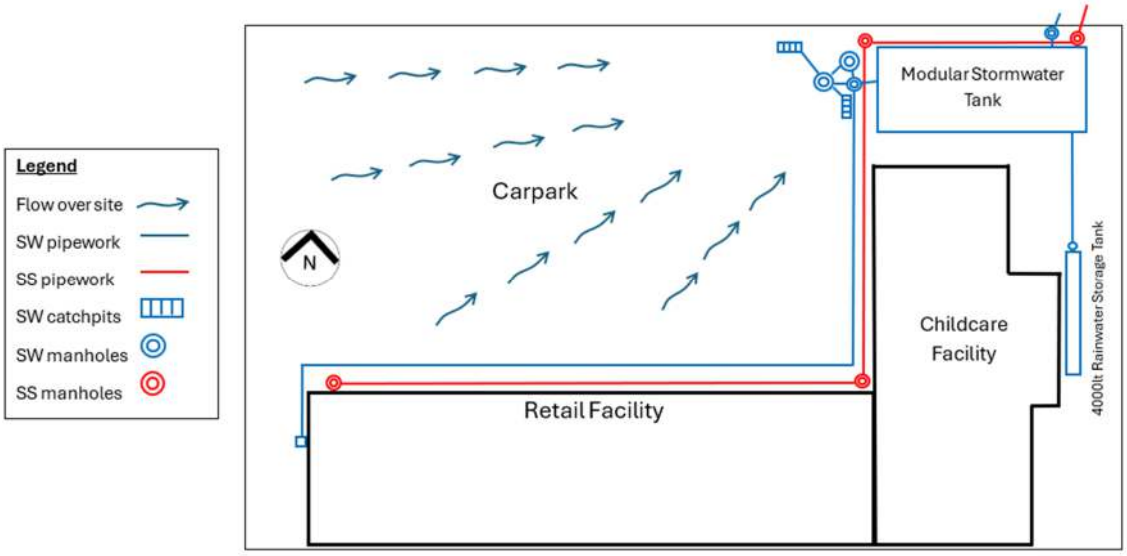


Figure 2: 575 Don Buck Road site layout.

The building consent

2.11. The authority's 'drainage engineers processing checklist' dated 14 December 2015 for the building consent application records 'ENG-2015-2164'[6] as the 'reasons for decision' for engineering plan approval and public drainage works for E1 compliance of the proposed building work. I have not seen any other assessment of the system (eg design, demands and attenuation rates) or other reasoning for the approval.

[5] RL means 'relative level' and refers throughout to site levels relative to the Auckland Datum 1946.
[6] The resource consent approval for a network connection for a new public wastewater and stormwater manhole at 575 Don Buck Road.

2.12. On 18 February 2016, the authority granted and issued building consent ABA-2015 2812 for the building work at 575 Don Buck Road.

As built

2.13. Following completion of the commercial development, all overland stormwater flow and surface water from the building was directed to the piped network discharge via the detention tank at the property's northeast corner. The onsite detention solution was installed to reduce the flow of stormwater discharging to the network.

2.14. The manufacturer's documentation shows the stormwater tank system contains a series of modules, each made from plates to form a cube, with a series of oval holes in all plates and a geotextile wrap around the tank. The manufacturer's installation specification notes all inlet and outlet pipes must enter the module series to allow water to flow directly. A 160mm or 300mm access plate is required for pipework into the tank system.

2.15. The tank, as installed under the playground, differs in some respects from what was designed:

- It is closer to the northern boundary, being approximately 800mm at the closest point.
- It has a base area of 188m^2 and a reduced maximum capacity of 191m^3.[7]
- It is located at a different depth than designed, being RL 57.83m at its base and RL 59.03m at its top (ie 110mm higher than planned).
- Measured above the base of the tank the weir orifices are lower, with orifice 1 at 50mm, orifice 2 is 570mm, and the top of the weir is 1150mm
- The weir orifice diameter at the bottom is smaller at 100mm (the top orifice is 100mm as designed).

2.16. While the as-built plans note changes to the stormwater tank base and SWMH4 weir orifice levels, it is unclear whether the inlet and/or outlet levels for SWMHs 1-3 were also retrospectively revised.

2.17. The relevant details for the foundations of the building at 579 Don Buck Road are:

- The finished floor level ("FFL") is RL 59.50m (ie 1670mm above the bottom of the tank).
- The base of the foundation footing 900mm below FFL, at RL 58.60m, is 770mm above the bottom of the tank.

[7] The drainage as-built for the stormwater tank notes a layout area of 188m², while the civil engineer's completion of drainage works memorandum states a tank volume of 191m³.

2.18. Architectural plans note the proposed childcare centre's ground level as being RL 59.80m (ie 30mm above the FFL of the building at 579 Don Buck Road), while the applicant's engineer stated the centre's play area is 40mm above the FFL.

2.19. Fencing and raised planter beds were installed along the northern boundary with 579 Don Buck Road, at the east end of the site (refer to Figure 3 below). There is approximately 80mm clearance between the fence and the neighbouring tilt-slab wall. However, the landscaping design plans are not stamped as approved under a building consent, and the authority has stated that these elements did not form part of the consented work for which the code compliance certificate was issued.

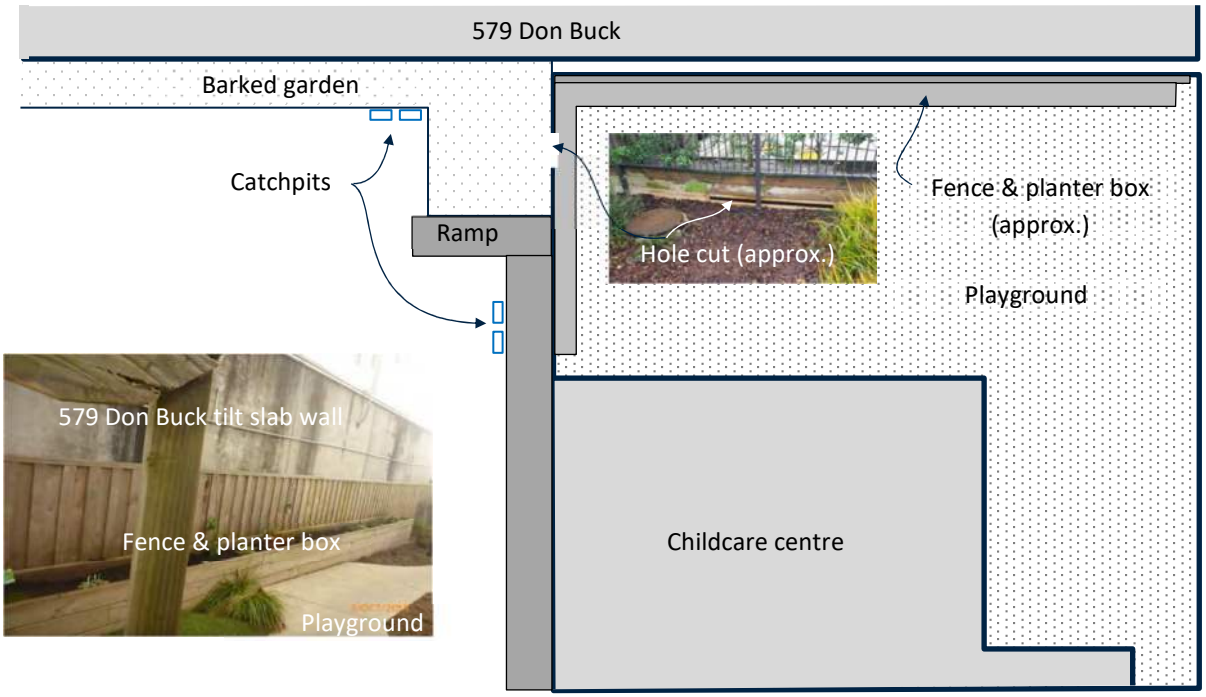


Figure 3: Northeast boundary of 575 Don Buck, adjacent to the rear wall of 579 Don Buck. (Photo from reports provided by parties)

3. Background

3.1. The applicant's property at 579 Don Buck Road is situated to the north of 575 Don Buck Road and comprises a single-storey multi-unit commercial building constructed in the 1990s. A code compliance certificate was issued for building work in 1997.

3.2. The building's south wall runs alongside and parallel to the boundary with 575 Don Buck Road, with subsoil drainage installed along the precast wall panel footings and paint applied bitumen waterproofing membrane as mitigation for ground level differences at the boundary prior to the development of 575 Don Buck Road.

3.3. In relation to the building work at 575 Don Buck Road, construction was carried out over 2016, and the authority undertook drainage inspections on 18 August 2016,

16 September 2016 and 24 September 2016. These inspections are all recorded as either a 'pass' or a partial pass and requiring only testing or a completed as-built plan to achieve a full pass and noting that the work had been completed in accordance with consented plans. Installation of the stormwater tank is referenced within these inspections, and site photos are included.

3.4. The drainlayer issued a Producer Statement - Construction (PS3) on 1 November 2016 for "installed [sanitary sewer] and [stormwater] pipework, manholes, re/detention tanks". Building work appears to have been substantially complete by early 2017.

3.5. Between March 2017 and December 2025 several instances of flooding were recorded within the laundromat that occupies one of the middle units at 579 Don Buck Road. The applicant has advised the laundromat was flooded in the following events:

12 March 2017	21 March 2022	1 May 2025
4 February 2018	27 January 2023	31 December 2025
December 2018	24 February 2023	
27 June 2020	9 May 2023	

(In this determination these events are referred to by the month and year.)

3.6. The applicant has stated that during the March 2017 event the carpark area adjacent to the catchpits flooded and surface water overtopped the kerb and saturated the landscaping area adjacent to the building's walls. A hole was cut in the bottom of the fence/box garden following this event to create flow path (see figure 3 inset).

3.7. On 12 April 2017, the civil engineer issued a Producer Statement – Construction Review (PS4) "for the installation of SSMH4 and SWMH4 manholes only".

3.8. On 28 June 2017 the authority issued a code compliance certificate for the building work at 575 Don Buck Road.

3.9. Between March 2017 to April 2023 the applicant engaged with the authority on multiple occasions about ongoing flooding issues at 579 Don Buck Road. The applicant also engaged with the owners in August 2018 about the flooding.

3.10. The applicant engaged a building surveyor, who provided a report dated 8 February 2019 detailing groundwater issues. The building surveyor confirmed water entry had occurred at the concrete slab/tilt-slab junction, and noted the following (in summary):

3.10.1. Several sealant joints between the tilt-slab panels were in a poor condition, have been incorrectly repaired with an incompatible sealant, and no form of protection was present to the waterproofing layer.

3.10.2. Existing scoria and drain adjacent to the building on 575 would have been excavated/moved to accommodate the manholes and exposed the waterproofing to the tilt slab panels.

3.10.3. The fence posts may have damaged the existing drainage coil.

3.10.4. The drainage medium is not full height at the tilt panels, and mulch has been added over the drainage medium.

3.10.5. Ongoing runoff is occurring at the boundary line, with scouring of the ground having increased since October 2018.

3.10.6. The rear-tilt slab wall at 579 Don Buck Road is in essence a retaining wall, and unless waterproofing has been provided internal water ingress is likely to be an ongoing issue.

3.11. In June 2019, the applicant engaged a consulting engineer who provided a 'stormwater investigation' report for 579 Don Buck Road. The report noted that during rainfall events of 8 to 12 March 2017, either lack of capacity within the drainage system or blockage of the catchpits resulted in ponding against the rear wall of 579 Don Buck Road – the water built up and flowed into the applicant's property and through the tilt-slab wall. The report noted that these previous high rainfall events "will have created established pathways which the stormwater is able to track along during each rainfall event that the drainage system cannot cater for".

3.12. The report concluded there were two driving issues of the flooding, namely the redirection and blocked overland flow path, and "location and neighbouring factors" of the detention tank. The consulting engineer noted:

3.12.1. An exposed footing due to scouring at the rear of the tilt slab wall and on the east boundary, 'illustrates continual water tracking along the rear wall and exiting the site'.

3.12.2. The raised garden and perimeter fencing obstructs the overland flow of the site in a 1-in-100-year event, 'resulting in potential ponding depths of 600mm in the lower corner of the carpark'.

3.12.3. The consulting engineer's calculations show that in a 1 in 10-year event, 'the peak attenuation section of the tank, with unimpeded function ability … would be empty after 1-2 hours'.

3.12.4. The double-back entry catchpits have capacity for the 1,535 m^2 carpark area for a 1 in 10-year rainfall event. Blockage of the catchpits will quickly result in flooding or ponding of stormwater against the planter boxes.

3.12.5. Bark tide marks on the fencing are evidence of manhole surcharging.

3.12.6. It is likely that informal drainage channels will have formed between the tank and the wastewater line (ie following the granular bedding) with a high possibility of these running towards the rear boundary wall of 579 Don Buck Road and the impact of this is unknown.

3.12.7. The tank is 1m from the building on 575 Don Buck, not the 3m specified in the authority's Stormwater Design Criteria[8], and is within the 45-degree zone of influence of the building's foundation.

3.12.8. The tank has a permeable geotextile lining, meaning it is in essence a soakage device or pit during times it stores water, but it does not meet the authority's requirements for boundary setbacks of soakage devices.

3.13. The developer advised that the kerb at the northern corner of the carpark (at the base of the ramp to the childcare centre) was raised in August 2019, and that an overland flow path was created "under retaining wall into playground [with the] sandpit directly opposite on playground side to mitigate water building up and diverting towards boundary and [precast concrete panel wall]".

3.14. In a letter dated 29 July 2020, the consulting engineer noted:

3.14.1. A recent site visit showed an attempt had been made to provide an opening for the overland flow path into the playground area. The constructed opening was "completely unsuitable for the purpose of providing an overland flow path through the playground area of 569 Don Buck Road. Until this matter is resolved, the lack of a secondary overland flow path through [575] Don Buck Road will continue to cause issues for 579 Don Buck Road".

3.14.2. The June 2019 report clearly shows that significant changes to the site layout and drainage, without remediation, will continue to cause flooding to 579 Don Buck Road.

3.15. In September 2020, another engineer was engaged to provide advice on the cause of flooding at 579 Don Buck Road. The report noted that the drainage coil originally collected seepage from rain falling on the precast concrete panel wall and a small amount of minor overland flow. The report noted damage to the drainage coil had been observed, but that this was not the cause of water ingress. In the engineer's opinion, the primary cause was the overwhelming of the drainage system for 575

[8] Stormwater Disposal via Soakage in the Auckland Region TP 2013/040 6.4.2 Design criteria.

Don Buck Road and the obstruction of the overland flow path by the timber fence to the playground.

3.16. The issue remained unresolved and the applicant applied for this determination.

4. Submissions

4.1. The drainlayer, the first body corporate and the owner did not make submissions in response to the application for determination. Other parties' submissions are summarised below where relevant.

4.2. The civil engineer noted they were not involved in design, construction or construction monitoring for the fencing, or planter boxes and landscaping, but did comment on the impact of these on the overland flow path.

4.3. The applicant considers the building work at 575 Don Buck Road is causing infiltration of surface water through and around the subfloor[9] and foundations of their building, and that this discharge is causing flooding and damage to their property.

4.4. The applicant provided several photographs documenting what was occurring during rainfall events, including:

4.4.1. photos taken during and after the June 2020 flooding event showing internal flooding at the laundromat, and stating "the water was 30mm deep in places"

4.4.2. photos taken during the May 2025 event showing water overtopping the kerb at the northeast corner of the carpark with water ponding above the bark garden and adjacent to the panel wall

4.4.3. photos showing the December 2025 flooding event inside the laundromat and water overtopping the kerb in the carpark adjacent to the catchpits

4.4.4. photos after a rainfall event on 26 March 2026, showing water ponding around the catchpits.

Installation of stormwater tank system and drainage connections

Location and soils

4.5. The applicant says the stormwater tank is too close to the boundary, which is not as per the building consent or the manufacturer's recommendations, and is 'within the zone of influence' of their building's foundations. They believe water is infiltrating the soil surrounding their foundations, that the position of the sewer line along the

[9] The construction at 579 Don Buck Road is concrete slab on ground as opposed to timber subfloor. The applicant is referring to the ground, and an alleged void space, below the concrete slab.

boundary increases that infiltration below the foundations, and the water is entering the subfloor space and impacting the building's structural stability. They also maintain that the installation was not in accordance with geotechnical advice that stated the soil type is not suitable for infiltration.

4.6. The authority noted the building consent drawings show the tank 1.8m from the boundary but that the as-built plans indicate it was constructed only 800mm from the boundary and with the sewer pipework between. It submitted that if granular fill extends under the foundations, water from the tank will have free movement. The authority does not believe underlying clay soil has any bearing on the flooding observed.

4.7. The civil engineer noted that low permeability clay soils were always expected where the tank was to be located, and the geotechnical report did not necessitate any amendment to the system design. They submitted that the authority required a small volume (8mm) of runoff to be able to drain to soakage irrespective of the soil type. This was achieved by constructing the tank with a permeable base and controlling outflow with an orifice higher than the tank base.

4.8. The developer noted the underside of the existing precast concrete panel wall foundation (at RL 58.60m) is approximately one metre below the level of the SSMH4 lid in the playground (at RL 59.60m). They also noted the underside of the stormwater tank is RL 57.72 m (ie 880 mm below the underside of the concrete panel wall foundation) with excavation 1200mm from the face of the precast panel wall, therefore not impacted by surcharge of the existing foundation.[10]

The tank, its capacity and performance

4.9. The applicant raised several concerns relating to the tank, including its durability, allowance for overflows or failures, lack of a through-pipe, and pipework between the tank and SWMH4 which they believe is only butted to the tank (with a photograph provided). The applicant advised the system experienced failure during the first minor rainfall event after its installation, and that this occurred before there was any opportunity for blockage or need for maintenance, which they contend indicates the problem is inherent to the system itself.

4.10. The authority submitted the tank is designed to detain flows and a small part is to retain some volume of water onsite; it has sufficient capacity for both 10% AEP event and 1% AEP events, and the network stormwater pipe has capacity to receive surface water from the site. If functioning correctly the two double-back entry catchpits have capacity for a 10% AEP event, with each having capacity in excess of 50 litres/second. The authority noted it was unable to identify the type of geotextile used to wrap the tank and the resultant permeability, because this information was not provided in the as-built plans or in the civil engineer's review.

[10] As noted above, the drainage as-built confirms the base of the stormwater tank at RL 57.83 m, 770mm below the underside of the concrete panel wall foundation and 800 mm from the boundary.

4.11. Regarding potential for blockages, the authority commented that there is pre-treatment on all inlets, and orifices are all 100mm or more in diameter, reducing the likelihood of blockage.

4.12. The civil engineer submitted the drainage design is appropriate for the site. They noted the stormwater system does not rely on disposal of stormwater to soakage, but rather to the public stormwater pipe. However, it does make use of some infiltration to soils for retention purposes in addition to disposal to the public system, which the authority was encouraging at the time irrespective of soil type.

4.13. The civil engineer noted that the change in orifice size from 130mm diameter (design) to the smaller 100mm diameter (as-built) would increase the drain-down period, but this change is compliant with the resource consent conditions. They consider it possible that leakage from the tank may be occurring, potentially arising through design, construction, maintenance (or lack of), litter blockage or clogging, unaddressed storm damage or similar. However, no evidence has been provided to demonstrate that issues with their design have caused or contributed to such leakage. They also submitted that the tank material is durable and can be expected to meet a 50-year design lift, and that the structural strength is more than sufficient to support loadings it is subject to.

Landscaping and overland flow

4.14. The applicant believes the alterations in ground slope and redirection of the overland flow to the northeast, along with the fencing and positioning of the raised planter boxes that obstruct the overland flow, have resulted in the flooding of their property.

4.15. The authority noted that neither the resource consent nor building consent included raised structures around the northeast part of the site.[11] The authority submitted that the garden area abutting where the applicant's property is most impacted will hold moisture when flooded and may be above the waterproofing line of the tilt slab. The authority considers these issues to be civil matters and not relevant to the decision to issue the code compliance certificate.

4.16. The civil engineer submitted that obstruction of the overland flow path will affect the neighbouring property and increase the risk of flooding, and the lack of a secondary overland flow path will continue to cause issues and re-establishment of the overland flow path is essential.

4.17. The developer noted that the kerb at the northern corner of the carpark had been raised and an path for overland flow was created "under retaining wall into playground [with the] sandpit directly opposite on playground side to mitigate water building up and diverting towards boundary and [precast concrete panel wall]".

[11] The authority's submission erroneously referred to the northwest corner.

4.18. The developer noted that the kerb around the carpark and garden at the northern corner “has a 100mm draincoil in Filter sock ... [which] already provides additional catchment of subsoil drainage or overland [surface water]”.

The rainfall event size

4.19. The applicant contends that flooding events occur at their property even in smaller rainfall events than the 10% AEP provided for in Clause E1.3.1, and that during minor and moderate rainfall the surface water backs up to 579 Don Buck Road and runs under the foundations. Only one recent flooding event was associated with rainfall close to 147mm within a 24-hour period (ie the 10% AEP value referenced in the civil engineers’ calculations).

4.20. The parties dispute the data relied on for the purpose of establishing the various rainfall event sizes, with the applicant believing the events were within the threshold for E1.3.1 and the authority and developer submitting that events exceeded the threshold.

Precast panel wall waterproof membrane and damage

4.21. The authority submitted that issues with the condition of the joint sealant and waterproofing of the building at 579 Don Buck Road would allow water to enter the building in significant rainfall events.

4.22. The developer described standard practice for tanking on a precast concrete wall when the finished floor level is below existing finished ground level, and stated that the existing precast concrete panel wall “has no protection to the full length of this wall” and that the “lack of membrane waterproofing remains evident having undertaken isolated inspections along [its] full length … since initial advice of water ingress event”.

4.23. The second body corporate noted a roof gutter overflow at the applicant’s property discharges directly over the carpark garden area at 575 Don Buck Road and is active in heavy rain.

4.24. The applicant advised that prior to the first flooding event in 2017 there was no evidence of moisture along the south wall of their building when carpet was removed in one of the retail tenancies, and that the overflow from the roof was installed in early 2023 and therefore wasn’t a factor in flooding events that occurred before then.

4.25. The applicant contends damage to the subsoil drain adjacent to 579 Don Buck Road is contributing to the flooding. The applicant believes this drain was damaged during construction of the tank, manholes and fencing, and that scoria backfill was replaced with topsoil.

4.26. The authority noted that photos and accounts suggest the fence may have compromised the subsoil drainage but noted that construction of the fence was not in scope of the building consent.

4.27. The developer claims there was no excavation against the neighbouring precast wall, with excavation being approximately 1200mm from its face (1m in from the boundary). They state the cut to grade was in virgin clay, and no precast membrane, drainage material/subsoil drainage was exposed.

4.28. I note here that a photograph shows a short section of tilt slab waterproofing exposed adjacent to SWMH4 with a section of drain coil observable.

4.29. The developer also stated that the existing drainage coil has no filter and that it is placed on top of the footing at the back of the precast concrete panel, whereas best practice would be to place it at the bottom and rear of the footing.

5. Discussion

5.1. As outlined in paragraph 1.5, the matters for determination are:

5.1.1. the authority's decision to issue a code compliance certificate for the building work at 575 Don Buck Road regarding compliance with clause E1 *Surface water*; and specifically

5.1.2. compliance of the building work as it relates to the protection of other property, specifically clause E1.3.1.

5.2. The matters turn on whether the surface water collected and concentrated by the building work on 575 Don Buck Road is being disposed of in a way that avoids the likelihood of nuisance or damage to 579 Don Buck Road.

The decision to issue the code compliance certificate

5.3. Under section 94(1)(a), an authority can only issue a code compliance certificate if it is satisfied, on reasonable grounds, that the building work complies with the building consent. This includes any amendments or minor variations made to the consent.

5.4. The building consent relied on the design details from the resource consent application. There are discrepancies between those plans and the as-built work, such as the in-ground position and depth of the modular stormwater tank, changes to the maximum capacity, and to the height of orifices.

5.5. I have seen no evidence that changes from the original design were covered by a minor variation or approved amendment.

5.6. The inspection records I have seen all indicate the building work complies with Clause E1, with only testing and as-built documentation required for issuing of the code compliance certificate. These records do not mention the discrepancies between the consented design and as-built stormwater system and tank position, and instead erroneously record that work was completed in accordance with the consented plans.

5.7. Although I have concluded that the building work does not comply with the building consent, it does not necessarily follow that the decision to issue the code compliance certificate should be reversed.

5.8. Previous determinations have established a two-step process for deciding whether to confirm, reverse of modify an authority's decision to issue a code compliance certificate.[12] The first step is to consider whether the building work was completed in accordance with the building consent. If the building work, or elements of the building work, do not comply with the building consent, then I need to consider whether the building work nonetheless complies with the Building Code.

5.9. While I have found that the as-built stormwater system and tank were not constructed in accordance with the consented plans, it does not automatically follow that the work does not comply with clause E1.

Compliance with the Building Code

The legislation

5.10. Section 17 provides "All building work must comply with the Building Code to the extent required by this Act, whether or not a building consent is required in respect of that building work".

5.11. I will consider whether the building work that is the subject of this determination complies with Building Code Clause E1 *Surface water*. The relevant performance requirement is clause E1.3.1:

> E1.3.1 Except as otherwise required under the Resource Management Act 1991 for the protection of other property[13], 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[14] of damage or nuisance to other property.

[12] Remedies provided for under section 188(1)(a).

[13] section 7 other property – (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; ...

[14] In considering the meaning of "likelihood" as it relates to clause E1.3.1, I have adopted the reasoning in *Auckland City Council v Selwyn Mews Ltd* District Court Auckland CRN2004067301-19, 18 June 2003, [2003] DCR 671 at [47].

5.12. "Surface water" is defined in the Building Code as:

> all naturally occurring water, other than sub-surface water, which results from rainfall on the site or water flowing onto the site, including that flowing from a drain, stream, river, lake or sea.[15]

5.13. In this case, the building work includes the installation of the stormwater management system that collects surface water from both the building (via downpipes and drainage channels) and the overland flow across 575 Don Buck Road via the kerbs and catchpits.

5.14. I also note that although construction of the fencing and raised planter boxes were not carried out under the building consent, these features impact on the water received by the stormwater management system.

5.15. The objective of clause E1 includes to "safeguard... other property from damage, caused by surface water". Its functional requirement is "Buildings and sitework shall be constructed in a way that protects people and other property from the adverse effects of surface water".

5.16. As discussed in previous determinations,[16] protection of other property is not limited to the protection of buildings and the land itself must also be protected from the likelihood of damage or nuisance.

5.17. The term "nuisance" is not defined in the Act or the Building Code. A previous determination[17] held that the term "nuisance" in clause E1.3.1 should not be given a narrow legal meaning and "there must be some significant nuisance effect before there can be a breach of Clause E1.3.1". This was expanded on in Determination 2015/052,[18] which said:

> [6.15] … The term "nuisance" has a particular 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'. The question of whether a nuisance is unreasonable is a question of fact and must be considered in relation to factors such as the nature of the harm and the locality in which it occurs, and the frequency, duration and intensity of the interference.
>
> [6.1.6] ... I am of the view that any nuisance has to be an *unreasonable interference*; calling a nuisance a significant nuisance is simply reflecting the fact that it is not a trivial or minor interference with a person's use and enjoyment, but must be an unreasonable or significant interference with that use or enjoyment.

[15] Clause A2 – Interpretation.
[16] For example, Determination 2015/003 *Compliance of a retaining wall between two properties* (10 February 2015).
[17] Determination 2010/059 *Disposal of surface water collected behind a retaining wall* (12 July 2010), at [6.2.4].
[18] Determination 2015/052 *Regarding the compliance of proposed building work ... in respect of adjacent other property* (12 August 2015).

5.18. Regarding the disposal of surface water, I hold the same view as discussed in previous determinations, that not all surface water needs to be disposed of; only surface water resulting from an event with a 10% probability of occurring annually.

Assessment of compliance

5.19. The applicant has provided ten dates of flooding events in the laundromat (refer paragraph 3.5) and several photographs of flooding in the building.

5.20. The available data[19] suggests at least four of the dates where the building at 579 Don Buck Road flooded involved rainfall events that were within 10% AEP[20]:

- The February 2018 event – between approximately 5-15mm in 24 hours
- The June 2020 event – approximately 31mm in 1 hour
- The May 2025 event – between approximately 5-6mm in 24 hours[21]
- The December 2025 event – 54mm in 24 hours.

5.21. Having assessed the required detention volume for a 10% AEP event, I am of the view that despite the difference in tank volume from the approved plans and the civil engineer's approach, the stormwater management system has sufficient capacity to accommodate a 10% AEP event and achieve E1.3.1 performance requirements.

5.22. The bulk of the surface water detention is designed to discharge to the network via flow restriction in the weir, rather than to soakage. Due to the relative height of the bottom orifice above the base of the tank, there will only be water to a depth of 50mm standing in the tank that does not directly discharge to the network (except during rainfall events), meaning relatively little water will be directly entering the ground.

5.23. Regardless, the floor level of 579 Don Buck Road is 1.67m above the base of the stormwater tank. Consequently, I do not believe tank infiltration is causing the flooding at the laundromat.

[19] Henderson North rain gauge treated as the primary gauge for daily 24-hour rainfall totals near 575 Don Buck Road. Supplementary gauges: Titirangi, Whenuapai, Albany, Auckland Airport, Albert Park and other West Auckland gauges used only where the previous summary identified relevant short-duration rainfall information not available from the daily Henderson North record.

[20] There are several available sources of rainfall intensity data, including: the National Institute for Water and Atmospheric Research (NIWA) High Intensity Rainfall Design System (HIRDS), rainfall intensity curves produced by territorial authorities, and Table A of E1/AS1. I have used HIRDS v4 to establish which of the recorded rainfall events were within 10% AEP.

[21] I note the rainfall recorded on 30 April 2025 was greater but still within 10% AEP.

5.24. Further, the base of the tank is close to the groundwater level, meaning the site itself would need to be oversaturated for groundwater to rise sufficiently to reach the floor level and create damage or nuisance.

5.25. I note also that the zone of influence (load surcharge 45° from the base of the foundation of the building at 579 Don Buck Road) is not affected by the position of the stormwater tank.

5.26. However, photos show water ponding in the carpark around the catchpits in rainfall events within 10% AEP, overtopping the carpark's concrete kerb, and saturating the ground along the northern boundary adjacent to the precast concrete panel walls of the applicant's building. And there is evidence of water ingress into the building at 579 Don Buck Road in events less than 10% AEP, with water entering the laundromat and causing flooding, which constitutes damage or nuisance to other property.

5.27. The evidence indicates the stormwater system is not functioning as intended. There are several things that may be contributing to this. For example:

5.27.1. The invert level from SWMH 3 to the stormwater tank (at RL 57.84m) which if unchanged would be only 10mm above the base of the stormwater tank. This could restrict the flow of water into the tank, causing water to back up in the system

5.27.2. Installation of tank pipework connections not as per the manufacturer's requirements.

5.27.3. Blockage of the catchpits and/or filters.

5.28. While the exact cause of the system failure is unknown, the evidence provided confirms the stormwater system as-built becomes inundated in events within 10% AEP. The result of the system not functioning as intended is surface water not being disposed of in a way that avoids the likelihood of damage or nuisance to other property, namely 579 Don Buck Road.

Other contributing factors

5.29. While the fencing and raised planters constructed close to the neighbouring wall were not in scope of the building consent, the location of these, in conjunction with ground saturation and flooding, has created a channel for surface water associated with 575 Don Buck Road to be directed along the neighbouring property's wall. Evidence in the submissions shows the volume of water along this channel is such that it is eroding the ground at the northeast corner of the site.

5.30. Also, water running down the precast concrete panel walls and the overflow from the roof gutter may be contributing to ground saturation, and damage (if any) to the subsoil drainage adjacent to the footings at 579 Don Buck Road could also contribute to the flooding issues at 579 Don Buck Road.

5.31. Finally, I note the age of the neighbouring building at 579 Don Buck Road, and in particular the waterproofing system and sealant joints below ground level, may be a contributing factor to the water ingress into the building. If waterproofing and panel junctions are suffering age-related durability issues or have been damaged, in combination with ground levels above the concrete panel wall's waterproofing and ground saturation discussed above, the building will inevitably be more vulnerable to moisture ingress.

Conclusion

5.32. The stormwater management system has sufficient capacity to collect and dispose of the surface water from 575 Don Buck Road, but there are elements restricting its ability to function adequately. This is resulting in surface water in rainfall events within 10% AEP not being disposed of in a manner that avoids the likelihood of damage or nuisance to other property.

5.33. There are other issues that are not part of the building work carried out under the building consent, or that are not at 575 Don Buck Road, that may be contributing to the extent of flooding being experienced within the building at 579 Don Buck Road.

Remedy

5.34. The issue of a code compliance certificate by an authority is a statutory decision that the authority is satisfied on reasonable grounds that the building work complies with the building consent.

5.35. As outlined at paragraphs above, there were several items of the stormwater tank and system were not constructed in accordance with the building consent. As such the criteria in section 94 for issuing a code compliance certificate was not met.

5.36. I have also concluded that the building work as constructed does not comply with the Building Code. Specifically, the stormwater system does not comply with E1.3.1 with regard to protection of other property.

5.37. Considering the nature and extent of non-compliance, and the fact that the non-compliance is causing nuisance and damage to other property, I consider the decision to issue the code compliance certificate should be reversed. This will allow the authority to issue a notice to fix requiring the building work at 575 Don Buck Road to be made compliant with Clause E1.3.1.

6. Decision

6.1. In accordance with section 188 of the Building Act 2004, I determine the stormwater tank and system does not comply with E1.3.1, as it relates to protection of other property, and I reverse the authority's decision to issue the code compliance certificate for the building work.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 9 November 2026.

Peta Hird

Lead Determinations Specialist