Determination 2026/047

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

120 Patiki Place, Whangamatā

Summary

This determination considers an authority's decision to issue a code compliance certificate for building work carried out at 120 Patiki Place, 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 122 Patiki Place.



Figure 1: Aerial view prior to building work.[1]

[1] Photo from property sales material showing indicative outline of 120 Patiki Place.

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").[2]

1.2. The parties to the determination are:

1.2.1. Dr K & J Walls, the owners of 'other property' at 122 Patiki Place, who applied for this determination ("the applicants")

1.2.2. K Kirkby and M Maich, the owners of the property at 120 Patiki Place where the building work was carried out ("the owners")

1.2.3. Thames-Coromandel District Council, the authority carrying out its duties as a building consent or territorial authority ("the authority")

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

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

1.3.2. the authority's decision to issue a code compliance certificate for building work carried out under building consent ABA/2024/0396 at 120 Patiki Place in relation to clause E1.3.1.

1.4. The determination does not consider the authority's decision to grant and issue the building consent or compliance of any other building work, or other clauses of the Building Code.

2. The building work and background

2.1. The property at 120 Patiki Road is approximately 945m^2, and lies to the west of 122 Patiki Place, with a right of way to the south serving several properties (see Figure 1). To the west of 120 Patiki Road is a council reserve and Waikiekie stream.

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

2.2. Prior to construction of the dwelling, the site was grassed. A survey dated 22 May 2024 shows the land sloping gently down from the entrance off the right of way, falling approximately half a metre from the entrance down to the west boundary[3] and approximately 200mm down to the northern boundary (see Figure 2).

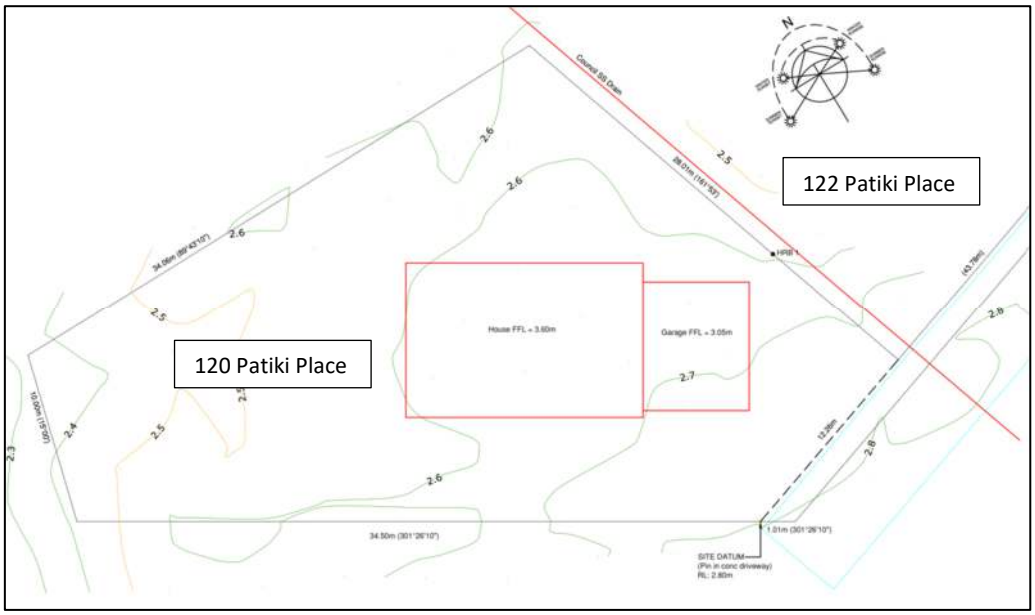

Figure 2: Contours prior to building work.

2.3. An engineering assessment and design report dated 10 March 2024 ("March 2024 report"), described the area at the location of the proposed dwelling as "flat" and ground investigations[4] showed the ground water table was 1.2m below the surface.

2.4. The building work comprised a new single-storey detached three-bedroom dwelling on a timber piles, with an attached double garage on a raft slab. The March 2024 report indicated the total roof area would be 279m^2 and proposed the stormwater from the roof be attenuated in a minimum 7000L tank and released via a 25mm orifice at the base of the tank "to match the existing flow rate". The tank outlet and overflow were proposed to discharge to a bubble up chamber located at the western end of the property, with discharge from the bubble up going to a secondary overland flow path toward the reserve.

2.5. On 16 August 2024, the authority issued building consent ABA/2024/0396.

2.6. The applicants experienced flooding during rainfall events on 23 and 24 August. Photographs taken during those events show flooding at the end of the right of way and along the fenceline between the applicants' and owners' properties, and water pooling around an outbuilding on the applicants' property. At this time construction was still underway; the stormwater system was incomplete, and downpipes were

[3] A flood assessment report dated 31 July 2024 records the fall from 2.8m RL to 2.4m RL, but incorrectly describes this as being a 1.2m fall.

[4] Testing was carried out in mid-February.

discharging to the ground on 120 Patiki Place. The applicants subsequently raised their concerns with the owners.

2.7. In September 2025 the stormwater design was revised, changing the above ground tank to underfloor tanks. An engineering assessment and design report dated 16 September 2025 ("September 2025 report") altered the minimum detention storage of the tank to 5,000L and described the roof area as 200m^2.[5]

2.8. The applicants raised their concerns about surface water management with the authority in January 2026, after rain events on 31 December 2025 and 2 January 2026. Photographs taken by the applicants on those dates show some ponding along the northern boundary of 120 Patiki Place (which appears adjacent to 124A Patiki Place) and an area of permeable metal surface at the entrance to 120 Patiki Place adjacent to the right of way. Another photograph taken on 23 March 2026 shows ponding again at the entrance.

2.9. An inspection report dated 27 November 2025[6] confirmed that three 2,000L tanks had been installed. Attached photographs show the tanks installed at ground level below a timber deck.

2.10. On 20 March 2026 a minor variation was approved for the changes to the stormwater design, and the authority issued a code compliance certificate for the building work on 23 March 2026.

3. Submissions

Applicants

3.1. The applicants contend that the building work on 120 Patiki Place, including recontouring of the site and the roof water discharge, is concentrating and discharging stormwater onto their property in a way that causes "ponding, nuisance and materially increased ground dampness" on their property.

3.2. The applicants submit that site work altered the topography, specifically the area between the new dwelling and the boundary with the applicants' property, and the site is now redirecting overland flow toward the applicant's property rather than to the reserve and stream boundary. In addition, surface water from the right of way "is now directed onto [their] property".

3.3. The applicants remain concerned that groundwater would affect the detention capacity of buried tanks, and regarding the changes to the tank whether there was "evidence that the revised system achieves equivalent hydraulic performance",

[5] It appears the original roof area of 279m^2 included allowance for a future outbuilding up to 80m^2 in roof area to be connected to the system.

[6] Record of an inspection by the firm of consulting engineers who authored the March 2024 and September 2025 reports

3.4. The applicants described the change in usability of part of their property as a result of the surface water being directed to their property, with areas previously used for vehicle access, caravan parking and camping in tents now being "excessively wet, making these long-established activities impracticable".

Owners

3.5. The owners did not make a submission in response to the application for a determination. I have taken correspondence from the owners on 18 September 2025 to represent their views, that flooding and ponding are widespread in the area, and the site had not been reshaped and does not redirect surface water to the applicant's property.

The authority

3.6. The authority was satisfied the code compliance certificate was properly issued, and submitted (in summary):

3.6.1. The property was resurfaced prior to the application for building consent, and photographs indicate that levelling was limited in scope (noting existing grass remaining visible in photographs). Minimal excavation was undertaken in preparation for the garage concrete floor slab and piled foundations for the dwelling, and the authority's inspection records do not identify further recontouring of the property or altering of overland flow paths.

3.6.2. The existing contour plan indicates the land naturally falls to the neighbouring property at 122 Patiki Place, and this alongside rainfall modelling for 10% AEP events indicates the applicants' property would likely receive natural flow of surface water in the form of natural servitude.

3.6.3. The revised engineering calculation required a minimum tank size of 5,000L and the as-built drainage plan confirms a combined capacity of 6,000L. The revised design did not alter the location of the bubble-up chamber or the overland flow path which falls to the reserve.

3.7. The authority submitted that rainfall events on 31 December 2025 and 23 March 2026 may have been greater intensities than provided for in E1.3.1.

3.8. The authority also noted that the applicants' property includes two utility buildings and a covered veranda that discharge directly to ground, which they consider will be contributing to surface water on the applicants' property.

4. Discussion

4.1. 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. In this case there were changes to the stormwater management system that were approved as a minor variation.

4.2. There is no indication that the as-built work is not in accordance with the approved plans and specifications. However, it does not necessarily follow that the decision to issue the code compliance certificate should be confirmed.

4.3. Section 17 provides "All building work must comply with the Building Code to the extent required by this Act…", and so I must also consider whether the building work that is the subject of this determination complies with clause E1.3.1 in relation to the protection of other property.

4.4. 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".

4.5. Performance clause E1.3.1 provides:

> E1.3.1 Except as otherwise required under the Resource Management Act 1991 for the protection of other property[7], 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[8] of damage or nuisance to other property.[9]

4.6. 'Surface water' is defined in Clause A2 of 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.

4.7. The obligations apply to surface water that is collected or concentrated "by buildings or sitework". 'Sitework' means work on a building site, including earthworks, preparatory to or associated with the construction, alteration, demolition, or removal of a building.

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7 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; ...

8 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].

9 Protection of other property is not limited to the protection of buildings, the land itself must also be protected from the likelihood of damage or nuisance.

4.8. In this case, the building work in scope of the building consent includes the sitework in preparation for the construction of foundations as well as construction of the dwelling and installation of the stormwater management system that collects surface water from rainfall on the roofs.

4.9. The term "nuisance" is not defined in the Act or the Building Code. A previous determination[10] 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,[11] 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.
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> [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.

4.10. 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. Furthermore, it must be surface water that is collected or concentrated by building work.

Assessment of compliance

4.11. The applicants have identified several dates of rainfall events where their property was subject to flooding and provided photographs in support of their application.

4.12. I note that there are several factors that may be contributing to surface water on the applicants' property. These include the surrounding topography, a high ground water table which can cause soggy ground and surface flooding after heavy rain, and the disposal of rainwater collected by some roofs on the applicants' property directly to ground. However, the question for this determination is whether the building work at 120 Patiki Place complies with clause E1.3.1.

4.13. Photographs from the August 2025 event show surface water ponding on both sides of the boundary between the applicants' and owners' properties, and around the

[10] Determination 2010/059 *Disposal of surface water collected behind a retaining wall* (12 July 2010), at [6.2.4].

[11] Determination 2015/052 *Regarding the compliance of proposed building work ... in respect of adjacent other property* (12 August 2015).

outbuilding on the applicants' property. However, I have not taken these into account in assessing compliance of the building work on 120 Patiki Place, because construction of the stormwater management system was not complete at that time and at least one downpipe was discharging directly to the ground.

4.14. I note that the sitework carried out under the building consent was limited, and the information available (including photographs during construction of the foundations) does not indicate that the sitework preparatory to the construction of the dwelling and attached garage has altered the contours of the land in a manner that collects and concentrates surface water and directs it toward 122 Patiki Place.

4.15. Photographs taken by the applicant after the stormwater management system was installed show some surface water ponding on 120 Patiki Place. Ponding is apparent along the northern boundary, which aligns with the original contours of the land falling from the entrance down to the north and west. Other photos show ponding at the entrance to 120 Patiki Place from the right of way, which also aligns with the original contours, with this end of the right of way slightly higher than both 120 and 122 Patiki Place at this point.

4.16. There is no indication of surface water from 120 Patiki Place being disposed of toward 122 Patiki Place after construction had been completed.

4.17. I have not been provided with information that would suggest the stormwater management system as built does not have sufficient capacity for the volume of surface water collected by the building in a 10% AEP event, and there is no indication that the system is failing to function as intended. For completeness, I note that the tanks are not located in the ground and so I do not consider the performance of the system will be affected by the high-water table.

4.18. As there is no evidence to indicate that the surface water collected and concentrated by building work on 120 Patiki Place in a 10% AEP event is being disposed of in a way that does not avoid the likelihood of damage or nuisance to 122 Patiki Place, I conclude that the stormwater management system as installed complies with clause E1.3.1. On that basis, there are not grounds to reverse the authority's decision to issue the code compliance certificate.

5. Decision

5.1. In accordance with section 188 of the Building Act 2004, I determine the building work complies with E1.3.1, as it relates to protection of other property, and I confirm the authority's decision to issue the code compliance certificate.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 12 November 2026.

Peta Hird

Lead Determinations Specialist