

Determinations

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Determinations are legally binding decisions made by the Ministry of Business, Innovation and Employment (MBIE) about matters of doubt or dispute to do with building work. They are not for disputes about workmanship. Most determinations are applied for by building owners, but councils and other people can also apply.

You may have already asked MBIE for an opinion or advice about the same question. A determination is different because MBIE takes a detailed look at the specific matter and makes a legally binding decision. The law that covers determinations is set out in the Building Act 2004 (sections 176-190).

EXAMPLES: Reasons for wanting a determination.

A building owner might want a determination when:

- a council refuses to issue a building consent for a proposed building
- they have been refused a code compliance certificate for a building that appears to be completed and they believe is compliant
- building work on a neighbouring property is affecting the stability of their own property
- they disagree with a notice to fix.

What determinations can decide

A determination can:

- make a decision on whether building work complies with the Building Code. The building work can be planned, underway or complete.
- confirm, reverse or modify council decisions on certain issues. For example, a determination may say the council was correct not to issue a particular building consent.

A determination is not intended to replace the council's decision-making process and responsibility, but rather to consider particular matters in dispute.

Determinations can only consider council decisions relating to:

- building consents
- notices to fix
- code compliance certificates
- compliance schedules
- certificates of acceptance
- granting waivers or modifications of the Building Code
- discretionary exemptions from requiring building consent (which councils can make under Schedule 1(2) of the Building Act)
- compliance requirements for building alterations
- changes of building use
- building code compliance requirements for a building subdivision
- dangerous, affected, and insanitary buildings
- earthquake prone buildings

- certificates for public use
- certificates issued under section 224(f) of the Resource Management Act 1991
- dams.

What determinations can't decide

MBIE can only make determinations on the matters described above.

For example, we are unable to determine:

- Resource Management Act or District Plan disputes
- Contractual disputes
- Disputes with neighbours – unless you are the owner of 'other property' as described below.

A determination is not a substitute for product certification.

A determination might not be right for your situation. There are other options for handling disputes, including using consumer rights, contracts, and mediation. [To find out more check out Resolution options \(https://www.building.govt.nz/resolving-problems/resolution-options/\).](https://www.building.govt.nz/resolving-problems/resolution-options/)

Who can ask for a determination

You can ask for a determination if you are a:

- building owner
- licensed building practitioner concerned with the relevant building work
- council or building consent authority
- person who has been issued with a notice to fix
- neighbour or the owner of 'other property' when the issue concerns Building Code requirements for protection of other property (which relate to land stability, surface water run-off and potential spread of fire between properties)
- person with a direct interest in the issue if it relates to access and facilities for people with disabilities
- person or organisation who or that has a right or an obligation under any other Act to give written notice to a territorial authority in respect of matters to which this Act relates.

MBIE can initiate a determination if it believes this necessary to achieve the aims of the Building Act.

Being a party to someone else's determination

Those involved in a determination, including the person who applies for it, are called 'parties'.

The list of those who may be parties to a determination is the same as those who can apply for one. The council is usually a party to a determination. MBIE might also identify parties that need to be involved.

If someone has applied for a determination and identified you as a party they will send you a copy of their completed application. They will also send a form for you to complete and return to MBIE.

If you are a party to a determination you will get copies of all information and correspondence from the other parties and MBIE. You can also provide your own information and comments as the determination is processed.

EXAMPLE: Parties to a determination

A building owner asks for a determination. They believe the builder (a licensed building practitioner) did not build their house in accordance with the plans, and that the council should not have issued a code compliance certificate for this building work. In this case, the parties to the determination are the 'building owner', the 'builder' and the 'council'.

Use of previous determinations

Previous determinations may provide some guidance if you are faced with similar problems. Each determination is clearly written so you can see the analysis leading to the decision.

MBIE is not bound by previous determinations in the same way a court is bound by the decisions of a higher court. However, we do take them into account if we think the circumstances are similar.

Search previous determinations (<https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/>) for free downloads of determinations.

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New Zealand Government

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- with compliance with the Building Act, it is published under section 175 of the Building Act
- with a Weathertight Services claim, it is published under section 12 of the Weathertight Homes Resolution Services Act 2006.