

Determinations

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A determination is a legally binding ruling 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 civil disputes or disputes about workmanship. Most determinations are applied for by building owners, but councils and other people can sometimes apply.

Determinations can look at whether a building or building work complies with the Building Code. They can be about building work that is planned, partly done or complete.

When you can't agree with a council's decision about building work, a determination can help you solve the problem. They are sometimes for when a council has failed to act or refused to make a decision.

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).

For further information, [contact Determinations \(https://www.building.govt.nz/about-building-performance/contact-us/#jumpto-determinations\)](https://www.building.govt.nz/about-building-performance/contact-us/#jumpto-determinations).

What a determination can be about

MBIE can make a determination about:

- whether a building or building work complies with the Building Code
- a council's decision on the following:
 - a building consent (including time extensions to building consents)
 - a notice to fix
 - a code compliance certificate (including time extensions to code compliance certificates)
 - a compliance schedule
 - a certificate of acceptance
 - granting a waiver or modification of the Building Code
 - an exemption from building consent requirements under Schedule 1 (whether or not a building consent is required)
 - building alterations
 - a change of building use
 - subdivision of buildings
 - dangerous, affected, earthquake-prone and insanitary buildings
 - a certificate for public use
 - a certificate under section 224(f) of the Resource Management Act 1991
 - dams.

For example, someone might want a determination when:

- a council refuses to issue a building consent for a proposed building
- a building owner has been refused a code compliance certificate for a building that appears to be completed and the owner believes is compliant
- building work on a neighbouring property is affecting the stability of adjacent land

- a building owner disagrees with the contents of a notice to fix.

Who can ask for a determination?

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

Example of 'parties':

A building owner asks for a determination. They believe building work on an adjacent property is not compliant with the obligations of the Building Code relating to the protection of other property. In this case, the parties to the determination are the 'building owner', the 'council' and the 'neighbour'.

You can ask for, or be involved as a party to a determination, if you are:

- the building owner or the owner's agent
- a licensed building practitioner concerned with the relevant building work
- the council
- a person who has been issued with a notice to fix
- a neighbour or the owner of other property, when the determination relates to a provision in the Building Code that involves protection of other property. For example, the potential spread of fire from one property to another, surface water run-off or land stability.
- a Government department or Crown agency with a statutory duty under the Building Act, such as the New Zealand Fire Service or WorkSafe NZ.
- anyone with a direct interest in the problem or question if it has to do with access and facilities for people with disabilities.

MBIE can initiate a determination where it believes it is necessary to achieve the aims of the Building Act. The council will usually be a party to any determination. MBIE may ask other people or organisations to become involved if necessary.

What a determination can decide

The determination can:

- make a decision on whether building work complies with the Building Code, and/or
- confirm, reverse or modify an earlier decision made by the council. For example, a determination may say the council was correct in not issuing a building consent.

A determination can also:

- make waivers or modifications to the Building Code. For example, a determination may modify the time period for which the building must be durable
- make conditions that the council may itself grant or impose. For example, a determination may require the council to issue a building consent with certain conditions.

Being a party to someone else's determination

If you have been identified as a party in someone else's determination application, you will receive a form and a copy of the application itself from the person applying. Please complete the form and send it to MBIE as quickly as possible.

You will receive copies of all correspondence to other parties, including reports and draft determinations, as the determination is processed. You will be given the opportunity to comment on all information presented by other parties. You can also request a hearing if you wish.

Other legal options following a determination

If any party is not satisfied with the determination, they can take the matter to court. The courts can decide whether the:

- decision reached in the determination is correct. This is called an appeal.
- determination-making process was correct and fair. This is called a judicial review.

You need to wait until we have issued the determination before you can ask for an appeal or judicial review. If you want to appeal, you must do so within 15 working days of the date the determination is issued (or the date the determination was clarified/corrected, if relevant). You may consider seeking legal advice. The District Court's decision will be final.

Use of previous determinations

A determination considers particular building work and is only binding in respect of that work. MBIE is not bound by previous determinations in the way that a court is bound by the decisions of a higher court. However, we will always take account of previous determinations if we think the circumstances are similar. We write determinations so that you can clearly see the analysis that led to the decision. So they do provide some guidance for councils and others faced with a similar problem.

You can search for [determinations issued \(https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/\)](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/) for copies. They are available free of charge.

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Advice about leaking houses or apartments

If your house is less than 10 years old, it may be more useful for you to make a claim to Weathertight Services rather than seek a determination.

Weathertight Services

If you own a leaky home in New Zealand, you have options to resolve issues under the Weathertight Homes Resolution Services Act 2006.

[Weathertight Services \(https://www.building.govt.nz/resolving-problems/resolution-options/weathertight-services/\)](https://www.building.govt.nz/resolving-problems/resolution-options/weathertight-services/)



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.

