

Determination 2023/007

Regarding the authority's decision to refuse to grant a building consent for alterations to an existing building

264 McShane Road, Wainui Bay, Tasman District

Summary

This determination considers the authority's decision to refuse to grant a building consent for alterations to an existing detached building. The determination considers the authority's reasons for refusal and whether sufficient information was included in the building consent application for the authority to be satisfied that the provisions of the Building Code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

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, Principal Advisor Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.¹
- 1.2. The parties to the determination are:
 - 1.2.1. Tasman District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority. The authority applied for the determination
 - 1.2.2. Tui Spiritual and Educational Trust (“the Trust”), the owner of the property
 - 1.2.3. W Hunt (“the building owner”), the owner of the building² and a trustee of the Tui Spiritual and Educational Trust
 - 1.2.4. D Curl, the licenced building practitioner (“the designer”) responsible for the design work.
- 1.3. This determination arises from the decision of the authority under section 50 to refuse to grant an application for a building consent for alterations to an existing detached building. The authority is of the view that the information provided with the building consent application contained “numerous errors and inconsistencies” which meant it was not able to be satisfied that the proposed building work would comply with the Building Code.
- 1.4. The matter to be determined, under section 177(1)(b) and (2)(a), is therefore the authority’s decision to refuse to grant the application for building consent number BC211501.
- 1.5. In deciding this matter, I will consider the reasons for the refusal outlined in the authority’s written notice to the Trust dated 20 January 2022.

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

² The building owner also has a Licence to Occupy the area of land on which the building is located.

Issues outside this determination

- 1.6. A plan included in the building consent application refers to the original building being previously “consented as [an] art studio” and the proposal is to “change [it] to residential ... use”. The building consent application form also refers to a proposed change of use. The designer has subsequently confirmed that the building is already being used as sleeping accommodation and the proposal is to install a kitchen. I have not considered whether the building has undergone a change of use in accordance with section 115, as the authority did not raise this as an item of dispute between the parties in its written notice dated 20 January 2022.
- 1.7. The building consent application included a proposal to construct a new carport on the east side of the existing building. The designer has indicated that the carport is to be constructed under Schedule 1 of the Act.³ Although the parties have exchanged correspondence on whether the carport design should be included in the plans and whether it meets the requirements of Schedule 1,⁴ it was not included in the written notice issued by the authority on 20 January 2022, so I have not considered this matter.
- 1.8. On 17 February 2022, a second building consent application was submitted to the authority for the same building work that is described in the first building consent application BC211501. I have only considered the decision by the authority to refuse to grant the application for the first building consent.
- 1.9. In correspondence between the designer and the authority, the designer has raised issues with how the authority performed its duties, including the processing of the building consent application. Issues related to how the authority performed its duties, functions, and responsibilities are not within the scope of matters that can be determined under section 177.

2. The building work

- 2.1. The Trust’s property is a lifestyle block in Wainui Bay, Tasman District.
- 2.2. The proposed building work involved alterations to an existing building on the property. The existing building was first constructed in 1986, and it is currently occupied by the building owner.
- 2.3. The existing building is approximately 8.38m long x 5.8m wide. It is a timber framed building, with a concrete slab floor, board and batten cladding to the external walls, and a pitched roof with lightweight metal cladding. The building has two rooms, described as a “studio” and “reception” area. There is an existing free-standing fire in the studio room. On the south side of the building is an existing veranda

³ Sections 41(1)(b) and 42A.

⁴ It appears compliance with clause 18A of Schedule 1 was at issue between the parties.

approximately 3.5m wide x 4.3m long with open sides and a timber roof with lightweight metal cladding and a concrete slab floor. Refer to Figure 1.⁵

2.4. The proposed building work, as described in the building consent application BC211501, is to add “New External walls under [the] existing verandah [sic] roof and new ablutions”. The stated means of compliance of the building work with the Building Code, for each of the clauses listed in the application form, were the associated Acceptable Solutions.⁶

2.5. The building consent plans show that the building will be altered and extended to become a one-bedroom dwelling (refer to Figure 1). Specific aspects of the proposed alterations include (but are not limited to):

2.5.1. installing a kitchen in the existing reception area of the building, which includes a new dining and living room space

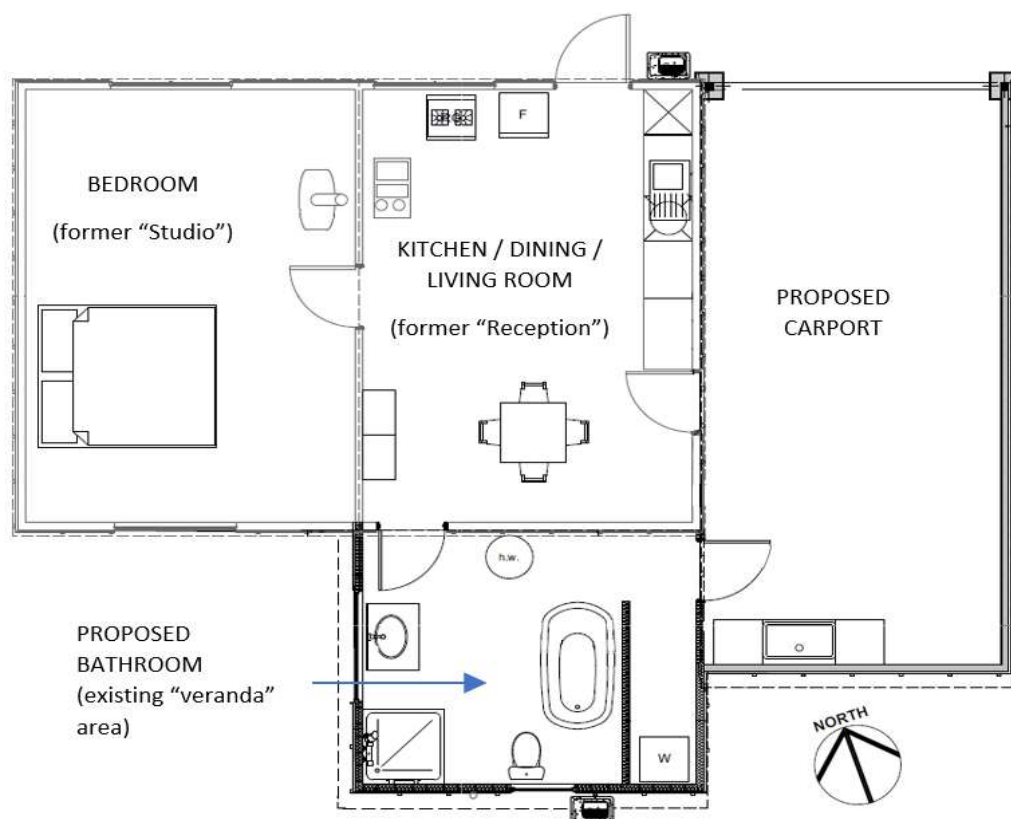


Figure 1: Floor plan (not to scale)

⁵ Figure 1 has been reproduced from a floor plan provided by the designer and included in the building consent documentation.

⁶ Sections 19(1)(b) and 22.

- 2.5.2. enclosing the existing veranda to form a new bathroom approximately 15m² in size, with a shower, bath, toilet, hand-basin, laundry space, and hot water cylinder
- 2.5.3. installing a hand-basin in the proposed carport
- 2.5.4. installing new plumbing and drainage
- 2.5.5. carrying out new electrical work and lighting.

3. Background

- 3.1. On 1 December 2021, the Trust applied for a building consent (BC211501) for the proposed building work.⁷
- 3.2. The authority subsequently raised several requests for further information about the proposed building work and the designer responded to these.
- 3.3. However, on 20 January 2022, the authority issued a written notice under section 50 refusing grant the application for the building consent. The authority stated it was “still not be able to be satisfied on reasonable grounds that the provisions of the building code will be met if the building work was properly completed in accordance with the plans and specifications”. In particular, the authority identified that:

The documents still contain numerous errors and inconsistencies including some new ones – a few of which are listed here: A section in the specification for stucco cladding when the elevations show battened ply cladding, inconsistencies and errors in the information supplied covering the veranda floor slab plan (new vs. existing) and construction detailing, numerous drafting and labelling errors in construction detailing, missing manufacturers [sic] product technical information (ply cladding and linings / bracing, wall wraps and flashing tape). There is no bracing justification supplied. There are errors in the revised drainage design. The proposed water supply is mentioned in the specification but not indicated on the drawings and there is no specification information relating to pipework carrying non potable water. There is no information concerning the installation of the proposed hot water cylinder (seismic restraint, valve train and venting requirements). There is insufficient information in the application to assess compliance of the existing/proposed building with H1 Energy Efficiency.

In addition to the above:

- The revised documents no longer have sheet titles or drawing numbers in the title blocks

⁷ The building consent application form (Form 2) shows the building owner as the contact person for the Trust, and the designer was the nominated agent who signed and submitted the application to the authority.

- The designer’s memorandum of design work⁸ indicates that the external walls are an Engineer designed system but there is no evidence supporting this
- The cross section through the new bathroom area now incorrectly identifies this area of work as Schedule 1 work.

Please note in accordance with MBIE guidance this is not an exhaustive list.

3.4. The designer challenged this decision and provided some further information on 24 January 2022.⁹ However, on 25 January 2022, the authority confirmed its decision in an email to the designer and the building owner stating that, “The design and specifications are of inadequate quality to process” and cited Ministry guidance¹⁰ on the level of information that an authority is required to provide when refusing to grant a building consent application. In a separate email to the designer dated 25 January 2022, the authority stated:

We provided you sufficient and clear examples of the reasons for the refusal in accordance with the guidance. The examples in our view were sufficient to substantiate our view that the application was of poor quality in terms of basic information missing and errors.

3.5. On 1 February 2022, the authority applied for this determination.

4. Submissions

The authority

- 4.1. The authority stated its reasons for refusing to grant the application for the building consent aligned with the Ministry’s guidance on Regulation 7 of the Building (Accreditation of Building Consent Authorities) Regulations 2006 (“the Accreditation Regulations”).
- 4.2. The authority referred to the Ministry’s guidance, which states that an authority “is not required to provide detailed reasons for each Building Code clause as to why an application may be deficient, or to detail all the deficiencies. It is also not required to provide any advice on how to rectify any deficiencies”.

⁸ A copy of the certificate of work (section 45(3)) was not provided to me in support of the application for determination.

⁹ The designer’s email refers to an attachment regarding their “reply to the refusal”. However, I have not been provided with a copy of that attachment. Regardless, I have relied on the information included in the plans and specifications the authority had before it on 20 January 2022 when the decision was reached to refuse to grant the application for the building consent.

¹⁰ Ministry of Business, Innovation and Employment guidance titled ‘Regulation 7(2)(d)(v) – Granting, refusing to grant, and issuing building consent’. Available at: <https://www.building.govt.nz/building-officials/bca-accreditation/detailed-regulatory-guidance/7-perform-building-control-functions/granting-refusing-to-grant-issue-building-consent/> (last updated 10 April 2017); accessed on 9 March 2023.

- 4.3. The authority provided a copy of the set of plans dated 4 January 2022 that it had annotated to clarify its reasons for refusal of the application for the building consent.

The other parties

- 4.4. Neither the Trust, the building owner, nor the designer made any submissions in response to the application for a determination.
- 4.5. However, in correspondence with the authority, the designer stated:
- 4.5.1. the written notice “is not clear, explicit or specific and is generic and vague”
 - 4.5.2. the drainage system designed by the drainlayer is correctly recorded on the plans
 - 4.5.3. the builder and drainlayer have seen the plans and “agree it reflects what they will be doing, with the products they use”
 - 4.5.4. all the relevant areas have been detailed and specified correctly.

5. Discussion

- 5.1. The matter for determination is the authority’s decision to refuse to grant the application for building consent BC211501. I need to consider the authority’s reasons for the refusal given in its written notice dated 20 January 2022. In doing so, I will consider whether the documentation provided with the building consent application is adequate to reach the view that the provisions of the Building Code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

Legislation

- 5.2. Section 45 states:

45 How to apply for building consent

- (1) An application for a building consent must—
 - (a) be in the prescribed form; and
 - (b) be accompanied by plans and specifications that are—
 - (i) required by regulations made under section 402^[11]; or

¹¹ Section 402 Regulations: general.

(ii) if the regulations do not so require, required by a building consent authority; and

...

(c) contain or be accompanied by any other information that the building consent authority reasonably requires...

5.3. Section 48 states:

48 Processing application for building consent

...

(2) A building consent authority may, within the period specified in subsection (1A), require further reasonable information in respect of the application...

5.4. Section 49 states:

49 Grant of building consent

(1) A building consent authority must grant a building consent if it satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

...

5.5. Section 50 states:

50 Refusal of application for building consent

If a building consent authority refuses to grant an application for a building consent, the building consent authority must give written notice of—

(a) the refusal; and

(b) the reasons for the refusal.

Documentation requirements for building consent applications

5.6. An authority is entitled to set reasonable requirements for the documentation that accompanies a building consent application (section 45(1)(b)(ii)). These requirements are to ensure that the building consent application clearly demonstrates and documents how compliance with the Building Code is to be achieved.

5.7. Section 48(2) also provides that a building consent authority may require further reasonable information in respect to the application. Where there is inadequate documentation to enable the authority to make a decision in accordance with

section 49(1), an authority is entitled under section 50 to refuse to grant an application for a building consent. Such a refusal is on the basis that the authority requires adequate documentation to be satisfied on reasonable grounds that the provisions of the Building Code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

5.8. The Ministry's¹² guidance that was current at the time the building consent application was lodged was titled "Guide to applying for a building consent (residential buildings)" ("the Ministry's guidance").¹³ This guidance described an acceptable minimum standard of documentation to be supplied with an application for building consent to demonstrate compliance with relevant clauses of the Building Code. The guidance stated that a building consent application needed to:¹⁴

5.8.1. be in the prescribed form

5.8.2. include plans and specifications

5.8.3. include any other information the building consent authority reasonably requires

5.8.4. include a brief description of how the project will comply with the Building Code

5.8.5. include information about the materials, products, and systems to be used in constructing the building.

5.9. The Ministry's guidance also provided information on the quality, content, form, and type of information for plans¹⁵ and specifications, which included (but was not limited to):

5.9.1. the plans and specifications should be project-specific

5.9.2. specifications should complement the plans, and not contain erroneous information or contradict itself or associated documents

5.9.3. specifications must not include unrelated generic information

5.9.4. the building consent application plans and specifications "should be clear, correct and complete"

¹² The former Department of Building and Housing.

¹³ Second edition, dated October 2010, issued under section 175. I note the guidance has subsequently been superseded by the Third edition, dated October 2022.

¹⁴ The items listed are not intended to be exhaustive. For information about how to apply for building consent, refer to section 45.

¹⁵ The guidance uses the terms "plans" and "drawings" to mean the same thing. For ease of reference, I have used the term "plans" (as defined in section 7 of the Act) in this determination.

- 5.9.5. all plans should contain a reference number and title, the name of the designer and the owner(s), the job address, include a scale, and be dated for version control
 - 5.9.6. plans should meet normal drawing conventions and generally conform to AS/NZS 1100 Technical Drawing,¹⁶ including conventions for line types and widths, lettering type and size, dimensions, symbols for building features and elements, designation of spaces, representation of materials, and cross-referencing conventions, and drawing sheet sizing should be consistent
 - 5.9.7. hand-drawn or computer-aided design plans are acceptable
 - 5.9.8. all relevant clauses of the Building Code should be correctly identified and considered during the design process, and the plans and specifications need to clearly demonstrate compliance.
- 5.10. Determination 2011/096¹⁷ considered what can be reasonably required in terms of the standard of documentation to be provided for a building consent application. It stated:

In my view plans and specifications submitted in support of a consent, or alterations to a consent, must:

- a) provide a compliant solution, and
- b) must also be sufficiently clear to describe how that situation is to be achieved through the construction process
- c) detail critical features.

The reasons for refusal

- 5.11. It has been previously noted in Determination 2021/027¹⁸ that when an authority refuses to grant an application for a building consent, the reasons for the refusal stated in the written notice “should be sufficiently clear so the applicant can submit specific information on specific matters of doubt over compliance with the Building Code to allow the consent to be issued”. In effect, the reasons for the refusal given by the authority need to be sufficiently explicit, clear, and specific, including on

¹⁶ The guidance did not refer to which part of AS/NZS 1100 was relevant (other than part 301 for dimensions on plans). The Standards New Zealand website (accessed on 14 March 2023) notes that parts 101, 201, 301 and 401 of AS/NZS 1100 have been “withdrawn”. However, AS/NZS 1100.501:2002 Technical Drawing – Structural Engineering Drawings is still current.

¹⁷ At paragraph 8.1.2 of Determination 2011/096: The refusal to grant an amendment to a building consent for proposed remedial work, and the issuing of a notice to fix for a 13-year-old house with monolithic cladding. Issued 16 November 2011.

¹⁸ At paragraph 5.7 of Determination 2021/027: Regarding the authority’s refusal to grant building consents for the construction of new residential dwellings. Issued 16 December 2021.

matters of compliance with the Act or its Regulations, so the applicant can remedy the situation in order to obtain the relevant certificate.

- 5.12. Turning now to the authority's reasons for refusing to grant the application for building consent BC211501. The written notice issued by the authority on 20 January 2022 referred to "numerous errors and inconsistencies" in the documents submitted in support of the building consent application, and included some specific examples of these while also noting that the list was not complete. Because of these "numerous errors and inconsistencies", the authority decided it was not able to be satisfied on reasonable grounds that the provisions of the building code will be met if the building work was properly completed in accordance with the plans and specifications.
- 5.13. In determining the matter, I have considered the documents the authority had available when making its decision. This includes the revised plans supplied by the designer (dated 4 January 2022),¹⁹ the specifications, and other supporting documents. Taking this information into account, I have reviewed several (but not all) of the authority's reported "errors and inconsistencies" and make the following observations:
- 5.13.1. Water supply – the plans do not indicate a water supply for the purpose of establishing compliance with Clause G12 Water Supplies for the new kitchen, the hand-basin in the carport, or the proposed bathroom. Although the accompanying specifications refer to a "cold water system", with "supply pumped from storage tank", it states that the plans indicate the locations of these. However, the relevant information has not been included on the plans.
- 5.13.2. Drainage – there are inconsistencies in the drainage design, with the site plan showing four foul water drains leading to a pump chamber, but the associated drainage plan only shows two drains. Further, one inspection point has been indicated on the drainage plan with no drains going to and from it, and no details have been provided to confirm how the waste pipes from the sanitary fixtures are to be installed through the proposed foundations and floor slab to comply with clauses B1 Structure and G13 Foul water.
- 5.13.3. Cladding – the specifications include a section on stucco plaster cladding for the external walls and a separate reference to "underlay for stucco plaster". However, the plans show the proposed external wall cladding system for the new bathroom, to comply with Clause E2 External Moisture, is to be timber board and batten to match the cladding on the existing building.
- 5.13.4. Bathroom and laundry floor slab – there is inconsistency between the information provided in the specifications and the plans for the construction

¹⁹ The plans were received by the authority on 10 January 2022.

of the floor slab and perimeter “foundation footing”. For example, a construction note says that the foundation footing is to be 300mm wide x 300mm deep and requires two D12 horizontal reinforcing bars. However, the drawn detail states that the overall depth of the footing is approximately 525mm deep,²⁰ and specifies three D12 horizontal reinforcing “rods”, although only two are detailed.

- 5.13.5. Hot water cylinder – no information has been provided to confirm how the hot water cylinder is to be installed to comply with Clause G12 Water Supplies. However, there is a construction note on one plan that confirms there will be a drained tray beneath the cylinder. Although the specifications note that seismic restraints are to be installed to the hot water cylinder, there is no detail to confirm how this will be done to comply with Clause B1 Structure.
- 5.13.6. Manufacturers’ information – although some manufacturers’ product technical information has been provided, it is not provided for all the materials. For example, manufacturer’s product information has not been provided for the proposed external wall cladding or the sealer for the concrete floor.
- 5.13.7. Bracing - no bracing calculations have been provided to confirm the bracing capacity achieved for the bathroom extension, which is required to support the bracing plan and demand calculation sheet, to comply with Clause B1 Structure.
- 5.13.8. Insulation - Insufficient information has been provided to assess compliance with Clause H1 Energy Efficiency of the extension in the building’s proposed new use. For example, no insulation has been specified for the roof above the new bathroom, although one detail (for a different form of roof construction using trusses, which is not associated with the proposed building work) does indicate some insulation at ceiling level.
- 5.14. Several of the plans, parts of the specifications, and other documentation do not differentiate between what is included in the building consent application and what is excluded because it is proposed to be constructed under Schedule 1 of the Act.
- 5.15. Other general matters that affect the ability to assess the proposed work for compliance with the Building Code include (but are not limited to):
- 5.15.1. The specifications refer to compliance with several Australian and New Zealand standards that are not relevant to the building work. For example, standards for fire hose reels and fire sprinkler systems for dwellings.

²⁰ The overall depth is detailed to be 225mm from finished ground level to the top of the “foundation footing” and 300mm from finished ground level to good ground.

- 5.15.2. The specifications appear to be incomplete. For example, paragraph 2.7.5.3 of the specifications refers to a separate section titled 'Painting and Decorating' that is not included in the document.
- 5.15.3. Several details indicate roof trusses, but the associated cross-sections indicate a skillion roof construction.
- 5.16. There are also drafting issues with the plans dated 4 January 2022, though I note these issues were not all present in earlier plans. For example, in the 4 January 2022 plans there are no individual titles or reference numbers provided for each plan, some dimensions cannot be read, one detail is obscured by construction notes, and no cross-referencing has been provided between construction details or sections. As referenced in paragraph 5.8, the Ministry's guidance was available at the time the building consent application was lodged with the authority regarding the quality expected of building consent plans.
- 5.17. In my opinion, the quality of the plans are not adequate, and they are not sufficiently clear, correct, or complete. Taking the observations above into consideration, I have reached a view that the application for the building consent does not meet the requirements of section 49 due to the inadequacy and deficiencies in the plans and specifications, and on that basis the authority was correct to refuse to grant the building consent.
- 5.18. However, I do not support the authority's assessment of the plans in all respects (refer to paragraph 4.3). For example, I note the authority was of the view that the size of the terminal vent for the foul water drainage system had not been specified by the designer when a size is in fact included on one of the plans.
- 5.19. Although I have considered some of the authority's reasons for refusing the consent, it is evident to me that there are a number of other deficiencies in the plans and specifications that mean they do not meet the requirements of section 49(1). For example, no information has been provided to confirm how compliance with Clause E3 Internal Moisture is to be achieved in the new kitchen.
- 5.20. In correspondence with one another, the parties have commented on the level of detail the authority is required to provide when refusing to grant an application for a building consent. The authority has referred to the Ministry's guidance on the Accreditation Regulations, specifically Regulation 7(2)(d)(v), which relates to how an authority performs its building control functions including "refusing a building consent". The guidance states that an authority "is not required to provide detailed reasons for each Building Code clause as to why an application may be deficient, or to detail all the deficiencies". However, it also states that the refusal should identify the relevant Building Code clause(s) where the application is deficient.
- 5.21. Detailing the Building Code clause(s) to which the deficiencies in plans and specifications relate provides the applicant and designer with a clear idea of what areas of compliance need to be addressed. The authority is correct, however, that it

does not need to provide detailed reasons as to why an application may be deficient for each Building Code clause, or detail all the deficiencies, or provide advice on how to rectify them.

5.22. In this case the authority did not include the relevant Building Code clauses for the list of errors and inconsistencies that it had identified in the written notice of refusal. Despite this shortcoming, I am of the view that the authority's response for the refusal, while not a complete list, were sufficiently explicit, clear and specific with regard to the deficiencies in the documentation.

6. Decision

6.1. In accordance with section 188 of the Building Act 2004, I determine the authority was correct to refuse to grant the application for building consent BC211501 under section 50. Accordingly, I confirm the authority's decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 28 March 2023.

Peta Hird

Principal Advisor Determinations