

# Determination 2024/006

**The refusal to issue a certificate of acceptance for building work associated with a dwelling**

**73A Gledstane Road, Stanmore Bay, Whangaparāoa**

## Summary

This determination considers the authority's refusal to issue a certificate of acceptance for building work associated with a dwelling, that was carried out without building consent. The authority considered that Building Code clauses B1 *Structure*, B2 *Durability*, E2 *External Moisture*, G2 *Laundering*, G9 *Electricity*, G12 *Water Supplies* and H1 *Energy Efficiency* were not met. The determination considers the reasons for refusal set out in the authority's refusal letter and subsequent report.



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](http://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](http://www.building.govt.nz).

## 1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Andrew Eames, Manager Advisory for and on behalf of the Ministry of Business, Innovation and Employment (“the Ministry”) and the Chief Executive of the Ministry.<sup>1</sup>
- 1.2. The parties to the determination are:
  - 1.2.1. A Zowitzkey (“the owner”), who applied for the determination.<sup>2</sup>
  - 1.2.2. Auckland Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. The matter to be determined<sup>3</sup> is the authority’s refusal to issue a certificate of acceptance for the building work to construct the owner’s dwelling, which was carried out without building consent.
- 1.4. The authority refused to issue the certificate of acceptance (COA02637674) because it was not satisfied that to the best of its knowledge and belief and on reasonable grounds, that, insofar as it could ascertain, the building work complies with clauses B1 *Structure*, B2 *Durability*, E2 *External Moisture*, G2 *Laundering*, G9 *Electricity*, G12 *Water Supplies* and H1 *Energy Efficiency* of the Building Code.
- 1.5. In deciding this matter, I must consider the authority’s reasons for refusing to issue the certificate of acceptance. This includes the reasons set out in the authority’s initial refusal letter (dated 25 March 2022) and in its subsequent refusal report (dated 13 April 2022).

### Matters outside this determination

- 1.6. This determination is not an assessment of the Building Code compliance of the dwelling. It does not consider the compliance of any building work which was not raised in the refusal letter and report.

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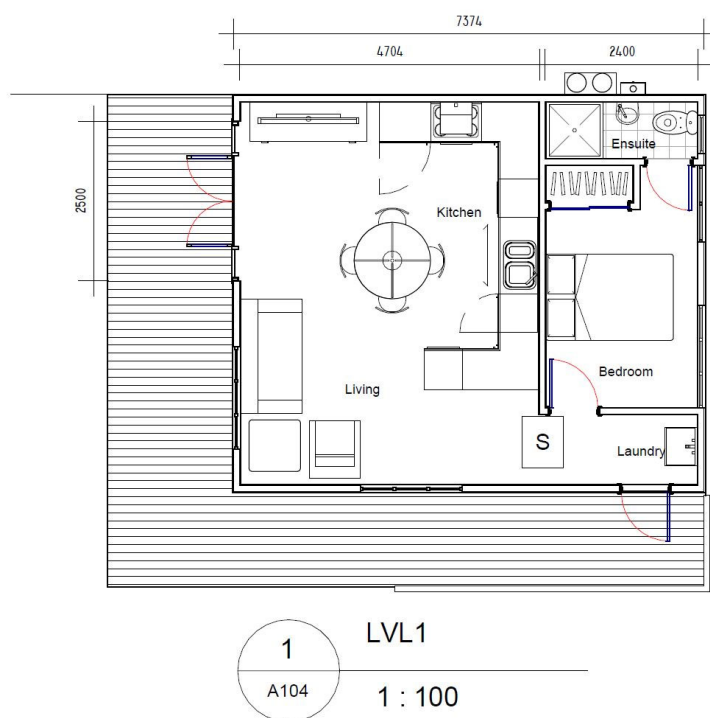
<sup>1</sup> The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

<sup>2</sup> The owner is represented by M and A Barber. M Barber is a Licenced Building Practitioner (“LBP”) (Design Class), and was the author of several documents produced for the certificate of acceptance application, including the as-built plans and the ‘building code compliance report’.

<sup>3</sup> Under section 177(1)(b) and (3)(b).

## 2. Building work and background

- 2.1. The dwelling is a 46m<sup>2</sup> timber framed building on timber piles. It has a regular form with four exterior walls and a low pitched trussed roof. The external wall cladding is horizontal profiled metal. The windows and doors are timber framed and single glazed. The dwelling consists of a single bedroom, ensuite, living area, kitchen and laundry space. A deck surrounds two of the external walls (see Figure 1).



**Figure 1: Floor plan of the dwelling, copied from Sheet A102, dated 07/11/21 (not to scale).**

- 2.2. According to the owner, the dwelling was originally built sometime between 2000 and 2007.<sup>4</sup> The owner did not confirm whether the original building was constructed onsite or relocated.
- 2.3. The owner applied for a certificate of acceptance on 16 December 2021. The building work was described in the application form as “Single bedroom dwelling with kitchen and bathroom”. The application also stated “Previous owner constructed sleepout prior to subdivision, new owner wishes to make this primary home”.
- 2.4. Among other documents, the certificate of acceptance application included as-built plans which were drawn by the owner’s agent, dated 07 November 2021. The authority also undertook an inspection of the dwelling.

<sup>4</sup> However, I note the certificate of acceptance application form states the building work was carried out on 1 September 2016. It is unclear which parts of the building work were done in 2016 and which were part of the original construction.

- 2.5. Between December 2021 and March 2022, the authority sent three requests for information (RFIs 1-3), which were responded to by the owner. Among other items, the RFIs included requests for:
- 2.5.1. a building report that demonstrated compliance with all relevant Building Code clauses. RFI 1 recommended the author be from a list of certificate of acceptance report authors on the authority's producer statement register. RFI 3 requested that the report be provided by a "...suitably qualified and **independent** professional...".
  - 2.5.2. an energy works certificate
  - 2.5.3. a producer statement (PS3) for general construction work
  - 2.5.4. all relevant specifications, including specifications of the floor and ceiling insulation.
- 2.6. The owner submitted further documents in response to the RFI requests, including (but not limited to) a report from an engineer dated 9 February 2022, revised plans dated 5 March 2022, and a 'building code compliance report' completed by the owner's agent on 13 March 2022.<sup>5</sup>
- 2.7. On 25 March 2022, the authority sent a refusal letter to the owner, outlining three reasons for the refusal:
- 2.7.1. There were "insufficient details submitted on provided documentation".
  - 2.7.2. The building work did not demonstrate a "clear pathway of compliance with the New Zealand Building Code Clauses, specifically, B1, B2, E2, G2, G9 & H1".
  - 2.7.3. The authority "has not been satisfied on reasonable grounds that compliance has been established with the Building Code and certificate of acceptance has now been refused".
- 2.8. On 27 March 2023, the owner sent a letter of complaint to the authority.
- 2.9. On 13 April 2022, the authority sent a refusal report to the owner. The refusal report provided further detail regarding the authority's reasons for refusing the certificate of acceptance (refer to Appendix A). The items at issue included the bracing, durability, laundry, hot water temperature, energy work, insulation, cladding, deck to cladding junction, and the 'lean to'.

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<sup>5</sup> I note that the owner also provided a revised version of the 'building code compliance report' on 26 March 2022, the day after the certificate of acceptance was declined.

### 3. Submissions

#### The authority

- 3.1. The authority's submission discussed the items raised in the refusal report, which the authority considers will need to be addressed if the owner reapplies for a certificate of acceptance (refer to Appendix A).
- 3.2. The submission also stated that the owner would need to provide:

#### **3<sup>rd</sup> party report**

A Building report describing, demonstrating, and establishing compliance with all the relevant NZ Building Code clauses for the building works undertaken with this building. More specifically how compliance is achieved, and sufficient evidence provided for (but not limited to); B1, B2, E1, E2, E3, G1, G4, G7, F7, G12, G13 and H1 of the NZ Building Code. The building work which must include a statement confirming compliance with the applicable Building Codes.

This report is to be supplied by a suitably qualified and independent professional such as a Chartered Professional Engineer, Registered Architect, Registered Building Surveyor (NZIBS), Level 3 Accredited Building Surveyor (BOINZ).

#### The owner

- 3.3. The owner's views were set out in their letter of complaint, sent to the authority following the initial refusal letter (see paragraph 2.7). The letter of complaint states:
  - 3.3.1. The authority's letter did not give specific reasons as to why the building work does not comply with the Building Code. The authority did not explain which details are missing, and the owner has "... made every attempt to provide as much detail as possible".
  - 3.3.2. Their report "clearly shows that all building code clauses as listed plus many more have been addressed".
  - 3.3.3. All the requirements as listed in the minutes from the pre-application meeting were addressed, and they "have constantly strived to present a valid honest application in every sense".
  - 3.3.4. The authority "has constantly tried to force my client to use one of the Building Surveyors listed on the councils website to write a report...". The owner agreed to provide a report from a structural engineer covering clause B1. However, the authority was not satisfied with this report.
- 3.4. In response to the authority's submission, the owner also set out their views on each of the items which the authority considers will need to be addressed if they reapply for a certificate of acceptance (refer to Appendix A).

- 3.5. In response to the authority's statement that they will need to provide an independent 3<sup>rd</sup> party report, the owner questioned what statute this requirement is from, and how it "...prohibits an LBP designer from accessing and addressing the building code requirements specifically those required for this [certificate of acceptance] application".

## 4. Discussion

### Legislation

- 4.1. The matter to be determined is the authority's refusal to issue a certificate of acceptance for the building work associated with the dwelling. Section 96(1)(a) allows an authority to issue a certificate of acceptance for existing building work, where a building consent was required for the work but was not obtained. In this case, there is no dispute between the parties that a building consent was required.
- 4.2. Under section 96(2), a territorial authority may issue a certificate of acceptance but "only if it is satisfied, to the best of its knowledge and belief and on reasonable grounds, that, insofar as it could ascertain, the building work complies with the building code".
- 4.3. Section 99(2)<sup>6</sup> and Form 9<sup>7</sup> provide for the authority to qualify the certificate to the effect that only parts of the building work were able to be inspected, and section 99(3)<sup>8</sup> limits the authority's liability for the issue of the certificate of acceptance to the same extent that it was able to inspect the building work.
- 4.4. This is because the extent to which an authority has been able to 'inspect' work will usually be less than the extent to which it has been able to 'ascertain' whether building work complies with the Building Code. In ascertaining compliance with the Building Code, the authority considers all the relevant evidence available, such as plans and specifications, producer statements, the builder's records, the owner's records, any expert reports, as well as the authority's own inspection records and experience and knowledge of the builders and designers involved in the work.
- 4.5. In processing a certificate of acceptance, the following types of building work can be differentiated:
- 4.5.1. Building work that the authority **has been able to ascertain**, on reasonable grounds, complies with the Building Code, based on inspections, judgement, and/or supporting information and documentation. A subset of this is work which the authority **has been able to inspect**, which can be listed in the

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<sup>6</sup> Section 99(2) states "A certificate of acceptance may, if a territorial authority inspected the building work, be qualified to the effect that only parts of the building work were able to be inspected."

<sup>7</sup> Building (Forms) Regulations 2004: Form 9 Certificate of Acceptance.

<sup>8</sup> Section 99(3) states "A territorial authority's liability for the issue of a certificate of acceptance is limited to the same extent that the territorial authority was able to inspect the building work in question."

certificate of acceptance for the purposes of limiting the authority's liability to the inspected work.

- 4.5.2. Building work that the authority **has not been able to ascertain** complies with the Building Code, because the authority has not been able to inspect the building work and there is insufficient supporting information or documentation to establish compliance. This work can be excluded from the certificate of acceptance.
- 4.5.3. Building work which the authority **considers is non-compliant** with the Building Code. A certificate of acceptance cannot be issued if there is building work that does not comply with the Building Code, as the test in section 96(2) is not met.
- 4.6. The fact that Building Code compliance cannot be ascertained for some elements of building work is not the same as an authority determining the building work is not compliant; rather there are not reasonable grounds on which to form a view one way or the other. Any exclusion should only relate to the building work for which compliance cannot be ascertained and should not include building work that is clearly non-compliant.
- 4.7. Grounds for refusing to issue a certificate of acceptance would be that there was non-compliant building work, and/or that exclusions are of such an extent that the certificate would be of little or no value (or in some instances, misleading).
- 4.8. Section 99A states:

**99A Refusal of application for certificate of acceptance**

If a territorial authority refuses to grant an application for a certificate of acceptance, the territorial authority must give the applicant written notice of –

- (a) the refusal; and
- (b) the reasons for the refusal.

- 4.9. I will firstly consider the standard of the information available to the authority, before considering the reasons for refusal given in the initial refusal letter and subsequent refusal report.

### **The information available to the authority**

- 4.10. The information available to the authority included (but was not limited to):

- 4.10.1. as-built plans, H1 calculations, and a 'building code compliance report'<sup>9</sup>, which were produced by the owner's agent

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<sup>9</sup> The 'building code compliance report' was provided by the owner in response to RFI 3.

- 4.10.2. a building report from a structural engineer, producer statement from a plumber, and electrical certificates
- 4.10.3. an inspection carried out by the authority.
- 4.11. In the authority's RFI requests and determination submission, it requested that a building report be provided to address all relevant code clauses. In RFI 3, the authority stated that it was "to be supplied by a suitably qualified and independent professional such as a Chartered Professional Engineer, Registered Architect, Registered Building Surveyor (NZIBS), Level 3 Accredited Building Surveyor (BOINZ)". The authority also recommended that the report author be listed as being a certificate of acceptance author on the authority's producer statement register.
- 4.12. There is no provision within the Act to require a building report to be provided by a particular person. However, authorities need to be provided, with sufficient evidence to be satisfied on reasonable grounds that the building work complied with the Building Code at the time the certificate of acceptance was applied for. It is the owner's responsibility to provide sufficient information to establish compliance. If compliance is not achieved, the authority must provide specific and valid reasons for the refusing the certificate of acceptance.
- 4.13. As discussed in Appendix A, I consider that the standard of information and evidence provided by the owner was inadequate, for the following reasons:
- 4.13.1. The level of detail in the 'building code compliance report' was inadequate. For example, the only information provided in the report in relation to clause E2 was:
- Ground clearances, cladding overlaps, window flashings, penetration sealing, appear adequate, with no indication of likely moisture penetration. The clearances are adequate, and the exterior offers no indication of any problems.
- A vague statement such as this does not provide enough information to demonstrate that compliance is achieved. Information provided to support an application for a certificate of acceptance should contain sufficient detail and evidence as to how building elements comply.
- 4.13.2. The 'building code compliance report' also contained inaccurate information. For example, the report noted that "A PS3 has been issued confirming that the existing dwelling conforms with AS/NZS 3500"<sup>10</sup>. However, the PS3 for the plumbing was limited in scope and did not establish compliance with all parts of this standard.
- 4.13.3. The engineer's report was limited to a visual inspection only, did not contain calculations, and was too vague to demonstrate compliance with clause B1.

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<sup>10</sup> This standard relates to plumbing and drainage, and consists of several parts (Parts 0 through 5).



- 4.13.4. The as-built plans contained inaccurate information, and there were discrepancies between the plans and the as-built dwelling. For example, the underfloor insulation observed on site was different to that specified in the plans, and no evidence was provided to show that certain bracing elements indicated on the plans corresponded with what is installed on site. The plans also stated, incorrectly, that the cladding complies with E2/AS1.<sup>11</sup> As such, the plans could not be relied on as an accurate source of information.
- 4.14. Overall, I consider that the available evidence does not demonstrate that the building work complies with the Building Code, and the test in section 96(2) was not met. Nonetheless, I have also found that several of the authority's reasons for refusal were not valid, as set out below and in Appendix A.

### **The refusal letter**

- 4.15. The refusal letter (dated 25 March 2022) notes three reasons for refusal, which I summarise as:
- 4.15.1. there were insufficient details submitted with the documentation
  - 4.15.2. the pathways of compliance with specific code clauses were unclear
  - 4.15.3. the authority was not able to ascertain compliance with the Building Code.
- 4.16. A refusal letter should be clear in what building work is at issue or must be made compliant in order to obtain a certificate of acceptance. Providing clear reasons for the refusal allows an owner to take the appropriate steps to address any deficiencies, for example, by bringing building work into compliance with the Building Code or by providing additional information.
- 4.17. In this case, I consider that the reasons for refusal in the initial refusal letter were not specific enough. It was not clear why the test in section 96(2) was not met, as the initial refusal letter did not identify specific items of building work that were non-compliant. The letter also did not identify specific items of work for which the authority was unable to ascertain compliance. As such, it was not clear to the owner which items of building work were at issue.

### **The refusal report**

- 4.18. Following the owner's letter of complaint, the authority provided a refusal report to the owner on 13 April 2022. The authority's reasons for refusal, as well as the owner's views and Ministry's conclusions on each item, are set out in Appendix A.<sup>12</sup>

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<sup>11</sup> Acceptable Solution E2/AS1 *External Moisture* (Amendment 10, effective 05/11/2020).

<sup>12</sup> I note that the refusal report listed several items under the heading "Non-compliance with the New Zealand Building Code", and also provided a number of photographs with captions in an appendix. Both have been considered in the determination.

4.19. I have come to a range of conclusions regarding the reasons set out in the refusal report. In summary:

4.19.1. Several reasons set out in the refusal report were not valid. These include the reasons given in regards to B2 *Durability*, G2 *Laundrying*, G9 *Electricity*, and the height in relation to the boundary of the 'lean to'.

4.19.2. The compliance of some building work could not be ascertained, including:

- (1) In regards to B1 *Bracing*, no evidence was provided to show that certain bracing elements noted on the bracing plan correspond with what is installed on site.
- (2) In regards to H1 *Energy efficiency*, there were discrepancies as to the insulation R-values in various documents provided by the owner and what was observed on site.

4.19.3. Some of the reasons set out in the refusal report were not specific enough. In regards to clause E2 *External moisture*, the horizontal profiled metal cladding system, and the deck to cladding junction, do not comply by way of Acceptable Solution E2/AS1.<sup>13</sup> No evidence was provided to demonstrate that these elements comply via an alternative solution. However, the authority did not provide specific enough reasons as to why it considered that these details were non-compliant.

4.19.4. In regard to clause G12 *Water supplies*, the hot water delivered to the hand basin was measured at 59.6°C. Therefore, the building work did not comply way of Acceptable Solution G12/AS1 which sets a threshold of 55°C.<sup>14</sup> While no evidence was provided as an alternative solution to demonstrate that this element complies with G12.3.6 (ie avoid the likelihood of scalding), medical literature indicates that a temperature of 59.6°C is well within the scalding range.

4.20. In some cases, if the authority is unable to ascertain compliance of particular building work it cannot inspect, it can be excluded from a certificate of acceptance, as discussed in paragraph 4.6. However, if exclusions are of such an extent that the certificate would be of little or no value in its coverage, the certificate could be refused. From the information available, I consider that compliance could not be ascertained for clauses B1 (in terms of the bracing) and H1 (in terms of the insulation).

4.21. Further, if non-compliant building work is identified, the certificate of acceptance must be refused. In this case, the hot water temperature delivered to the hand basin does not comply with clause G12, and compliance with E2 was not

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<sup>13</sup> Acceptable Solution E2/AS1 *External Moisture* (Amendment 10, effective 05/11/2020).

<sup>14</sup> Acceptable Solution G12/AS1 *Water Supplies* (Amendment 12, effective 27/06/2019 - 01/11/2024), at [6.14.1].

demonstrated from the evidence presented to me. As such, the certificate of acceptance had to be refused.

## 5. Conclusion

5.1. Overall, I consider that:

- 5.1.1. The documentation provided to the authority contained inaccuracies and was not sufficiently detailed to establish compliance with the Building Code.
- 5.1.2. The reasons for refusal in the initial refusal letter were not specific enough as to why compliance with the Building Code had not been demonstrated.
- 5.1.3. While the subsequent refusal report identified the building work at issue (discussed in Appendix A), several of the reasons given were not valid. Nonetheless, the compliance of some key elements of building work could not be ascertained. Further, as the building work included work that did not comply with the Building Code, the certificate of acceptance had to be refused.

## 6. Decision

- 6.1. In accordance with section 188 of the Building Act 2004, I reverse the authority's decision to refuse to issue the certificate of acceptance. A new decision should be made which takes into account the findings of this determination.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 27 February 2024.

**Andrew Eames**

**Manager Advisory**

## Appendix A: Reasons for refusal (in report dated 13 April 2022)

Clause B1 <i>Structure</i> : In terms of the bracing	
Authority's view	<p>The refusal report noted:</p> <ul style="list-style-type: none"> <li>The amended plans have the same date as the application plans (07/11/21) and there is no revision number provided.</li> <li>"Sheet A201 (Bracing) has a mix of GS1 (x 2), GS2 (x 5) and BL1-H (x 3) GS2 Braces x 3 have been placed to the external walls. The plans do not provide measurements of window sizes or open wall measurements for assessment of bracing widths".</li> <li>A suitably qualified structural engineer was "requested to be engaged to assess and provide a report". The authority assumed the engineer would carry out bracing calculations and invasive investigations as to the bracing hold downs. However, this information was not provided for consideration.</li> </ul> <p>The authority's determination submission noted:</p> <ul style="list-style-type: none"> <li>If the original certificate of acceptance bracing plans are submitted (in a subsequent certificate of acceptance application), they will need to be "recalculated and changes made to reflect accurate information, there are GS2s to the external walls... The build is complete, for the BL1-H bracing elements... verification of the hold-downs and 'Braceline' (if GIB product used) would need to be established. A suitable qualified person producing a structural report will also comment on the sub-floor bracing &amp; roof bracing which would include calculations".</li> </ul>
Owner's view	<p>The 'building code compliance report'<sup>15</sup> noted:</p> <ul style="list-style-type: none"> <li>A registered engineer has provided a report based on an inspection carried out on 03/02/22, which confirms that the engineer could not find any structural weakness and was satisfied that the structure was built to the "design code" at the time of its initial construction.</li> </ul> <p>The owner's determination submission noted:</p> <ul style="list-style-type: none"> <li>The only plans provided subsequent to the original submission were revised drawings in response to requests for further information.</li> <li>The bracing symbol used indicates grid line, bracing type and length.</li> <li>"...GS1-N/GS2-N is standard GIB board and as per GIB requirements do not require any hold down fixing, the bracing calculations have been provided on our drawings A201 for the subfloor and upper floor... the cladding adds an additional bracing value as per Branz study report SR305 of 31 Bu's per meter for wind and 28 Bus for earthquake...".</li> <li>The authority never requested further information regarding the bracing.</li> </ul>
Ministry's conclusion	<ul style="list-style-type: none"> <li>It appears that the owner has provided inaccurate information in terms of the bracing elements shown on the bracing plan (see Figure 2) and in the associated calculations. The bracing plan and associated calculations indicate particular bracing types and lengths, which are unlikely to be installed on site. This is because:</li> </ul>

<sup>15</sup> Provided to the authority by the owner's agent in response to RFI 3.

- The lengths of bracing elements specified in certain areas would be unlikely to fit into those locations, due to window locations etc. For example, element M2 is shown as a 1m long BL1. However, the length of wall in this location appears to be less than 1m.
- Elements M1, B1 and B2 are located on the external walls, and are noted as GS2 bracing elements. GS2 bracing elements require GIB lining to be installed to both sides of the framing. No evidence has been provided to confirm that these bracing elements are GS2s. Given the location of these elements on the external walls (of the type installed in this building), I consider it is unlikely that these bracing elements are GS2s.
- As such, I am not satisfied that the bracing plan and associated calculations accurately reflect what has been installed on site. I also note that the BL1 elements (at M2, O1 and O2) require a specific hold down fixture, which would have needed to be verified with specific evidence.

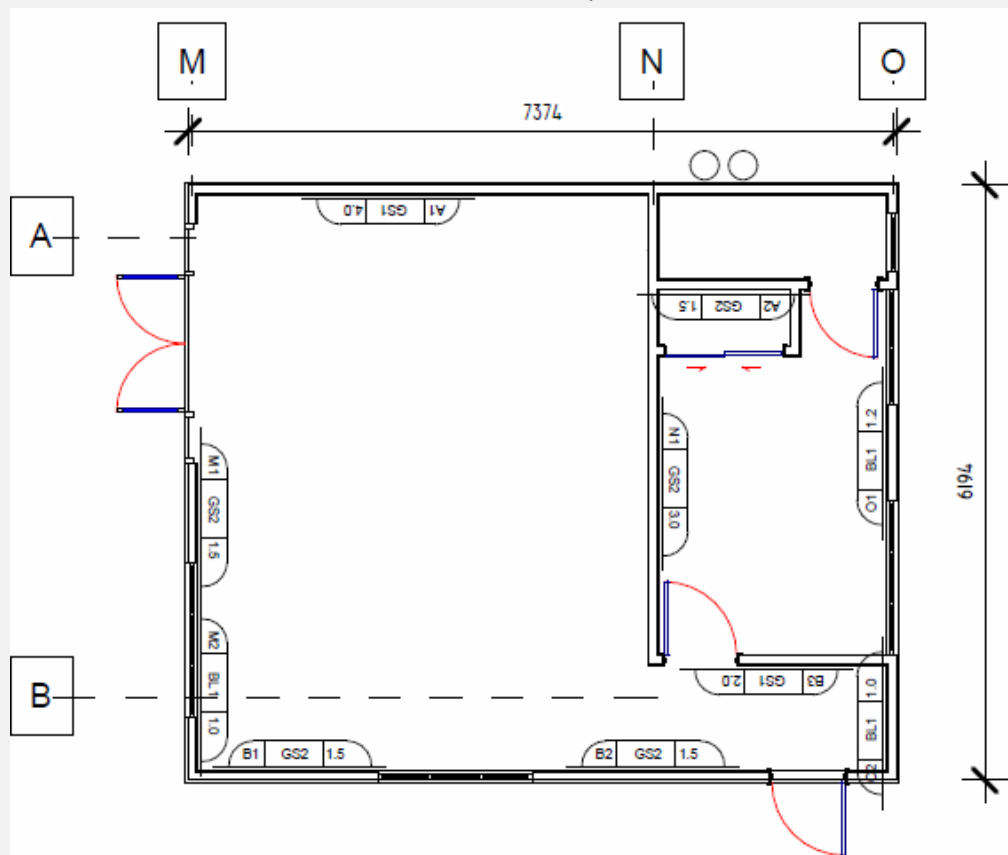


Figure 2: As-built bracing plan copied from Sheet A201, dated 07/11/21 (not to scale).

- Further, the engineer's report provided by the owner states:  
This report is based on our visual inspection of only part of the building and limited to the timber framed super structure only... The structure is supported off typical timber subfloor construction, timber piles etc. and braced piles, whose details thereof and adequacy is not part of our brief or commented upon in this report... Based on our visually [sic] inspection and access where possible at the time, there are no obvious structural weaknesses (B1) assuming the structure was built in accordance with design codes at it's initially [sic] construction.

	<ul style="list-style-type: none"> <li>In my view, the report is vague and does not contain specific enough information to demonstrate compliance. While the authority cannot require an engineer's report to be provided (as the only means of demonstrating compliance), it is the owner's responsibility to provide sufficient evidence to demonstrate compliance.</li> <li>Given that the engineer's report was vague, and the bracing plan and associated calculations appear to be inaccurate (and unverified), I consider that the authority was not provided with sufficient information to be satisfied that the bracing requirement has been achieved.</li> <li>As such, I consider that compliance with B1 could not be ascertained.</li> </ul>
<b>Clause B2 Durability</b>	
Authority's view	<ul style="list-style-type: none"> <li>The refusal report noted "B2/AS1: No documentation was provided".</li> </ul>
Owner's view	<p>The 'building code compliance report' noted:</p> <ul style="list-style-type: none"> <li>It has been assumed that the structure was built in 2006, and that would indicate that the building meets clause B2.</li> <li>The structure "...has been covered by the structural engineer and other inspections with normal maintenance being necessary...".</li> </ul>
Ministry's view	<ul style="list-style-type: none"> <li>Clause B2 concerns the durability periods for which building elements must continue to satisfy the performance requirements of the Building Code. The limits on application for clause B2.3.1 are expressed in terms of the durability periods that commence "from the time a code compliance certificate is issued". It follows that B2 does not apply to the issuing of a certificate of acceptance.</li> <li>This is not a valid reason for refusal.</li> </ul>
<b>Clause G2 Laundering</b>	
Authority's view	<ul style="list-style-type: none"> <li>The refusal report noted that a laundry is not required as the dwelling is only for two people; however, the laundry is cited on the plans and is stated to comply with G2/AS1.<sup>16</sup></li> <li>The refusal report included a photograph captioned "G2 - Laundry area has not provided space for washing machine".</li> <li>The authority's determination submission noted: It appears the laundry is too small to be accepted (G2/AS1 figure 1), The dwelling has one bedroom which indicates 2 persons max, in this case a laundry is not a requirement (If the client wishes to have a laundry within the dwelling then a [building consent] will be required to furnish the requirements as in appropriate space &amp; or new plumbing and drainage work.</li> </ul>
Owner's view	<ul style="list-style-type: none"> <li>The 'building code compliance report' noted that a laundry has been provided as indicated in the drawings.</li> <li>The owner's determination submission noted "G2/AS2 figure 1 requires a minimum space 600x600mm for the tub and a further 800x600mm for access, the space we have provided far exceeds this".</li> </ul>

<sup>16</sup> Acceptable Solution G2/AS1 Laundering (Amendment 3, effective 01/01/2017).

Ministry's conclusion	<ul style="list-style-type: none"> <li>G2/AS1 states "Laundering facilities shall be provided according to the number of people being serviced. Acceptable provisions are shown in Table 1". As per Table 1, laundering facilities are not required for a "detached dwelling or separate household unit to accommodate no more than 2 people".<sup>17</sup> As such, no laundry is required as the dwelling is for no more than two occupants.</li> <li>It is unclear why the authority considered that the space is too small to comply with clause G2, via G2/AS1 Figure 1.<sup>18</sup> It appears from the plans and photograph that the space exceeds that required by Figure 1.</li> <li>It is also unclear whether there is in fact a laundry in the dwelling; however, this is irrelevant as no laundering facilities are required to achieve compliance by way of G2/AS1. Potential discrepancies with the plans could have been resolved at the inspection or during the certificate of acceptance process (ie the laundry could have been removed from the plans). I note that the plans are one way for an applicant to demonstrate compliance with the Building Code; however, for the purposes of a certificate of acceptance, compliance is assessed against the Building Code and not against the plans.</li> <li>As the relevant acceptable solution (G2/AS1) does not require a laundry for a dwelling of two occupants, there is no issue under this clause. As such, this is not a valid reason for refusal.</li> </ul>
<b>Clause G9 Electricity</b>	
Authority's view	<ul style="list-style-type: none"> <li>The refusal report noted that no electrical certificate was provided for the electrical installations including the light switches, mechanical ventilation, plug sockets and infinity gas system etc.</li> </ul>
Owner's view	<ul style="list-style-type: none"> <li>The owner provided electrical certificates, dated 16/12/2021 and 23/12/2021.</li> </ul>
Ministry's conclusion	<ul style="list-style-type: none"> <li>As per section 43 of the Building Act, energy work does not require a building consent (other than in specific situations<sup>19</sup> that are not relevant to this determination). As the purpose of a certificate of acceptance is to regularise building work for which a building consent was required but not obtained, it follows that a certificate of acceptance is not required for electrical work.</li> <li>Section 43(3) states, "An owner who wishes to obtain a building consent for energy work that does not require a building consent may apply for a building consent for that work... and in that case this Act applies as if the energy work required a building consent". I consider that under section 43(3), an owner must expressly seek a building consent for energy work that otherwise does not require a building consent, if they want that energy work to be covered by the consent.<sup>20</sup></li> </ul>

<sup>17</sup> Acceptable Solution G2/AS1 *Laundering* (Amendment 3, effective 01/01/2017) at [1.3.1].

<sup>18</sup> Acceptable Solution G2/AS1 *Laundering* (Amendment 3, effective 01/01/2017). Figure 1: Minimum Dimensions for Laundries, at [1.2.1].

<sup>19</sup> As per section 43(2), energy work requires a building consent where it relates to a specified system, or where a consent could not be granted unless it was subject to a waiver or modification of the Building Code.

<sup>20</sup> This approach was taken in Determination 2020/005 *Regarding the refusal to issue a code compliance certificate for a 22-year-old house* (7 May 2020) and Determination 2023/021 *The refusal to issue a code*

	<ul style="list-style-type: none"> <li>Likewise, I consider that an owner should also elect to obtain a certificate of acceptance for electrical work, if they want that work to be covered by a certificate of acceptance. In this case, the building work listed in the certificate of acceptance application form was “single bedroom dwelling with kitchen and bathroom”. It does not appear that there was any explicit mention of including the energy work in the certificate of acceptance.</li> <li>Based on the information provided to me, it appears that the owner did not expressly seek to have the energy work included in the certificate of acceptance. Therefore, this was not a valid reason for refusal.</li> </ul>
<b>Clause G12 Water supplies</b>	
Authority’s view	<ul style="list-style-type: none"> <li>The refusal report included a photograph showing a thermometer measuring the water temperature in the handbasin at 59.6°C. The photograph was captioned “Water temperature exceeds 55 degrees”.</li> </ul>
Owner’s view	<ul style="list-style-type: none"> <li>The ‘building code compliance report’ noted “A PS3 has been issued confirming that the existing dwelling conforms with AS/NZS 3500”.</li> </ul>
Ministry’s conclusion	<ul style="list-style-type: none"> <li>The owner states that they have provided a PS3 confirming that the dwelling conforms with AS/NZS 3500. However, the PS3 provided is limited in scope, and only confirms that the plumber has completed a hydrostatic test to check for leakage, as set out in clause 18.3.1 of AS/NZS 3500.1:2015 (Part 1).<sup>21</sup> The PS3 does not confirm compliance with any other parts of the standard.</li> <li>Part 4 of the standard, which relates to ‘Heated water services’, states “In New Zealand, the requirements for maximum heated water delivery temperatures... are specified in the NZBC Acceptable Solution G12/AS1”.<sup>22</sup></li> <li>Acceptable Solution G12/AS1 states “The delivered hot water temperature at any sanitary fixture<sup>23</sup> used for personal hygiene shall not exceed... 55°C”.<sup>[24][25]</sup></li> <li>The water temperature at the owner’s hand basin (59.6°C) exceeds the maximum temperature set out in the relevant acceptable solution of 55°C.<sup>26</sup></li> <li>Performance clause G12.3.6 states “If hot water is provided to sanitary fixtures and sanitary appliances used for personal hygiene, it must be delivered at a temperature that avoids the likelihood of scalding”. The</li> </ul>

*compliance certificate for a 21-year-old dwelling* (18 September 2023). Although these determinations related to energy work under the former Act, the relevant energy work provisions in the current and former Acts are essentially the same.

<sup>21</sup> Australia/New Zealand Standard AS/NZS3500.1:2015 *Plumbing and drainage. Part 1: Water services*. I note that the 2015 version is not the current version of the standard; however, the same test is set out in clause 17.3.1 of the current amendment (AS/NZS 3500.1:2021).

<sup>22</sup> Australia/New Zealand Standard AS/NZS3500.4:2021 *Plumbing and drainage. Part 4: Heated water services*, at [1.11.1].

<sup>23</sup> Sanitary fixtures used for personal hygiene includes showers, baths, hand basins and bidets (as noted in G12/AS1 (Amendment 12), at [6.14.1]).

<sup>24</sup> This is for the category “all other buildings”, which includes the dwelling under consideration.

<sup>25</sup> Acceptable Solution G12/AS1 *Water Supplies* (Amendment 12, effective 27/06/2019 - 01/11/2024), at [6.14.1].

<sup>26</sup> I note that G12/AS1 has recently been amended (Amendment 13, effective from 02/11/2023). The maximum temperature for “all other buildings” in Amendment 13 has been reduced to 50°C. The owner may wish to consider this when rectifying this issue.



	<p>owner has not provided any argument as to how a temperature of 59.6°C avoids the likelihood of scalding, given that the acceptable solution provides a reference point of 55°C.</p> <ul style="list-style-type: none"> <li>As such, I consider that clause G12 has not been met. This is a valid reason for refusal. However, the authority should have referenced the specific performance requirement in its refusal.</li> </ul>
<b>Clause H1 Energy efficiency provisions: In terms of insulation</b>	
Authority's view	<p>The refusal report noted:</p> <ul style="list-style-type: none"> <li><u>Wall insulation</u>: the submitted application for H1/AS1 calculation (BRANZ NZS 4218:2009) does not indicate any wall insulation. The plans also have no reference to the wall insulation R-value.</li> <li><u>Floor insulation</u>: the response to RFI 2 (on 21/02/22) indicates insulation with an R-value of 1.6, while the plans (dated 07/11/21 and revised on 05/03/22) show R2.6. At the inspection, the authority sighted an insulation label (in the subfloor space) stating R1.5.</li> <li><u>Ceiling insulation</u>: the response to RFI 2 (on 21/02/22) has an R-value of 0.04 and there is no mention of any insulation material to the ceiling space. However, the plans (dated 07/11/21 and revised on 05/03/22) show R2.2 insulation to the ceiling.</li> <li>The authority's determination submission noted: <ul style="list-style-type: none"> <li>The original CoA application H1 insulation value calculations were obtained for different sources (BRANZ &amp; Construction R-value calculator) the information provided did not provide information as to what was placed or what was to be provided to the ceiling &amp; walls (verification of the insulation to the ceiling &amp; walls are required &amp; the R-values are required) This has resulted in confusion as to what the true habitable space R-values are required and if the H-values placed complies.</li> </ul> </li> </ul>
Owner's view	<p>The 'building code compliance report' noted:</p> <ul style="list-style-type: none"> <li>"The dwelling complies with H1.1, H1.2 and performance H3.2A (b) climate zone 1 (building amendment regulation 2000) as applied to NZS 4214:2006".</li> </ul> <p>The owner's determination submission noted:</p> <ul style="list-style-type: none"> <li>"Based on the Branz NZS4218:2009 calculations there was no need for wall insulation in 2006, if a construction R value 1.30 could be achieved..."</li> <li>"The drawing A300... clearly indicates the insulation for the ceiling and underfloor, we also provided a H1 compliance note on this drawing..."</li> </ul>
Ministry's conclusion	<ul style="list-style-type: none"> <li>There was inconsistent information provided by the owner in terms of the plans, the response to RFI 2<sup>27</sup>, and what was observed on site. The authority observed insulation with an R value of 1.5 in the subfloor space, despite the plans stating R2.6, and the response to RFI 2 stating R1.6. The information about the ceiling insulation also varied, with the response to RFI 2 using R0.04 and the plans stating R2.2. There was no information provided as to wall insulation.</li> </ul>


<sup>27</sup> The response to RFI 2 (that was provided during the determination process) stated "ceiling and floor insulation specifications uploaded". However, I was not provided a copy of the specifications that were uploaded, on 21/02/22.

	<ul style="list-style-type: none"> <li>I note that on drawing A300 (dated 07/11/21 and revised on 05/03/22), the depicted underfloor insulation was annotated “existing underfloor insulation proposed min R2.6”. The drawing also stated: H1 Compliance NZS4218:2009 Appendix D3.3 has been applied. We state that the existing dwelling has... unknown insulation to the underfloor. R2.2 insulation to the ceiling space... This application provides for the installation of R2.6 to the underfloor spaces, should the existing underfloor insulation not meet this criteria. Therefore, the dwelling complies with NZS4218:2009 calculation method as required by the Building Code [sic] 2004.</li> <li>In my view, it is not acceptable to “provide for” or “propose” R2.6 underfloor insulation in the plans, if it does not exist on site. The plans are intended to show the as-built dwelling, and using proposed values in the plans and calculations undermines their reliability.</li> <li>Due to the discrepancies in various documents provided by the owner and what was observed on site, the submitted plans and calculations are not a reliable or accurate source of information.</li> <li>The owner has not provided sufficient evidence to demonstrate the dwelling is compliant with clause H1. As such, I consider that compliance with H1 could not be ascertained.</li> </ul>
<b>Clause E2 External moisture: In terms of cladding system and the deck to cladding junction</b>	
Authority’s view	<p>The refusal report noted:</p> <ul style="list-style-type: none"> <li>Plan A104 states “All exterior wall cladding material bevel back aluminium direct fixed complying with E2/AS1”. However, at the inspection, the authority sighted “profile metal cladding as consistent with garage cladding circa 2006”.<sup>28</sup></li> </ul> <p>The refusal report included:</p> <ul style="list-style-type: none"> <li>A photo showing the cladding.</li> <li>A photo showing the junction between the cladding and deck (see Figure 3). The photo was captioned “No wash down 12mm between primary structure &amp; Deck”.<sup>[29][30]</sup></li> </ul>

<sup>28</sup> I note that the authority listed this item as being an issue with clause B1 in the refusal report.

<sup>29</sup> This item was also listed as an issue with clause B1 in the refusal report.

<sup>30</sup> In reference to this photo in its determination submission, the authority also noted the bottom plate is exposed.

	 <p><b>Figure 3: Photograph of deck to cladding junction</b></p>
Owner's view	<ul style="list-style-type: none"> <li>• The 'building code compliance report' noted "Ground clearances, cladding overlaps, window flashings, penetration sealing, appear adequate, with no indication of likely moisture penetration. The clearances are adequate, and the exterior offers no indication of any problems".</li> <li>• The owner's determination submission noted "To our knowledge the cladding is aluminium, and typically used as a cladding material along with formed metal for the era, once again this was never queried in any RFI". The owner also provided a photo which indicates there is building wrap beneath the cladding.</li> </ul>
Ministry's conclusion	<p>In regards to the cladding, I note that:</p> <ul style="list-style-type: none"> <li>• From the information provided, it is unclear whether the cladding is "bevel back aluminium" or another type of profiled metal cladding. In regards to the owner's comment that "To our knowledge the cladding is aluminium...", I do not consider this is sufficient confirmation of the type of cladding.</li> <li>• Further, the only information provided about the compliance of the cladding is the note on the elevation plan (Sheet 104, dated 07/11/21 and revised 05/03/22) stating "All exterior wall cladding material bevel back aluminium direct fixed complying with E2/AS1".</li> <li>• E2/AS1 states "Horizontal profiled metal wall cladding shall be fixed over a drained cavity...".<sup>31</sup> However, the owner states that the cladding is "direct fixed" (ie not installed over a cavity). As such, it does not comply with clause E2 by way of Acceptable Solution E2/AS1.</li> <li>• Performance clause E2.3.2 states "Roofs and exterior walls must prevent the penetration of water that could cause undue dampness, damage to building elements, or both". In my view, the owner has not provided sufficient evidence to demonstrate compliance with E2.3.2 by way of an alternative solution.</li> <li>• While this may be a valid reason for refusal, the reason provided by the authority in the refusal report was not specific enough in terms of Building</li> </ul>

<sup>31</sup> Acceptable Solution E2/AS1 *External Moisture* (Amendment 10, effective 05/11/2020) at [9.6] 'Profiled Metal Wall Cladding'.

	<p>Code performance, considering the authority conducted an inspection that included the exterior of the building.</p> <p>In regards to the deck to cladding junction, I note that:</p> <ul style="list-style-type: none"> <li>• E2/AS1 states “For slatted decks, a minimum gap of 12 mm shall be provided between the exterior wall and the adjacent decking slat”.<sup>32</sup></li> <li>• There is not a 12mm gap at the junction between the cladding of the dwelling and the deck, and therefore this detail does not comply with clause E2 via E2/AS1.</li> <li>• The owner has not provided any evidence as to how adequate drainage is achieved at this junction. Therefore, they have not demonstrated how performance clause E2.3.2 is met by way of an alternative solution.</li> <li>• While this may be a valid reason for refusal, the reason provided by the authority in the refusal report was not specific or explicit enough in terms of Building Code performance.</li> </ul>
<b>Height in relation to boundary of the ‘lean to’</b>	
Authority’s view	<ul style="list-style-type: none"> <li>• The appendix of photographs in the refusal report included a photo showing the lean to on the side of the dwelling. The photo was captioned “HIRB<sup>33</sup> - Lean to has not been removed as per plan A104”.</li> </ul>
Owner’s view	<ul style="list-style-type: none"> <li>• The owner did not comment on this.</li> </ul>
Ministry’s conclusion	<ul style="list-style-type: none"> <li>• This is an issue under the district plan, not the Building Code.</li> <li>• Although there is a discrepancy between the as-built dwelling and the plans, for the purpose of a certificate of acceptance application, compliance is assessed against the Building Code. This is not a valid reason for refusal.</li> </ul>

<sup>32</sup> Acceptable Solution E2/AS1 *External Moisture* (Amendment 10, effective 05/11/2020) at [7.1.1] ‘Slatted decks’.

<sup>33</sup> Height in relation to boundary.