



## Determination 2017/079

# Regarding the decision to issue a notice to fix for building work at 10 Hillside Crescent South, Mount Eden, Auckland

### Summary

This determination concerns a return wall to a retaining wall built under a building consent; the return wall encroaches over the owners' boundary into a neighbouring property. The authority issued a notice to fix in respect of the return wall, as it is of the view it was built without first obtaining an amendment to the consent. The determination considers whether the notice to fix was correctly issued, and whether the return wall was a major or minor amendment to the building consent.

### 1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> ("the Act") made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment ("the Ministry"), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are:
  - the owners of the property that the building work occurred on, A and M Sparks, who are the applicants ("the applicants")
  - Auckland Council carrying out its duties and functions as a territorial authority or a building consent authority ("the authority"), represented by its lawyer
  - the owners of the neighbouring property, B and M Goldstein, who have been included as parties because the building work encroaches on their property ("the neighbours").
- 1.3 This determination arises from the authority's decision to issue Notice to Fix No. 7495 in respect of building work in relation to a section of retaining wall ("the return wall") located adjacent the boundary between the applicants' and the neighbours property. The applicants are of the view that all of the building work, including the return wall, is already included within a code compliance certificate issued by the authority.
- 1.4 Accordingly, the matter to be determined<sup>2</sup> is whether the authority correctly exercised its power of decision in issuing the notice to fix for the building work.

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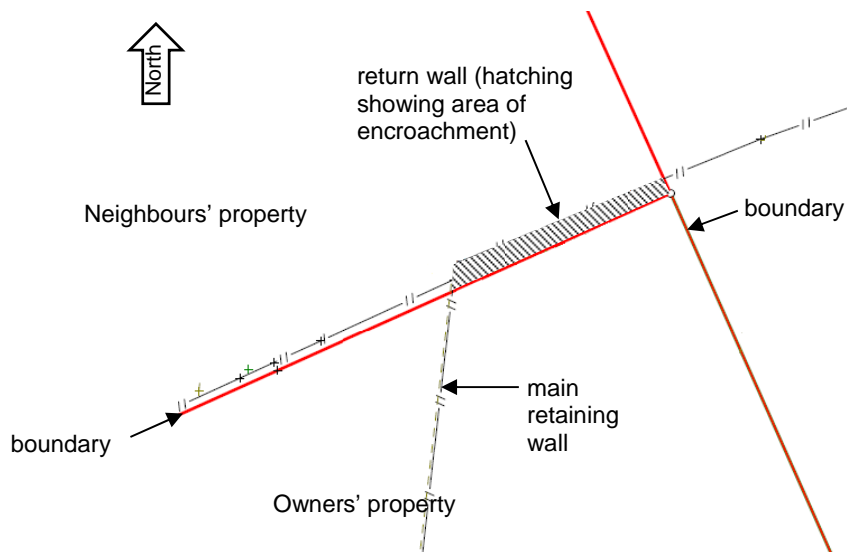
<sup>1</sup> The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at [www.building.govt.nz](http://www.building.govt.nz) or by contacting the Ministry on 0800 242 243.

<sup>2</sup> Under sections 177(1)(b), 177(2)(f) and 177(3)(e) of the Act.

- 1.5 In making my decision, I have considered the application, the submissions of the parties, and the other evidence in this matter. I have not considered any other aspects of the Act or Building Code, beyond those required to decide on the matter to be determined.

## 2. The building work

- 2.1 The applicants' property is located on the side of Mt Eden, and slopes steeply down from its south-west corner towards its north-east corner. On its north-western boundary the property abuts the Mt Eden Historic Reserve. On its north-eastern (downhill) side, the boundary is shared with the neighbours' property.
- 2.2 The site has numerous retaining walls built on it to retain and landscape the slope. Many of these walls date from the 1930s and are built of stone block. In 2012, the applicants decided to demolish and replace two of these walls, as they had become unsafe. It is this building work that is the subject of this determination.
- 2.3 One of the walls in question ("the main wall") runs at an angle from just beyond the north-western corner of the applicants' house towards the north-western corner of their property. At the point where it reaches the boundary with the neighbours' property, it joins to a shorter return retaining wall ("the return wall"). The return wall forms an approximately 110° angle with the main wall, and runs for approximately 2m along the mutual boundary on the uphill side, before passing into council property and joining to another existing retaining wall.



**Figure 1: Approximate location of the return wall (not to scale)**

- 2.4 The main retaining wall was constructed using steel footings and reinforcement, and concrete blocks, which were then filled with cement and faced with stone. The return wall was constructed at the same time and in the same manner as the main wall, although it is not faced with stone. The wall stands approximately 3m high at its highest (downhill) point, and is topped by a 1m high steel barrier. The land retained by the walls is flat, and comprises lawn and, towards the house, a swimming pool.

### 3. The background

- 3.1 In September 2011, the applicants applied for a building consent to ‘replace retaining wall and reissue swimming pool consent’. The authority granted the building consent (B/2011/5349) on 17 November 2011. The consented plans include a site plan, showing a stone-faced retaining wall running parallel to, and 1m in from, the boundary, with a 900mm-wide flight of stone-faced steps in the space between the return wall and the boundary. The steps led from the top of the proposed return wall to the ground below. The whole structure ended 100mm within the boundary. The date on the site plans is 13 June 2011.
- 3.2 On 2 August 2012, the applicants applied for an amendment to the building consent, with the amendment described as ‘revision to engineering plan retaining wall footing only’. The authority granted the amended consent (B/2011/5349A) on 19 August 2012. The amended plans, also dated 13 June 2011, still show the main wall, but no longer show the stone steps or the return wall behind them. No building work of any sort is shown in the location where the return wall now stands. The main wall is now shown as ending on, or very close to, the boundary.
- 3.3 The applicants have produced a third site plan, also dated 13 June 2011 (“the unstamped site plan”), which shows a concrete block retaining wall, inside the boundary of their property, in the same location as the current retaining wall. This plan has not been stamped as received or approved by the authority; the authority contends the plan was not received. The applicants contend that this plan formed part of the consented plans. They also advise that, although there was not originally a retaining wall in this location, they were advised to add one to make safe ‘a topographical spur and some old dry stone walls’ that had been disturbed by the building works and were at risk of falling into the neighbours’ property.
- 3.4 The applicants advise that construction of the walls was completed ‘at the end of 2012’. The authority carried out a final inspection of the building work on 6 August 2013, which records that the work had been completed in accordance with the approved plans. A code compliance certificate for the work was issued on 26 September 2013.
- 3.5 It appears that a couple of years later the applicants and the neighbours became involved in a dispute about various matters pertaining to their respective properties and boundaries, including the return wall.
- 3.6 At some point the matter was brought to the authority’s attention, and on 2 May 2017 the authority issued Notice to Fix No. 7495 (“the notice to fix”) in relation to the return wall. The notice to fix is addressed to the applicants as the owners of the wall, as well as to the various professionals involved in its design and construction. The notice to fix gives the particulars of contravention or non-compliance as:

In particular, contrary to **s 40 of the Act**, the following building work has been carried out at 10 Hillside Crescent South, Mount Eden except in accordance with a building consent:

Construction of a 4 metre high (including 1 metre fence on top) block return wall (**wall 1A**) that extends between 125mm and 220mm across the neighbouring boundary with 6 Hillside Crescent. The stone facing of the walls extends up to 260mm across the boundary...

[The authority] considers wall 1A to be a separate building to the main retaining wall that received code compliance certificate on 26 September 2013. Wall 1A has therefore not been certified as code compliant by [the authority].

Neither the original nor the amended building consent plans for the main retaining wall (B/2001/5349 & B/2011/5349A) accounted for wall 1A; and wall 1A requires a building consent.

**To remedy the contravention or non-compliance you must:**

**Either:**

1. Remove wall 1A (please note that building and/or resource consents may be necessary for this work and you should consult a professional for independent expert advice); **or**
2. Pursue any legal options open to you to make wall 1A compliant with the Act and Regulations. This may involve the making of an application for a certificate of acceptance and/or building consent.

This notice must be complied with by [1 November 2017]

- 3.7 The applicants applied for a determination, and this was received by the Ministry on 21 June 2017.

## **4. The submissions**

### **4.1 The applicants' submissions**

- 4.1.1 The applicants made a submission with their application for a determination. The submission sets out the background to the dispute, and the timeframe for the various regulatory processes associated with building the main and return wall. In the submission, the applicants assert that:

- an amended plan showing the return wall was lodged with the authority following advice to do so by the authority and the applicant's engineer; the amended plan was 'misfiled' by the authority
- the return wall had been built 'in good faith'. A code compliance certificate had been issued which included the return wall
- the boundary encroachment was 'a civil matter between our neighbour and ourselves', and that the authority should revoke the notice to fix.

- 4.1.2 The applicants made further submissions in emails dated 22 June 2017, 9 July 2017, 26 July 2017, 27 July 2017, 4 August 2017 and 11 August 2017. The main additional points in these submissions that relate to the matter to be determined can be summarised as follows:

- the unstamped site plan was lodged at the recommendation of the applicants' engineer and the authority to mitigate the risk of rock fall into the neighbours' property
- in a report dated 10 October 2016, the applicants' engineer had confirmed that the return wall was added after the original flight of steps on the boundary was removed from the plans 'to ensure no materials that were placed behind the new retaining wall, fell into the neighbouring property to the North'
- the return wall was built at the same time as the main wall, as part of the same project: 'Footings, steel work, block work, block filling with cement, and drainage were all done simultaneously, and inspected by [the authority] at the same time. All contractors involved in the building invoiced us as one project'.

4.1.3 With their submissions, the applicants provided copies of:

- the unstamped site plan
- the amended building consent, and its associated plans
- the notice to fix
- the code compliance certificate
- the applicants' engineers' report dated 10 October 2016
- a letter from a surveyor dated 26 March 2017 relating to ground levels at the base of the return wall
- photographs of the boundary and return wall.

## 4.2 The neighbours' submissions

4.2.1 The neighbours made submissions in emails dated 26 July 2017, 28 July 2017, 31 July 2017, 4 August 2017 and 7 August 2017. The main points in these submissions that relate to the matter to be determined can be summarised as follows:

- the land that the return wall is built on belongs to them (the neighbours) and the applicants have purposefully built on it
- at no time were they consulted about the construction of the return wall, and at the time of construction they were assured by the applicants that the return wall was located on the applicants' property
- the degree of the encroachment 'is in the order of 450mm to the face, and exceeds 500mm at ground level and below, clearly the wall is not built in the location of the plans'.

4.2.2 With their submissions, the neighbours provided copies of:

- the certificate of title for their property
- information relating to their own landscaping and building work
- photographs of the boundary and the return wall.

## 4.3 The authority's submissions

4.3.1 The authority made a submission dated 8 August 2017. The main points in this submission can be summarised as follows.

- The authority considers that the notice to fix 'was appropriately issued'. The authority issued the notice to fix 'because it was satisfied on reasonable grounds that building work had been carried out except in accordance with a building consent'.
- The notice to fix was issued on expert advice from a surveyor and engineer. These experts confirmed that the return wall was not part of the consented design; 'was an independent structure' to the main wall; supports a different load to the main wall; was not exempt building work; was not covered by the code compliance certificate; and encroaches on the neighbours' land.
- The return wall was constructed without building consent and 'was not certified as code compliant'.
- The authority 'denies ever receiving' the unstamped site plan.

- The Ministry should determine that the notice to fix was correctly issued, in which case the applicants would need to either remove the return wall, or ‘pursue any legal options’ to make it comply with the Act.

4.3.2 With its submission, the authority provided copies of:

- photos of the return wall
- new survey plans
- a statement prepared by a geotechnical engineer for the purpose of the determination
- documentation and plans relating to the original building consent
- documentation and plans relating to the amended building consent
- the unstamped site plan
- the code compliance certificate
- the notice to fix.

## 5. The draft determination and parties’ further submissions

5.1 A draft determination was issued to the parties for comment on 25 August 2017.

5.2 The applicants accepted the draft determination on 25 August 2017 and made a further submission dated 25 September 2017. In their submission, they stated that the variation to the building consent to include the return wall was ‘verbally communicated’ to the authority before it was built; ‘approved and noted’ by the authority, and built to comply with the authority’s and their engineer’s ‘safety recommendations’. With their submission the applicants provided a photograph taken during construction, which they state shows how the return wall was built at the same time as the main wall.

5.3 The authority did not accept the draft determination and made a submission dated 8 September 2017. The main points raised in this submission, additional to those raised in the authority’s earlier submissions, are summarised as follows.

- It was not accepted that the return wall was a minor variation. It did not come within the ‘class of building work that the legislators have deemed to be “minor variations”’, as detailed in the Building (Minor Variations) Regulations 2009, nor is it in the same class as the examples given in the Ministry’s guidance document<sup>3</sup> on minor variations.
- No application was made for a minor variation to the building consent under 45A(1)<sup>4</sup>: there is no record of the authority granting the variation.
- The building work on the return wall was not ‘inspected and passed’ alongside the work on the main wall.
- The authority is ‘unsure whether the return wall complies with the Building Code’.

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<sup>3</sup> Minor variations to building consents: Guidance on definition, assessment and granting, (Ministry of Business, Innovation and Employment), 1 January 2010

<sup>4</sup> In this determination, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

5.4 The neighbours also did not accept the draft determination and made a further submission dated 22 September 2017. The main points raised in this submission, additional to those raised in their earlier submissions are summarised as follows.

- There is no evidence that the unstamped site plan was submitted as an ‘amendment or minor variation’ or was brought to the authority’s attention at the time the walls were constructed or approved.
- The return wall represents a ‘major amendment’ to the building consent as ‘it involved structural design, ...and brings the wall to a location that affects [the neighbours’] property without consultation’. To treat the return wall as a minor amendment is not in accordance with the Act.
- There is no evidence that the return wall was constructed in accordance with the unstamped plan.

5.5 I have taken the parties’ submissions into account and altered the final determination as I consider appropriate.

## 6. Discussion

6.1 In their submissions, both the applicants and the neighbours raised several matters that are outside the scope of those matters that can be considered in a determination under section 177 of the Act. I advised the parties in a letter dated 8 August 2017 that this was the case and that this determination would deal solely with the issue of the authority’s decision to issue the notice to fix.

6.2 It appears that there is no dispute between the parties that the return wall encroaches on the neighbours’ property, by being built across the mutual boundary between the applicants’ and the neighbours’ properties.

6.3 The applicants advise that their intention was to locate the return wall ‘as close as possible’ along the mutual boundary, but that the measurements for the wall were taken from an existing survey peg that was subsequently found to be wrongly placed. As a result, the face of the return walls encroaches, with the degree of encroachment varying from approximately 220mm at the corner with the main wall to 125mm at the corner of the parties’ properties.

(Note that there is some minor variation between the parties as to the degree of this variation, and I make no comment as to which of these various measurements is accurate. The measurements cited above were provided by the authority, and are sufficiently representative to be used for the purposes of this determination. The authority also advises that, with the addition of the stone facing on the main wall, the greatest extent of the encroachment is 260mm, and that this occurs at the corner where the main and return walls meet.)

6.4 The authority has issued the notice to fix on the grounds that the return wall has been constructed without a building consent. The return wall is clearly building work for which a building consent is required<sup>5</sup>. Therefore, whether the authority was correct to issue the notice to fix depends on whether the return wall was covered by the amended building consent (B/2011/5349A).

6.5 The approved plans for the original building consent (B/2011/5349) show a flight of stone-faced stairs, backed by a stone-faced retaining wall, in the approximate

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<sup>5</sup> The return wall is approximately 3.0m high at its highest point, so falls outside work that could be considered exempt from the need for a building consent under Schedule 1(20) of the Act.

location of the current return wall. These stairs and the retaining wall behind were omitted from the approved plans for the amended consent. Instead the main wall is shown as finishing just short of the mutual boundary meaning ground is not retained at the wall's northern end.

- 6.6 The applicants have submitted that a further plan was prepared and lodged with the authority, and that this plan shows a return retaining wall in the location of the current return wall (albeit fully inside the applicants' property). They have produced the unstamped plan, which I note has been prepared by the same draughtsperson and with the same date as the other two consented plans. The applicants contend this plan was prepared, at the request of the applicant's engineer and the authority, to address the risk of potential rock fall from the unretained ground at the end of the main wall, and that the plan was lodged with the authority. The authority contends it did not receive the plan.
- 6.7 As set out in paragraphs 6.8 to 6.12, there appears to be veracity in the applicants' submission that a further amended plan was prepared showing the return wall, and that this was then accepted and used by the applicants and the authority as the basis on which the building work was completed, inspected, and a code compliance certificate issued. I have insufficient information on which to form a view whether the amended plan was lodged and approved by the authority, but it would seem likely that at the time the work was completed, both the applicant and the authority knew of its existence and treated it as either the consented or as-built plan.
- 6.8 This assumption is borne out by the applicants' engineers' report of 10 October 2016, which states:
- Under your engagement we undertook the structural design of a retaining wall to replace an existing [structure] which ran from the rear door of the dwelling, parallel with the house before diverging in a Northerly direction up the Northwest boundary...
- The original design included a set of steps which ran up alongside the Northern boundary to the area at the top of the wall. However, these steps were deleted from our original design meaning that a return wall was necessary along the boundary to ensure no materials that were placed behind the new retaining wall, fell into the neighbouring property to the North.
- 6.9 Additionally, there are comments within the inspections carried out by officers of the authority that suggest the return wall was known to the authority. In the 'Concrete block or concrete reinforcing' inspection carried out on 29 October 2012, after the amendment to the consent was issued, the inspection record notes that 'additional retaining wall may be required to existing retaining wall [at] boundary'. This corresponds with the applicants' assertion that the authority requested the return wall. Given the photographs that have been provided of the site by the applicant, it is apparent that the plan of the amended wall did not allow to retain ground to the east of the wall (i.e. behind the wall) at the point the main wall met the neighbour's boundary.
- 6.10 In a final inspection carried out on 6 August 2013, the comments by the officer of the authority note:
- Large retaining wall as shown on consent. Additional smaller retaining wall behind...
- While this inspection was failed due a drainage issue, it considers there were two retaining walls. Although the consented amended plan only identifies one retaining wall, the comments suggest there were two retaining walls being inspected by the officer of the authority.



- 6.11 In their submissions on the draft determination, both the authority and the neighbours suggested that this comment refers to another smaller existing retaining wall on the site. While it is not possible, at this distance in time, to be certain what the reference relates to, it seems unlikely that the inspector was referring to another wall, given that, as the parties have pointed out, the property contains numerous retaining walls, and the existing wall was unrelated to the building work being inspected. In my opinion, the comment is much more likely to be a reference to the return wall, which, as the applicants' photo shows, was being constructed at the same time as the main wall.
- 6.12 The assumption that the authority was aware of the unstamped site plan is also consistent with the conduct of the officer of the authority who completed the final inspection for the wall, and passed it, also recording it had been completed in accordance with the approved plans. If, as the authority asserts, there was never any plan showing the return wall, I would have expected the inspecting officer to have commented on or queried the existence of an approximately 3m high, by 2m long engineered retaining wall in a location where none was shown on the plans. I would have also expected the code compliance certificate to have been withheld until this discrepancy was resolved. The fact that this did not occur, points, in my opinion, to the existence of a plan showing the return wall at the time that it was built, and that the authority was aware of it.
- 6.13 However, the only version of the plan showing the return wall that is currently available is not stamped as being received by the authority, and accordingly I must proceed on the basis that the building work for the return wall was additional to the work shown in the consented plans. The question therefore becomes whether this additional building work should be treated as a major or a minor amendment to the building consent.

#### **Amendment to the building consent**

- 6.14 The relevant legislation in relation to this question can be found in sections 40, 44, 45, 45A, and 94 of the Act.
- 6.15 Section 40 specifies that all building work must be carried out in accordance with a building consent, while section 44 specifies that the building consent must be applied for before work begins. Section 94 provides that a building consent authority must issue a code compliance certificate if it is satisfied, on reasonable grounds that the building work complies with the building consent.
- 6.16 There is an exception within the Act where the restrictions imposed by sections 40 and 94 may not apply, because a variation to a building consent is considered minor. The sections of the Act that apply to variations to building consents are sections 45 and 45A.
- Section 45 allows for applications to amend a building consent. For minor amendments, the application must be in accordance with section 45A. In all other cases, the application for an amendment must be made as if it were an application for a building consent.
  - Section 45A specifies that an application for a minor variation does not need to be on a prescribed form, and does not require the authority to issue an amended consent.
- 6.17 The significance of these sections in the current case is that, if the additional building work (represented by the return wall) constituted a major amendment to the consent,

the applicants should have applied for a further formal amendment to the building consent in relation to it. As this did not occur, the authority could not issue a code compliance certificate for the additional work, and the code compliance certificate that was issued would not extend to it. If, on the other hand, the additional building work only represented a minor amendment to the consent, no formal amendment to the building consent would be required, and the additional work would come within the existing code compliance certificate. All that would be required in the latter situation would be for the minor amendment to be recorded by the authority as described in the Ministry's guidance.

6.18 I have considered the question of whether additional work can be brought within the scope of an existing building consent in a previous determination<sup>6</sup>. In that determination I expressed the view that the following factors were pertinent:

- the extent of the additional work
- whether it was of a type that was generally consistent with the consented work
- whether it was carried out at the same time as the consented work
- whether it was inspected during construction.

6.19 Although in the current case we are dealing with a slightly different situation, I consider that these factors still apply. In its submission on the draft determination, the authority asserted that Determination 2007/105 is not relevant, as on the facts of that case no code compliance certificate was issued. I do not accept this argument. Determination 2007/105 provides guidance on the type of factors that are relevant in determining whether additional building work, beyond that detailed by an existing building consent, can none-the-less be brought within the scope of the consent: the issue of a code compliance certificate has little or no bearing on this position.

6.20 Some guidance is also provided by the Building (Minor Variations) Regulations 2009, which define what is meant by a minor variation in clause 3.

### **3 Minor variation defined**

(1) A **minor variation** is a minor modification, addition, or variation to a building consent that does not deviate significantly from the plans and specifications to which the building consent relates.

6.21 Applying these considerations in the current case, I believe that the addition of the return wall to the consented plans only amounts to a minor variation to the building consent. In making this assessment I consider it significant that:

- the return wall was built at the same time as the main wall
- it was designed by the same engineer who designed the main wall
- it was designed as a material adjunct to that main wall in order to address a specific risk associated with it
- it has the same construction as the main wall
- the evidence suggests that it was inspected and passed at the same time as the rest of the building work covered by the consent
- the return wall retains the same ground as that retained by the main wall

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<sup>6</sup> Determination 2007/105 Determination regarding refusal to issue a code compliance certificate for a house due to the territorial authority's decision not to rely on a building certifier's inspection reports at 359 Hot Springs Road, Katikati (Department of Building and Housing) 12 September 2007

- the evidence points to the officer of the authority inspecting the work being aware of the addition of the return wall and its purpose at the time of its inspection, and, in all likelihood, also being aware of the amended plan.
- 6.22 For the above reasons, in my opinion the return wall does not represent a significant deviation from the consented plans and can be treated as a minor amendment to them. This means the return wall is covered by the amended building consent, and by the code compliance certificate issued by the authority on 26 September 2013.
- 6.23 In its submission on the draft determination, the authority asserted that the return wall could not be considered a minor variation to the building consent and that no application had been made for it, as required by Section 45A(1) of the Act. The authority contends the Ministry’s guidance on minor variations supports of this view.
- 6.24 I do not accept this argument. There is nothing in the evidence to suggest that the applicants did not bring the need for the return wall to the notice of the authority. In fact, as discussed in paragraphs 6.6 to 6.12 of this determination, in my opinion it is likely that they did, and that the unstamped site plans were prepared as a result.
- 6.25 The authority contends that the minor amendment needed to be made in writing, but there is nothing in the Act (or in the Ministry’s guidance) to support this position. Section 45A(1)(a) says an application for a “minor variation ...is not required to be made in the prescribed form”, and the Ministry’s guidance says a minor variation can be approved on-site but that this decision be recorded. In my opinion, it is the recording of the minor variation that has not occurred, and that this should now be rectified.
- 6.26 Both the authority and the neighbours also submitted that the return wall went beyond the type of building work that could be covered by a minor variation, both in its scope and its complexity. The authority referred to the examples of building work given in the Ministry’s guidance on minor variations, and to previous determinations that had considered minor variations, in support of this contention.
- 6.27 Whether or not additional building work constitutes a minor variation to a building consent is a question that must be considered on the facts in each individual case. In the current case, for the reasons described in paragraph 6.21, I consider that the return wall does constitute a minor variation. This decision is not based on the type of building work, per se (for example, structural versus finishing work), but on the circumstances surrounding it.

### **Conclusion**

- 6.28 Accordingly, I conclude that the authority incorrectly exercised its power of decision in issuing the notice to fix for the building work and that the notice to fix should now be withdrawn.

## **7. What happens next?**

- 7.1 The authority should now withdraw the notice to fix. The applicants should then submit as-built plans showing the return wall, as well as the other building work covered by the consent, and these should be placed on the authority’s file.
- 7.2 The matter of the boundary encroachment is a civil matter between the parties and can be dealt with accordingly.

## **8. The decision**

- 8.1 In accordance with section 188 of the Building Act 2004, I reverse the decision of the authority to issue a notice to fix for the building work, as described in this determination.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 7 November 2017.

Katie Gordon  
**Manager Determinations**

## Appendix A: The legislation

### A.1 The Building Act 2004

#### **40 Buildings not to be constructed, altered, demolished, or removed without consent**

- (1) A person must not carry out any building work except in accordance with a building consent ...

#### **44 When to apply for building consent**

- (1) An owner intending to carry out building work must, before the building work begins, apply for a building consent to a building consent authority that is authorised, within the scope of its accreditation, to grant a building consent for the proposed building work.

#### **45 How to apply for building consent**

- (1) An application for a building consent must—
  - (a) be in the prescribed form; and ...
- (4) An application for an amendment to a building consent must,—
  - (a) in the case of a minor variation, be made in accordance with section 45A; and
  - (b) in all other cases, be made as if it were an application for a building consent, and this section, and sections 48 to 51 apply with any necessary modifications.

#### **45A Minor variations to building consents**

- (1) An application for a minor variation to a building consent—
  - (a) is not required to be made in the prescribed form; but
  - (b) must comply with all other applicable requirements of section 45.
- (2) Sections 48 to 50 apply, with all necessary modifications, to an application for a minor variation.
- (3) A building consent authority that grants a minor variation—
  - (a) must record the minor variation in writing; but
  - (b) is not required to issue an amended building consent.

#### **94 Matters for consideration by building consent authority in deciding issue of code compliance certificate**

- (1) A building consent authority must issue a code compliance certificate if it is satisfied, on reasonable grounds,—
  - (a) that the building work complies with the building consent; and
  - (b)...

## A.2 The Building (Minor Variations) Regulations 2009

### 3 Minor variation defined

(1) A **minor variation** is a minor modification, addition, or variation to a building consent that does not deviate significantly from the plans and specifications to which the building consent relates.