

# Determination 2021/028

**Date: 21 December 2021**

## **Regarding the decision to issue a code compliance certificate for building work to re-pile an existing house at 346 Umutaoroa Road, Dannevirke**

### **Summary**

This determination considers whether the authority was correct to issue a code compliance certificate for the building work to partially re-pile an existing house. The determination considers whether the building work can be considered as a minor variation.

The legislation which is discussed in this determination is contained in Appendix A. 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 (e.g., 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 under Part 3 Subpart 1 of the Building Act 2004 (“the Act”) made under due authorisation by me, Katie Gordon, National Manager Building Resolution, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.<sup>1</sup>
- 1.2 The parties to the determination are:
  - Taranaki District Council, carrying out its duties as a territorial authority or building consent authority (“the authority”). The authority is acting through its lawyers as its agent and is the applicant in this determination
  - the current owner of the property, P. Glover (“the owner”)

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<sup>1</sup> The Building Act and Building Code are available at [www.legislation.govt.nz](http://www.legislation.govt.nz). The Building Code is contained in Schedule 1 of the Building Regulations 1992. Information about the Building Act and Building Code is available at [www.building.govt.nz](http://www.building.govt.nz), as well as past determinations, compliance documents and guidance issued by the Ministry.

- the licensed building practitioner responsible for the building work, M. Holm (“the builder”). The builder was also the owner of the property at the time the building work was carried out.
- 1.3 The determination arises from the authority’s decision to issue a code compliance certificate for building work to partially re-pile an existing house. The authority subsequently became concerned that it should not have issued the code compliance certificate, because the as-built building work differed from the consented plans. The authority had previously treated this departure as a minor variation. It later formed the view that this assessment was not appropriate, given the nature of the building work.
- 1.4 Accordingly, the matter to be determined<sup>2</sup> is whether the authority correctly exercised its powers of decision to issue a code compliance certificate for the building work.
- 1.5 I note that the contractual issues relating to the purchase of the property, and the scope of the works that were to occur pursuant to that contract, are not issues that can be considered by way of a determination.
- 1.6 In making my decision, I have considered the submissions of the parties and the other evidence in this matter. This determination is limited to the matter outlined above. It does not consider any other aspects of the building work or its compliance with the Building Code.

## 2. The building work and background

- 2.1 The owner’s house is a single-level weatherboard bungalow, constructed in the 1930s and located on a flat section in a rural area on the outskirts of Dannevirke.
- 2.2 On 30 July 2019, the builder applied for a building consent to re-pile the house (the builder was the owner of the property at the time). The application included calculations demonstrating the number of anchor piles required to meet wind and earthquake subfloor bracing demands, as well as anchor pile fixing details. The proposed ‘pile plan’ submitted with the application (dated 19 July 2019) showed that:
- the work was for a partial rather than total re-pile for the house, with the piles to be fixed to existing bearers
  - an existing concrete slab, and 14 existing concrete piles, were unaffected by the building work and were to remain
  - 89 existing timber piles were to be replaced with 70 ordinary and 19 anchor timber piles (13 located on the perimeter of the subfloor, and 6 internally), with none of the existing timber piles to be retained:
    - the 70 replacement ordinary piles were to be constructed from 125 x 125mm H5<sup>3</sup> treated timber, with 300 x 300 x 300mm deep concrete footings, to 17.5 MPa<sup>4</sup>; no fixing mechanism was described
    - the 19 replacement anchor piles were to be constructed from 125 x 125mm H5 treated timber, with 350 x 350 x 900mm deep footings, to 17.5

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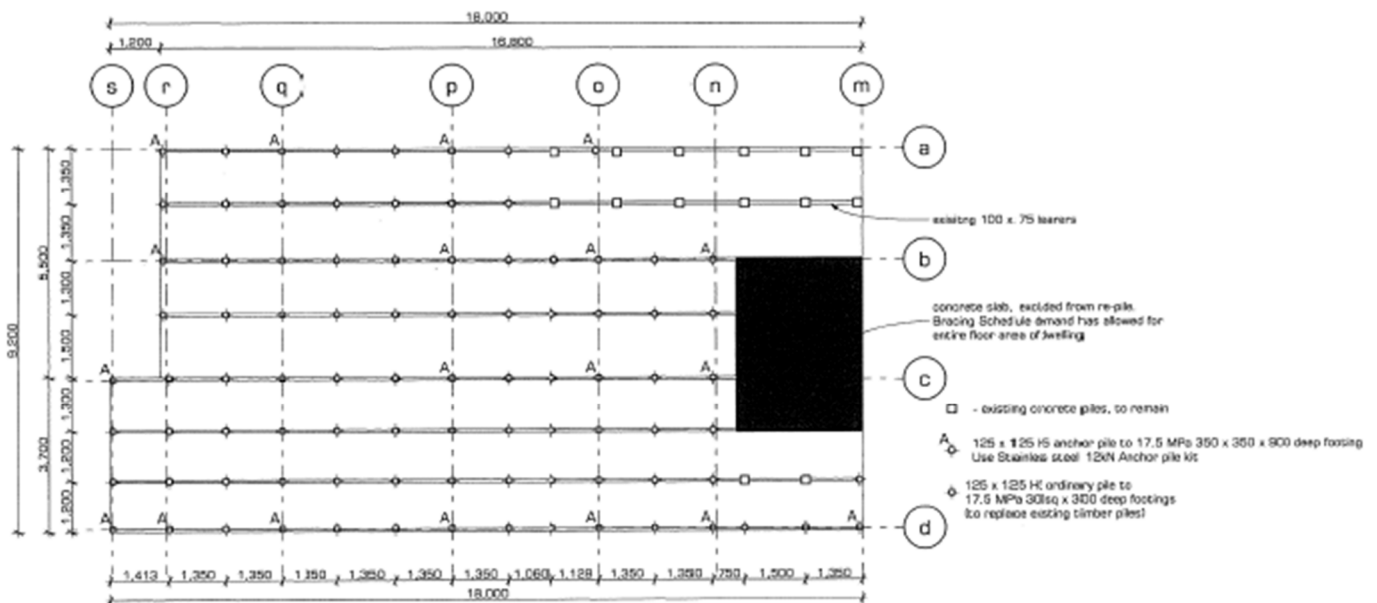
<sup>2</sup> Under sections 177(1)(b) and 177(2)(d) of the Act.

<sup>3</sup> H5, or Hazard Class 5, is a category of timber treatment.

<sup>4</sup> A megapascal (MPa) is a measure of the compressive strength of concrete.

MPa; the piles were to be fixed to the bearers and joists using 12kN stainless steel plates and cleats.

- 2.3 The application did not specify a particular Building Code compliance method for the building work. However, the anchor pile fixing specifications, and wind and earthquake bracing calculations submitted with the application, both indicated the work was to comply with New Zealand Standard NZS 3604:2011<sup>5</sup> Timber Framed Buildings (the standard is cited in Acceptable Solution B1/AS1 as an Acceptable Solution for Clause B1 for timber-framed buildings, with some modifications). In addition, the application form stated, unless an alternative was specified, the application would be assessed for compliance against the Acceptable Solutions for Building Code Clauses B1 *Structure*, B2 *Durability* and F7 *Warning Systems*.
- 2.4 On 19 August 2019, the owner purchased the property from the builder.
- 2.5 On 21 August 2019, the authority granted building consent 303653 for “Re-piling an existing single dwelling” (see Figure 1).
- 2.6 The building work was then carried out by a piling sub-contractor, with the assistance of



and under the supervision of the builder.

**Figure 1: Approved foundation plan (not to scale)**

- 2.7 The authority inspected the building work on 22 November 2019. The inspection failed on the grounds that the consented plans did not accurately reflect the existing subfloor layout of the house. The inspection report noted the matter had been discussed with the builder, that ‘On-site amendments/variations will be required’, and that an ‘As-built sub-floor plan will be required at completion’. The report also recorded the existing piles

<sup>5</sup> NZS 3604:2011 Timber framed buildings. I note NZS3604 is an Acceptable Solution for Building Code Clause B1. Section 19 of the Act sets out various ways to establish compliance with the Building Code or ‘compliance pathways’. An Acceptance Solution is one way, but not the only way to comply to establish compliance with the Building Code.

comprised a mix of timber piles, pre-cast concrete piles and in-situ concrete piles; the new timber piles were appropriately treated; and the ground beneath the dwelling complied with the requirements in NZS 3604:2011 for “Good Ground” for bearing capacity.

2.8 With respect to compliance with Clause B1, the inspection report noted the following:

- ‘19 anchor piles (or similar) with 12kN<sup>6</sup> connections ... will provide complying seismic resistance points’
- the authority was ‘reasonably satisfied that the existing pre-cast concrete piles with wiring to the bearers will comply with [Clause] B1’, but the condition of the wiring needed to be checked
- all of the existing timber piles needed to be replaced
- all of the in-situ concrete piles had various compliance short-comings, including insufficient ground penetration, and needed to be replaced
- all piles needed to be connected to the sub-floor, with 12kN fixings for the anchor piles and 6kN fixings for the standard piles.

2.9 The authority repeated these compliance issues in an email also dated 22 November 2019, which it sent to the builder as a ‘projected scope of works’. The email stated that:

If the scope of works is followed, all holes are inspected before pouring concrete and all connections completed as per pile type then [the authority] will be in a position to sign off the work as compliant.

2.10 The authority inspected the pile holes on 28 November 2019. This time the inspection passed, with the inspection report noting that a pile layout design was to be supplied at the completion of the job.

2.11 The authority then carried out three further inspections, as follows:

- 4 December 2019, to inspect the anchor piles – passed. The authority noted that 13 anchor piles had been constructed around the perimeter of the house and three anchor piles on internal lines; that the ‘Distribution of seismic points (anchor piles)’ was ‘OK’; that the anchor piles were treated and their footings were ‘900 [mm] deep x 450 [mm] square’; and that the ‘Piles provide adequate support to load paths’. The report noted a ‘Variation to approved plan’ and noted that as-built plans were to be provided at completion
- 11 December 2019, to inspect the ordinary piles – passed. The inspection report noted that both 6kN and 12kN connections had been observed and verified, and that an as-built plan was to be provided
- 17 December 2019, final inspection – failed, with the report noting that an amended as-built plan was required.

2.12 On 30 December 2019, the builder provided an as-built pile plan (refer to Figure 2) and applied for a code compliance certificate for the building work. The as-built plan showed that:

- 19 new anchor piles had been installed; 13 on the perimeter of the subfloor and 6 internally (some in different locations than on the consented plan)

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<sup>6</sup> A kilonewton (or kN) is a unit of measurement for force.

- 22 existing pre-cast concrete piles had been retained (some in different locations than on the consented plan)
  - 80 new ordinary timber piles had been installed
  - 24 new ordinary concrete piles had been installed to replace the in-situ concrete piles.
- 2.13 The authority conducted a further final inspection on 15 January 2020, which passed. The inspection report noted the pile layout differed from the original consented plan and that an as-built plan had been provided. It was also noted 19 anchor piles had been installed in positions that varied from the consented plan and '[The building compliance officer] has checked and approved as being as near as is reasonably practicable'.
- 2.14 The authority issued a code compliance certificate on 15 January 2020, with respect to building consent 303653 for the building work to "Re-pile an existing single dwelling".
- 2.15 At some point, the owner developed concerns about the piles and commissioned a firm of consulting engineers ("the owner's engineers") to review the compliance of the building work. The engineers reviewed the documentation and conducted a site visit to inspect the as-built piles, and provided a report dated 12 February 2020. The report recorded that 19 anchor piles had been installed, as shown in the as-built plans, but that the layout of these piles 'differs significantly' from the layout shown in the consented plans.
- 2.16 The report also stated that:
- The installed anchor pile layout does not comply with NZS3604:2011 Timber Framed Buildings Standard. Although there are 19 anchor piles installed the spacing exceeds the recommended 5m maximum spacing and there are no anchor piles in some of the perimeter walls.
- 2.17 Other main findings in the report were that:
- all anchor pile fixings had been installed in accordance with the manufacturer's recommendations
  - some existing concrete piles were not connected to bearers
  - one new ordinary concrete pile had no concrete around its base
  - some timber piles had not been replaced, even though the consented plan showed that only concrete piles were to remain.
- 2.18 The report recommended that five additional anchor piles should be installed, internally and in the perimeter walls, and that additional connections should be installed and concreting carried out to ensure the piles satisfied NZS3604:2011.
- 2.19 The report stated all anchor piles, fixings to bearers, and adjoining joists must achieve a 12kN fixing capacity to comply.
- 2.20 On 23 January 2020, the owner contacted the authority, querying whether the building work had been carried out in accordance with the building consent and raising concerns about the compliance of the piles.
- 2.21 The authority carried out its own investigation into the compliance of the building work on 28 February 2020. Following that, the authority concluded the building work had not been undertaken in accordance with the building consent and the code compliance

certificate should not have been issued. It subsequently notified the owner and the builder that it would be applying for a determination on the matter, seeking for its decision to be reversed and the code compliance certificate withdrawn.

- 2.22 The authority applied for a determination on 29 April 2020, which was accepted by the Ministry on 18 June 2020.

### 3. The submissions

#### 3.1 The authority's submissions

- 3.1.1 The authority made a submission with its application for a determination. The submission summarised the events leading up to the application and made the following key points:

- the building consent application and building consent were based on the consented plan and were for 'a partial rather than a full re-piling of the dwelling'
- in the building consent application, the builder proposed to demonstrate compliance with Clause B1 using NZS 3604:2011
- two additional anchor piles were required, as the bracing lines on the consented piles plan show the anchor pile spacing exceed the maximum line spacing requirement in NZS3604:2011. As such, the piles do not satisfy NZS3604:2011 and compliance with Clause B1 was not demonstrated
- the building consent authorised the replacement of 89 existing timber piles with 70 ordinary timber piles and 19 anchor piles; however, 14 existing concrete piles were excluded and were not replaced
- the authority was unable to identify the location of the existing timber piles that were not replaced and stated the existing timber piles in-situ that have been retained are no longer load bearing (and therefore these piles are not recorded on the as-built plan)
- the footings and fittings for all the new piles (anchor and ordinary) have been 'built in accordance with the approved specifications in the building consent'
- the 24 additional ordinary piles, that replaced the in-situ concrete piles, were not approved by either the building consent or an amendment
- the layout configurations of the installed anchor piles '[were] not authorised by the building consent or an amendment' and do not achieve the bracing units calculated in the building consent
- the building consent authorised the installation of 70 new ordinary piles. An additional 10 ordinary piles have been installed and this work was not approved by either the building consent or an amendment
- the authority's building compliance officer approved the changes as a minor variation under section 45A of the Act. However, the authority now considers that the changes fall 'outside the scope of a minor variation' as defined by Regulation 3 of the Building (Minor Variations) Regulations 2009. The authority also considers that 'the

departures from the building consent went beyond what was approved by way of variation’.

3.1.2 The authority concluded their submissions by requesting the Ministry to determine that the code compliance certificate had been wrongly issued and should be withdrawn.

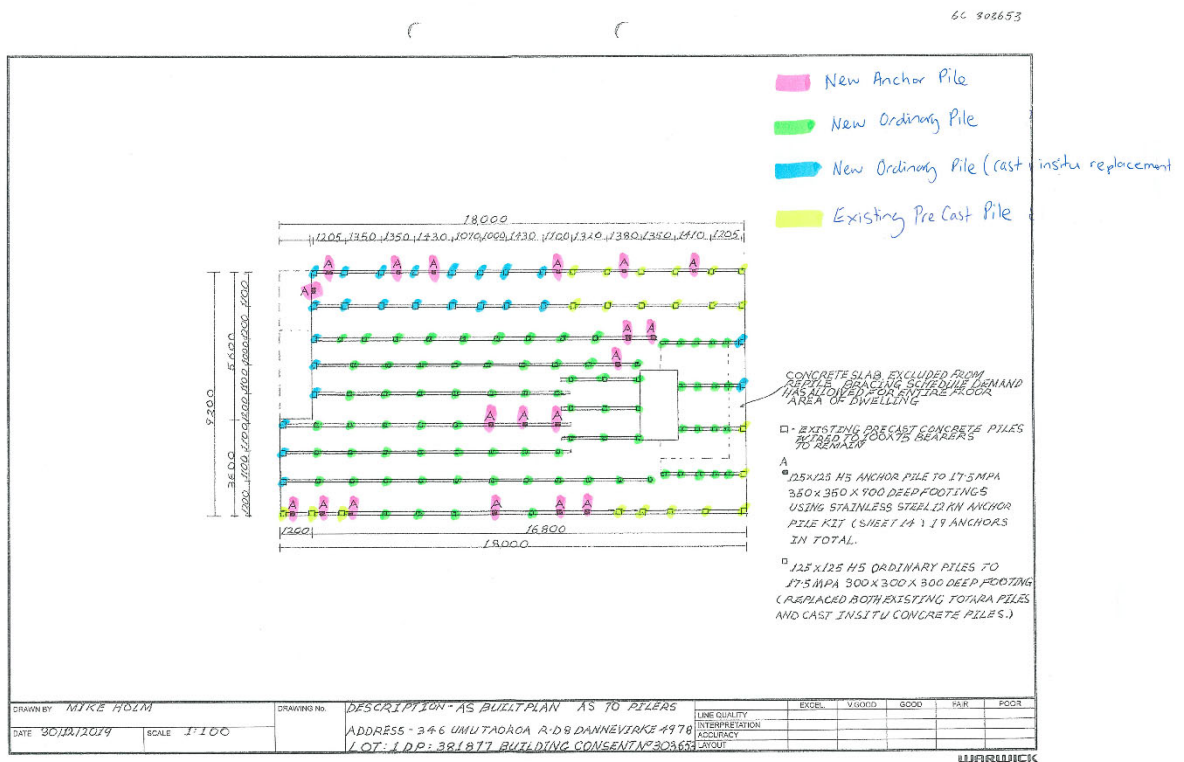


Figure 2: The as-built plan (not to scale)

3.1.3 In response to the Ministry’s requests for further information, the authority on 13 August 2020 made the following points:

- the authority’s request for a reversal of the code compliance is not based on the grounds that the building work does not comply with the Building Code, but rather that it does not comply with the building consent
- the authority ‘remains of the view that section 94(1)(a) of the Building Act 2004 precludes it from issuing a code compliance certificate unless it is satisfied on reasonable grounds that the building work complies with the building consent’.

3.1.4 The authority, by way of email dated 16 September 2020, confirmed that their initial intention to engage an engineer to address the question of code compliance had fallen through and as a result of which the authority requested that this determination consider its decision to issue the code compliance certificate.

## 3.2 The owner’s submissions

3.2.1 The owner made a submission as follows:

- not enough dirt had been dug out to access all areas under the house, which limited the number of piles that could be installed
- the owner's engineer recommended that a further five anchor piles be installed
- not all piles are connected to the bearers, and one pile does not have concrete at its base
- excess dirt has been shovelled against the piles, which will cause rot.

### 3.3 The builder's submissions

3.3.1 The builder made a submission dated 12 June 2020, the main points as follows:

- the building work was a 'teamwork effort', whereby the communications between the parties, contractors and suppliers was 'to ensure a smooth process'
- the builder kept numerous records to note any variations, meetings, issues and other information relating to the building work, including a work diary, notebook brief, record of works, and regular progress report
- there were 'multiple inspections' of the building work, including of the foundations holes, concrete pours and fixings, with other 'fixtures or detail to be confirmed with final inspections'
- the builder had taken 'reasonable practical steps throughout the course of the project' that fulfilled his obligations as a licenced building practitioner and provided the basis for issuing the code compliance certificate.

3.3.2 The builder provided a further submission received by the Ministry on 6 July 2020, responding to the owner's engineer's report of 22 June 2020, the main points as follows:

- during the excavation phase of the project, the piling contractor discovered there were more existing concrete piles beneath the dwelling than was previously known. These piles were of two types: pre-cast and wired to the bearers, and cast in-situ, which were not wired
- two meetings were held with the authority's officers on 7 and 9 November 2019 to discuss these piles. At the 9 November 2019 meeting, the authority's officers confirmed 'that they were satisfied based on reasonable grounds the precast and wired to bearer piles comply with [Building Code Clause] B1'
- the builder then sought the owner's agreement, via a real estate agent, 'to allow all concreted precast and wired to bearers piles to remain [in place]', and this approval was subsequently given by the owner, again via the real estate agent. The in-situ unwired piles were all removed, as they were barely embedded 50mm below the ground level
- with regard to removing the surplus earth from underneath the dwelling, the piling contractor discussed this with the authority's building officer, and expressed the opinion that it was better to keep the excavation to a minimum (as too much excavation can cause issues with the piles, especially in older dwellings). The builder thought the piling contractor's assessment was 'reasonable'
- with respect to the excavated soil that was left against the piles causing future rotting, this was a 'non-event' as the portion of the pile below ground would rot



before the above-ground portion, and all of the timber piles were H5 treated, with sufficient airflow through the base boards to provide ventilation and prevent moisture build up or spread

- the builder acknowledged the matters of the piles not being connected to the bearers, and the one pile that had not been concreted, were both compliance issues. The builder stated that the builder had been previously unaware of these issues and had presumed they would be checked as part of the final inspection.

### **3.4 The responses to the draft determination**

- 3.4.1 A draft determination was issued to the parties for comment on 14 July 2021.
- 3.4.2 On 27 July 2021 the authority and the owner accepted the draft determination with no further comment.
- 3.4.3 The builder, through an email dated 29 July 2020 indicated that they would be providing the Ministry with an engineer's report. However, after several requests from the Ministry, the builder's agent confirmed by way of an email dated 30 September 2020 that the builder has no further comment in response to the draft determination.
- 3.4.4 The builder, through another email of 29 July 2020, enquired whether the Ministry had considered section 112 of the Building Act 2004 in relation to the building work. I note that section 112 is a provision that concerns the extent to which a building requires upgrading, and the extent to which the unaltered parts of a building will continue to comply, when the building is undergoing alterations that are the subject of a building consent. This section would be relevant to consider as part of an assessment of the compliance of the building work. However, as this determination is focused on whether the changes to design of the building work are a minor variation, in order to determine whether the authority was correct issue a code compliance certificate for the building work, I have not commented any further on the application of section 112.

## **4. Discussion**

- 4.1 I have to consider whether the authority decided correctly in issuing the code compliance certificate. In determining this matter, I must also consider whether the variations in the as-built building work could constitute a minor variation in terms of section 45A of the Act.
- 4.2 In this case, once the building work started, it was discovered that the layout of the existing piles did not match what was shown on the consented plans. This led to a different number, and layout, of new piles being installed than was shown on the consented plan. It is this discrepancy that has given rise to the determination.
- 4.3 The relevant legislation can be found in sections 94 and 45A of the Act, and in Regulation 3 of the Building (Minor Variations) Regulations 2009 ("Regulation 3").
- 4.4 Section 94 establishes that, in deciding whether to issue a code compliance certificate, an authority must consider whether the building work complies with the 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

...

4.5 Section 45A makes provision for some amendments to building consents to be treated as minor variations. Minor variations do not require a formal amendment to the building consent. They can be arranged informally between the parties, but must be noted in writing by the authority.

**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.

4.6 With respect to the owner's house, whether the building work complies with the building consent, and therefore whether the authority was correct to issue a code compliance certificate in respect of it, will depend on whether or not the changes that were made to the building work (from what was described in the consented plans) can be considered to be a minor variation to the building consent.

4.7 If they are, then there was no need to formally alter the building consent, provided the minor variation was recorded by the authority in writing, and the authority could still issue the code compliance certificate based on the original consent (providing it is satisfied that the building work that is the subject of the minor variation complies with the Building Code).

4.8 Regulation 3 defines a "minor variation" and gives some examples of what is meant by this term.

**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.

(2) The following are examples of minor variations and do not constitute an exhaustive list:

(a) substituting comparable products (for example, substituting one internal lining for a similar internal lining):

(b) minor wall bracing changes:

- (c) a minor construction change (for example, changing the framing method used around a window):
- (d) changing a room's layout (for example, changing the position of fixtures in a bathroom or kitchen).
- (3) The examples in subclause (2) are only illustrative of subclause (1) and do not limit it. If an example conflicts with subclause (1), subclause (1) prevails.
- (4) To avoid doubt, a minor variation does not include any building work in respect of which compliance with the building code is not required by the [Building Act 2004](#).
- 4.9 I have considered whether particular building work constitutes a minor variation in previous determinations, including those referred to by the parties in their submissions<sup>7</sup>.
- 4.10 The Ministry has also published guidance<sup>8</sup> on minor variations. This guidance makes clear that, ideally, minor variations should be communicated to a building consent authority before the work is carried out. The guidance also makes clear that on-site conversations can be sufficient to constitute a proposal to make a minor variation, provided they are documented afterwards.
- 4.11 In all cases, what is required is for the proposed variation to be assessed against the definition and examples provided in the Regulations, and a decision made as to whether it represents a significant deviation from the consented plans and specifications.
- 4.12 In this case, the as-built building work varied from the consented building work in the following ways:
- the same number of new anchor piles were installed, although the location of some of them differed from those shown on the consented plan
  - 22 existing pre-cast concrete piles were retained, as opposed to 14 shown on the consented plans, some in different locations than on the consented plan
  - 80 new ordinary timber piles were installed, as opposed to 70 on the consented plans, some in different locations than on the consented plan
  - 24 additional new ordinary concrete piles were installed to replace the in-situ concrete piles, which had not been noted on the consented plan
  - some existing timber piles were retained, although these were no longer load-bearing.
- 4.13 The Ministry's guidance outlines a three-step process for an authority to consider whether a variation from the consented building work is a minor variation or not, namely:

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<sup>7</sup> See Determination 2020/015 Regarding the refusal to issue a code compliance certificate for building work on a relocated house at 1510 State Highway 2, Featherston; Determination 2019/004 Regarding the decisions to refuse to issue a code compliance certificate and to issue a notice to fix in respect of a solid fuel heater (18 March 2019), Determination 2020/002 Regarding the consented alterations to the walls and roof of a house and its compliance with Building Code Clause B1 (17 March 2020).

<sup>8</sup> *Minor variations to building consents: Guidance on definition, assessment and granting* (1 January 2010); available at: [www.building.govt.nz/projects-and-consents/build-to-the-consent/making-changes-to-your-plans/minor-variations-guidance/](http://www.building.govt.nz/projects-and-consents/build-to-the-consent/making-changes-to-your-plans/minor-variations-guidance/)

**Step 1:** “Does the proposed change involve building work that is required to comply with the Building Code?” If not, the authority does not need to approve the work.

**Step 2:** Does the proposed change come “within the definition of ‘minor variation’” contained in the Regulations.

**Step 3:** Does the proposed change:

- comply with the Building Code
- reflect common appropriate industry practice or standards
- not significantly increase the likelihood of a building element’s performance failure.

The guidance goes on to state that if in the event the answer to each of those steps is in the affirmative, it would generally be appropriate for the authority to grant the minor variation.

- 4.14 In respect of step one described in the Ministry’s guidance, it is clear the alterations are building work required to comply with the Building Code.
- 4.15 In respect of step two, I have considered the examples provided in the Regulations (refer paragraph 4.7). These examples suggest that limited changes can be made to the building’s structure and be classified as a minor variation to a building consent. In considering whether the proposed change ‘does not deviate significantly from the plans and specifications’, I would expect a minor variation to perform in the same manner as the approved work. In this case, the pile layout would be expected to perform its bracing and load-carrying function in the same manner as the approved work, which in this case was indicated to be in accordance with Acceptable Solution NZS3604.
- 4.16 I have considered the following in coming to the conclusion that the changes to the pile layout do not constitute a minor variation:
- while the structural design overall is simple, almost every aspect of the design was altered. The changes during construction resulted in a different layout of the anchor piles; additional 24 ordinary timber piles installed that replaced 24 existing in-situ concrete piles; an additional 10 ordinary timber piles were installed; and a new ordinary pile was not set in concrete. The large number of additional piles cannot be considered a minor change within the definition and examples given in the Regulations
  - the changes to the anchor pile layout affect the building’s ability to resist earthquake and wind loads. The as-built layout of the anchor piles does not satisfy the requirements of NZS3604, therefore does not perform its bracing and load-carrying function in the same manner as the approved work, but this is not the only way to establish code compliance. Specific engineering design<sup>9</sup> would likely be needed to confirm code compliance, which was not provided.
- 4.17 I conclude the authority was incorrect in its initial view the as-built work came within the definition of a ‘minor variation’. I consider an amendment to the building consent was required for this building work. A consequence of this conclusion is that the building

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<sup>9</sup> A type of design that requires calculation by an engineer, typically in accordance with a Verification Method, or Standard or both. A Verification Method is another way set out in section 19 of the Act to establish compliance with the Building Code.

work has not been completed as it was described in the plans and specifications, and does not meet the test under section 94(1)(a) of the Act.

4.18 Now that I have concluded that the authority was incorrect to issue the code compliance certificate, I must consider whether to confirm, reverse or modify that decision. I consider it is appropriate in this case to reverse the authority's decision, for the following reasons:

- The owner's engineers report notes the building work is not in accordance with NZS3604 and the remaining parties have elected not to provide any further information on code compliance (despite initially indicating an intention to do so) to satisfy me that the building work complies with the building code
- As I have not been provided with the information necessary to decide on the compliance of the as-built work, the matter is limited to a consideration of section 94(1)(a). The completed building work is not a minor variation and therefore the building work does not comply with the building consent plans and specifications
- As the authority is unable to amend an issued code compliance certificate, a reversal of the code compliance certificate is needed to allow the parties to 'regularise' the completed building work (I leave it to the parties as to how best to address the discrepancy between the plans and specifications and the completed building work).

## 5. The Decision

5.1 In accordance with section 188 of the Act, I determine that the authority was incorrect to issue a code compliance certificate for the building work and I reverse that decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 21 December 2021.

Katie Gordon

**National Manager, Building Resolution**