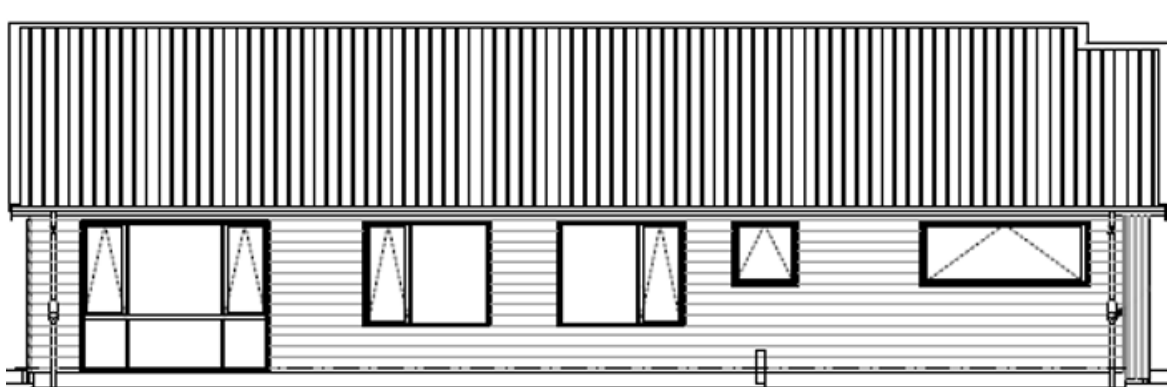


Determination 2023/008¹

The purported refusal of a building consent on the basis that a certificate of work for the design of the roof trusses was not provided. 226 Grand Drive, Orewa, Auckland

Summary

This determination explores whether a certificate of work is required from a licensed building practitioner for the design of the roof trusses. This requires a decision of whether the design of roof trusses is part of the primary structure of a dwelling and restricted building work.



¹ This determination is subject to a clarification under Section 189 of the Building Act 2004. The determination was originally issued on 29 March 2023. The clarification amends the title and paragraphs 4.1, 4.3 and 4.5.

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (eg, Acceptable Solutions), and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Charlotte Gair, Manager Advisory, Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.²
- 1.2. The parties to the determination are:
 - 1.2.1. R Morley, the licensed building practitioner,³ who carried out the design of the dwelling and applied for this determination (“the designer”).
 - 1.2.2. Rodney Residential Ltd, the owner of the property, represented by the designer, who is a director in the company (“the owner”).
 - 1.2.3. Auckland Council, carrying out its duties as a territorial authority or building consent authority (“the authority”).
- 1.3. This determination arises from the authority’s purported refusal of a building consent.
- 1.4. The purported refusal hinges on the fact that a certificate of work for the roof trusses was not provided.
- 1.5. I will consider whether the design of the roof trusses is restricted building work. If it is considered restricted building work, then a certificate of work is required for a building consent.
- 1.6. The matter to be determined, under section 177(1)(b) and (2)(d), is therefore the purported refusal of a building consent on the basis that a certificate of work for the roof trusses was not provided.

² Section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

³ Section 176(d) provides for a “licensed building practitioner concerned with the relevant building work” to be a party to a determination.

Matters outside this determination

- 1.7. I have not considered the administration of, or any liability, relating to the licensed building practitioner scheme.⁴ This includes whether or not a licensed building practitioner has the required competencies to supervise the work of another designer.
- 1.8. I have not considered the compliance of any building work with the Building Code.

2. The building work

- 2.1. The relevant building work for this determination involves the roof trusses for a new single-storey dwelling. The proposed dwelling has an approximately 152 square metre long-run steel roof, supported by a proprietary truss system. The truss system consists of a series of prefabricated timber members held together with steel plates and connectors.

3. Background

- 3.1. The designer applied for the building consent in November 2021.
- 3.2. The authority issued a request for information on 20 December 2021 that concentrated on the requirement of a certificate of work⁵ to be provided for the design of the roof trusses. The authority considers roof trusses to be restricted building work. There were other items mentioned in the request for information, but these are not relevant to this determination.
- 3.3. The designer and the authority engaged in email correspondence between 20 December 2021 and 22 January 2022.
- 3.4. The authority sent its final request for information email on 22 January 2022. This email contained the purported refusal of the building consent based on the fact

⁴ Read more about the LBP licence classes on the Building Performance website [here](#).

⁵ A certificate of work records that a suitably qualified design professional has designed or supervised the design of restricted building work. It is produced on a form regulated by the Building (Forms) Regulations 2004.

that no certificate of work documentation was provided for the design of the roof trusses.

4. Submissions

The designer (and owner)

- 4.1. The designer holds the view that it is not possible for a licensed building practitioner to supervise a truss design. Therefore, a “typical licensed building practitioner” cannot issue a certificate of work for the design.
- 4.2. The designer cites the definition of “supervise” in section 7 of the Act, which states:
supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—
 - (a) is performed competently; and
 - (b) complies with the building consent under which it is carried out
- 4.3. Because of this definition, the designer does not believe that an LBP can provide control/direction/oversight for the design of the trusses without the proprietary software which an LBP may not be able to operate or access.
- 4.4. To further their point, the designer states:

Truss design is carried out by specific software which carries out amongst other things, sizing of timber, sizing of joining plates, spans of sprockets/timber members, location of girder trusses, fixing of trusses to girder trusses, upload lift calculations for std trusses and girder truss end points and heel heights to name a few.
- 4.5. The designer considers “the location load comes from the truss design software” that is only available to persons with “proprietary access” and this work is carried out by the truss designer and is supported by producer statements.⁶
- 4.6. While the designer discusses the Licensed Building Practitioners scheme in their submissions, and the possible liability of builders and designers, the administration of this scheme or any matters of liability are outside of the matter to be determined.

⁶ Producer statements, which are statements of expert opinion, are a widely used tool to support the assessment of building code compliance.

The authority

- 4.7. The authority holds the view that a certificate of work is required for the design of roof trusses, as roof trusses are a building element associated with the primary structure of the building.
- 4.8. The authority refers to the Building (Definition of Restricted Building Work) Order 2011 in its justification for not issuing the building consent.
- 4.9. In its final request for information email, the authority stated, “Restricted building work can be defined in this situation as design work or the preparation of any drawing, specification, or other document, where the primary structure of a house or a small-to-medium apartment building is proposed to be constructed or altered.”
- 4.10. It also referred to the Ministry’s Building Performance website for guidance on restricted building work. Which includes information on what is considered an element of the primary structure, this mentions trusses.
- 4.11. The authority also considers that while a record of building work is not required for the off-site construction, it is required for the design.

5. Discussion

Legislation

- 5.1. Section 50 of the Act covers the refusal of application for building consent. The legislation states:

50 Refusal of application for building consent

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

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

- 5.2. In this case, the authority issued its purported refusal when it sent the request for information to the designer (refer to paragraph 3.4). The main point of contention

centres around whether a certificate of work is required for the roof trusses under section 45.

- 5.3. Section 45 of the Act provides an application must contain certain information when someone applies for a building consent. Section 45 states:

45 How to apply for building consent

...

(2) If an application for a building consent is accompanied by plans and specifications that contain design work (relating to building work) that is restricted building work, that design work must be carried out or supervised by 1 or more licensed building practitioners who are licensed to carry out or supervise that work.

(3) The plans and specifications that contain the design work referred to in subsection (2) must be accompanied by a certificate of work—

(a) provided by 1 or more licensed building practitioners who carried out or supervised that design work; and

(b) that identifies that design work; and

(c) that states—

(i) that the design work complies with the building code; or

(ii) whether waivers or modifications of the building code are required and, if so, what those waivers or modifications are.

- 5.4. To determine whether s45(2) and s45(3) are met, I must look at the definition of restricted building work and determine whether the design work for the roof trusses proposed in the building consent meets that definition.

- 5.5. Restricted building work is defined in Section 7:

restricted building work means any building work that is—

(a) building work of a kind declared by the Governor-General by Order in Council to be restricted building work (*see* subsection (2)); or

(b) design work of a kind declared by the Governor-General by Order in Council to be restricted building work (*see* subsection (2))

5.6. The Building (Definition of Restricted Building Work) Order 2011 outlines restricted building work for the purposes of the Act.

5.7. Section 6 of the Order states:

Certain design work relating to primary structure or external moisture-management systems of residential buildings to be restricted building work

(1) The kinds of design work described in subclause (2) are restricted building work for the purposes of the Act.

(2) The design work referred to in subclause (1) is the preparation of any drawing, specification, or other document, according to which—

(a) the primary structure of a house or a small-to-medium apartment building is proposed to be constructed or altered; or

(b) any external moisture-management system attached to or forming part of a house or a small-to-medium apartment building is proposed to be constructed or altered.

5.8. Regarding restricted building work, the Act⁷ requires a licensed building practitioner to “carry out or supervise the work”.

5.9. None of the parties dispute that this is a house that falls within the definition of a residential building

Does the design work⁸ relate to the primary structure?

5.10. There are two definitions set out in the Act that are important to determining whether the design work of new roof trusses relates to the primary structure.

5.11. The two definitions are as follows:

primary structure, in relation to a building—

(a) means those of its building elements that are intended to contribute to its ability to withstand vertical or horizontal loads (for example, its beams, bracing, columns, foundations, roof, subfloor framing, and walls); and

(b) includes any part of its primary structure

building element, in relation to a building, means any component or assembly (whether structural or non-structural) that is, or is to be, incorporated into or associated with it

⁷ Section 84 of the Act, Licensed building practitioner must carry out or supervise restricted building work.

⁸ In section 7 of the Act, building work “includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act”.

- 5.12. A roof truss is a building element that performs a role in distributing the structural loads⁹ from the roof down to the frame below it. This contributes to the building's "ability to withstand vertical and horizontal loads". An excess load may cause a structural failure of a building. I therefore consider roof trusses to be a building element that is part of the primary structure of a building.
- 5.13. The design of roof trusses is therefore restricted building work, and a certificate of work is required.
- 5.14. The designer has raised the issue of the off-site manufacture of roof trusses not being restricted building work.¹⁰ That may be correct, but this exclusion only applies to the construction of trusses, not their design.
- 5.15. The designer has also queried, whether a "lead designer" is to provide a certificate of work. The authority has commented that it is not requiring this. The authority has suggested the certificate could come from any designer who is an LBP, including potentially the truss designer.

6. Conclusion

- 6.1. To satisfy section 45(2) of the Act, a certificate of work is required to cover the primary structure of the roof, which includes the design of the roof trusses in this case. This needs to be from a licensed building practitioner with a design class licence that covers the design, or supervision of the design, of roof trusses.
- 6.2. The authority was correct to require a certificate of work before issuing a building consent.

7. Decision

- 7.1. In accordance with section 188 of the Building Act 2004, I determine the authority was correct in its purported refusal of the building consent. I confirm the decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 1 May 2023.

Charlotte Gair

Manager Advisory, Determinations.

⁹ Loads are forces from the physical conditions likely to affect the stability of a building. See Building Code Clause B1.3.3 for a useful list of physical conditions that can affect a building.

¹⁰ To find out more about restricted building work and why you must use licensed people for some residential building projects, visit the Building Performance website.