

Determination 2024/021¹

The issuing of a notice to fix for a partially completed new single storey residential building

100 Ravensdale Rise, Westmorland, Christchurch

Summary

This determination considers the decision by an authority to issue a notice to fix for a partially completed new single storey residential building. The determination considers whether the areas of work identified on the notice comply with the building consent and whether the foundations comply with Building Code clause B1.3.1.



¹ This determination is subject to a clarification under section 189 of the Building Act 2004. The determination was originally issued on 8 May 2024. The clarification amended paragraphs 1.3, 5.9 and 5.10.

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

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

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Peta Hird, Principal Advisor Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.²
- 1.2. The parties to the determination are:
 - 1.2.1. S McInroe, the licensed building practitioner who carried out the building work and who was issued with the notice to fix. They applied for this determination (“the builder”)
 - 1.2.2. C and L Davis, the owners of the property (“the owners”)
 - 1.2.3. B Corbett, a licensed building practitioner and structural engineer concerned with the building consent (“the design engineer”)
 - 1.2.4. Christchurch City Council (“the authority”), carrying out its duties as a territorial or building consent authority.
- 1.3. This determination arises from the authority’s decision to issue a notice to fix on 14 December 2021 in relation to the incomplete building work at the owners’ property.
- 1.4. The builder disputes the issuing of the notice to fix and applied for this determination.
- 1.5. The matter to be determined, under section 177(1)(b) and (2)(d) of the Act, is the decision by the authority to issue the notice to fix. In deciding this matter, I will consider the particulars of contravention or non-compliance alleged in the notice to fix, namely:
 - 1.5.1. the compliance with the building consent of each of the three areas of building work specified in the notice
 - 1.5.2. the compliance of the foundations with Building Code clause B1.3.1.

² The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

Matters outside this determination

- 1.6. I have not considered the following issues in making this determination:
 - 1.6.1. the authority's decision to grant and issue the building consent
 - 1.6.2. the compliance of any elements of the building work that are not identified in the notice to fix
 - 1.6.3. any contractual or financial arrangements between the parties
 - 1.6.4. issues related to the Health and Safety at Work Act 2015, or access to the property
 - 1.6.5. the enforcement powers exercised, or not, by the authority in respect of the notice to fix.

2. The building work

- 2.1. A building consent was granted by the authority on 18 November 2020 for the construction of a new dwelling at the owners' property.
- 2.2. The proposed building work included the construction of a single storey four-bedroom dwelling on a sloping site. The structure was to have timber framing with a concrete slab foundation, profile metal roofing, and vertical shiplap cedar cladding to the structure's exterior walls.
- 2.3. The plans included a raised deck on the northwest side of the dwelling, with stormwater attenuation tanks below.

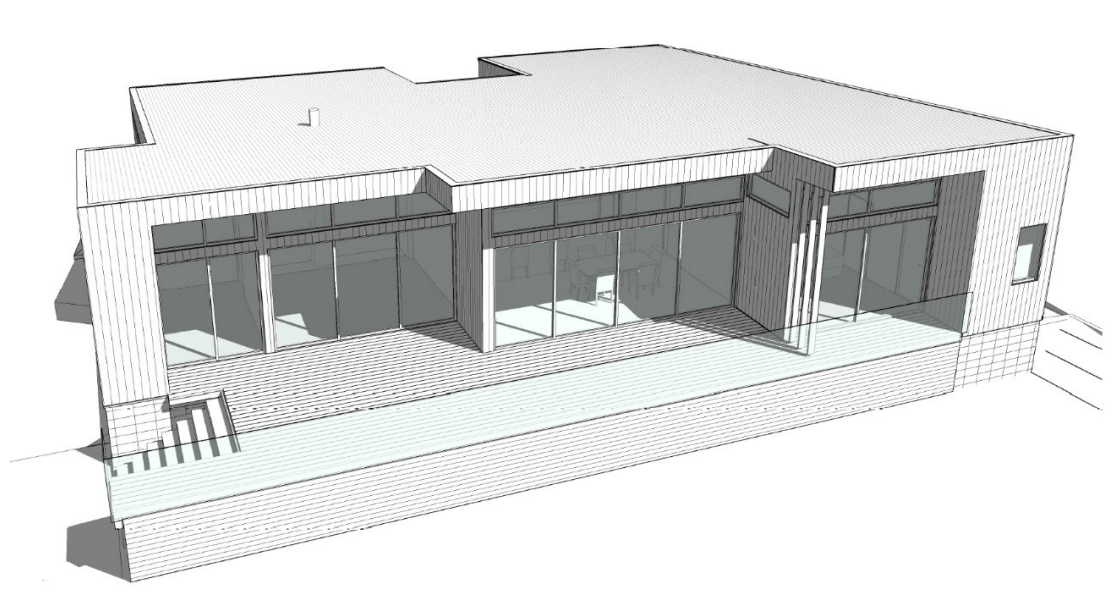


Figure 1: 3D render of the building, viewed from the northwest.

3. Background

- 3.1. Construction was carried out across 2020 and 2021.
- 3.2. During the course of construction, a number of inspections and reports were provided from a range of technical specialists. To summarise, the specialists are:
 - 3.2.1. A civil and structural engineer engaged by the builder (“the builder’s structural engineer”)
 - 3.2.2. A structural engineer engaged by the property owners, separate to the structural engineer initially engaged for the building consent (“the owners’ structural engineer”)
 - 3.2.3. A geotechnical engineer engaged by the property owners (“the geotechnical engineer”)
 - 3.2.4. A building surveyor engaged by the builder (“the building surveyor”)
 - 3.2.5. A land surveyor engaged by the owner (“the land surveyor”)
 - 3.2.6. The architectural and specifications manager from the cladding manufacturer (“the cladding specifications manager”).

December 2020 inspection by the geotechnical engineer

- 3.3. By 9 December 2020, excavation for the foundations had commenced though the foundations were still to be poured. The geotechnical engineer completed a site inspection at the property.
- 3.4. In their report, the geotechnical engineer noted that good ground had been established at the base of all footings inspected. They also noted that the excavation for the stormwater attenuation tanks was close to the other foundation footings. The geotechnical engineer recommended that those adjacent footings be deepened to avoid undermining of the foundations of the dwelling.

April 2021 comment from the cladding specifications manager

- 3.5. By April 2021 work had progressed and the vertical shiplap cedar cladding had been partially installed.
- 3.6. On 23 April 2021, the cladding specifications manager provided comment on site photos taken of the building work completed to date. They noted:

The ... vertical weatherboard system has been tested in accordance with the NZ Building Code Clause E2/VM1 and is considered an alternative solution when installed over a drained cavity.

This system has some specific details outlined in the attached installation manual, which must be adhered to, to ensure the weathertight integrity of the tested system is maintained.

There appears to be a number of areas where the installation manual has not been followed ... Some of these are minor departures from our specification, but some are more serious and pose a weathertightness risk, and therefore render the standard ... warranty void until these issues are rectified to our satisfaction.

May 2021 cladding inspection by the authority

- 3.7. On 31 May 2021, the authority inspected the building work and found that the cladding and bracing systems were not being installed in accordance with the building consent. The authority failed this inspection noting (in summary):
- 3.7.1. The bracing system did not have adequate clearance from the foundations and were not nailed around the perimeter of each board with the right spacing.
 - 3.7.2. While the nails used to fix the bracing were in accordance with the manufacturer's specifications, it had been installed over timber packers, which might affect the depth of the nails into the timber framing.
 - 3.7.3. The cavity battens were not the right depth and had not been installed with the correct fixings.
 - 3.7.4. The cladding had not been installed with the correct flashings and cover, and as a result some areas of the cladding were cracking.
- 3.8. The information provided by the parties suggests that building work stopped sometime after this inspection. Work to the foundations and the timber structure had been completed, some bracing installed, and the cladding (including roofing) was partially complete but not fully weathertight. Internal linings had yet to be installed.

Further inspections by the technical specialists

- 3.9. From June 2021 through to December 2021 the building work was inspected by a number of technical specialists. Their findings are summarised below.
- 3.10. On 2 June 2021, the owners' structural engineer was engaged to carry out an inspection of the building work. The summary report of their findings was issued on 2 September 2021.
- 3.11. In their report, the owners' structural engineer concluded that they "do not believe the foundations have been constructed to meet the consented plans ... [but] the only concern relates to the lateral resistance of the foundations". They noted that:

... the foundation wall footing relies on a combination of passive pressure from the soil and friction beneath the footing to resist sliding. ...

From our site observations and provided site photography, DPM [damp proof membrane] has been provided beneath the concrete footings, which was not indicated on the consented drawings. This will likely reduce the friction capacity available at the base of the footing, thereby increasing the demand required in passive pressure of the soil at the base of the footing. Further to this, the as-built footing does not appear to be founded at the correct depth or have the correct shape ...

3.12. The owners' structural engineer concluded that:

The foundations rely on friction at the base of the foundations between the concrete and the ground, as well as passive pressure which is formed by soil against the side of the foundation. As there is no longer a 400mm layer of soil (compacted hardfill) as noted in the consented plans, there is effectively no passive pressure to provide lateral resistance. Therefore, in our opinion, the as-built foundations do not match the original plans and are non-compliant.

3.13. On 10 December 2021, the owners' structural engineer added further comment regarding the compliance of the foundations with clause B1 Structure. They provided calculations related to the lateral stability of the foundations, and concluded that:

... we consider that the foundations in their current construction will not have the capacity to resist a 5 year ULS event³.

3.14. On 14 June 2021, the geotechnical engineer carried out a second site inspection at the owners' property. A third inspection was undertaken on 25 June 2021.

3.15. Based on these latter two inspections, the geotechnical engineer noted they had observed issues at the property related to erosion, non-engineered fill, and the lateral restraint of the foundations.

3.16. The land surveyor assessed the site on 21 July 2021. In the report they noted that the building's foundations are:

... well within cadastral survey tolerances and this confirms to me the horizontal position of the house has been accurately set out.

3.17. The land surveyor also noted the difference between the design height of the finished concrete slab and the actual existing slab level was 64mm.

³ A 5-year ultimate limit state (ULS) event refers to the maximum design load(s) a structure is expected to withstand without failing, within a five-year period.

- 3.18. The builder engaged a building surveyor to inspect the building work during September or October 2021.⁴
- 3.19. The building surveyor investigated a range of alleged defects and noted that while the installed cavity battens have a shallower depth than those outlined in the consented plans, they will still meet the requirements of clause B1 Structure.
- 3.20. The building surveyor's report is inconclusive regarding other matters raised, for instance compliance of the foundations, bracing, and cladding and roofing installation, with the surveyor noting that some areas required either an engineer's inspection or further investigation.
- 3.21. On 21 October 2021, the owners' structural engineer noted that the foundations had not been constructed as detailed in the building consent. They added that remediation work would be required to bring the foundations into compliance with clause B1.
- 3.22. The builder's structural engineer inspected the building work. The purpose of the inspection was to "assess the risk of collapse or ongoing damage to the structure in its temporary condition".
- 3.23. The builder's structural engineer carried out a qualitative review of the building work and issued a report on 10 December 2021 which concluded that:
- we consider the building code clause B1 objectives to be met for a reduced design life of less than 6 months.
- 3.24. They did, however, add caveats regarding confirmation of the structural design, the geotechnical conditions on site, and the work carried out by the builder.

November 2021 inspection by the authority

- 3.25. The notice to fix referenced a site notice of 19 November 2021 for further details regarding the alleged contraventions and non-compliances.⁵
- 3.26. The site notice issued on 19 November 2021, followed a failed inspection on 18 November 2021. In the site notice, the authority outlined the reasons for the failed inspection, which I have summarised below:
- 3.26.1. The as-built structure and bracing differed from that shown on the consented plans. Bracing sheet installed over packing, no back blocking, and minimum penetration of fixings to framing not met.

⁴ The report is unclear as to the month in which the inspection was carried out, but this is immaterial to the findings of this determination.

⁵ During the course of construction, the authority issued several site notices for the building work. I am only concerned with the site notice that directly relates to the notice to fix for the purposes of this determination.

- 3.26.2. Confirmation from a structural engineer would be required to confirm that specifically engineered elements such as the foundations comply with the Building Code.
- 3.26.3. The installed cladding and cavity battens differed from the manufacturer's requirements and consented plans across a number of areas including batten size and installation, penetrations through the cladding, and details around the windows and doors.
- 3.26.4. Plumbing and drainage pipework require appropriate bedding, protection, and cover. The clearance distance from the pipework cover to the bottom of the cladding would need to be accounted for.
- 3.26.5. It was noted in photos attached to the site notice that: a window to the family room was located in a different position to that shown on the plans; a wing wall had been added to the main bathroom; the earthwork to the southwest side of the dwelling cut ground to be battered/retained or alternative solution proposed.
- 3.26.6. Some areas of the building work, such as cladding and structural elements, had been exposed to the weather for some time. Work to protect these areas needed to be undertaken, and remedial work might be required.
- 3.26.7. The authority noted their reasons were not exhaustive, and further work may be required. Given the difference between the as-built work and consented plans an amendment to the building consent would be required.

The notice to fix

- 3.27. On 14 December 2021, the authority issued a notice to fix. The notice stated that it needed to be complied with by 1 June 2022.
- 3.28. In the notice to fix, the authority identified three areas where the building work has, in its opinion, contravened section 40 because it has not been carried out in accordance with the Building Consent.
- 3.29. The authority also identified one area where it believes that the work contravenes section 17 because the building work does not comply with the Code.
- 3.30. The particulars of contravention or non-compliance were set out as follows:

After meeting and on review of reports and supporting information, the [authority] records that the following building work carried out under building consent BCN/2020/10093 at 100 Ravensdale Rise is not in accordance with the building consent and in contravention of section 40, Building Act 2004.

The areas of work that do not comply with the building consent are:

1. The siteworks, being excavations and fill placement in proximity to the foundations.
2. The construction of the framing, connections, and bracing of the structure.
3. The installation of the wall and roof cladding systems.

Further specifics are provided in the attached site notice dated 19 November 2021.

While the [authority] has been provided with a range of opinions in regards to the dwellings [sic] foundations, compliance with building code clause B1.3.1 has not been adequately supported. This is a contravention of section 17, Building Act 2004.

- 3.31. The notice to fix required the following action to remedy the contravention or non-compliance:

Undertake remedial building work to the following areas to bring the building back into compliance with the building consent and/or amend the consent to support compliance of an alternative solution for the:

1. The siteworks, being excavations and fill placement in proximity to the foundations or foundation design.
2. The construction of the framing, connections, and bracing of the structure.
3. The installation of the wall and roof cladding systems.

Further specifics are provided in the attached site notice dated 19 November 2021.

- 3.32. The notice to fix also stated under further particulars:

All temporary [sic] building work must be maintained for the safety of this building and others, all other works are to cease until the [authority] is satisfied that you are able and willing to resume operations in compliance with the Building Act 2004 and regulations under that Act.

The [authority] must be contacted for approval before further works are undertaken.

4. Submissions

The builder

- 4.1. With regard to compliance of the building work with the building consent, the builder stated that they relied on the fact there was no reason from the other contractors involved in the building work – for example, the geotechnical engineer and the structural engineer –not to proceed with the building work in the manner that it did.
- 4.2. Regarding the discrepancy in the size of the cavity battens, the builder noted that the authority had inspected the bracing and cladding on 29 March 2021. The authority had noted during its inspection that the installed cavity battens were different in size from those on the approved plans but had still passed the inspection. This led the builder to believe that the work was accepted as being

compliant. The builder is also of the view that the batten size, and fixings are in accordance with the building consent.

- 4.3. Regarding the compliance of the building work with clause B1.3.1, the builder pointed out that the reports provided by the geotechnical engineer and the owners' structural engineer were not based on recent site visits or assessments undertaken within the property boundaries. This and comments from the various engineers in relation to short term compliance of the foundations, led the builder to form the view that the reports could not be relied on by the authority when assessing the foundation's compliance with clause B1.3.1.
- 4.4. Regarding the notice to fix, the builder submitted that temporary work to secure the building, or remedies in relation to the framing, bracing, and cladding of the structure, could not be carried out prior to fixing the foundations. Because of this the builder is of the view that the notice to fix should not have been issued or should have been issued in relation to the foundations only.

The owners

- 4.5. The owners made a significant number of submissions regarding the validity of the determination and the determination process. I have not included these here as they are not relevant to the matter being determined.
- 4.6. The owners supplied a number of reports in relation to the matter being determined, and I have summarised those in the background section above. Where relevant, content that has been commented on or highlighted by the owners has been noted here as their submission.
- 4.7. Regarding non-compliance with clause B1.3.1:
 - 4.7.1. In addition to non-compliance regarding the use of a damp proof membrane below the concrete foundation slab – which was expected to increase the risk of the slab sliding, and lack of lateral support from the surrounding soils, the owners' structural engineer also outlined further issues regarding the non-compliance of the foundations with clause B1.3.1. These issues included shallow foundations, the use of non-engineered fill, and incorrectly shaped footings.
- 4.8. Regarding the notice to fix:
 - 4.8.1. The owners' structural engineer noted that temporary works required to secure the building were only intended to prevent further deterioration of the building work.
 - 4.8.2. The view of the owners' structural engineer is that it is the non-compliance with the building consent and the Building Code, and long-term remedy of these, which are the relevant grounds for the issuing of a notice to fix.

- 4.9. The owners proposed a remedy for the foundations, based on advice from the geotechnical engineer and the owners' structural engineer.

The design engineer

- 4.10. In addition to the inspections and comment provided during the course of the construction outlined above, the design engineer reiterated that their primary concern regarding the as-built foundations was the ability to resist lateral loads.

The authority

- 4.11. Regarding compliance with the building consent:

4.11.1. The work carried out on site at the property has resulted in more excavation than was indicated on the consented drawings, and the authority noted that the design engineer proposed amendments to the approved plans as required.

4.11.2. The additional excavation was causing surface water to scour the ground from underneath the foundation slab.

4.11.3. Building elements, such as the plywood bracing sheets, have not been installed in such a way as to achieve the bracing required. Issues were also noted with the lintel connections, the lack of top plates in some areas, and bottom plates that were not aligned with the concrete slab.

4.11.4. The site notice referenced in the notice to fix outlines further details regarding specific non-compliances with the building consent.

- 4.12. Regarding compliance with clause B1.3.1:

4.12.1. Its decision regarding the non-compliance of the foundations with clause B1 is based on reports by the geotechnical engineer and the owners' structural engineer.

4.12.2. Although earlier site work undertaken during 2020 and early 2021 did not raise concerns regarding the compliance of the foundation work, further information that came to light later did raise concerns regarding this matter.

- 4.13. The remedies listed on the notice to fix are open ended because the authority considers that it is not appropriate for it to dictate the specific work that should be carried out.

5. Discussion

The legislation

- 5.1. An authority has the power to issue a notice to fix where it considers, on reasonable grounds, that a specified person is contravening or failing to comply with the Act (section 164(1)(a)).
- 5.2. “Specified person” is defined in section 163, and includes the owner of the building and, if the notice relates to building work being carried out, the person carrying out or supervising the building work.⁶ In this case, the notice to fix was issued to builder in their role as the licenced building practitioner who carried out the building work. They are a specified person under the definition in section 163.
- 5.3. A notice to fix is an enforcement notice which:
 - 5.3.1. requires the specified person to remedy the contravention of, or to comply with, the Act (section 164(2)(a))
 - 5.3.2. specifies a reasonable timeframe for complying with the notice (section 165(1)(b))
 - 5.3.3. may direct that the site be made safe and that all or any building work cease immediately (section 165(1)(f))
 - 5.3.4. may be enforced by a prosecution for failing to comply with the notice (section 168).
- 5.4. For an authority to be able to issue a notice to fix, there must be a contravention (or breach) of the Act. In this case the contraventions listed on the notice were sections 17 and 40:

17 All building work must comply with building code

All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

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.
- (2) ...

⁶ Section 163 Specified person (a) and (b).

Compliance with the building consent

- 5.5. There are a number of areas where the as-built work is not in accordance with the approved plans and specifications in the building consent. I have outlined some examples below:
- 5.5.1. Bracing elements have been installed over packers, not as detailed on the approved plans. Also, the nailing pattern used to fix the bracing elements to the timber framing was not in accordance with the manufacturer's requirements, as referenced on sheet A112.
 - 5.5.2. The layout of some elements in the dwelling differs from that shown on the approved plans. Window 07 has been constructed in a different location in the family room and a wing wall, not shown on the approved plans, has been constructed in the main bathroom.
 - 5.5.3. Aspects of the as-built cladding are not in accordance with the details on the approved plans. For instance, penetrations through the cladding have not been sealed appropriately and external corner flashings are not hemmed. These details differ from those shown on sheets A304 and A305.
- 5.6. I note also that it appears from the photograph included in the authority's site notice of 19 November 2021, that the slope on the southwest side of the building may be greater than 1V:2H as proposed in the building consent.
- 5.7. The notice to fix references two areas of building work for which the details and non-compliances are unclear:
- 5.7.1. It is unclear from the notice to fix and referenced site notice what "fill placement" is in relation to. Neither describe what the "fill placement" is or how it does not comply with the building consent.
 - 5.7.2. The notice to fix also lists "the installation of the ... roof cladding systems" as a non-compliance with the building consent. Neither the notice or the referenced site notice provide evidence or details of what these non-compliances might be.
- 5.8. A notice to fix must contain sufficient particulars of the building work and contraventions or non-compliance, so that the recipients are fairly and fully informed of the issues with the building work and can take appropriate steps to remedy the situation. With regard to the fill placement and installation of the roof cladding systems described above, the notice has not provided sufficient detail to meet this requirement.
- 5.9. While the as-built work varies from the approved plans (as described in paragraph 5.5), I note that, with regard to the stormwater attenuation tanks, the consented

plans indicated the general location under the deck⁷, but did not include details relating to excavation. At 1.76 metres in height, the specified tank is taller than the approximately 1.3 metres height between the ground line and the deck joists on the plans. While section A on sheet A200 appears to indicate that the tanks are to be located below the ground line, no further excavation or foundation details are provided in either the architectural or structural plans and specifications.

- 5.10. This makes it difficult to determine whether the aspects of the as-built foundations relating to the stormwater attenuation tanks comply with the building consent. While the foundation footings adjacent to the stormwater attenuation tanks are located at a greater depth than those shown on the approved plans, it is not clear whether the impact of the excavation works for the tanks was considered in those plans. Regardless, building work must still comply with the Building Code, which I address below in relation to the foundations.
- 5.11. The building surveyor noted the installed cavity battens have a shallower depth than what was described in the consented plans, and I note this may have impacts on the installation of the cladding at junctions such as at joinery and the weathertightness of the external envelope. However, the approved plans contain conflicting information on the cavity battens. The elevations on sheet A105 and A106 refer to the cladding being installed on “45mm [deep] cavity battens” and the wall details all show 40 x 45mm battens. Also, the window head detail on sheet A304 notes that the cavity battens are to be “notched.” This requirement for the cavity battens to be notched is not noted anywhere else they are described in the plans and specifications.
- 5.12. Because the plans are not clear regarding the size or type of the cavity battens to be used, I cannot conclude whether this aspect of the building work is in contravention of section 40.
- 5.13. Notwithstanding the lack of detail in the notice to fix regarding fill placement, the roof cladding, and conflicting information in the consented plans regarding the cavity battens, as outlined in paragraph 5.5 building work has been carried out other than in accordance with the building consent. As such, section 40 has been contravened and the authority had grounds to issue the notice to fix in relation to that building work.

Compliance with the Building Code

- 5.14. The notice to fix identified the foundations as not being compliant with clause B1.3.1.

⁷ Indicated on sheet 03 Service Plan (Drawing A102 rev D), 04 Lower Floor (Drawing A103 rev B), A and B Sections (Drawings A200 rev B and A201 rev B respectively)

5.15. The relevant Building Code clause in B1 Structure is:

B1.3.1 Buildings, *building elements* and *sitework* shall have a low probability of rupturing, becoming unstable, losing equilibrium, or collapsing during *construction or alteration* and throughout their lives.

5.16. Regarding the as-built foundations, several reports were provided by a number of engineers prior to the issuing of the notice to fix. Those reports were all based on a combination of evidence, including site visits, photographs, the approved plans, and the engineers' professional opinions. I have considered those reports in making this determination.

5.17. The primary concern regarding the as-built foundations is that in the event of lateral loading, the foundations will slide, losing stability.

5.18. While the builder's structural engineer concluded that the as-built foundations would meet the expected lateral loading requirements during a five-year return period, I note this is a qualitative analysis. The builder's structural engineer noted they had "not carried out a quantitative analysis to verify loads".

5.19. For this reason, I do not weigh the evidence from the builder's structural engineer as being as robust as the other evidence provided.

5.20. Furthermore, the analysis provided by both the builder's and owner's structural engineers concerns the lateral loads expected during a five-year return period.

5.21. I note that clause B2.3.1(a)(i) requires that building elements providing structural stability must satisfy the performance of the Building Code for no less than 50 years unless otherwise stated. This building consent was not granted with a specified intended life, so my assessment for compliance is against a 50-year period.

5.22. The loads expected during a 50-year return period would be greater than those expected for a five-year period.

5.23. There are also other concerns regarding the foundations, such as surface water eroding the soil around and underneath the foundations, and this raises concerns about the compliance of the building work with clause B1.3.1. However, I have not been provided with evidence regarding the impact of this erosion and so I am unable to draw a conclusion on this issue.

5.24. On the basis of the evidence provided, I am of the opinion that the as-built foundations may slide in the event of expected lateral loads, losing stability. Therefore, I conclude that the foundations as constructed do not comply with clause B1.3.1.

The notice to fix

- 5.25. In the section in the notice to fix headed “Further particulars”, the authority states that although other building work is to stop until the contraventions are remedied, the as-built work "must be maintained for the safety of this building and others". I note this wording is comparable to section 165(1)(f) of the Act, which allows for notices to fix to require the site be made safe immediately.
- 5.26. The referenced site notice dated 19 November 2021 notes uncontrolled stormwater runoff from the building’s roof and that erosion is occurring on site. It also notes that the building is subject to water ingress. It noted that temporary works may be required to address these issues.
- 5.27. The notice to fix requires the contraventions to be remedied, and that this may involve building work, amendments to the building consent, or both. With reference to the builder’s submission regarding the sequencing of these remedies and the “temporary fixes” listed in the 19 November 2021 site notice, I agree with the authority that it is up to the specified persons to decide how to remedy the non-compliance and the sequencing of that work.

6. Decision

- 6.1. In accordance with section 188 of the Building Act 2004, I determine that work has been carried out at the property that does not comply with clause B1.3.1 and does not comply with the building consent. Accordingly, I confirm the authority’s decision to issue the notice to fix.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 31 May 2024.

Peta Hird

Principal Advisor Determinations