

Determination 2023/010

Regarding the authority's decision to refuse to grant an application for a building consent for building work to enclose an existing carport

264 McShane Road, Wainui Bay, Tasman District

Summary

This determination considers the authority's decision to refuse to grant a building consent for alterations to an existing detached building. The determination considers the authority's reasons for refusal and whether sufficient information was included in the building consent application for the authority to be satisfied that the provisions of the Building Code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

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, 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.¹
- 1.2. The parties to the determination are:
 - 1.2.1. Tasman District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority. The authority applied for the determination
 - 1.2.2. Tui Spiritual and Educational Trust (“the Trust”), the owner of the property
 - 1.2.3. J Blessing (“the building owner”), the owner of the building² and trustee of the Tui Spiritual and Educational Trust
 - 1.2.4. D Curl, the licensed building practitioner (“the designer”) responsible for the design work.
- 1.3. This determination arises from the decision of the authority under section 49, and associated notification under section 50 of that decision, to refuse to grant an application for a building consent for alterations to a carport attached to an existing building. The authority is of the view that the information provided with the building consent application contained “numerous errors and omissions” which meant compliance with the Building Code “is not demonstrated adequately”.
- 1.4. The matter to be determined, under section 177(1)(b) and (2)(a), is therefore the authority’s decision to refuse to grant the application for building consent number BC211504.
- 1.5. In deciding this matter, I will consider the reasons for the refusal outlined in the authority’s written notice to the building owner dated 24 January 2022.

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

² The building owner also has an Occupation Licence that allows for the occupation and building on the Licenced Land as part of the community associated with the Trust.

Issues outside this determination

- 1.6. The plans accompanying the application for building consent also refer to a new carport to be attached to south-east corner of the existing building. The plans indicate the new carport is to be constructed under Schedule 1 of the Act.³ The written notice issued by the authority on 24 January 2022 did not refer to the design of the new carport, so I have not considered this matter further other than an observation I make in paragraph 5.14.
- 1.7. The determination will not consider the design and construction of the existing building in 2006.
- 1.8. On 9 March 2022, in response to the application for determination, the designer provided a set of revised plans dated 27 January 2022. I have not assessed the adequacy of the design information included in the revised plans or its compliance with the Building Code. I note, it is the original plans dated 1 December 2021 that were assessed by the authority and that informed its decision to refuse to grant the application for building consent on 24 January 2022 and it is these plans I have considered in this case.
- 1.9. I have received conflicting submissions during the determination process on the intended use of the building and whether there has been a change of use.⁴ A change of use was not raised in the building consent application and the authority did not raise this as an item of dispute between the parties in its written notice dated 24 January 2022. I leave any matters regarding a potential change of use of the building to the parties to consider and resolve following the determination.
- 1.10. The designer and building owner have raised issues regarding their interactions with the authority and how it performed its duties. Issues related to how the authority performed its duties, functions, and responsibilities are not within the scope of matters that can be determined under section 177.
- 1.11. The designer also asked me to consider the authority's "cancellation of the [building] consent" (BC211504) and its decision to refuse "to accept a new [building] consent for the work". It is not clear what the designer meant by the term 'cancellation' or how it may apply to the Act⁵, and any decisions regarding a second building consent application are outside of the scope of this determination. Therefore, I have not considered either of these issues further.

2. The building work

- 2.1. The Trust's property is a lifestyle block in Wainui Bay, Tasman District.

³ Sections 41(1)(b) and 42A.

⁴ Sections 114 and 115.

⁵ Provisions relating to an authority's decision in respect of a building consent application are outlined in sections 49, 50 and 51.

- 2.2. There are several buildings on the property. The detached building that is the subject of this determination is located to the north side of the property, a short distance from the property boundary.
- 2.3. The authority advises the building was first constructed in 2006 and considers it has a current lawfully established use of 'industrial'.⁶
- 2.4. The existing building is rectangular and measures approximately 15.2m long x 4.8m wide.⁷ The building is split into two areas, one is described as an 'office', the other as a 'warehouse / despatch'. There is an existing roller shutter or tilting door⁸, and a separate single leaf access door, in the south-east elevation of the building.
- 2.5. Attached to the north-east corner of the building is an existing carport approximately 4.9m long x 3.75m wide. It is constructed from '200 SED H5 poles'⁹, with three open sides. The roof is constructed from two 290mm deep x 45mm thick 'roof beams' spanning between the two outermost poles, and seven 240mm deep x 45mm thick 'rafters', spanning between the roof beams and the existing building. The roof is a mono pitch extension from the existing building and uses profiled metal roof cladding.
- 2.6. The proposed building work is detailed in plans and specifications¹⁰ dated 1 December 2021. These were provided by the designer in support of the application for building consent BC211504. The proposed floor plan is shown in figure 1.¹¹ The proposed building work includes (but is not limited to):
 - 2.6.1. forming a 100mm thick reinforced concrete floor slab and perimeter 'foundation footing' for the new garage
 - 2.6.2. enclosing three sides of the existing carport using timber framing and plywood sheet external wall cladding, to form a 'new garage'
 - 2.6.3. installing two roller shutter doors into two sides of the new garage
 - 2.6.4. installing fire exit signs above the two new roller shutter doors.¹²

⁶ Clause A1 – Classified uses, sub-clause 6.0. This aligns with the information included in the application for building consent that also confirms the current lawfully established use is 'industrial'.

⁷ The plan dimensions were scaled from plan number 201.

⁸ Insufficient information has been provided to confirm the type of existing door that is already installed. Although I have made an assumption on the type of door currently in place, I accept other types are possible.

⁹ 200mm diameter, specific engineering design (SED) timber poles, with H5 timber treatment (refer to *New Zealand Standard NZS 3640:2003 – Chemical Preservation of Round and Sawn Timber*, hazard classification H5, Table 3.1, and section 6.5 – Hazard class H5).

¹⁰ The specifications referred to here are included on plan sheet 701, titled "Keynotes". I have received no other documentation in support of the plans provided as part of the application for building consent.

¹¹ Figure 1 has been reproduced from plan number 201.

¹² I have received no information to suggest that there are any existing specified systems currently installed in the building.

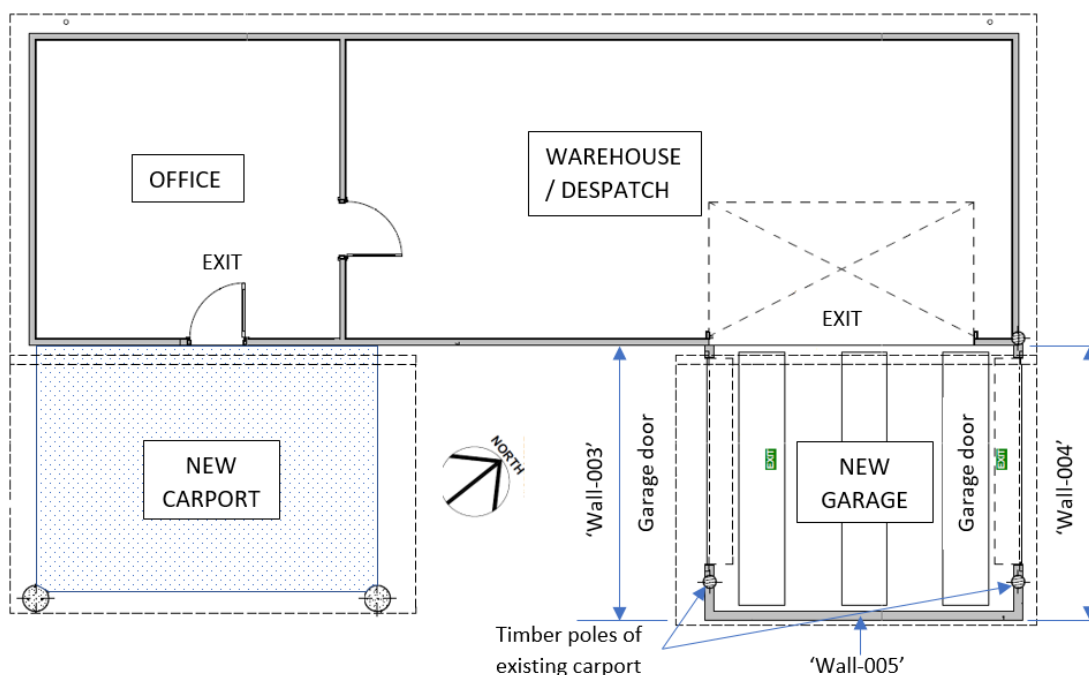


Figure 1: Floor plan (not to scale)

Note: The 'new carport' is proposed to be constructed under Schedule 1 of the Act (refer to paragraph 1.6). The 'existing carport' is where the 'new garage' is to be constructed.

- 2.7. The ground floor plan (number 201) includes information that relates to the protection from fire (clauses C1 to C6); it states:
- 2.7.1. the building is a WL purpose group¹³ and WB⁽¹⁴⁾⁽¹⁵⁾ risk group
- 2.7.2. the number of employees using the building remains at nine at any one time

¹³ I note the designer has referred to a purpose group of WL (spaces used for working, business or storage – low fire load). However, the reference to purpose groups for buildings was replaced with risk groups in 2012 with the introduction of Clauses C1-C6 Protection from Fire. Therefore, I have assumed the designer was referring to a purpose group WL for the building that may have applied when it was first constructed in 2006.

¹⁴ Risk Group WB – Business, commercial and low level storage (refer to Acceptable Solution C/AS2, Table 1.1 – Risk groups: scope and limitations).

¹⁵ I note the application for building consent (Form 2) states the means of compliance with clauses C1-C6 is Acceptable Solution C/AS1, however, the relevant Acceptable Solution for risk group WB is C/AS2.

- 2.7.3. the size of the firecell¹⁶ remains under the maximum allowed in Acceptable Solution C/AS2⁽¹⁷⁾⁽¹⁸⁾⁽¹⁹⁾
- 2.7.4. the project does not increase the requirements for firecell construction, or the fire safety provisions
- 2.7.5. the number of escape routes do not change
- 2.7.6. the escape path lengths are within the distances stated in the Acceptable Solution²⁰
- 2.7.7. the internal and external fire spread requirements do not change
- 2.7.8. the building will comply with the requirements for means of escape from fire after the project is completed. The plans show two unlabelled escape routes.

3. Background

- 3.1. On 1 December 2021, the building owner applied for a building consent (BC211504) for the proposed building work.²¹ The project description was “enclose existing carport”.
- 3.2. The authority advises that it considered there were deficiencies with the submitted documentation and rang the designer on 20 January 2022.

¹⁶ Firecell - Any space including a group of contiguous spaces on the same or different levels within a building, which is enclosed by any combination of fire separations, external walls, roofs, and floors. Floors, in this context, include ground floors and those in which the underside is exposed to the external environment (eg when cantilevered).

¹⁷ *Ministry of Business, Innovation and Employment C/AS2 Acceptable Solution for Buildings other than Risk Group SH for New Zealand Building Code Clauses C1-C6 Protection from Fire*, first edition, amendment 2 dated 5 November 2020.

¹⁸ It is not clear what the designer meant by this statement; therefore, I have assumed the designer was referring to the floor area limits of a firecell for risk group WB stated in C/AS2, Table 2.1, which states 5000m². After the proposed alterations to the existing building in this case, the floor area is still less than 5000m².

¹⁹ I note I have received conflicting information about the means of compliance for clauses C1-C6. The application for building consent (Form 2) refers to adherence to Acceptable Solution C/AS1. However, the building consent plans refer to compliance with Acceptable Solution C/AS2. For the purposes of this determination, I have relied on the information included on plan 201 which refers to C/AS2.

²⁰ I have assumed the designer was referring to the ‘travel distances on open paths’ stated in C/AS2, table 3.2; where no fire safety system is installed for risk group WB escape route lengths shall not exceed 25m for a dead end open path, and 60m for a total open path.

²¹ I note the designer was acting as the agent on behalf of the building owner in respect of the application for the building consent and was the first point of contact with the authority.

- 3.3. On 24 January 2022, the authority issued a written notice under section 50 to the building owner refusing to grant the application for the building consent. The reasons given for the refusal were:

As per [the authority's] phone conversation with your agent and first point of contact [the designer] on [20 January 2022] your application is not able to be processed due to numerous errors and omissions. Compliance with the building code is not demonstrated adequately. Some of the deficiencies are noted as follows: Wall framing design does not comply with NZS 3604:2011. [Concrete] slab / foundation details are inadequate. There is no bracing design provided and no assessment of the existing carport structure to determine if wind and earthquake loads will be resisted following the enclosure of the open structure. The specification sheet contains a large amount of material not relevant to the application. The fire design assessment information is inadequate and contains errors (reviewed by [a] professional fire engineer²²).

The above items are representative only and not a complete list.

- 3.4. On 24 January 2022, the designer replied to the authority stating the refusal was “erroneous” and did not “meet the threshold” for the information an authority is required to supply when refusing a building consent. In response to the authority’s reasons for refusing the application for the building consent, the designer stated:

- 3.4.1. wall framing design – the infill framing was designed only to support the new cladding
- 3.4.2. concrete slab and foundation details – 200mm into good ground complies with NZS3604:2011²³ for non-load bearing walls⁽²⁴⁾⁽²⁵⁾
- 3.4.3. bracing design – bracing information has been provided on the plans
- 3.4.4. assessment of existing carport structure for wind and earthquake loads – under section 112, analysis of means of escape from fire and accessibility²⁶ are the only areas of Building Code required to be assessed
- 3.4.5. fire design assessment – disagreed the fire design is inadequate. The authority has provided no information about the alleged deficiencies of the design, which contravenes the Ministry’s guidance²⁷ on reasons for refusing

²² I have taken this to mean the proposed “fire design” was reviewed by a ‘professional fire engineer’ engaged or employed by the authority.

²³ New Zealand Standard NZS 3604:2011 Timber-framed buildings.

²⁴ Refer to section 1.3 “Definitions” in NZS 3604:2011: ‘Non-loadbearing wall’ – a wall other than a loadbearing wall and may contain bracing elements. ‘Load-bearing wall’ – a wall supporting vertical loading from floors, ceiling joists, roof, or any combination thereof.

²⁵ It is not clear which paragraph(s) or figure(s) in NZS 3604:2011 the designer was relying on.

²⁶ Section 112(1)(a)(i) and (ii).

²⁷ It is not clear which Ministry’s guidance the designer was referring to (ie it was not specified in the designer’s response to the authority).

a building consent. The assessment is valid for the construction of the three non-loadbearing walls²⁸

3.4.6. the authority failed “the test of information” an authority needs to supply when refusing a building consent.²⁹

3.5. The Ministry received an application for a determination on 11 February 2022.

4. Submissions

The authority

4.1. The authority provided a brief ‘information summary’ with its application for a determination setting out the reasons for its refusal of the application for the building consent (refer to paragraph 3.3), and provided some supporting documentation (for example, a copy of the plans and specifications dated 1 December 2021).

The building owner

4.2. The building owner confirmed the building previously housed their company until December 2022 (when the company was sold), and it continues to be used as a workshop and art studio.

4.3. The proposed closing in of the existing carport is to provide protection from the weather for some woodworking machinery.

The designer

4.4. The designer stated the roof of the existing carport had been engineer-designed to “withstand the gravity loads”, so any walls on the proposed garage once enclosed “will not be loadbearing and [are] simply a support for the lightweight cladding” and are intended to be unlined on the inside.³⁰

4.5. The designer also responded specifically on the matters raised by the authority in its written notice refusing to grant the application for building consent, as follows:

²⁸ I note the designer did not elaborate or provide additional commentary on what this sentence was meant to convey. Therefore, I have assumed the designer was referring to the possible effects on the means of escape from fire (for example, horizontal travel distances) as a result of the construction of the three new external walls intended to enclose the existing carport.

²⁹ For the purposes of this determination, I have assumed the designer was disputing the adequacy of the information provided by the authority when detailing the reasons for refusing the application for the building consent.

³⁰ I note the plans do indicate some areas of the external walls are to be lined internally, specifically those parts of the walls where a proprietary plywood bracing system is proposed to be installed.

- 4.5.1. Wall framing design – the authority was incorrect to limit the assessment of the wall framing’s compliance to NZS 3604:2011.³¹ The proposed building work is to a “known code compliant construction”.³²
 - 4.5.2. Concrete slab / foundation details – there is no requirement to have foundations beneath non-loadbearing walls to achieve Building Code compliance. The thickened footing under the walls exceeds compliance requirements.
 - 4.5.3. Bracing design and assessment of existing carport structure for wind and earthquake loads – bracing has been added to the walls. “By adding structure between the poles, lateral load resistance is improved. Uplift is reduced”. The authority can assess the bracing units against the Building Code.
 - 4.5.4. Specification sheet relevance – the designer accepted this was an error.
 - 4.5.5. Fire design assessment – the original building consent for the existing building did not contain a fire report or assign the building a purpose group. It is likely to belong to the SH risk group³³. The building consent documentation contained a “fire safety analysis fit for a small project” and “it addresses mean of escape [from fire]...for a...WB Risk Group”.
- 4.6. The designer went on to state “the information provided in the refusal [issued by the authority] does not clearly indicate what the owners need to revise and resubmit”.

The Trust

- 4.7. The Trust declined to make a submission in response to the application for determination.

³¹ I note the application for building consent (Form 2) refers to compliance with the Building Code Clause B1 Structure using *Ministry of Business, Innovation and Employment Acceptable Solutions and Verification Methods for New Zealand Building Code Clause B1 Structure*, first edition, amendment 20, effective on 29 November 2021. Acceptable Solution B1/AS1 references NZS 3604:2011 as the standard for timber-framed building design.

³² I note the designer did not clarify which Building Code “compliant construction” they were relying on when making this statement, therefore, I have relied on the information provided in the application for building consent (Form 2).

³³ Risk group SH – buildings with sleeping (residential) and outbuildings.

5. Discussion

5.1. The matter for determination is the authority's decision to refuse to grant the application for building consent BC211504. I need to consider the authority's reasons for the refusal given in its written notice dated 24 January 2022. In doing so, I will consider whether the documentation provided with the building consent application is adequate to reach the view that the provisions of the Building Code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

Legislation

5.2. Section 45 states:

45 How to apply for building consent

- (1) An application for building consent must-
- (a) be in the prescribed form; and
 - (b) be accompanied by plans and specifications that are-
 - (i) required by regulations made under section 402; or
 - (ii) if the regulations do not so require, required by a building consent authority; and

...

- (c) contain or be accompanied by any other information that the building consent authority reasonably requires...

5.3. Section 48 states:

48 Processing application for building consent

...

- (2) A building consent authority may, within the period specified in subsection (1A), require further reasonable information in respect of the application...

5.4. Section 49 states:

49 Grant of building consent

- (1) A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

...

5.5. Section 50 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 written notice of-

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

Documentation requirements for building consent applications

- 5.6. An authority is entitled to set reasonable requirements for the documentation that accompanies a building consent application (section 45(1)(b)(ii)). These requirements are to ensure that the building consent application clearly demonstrates and documents how compliance with the Building Code is to be achieved.
- 5.7. Section 48(2) also provides that a building consent authority may require further reasonable information in respect of the application. Where there is inadequate documentation to enable the authority to make a decision in accordance with section 49(1), an authority is required to provide written notification under section 50 of its refusal to grant an application for a building consent. Such a refusal is on the basis that the authority requires adequate documentation to be satisfied on reasonable grounds that the provisions of the Building Code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application (section 49).
- 5.8. The Ministry's guidance that was current at the time the building consent application was lodged was titled "Guide to applying for a building consent (residential buildings)" ("the Ministry's guidance").³⁴ This guidance described an acceptable minimum standard of documentation to be supplied with an application for building consent to demonstrate compliance with relevant clauses of the Building Code. The guidance stated that a building consent application needed to:³⁵
- 5.8.1. be in the prescribed form
 - 5.8.2. include plans and specifications
 - 5.8.3. include any other information the building consent authority reasonably requires

³⁴ Second edition, dated October 2010, issued under section 175 by the former Department of Building and Housing. I note the guidance was subsequently replaced by the Third edition, dated October 2022.

³⁵ The items listed are not intended to be exhaustive. For information about how to apply for building consent, refer to section 45.

- 5.8.4. include a brief description of how the project will comply with the Building Code
 - 5.8.5. include information about the materials, products, and systems to be used in constructing the building.
- 5.9. The Ministry's guidance also provided information on the quality, content, form, and type of information for plans³⁶ and specifications, which included (but was not limited to):
- 5.9.1. the plans and specifications should be project-specific
 - 5.9.2. specifications should complement the plans, and not contain erroneous information or contradict itself or associated documents
 - 5.9.3. specifications must not include unrelated generic information
 - 5.9.4. the building consent application plans and specifications "should be clear, correct and complete"
 - 5.9.5. all plans should contain a reference number and title, the name of the designer and the owner(s), the job address, include a scale, and be dated for version control
 - 5.9.6. plans should meet normal drawing conventions and generally conform to AS/NZS 1100 Technical Drawing,³⁷ including conventions for line types and widths, lettering type and size, dimensions, symbols for building features and elements, designation of spaces, representation of materials, and cross-referencing conventions, and drawing sheet sizing should be consistent
 - 5.9.7. hand-drawn or computer-aided design plans are acceptable
 - 5.9.8. all relevant clauses of the Building Code should be correctly identified and considered during the design process, and the plans and specifications need to clearly demonstrate compliance.
- 5.10. Determination 2011/096³⁸ considered what can be reasonably required in terms of the standard of documentation to be provided for a building consent application. It stated:

³⁶ The guidance uses the terms "plans" and "drawings" to mean the same thing.

³⁷ The guidance did not refer to which part of AS/NZS 1100 was relevant (other than part 301 for dimensions on plans). The Standards New Zealand website (accessed on 14 March 2023) notes that parts 101, 201, 301 and 401 of AS/NZS 1100 have been "withdrawn". However, AS/NZS 1100.501:2002 Technical Drawing – Structural Engineering Drawings is still current.

³⁸ At paragraph 8.1.2 of Determination 2011/096: The refusal to grant an amendment to a building consent for proposed remedial work, and the issuing of a notice to fix for a 13-year-old house with monolithic cladding. Dated 16 November 2011.

In my view plans and specifications submitted in support of a consent, or alterations to a consent, must:

- a) provide a compliant solution, and
- b) must also be sufficiently clear to describe how that situation is to be achieved through the construction process
- c) detail critical features.

The reasons for refusal

5.11. It has been previously noted in Determination 2021/027³⁹ that when an authority refuses to grant an application for a building consent, the reasons for the refusal stated in the written notice “should be sufficiently clear so the applicant can submit specific information on specific matters of doubt over compliance with the Building Code to allow the consent to be issued”. In other words, the reasons for the refusal given by the authority need to be sufficiently explicit, clear, and specific, including on matters of compliance with the Act or its Regulations, so the applicant can remedy the situation in order to obtain the relevant consent.

5.12. Turning now to the authority’s reasons for refusing to grant the application for building consent BC211504. The written notice issued by the authority on 24 January 2022 referred to “numerous errors and omissions” in the documents submitted in support of the building consent application, and included some specific examples of these, while also noting that the list was not complete. Because of these “numerous errors and omissions”, the authority decided “compliance with the [Building Code] is not demonstrated adequately”.

5.13. In determining the matter, I have considered the documents the authority had available to it when making its decision; this includes the plans and specifications dated 21 December 2021. Taking this information into account, I have reviewed the specific deficiencies noted by the authority in its written notice to the building owner and make the following observations:

5.13.1. Wall framing design does not comply with NZS 3604:2011. The authority did not clarify which aspect of the wall framing design it believed did not comply with NZS 3604:2011, and neither did it refer to whichever part (or parts) of the standard it considered was applicable. The designer identified Acceptable Solution B1/AS1 as their means of compliance with Clause B1 Structure in the building consent application; this refers to NZS 3604:2011 as the referenced standard for timber-framed building design. It was therefore appropriate for the authority to rely on and refer to NZS 3604:2011 for its assessment of compliance of the wall framing with clause B1. If the designer was relying on a different means of compliance for the design of the wall

³⁹ At paragraph 5.7 of Determination 2021/027: Regarding the authority’s refusal to grant building consents for the construction of new residential dwellings. Dated 16 December 2021.

framing, it should have been stated in the building consent application. Regardless, the authority was not sufficiently explicit or clear regarding this reason for refusal. However, I note there are some discrepancies with the plans. For example (these include but are not limited to):

- (1) Drawings 201, 500 and 501 state the 140 x 45mm wall framing studs are to be fixed generally at 600mm centres. However, detail D-03 on drawing 202 states the same studs are to be at 400mm centres, and detail D-04 on drawing 202 and drawings 300 and 701 states the studs are to be at 450mm centres.
- (2) Regardless, the framing design appears to be non-compliant with NZS 3604:2011, Table 8.4 – Studs in non-loadbearing walls for all wind zones.⁴⁰ For example, ‘wall-005’ is dimensioned on drawing 501 as 4988mm high with 140mm x 45mm studs at 600mm centres.⁴¹ For a high wind zone⁴², NZS 3604:2011 provides required dimensions and spacings for non-loadbearing studs up to a maximum of 4.8m long.
- (3) There appears to be no fixings specified or shown in detail D-04 on drawing 202 for securing the top plate of ‘wall – 005’ to the existing carport structure or roof.⁴³ In addition, the rafters shown penetrating ‘wall-005’ in detail D-04 are not shown in the wall framing elevation on drawing 501.⁴⁴ Further, it is also not clear how the top plates for ‘wall-003’ and ‘wall-004’ are to be fixed.⁴⁵
- (4) Detail D-04 on plan 202 shows an “aluminium equal angle” to the underside of a roof purlin, between the existing rafters, close to and in line with the ‘wall – 005’. However, no size has been given for the aluminium angle and no fixings have been specified.⁴⁶
- (5) It is not clear how or if external wall types ‘wall-003’ and ‘wall-004’ are intended to be fixed to the existing 200mm diameter timber poles.

⁴⁰ For structural grade 8 (SG8) timber.

⁴¹ I note the dimension of 4988mm appears to include the thickness of both the top and bottom plates (each 45mm thick). Therefore, the studs are approximately 4.9m long.

⁴² As stated on drawing 101.

⁴³ Refer to figure 1 for the location of the different walls ie ‘wall-003’, ‘wall-004’ and ‘wall-005’.

⁴⁴ I note detail D-04 states “cut wall around rafters and finish at purlin height”, however the design of ‘wall-005’ for a continuous top plate and line of noggins directly below does not appear to allow for the depth of the existing rafters (240mm) or the additional timber fillet shown on detail D-04.

⁴⁵ I note, based on drawing 203, these two walls do not align with the rafters, and there appears to be no other building elements drawn or specified to provide a suitable fixing arrangement for securing the top plates.

⁴⁶ It is not clear if the aluminium angle is existing or proposed to be installed as part of the application for the building consent. However, I have assumed the latter applies since the designer has not indicated the presence of an aluminium angles on the existing roof framing drawing 203.

5.13.2. Concrete slab / foundation details are inadequate. The authority did not clarify what it meant by the term 'inadequate'. For example, it is not clear if the authority had issues with the adequacy of the drawn details, or compliance with the Building Code, or both. As such the authority was not sufficiently explicit or clear regarding this reason for refusal. Regardless, I note there are some discrepancies with the drawings:

- (1) Detail D-03 on drawing 202 states the concrete footing to the new external wall is to be 200mm wide x 200mm deep. However, drawing 701 states the "slab foundation footing" is 300mm wide x 300mm deep.
- (2) In his response to the authority the designer said that 200mm into good ground complies with NZS 3604:2011 for non-loadbearing walls, but, while not dimensioned, detail D-03 on drawing 202 shows the foundation approximately 100mm into the ground. The detail is not in accordance with NZS 3604:2011 paragraph 3.4.2, which requires "the minimum depth of footings below the cleared ground level shall be 200mm, subject to satisfying expansive soil requirements".
- (3) Detail D-03 on drawing 202 does not comply with NZS 3604:2011, paragraph 7.5.2.1 and figure 7.11 (A) which requires the finished concrete floor level of the slab to be a minimum height of 150mm above adjacent permanent paving, or otherwise 225mm. Detail D-03 indicates the finished concrete level would be approximately 100mm above the finished ground level.⁽⁴⁷⁾⁽⁴⁸⁾

5.13.3. There is no bracing design provided. I note some bracing information is provided on drawing 202. Three bracing elements, which are each 1m long, are shown for 'wall-005', and one bracing element each (700mm long) for 'wall-003' and 'wall-004'. The bracing uses a proprietary plywood system, and the plan does indicate the bracing units achieved for both wind and earthquake loading. However, I am of the view the proposed bracing design is incomplete and contains some errors:

- (1) No information on the bracing demand was provided with the building consent documentation.
- (2) The three bracing elements shown for 'wall-005' are all the same width and height. However, different figures have been stated for the bracing

⁴⁷ I note, the drawing does not indicate any permanent paving external to the building. I have therefore assumed the finished ground external to the new garage will be an unpaved surface.

⁴⁸ I note the application for building consent (Form 2) stated Acceptable Solution E2/AS1 was the stated means of compliance for Clause E2 External Moisture. E2/AS1 (third edition, amendment 10, effective from 5 November 2020), section 9, paragraph 9.1.3 and Table 65, also requires the same minimum distances from the finished floor level to paved and unpaved surfaces as stated in NZS 3604:20211 and includes a minimum distance of 175mm from the base of the external wall cladding to unpaved ground. However, detail D-03 on drawing 202 appears to indicate a vertical dimension of approximately 50mm clearance is proposed.

units achieved for both wind and earthquake loading. Further, it is also not clear how the bracing units have been calculated, and whether they have been adjusted for the 3.8m high bracing elements specified on drawing 202. Regardless, I note drawing 501 indicates the actual total height of 'wall-005' is approximately 4.98m.

- (3) Further, drawing 501 indicates 'wall-005' has a total height of approximately 4.98m, and allowing for the 240mm deep existing roof rafters and detail D-04 on plan 202, it means the bracing elements do not extend to the top plate. As such, this is not in accordance with NZS 3604:2011⁴⁹, section 5.4 – 'wall bracing design', or the manufacturer's specification and installation guide.⁵⁰
- (4) The three bracing elements shown for 'wall-005' are specified to be 1m wide. However, the width of these bracing elements does not align with the setting out (centre-to-centre spacing) of the timber studs shown on drawing 501. Therefore, one longitudinal side of each bracing element will have no fixings into studs, ie in non-compliance with the manufacturer's fastening instructions. Paragraph 5.1.1 of NZS 3604:2011 requires that wall bracing is designed and built to provide bracing capacity that exceeds the bracing demand. Paragraph 8.3.1.2 requires that the bracing capacity of wall bracing elements⁵¹ shall be determined from the BRANZ Technical Paper P21. The manufacturer's specification technical note states that the system has been tested in accordance with "the P21 method", however the test results will be reliant on the bracing being fastened in accordance with the manufacturer's fastening instructions.

5.13.4. No assessment of the existing carport structure to determine if wind and earthquake loads will be resisted following the enclosure of the open structure. The existing building, including the carport, was first constructed in 2006 in accordance with a building consent.⁵² In this case the existing open-sided carport is being altered to create a new garage by enclosing in three sides of the existing structure. In their response to the authority (refer to paragraph 3.4.4) the designer did not address the provisions of section 112(1)(b)(i) that applied to the potential increased loading on the structure of the existing building.⁵³

⁴⁹ I note this is the means of compliance stated on plans 202 and 701.

⁵⁰ In the absence of receiving a copy of the manufacturer's product specification and installation guide with the application for the building consent documentation, this information was accessed from manufacturer's website on 26 April 2023. The guide is dated October 2022, and it states: the "...bracing panels must be fixed from top plate to bottom plate".

⁵¹ Other than those given in paragraph 8.3.2 of the Standard, which the bracing concerned is not.

⁵² I have received no information to confirm if or when the authority may have subsequently issued a code compliance certificate for this building work.

⁵³ The building will, - (i) if it complied with the other provisions of the building code immediately before the building work began, continue to comply with those provisions. I have not referred to section 112(1)(b)(ii)

5.13.5. The specification sheet contains a large amount of material not relevant to the application. I agree, and I note the designer has accepted this was an error.

5.13.6. The fire design assessment information is inadequate and contains errors. The authority did not clarify which aspect of the fire design it considered was 'inadequate' or why, and neither did it give any indication what 'errors' it had identified. As such the authority was not sufficiently explicit or clear regarding this reason for refusal. In this case, section 112(1)(a)(i) applies⁵⁴ since the existing building is subject to an alteration. Although the application for building consent (Form 2) referred to compliance with clauses C1-C6 using Acceptable Solution C/AS1, drawing 201 refers to a means of compliance using Acceptable Solution C/AS2. Other than the conflicting information provided regarding the stated means of complying with clauses C1-C6, I note there are some discrepancies or omissions in the drawings. For example:

- (1) It is not clear how compliance with Acceptable Solution C/AS2, paragraph 3.15.1 a) is to be achieved; this is in respect of the proposed escape routes through the two new roller shutter garage doors. The issue relates specifically to the requirement that the roller shutter doors are to remain open at all times the space is occupied. This is notwithstanding the proposed escape routes indicated on plans 201 and 202 also pass through an existing roller shutter or tilting door (refer to paragraph 2.4).
- (2) The method used to assess the escape path lengths based on the routes detailed on drawings 201 and 202 does not appear to comply with Acceptable Solution C/AS2, paragraph 3.4.2 c) ie allowance shall be made for the travel distance around obstructions located in the open path. If the location of such obstructions is not known, then the allowable travel distance shall be measured orthogonally. In this case, none of the drawings show the location of any obstructions in the office, warehouse / despatch area, or the new garage.

5.14. For the benefit of the parties, I note several of the drawings (for example, numbers 400, 501, and 700) do not differentiate between what is included in the building consent application and what is excluded because the new carport is proposed to be constructed under Schedule 1 of the Act. Although this issue was not raised by the authority in its written notice of 24 January 2022, I am of the view there needs

on the assumption that the construction of the existing carport did form part of the building consent application in 2006 and it would have complied with the relevant clauses of the Building Code that applied at that time.

⁵⁴ 112 Alterations to existing buildings (1) A building consent authority must not grant a building consent for the alteration of an existing building, or part of an existing building, unless the building consent authority is satisfied that, after the alteration,- (a) the building will comply, as nearly as in reasonably practicable, with the provisions of the building code that relate to – (i) means of escape from fire...

to be a clear distinction made between those elements of the building work that are included in the application for building consent and what is excluded because some of the building work is intended to be carried out under Schedule 1.

5.15. There are also drafting issues with the drawings dated 1 December 2021. Some of these drafting issues lead to aspects of the proposed construction being unclear or contradictory, for example:

5.15.1. Section A1 on drawing 400 appears to show two horizontal circular building elements built into the two external walls of the new garage approximately 3m above finished floor level. In the absence of any annotation, it is not clear what these elements are except possibly something related to the new roller shutter doors. However, if the designer was intending to show these as roller shutter doors, they do not appear to be drawn in the correct locations ie inside the line of the walls.

5.15.2. It is not clear what the 'cross' above the new garage on drawing 203 is supposed to represent (since it extends beyond the outline of the roof).

5.15.3. Drawings 201 and 202 show three large rectangle shapes drawn in the new garage. These are not annotated and therefore it is not clear what they are.⁵⁵

5.16. In my opinion, the quality of the plans in this case are not adequate, and they are not sufficiently clear, correct, or complete. Taking the observations above into consideration, I have reached a view that the application for the building consent BC211504 does not meet the requirements of section 49(1) due to the inadequacy and deficiencies in the plans and specifications, and on that basis the authority was correct to refuse to grant the building consent.

5.17. In respect of the reasons for the refusal of a building consent, I maintain the view established in previous determinations⁵⁶ that detailing the Building Code clause(s) to which the deficiencies in the plans and specifications relate provides the applicant and designer with a clear idea of what areas of compliance need to be addressed. However, the authority does not need to provide exhaustive reasons as to why an application may be deficient for each Building Code clause, or detail all the deficiencies, or provide advice on how to rectify them.

5.18. However, I am of the view there were some shortcomings in the completeness of the authority's written notice to the building owner dated 24 January 2022. Several of the reasons for the refusal were not sufficiently clear for a person to understand the shortcomings or discrepancies with the design information so the applicant

⁵⁵ I note, if these rectangles are supposed to represent the outline of roof lights above, these are not shown on the roof plan 204, or if they intend to represent a specific set of features to be incorporated into the concrete floor slab they are not shown on plan 200.

⁵⁶ For example, at paragraph 5.21 of 2023/007 Regarding the authority's decision to refuse to grant a building consent for alterations to an existing building. Dated 28 March 2023.

could remedy the situation (refer to paragraphs 5.13.1, 5.13.2 and 5.13.6). Regardless, despite those shortcomings I am of the view it did not meet the threshold for me to reverse the decision not to grant the application for building consent in this case (whilst also taking into consideration the extent of some of the inaccuracies and discrepancies with the plans and specifications identified above).

6. Decision

In accordance with section 188 of the Building Act 2004, I determine the authority was correct to refuse to grant the application for building consent BC211504 under section 49 and issue the written notification under 50. Accordingly, I confirm the authority's decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 9 May 2023.

Katie Gordon

National Manager Building Resolution