



## Determination 2011/093

### The issuing of a code compliance certificate for a relocated house and associated alterations at 75 Bartholomew Drive, Grandview, Hamilton



#### 1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department.

1.2 The parties to the determination are:

- Ms J Tarrant, the owner of the property (“the applicant”)
- The Hamilton City Council carrying out its duties and functions as a territorial authority and a building consent authority (“the authority”).

1.3 I also consider that the following are persons with an interest in this matter:

- GA Property Development Limited, the developers and vendors of the property (“the developers”)
- Mr G Leckner, who carried out the building work on the property (“the builder”) acting through his legal adviser (“the legal adviser”).

1.4 This determination arises from the decision of the authority to issue a code compliance certificate for building work that the applicant subsequently considered did not comply

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

with various clauses of the Building Code.

1.5 The matters to be determined<sup>2</sup> are therefore:

- whether the consented building work complies with the relevant clauses of the Building Code<sup>3</sup>
- whether the authority's decision to issue a code compliance certificate was correct.

1.6 In making my decision, I have considered the submissions of the parties, the report of the two independent experts commissioned by the Department ("the first and second experts"), and the other evidence in this matter. The relevant provisions of the Act are set out in Appendix A.

## 2. The building work

2.1 The building work relates to a part two-storey house built around 1980 that was transported to its current location at some time in late 2008. The house was positioned on new foundations and connected to new services. The configuration of the house has been retained and it now sits partly over a newly-constructed garage and bedroom.

2.2 The new garage is under the front of the house; a workshop and laundry were shown on the consented plans as being located in the garage area. The garage has a concrete ground floor slab and timber-framed exterior and interior walls. The rear portion of the house is set on concrete block perimeter walls with timber intermediate piles, and the front portion of the house rests on the new timber-framed walls of the garage.

2.3 A new masonry veneer cladding has been constructed to all elevations of the exterior of the new and existing sections of the building. The veneer is two storeys high to the front and both front return side walls of the house. The parties have confirmed that the exterior joinery is part of the relocated dwelling.

2.4 New timber-framed decks have been constructed along part of the southwest and the northwest elevations. A flight of timber steps leads up to the front entry door on the southwest elevation.

## 3. Background

3.1 In a letter dated 18 September 2008 to a firm of surveyors representing the developer, the authority stated that it had inspected the building that was to be relocated (on 10 September 2008) and identified work that would be required as a condition of the relocation ("the re-site report"). The letter said the re-site report 'shall be submitted together with the consent application [for the proposed work]': The authority confirmed that, subject to the following work being carried out, the house was suitable for re-siting within the area of the authority's jurisdiction. The letter itemised this work as:

- Total Reclad to Exterior
- Base Vents to be installed
- Install new Kitchen
- Complete renovate to Bathrooms

<sup>2</sup> Under sections 177(a), 177(b)(i) of the Act (prior to 7 July 2010)

<sup>3</sup> In this determination, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code

Repair all Ceilings  
Repair all broken Glass  
Replace PVC Spouting  
Repair Roofing Iron

- 3.2 On 9 December 2008 the authority issued a building consent (No 2008/21719) for building work described as:
- Relocate 2 Storey dwelling and (construct) New Attached Garage
- 3.3 As part of the building consent process, the authority approved various plans and specifications, including the plasterboard bracing specification sheets provided with the consent documentation.
- 3.4 The authority carried out a series of site inspections from December 2008 until the final inspections (Building, Plumbing and Drainage) on 20 June 2009. In a letter to the surveyors dated 25 June 2009, the authority noted that it had carried out the final inspection, approved the building work, and the non-payment of fees was the only outstanding issue.
- 3.5 At the completion of the work, the following documents were provided in relation to the building work:
- A “Producer Statement - PS4 - Construction Review” in respect of Clause B1 for ‘excavated sand pad and foundations for the new dwelling’ dated 12 June 2009
  - A producer statement for the plumbing system pressure test, dated 9 June 2009
  - An electrical certificate of compliance, dated 6 June 2009
  - An energy works certificate for the gas hot water heater, dated 12 June 2009
  - A ‘home insulation installation guarantee’, dated 17 June 2009.
- 3.6 The authority issued a code compliance certificate on 25 June 2009, which was in respect of ‘the building work under the above building consent [No 2008/21719]’, and the house was subsequently sold to the applicant.
- 3.7 The applicant immediately became concerned that the roof leaked, that various items did not comply with Building Code, and that work had not been carried out to a satisfactory standard.
- 3.8 The applicant consequently engaged an inspection company to provide a report on the re-located house. The company inspected the property on 7 September 2009 and produced a report dated 20 September 2009 (“the first assessment report”), which set out various items that, in its opinion, required attention. As I consider that some of these items do not relate to requirements of the Building Code or are contractual issues, I have summarised below only those that I consider are relevant to this determination (corresponding clauses shown in brackets):
- As the workshop was changed to a bedroom, the completed work, including the decks and other details, did not match the consented plans.
  - A missing or damaged original floor joist needed to be replaced (B1).
  - The entry steps were constructed with untreated timber, had smooth treads, and lacked a handrail (B2, D1).

- One of the sliding doors to the lounge was incorrectly fixed and it was recommended that safety glass be installed in the sliding doors (F2).
- The ensuite and main bathroom shower linings were bulging and required attention (E3).
- The laundry tub and pipe work was not sealed at the wall junctions (E3).
- There was insufficient fall and support to some of the waste water pipework (G13).
- The flushing system to the bathroom toilet was not operating correctly (G13).
- The garage window was incorrectly installed, and there is evidence of moisture that may be leaking in around the window (E2).
- There were weathertightness risks associated with the exterior joinery units (E2).
- The gutter to the front of the house was set too low and had insufficient fall (E2).
- Some of the weep holes in the brickwork were blocked (E2).
- Some air vents to the subfloor area were blocked (E2).
- Some deck joists have been only nailed to the deck piles and some piles were out of plumb (B1).
- The brick work sill outside a sliding door is flat which would inhibit water drainage (E2).
- Insulation is only present in 'approximately 70% of the roof cavity area'. Wall insulation was missing to the basement (H1).

3.9 On 12 October 2009, the applicant wrote to the developers and the builder advising that the house as completed did not comply with the Building Code and that the code compliance certificate should not have been issued. The applicant listed the items set out in the first assessment report and noted that the shower and roof problems had not been properly addressed.

3.10 The applicant arranged for a second property assessment, and received a report dated 24 November 2009 ("the second assessment report"). This report reaffirmed some of the items raised in the first inspection report (summarised in paragraph 3.8). I list below only the relevant additional items, or queries, raised in the report relating to compliance with the Building Code (corresponding clauses shown in brackets):

- The entry steps are constructed from appropriately-treated timber.
- There are cracked boards to the deck and there are places where water is entering the building (E2).
- The seal between the ensuite shower base and the lining is broken and the lining has moved away from the framing (E3).
- There is no landing to the top of the stairs from the kitchen door which opens out into the stairway (D1).

3.11 The application for a determination was received by the Department on 24 May 2010.

## **4. The initial submissions**

4.1 The applicant emailed the Department on 26 May 2010 advising that the house had been re-located from Auckland and was of the 1970 to 1980 era. The applicant had been informed that the house was originally only of one level and had been considerably altered and amended.

4.2 The applicant forwarded copies of:

- the first assessment report dated 20 September 2009
- the applicant's letter to the developer and the builder dated 12 October 2009
- the second assessment report dated 24 November 2009.

4.3 Under a cover note received by the Department on 28 June 2009, the authority forwarded copies of:

- the approved Resource Consent plan
- a set of consent drawings (no specification was supplied)
- as-laid drainage plans
- the building consent documentation, including the geotechnical investigation report, the bracing documents, the building consent and the authority's consent application assessment forms
- the authority's inspection documents and reports
- the code compliance certificate
- the producer statements and home insulation guarantee
- the certificate of title
- various related correspondence.

## **5. The experts' reports**

### **5.1 The first expert**

5.1.1 As set out in paragraph 1.6, I engaged the first independent expert, who is a member of the NZ Institute of Building Surveyors, to provide me with an assessment of the building work that is the subject of this determination.

5.1.2 The first expert inspected the property on 22 July 2010, and provided me with a report dated 23 August 2010. The report described the building work and set out the expert's observations and comments. I summarise the salient points as follows (relevant clauses shown in brackets):

- The drainage holes in the brick veneer were blocked, and the lintels of the veneer lacked weep holes. There was a lack of clearance beneath the bottom courses of the brick veneer so that water could run freely from weepholes. The timber decks partially blocked the drainage paths from the veneer cavity. (E2)
- There were relatively elevated moisture readings inside the window units indicating the ingress of moisture at these locations. (E2)
- In some locations flashings appeared to be generally inadequate and do not

provide reasonable grounds that compliance with E2 will be achieved. For example, there were no sill flashings installed at the external door units. The sill of the northwest elevation ranchslider was only partially packed and this allowed for deflection and the ingress of moisture. The sill of the ranchslider sat on a flat masonry surface with no slope to the exterior face. (E2)

- The timber in-fills over the exterior joinery units were damaged at some locations. (E2)
  - A new garage window was installed on its side, which prevented the proper functioning of the drainage slots. (E2)
  - The roof gutter at the northwest elevation had a displaced leaking joint and the single downpipe serving this gutter was inadequate. (E2)
  - The steps leading to the entrance landing had smooth slippery treads and lacked a handrail given the steps have eight risers. (D1)
  - The door to the internal stairs from the kitchen opens outward over the stairs without a landing at the door exit and lacked sufficient headroom. (D1)
- 5.1.3 The expert noted that the shower and all linings in the bathroom and ensuite were improperly fixed and were bulging away from the framing. The expert also noted that the ranchsliders did not slide easily and could inhibit safe fire-egress. The expert noted some window joinery units had shrunken glazing rubbers which may have contributed to moisture ingress.
- 5.1.4 The expert was of the opinion that the building work met the Building Code requirements with respect to the following Clauses; G1, G2, G3, G7, G8, and G12.
- 5.1.5 The expert also commented that the existing wall framing should have been inspected, remediated as required, and treated with an appropriate preservative at the time the new masonry veneer cladding was added to the dwelling. In addition, the expert noted that there were no safety glass markings on the glass to the large ranchslider panels.
- 5.1.6 The roof had been replaced and currently appeared to be weathertight.
- 5.1.7 With regard to the consented documentation, the expert noted that the following items had not been included:
- the building specifications
  - the north and east elevations
  - plan details of the exterior joinery openings
  - references to relevant building standards and the like.
- 5.1.8 The first expert's report was sent to the parties for comment on 24 August 2010.

## **5.2 The second expert**

- 5.2.1 Following the issuing of the first draft determination, I engaged the second expert, who is a Registered Architect, to provide me with a report that would clarify certain matters relating to this determination.
- 5.2.2 The second expert issued a report dated 22 December 2010, and I summarise the expert's findings as:
- The foundation vents installed on the north elevation, which are enclosed by the

decks, are obstructed by the sub-floor polythene sheet protection.

- There was no support provided for the sub-floor drain located adjacent to the north wall.
- Some of the shower enclosure panels appeared to be inadequately glued.
- The internal stair from the garage up to the kitchen lacks a landing, and at 850mm, the single handrail height is less than the required minimum of 900mm described in D1/AS1. The head height to the stair at one point is 1.70m which is less than the 2.0m minimum clear dimension as described in D1/AS1.
- There is no support provided to the bearer adjoining the west foundation wall.
- The spouting to the south elevation does not run the full length of the roofing and is poorly fixed.

5.2.3 The second expert's report was sent to the parties for comment on 27 January 2011.

## **6. The draft determinations and the hearing**

### **6.1 The first draft determination**

6.1.1 A draft determination was issued to the parties and persons with an interest in the matter on 13 September 2010. The applicant accepted the draft on 6 October 2010 and noted that the roof had been fully replaced due to it leaking.

6.1.2 The builder's legal adviser's submission was received on 19 November 2010. The submission included a statement from the developers and a statement from a building consultant ("the consultant").

6.1.3 The developers stated that the house was originally two-storied, that the original internal stairs to the 'kitchen/laundry' lacked a landing, and that original windows were not removed or replaced except for the windows in the basement.

6.1.4 The statement from the consultant included the following points:

- The consultant had viewed the first expert's report (refer paragraph 5.1) and that of the inspection company (refer paragraph 3.8) and noted that, as he had been unable to visit the property, he was unable to observe some matters.
- With reference to section 112 of the Act, 'there is no requirement to improve the standard of the Property save where the works relate to means of escape from fire or access and facilities for persons with disabilities'.
- Some features referred to as being non-compliant were existing and were 'therefore exempt from complying with the current performance requirements...' This was particularly true of the windows and doors that remained unchanged in their existing locations.
- Moisture readings taken by the expert were 'slightly elevated' and could not be attributed to the failures raised by the expert.
- The gutters were not replaced because section 112 applied.
- It was accepted some matters did require rectification.

6.1.5 The authority did not accept the draft. In a letter to the Department, dated 19 November 2010, the authority outlined two general areas of concern;

Firstly, the building work was consented as a relocated and renovated dwelling and as such was considered under section 112 so that generally it was expected that house would comply to the same extent as it did previously.

[Paragraph 3.8] of the draft Determination identifies a number of issues that the Department considers as non-compliances with the NZ Building Code and for which should have been addressed through the consent and inspection process.

It is [the authority's] view that a number of these items were existing and dealt with under section 112 ...

- 6.1.6 In addition, the authority considered that the consent documents were sufficient. The authority submitted that the consent would not have been approved and issued had the authority not been satisfied on reasonable grounds that the work would comply.

## **6.2 The second draft determination**

- 6.2.1 Following the parties response to the first draft determination and the second expert's report, a second draft determination was issued for comment to the parties and persons with an interest in the matter on 24 February 2011.

- 6.2.2 The applicant accepted the draft without comment. The authority did not accept the draft and in a submission dated 21 March 2011 said:

- it is accepted that some matters required rectification and 'there may have been some departures from the approved consent documentation.'
- it was of the opinion that some matters were 'outside the parameters set out in section 112' but 'must be considered against the functional requirement and performance criteria of the code clauses [to] which these ... items relate.' The authority was 'unable to enforce an upgrade given they comply with the provisions (*sic*) of the Building Code to the same extent as before the relocation and renovation.'
- There was 'insufficient evidence to determine that this building doesn't comply to at least the same extent as it did before the building works given the application of section 112 of the ... Act.'

- 6.2.3 The builder's legal adviser did not accept the draft and sought a hearing.

## **6.3 The hearing and site visit**

- 6.3.1 I arranged a hearing at Hamilton on 19 May 2011, which was attended by the applicant, two representatives of the authority, the developer and the builder and their consultant, and the builder's legal adviser. I was accompanied by a Referee engaged by the Chief Executive under section 187(2) of the Act, together with two officers of the Department. The attendees visited and inspected the property as part of the hearing process.

- 6.3.2 All the attendees spoke at the hearing and the evidence presented enabled me to amplify or clarify various matters of fact and was of assistance to me in preparing this determination.

- 6.3.3 The submissions received in response to the second draft determination and the views put forward at the hearing are summarised in paragraphs 6.5 to 6.6.

## **6.4 The third draft determination**

- 6.4.1 Following the hearing a third draft determination was issued for comment on 8 August

2011 to the parties and persons with an interest in the matter. The issue of the third draft determination was delayed pending receipt of advice on the scope in the PS4 (refer paragraph 6.5, item 13).

6.4.2 The legal adviser responded to the third draft in a letter dated 11 September 2011. The adviser noted that the re-site report ‘was not included as part of the Building Consent conditions’ meaning that the replacement of the gutters did not form part of the consent, and that ‘there is no evidence to establish any failure of the spouting to comply with the relevant provision of the Building Code.’

6.4.3 The authority did not accept the third draft. In a letter dated 8 September 2011, the authority stated its reasons for this position as summarised below:

- The ‘conversion’ of the basement workshop to a bedroom did not form part of the work for which the code compliance certificate had been issued. The authority requested ‘any mention of a basement bedroom conversion be removed from the determination ...’
- The authority disputed matters related to the gutters and outlets (items 6 and 14 in paragraph 6.5) and there was no evidence to show that functional requirement E1.2 had been breached.
- It was still the authority’s view that:
  - the decks and access to them is exempt under Schedule 1 due to its height in relation to ground level. ... Schedule 1 allows for decks to be built without consent and as such [the deck] was excluded from both the consented documents and the Code Compliance Certificate.
- In conclusion the authority said:
  - there are parts of this building that don’t comply with today’s building codes, however we are of the opinion there is insufficient evidence to determine that this building doesn’t comply to at least the same extent as it did before the building works given the application of section 112 ...’

6.4.4 Both the authority and the legal adviser sought confirmation of advice the Department said, at the hearing, it would obtain about the application of section 112 and the internal stairs. That advice has been received and is incorporated in paragraph 7.4.

6.4.5 I have taken account of the comments received in response to the third draft determination. With respect to the gutters I note that:

- The gutter to the north elevation is an existing building element. New spouting appears to have forced the gutter away from the fascia. I accept that this has not caused a break in the gutter, but the gutter and spouting should be remedied as an item of maintenance.
- The gutter to the south elevation (paragraph 6.5, item 14) is also an existing element, but would otherwise be a breach of Clause E1.3.3(a) as surface water is not being conveyed to an appropriate outfall. As discussed at the hearing, the correction of the low point can be corrected as an item of maintenance.

6.4.6 The applicant did not respond to the third draft determination.

## 6.5 Code compliance

Items below are numbered as per the document tabled by the builder's legal adviser at the hearing:

<b>1. Drainage holes in the brick veneer</b>	
Consultant	There are more than enough ventilation holes to get air circulating behind the bricks. There is no location where the drainage holes were completely blocked; some were partially blocked and could be cleaned out with a screw driver. No evidence of mould or dampness around the outside walls.
Authority	There doesn't appear to be any signs of moisture on the outside of the walls. Partial blockage of a couple of weepholes is not substantial enough to be considered non-compliance.
Legal adviser	Meets performance requirements of the Building Code (E2.3.5)
<b>2. Moisture readings inside window units</b>	
	It was noted that the detailing around the ranchslider and the top floor windows was existing building work and therefore not part of the consented work considered in this determination
<b>3. Inadequate flashings/lack of sill flashings</b>	
	It was noted that the detailing around the ranchslider and the top floor windows was existing building work and therefore not part of the consented work considered in this determination
Authority	Whole system is an alternative solution but does not breach the code requirements. Sill flashings are not required with a cavity (there is brick work under all the windows except the one above the entry door).
Consultant	If water got in it could drain out via the cavity. The cavity should have a waterproof membrane so that water entering the cavity wouldn't transfer to the floor or the framing.
<b>4. Damage to timber in-fills over exterior joinery</b>	
Authority	There is a flashing system behind that is draining the cladding junctions
<b>5. Incorrect orientation of the basement window (with respect to the drainage holes)</b>	
Legal adviser	There is no evidence of water penetration after two years and to be considered non-compliant there must be substantial enough ingress to cause damage. The framing timber is also treated.
Authority	Meets performance criteria of the Building Code. Will continue to perform for at least another 15 years. The drainage in the wrong position can be easily rectified.
<b>6. Gutter &amp; outlet at northwest corner has a displaced and leaking joint, single downpipe serving this gutter is inadequate.</b>	
	It was observed that the horizontal section of downpipe appears to have pushed the gutter off the fascia. The downpipe is new building work as it is fixed to the new brick veneer.
Vendor	It is performing and not cracked or broken. It is a maintenance issue and needs a couple of brackets.
Applicant	The joint has deteriorated. The consent conditions (via the re-site report) included a requirement for new spouting.

Authority	<p>Relocated house is in same rain/wind/earthquake zone.</p> <p>The number of discharge points hasn't changed; alignment or fall on the spouting hasn't changed. The number of outlets is existing.</p> <p>The work was considered under section 112.</p> <p>The test is whether it is not code-compliant. Is not causing a loss of amenity or not performing to the code.</p> <p>The roofer has changed the roofing materials; the authority can't speculate whether there has been any change or movement or damage under those circumstances.</p>
Authority	<p>The consent identified the re-site report; it was not a requirement of the consent. Even if it had been a condition of the consent the legislation would override that and an upgrade to the spouting could not be required by the authority.</p>
Legal adviser	<p>There was no requirement in the building consent to replace the spouting; it was in the resource consent.</p> <p>There is no breach of the code as the performance of the exterior spouting will not cause problems with the performance of the house.</p>
<b>7. Steps to the front; step slip resistance and lack of a handrail</b>	
	<p>The deck and steps as built is shown in outline in plans for the resource consent. A deck, steps and ramp is shown in the plans for the building which is different to what was built. The stairs to the deck have eight risers and the deck is approximately 1.4m high.</p>
Authority	<p>It is exempt work [under Schedule 1] because the deck is 'under height'. The details were on the resource consent.</p> <p>The consent documents only showed outlines of where external features would be, not details of handrails or risers etc. It was accepted that the steps were not compliant. In the general case the authority would not hold up the issue of a code compliance certificate over something that is exempt work.</p>
Legal adviser	<p>If it is not on the plans then the authority don't need to consider it.</p> <p>Consideration is not whether it complies with the Building Code but only whether it complies with the building consent.</p> <p>Paint vendor/builder could put some paint on the steps for slip resistance.</p>
<b>8. Headroom to the internal stairs (Basement to Ground)</b>	
	<p>The parties discussed the constraints which lead to the lack of head-room to the stairs; being the location and layout of the bathroom fixtures and potential loss of kitchen floor area.</p>
Vendor	<p>The orientation of the door opening was changed so that it no longer opened into the stairwell.</p>
Legal adviser	<p>The existing stairs were replaced because they were rotten. This work should be considered [as a like-for-like replacement] under section 112.</p> <p>Section 112 does not differentiate between new building work and old work, only that it must comply to at least the same extent as before. There is no requirement to upgrade for Clause D1 under section 112. The stairs comply to the same extent as previously.</p> <p>There are significant consequences if the stairs are considered new building work as opposed to replacement or re-installation.</p>
Authority	<p>The configuration and location of the stairs were existing.</p> <p>The authority has had to deal with a similar situation which it accepted as an alternative solution in part because to change it would have been to the detriment of the entire scope of works.</p> <p>To alter the layout of the upper floor to accommodate code-compliant stairs</p>

	would be of detriment to the existing structure which was covered under section 112.
<b>9. Polythene obstructing foundation vents</b>	
Consultant	Only approximately half were covered, not all. It is easily taken out.
Authority	It is an item that wouldn't have been there at the bond/beam inspection, but could have been picked up at the code compliance inspection.
<b>10. Lack of support to sub-floor drain</b>	
Consultant	It had support and was functioning properly, but the span between supports was a bit greater than would normally be expected. Probably a single strap would be adequate.
Authority	Agree that it needs support.
<b>11. Shower enclosures</b>	
Authority	There is no evidence of any leaking.
<b>12. Internal stair handrail</b>	
Legal adviser	The balustrade is new, but it was submitted that at only 50mm lower than required it was not a matter for concern.
Builder	It is adequately performing in respect of the purpose and intention [of the Act].
Authority	It is a minor breach of an Acceptable Solution. It is meeting the code requirements but is not in accordance with the Acceptable Solution.
<b>13. Support to bearer (timber sub-floor framing)</b>	
	The consent plans show the boundary of the timber flooring supported on the new masonry foundation.
Authority	The PS4 (refer paragraph 3.5) was accepted and the timber sub-floor would not have been re-checked by the authority. The authority would need to check with the engineer whether it was within the design parameters.
Legal adviser	The lack of support does not necessarily mean a loss of stability to the point that it is not compliant.
Consultant	Bearers should cantilever no more than 200. It should be reviewed by the engineer that designed it.
<b>14. Gutter to the South elevation</b>	
Vendor	A maintenance matter requiring additional brackets to raise the present low point.
<b>15. Deck joists</b>	
Consultant	It is an alternative solution. The deck is lower than 1m and didn't require a building consent. The deck is well supported.
Authority	It is under 1m and wasn't part of the building consent so it shouldn't be considered in the determination.
<b>16. Bathroom toilet does not flush properly</b>	
	This was considered a maintenance item.
<b>17. Insulation</b>	
	It was noted that the matter of the existing insulation is a contractual issue and that in respect of the new building work the insulation has been installed.

<b>18. Infill panel above entry door</b>	
	The plywood infill panel above the entry door was new. The window had no head flashing, etc, and the horizontal sheet joint to the plywood also had no flashing.
Consultant	The wrap comes around on both sides. There is no flashing at the top of the window. The cladding did lap at the door. Solution is quite simple.

6.5.1 It was agreed that the following items were currently satisfactory:

- Item 1. – Drainage holes in the brick veneer
- Item 2. – Moisture readings inside window units
- Item 3. – Window flashings, sill flashings
- Item 4. – Damage to timber in-fills over exterior joinery
- Item 11. – Shower enclosure
- Item 12. – Internal stair handrail
- Item 15. – Deck joists
- Item 16. – Toilet flushing
- Item 17. – Insulation

6.5.2 It was agreed that the following items require rectification (corresponding Building Code clause shown in brackets):

- Item 5. – Incorrect orientation of the basement window (E2)
- Item 7. – Steps to front entry: slip resistance & handrail (D1)
- Item 9. – Polythene obstructing subfloor vents (E2)
- Item 10. – support to subfloor drain (G13)
- Item 13. – Support to bearer (B1)
- Item 18. – Infill panel above entry door (E2)

6.5.3 It was agreed that the following item required rectification, but as an item of maintenance:

- Item 6. – Gutter & outlet to northwest corner (E1)
- Items 14. – Gutter to the south elevation (E1)

6.5.4 The following items and matters are considered in the Discussion:

- Item 8. – Headroom to the internal stairs
- application of section 112
- whether the entry deck and stairs are exempt from the need for a building consent under Schedule 1.

## **6.6 Other matters**

- 6.6.1 I put it to the parties that as a matter of safety the slip resistance to the timber entry stairs should be rectified without waiting on the outcome of the determination.
- 6.6.2 The legal adviser offered to remediate some of the items and the authority agreed that it would conduct inspections subsequent to remedial work being undertaken. The legal adviser noted that the Department would be informed of work undertaken and the engineering review of the support to the bearer would also be provided.
- 6.6.3 On 19 July 2011 the legal adviser provided a schedule of proposed remedial work to the applicant for agreement. The applicant's response to the proposal was made "without prejudice".

## **7. Discussion**

### **7.1 Generally**

- 7.1.1 I have been asked by the applicant to consider whether the consented building work complies with the relevant clauses of the Building Code, and whether the authority's decision to issue a code compliance certificate was correct. In doing so I must consider:
- the adequacy of the consent documentation
  - the application of section 112 generally, and to the internal stairs
  - the headroom to the internal stairs
  - exempt work under Schedule 1
  - the code compliance of the as-built work
  - the issue of the code compliance certificate.

### **7.2 The consent documentation**

- 7.2.1 The consent documentation does not contain a scope for the proposed work and does not clearly distinguish between the existing and the proposed building work. For example, the floor plans make no reference to what elements are new and what are existing. The drawings only show two of the four elevations. Of the elevations shown, these do not show basic features such as windows and doors.
- 7.2.2 I have not been provided with a specification for the work. The consent drawings (6 x A3 sheets) principally show structural information. The drawings show insulation to the perimeter walls as 'Insulation (optional)', and one detail labels the brick veneer as 'solid plaster 20mm'.
- 7.2.3 The drawings contain no information relating to compliance with Clause E2. The drawings show no plumbing and drainage services, apart from the surface water discharging to a soakage trench. Yet the as-built drainage plan shows this being connected to a network drain. The drawings appear to show details for the construction of a shower membrane, yet proprietary showers cubicles were installed.
- 7.2.4 No information is provided for the work to the kitchen and bathrooms despite these facilities being new. The basement workshop has been altered to become a bedroom with an additional window. The consented drawings do not show the entry steps as-built or the decks, yet both are shown on the approved resource consent plan.

- 7.2.5 At the hearing the authority stated that the re-site report was 'cited in the consent documents' but did not form part of the consent conditions. In my view, the authority's letter of 18 September 2008 (refer paragraph 3.1) is clear that the work detailed in the re-site report formed part of the consent as it identified work that would be required as a condition of the relocation and required that it be submitted together with the consent application.
- 7.2.6 Accordingly I am of the view that the authority should not have granted building consent because the consent application lacked basic information to describe the proposed work. Without adequate documentation, the authority cannot be satisfied on reasonable grounds that the provisions of the Building Code will be met if the proposed building work is completed in accordance with the plans and specifications that accompanied the application for the building consent.
- 7.2.7 However, the granting of a building consent is a statutory decision authorising particular building work to be undertaken which was relied upon by the original owners and the applicant. I consider it would now be unreasonable to reverse that statutory decision made by the authority.

### **7.3 The application of section 112**

- 7.3.1 The consultant and the authority have stated that the requirements of section 112 must be taken into account when considering the level of compliance achieved in the as-built work.
- 7.3.2 The application of section 112 has been considered extensively in previous determinations, in particular 2009/110 and 2010/140. The provisions of section 112 are contained in Appendix A. With respect to the house in question the following is noted:
- All new building work must comply fully with the requirements of the Building Code.
  - The existing building as a whole must comply with all the provisions of the Building Code to at least the same extent as before the alteration.
- 7.3.3 I note that the provisions of section 112 represent the minimum Building Code requirements that are to be achieved. An owner can elect to exceed those minimum requirements and, in the normal course of events, such requirements will be detailed in the approved consent for the proposed work.
- 7.3.4 As discussed in paragraph 7.2, I consider the scope of the consented work is unclear. It is therefore difficult in respect of some of the building elements to determine whether they are new or existing, and therefore the extent to which section 112 applies. In my opinion there has been an over-reliance on the provisions of section 112 in relation to compliance of the as-built work. A building's compliance with the Building Code to the extent required by section 112 is to be considered and decided before building consent is granted.

### **7.4 The application of s112 to the internal stairs**

- 7.4.1 At the hearing the parties sought clarification of the requirements of section 112 with respect to the internal stairs. The legal adviser stated that as the original stairs had been rotten the stairs had been fully replaced; and that section 112 does not differentiate between new and existing building work, only that it must comply to at

least the same extent as before.

- 7.4.2 Given the stairs have been fully replaced I do not believe the stairs can also be considered an existing building element, even though the new stairs were built to the same dimensions and configuration as the original stairs. The stairs do not become an existing building element by virtue of being the same size, and being in the same location as the original.
- 7.4.3 “Building work” as it is defined in section 7 of the Act includes “alteration”. “Alter” as it is defined in section 7 includes ‘to rebuild, re-erect’. The stairs were rebuilt; therefore building work has taken place. Section 17 requires that ‘[all] building work must comply with the building code to the extent required by this Act ...’.
- 7.4.4 The provisions of section 112 apply to the compliance of the building as a whole after the alteration; the provisions of section 112 do not apply to the building work itself. In paragraph 7.10 of Determination 2010/110 I said:
- Under section 112, it is the building after the alteration, (i.e. the whole building that includes the existing building as well as the new building work), which must:
- comply as nearly as is reasonably practicable with respect to means of escape from fire, and
  - comply as nearly as is reasonably practicable with respect to the provision of access and facilities for people with disabilities, and
  - continue to comply to as at least the same extent as before the alteration for all other Building Code clauses.
- 7.4.5 I continue to hold that view. The provisions of section 112 cannot be used as means of accepting any shortcomings in the compliance of the new stairs; the stairs are new building work and, as such, need to comply fully with the requirements of the Building Code.

## **7.5 Headroom to the internal stairs**

- 7.5.1 The headroom to the internal stairs was discussed at length at the hearing. The builder maintained that it was not possible to increase the headroom because of the floor framing above, and the authority believed the stairs comply with the Building Code to the extent required by section 112. As stated above, I do not consider provisions of section 112 apply to the stairs themselves. I also note the basement is new building work.
- 7.5.2 I consider the floor framing could have been supported by the wall built adjacent to the southwest of the stairs and a post, or similar, provided to the immediate northeast of the stair. This support would have enabled the floor framing over the stair to be reduced in depth allowing the head height to be increased. I accept this form of solution is now difficult to effect (the floor slab may not be able to accept the increased point loads, etc) but had the proposed work been adequately detailed the problem may have become evident before construction commenced, enabling a cost-effective solution to be built.
- 7.5.3 I do not accept the authority’s position that the reduced headroom is acceptable due to the provisions of section 112. The ‘bulkhead’ that intrudes into the stairway should be fitted with some form of cushioning material to lessen the risk of injury from impact from users.

## **7.6 Exempt work under Schedule 1**

- 7.6.1 The authority stated at the hearing that the entry deck and steps did not form part of the consent and it was exempt work because the deck was ‘under height’ (refer paragraph 6.5, item 7, and also paragraph 6.4.3).
- 7.6.2 Although the as-built work for the deck and steps is different to that shown in outline on the consent drawings, I consider the construction of the deck and stair formed part of the consent; the work was also necessary to gain access to the front door.
- 7.6.3 I note that paragraph (g) of Schedule 1, which was in force at the time the work was consented, stated that no building consent was required for ‘the construction [or alteration] of any platform, bridge, or the like from which it is not possible for a person to fall more than one metre ...’. The deck is well in excess of 1 metre high so the deck (as a platform) did not fall within Schedule 1 at the time the consent was issued, therefore it could not be considered exempt work.

## **7.7 The compliance of the as-built work**

- 7.7.1 Taking account of the matters agreed at the hearing I consider compliance has not been achieved in respect of the items as described in paragraph 6.5.2 and 7.5.3. In addition the laundry tub and pipework not being sealed to the wall (refer paragraph 3.8) means that compliance with Clause E3 has not been achieved. The parties have been unable to have the engineer confirm that the PS4 included acceptance of the timber sub-floor framing (refer paragraph 6.5, item 13). I therefore find that the building work does not comply with the requirements of the following clauses:
- Clause B1 – Structure
  - Clause D1 – Access
  - Clause E2 – External moisture
  - Clause E3 – Internal moisture
  - Clause G13 – Foul water
- 7.7.2 In respect of the safety glass to the existing sliding doors, any panes replaced as part of the consented work should have been fitted with glass complying with NZS 4223<sup>4</sup>. However, in terms of section 112(1)(b), I am of the opinion that any panes not replaced are not required to comply with this requirement. While I have reached this decision, I suggest upgrading the glass to meet current requirements.
- 7.7.3 I consider the remaining matters raised by the experts and in the assessment reports relate to workmanship and not compliance with the Building Code. The remediation of such items is outside the matters I am able to consider by way of determination under the Act.

## **7.8 The issue of the code compliance certificate**

- 7.8.1 Section 94 requires an authority to issue a code compliance certificate only if it is satisfied there are reasonable grounds to show that the building work complies with the building consent.
- 7.8.2 In my view the authority did not have reasonable grounds on which to be satisfied that

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<sup>4</sup> NZS 4223: Part 3: 1999: Glazing in buildings, Human impact safety requirements

the work had been completed in accordance with the building consent, nor that compliance with the Building Code had been achieved as discussed above. Accordingly I do not consider the authority had reasonable grounds on which to issue the code compliance certificate.

## **8. What is to be done now?**

- 8.1 The authority should issue a notice to fix, requiring the owner to bring the building work up to compliance with the Building Code. It is not for the notice to fix to specify how the defects are to be fixed. That is a matter for the owner to propose and for the authority to accept or reject. It is important to note that the Building Code allows for more than one method of achieving compliance.
- 8.2 Various as-built changes from the consent drawings are noted in the reports received. I consider the matter of the as-built changes also needs to be addressed. I leave this matter to the parties to resolve.

## **9. The decision**

- 9.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the building work does not comply with the following Building Code clauses, and did not comply at the time the code compliance certificate was issued:

- Clause B1 – Structure
- Clause D1 – Access
- Clause E2 – External moisture
- Clause E3 – Internal moisture
- Clause G13 – Foul water

and accordingly I reverse the authority's decision to issue a code compliance certificate.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 21 October 2011.

John Gardiner  
**Manager Determinations**

## Appendix A

A.1 The relevant provisions of the Act are:

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

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

### **Section 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, the building will—
- (a) comply, as nearly as is reasonably practicable... , with the provisions of the building code that relate to—
- (i) means of escape from fire; and
- (ii) access and facilities for persons with disabilities (if this is a requirement in terms of section 118); and
- (b) continue to comply with the other provisions of the building code to at least the same extent as before the alteration.

### **Schedule 1 Exempt building work**

- (1) A building consent is not required for the following building work:
- (g) the construction or alteration of any platform, bridge, or the like from which it is not possible for a person to fall more than 1 metre even if it collapses: