



## Determination 2012/058

### Regarding the refusal to issue a code compliance certificate for 12-year-old alterations and additions to a residential unit (Unit 6) at 16 Marewa Road, Haitaitai, Wellington



#### 1. The matters 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, Ministry of Business, Innovation and Employment (“the Ministry”)<sup>2</sup>, for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to the determination are:

- the owner of Unit 6, D Gunn (“the applicant”)
- Wellington City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.

1.3 This determination arises from the decision of the authority to refuse to issue a code compliance certificate for 12-year-old additions and alterations to Unit 6 (“the

---

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

<sup>2</sup> After the application was made, and before the determination was completed, the Department of Building and Housing was transitioned into the Ministry of Business, Innovation and Employment. The term “the Ministry” is used for both.

alterations”), because it believed that the supervision of the work had been transferred to a building certifier and it therefore could be not satisfied that the building work complies with the Building Code (First Schedule, Building Regulations 1992).

- 1.4 The matter to be determined<sup>3</sup> is therefore whether the authority was correct to refuse to issue a code compliance certificate for the building work. In deciding this matter, I must consider whether the building work complies with the clauses of the Building Code<sup>4</sup> relevant to the alterations to Unit 6 that were current at the time the consent was issued.
- 1.5 This determination is limited to the compliance of the building work described in building consent (No. 60248) issued on 13 March 2000 for ‘Addition/extension of unit 6’.
- 1.6 I note that a fire consultant (“the fire consultant”) inspected the building in 1999 and undertook other work in relation to fire protection. During the subject alteration work, the fire protection work was underway elsewhere in the building based on the recommendations of the fire consultant. That fire protection work is not considered in this determination; however, I have considered the fire consultant’s role where it has had a direct bearing on the authority’s approach to the matter. This is discussed in paragraph 8.
- 1.7 In making my decision, I have considered:
- the submissions made by the parties
  - the fire consultant’s two fire protection reports on the building
  - the report of the expert commissioned by the Ministry to advise on this dispute (“the expert”)
  - the other evidence in this matter.

## 2. The building work

- 2.1 Unit 6 is in a unit-titled building (“the building”) situated in a high wind zone that is moderated by the site contour and mature trees. The building has a total of five different levels built down a steep slope to the southwest. A path leads down from the street to the north.
- 2.2 The original house was constructed in 1939 and has been altered and extended over time to provide six units (as shown in Figure 1) located over five different levels (as described in Table 1).

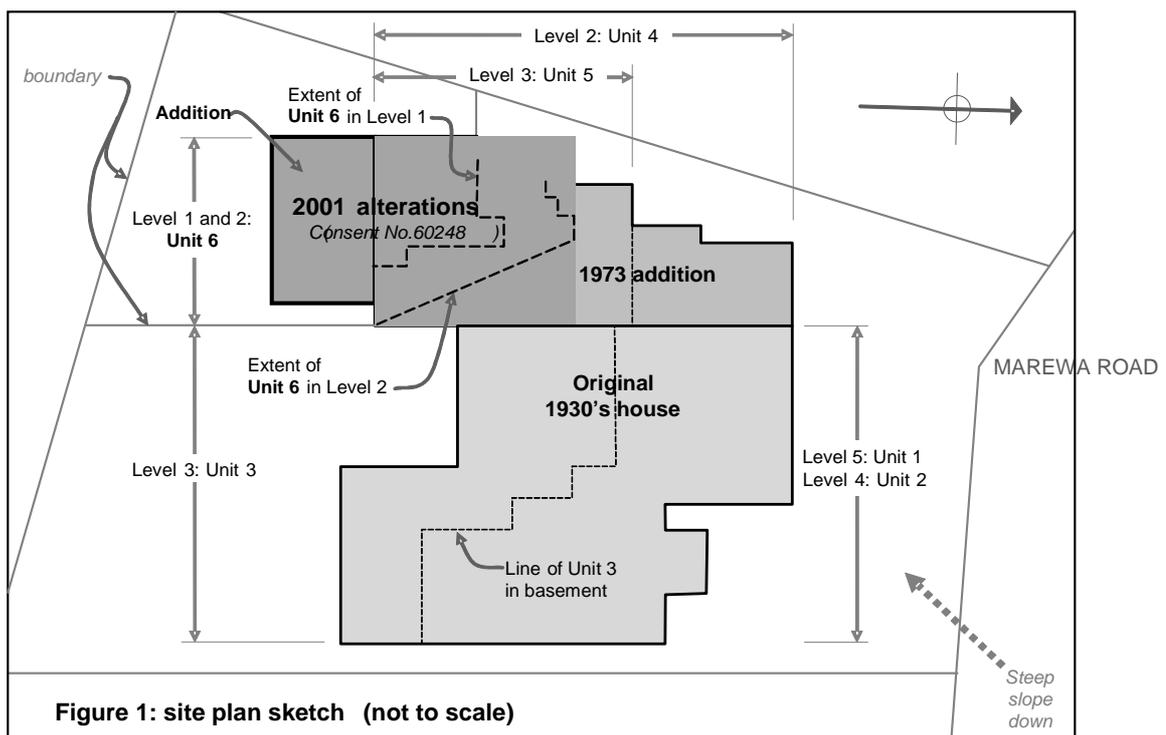
---

<sup>3</sup> Under sections 177(1)(b) and 177(2)(d) of the Act

<sup>4</sup> In this determination, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

**Table 1: Location of units in the building**

Location	Original house	1973 addition	2001 alterations
Level 1			Unit 6 (lower level)
Level 2		Unit 6 (bed-sitting room)	Unit 6 (upper level)
Level 3	Unit 3 (in part basement)	Unit 5	
Level 4	Unit 2	Unit 4	
Level 5	Unit 1		



2.3 The building is conventional light timber frame, with concrete slabs and foundations to basement level units and timber pile foundations elsewhere. Wall claddings are timber weatherboards, roof cladding is generally corrugated steel, and windows and doors are timber.

2.4 Unit 6 occupies the lowest two levels of the building, and includes an exterior area at the southwest corner within its unit title. Prior to the alterations, the apartment was limited to a small single-level unit on Level 2, with a cantilevered timber deck to the south and an undeveloped subfloor area on Level 1.

## 2.5 Unit 6 alterations

2.5.1 The 2001 alterations included a two-storey-high addition lean-to to the south; with concrete slabs and foundations, low-pitched corrugated steel roof, bevel-backed timber weatherboards to match existing and timber joinery that appears to have been re-used or purchased second-hand. Timber facings are used at corners, around joinery, and at the junction between the existing and new weatherboards.

2.5.2 The alterations to Unit 6 include:

- in the upper level (Level 2):
  - a shower/laundry room in place of the original kitchen area
  - a bedroom in the west end of the original living/bedroom area
  - two bedrooms in the addition
  - stairs to the lower level
- development of the basement in the lower level (Level 1) to provide:
  - stairs from the upper level
  - a new kitchen area
  - a living area in the addition.

2.5.3 The expert noted some treated timber visible from the sub-floor area and the specification calls for wall framing to be 'framing grade treated H1'. However, given the date of the alterations in 2001 I am unable to determine the particular level and type of treatment, if any, described as 'H1'. I therefore consider that the wall framing of Unit 6 may not be treated to a level providing resistance to fungal decay.

### 3. Background

3.1 The building was purchased by a builder in October 1998 ("the builder"), with the intention of developing and selling individual apartments in the building.

3.2 A land surveyor was commissioned to seek necessary approvals for unit titling the existing six tenanted units on behalf of the builder. The surveyor sought resource consent to unit title the existing six tenanted units in the building, stating:

My client proposes to obtain separate Unit Titles to the six existing Units located on site. As part of an improvement proposal my client plans to extend Unit 6 (on levels 1 & 2) as shown on the attached Plans.

The six units have been occupied as separate flats for many years.

The letters also outlined existing use rights for the building, noting:

1939 – Constructed  
1973 – Conversion to 3 units  
1973 – Conversion to 5 units  
1975 – Flat addition and alteration plus other alterations and crib walls at various other dates.

3.3 In advice dated 18 March 1999, the fire consultant stated that the proposal complied with the Building Code with regard to means of escape 'as nearly as is reasonably practicable' and with other provisions 'to at least the same extent as before the application for subdivision'.

3.4 A resource consent (No. SR 51609) was issued and an architect ("the architect") was engaged to assist with the proposed work, which included the extension to Unit 6. The fire consultant subsequently recommended that sprinklers be installed in each unit to 'bring the building up to fire regulation standards' and the builder submitted a fire report dated 28 February 2000 ("the first fire report").

- 3.5 The authority issued a building consent (No. SR 60248) to the builder for ‘addition/extension of unit 6’ on 13 March 2000, under the Building Act 1991 (“the former Act”). The consent conditions called for the building work to comply with the recommendations of the first fire report.
- 3.6 Correspondence passed between the authority and the builder between January and February 2000 about fire protection to Unit 6.
- 3.7 The letters from the builder refer to a ‘proposal to put a small addition to the front of [Unit 6]’, but also says ‘[Unit 6] was created prior to the ... Building Act 1991’. The letters state that sprinklers had been ‘completed in 5 of the 6 units and will be installed in unit 6 during construction’. I do not know what fire protection work was undertaken in units 1 to 5.
- 3.8 In an undated letter (date stamped by the authority on 13 March 2000) a sprinkler installer advised what standard the sprinkler system to ‘16 Marewa Road’ would be installed to.
- 3.9 Construction did not start until 2001 and the authority carried out four inspections during construction as follows:
- plumbing and drainage on 2 July 2001
  - cladding, framing, bracing and glazing on 9 July and 1 August 2001
  - drainage on 13 September 2001.
- 3.10 During August 2001, an investigation of ‘fire protection and means of escape’ for the building was carried out by the fire consultant, who was now operating within a firm of building certifiers.
- 3.11 On 9 August 2001, the fire consultant carried out an inspection to ‘examine the building and to reconsider the first fire report requirement to install a domestic sprinkler system’, and subsequently provided the architect with a report dated 10 August 2001 (“the second fire report”). The second fire report is under the building certifier’s letterhead and is signed by the fire consultant. I have seen no evidence that shows the letter was accompanied by a building certificate issued by the building certifier under section 56 of the Building Act 1991.
- 3.12 The fire consultant noted that the first fire report had been based on previous requirements that were now superseded by new approved documents allowing for the specified apron projections to be equivalent to different spandrel heights. The fire consultant’s re-assessment led to the following conclusions:
1. The partially constructed domestic sprinkler system is to be removed.
  2. A Type 2 fire alarm system is to be installed with external call points and sounders.
  3. Aprons to be constructed to achieve spandrel protection in accordance with 7.9.12 of Part 7, C/AS1.
  4. All other passive and active fire protection is to remain as constructed.

3.13 The architect forwarded the report to the authority by fax on 14 August 2001, noting:

To follow is a letter from [the building certifier] [the fire consultant]

We intend to follow this course of action and request that you amend the conditions of building consent # accordingly

[The fire consultant] will be retained to observe the remedial work to Units 1-5 and issue a certificate of compliance on completion.

3.14 The alterations to Unit 6 appear to have been substantially completed during 2001 and Unit 6 was subsequently sold without a code compliance certificate. There are no records of any further communication with the authority until 2007.

3.15 In an email dated 11 January 2007 in response to a query, the authority stated:

On 14 August 2001, the [authority] was advised by the architect ... that [the building certifier] had been engaged to carry out inspections and issue the Code Compliance Certificate. [The building certifiers] are no longer in business and so are unable to issue the CCC.

...the [authority] has insufficient grounds on which to be satisfied that the building work complies with the requirements of the Building Code and so is unable to issue a Code Compliance Certificate.

On this basis we will not carry out inspections of the work under this building consent.

The authority discussed various options for the owners to consider in light of this position.

3.16 Unit 6 was subsequently sold to the applicant in March 2007, and the lack of a code compliance certificate became apparent to the applicant some time later.

3.17 The Ministry received an application for a determination on 22 May 2012 and attempted to clarify the authority's responsibility for inspecting the building work. After a series of emails, the authority noted that the architect's facsimile was taken as 'formal notification' of the building certifier taking over inspection and that it held:

...no documentation which indicates that a building certificate was issued by [the building certifier] in respect of the work as per letter dated 10 August 2001 from [the building certifier].

## 4. The initial submissions

4.1 The applicant provided copies of:

- the consent documentation
- the drawings and specification
- the authority's inspection records
- the fire consultant's reports
- correspondence between the builder and the authority in regard to a fire report and sprinklers to the whole building and Unit 6
- correspondence in regard to unit titling the building.

- 4.2 The authority noted that its position as expressed in the email dated 11 January 2007 'is still current' and forwarded copies of its records, which included similar documents to those submitted by the applicant.

## **5. The expert's report**

- 5.1 As mentioned in paragraph 1.7, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors. The expert inspected Unit 6 on 13 June 2012, providing a report dated 18 June 2012.

### **5.2 General**

- 5.2.1 The expert noted that the internal layout of Unit 6 had changed from that shown in the consent drawings, and described the overall construction quality as 'sufficient given type of construction but with areas requiring remedial work'. Claddings were 'average and in keeping with the other units' with flashings in need of attention and other areas 'completed in serviceable fashion'.
- 5.2.2 The expert also noted that Unit 6 was 'built/cobbled together to resemble a unit normally more associated with a 1960's or earlier design' and has been influenced by the original 1930's building and the later 1970's addition, with materials and joinery recovered and reused. As a result, the expert considered that its appearance and serviceability 'is more akin to a much older unit' as joinery and some other components are likely to be nearly 40 years old.
- 5.2.3 The expert noted that the second-hand timber windows and door were installed in a traditional manner, with timber facings to heads and jambs, metal head flashings over head facings and sealed against upper weatherboards, and solid timber sills extended beyond the jamb facing scribes.

### **5.3 Moisture levels**

- 5.3.1 The expert inspected the interior and exterior, taking non-invasive moisture readings. The expert noted signs of moisture entry or damage at:
- bowed tiles in the small tiled area adjacent to the south entry door; with
    - the removal of a tile revealing decayed fibreboard laid over concrete
    - a large gap beneath the door, allowing wind-blown rain to enter
  - cracked kitchen floor tiles typical of swelling of the fibreboard substrate; with a leaking downpipe junction leading to saturated ground adjacent
  - decay in the timber facing over the junction between old and new boards; with a butted joint to the existing upper facing open to water entry
  - raised moisture levels in the Level 2 bathroom; with
    - wet flooring in the subfloor area beneath the shower
    - water drips indicating a leak from the shower wastepipe.
- 5.3.2 Apart from the above areas, the expert noted no other raised moisture levels or indications of moisture problems.

## 5.4 The relevant code clauses

5.4.1 In regard to the claddings (Clauses E2 and B2), the expert noted that:

- the south door is allowing windblown rain to enter
- the south door facings have deteriorated, with some decay apparent
- the south door head flashing is not properly sealed
- the butted joint above the west inter-cladding facing is not weathertight
- there is a gap at the end of the west barge flashing, allowing water to enter behind the fascia.

5.4.2 The expert also observed cracking to the tiled kitchen floor, noting that this was close to the area of the leaking downpipe but that no elevated moisture readings were recorded.

5.4.3 The expert also commented on the compliance of the house with the other relevant clauses of the Building Code and I have included those comments in paragraph 7. The expert included the following summarised comments (with relevant code clauses provided in brackets):

- A floor joist has been cut to allow for the shower waste pipe (Clause B1).
- There are no alarms installed within Unit 6 unit or on the exterior of the building (Clauses C, F7).
- A leaking downpipe joint is resulting in saturated ground (Clause E1).
- In regard to foul water (Clause G13):
  - there are leaks at the shower outlet, leading to wet flooring
  - the terminal vent is not extended above the roof line.
- There is no under-floor insulation beneath the upper bathroom (Clause H1).

5.5 A copy of the expert's report was provided to the parties on 12 July 2012.

5.6 The applicant provided a submission dated 12 July 2012 in response to the expert's report, noting that some remedial work has already been carried out. The applicant also considered that the cracking to the kitchen tiles was more likely the result of damage caused by dropping a heavy object.

## 6. The draft determination and responses received

6.1 A draft determination was issued to the parties for comment on 26 July 2012. The applicant accepted the draft without comment in an email to the Ministry dated 31 July 2012.

6.2 The authority responded to the draft determination in a submission to the Ministry dated 24 August 2012. The authority did not accept the draft determination. The submission included copies of the following documents and I have taken these into account:

- correspondence between the authority and the builder in January and February (referred to in paragraph 3.6)
- the letter from a sprinkler installer (referred to in paragraph 3.8)
- the authority's four site inspections (referred to in paragraph 3.6)
- correspondence between the architect, the fire consultant, and the authority (referred to in paragraphs 3.12 and 3.13).

6.3 The points raised in the authority's submission are summarised as follows:

#### **The expert's report**

- It was unclear whether the expert had paid 'particular attention' to the condition of the downstairs rear wall noted as having a high moisture content during the authority's inspection carried out on 1 August 2001.
- The expert had noted the as-built work was at variance from that consented; the authority noted its concern that the expert had not 'considered the implications of the change[s]' with respect to fire and structure.

#### **Fire protection**

- The authority questioned the involvement of the fire consultant and the building certifier with respect to fire protection. It was 'unclear how much of the sprinkler system was ever actually installed'. The fire design to Unit 6 was not simply limited to the installation of the sprinkler system.
- The fire protection work was work that required building consent. The architect's reference to 'a certificate of compliance' (refer paragraph 3.13) related to consented work, being that issued for Unit 6. Therefore, the architect's advice 'can be interpreted as an indication that' the building certifier would complete the inspection of Unit 6 'in addition to ensuring that the partially constructed sprinkler system was removed from Units 1 to 5.'

#### **The responsibility of the building certifier**

- The submission noted that there was 'no formal transfer instrument' of responsibility from the authority to the certifier, but that 'its unavailability cannot be regarded as determinative'. However, the authority observed that the building certifier would have been prevented from certifying any work that it had also designed as the fire engineer.
- The authority carried out a drainage inspection after 14 August 2001.
- The architect had been contacted, but was unable to recall the events surrounding the issue of his fax dated 14 August 2001 (refer paragraph 3.13).
- The authority 'was certainly of the view that responsibility for the inspection and certification of the work had been transferred to [the building certifier] following [the architect's] fax of 14 August 2001. While points go both ways, we consider that view was open to the [authority] to take.'

#### **The authority's actions**

- The authority's regulatory response should be judged in light of its view that responsibility for the work had been transferred to the building certifier. Given

this, the determination should reflect the process described in section 437 for the issue of a certificate of acceptance.

6.4 I note the following in response to the authority's submission:

- The authority inspection referred to was conducted 11 years ago, and the elevated moisture readings to the framing are very likely to have been due to construction moisture that will have long since dissipated. The expert observed that all the walls were dry, except where noted in his report.
- The authority carried out a preline inspection in July 2001. Any change to the internal layout would have been evident to the authority at that time.
- There is no indication in Unit 6 that any of the fire protection measures were installed, or that any work in relation to this was undertaken. I have been provided with no evidence to show what fire protection measures, if any, have been installed to Units 1 to 5.
- An assessment of work undertaken by a building certifier under section 437 of the Act can result in the issue of either a certificate of acceptance or a code compliance certificate, not just a certificate of acceptance as is stated.

6.5 I amended the determination as I considered appropriate. Matters in relation to the building certifier are discussed in paragraph 8.

## **7. The compliance of Unit 6**

7.1 Taking account of the expert's report and the other available evidence, I have assessed the compliance of the alterations of Unit 6 with the relevant clauses of the Building Code current at the time of the issue of the consent. The following addresses those clauses.

### **7.2 Clause B1 Structure**

7.2.1 The addition is a simple conventional structure and the records show that bracing was passed during the pre-line inspections.

7.2.2 Apart from the cut floor joist identified in paragraph 5.4.3, the expert noted no visible signs of structural settlement, movement, or other problems relating to the subject building work.

### **7.3 Clause C Fire safety**

7.3.1 The fire consultant assessed the means of escape as code-compliant as part of the approval process for gaining resource consent to unit title the building (see paragraph 3.3). I note that the requirement for a sprinkler system was subsequently replaced by fire aprons to provide fire separation between windows (see paragraph 3.12), and the expert has confirmed that aprons were installed where necessary.

7.3.2 However, the expert has noted that no smoke or other fire alarms were installed in Unit 6, though the fire consultant had stated in the second fire report that a 'Type 2 fire alarm system is to be installed with external call points and sounders'. I note that

at a minimum a single point smoke alarm is required in Unit 6; however, this should be confirmed against the fire protection features for the building as a whole.

#### **7.4 Clause E1 Surface water**

- 7.4.1 The authority carried out three drainage inspections, with the last noting 'there is no stormwater drainage connected to any of the downpipes on site'. The expert tested the drainage system, but could not identify stormwater path and dispersal, noting 'this may be a historical issue to the general area' as stormwater pipes for a neighbouring property travel downhill over a lower property.
- 7.4.2 The expert noted no evidence of unsatisfactory surface water discharge, except for a leaking downpipe connection in paragraph 5.4.2.

#### **7.5 Clause E2: Weathertightness**

- 7.5.1 The claddings generally appear to have been installed in accordance with reasonable and traditional trade practice at the time of construction. However taking account of the expert's report, I conclude that remedial work and/or maintenance is necessary in respect of the items outlined in paragraph 5.4.1.
- 7.5.2 I also consider the expert's report establishes that the current performance of the claddings is not adequate because there is evidence of some moisture penetration through the building envelope. Consequently, I am satisfied that the alteration does not comply with Clause E2 of the Building Code.
- 7.5.3 In addition, the building envelope is also required to comply with the durability requirements of Clause B2 and that includes the requirement for Unit 6 to remain weathertight. Because faults may allow the ingress of moisture in the future, the building work does not comply with the durability requirements of Clause B2.
- 7.5.4 Because identified cladding faults occur in discrete areas, I am able to conclude that satisfactory rectification of items outlined in paragraph 5.4.1 will result in the claddings being brought into compliance with Clause B2 of the Building Code.

#### **7.6 Clause E3 Internal moisture**

- 7.6.1 The expert observed no areas of non-compliance or evidence of interior moisture, apart from areas resulting from external causes identified in paragraph 5.3.1, which lead to localised dampness.

#### **7.7 Clause F2 Hazardous building materials**

- 7.7.1 The sliding glass shower doors appear to be conventional units with safety glass and would have been inspected during pre-line inspections.
- 7.7.2 The re-used window to the bathroom has a sill height well below the level at which safety glass would be required as described in F2/AS1. It is recommended that the glass to this window is verified as being compliant.

## **7.8 Clause G1 to G8 (Personal hygiene, Laundering, Food preparation, Ventilation, Interior environment, Natural light, Electricity and Artificial light)**

7.8.1 There appears to be sufficient kitchen, bathroom and laundry facilities provided, along with adequate provisions for natural light. The expert noted that ventilation appeared satisfactory, with an extract fan in the kitchen vented to the outside and no evidence of non-compliance was observed.

## **7.9 Clause G12 Water Supplies and G13 Foul Water**

7.9.1 The authority carried out three plumbing and drainage inspections, and the expert noted that all waste water is directed to mains sewer systems as required.

7.9.2 The authority's last inspection noted 'terminal vent to be extended to above roof line'. The expert noted that the terminal vent is also used by Units 4 and 5 on Levels 2 and 3, with the top of the vent finishing in line with the top of a Unit 5 window.

7.9.3 The expert observed no other evidence of non-compliance, apart from the leaking overflow pipe identified in paragraph 5.4.2.

## **7.10 Clause H1 Energy Efficiency**

7.10.1 The authority passed insulation in its preline inspections and the expert noted that the subfloor kitchen wall was covered with polythene to protect wall insulation.

7.10.2 The expert observed no evidence of non-compliance, apart from the lack of under-floor insulation above the subfloor area as identified in paragraph 5.4.3.

## **7.11 Conclusion**

7.11.1 Taking account of the above observations and the expert's report, I conclude that remedial work, investigation and/or maintenance is necessary in respect of the following areas:

- a cut in the floor joist below the shower (Clause B1)
- a single point smoke alarm (Clauses C and F7)<sup>5</sup>
- a leaking downpipe causing saturated ground (Clause E1)
- in regard to the claddings (Clauses E2 and B2)
  - the gaps at the south door
  - the inadequate sealing of the south door head flashing
  - deterioration and decay in some timber facings
  - the inadequate butted joint above the west inter-cladding facing
  - the gap at the end of the west barge flashing
- in regard to foul water (Clause G13)
  - the leaking shower outlet
  - the height of the terminal vent

---

<sup>5</sup> This is considered a minimum requirement, refer also paragraph 7.3.2.

- the lack of under-floor insulation beneath the upper bathroom (Clause H1).

7.11.2 I consider that the expert's report, the authority's inspection records, the authority's assessment and the other documentation, allow me to conclude that the remaining building work complies with the Building Code.

7.11.3 The expert has identified some areas where maintenance is required. Effective maintenance is important to ensure ongoing compliance with the Building Code and is the responsibility of the building owner. The Ministry has previously described these maintenance requirements, including examples where the external wall framing of the building may not be treated to a level that will resist the onset of decay if it gets wet (for example, Determination 2007/60).

## 8. The involvement of the building certifier

8.1 My observations in response to the authority's submission regarding the involvement of the building certifier (refer paragraph 6.3) are as follows:

- A building certifier was unable to issue a building certificate in respect of work in which the 'certifier has a professional or financial interest'<sup>6</sup>.
- The architect's fax dated 14 August 2001 says the fire consultant was 'retained to observe the remedial work to Units 1-5 and issue a certificate of compliance on completion'. The advice from the fire consultant was not covered by a building certificate issued by the building certifier. I have been provided with no evidence that a building certificate was issued by the building certifier for Unit 6.
- There are a number of not insignificant inconsistencies in architect's fax; however, it appears the authority did not question these at the time.
- The architect's fax requests that the authority 'amend the conditions of building consent # accordingly'. In my opinion this does not indicate the passing of responsibility for the consent from the authority to the certifier: it is unlikely the request for amendment would have been made had this been the case.
- The authority carried out an inspection after the date on which it now contends responsibility for the work passed to the building certifier.
- There is no evidence to show that any of the fire protection work described in paragraph 3.12 was completed in respect of the work to Unit 6.

8.2 In my opinion there is insufficient evidence to show that the completion of the work to Unit 6 was passed to a building certifier as is contended, and the balance of evidence shows that this did not occur. I therefore consider that the authority has erred in assuming involvement by a building certifier and was incorrect in refusing to inspect the building work in 2007; and that responsibility for finalising the consent for Unit 6 rests with the authority.

---

<sup>6</sup> Under section 56(6) of the former Act.

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

- 9.1 The authority should issue a notice to fix that requires the applicant to bring the alteration into compliance with the Building Code, including but not limited to the defects identified in paragraph 7.11.1, without specifying how those defects are to be fixed. It is not for the notice to fix to specify how the defects are to be remedied and the alteration brought to compliance with the Building Code. That is a matter for the owner to propose and for the authority to accept or reject.
- 9.2 I suggest that the parties adopt the following process to meet the requirements of paragraph 9.1. Initially, the authority should inspect the alteration and issue the notice to fix. The owner should then produce a response to this in the form of a detailed proposal produced in conjunction with a competent and suitably qualified person, as to the rectification or otherwise of the specified issues. Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination.
- 9.3 Once the matters set out in paragraph 7.11.1 have been rectified to its satisfaction, the owner should apply for an amendment to the consent to modify Clause B2.3.1 to the effect that the required durability periods start from the date of substantial completion; the authority shall then issue a code compliance certificate in respect of the building consent (No. 60248).
- 9.4 I strongly recommend that the authority record this determination and any modifications resulting from it, on the property file and also on any LIM issued concerning this property.

## **10. The decision**

- 10.1 In accordance with section 188 of the Building Act 2004, I hereby determine that Unit 6 does not comply with Building Code Clauses B1, B2, C, E1, E2, F7, G13, and H1; and accordingly, I confirm the authority's decision to refuse to issue a code compliance certificate. I have insufficient information to confirm whether the unit complies with Clause F2.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 13 September 2012.

John Gardiner  
**Manager Determinations**