

Determination 2014/019

Regarding the decision to issue a code compliance certificate in respect of the decks to Units 220, 221, and 237, at Terrace Downs Villas, Lake Coleridge Road, Darfield



1. The matters to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, Tony Marshall, Manager Determinations and Assurance (Acting), Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to the determination are:

- the owner of Unit 220, A Meyer (“the applicant”)
- the owner of Unit 237, Peppers No 2 Trust, represented by the applicant as the agent for the owner
- the owner of Unit 221, represented by the applicant as the agent for the owner
- Selwyn District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.

1.3 In regard to the units that are the subject of this determination: Units 220 and 221 are part of work constructed under Consent No. 030544 with the owners represented by Body Corporate Stage II. Unit 237 is part of work constructed under Consent No. 031557 with the owners represented by Body Corporate Stage III (refer Figure 1).

¹ The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.dbh.govt.nz or by contacting the Ministry on 0800 242 243.

- 1.4 I consider the Body Corporate Stage II and Body Corporate Stage III represent the owners of other units built under the same consents as the subject units but are not otherwise represented herein. I therefore consider that the Body Corporate Stage II and Body Corporate Stage III are persons with an interest in this determination, and also acting as the agents for the owners of Units 218, 219 and 235, and the remaining units in Block 9.

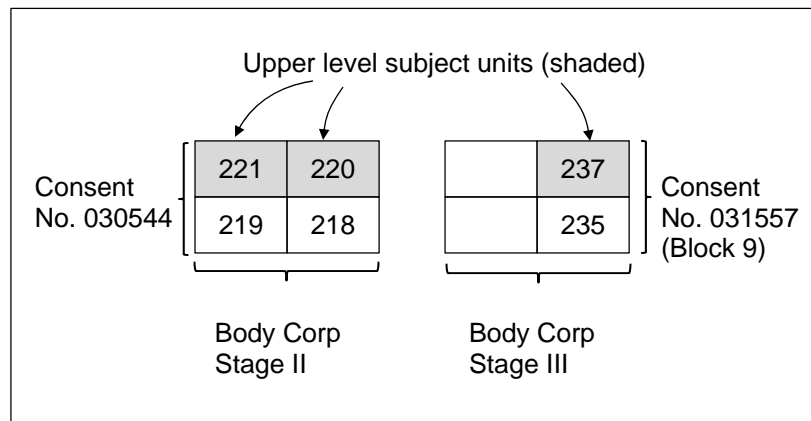


Figure 1: Schematic elevation of the units within the subject blocks

- 1.5 This determination arises from issues with the weathertightness of the decks to Units 220, 221, and 237. The applicant is of the view that the decks were not constructed in compliance with certain clauses² of the Building Code (Schedule 1, Building Regulations 1992). The applicant is therefore challenging the decision of the authority to issue code compliance certificates for work that included the decks of Units 220, 221, and 237.
- 1.6 The matter to be determined³ is therefore the exercise of the authority's power of decision in issuing code compliance certificates for building consent No. 030544 and No. 031557, in respect of the decks to Units 220, 221, and 237. In deciding this, I must consider whether the decks were constructed to comply with the Building Code that was in force at the time of construction.
- 1.7 This determination is limited to the consideration of the decks of Unit 220, 221, and 237, and does not consider other matters relating to the units, or the compliance of other units in the complex.
- 1.8 In making my decision, I have considered the submissions of the parties, the report of the expert commissioned by the Ministry to advise on this dispute ("the expert") and the other evidence in this matter.

2. The building work

- 2.1 This determination is in respect of decks to three upper level units – Unit 220, 221 and 237. Each unit is part of a two-storey building consisting of two units on each level. The units are part of a larger development known as Terrace Downs.

2.2 The buildings

- 2.2.1 The buildings are constructed on a sloping site. Each building is constructed primarily of precast concrete wall panels with concrete foundations and floor slabs.

² In this determination, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

³ Under sections 177(1)(b) and 177(2)(d) of the Act

The precast concrete wall panels extend above the first storey level and support the timber roof trusses.

- 2.2.2 The floors of the first storey are constructed using proprietary hollow core pre-stressed concrete planks with an in-situ concrete topping.
- 2.2.3 At upper storey level, one exterior wall of each block is timber framed and clad with cedar battens over plywood, fixed directly to the framing. This construction is along one edge of the deck.

2.3 The decks

- 2.3.1 Units 220 and 237 are on the upper level of separate but adjacent blocks; the decks to these units are, in part, located over bedrooms in the units underneath. Units 218, 219, 220 and 221 are in the same building; Unit 219 is located under Unit 221, Unit 218 is located under Unit 220. Unit 235 is located under 237 in Block 9, (refer Figure 1).
- 2.3.2 The decks were originally consented to have a liquid applied membrane over a concrete substrate with a tiled finish. The surface of the deck to unit 237 has the original construction. The surface of the decks to Unit 220 and 221 were replaced and now consist of a seamless waterproofing membrane.

3. Background

- 3.1 The authority issued a building consent (BC 030544) for the construction of 16 villas, being blocks 5 to 8 of the Terrace Downs development on 29 August 2003 under the Building Act 1991 (“the former Act”). It is not known which block contains Units 218 to 221.
- 3.2 A code compliance certificate was issued for the construction of the four blocks on 2 September 2004.
- 3.3 The authority issued a building consent (BC 031557) for the construction of 12 villas, being blocks 9 to 11 of the Terrace Downs development on 9 March 2004 under the former Act. Block 9 contains Units 237 and 235.
- 3.4 A code compliance certificate was issued for the construction of the three blocks on 10 May 2005.
- 3.5 The deck of Unit 220 was repaired in January 2013 by laying a waterproofing membrane. It appears that a building consent was not obtained for this work. The applicant advises that repairs had also previously been carried out on the deck.
- 3.6 The applicant commissioned a building surveyor (“the building surveyor”) to inspect and report on the weathertightness of the decks to Units 220 and 237. The decks were inspected on 30 January 2013.
- 3.7 The Ministry received an application for a determination on 27 May 2013.

4. The submissions and the draft determinations

4.1 The initial submissions

- 4.1.1 The application set out the background to the situation and noted that remedial work was carried to the deck of unit 220 in January 2012, and that work had been carried out to the deck three or four times.

4.1.2 The application included drawings and details, and a report commissioned by the applicant about the weathertightness of the decks to Units 220 and 237.

4.1.3 The authority acknowledged the application on 10 June 2013.

4.2 The first draft determination and responses received

4.2.1 A draft determination was issued to the parties for comment on 24 October 2013. The first determination did not take account of the fact that the work was completed under two consents, and reversed the issue of one code compliance certificate in the belief this was for all three decks: this has now been corrected.

4.2.2 The applicant responded on 24 and 25 October 2013 noting:

- Units 220 and 237 fall under different consents; the determination should include the reversal of both consents.
- The Stage II Body Corporate should have sought a building consent for the remedial work. 'In failing to apply for Building Consent this has caused losses to owners, a huge amount of stress and frustration' and the applicant requested the Ministry take legal action against the Body Corporate.
- The applicant queried whether it would be possible to 'split up' a consent so that the determination's decision was in respect of one unit and not all the units covered by the relevant consent.

4.2.3 In an email dated 4 November 2013, the applicant also requested the Ministry consider 'splitting' the determination's decision so that decisions were made in respect of the consents for Stage II and Stage III.

4.2.4 In an email dated 19 November 2013, the Stage II Body Corporate noted that:

- It had been decided to commission an inspection of all the units in Stage II including an assessment of required solutions and repair. A future WHRS claim was possible.
- The reversal of the code compliance certificate would be 'detrimental' in terms of additional cost and the ability to obtain insurance.

4.2.5 The Stage III Body Corporate also responded on 19 November 2013 noting that the draft determination did not refer to Unit 237 being built under a different consent and agreeing with the position taken by the Stage II Body Corporate.

4.2.6 The applicant responded to the submission of the Stage II Body Corporate saying he required the code compliance certificate to be reversed to ensure the remedial work was completed.

4.2.7 In a submission dated 18 November 2013, the authority did not accept the draft determination and also provided a detailed response to the experts report (refer paragraph 5.5). In respect of the draft determination the authority submitted that:

- The engineer should be considered as a person with an interest in this determination given the engineer's inspections and monitoring for the project.
- 'No person ... had any issues with the dressing of the membrane at the time this work was [originally] done. Therefore it can be assumed that the poor work described was part of the replacement work. This view is supported by the fact that if the poorly dressed outlet was the cause of the leak it would have been apparent to everyone soon after it was installed.'

- ‘There was no requirement for a 1.5° minimum cross fall in E2/AS1 at the time [the consents were issued] ...’
- ‘... as stated in the [building surveyor’s report] the replacement membrane has drastically altered the heights and clearances to the cladding.’
- The drainage outlets were adequate for the deck area and the rainfall intensity. Any obstruction would be immediately apparent.
- ‘While accepting that remedial work is only likely to occur when something has gone wrong, it has not been established what went wrong. It could be for example that the tiled surfaces required too much on-going maintenance ...’
- ‘The authority believes it was satisfied on reasonable grounds that the decks complied with the Building Code at the time the Code Compliance Certificate was issued. ... the only conclusions that can be drawn are that the faults were caused by one or more of the following:
 - lack of maintenance
 - poor workmanship in applying the original waterproofing membrane
 - incorrect or poorly carried out replacement work.’

The authority also noted typographical errors that have been corrected.

4.3 My response to the submissions on the first draft determination

- 4.3.1 The applicant and the bodies corporate have asked that that the block containing Units 218 to 221 and Block 9 (containing unit 237) be separated from the remaining work approved under the relevant consents. If the consents had still been in effect (i.e. had the code compliance certificates not been issued) this may have been an appropriate course of action as the consents could have been amended so that the blocks concerned could have been the subject of a separate consent.
- 4.3.2 I do not consider it is reasonable to include the engineer for the work as a person with an interest in the matter, as the matters in dispute relate to weathertightness not structure. None of the evidence presented by the parties or gathered the expert suggests the faults arise from recent seismic activity in the Canterbury region.
- 4.3.3 I do not accept that the authority’s observation that the building surveyor’s report establishes that the replacement membrane has altered the heights and clearances to the cladding to the extent that a fall of 30mm shown noted on the plans has reduced to 5mm through the application of a liquid-applied membrane.
- 4.3.4 While the authority has suggested the lack of maintenance as a possible cause for the faults, the fact that the deck membranes have failed several times since the issue of the code compliance certificate provides strong evidence that the original construction and subsequent repairs have been insufficiently durable for their intended use.
- 4.3.5 The expert’s report considered the original deck to Unit 237 was failing due to the system being insufficiently durable and not through lack of maintenance. The expert’s report also notes that most of the original tiled membrane system to the remaining units have been replaced.
- 4.3.6 Although the building is outside the scope of E2/AS1, the Acceptable Solution may be used as a guide to how compliance is to be achieved. Clause E2.3.1 says roofs must shed precipitation, and the deck membranes are acting as roofs to the habitable

spaces beneath. The expert and the building surveyor observed the decks ponding, meaning water is not being shed.

4.4 The second draft determination and responses received

- 4.4.1 The first draft determination was amended to take the parties submissions into account. A second draft determination was sent to the parties for comment on 23 December 2013.
- 4.4.2 The authority responded in a letter dated 10 February 2014. The authority said that the matter for determination should be limited to the compliance of decks to Units 220, 221 and 237 and reference to any other units was outside the scope of the determination. The authority considered that inferences drawn from the performance of other units was conjecture.
- 4.4.3 The authority also submitted (in summary) that:
- Decks to Units 220 and 221 were ‘significantly altered’ after the code compliance certificate was issued. It is now not possible to determine whether the authority was correct or not in issuing the code compliance certificate for these units. This position is supported by the second draft determination not reversing the issue of the code compliance certificate for the Stage II consent.
 - ‘[M]odifications to deck areas didn’t start until 2009; five years after the code compliance certificate had been issued’ indicating the authority had reasonable grounds on which to be satisfied that the work was compliant.
 - All the determination can consider is the issue of the code compliance certificate for the deck to Unit 237. The draft determination ‘suggest[s]’ that the failure of the deck system is due to it being insufficiently durable. There was ‘verifiable service history of this detail which is that tiles and tiled surfaces are durable ...’.
 - The expert’s report did not indicate the deck to Unit 237 was not compliant with the provisions of Clause E2 in place at the time the consent was issued. There is ‘no mention of ponding’ on the deck to Unit 237 but there is to the decks with ‘unauthorised repairs’ (Units 220 and 221).
 - The work was consented under the former Act. ‘Compliance was established through construction on site.’ The building was specifically designed and not required to comply with the Acceptable Solutions.

The authority sought another draft determination for it to provide comment on.

- 4.4.4 The Stage III Body Corporate responded in a letter dated 18 February 2014 submitting that the defects to the decks were matters of maintenance that it was remedying in conjunction with the authority, the builder, and the architect. The submission asked that the code compliance certificate for Stage III (consent No. 031557) not be reversed, and requested another draft determination be provided for comment.
- 4.4.5 The applicant also responded to the draft determination in a letter dated 18 February 2014. The applicant submitted (in summary) that:
- Any notice to fix should be issued to the Stage II Body Corporate as the decks are common property.

- A full investigation of the remaining decks to the Stage II work had been undertaken by the expert.
- Action should be taken against those responsible for carrying out the repair work as consent was required for this work.
- Comment was sought in the determination on the condition of all the work completed under the stage II and III consents.
- The authority should be directed to assess every apartment to determine whether they are safe and sanitary.
- If Unit 237 'is found to be defective ... then this must provide evidence that the code compliance certificate for the whole stage must be revoked.'

4.4.6 In an email dated 20 February 2014 the Stage II Body Corporate understood that the deck areas were not compliant but requested that no notice to fix be issued in respect of the Stage II work. The Body Corporate noted that legal action was being taken in respect of all the decks in Stage II.

4.5 My response to the submissions on the second draft determination

4.5.1 It is noted that the Ministry was not aware of the additional investigation by the expert (refer paragraph 4.4.5), and was only made aware of this on receipt of the applicant's submission dated 18 February 2014. I have not seen the expert's report in respect of that work, nor do I make any inferences in respect of that report's findings in relation the units discussed herein, or any other units.

4.5.2 The authority contends that the determination should be limited to Units 220, 221 and 237 (all upper level units). The upper level decks are located over habitable space beneath. The determination considers the condition of two lower level units directly affected by the performance of the decks by way of an internal assessment of Unit 219, and a visual inspection from the outside of Unit 235: no inference is made about the performance or condition of any other units.

4.5.3 It is entirely reasonable to consider whether there is any sign of moisture ingress in the lower level units as a measure of the performance of the upper level decks. The determination makes no decision with respect to the compliance of the lower level units.

4.5.4 I do not accept that the failure of the decks after approximately five years to meet the 15-year performance required by Clause B2.3.1(b) can be seen as meeting the requirements of the Building Code. It is reasonable to assume that had the decks only required normal maintenance in order to continue to comply, as its contended by the authority, then that is the limit of the work that would have been undertaken: the application of a new membrane system and extent of remedial work required within the 15-year period cannot be considered to be normal maintenance.

4.6 The third draft determination and responses received

4.6.1 The second draft determination was amended to take the parties submissions into account. The third draft determination was sent to the parties for comment on 12 March 2014.

4.6.2 The applicant accepted the third draft without comment on 19 March 2014.

4.6.3 The authority did not accept the third draft determination. In a submission dated 19 March 2014 the authority submitted (in summary):

- It was not clear what the failure mechanism was and ‘there are no grounds to conclude that the code compliance certificate had been improperly issued.’
- The membrane was protected by the tiling and damage to the membrane could not have been ‘reasonably foreseen’. The deck fall, clearances and drainage were considered unlikely causes of failure.
- A possible reason for the membrane’s failure was the incompatibility of the membrane with the tile adhesive. If the incompatibility was the cause ‘it is not one which renders the [authority’s] issuing of the code compliance certificate unreasonable.’

4.6.4 In response to the authority’s submission I consider the compatibility of the membrane and the tile adhesive would have been able to have been readily identified at the time of construction.

4.6.5 The Stage II Body Corporate accepted the draft subject to comment in an email dated 25 March 2014. In an attached submission the Stage II Body Corporate restated earlier advice regarding legal action and requested that no notice to fix be issued for units constructed under consent no. 030544. The submission also referred to the outcome of the investigation of the remaining decks referred to in paragraph 4.4.5.

4.6.6 The Stage III Body Corporate did not accept the third draft. In a letter dated 26 March 2014 the Body Corporate submitted that it was not clear that the authority was incorrect to issue the code compliance certificate for consent no. 031557. Further investigation was required which the Body Corporate intended to seek, with any required remedial work being carried out ‘in compliance with the requisite consent’.

5. The expert’s report

5.1 As mentioned in paragraph 1.8, I engaged an independent expert to assist me. The expert is a Registered Building Surveyor. The expert inspected the units on 29 August 2013, providing a report dated 25 September 2013 and which was provided to the parties on 8 October 2013.

5.2 Comparison with the consented plans

5.2.1 The expert noted that the decks did not appear to be constructed as per the consented drawings as follows:

- there was no indication that the 15mm x 15mm rebate formed in the panels to dress the liquid applied membrane was installed
- the cross fall on the consented drawings is 0.34°, but the cross fall of the constructed decks was between 0.05° and 0.3°; the recess in the concrete topping for the gutter was not formed
- the outlet in the precast panels was considerably smaller than the 50mm high and 100mm wide outlet detailed in the consented plans; and the outlet was poorly dressed with the waterproofing membrane. The outlet opening was too small to be able to properly apply the membrane.

5.3 Observations about the decks to the upper units

Unit 220

5.3.1 The waterproofing membrane to the deck of Unit 220 has been replaced with a new membrane.

- 5.3.2 The expert observed that the replacement membrane has been taken up onto a skirting substrate material. The membrane has come away from the precast concrete wall at the top edge and at the joints in the substrate. Water is able to penetrate behind the skirting wall.
- 5.3.3 The expert noted that the membrane has delaminated from the concrete deck in places, with bulges visible in the membrane surface. The expert also observed craze cracking in the membrane. The expert considered the durability of the membrane was reduced due to water ponding on the surface and then freezing.
- 5.3.4 The expert observed that the precast wall panels extend 1000mm above the deck level to form the barrier to the deck. The rainwater outlet is located at the internal corner of the panels. A hole through the panels drains water to the external rainwater head. This outlet is located at a panel join. The 50mm x 50mm outlet is limiting the flow of water from the deck and ponding is occurring. Water was observed overflowing off the deck, but not before ponding occurred. Water is seeping through the membrane.

Unit 221

- 5.3.5 The waterproofing membrane to the deck of Unit 221 has been replaced with a new membrane.
- 5.3.6 The deck to Unit 221 ponded over a large area of the deck with cracking to the seamless membrane. The expert considered frost heave would delaminate the membrane. Given the decks to the units were originally tiled, it appears the seamless membrane constitutes a repair of the original deck surface.

Unit 237

- 5.3.7 The deck of Unit 237 has the original tiled deck. The expert observed delamination of the tiling from waterproofing membrane due to frost heave, and the tiles are now loose on the deck. The skirting tiles are also loose and a light green liquid-applied membrane is visible under the tiling mortar.
- 5.3.8 The expert noted that the consented drawings of the precast panels show a 15mm x 15mm rebate 70mm above the finished slab to dress the liquid applied membrane up the walls. There was no sign of this having been installed.
- 5.3.9 The expert also noted that there was no clearance between the cladding off the deck, and as a result, there was moisture wicking from the deck into the bottom of the cladding.

5.4 Observations about the lower units

- 5.4.1 The expert inspected bedroom 3 of Unit 219 and noted it would be representative of a typical lower unit: Unit 219 is below the deck to Unit 221.
- 5.4.2 The expert observed a strong smell in the room from the saturated framing, lining, curtains, and carpet. The expert considered the room was not habitable. The expert noted there were signs of water staining to the plasterboard linings, condensation on the windows, and decayed carpet and mould on the back of the curtains. The expert observed that the carpet had been replaced.
- 5.4.3 The expert removed the wall linings in three locations in the room, and found the cavity strapping timber was severely decayed, and moisture readings were in excess of 40%, which I take to mean that the timber is saturated. The expert observed

mould growth on the back face of the wall lining, and found the 50mm polystyrene insulation was wet to touch and the inside face of the pre-cast panels were wet where the cut outs were made.

- 5.4.4 The deck to Unit 221 was flooded by running an exterior tap. During this test free water was observed running down the wall inside Unit 219.
- 5.4.5 The expert observed a large amount of condensation on the inside face of the double glazed windows and the back of the curtains were covered in mildew.
- 5.4.6 The expert did not have agreement to conduct invasive testing to Unit 235 (being the Unit below 237) but carried out a visual inspection from the outside. The expert was of the opinion that Unit 235 displayed the same signs of water ingress into the unit as Unit 219.

5.5 The expert's conclusions

- 5.5.1 The expert concluded that there has been water ingress into the ground floor unit 219 directly below the Unit 221 deck, and that Unit 235 showed the same signs of water ingress. A combination of a poorly installed waterproofing membrane and inadequate deck outlet to the rainwater head has caused water ingress.
- 5.5.2 The expert also noted that the replacement deck waterproofing of the deck of Unit 220 was done without first obtaining a building consent.

5.6 Authority's response to the expert's report

- 5.6.1 The authority responded to the expert's report on 19 November 2013. The authority submitted that:
- Units 235 and 237 were not part of consent No 030544. Unit 237 was in 'block 9'.
 - There was no evidence that water ingress to the lower units was systemic to all units in the complex.
 - The buildings are outside the scope of NZS 3604.
 - The expert had measured falls on the replacement deck, not on the original deck. The building surveyor's report referred to a 30mm fall to the drain outlet shown on the plans saying 'This fall appears to have been achieved originally but with the addition of the extra coatings has now been negated'.
 - The expert has not found any leaks arising from the clearance of the cladding 'therefore it complies with E2'. 'Deterioration in the appearance of the cladding does necessarily relate to' compliance with Clause E2. The expert had not commented on the maintenance of the cladding. The cladding was 'nearly two-thirds through' its required durability period.
 - The minimum falls quoted in the report apply to timber construction and 'are not relevant for concrete construction.' The minimum fall for a membrane roof in E2/AS1 was for butyl rubber and not liquid applied membranes.
 - 'The authority was satisfied on reasonable grounds that the building would comply and based this on several factors such as; common building practice, in service history, product manufacturers' specifications, and the expertise and qualifications of the Registered Architect responsible for the design'.

6. Discussion

6.1 General

6.1.1 Based on the expert's findings set out in paragraph 4.6.1, I am satisfied that the decks to Units 220, 221, and 237, are not currently weathertight and have not satisfied the performance requirements of Clauses E2 and B2.

6.2 Unit 220 and 221 (Consent No. 030544)

6.2.1 The work to Units 220 and 221 was consented in August 2003; the deck membranes had a required minimum durability period under Clause B2.3.1 of 15 years with normal maintenance. The applicant has advised the decks have undergone remedial work on several occasions to date with the remedial work in each case being completed without building consent.

6.2.2 As the repairs undertaken to these decks mean the decks no longer resemble, in some respects, the work for which the code compliance certificate was issued, I have not considered whether the code compliance certificate for consent No. 030544 was correctly issued.

6.2.3 I note here that repairs and maintenance can be exempt from the need for a consent but only in situations where the elements being replaced have satisfied the relevant durability periods set out in Clause B2. That is not the case in this situation and consent for the remedial work was required. The failure to obtain a building consent when consent was required is a breach of the Act and provides grounds for issuing a notice to fix.

6.2.4 In my view the authority should consider issuing a notice to fix in respect of the building work carried out without consents for Units 221 and 220 that requires the work concerned to be removed and/or brought into compliance with the Building Code.

6.3 Unit 237 (Consent No. 031557)

6.3.1 In considering the decision of the authority to issue a code compliance certificate for the deck to Unit 237, I must consider the evidence available at the time the code compliance certificate was issued.

6.3.2 The building consent was issued under the former Act. The test for issuing a code compliance certificate was whether the building work complied with the Building Code that was in force at the time the consent was issued.

6.3.3 At the time the consent was issued, Building Code Clause E2.3.2 required 'roofs and exterior walls shall prevent the penetration of water that could cause undue dampness, or damage to building elements.'

6.3.4 The expert has found what he considers to be defects to the decks including the lack of clearance to the cladding off the deck, the small size of the drainage outlet, the lack of a rebate above the slab to receive the membrane, and the poor installation of the waterproofing membrane itself. The expert has also considered the likely effects of frost damage in relation to the durability of the membrane elements.

6.3.5 I am of the view that these defects and non-compliances together should have been apparent to the authority at the time of inspection, particularly taking into account the combined net effect of the defects.

6.3.6 I therefore am of the view that the authority did not have reasonable grounds to conclude the decks complied with the Building Code and issue a code compliance certificate in respect of consent No. 031557.

6.4 The units located beneath the decks

6.4.1 Unit 219 clearly does not meet the requirements of the Building Code as it is suffering from deleterious effects of water ingress from the deck to Unit 221. However, once an authority has issued a code compliance certificate it is unable to take any regulatory action in respect of that work unless a building becomes dangerous or insanitary.

6.4.2 I note the expert's comment that he considered the bedroom to Unit 219 was not habitable, and that Unit 235 also exhibited the same signs that it was subject to excessive water ingress. In my view the authority has a duty under the Act to conduct its own assessment of the units located under the decks in order to satisfy itself whether the lower units are dangerous or insanitary in terms of the Act.

6.4.3 Given the extent and effect of the water ingress to Unit 219 observed by the expert, it is possible that the compliance of the lower units will rely on the compliance of the remedial work to the upper units: this assessment should form part of any detailed remedial solution.

7. The decision

7.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:

- the decks to Units 220, 221, do not comply with Clauses B2 and E2 of the Building Code
- the deck to Unit 237 does not comply with Clauses B2 and E2 of the Building Code that was in force at the time the consent was issued, and accordingly I reverse the code compliance certificate issued in respect of Building Consent No 031557.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 17 April 2014.

Tony Marshall
Manager Determinations and Assurance (Acting)