MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Determination 2014/037

Regarding the refusal to issue a code compliance certificate for a 17-year-old house at 6 Jersey Place, Grandview Heights, Hamilton

1. The matters to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004[1] ("the current Act") made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, 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 owners of the house, W and S Hobson ("the applicants")
- Hamilton 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 the 17-year-old house because it was not satisfied that the building work complies with certain clauses[2] of the Building Code (First Schedule, Building Regulations 1992). The authority's concerns regarding compliance of the building work appear to relate to the age of the house and the weathertightness of its claddings.

1.4 The matter to be determined[3] is therefore whether the authority was correct to refuse to issue a code compliance certificate. In deciding this, I must consider:

1.4.1 Matter 1: The external envelope and the remaining items of compliance

Whether the external building envelope of the house complies with Clause B2 Durability and Clause E2 External Moisture of the Building Code that was current at the time the consent was issued, and the other items identified by the authority as

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

requiring attention before the code compliance certificate would be issued. I consider this in paragraph 6.

1.4.2 Matter 2: The durability considerations

Whether the building elements comply with Clause B2 Durability of the Building Code, taking into account the age of the house. I consider this in paragraph 7.

1.5 In making my decisions, I have considered:

- the submissions of the parties
- the report of the expert commissioned by the Ministry to advise on this dispute ("the expert")
- the report of the weathertightness consultant engaged by the applicants to report on the house
- the other evidence in this matter.

2. The building work

2.1 The building work consists of a detached house that is two-storeys-high in part, with a partial basement, and is situated on a sloping site in a medium wind zone for the purposes of NZS 3604[4]. The expert takes the main entry and garage as facing west and this determination follows that convention. The house is assessed as having a low to moderate weathertightness risk.

2.2 Except for the basement, construction is generally conventional light timber frame, with concrete foundations and floor slab, monolithic and brick veneer wall claddings, pressed metal tile roofing, and aluminium joinery. The basement garage is specifically designed, with reinforced masonry walls and a reinforced concrete roof slab. The hipped roofs to both levels have eaves of 600mm or more, with the lower level roofs forming lean-tos against upper walls.

2.3 The ground floor provides three bedrooms and living/dining areas, with a master bedroom in the small upper floor. The entry and adjacent office are at the mid-level between the basement and ground floors with a separate hipped roof, which intersects with ground floor walls and extends as a canopy over exterior steps to the driveway. Part of the basement garage extends below the ground floor, with the remainder forming a roof deck opening from the lounge. The tiled deck has a metal and glass balustrade, with posts fixed through tiles to the concrete roof.

2.4 The expert was unable to identify the treatment of the wall framing timber and the documents are silent on the matter. However, the expert was able to view roofing timbers and identified rafters as Douglas fir. Given this evidence and the date of wall framing installation in 1996, I consider that the timber wall framing is likely to be either untreated Douglas fir or Radiata pine.

2.5 The wall claddings

2.5.1 Foundation and basement walls are plastered concrete block and ground floor walls are clad in traditional brick veneer. The wall cladding to the top level consists of 7.5mm thick fibre-cement sheets fixed through the building wrap to the framing and finished with an applied textured coating system ("the textured fibre-cement").

[4] New Zealand Standard NZS 3604:1999 Timber Framed Buildings

2.5.2 Textured fibre-cement is also used as panels above ground floor windows and doors and as infill cladding between the hipped roof over the entry and the ground floor soffits. On the south elevation exterior concrete steps provide access from the ground floor laundry; the landing and stairs have timber-framed balustrades with textured fibre-cement cladding and a flat-topped timber capping.

3. Background

3.1 General

3.1.1 The former owners applied for a building consent on 9 May 1995. The application documents included a producer statement and details from the structural engineer, with a letter dated 9 May 1995 stating that the engineer would carry out a construction review of 'relevant parts' of the construction 'subject to the Contractor contacting me at the appropriate stages of construction.'

3.1.2 The authority issued a building consent (No. 95/0855) on 9 August 1995 under the Building Act 1991 ("the former Act"). The authority carried out various inspections of foundations, masonry walls and concrete floor slabs in September 1995. Construction may have been protracted as a pre-line inspection was not recorded until June 1996, and it appears the house was occupied in 1997.

3.2 Post-completion correspondence

3.2.1 No further inspections were carried out and the authority wrote to the former owners on 8 November 1999 noting that although it appeared that the project had been completed, no advice of completion had been received. The authority subsequently inspected the house and in a letter dated 6 December 1999 noted that:

> A recent inspection of the project has confirmed that the following items are still to be completed.
>
> 1. Provide bends to waste pipes in gully traps and seal wastes to gullies.
> 2. Provide handrails to stairs internal and external.

The authority also stated:

> Upon satisfactory completion of the project, a Code Compliance Certificate will be issued which is normally a requirement should you ever wish to sell your property, which would also avoid any delays should a proposed purchaser request a land information Memorandum from Council.

3.2.2 There was apparently no response to the above and the authority's internal records note a 'general memo' signed and dated 31 August 2006, which summarised the background of the building consent as follows:

> Property visited 24/9/1999. No one home and unable to gain access. Letter sent 8/11/1999 requesting access. Called for final inspection 17/11/1999 – some outstanding issues. Letter sent 6/12/1999 confirming issues. No response and due to the age of the project we have not issued a Code Compliance Certificate.

3.3 There is no record of further inspections and in 2007 the authority developed a policy for managing building consents issued under the Building Act 1991; and its 'Building Unit Policy' dated 25 May 2007[5] outlined the policy as (in summary):

- Code compliance certificates will not be issued for consents issued under the former Act.
- Consent records will be removed from circulation and stored.

[5] Sourced from another determination for a house inspected by the same authority

- Code compliance certificate applications will be refused and owners given options to:
  - apply to the Ministry for a determination, or
  - obtain a building report from an independent expert to lodge on the file.
- Any information on the property file will be made available on the LIM.

3.4 The 2009 sale of the property

3.4.1 There is no record of any further correspondence until the former owners prepared to sell the property in 2009 and the applicants' solicitor raised the matter of the lack of a code compliance certificate for the house. On receipt of a copy of the authority's letter dated 6 December 1999, the solicitor stated that the applicants required outstanding matters to be attended to and inspected by the authority, and then an application for a code compliance certificate to be made.

3.4.2 The former owners' solicitor responded on 17 July 2009, confirming that the authority would not issue a code compliance certificate and stating that work to the gully traps had been completed. The solicitor also noted:

> [The former owners] will purchase handrails and have these installed. They then intend to have an independent expert of suitable qualification in the building sector to prepare a report for filing with the [authority] (to be approved by you) so that the work that is required to be done ... will be done to a good and professional standard.

3.4.3 Based on subsequent correspondence between the solicitors, it appears agreement was reached to accept a building report on the satisfactory completion of the outstanding items. This was provided in the form of a brief inspection report by a building consultant, which confirmed the work and concluded that in the consultant's view the house complied with Building Code Clauses B2, E2, D1 and G13. The report was forwarded to the authority on 4 August 2009 to 'be filed on the property register.'

3.4.4 The applicants purchased the property on the understanding the authority would not or could not issue a code compliance certificate for a building constructed in 1995. There is no record of correspondence until the applicants prepared to sell the property in 2014 and an offer was received subject to obtaining a code compliance certificate. The purchasers' solicitor approached the authority and was advised that a code compliance certificate could be issued for an old consent with an amendment to allow the durability provisions to apply from the date of substantial completion of the house.

3.5 The final inspection

3.5.1 At the request of the applicants, the authority carried out 'an urgent code compliance certificate site inspection' on 27 May 2014. The authority identified a number of outstanding items and provided the applicants' real estate agent with the following list:

> 1. Please submit a copy of the [code compliance certificate] application form – NZBC requirement.
> 2. Please seal the top edge of the PVC shower linings in both showers to the painted gib board linings – E3 requirement.
> 3. Please install a new air vent grill and seal the plastic frame to the brick veneer claddings at the laundry extractor pipe outlet, as without the grill it currently allows water to enter the building envelope – E2 requirement.

4. Please seal all gas and water feed pipes for the gas water heater to the brick veneer, as it currently allows water to enter the building envelope – E2 requirement.
5. Please submit a copy of the structural engineers Producer Statement-4 for the concrete block basement and the [proprietary] basement roof structure which is also the base for the 2nd storey tiled deck – B1/B2 requirements.
6. Please submit copies of an electrical Certificate of Verification and a new Certificate of Compliance for the gas water systems to demonstrate compliance today for those systems.
7. Please submit a copy of a weathertightness report from a qualified weathertightness expert prior to any possible [code compliance certificate] issue by [the authority].

3.6 In an email to the applicants dated 4 June 2014, the engineer (refer paragraph 3.1) confirmed that he would have inspected the work and stated that the email would confirm he:

> ...carried out a construction review of the structure shown on my drawing 241/1 (which shows a suspended concrete floor slab and beams supported on the garage blockwork).

3.7 The weathertightness consultant's report

3.7.1 The applicants' solicitor apparently discussed the above list with the authority and sought instruction from the applicants. The applicants engaged the weathertightness consultant who inspected the house on 3 June 2014 and provided an undated report titled 'Building Overview / Weathertightness Inspection". The report described the overall condition of the house as 'good', but noted that there was 'some general maintenance work needed to keep this property weathertight.'

3.7.2 The weathertightness consultant inspected the interior of the house and carried out non-invasive moisture testing, with no elevated readings noted. Moisture levels were elevated in battens to the garage concrete block wall along with some efflorescence to the concrete evident, but the weathertightness consultant did not consider this significant and recommended regular monitoring.

3.7.3 The weathertightness consultant listed recommended work and highlighted items he considered should be attended to 'as a priority'. Some other items were classified as needing 'attention over the next 12 to 18 months'. The remaining identified items were considered 'general maintenance', mostly due to 'normal wear and tear and can be addressed as redecoration or annual maintenance as it is undertaken.'

3.7.4 Commenting on the exterior claddings, the weathertightness consultant noted various areas at risk of moisture penetration and included recommendations for attention to the following (in summary):

- deteriorated jamb liners to garage door
- sealing of countertops, shower cubicles, bathtubs, laundry tub
- cracks and damage to textured fibre-cement cladding
- seals to windows in brick veneer
- seals to penetrations
- blockages to gutters and downpipes
- seals and grout to deck tiles
- deterioration of balustrade to laundry stairs and landing.

3.8 Some of the above items were attended to. Further correspondence followed without resolution, with the authority apparently stating that all items needed to be completed and then inspected.

3.9 The Ministry received an application for a determination on 16 June 2014.

4. The submissions

4.1 The applicant's submission

4.1.1 In emails to the Ministry dated 13 and 16 June 2014, the applicants outlined the background to the dispute, noting that:

> We bought the house in 2009 and [the authority] said it was then not possible to get a [code compliance certificate] but issued a letter saying matters outstanding at the time … were attended to in a satisfactory manner.
>
> [The outstanding items] were attended to a standard that would have satisfied the [the authority's] requirements. We were informed at that time that [a code compliance certificate] could not be issued as the [authority] was unable to issue one then considering the passage of time.

The owners advised that their solicitor had spoken to an officer of the authority who said that 'the rules have now changed and it is now possible to obtain a code of compliance years after completion date.' At the time of the sale, the applicants believed that all parties were 'happy that the property was built to the correct standard.'

4.1.2 The applicants forwarded copies of

- the drawings
- the former owners' consultant's site visit report dated July 2009
- some correspondence with the authority, solicitors, and real estate agents.

4.2 The authority's submission

4.2.1 In an email to the Ministry dated 18 June 2014, the authority outlined 'the timeline of events related to the [code compliance certificate] request from the current property owners'. The authority had responded to the request for an 'urgent the [code compliance certificate] site inspection', which had been carried out 'at very short notice to try and assist their property sale'. The authority provided the list of outstanding items identified during its inspection (see paragraph 3.5.1), noting that these were discussed with the applicants' solicitor.

4.2.2 The authority considered that it had been attempting to assist the applicants to reach 'a successful conclusion for all parties involved' and it was therefore perplexed to be advised of the determination application because:

> ...we have still not concluded the normal [code compliance certificate] process for this consent and I have not been requested to do the [code compliance certificate] re-inspection for [the] failed list above.

4.3 I acknowledge the authority's concerns that the determination has been applied for at a time where the authority considers the process for obtaining a code compliance certificate has only been partly completed. However, the applicants had previously been advised by the authority that it was not able to issue the code compliance certificate due to the age of the building work, and have acted under the knowledge that regardless of any further work carried out the authority may elect to refuse to issue the code compliance certificate.

4.4 A draft determination was issued to the parties for comment on 30 July 2014.

4.5 The applicants responded by email on 5 August 2014 and accepted the draft without further comment.

4.6 The authority responded by email on 13 August 2014, accepting the findings in the draft. The authority reiterated its concerns that the determination application pre-empted the normal process and that the matter could have been resolved with the applicant requesting a final inspection once the relevant items had been attended to. In the authority's view the determination application caused a greater delay in the process for issuing the code compliance certificate. The authority also noted that it accepted the findings in the expert's report and that if it had been presented to the authority it would have provided the basis for the authority's approval.

4.7 The authority submitted that it had concerns regarding 'who would be responsible [for informing] the new owners of the on-going maintenance requirements' and who is going to inspect the five overdue maintenance items (refer paragraph 6.5.3). I note here that the determination should be placed on the property file and will be disclosed in any LIM. This will serve to ensure that the current items identified as requiring maintenance will be apparent to any prospective purchaser. Once a code compliance certificate has been issued the authority has no regulatory role in respect of issues of maintenance unless the building becomes dangerous or insanitary.

5. The expert's report

5.1 As mentioned in paragraph 1.5, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Architects. The expert inspected the house on 23 and 27 June 2014, providing a report dated 15 July 2014 which was forwarded to the parties on the same date.

5.2 The expert obtained property records from the authority and was provided with further recent documentation from the applicants' real estate agent. That information included additional information pertinent to this determination:

- From the authority's property records:
  - the building consent documentation
  - the structural engineer's producer statement for design, structural drawings and letter to the authority dated 9 May 1995
  - the authority's inspection summary
  - some correspondence from the authority
  - various other producer statements, internal memos and information
- From the applicants' real estate agent:
  - registered electrical inspector's statement dated 9 June 2014
  - certificate of verification for gas hot water system
  - email from structural engineer dated 4 June 2014
  - email from the applicants dated 18 July 2014
  - the weathertightness consultant's report.

5.4 General

5.4.1 The expert noted that claddings were 'in reasonably good condition considering the age of the house', with the light-coloured finish to the textured fibre-cement cladding in accordance with the manufacturer's recommendations at the time. The expert observed some minor cracking, noting that this was expected after 17 years and can be considered as easily addressed maintenance items. The expert also noted that brick veneer drainage slots were clear and ground clearances were satisfactory.

5.4.2 The pressed metal roof tiles appeared to be in good condition, except for some minor denting from foot traffic. However, maintenance is required to the concealed fascia/gutter system as there is ponding to some areas. Some overflow holes were blocked and elevated moisture levels in the north soffit indicated that some downpipes may also be blocked allowing water to overflow into the soffits.

5.4.3 The expert also noted that, although the step down from the lounge to the roof deck was only 50mm, there was no sign of moisture penetration, levels were clearly shown in the drawings and the step down was considered acceptable at the time of construction. Although balustrade posts are fixed through the deck tiles, the roof deck is concrete and there was no evidence of associated moisture penetration.

5.5 Moisture testing

5.5.1 The expert noted that the interior appeared 'well finished', with wall finishes and carpets in reasonable condition considering the age and rental history. There was 'no evidence of cracked or stained linings or finishes, swelled skirting boards or leaking'. The expert lifted carpet in several rooms and noted no signs of dampness or water staining at the exterior walls.

5.5.2 The plastered concrete block south wall of the garage is lined with plasterboard installed over timber battens. The expert recorded a moisture reading of 22% in the bottom of the batten to the southwest corner and removed a small area of lining, noting no sign of dampness or moisture damage to the batten or the back of the plasterboard despite the reading.

5.5.3 The expert noted elevated moisture readings in the north soffit, which indicated that gutter and downpipe blockages were causing water to overflow into soffits. Invasive moisture readings were taken using long probes through linings into framing where non-invasive readings were elevated or where considered vulnerable, with all readings 'well below 18%' except for:

- 26% in the window lintel below the bottom of the roof/wall junction on the west elevation, although only 12% in framing below the window
- over 40% and decay in the bottom plate of the laundry external balustrade.

5.6 Areas of concern

5.6.1 The expert noted that kick-out flashings at the bottom of roof/wall junctions were not common at the time of construction, adding that the authority did not identify the junction in 1999 or 2014. He considered moisture ingress was not occurring as the inside was dry and the junction is well sheltered under the ground floor eaves.

5.6.2 The expert noted that the balustrade to the laundry steps and landing was clad in textured fibre-cement with a flat-topped timber capping that does not allow water to drain from the surface, and cladding in contact with concrete which allows moisture

to wick into balustrade framing. Although not leading to moisture in wall framing, the expert noted that moisture damage will eventually affect balustrade safety.

5.7 The outstanding items

5.7.1 The expert also assessed items identified by the authority during its 2014 final inspection and his findings are summarised as follows:

	Items per authority's list	Expert's opinion
1	CCC application form	To be submitted.
2	Seals to top edge of showers	Shower cubicles now sealed to linings
3	New sealed air vent to laundry	Extractor vent installed and sealed to bricks
4	Seal all gas and water pipes to brick veneer	Pipe work now sealed to bricks
5	Submit structural engineer's PS4 for construction review	Engineer's email dated 4 June 2014 confirms that construction review of specifically designed elements was carried out (see paragraph 3.1)
6	Certificates for electrical and gas water systems	Registered Electrical Inspector verified compliance Certificate of verification provided for gas hot water.
7	Weathertightness report from qualified expert	Report provided which showed: • notes no leaks or raised moisture levels • identifies maintenance items.

5.8 The expert considered that the defects outlined in paragraph 5.6 could be considered as necessary maintenance repairs, along with gutter blockages, cracking and any other items identified in the weathertightness consultant's report.

6. The external envelope and the remaining items of compliance

6.1 The evaluation of building work for compliance with the Building Code and the risk factors considered in regards to weathertightness have been described in previous determinations (for example, Determination 2004/1).

6.2 Weathertightness risk

6.2.1 This house has the following environmental and design features, which influence its weathertightness risk profile:

Increasing risk

- the house is fairly complex in form, with some complex junctions
- upper walls have monolithic cladding fixed directly to the framing
- external wall framing may not be treated to provide resistance to decay if it absorbs and retains moisture.

Decreasing risk

- there are generous eaves to shelter the monolithic wall cladding
- most walls are brick veneer or concrete block
- the roof deck is concrete and is above concrete block walls

6.2.2 Using the E2/AS1 risk matrix to evaluate these features, the elevations are assessed as having a low to medium weathertightness risk rating. If details shown in the current E2/AS1 were adopted to show code compliance, a drained cavity would be required for the textured fibre-cement at all risk levels. However, this was not a requirement at the time of construction.

6.3 Weathertightness performance

6.3.1 Taking account of the expert's report, the external envelope generally appears to have been constructed in accordance with good trade practice and applicable manufacturers' instructions at the time of construction.

The exterior balustrade

6.3.2 With regard to the balustrade to the laundry landing and steps, I note the following:

- the performance of the balustrade does not contribute to the weathertightness of the house, and will not endanger any remaining wall framing in the house
- the wet timber and limited damage indicate that water is penetrating the balustrade framing; the balustrade is currently safe
- the balustrade is moderately accessible for repair or replacement, and in my view has a required durability period of 15 years for Clauses B1 and E2: it can be assumed that the balustrade is an original feature and has been in place for 17 years.

6.3.3 The condition of the balustrade framing indicates there has been a failure to meet the requirements of Clause B2.3.1. However, the level of water ingress in this instance has not adversely affected the performance and amenity of the balustrade in terms of its required 15 year durability period.

6.3.4 The ongoing compliance of the balustrade is at the discretion of the owner as a matter of maintenance. However, if the balustrade is removed Clauses D1 Access and F4 Safety from falling will still need to be satisfied.

The roof to wall junction

6.3.5 With regard to the roof/wall junction above the entry, I note that the following:

- There is moisture penetration into the window lintel below the junction, where cladding is cracked and the apron flashing lacks a kick-out diverter at the gutter.
- The expert found no signs of dampness to corresponding interior linings and moisture levels are very low at the window jamb/sill below the junction.
- The roof/wall junction is sheltered beneath deep eaves.
- The adjacent gutter is holding water and blockages are likely to be allowing water to build up against the vulnerable junction.

Taking account of the above, I concur with the expert's opinion that moisture penetration has not been long term and has likely occurred in the last few years. I therefore conclude that repairs may be carried out as maintenance work.

6.3.6 I also note the expert's comments on cracking to some areas of the textured fibre-cement and observe that, apart from the above, this has not resulted in moisture penetration into framing. I concur with the expert that some cracks are expected after 17 years and can be simply repaired as part of maintenance work to the house.

6.3.7 Notwithstanding that the fibre-cement is fixed directly to timber framing, thus inhibiting drainage and ventilation behind the cladding, I note certain factors that assist the performance in this case:

- The cladding is installed according to good trade practice and the manufacturer's instructions at the time of construction.
- The 600mm roof overhang around the whole of the top storey roof provides good weather protection to the cladding, cladding junctions, window joinery etc.
- The textured fibre-cement is in good condition for its age, although some maintenance is required.
- Except one roof/wall junction, there is no evidence of moisture penetration after 17 years.

6.4 Weathertightness conclusion

6.4.1 The expert's report has satisfied me that the one area of moisture penetration into the timber wall framing is a recent occurrence likely to be due to the lack of gutter maintenance. I therefore have reasonable grounds to be satisfied that the house remained weathertight for at least 15 years following its substantial completion and the cladding complied with Clause E2 of the Building Code for that period.

6.4.2 The durability requirements of Clause B2 include a requirement for wall claddings to remain weathertight for a minimum of 15 years. A modification of the durability provisions to allow for them to commence from the date of substantial completion in 1997 will mean that the wall claddings will have already met the minimum life required by the Building Code, and therefore also comply with Clause B2 for that period.

6.5 The remaining items of compliance

6.5.1 Taking account of the expert's report, I am also satisfied that other items identified by the authority during its inspection on 27 May 2014 have been attended to as outlined in paragraph 5.7. As these items were outstanding I am of the view the authority was correct in its decision to refuse to issue the code compliance certificate at that time.

6.5.2 The authority has required producer statements to be provided in respect of the concrete blockwork and the proprietary concrete basement roof structure. Although the authority is entitled to accept producer statements if they are offered, it cannot require such statements to be provided. In my view the receipt of a producer statement by an authority does not lessen its liability in establishing code compliance. The authority should not rely on such a statement to the exclusion of other evidence that demonstrates code compliance, such as that observed by the expert and provided by the engineer.

6.5.3 Although a modification of durability provisions will mean that wall claddings have already met the minimum life required by the Building Code, the expected life of the building as a whole is considerably longer. Careful maintenance is therefore needed to ensure that claddings continue to protect the underlying framing for its minimum required life of 50 years for the structure. In the case of this house, the expert's report satisfies me some maintenance is overdue, in particular for the

- cracking to the textured fibre-cement

- blocked gutters and downpipes
- bottom of the apron flashing at the roof/wall junction
- balustrade to the exterior steps and landing to the laundry
- other items identified by the weathertightness consultant.

6.5.4 Effective maintenance of claddings is important to ensure ongoing compliance with Clauses B2 and E2 of 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).

7. The durability considerations

7.1 The relevant provision of Clause B2 of the Building Code requires that building elements must, with only normal maintenance, continue to satisfy the performance requirements of the Building Code for certain periods ("durability periods") "from the time of issue of the applicable code compliance certificate" (Clause B2.3.1).

7.2 In this case the 17-year delay since the completion of the house in 1997 raises concerns that many elements of the building are now well through or beyond their required durability periods, and would consequently no longer comply with Clause B2 if a code compliance certificate were to be issued effective from today's date.

7.3 I have considered this issue in many previous determinations and I maintain the view that:

(a) the authority has the power to grant an appropriate modification of Clause B2 in respect of all the building elements, if requested by an owner

(b) it is reasonable to grant such a modification, with appropriate notification, as in practical terms the building is no different from what it would have been if a code compliance certificate for the building work had been issued at the time of substantial completion in 1997.

I therefore leave the matter of amending the building consent to modify Clause B2.3.1 to the parties to agree.

8. What happens next?

8.1 The parties should agree on a date when the house was substantially completed and the building consent be amended to the effect that Clause B2.3.1 applies from that date instead of from the time of issue of the code compliance certificate for all the building elements, and complete the required administrative processes.

8.2 I strongly suggest that the owners arrange for the overdue maintenance work outlined in paragraph 6.5.3 to be urgently attended to in order to prevent future deterioration, with other maintenance to follow at the appropriate time.

10. The decision

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

- the decision to refuse to issue the code compliance certificate was correct on the basis that there were items at that time that did not comply with the Building Code
- providing Clause B2 is appropriately modified to allow the durability provisions to apply from the substantial completion of the house in 1997, the house now complies with the relevant clauses of the Building Code, and accordingly I reverse the authority's decision to refuse to issue a code compliance certificate.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 19 August 2014.

John Gardiner
Manager Determinations and Assurance