



## Determination 2018/014

# The refusal of a code compliance certificate for alterations to a house at 13 Clifford Street, Gisborne



### Summary

This determination considers the compliance of consented alterations to an existing house where some inspections during the construction had not been completed by the authority. The determination considers the compliance of the as-built work and whether the authority was correct in declining to issue a code compliance certificate for the work.

### 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, Katie Gordon, Manager Determinations, 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 the building, M Reilly (“the applicant”) acting via an agent (“the builder”)
  - the Gisborne District 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 recent alterations to a house (“the alterations”). The refusal arose because the authority is not satisfied that the building work complies with the relevant clauses<sup>2</sup> of the Building Code (First Schedule, Building Regulations 1992) due to a lack of inspections carried out during construction.
- 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 alterations. In deciding this, I must

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

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

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

consider whether the alterations to this house comply with the relevant clauses of the Building Code.

## 1.5 The available evidence

1.5.1 There are limited inspection records available for the extension. Therefore, in order to determine the compliance of the alterations to this house, I have addressed the following questions:

- Is there sufficient evidence to establish on reasonable grounds that the building work as a whole complies with the Building Code? (I consider this question in paragraph 5.2). If so, a code compliance certificate can be issued.
- If not, are there sufficient grounds to conclude that, once any outstanding items are repaired and inspected, the building work will comply with the Building Code? If so, a code compliance certificate can be issued in due course.

1.5.2 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”) and the other evidence in this matter. The decisions to make this determination under section 184 of the Act and engage a person to assist under section 187 of the Act were made by the previous Manager Determinations.

## 2. The building work and background

### 2.1 The original house

2.1.1 The house is situated on a narrow site in a medium wind zone<sup>4</sup> for the purposes of NZS 3604<sup>5</sup>. The street frontage is to the west, with a flat site beneath the house and a steep slope down towards the river to the east.

2.1.2 The original two-bedroom house was built during the 1930s, with the living and dining room to the west, master bedroom to the north east and a large laundry to the south east.

2.1.3 Construction of the original house was traditional light timber frame with concrete foundation walls and piles, a timber framed floor, clay tile hipped roofing, cedar shingle wall cladding, timber joinery and a concrete terrace to the east.

### 2.2 The altered house

2.2.1 The alterations have not extended the building envelope of the original house. As shown in Figure 1, alterations were to three primary areas as follows:

- Area A: the kitchen alterations:
  - demolition of original master bedroom/laundry partitions
  - a new open-plan kitchen/dining area across the east elevation
  - new windows and bi-fold doors onto the original concrete east deck
  - the conversion of the original kitchen into a third bedroom.
- Area B: the ensuite alterations:
  - demolition of the original toilet/hall partitions
  - a new ensuite bathroom to the north elevation

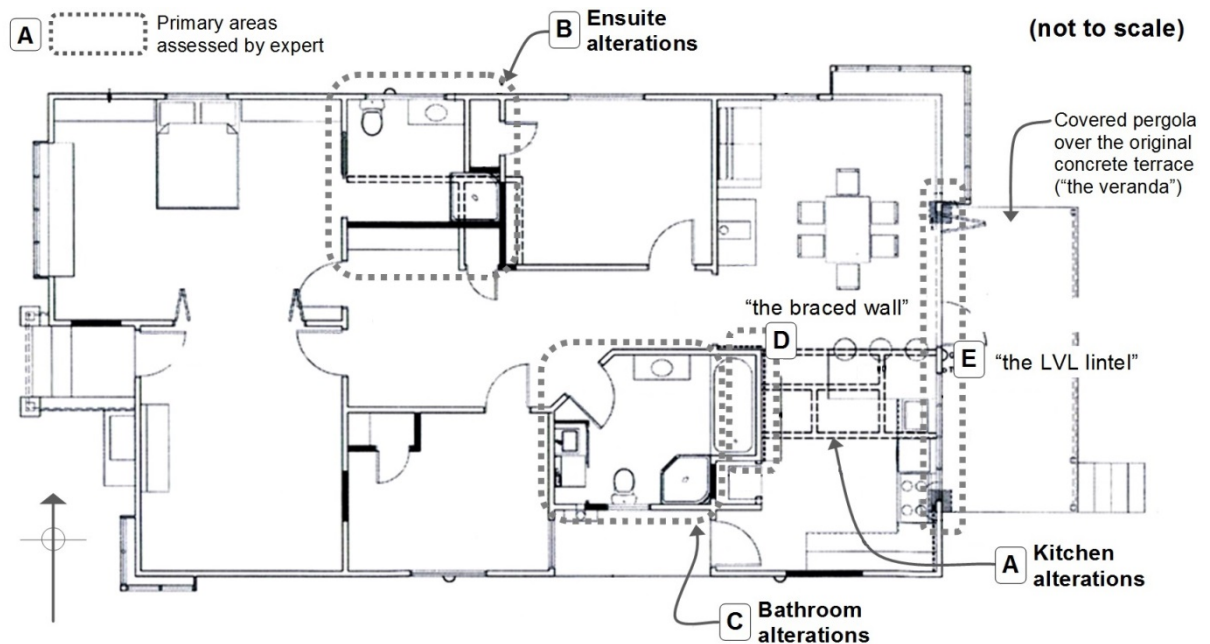
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<sup>4</sup> According to the bracing calculations

<sup>5</sup> New Zealand Standard NZS 3604:1999 Timber Framed Buildings

- the conversion of the original north west lounge into a master bedroom
- the conversion of the original dining area into an entry/lounge area.
- Area C: the bathroom alterations:
  - removal of some fittings in the original bathroom
  - new laundry facilities within cupboard
  - new vanity and toilet installed.

**Figure 1: Floor plan of alterations**



- 2.2.2 A specifically designed 5.3m long proprietary LVL<sup>6</sup> beam forms the lintel above the new bifold door and the kitchen window, with point loads at lintel ends supported on the original concrete east foundation wall and a pad at the south east corner. The drawings also call for plywood bracing to be installed to the braced wall to the bathroom.
- 2.2.3 Where original timber framed external walls have been altered, new plywood shingles match the profile of the original cedar shingles and are fixed through the building wrap and sarking substrate directly to the framing timbers.
- 2.2.4 The expert has noted that the original shingles appear to be cedar. Given the age of the original house, I consider that the original timber framing and sarking is likely to be heart Rimu, the recent framing is treated to H1.2<sup>7</sup>. The external framing is therefore likely to provide some resistance to fungal decay.

## 2.3 Construction

- 2.3.1 The authority issued a building consent (No. 15892) to the applicant on 3 March 2015 under the current Act for 'internal alterations to dwelling and install Butler multi hot water heater'. Item 1 of the attached conditions was:

1. The inspections detailed in the attached "Schedule of Required Inspections have been deemed necessary by [the authority]. Failure to call for these inspections may result in [the authority] declining to issue a Code Compliance Certificate.

<sup>6</sup> Laminated Veneer Lumber

<sup>7</sup> Timber treatment class to New Zealand Standard NZS 3602: Part 1: 2003 Timber and wood-based products for use in building

2.3.2 The attached ‘Schedule of Required Inspections’ listed inspections of the following (in summary):

1. Pre-pour foundations
2. Sub-floor framing
3. Wall framing and fixings
4. External pre-lining before wrap installed
5. Internal pre-lining of framing, insulation and bracing
6. Plumbing pre-lining
7. Drainage
8. Final inspection.

2.3.3 According to the builder, the alteration work was completed in two main stages over two years to allow the owner to continue living in the house during the building work, with the kitchen alterations completed first. When demolishing the original laundry partitions, sound concrete foundations were uncovered beneath the ends of the LVL lintel beam. Additional footings were not required and inspection (1) was therefore not requested. Because original sub-floor framing could be viewed via a floor opening and accessed via the crawlspace, inspection (2) was also not requested for that area.

2.3.4 The authority carried out a pre-line inspection of the kitchen alterations on 7 April 2015, which passed and the inspection summary noted:

Small amount of addition framing, 90 x 45 H1.2 to walls, [glass wool insulation] R2.6 and R4.0 to ext. walls. 300 x 90 lvl beam in place with strapping to trimming stud (top) and bomac angle brackets (bottom) stud to plate.

2.3.5 At the time of the pre-line inspection, it appears that all sill tape was in place, a floor cut-out was left open and plumbing pipework was ready for pressure-testing. Because the inspection passed and work was allowed to proceed, the builder assumed this inspection covered all requirements for inspections (2) to (6); and no further inspection was called for during the protracted completion of the work. However, I note this inspection was limited to the kitchen area and no bathroom inspections were requested when those alterations were carried out about a year later.

2.3.6 I have seen no copies of any further inspection records, but a subsequent entry in the inspection summary dated 10 October 2016 notes:

Only 1 inspection out of 7 called for. Have told builder to demonstrate why he didn't feel other inspections were req'd. [Code compliance certificate] likely to be refused.

## **2.4 The authority's refusal to issue a code compliance certificate**

2.4.1 Although it appears the authority did not carry out a formal final inspection of the alterations, the inspection summary records a ‘site visit’ by two officials on 9 December 2016:

...to check extent of work that has been done. Far too much considering only one inspection carried out. Haven't seen any work to new ensuite, no plumbing test, no drainage, no bracing has been seen, front door has been moved. Too much liability for [the authority] to take on. Have told builder [code compliance certificate] will be refused and that he will have to contact MBIE apply for a determination.

2.4.2 In a letter to the applicant dated 15 December 2016, the authority stated that it had become aware that a number of the inspections required for this job were not called

for’, meaning that a large amount of uninspected work was now covered up. The authority therefore considered it ‘had no choice but to refuse to issue’ a code compliance certificate for the alterations, which could be a problem when selling the property.

- 2.5 The Ministry received an application for a determination on 24 July 2017 and sought additional information and records from the authority – which were received on 31 August 2017.

### **3. The submissions**

#### **3.1 The initial submissions**

- 3.1.1 The builder outlined the background to the current situation, which was further clarified in an email to the Ministry dated 27 July 2017: explaining the sequencing and protracted construction of the alterations over two years. The builder noted that the original foundations, framing, plumbing pipework and sill tapes had been exposed during the pre-line inspection. Because work was approved to proceed, he was not aware of any need for additional inspections until the final inspection. Attempts to resolve the situation had been unsuccessful and the authority recommended he seek a determination.
- 3.1.2 The submission also included a statement dated 10 May 2017 from the designer, who confirmed the builder’s description of the pre-line inspection and included the following comments (in summary):
- When original concrete foundations and piles were uncovered, the authority had verbally advised that if the support studs under the new beam were within 300mm of the foundations, then that would be acceptable. (The authority disputes this based on NZS 3604 which only allows a maximum 200mm offset).
  - The pre-line inspection was expected to have included framing, connections, bracing, cladding, doors, windows and insulation. At the time of the inspection, gauges had been fitted to plumbing pipes for pressure testing and an access hole allowed inspection of the foundations.
  - ‘For the sake of pragmatism, a building inspector should sign off as many compliant consent units in a single visit as possible, particularly in a remodel job of this nature’, so the pre-line inspection was incomplete.
- 3.1.3 The builder provided copies of:
- amended floor plan dated 4 May 2017
  - a construction photograph showing the floor cut-out above the foundation
  - photographs of the original foundations
  - various statements, certificates and other information.
- 3.1.4 The authority made no submission but submitted copies of additional information pertinent to this determination, which included:
- the consent documentation
  - the pre-line inspection record
  - the inspection summary

- the letter to the applicant dated 15 December 2016.

### **3.2 The draft determination and the submissions received**

- 3.2.1 A draft determination was issue to the parties for comment on 27 October 2017.
- 3.2.2 The builder did not dispute the draft and requested an extension of time in order to seek engineering advice. The builder's response was received on 9 February 2018.
- 3.2.3 The builder engaged a structural engineering company ("the engineer") to review the bracing requirements for the altered house. The engineer provided a report dated 8 January 2018. The report was based on the amended floor plan dated 4 May 2017 but made no reference a site visit to verify the as-built work, or to the matters raised in the draft determination or the expert's report.
- 3.2.4 The engineer provided a producer statement (PS1 – Design) dated 2 February 2018 for the 'Review of House Bracing' with attached calculations and a bracing plan being notes added to the amended floor plan ("SK1") dated 4 May 2017. SK1 shows the bracing changes observed by the expert, with bracing calculations being derived from assumptions about the existing sheet linings and the as-built work.
- 3.2.5 The engineer's review addressed the absence of the plywood bracing element noted by the expert (see paragraph 4.6.1) but the review made no comment on the remaining matter being the lack of a connection to the bottom of the LVL lintel beam (Area E on Figure 1).
- 3.2.6 The builder also proposed using sealant to seal the external jamb facings to the kitchen window in lieu of scribes, in order to match the existing window junctions. I consider this acceptable, providing an appropriate sealant is applied to the authority's satisfaction and is subject to normal maintenance by the owner.
- 3.2.7 The authority accepted the draft determination subject to non-contentious amendments and stated if inspections (2) – (6) were no longer required, these would have been "passed and signed off" on the inspection record.

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

### **4.1 General**

- 4.1.1 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 Building Surveyors and inspected the house on 14 September 2017; providing a report completed on 4 October 2017, which was forwarded to the parties on 5 October 2017.
- 4.1.2 The expert's scope of his inspection was to assess code compliance of the alterations with associated parts of Clauses B1, B2, E2, E3, F2, G1 to G4, G9, G11 to G13, and H1 of the Building Code.
- 4.1.3 The expert noted that the alterations to the exterior cladding 'have generally been well performed' and the altered house 'is generally well presented, has wide eaves and is maintained to a reasonable standard'.

### **4.2 Variations from the consent drawings**

- 4.2.1 The expert noted the following as-built changes from the consent floor plan:
- Master bedroom wardrobe position changed, and bay window seat not installed.

- In the ensuite alterations (Area B):
  - ensuite shower changed from recessed to corner cubicle unit
  - hallway store and door not removed, borrowed lights and bookcase added
  - Bedroom 2 ‘dogleg’ wall not removed.
- In the bathroom alterations (Area C):
  - the shower over the original bathtub not installed
  - washing machine and shower positions switched
  - no laundry tub installed, with cupboard enclosing washer.

4.2.2 The expert also noted the following changes:

- hallway/dining doorway removed and small lintel installed
- In the kitchen alterations (Area A):
  - plywood to south end of east kitchen wall not installed, with bracing from original 19mm tongue in groove sarking under exterior cladding
  - plywood to the north end of the braced wall not installed (Area D)
- for the new LVL lintel (Area E):
  - original foundations in lieu of new concrete footing under lintel end
  - two 90 x 45mm studs in lieu of 90 x 90mm post under lintel north end
  - stainless steel bracket replaced with galvanised angle bracket, which was only fixed into the timber bottom plate, lacking a connection into the concrete foundation wall.

4.2.3 The following plumbing and drainage changes were observed:

- In the ensuite alterations (Area B):
  - original gully trap removed, replaced with an AAV<sup>8</sup>
  - toilet, vanity and shower connected into subfloor drain
- In the bathroom alterations (Area C):
  - shower, vanity and laundry tub connected to south gully trap
  - toilet connected via new subfloor pipework to original underground drain beneath existing terrace
  - position of the instantaneous water heater moved to the south elevation.

### 4.3 Area A: The kitchen alterations

4.3.1 The expert observed no indication of any sagging or movement where framed partitions to the original laundry had been removed to form the new open plan kitchen/dining area.

4.3.2 The expert also assessed the installation of the new bi-fold door and kitchen window in the east wall; observing no signs of any cracking at joinery junctions that would indicate movement of the 5.3m LVL lintel installed over the combined opening.

4.3.3 In regard to the braced wall (Area D), the expert noted that:

- the drawings called for the corner walls around the north east sides of the bathtub to be braced on the kitchen/dining side with 12mm plywood sheets

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<sup>8</sup> Air admittance valve

- drilling through lining at the corner of the wall revealed rimu drillings, with no evidence the plywood had been installed

4.3.4 In regard to the LVL lintel (Area E), the expert noted that:

- the old joinery was removed, with a 5.3m lintel installed over the opening for the kitchen window and the dining bi-fold door
- the large original concrete pad at the SE corner is close to, but not directly beneath the south support studs to the lintel opening
- the original foundations support two 90 x 45mm studs under the lintel end in lieu of a 90 x 90mm post fixed to a new concrete pad with stainless steel brackets anchored into the concrete
- removal of a small section of lining beside the north end of the door sill revealed a galvanised angle bracket bolted through double studs and fixed with coach screws through the bottom plate into underlying timber, with no connection extending into the concrete foundation wall.

4.3.5 In regard to windows and doors (Area E), the expert noted that:

- the subfloor beneath the bi-fold door/window is generally dry, with no dampness that would suggest inadequate subfloor ventilation
- the original pergola over the east terrace was removed and reinstated - and includes clear uPVC<sup>9</sup> roofing to form a veranda protecting the joinery heads
- a head flashing is installed above timber head facings, but no scribes are installed at jamb facings – making some junctions vulnerable to water penetration during cleaning
- new plywood shingles infill the original laundry door and entry door openings – and are taken down to paving level to match the original cedar shingles
- given the shelter provided by the deep veranda and entry porch together with a 125mm step down from the interior floor level, the lack of cladding clearance is not considered a problem in these circumstances.

## 4.4 The bathroom alterations

4.4.1 The expert observed that:

- the original timber window has not been altered
- the hand basin is installed onto a free-standing cabinet
- traps are installed to the basin and washing machine waste pipes
- an extract fan is vented to the outside
- there are no signs of leaking at shower cubicle/wall junctions
- the external water heater lacks a head flashing and is mounted on fibre cement sheet, which is not sealed against the shingles.

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<sup>9</sup> Unplasticized polyvinyl chloride



## 4.5 The ensuite alterations

4.5.1 The expert observed that:

- the hand basin is sealed to the vanity, which is sealed to the wall
- there are no signs of leaking at shower cubicle/wall junctions
- the shower mixer and hose are not sealed to the shower lining
- the extract fan is not vented to the outside
- the toilet foul water pipe penetration through the shingles is unsealed.

## 4.6 The relevant Building Code clauses

4.6.1 In regard to Clause B1 Structure, the expert noted that, although there are no signs of structural movement:

- plywood sheet bracing has not been installed to the braced wall (Area D)
- galvanised angle brackets to the lintel support studs do not connect to original concrete foundations (Area E).

4.6.2 In regard to Clause E2 External Moisture, the expert noted that:

- the external water heater to the bathroom lacks a head flashing and is mounted on fibre cement sheet, which is not sealed to the shingles
- the ensuite toilet pipe penetration through the shingles is unsealed
- except for the above, 'no significant ongoing durability or external moisture issues are foreseen'.

4.6.3 In regard to Clause E3 Internal Moisture the expert noted that:

- the ensuite shower mixer and hose are not sealed to the shower lining
- except for the above, there is 'no visible evidence of any internal moisture issues', with no indications of damage or elevated moisture readings
- although sealant is deteriorating or missing from the bathroom vanity top/hand basin/wall junction and the sink bench/wall junction, adjacent walls are lined with continuous tiles that protect the underlying framing.

4.6.4 In regard to Clauses F2, G1 to G13, H1, the expert noted that:

- although the sill height would require safety glass in a new window, the bathroom window is original and unchanged (F2)
- Sanitary and kitchen facilities appear satisfactory (G1 to G3), with:
  - no personal hygiene or laundering issues observed (G1 to G3)
  - well installed sanitary fixtures, with effective traps, properly operating drains and no evidence of problems (G1)
  - a well-designed kitchen providing 'adequate amenities for the hygienic storage, preparation and cooking of food' (G3)
- the ensuite and bathroom include opening windows and the cook top includes a rangehood vented to the outside (G4)
- the ensuite extract fan does not appear to be vented to the outside (G4)
- the electrical installation appears satisfactory (G9), with:

- functioning power outlets, appliances and lighting
- no indication of any non-compliance, but no electrical certification in the authority's records
- the gas installation appears satisfactory (G11), with:
  - gas bottles installed and secured at the south east corner of the house
  - gas pipe penetrations through weatherboards flanged and sealed
  - no indication of any non-compliance, but no gas certification in the authority's records
- the water supply appears satisfactory (G12), with:
  - water supplied from the authority's mains supply
  - tempered hot water provided via an external gas water heater
  - satisfactory hot and cold water pressures.
- foul water drainage appears satisfactory (G13), with:
  - sanitary fixtures and traps functioning properly, with no sign of water being drawn down when fittings drained
  - well installed drain pipes visible in sub-floor crawl space
  - gully traps installed below the lowest fixture in the house, with satisfactory ground clearance and no sign of overflow;however:
  - the original terminal vent had been removed and an AAV is fitted to the foul water drain outside the ensuite
  - A poorly-fitted cover to the gully outside the ensuite was noted and no grate was fitted
- glass wool insulation was observed during the pre-line inspection and at the cut-out beside the bi-fold door (H1).

## 4.7 Summary

4.7.1 The expert concluded that the following deficiencies 'may require remedial work to achieve code compliance':

- the lack of plywood installed to the braced wall (Area D)
- the structural connections of the bottom of lintel support studs (Area E)
- the unsealed junctions at the:
  - jamb facings to the kitchen window (Area E)
  - bathroom water heater junctions with the weatherboards
  - ensuite toilet drain pipe penetration through the weatherboards (Area B)
- the lack of sealing to the ensuite shower fittings (Area B)
- the ensuite extract fan is not vented to the outside (Area B)
- the lack of a grate to the gully trap outside the ensuite (Area B)
- the apparent lack of a terminal vent to the foul water drain.

## 5. Discussion

### 5.1 General

5.1.1 Section 94 of the Act requires an authority to issue a code compliance certificate only if it is satisfied on reasonable grounds that the building work complies with the building consent. In Determination 2008/030 I considered a two-stage approach to the issuing of a code compliance certificate under the Act: firstly, whether there were reasonable grounds to be satisfied that building work complied with the building consent; and second, whether items not in accordance with the consent comply with the Building Code.

5.1.2 The matter in dispute is whether the authority correctly exercised its power in its decision to refuse to issue the code compliance certificate for these alterations. In deciding this matter, I have therefore considered:

- whether the alteration work complies with the building consent and the relevant clauses of the Building Code
- whether there are reasonable grounds for the authority to issue a code compliance certificate for the alteration work.

5.1.3 I also note that alterations need to comply with the Building Code to the extent required by Section 112(b) of the Act. These alterations must therefore continue to comply with the code to ‘at least the same extent as before the alteration.’

### 5.2 The grounds for establishing compliance

5.2.1 In order for me to form a view as to the code compliance of the alterations, I have established what evidence was available and what could be obtained considering that the building work is completed, and some elements are not able to be cost-effectively inspected. A visual inspection of accessible components can provide reasonable grounds to form a view on the code compliance of the alterations to this house.

5.2.2 In summary, I find that the following evidence allows me to form a view as to the code compliance of the building work as a whole:

- the drawings and specification
- the simple traditional nature of the building, and the modest alterations
- the authority’s pre-line inspection, and the likelihood that some hidden elements were inspected during this inspection, despite the lack of detail in the inspection records
- the construction photographs
- the expert’s report as outlined above
- the required level of compliance for some of the alteration work.

### 5.3 The compliance of the alteration work

#### ***Clause B1 Structure***

5.3.1 The builder has obtained a review of the house by an engineer. The assumed gravity loads appear to be underestimated by the engineer and don’t take account of some existing building elements. The loads arrived at, in terms of the required bracing demand, have not been carried through to the bracing calculations and a significantly higher figure has been used which the bracing calculations satisfy. It is noted the

review assumed that all the existing walls had bracing values as for new construction, which is unable to be verified.

- 5.3.2 The review highlighted the even distribution of the lined walls capable of resisting horizontal loads throughout the building, and the redundancy along most bracing lines. The exception to this is the eastern exterior wall which is reliant on one bracing element at the south end of the eastern wall. However, the expert raised no concerns about this particular bracing element.
- 5.3.3 I consider further engineering assessment and verification is required in respect of the connections at the bottom of lintel support studs (Area E) in order to satisfy the compliance of the structure with Clause B1 Structure.

***Clauses E2 External moisture, E3 Internal moisture, G4 Ventilation and G13 Foul water***

- 5.3.4 I conclude that investigation and/or remedial work is necessary in respect of the following areas:
- In regard to Clause E2, the unsealed junctions at the:
    - jamb facings to the kitchen window (Area E)
    - bathroom water heater junctions with the wall cladding
    - ensuite toilet drain pipe penetration through the wall cladding (Area B)
  - In regard to Clause E3:
    - the unsealed ensuite shower fittings (Area B)
    - the lack of ducting to the outside of the ensuite extract fan (Area B)
    - deteriorating sealants to some junctions
  - In regard to Clause G4:
    - the ensuite extract fan does not appear to be vented to the outside
  - In regard to Clause G13:
    - verification of an open terminal vent to the foul water drain
    - the lack of a grate to the gully trap outside the ensuite.

5.3.5 I consider that the expert's report provides me with reasonable grounds to conclude the building work is likely to comply with the remaining relevant clauses of the Building Code; being Clauses F2, G1 to G3, G9, G11, G12, and H1.

5.3.6 Effective maintenance is important to ensure ongoing compliance with Clauses B2, E2 and E3 of the Building Code and is the responsibility of the building owner. The Ministry has previously described these maintenance requirements (for example in Determination 2007/60).

## **5.4 Conclusions**

- 5.4.1 Pending engineering investigation and confirmation, I am unable to conclude whether the north east bathroom/dining wall and the connections at the bottom of lintel support studs comply with Clause B1 of the Building Code.
- 5.4.2 The alterations are required to comply with the durability requirements of Clause B2, which require the altered areas to satisfy all the objectives of the Building Code throughout their effective life. The durability requirements of Clause B2 include a requirement for wall claddings and wet area linings to protect the underlying framing

for a minimum of 15 years and for timber framing to remain structurally adequate for a minimum of 50 years. Because of the risk of moisture penetration into some areas of the wall framing, I am satisfied the alterations do not comply with Clause B2 insofar as it applies to Clauses E2 and E3.

- 5.4.3 Taking the expert's report into account, I am able to conclude that satisfactory rectification and verification of the matters outlined in paragraph 5.3 will result in the alterations complying with the Building Code. I am also satisfied the alterations comply with the remaining relevant clauses of the Building Code.
- 5.4.4 Based on the evidence received to date, I consider the authority was correct to refuse to issue the code compliance certificate.

## **5.5 Departures from the building consent**

- 5.5.1 The authority has refused to issue the code compliance certificate due to the lack of inspections, which were included as a condition of the building consent. This determination has established that, providing certain areas are attended to, the altered house will comply with the Building Code. However, the expert has also identified a number of departures from the consent drawings as outlined in paragraph 4.2.
- 5.5.2 The building consent was issued under the current Act, and Section 94(1)(a) of the Act requires an authority to 'issue a code compliance certificate if it is satisfied, on reasonable grounds' that the building work complies with the building consent. When considering the issue of a code compliance certificate for a building consent where the as-built construction differs from that consented, it is important to consider whether the completed work complies with the Building Code
- 5.5.3 There will often be minor variations from the consent documents and the authority should always be informed on these so that a proper process for dealing with these can be established. When changes are minor and the work complies with the Building Code an authority can record these by way of adequately detailed as-built drawings. The procedure for addressing such changes is addressed in the Building (Minor Variations) Regulations 2009, which defines minor variations. In this case, I consider that the variations are not of such a significant level that they would warrant a formal amendment of the building consent. I therefore leave the resolution of as-built drawings to the parties to resolve in due course.

## **6. What happens next?**

- 6.1 The authority may issue a notice to fix that requires the applicant to bring the building work into compliance with the Building Code, or issue another notice under section 95A taking into account the findings of this determination. Any notice should take into account the findings of this determination, identifying the areas outlined in paragraph 5.3.
- 6.2 The applicant should produce a detailed proposal to specifically address the matters of non-compliance, produced in conjunction with a suitably competent person. Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination. A code compliance certificate will be able to be issued once these matters have been rectified.

## 7. The decision

7.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the alterations comply with the relevant clauses of the Building Code with the following exceptions:

- the unsealed cladding penetrations and external jamb facing boards do not comply with Clause E2 External moisture of the Building Code
- the unsealed shower fittings, and deteriorating sealants do not comply with Clause E3 Internal moisture of the Building Code
- the extract fan to the ensuite does not vent to the exterior and does not comply with Clause G4 Ventilation of the Building Code
- the lack of a grate to the ensuite gully trap does not comply with Clause G13 Foul water of the Building Code

and accordingly, I confirm the authority's decision to refuse to issue a code compliance certificate for the alterations.

7.2 I consider there is insufficient evidence to establish whether:

- the connections at the bottom of lintel support studs comply with Clause B1 Structure
- the foul water drainage system complies with Clause G13 Foul water, with respect to open venting.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 20 April 2018.

Katie Gordon  
**Manager Determinations**