MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Determination 2015/005

The refusal to issue a code compliance certificate for a 12-year-old house completed under the supervision of a building certifier at 72 Aston Road, Waikanae

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, C and J Lewis ("the applicants")
- Kapiti Coast 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 the 12-year-old house because it was not satisfied that the building work complied with certain clauses[2] of the Building Code (First Schedule, Building Regulations 1992). The authority's concerns appear to relate primarily to the weathertightness of the claddings and because the building work had been undertaken under the supervision of Enviroplus Building Certifiers ("the building certifier"). The building certifier was duly registered under the Building Act 1991 ("the former Act"), but ceased operating as a certifier before it had issued a final code compliance certificate for the building work.

[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, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

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

1.4.1 Matter 1: Weathertightness

Whether the external building envelope of the house complies with Clause B2 Durability and Clause E2 External Moisture of the Building Code that was in force at the time the consent was issued. The building envelope includes the components of the systems (such as the wall cladding, windows, roofing and decks), as well as the way the components have been installed and work together. I consider this matter in paragraph 7.

1.4.2 Matter 2: The remaining relevant code clauses

Whether the building work complies with other relevant clauses of the Building Code that was in force at the time the consent was issued. I consider these clauses in paragraph 8.

1.4.3 Matter 3: The authority's exercise of powers

Whether the authority correctly exercised its powers of decision in its refusal to issue a code compliance certificate on the grounds provided. I consider this matter in paragraph 10.

1.5 I note that the applicants can apply to the authority for a modification of the durability requirements to allow durability periods to commence from the date of substantial completion of the house. Although I leave this matter to the parties to resolve in due course, I have taken the anticipated modification into account when considering the compliance of the claddings (see paragraph 7.3.1).

1.6 The building consent was issued under the former Act, and accordingly the transitional provisions of the current Act apply when considering the issue of a code compliance certificate for work completed under those consents. Section 436(3)(b)(i) of the current Act requires the authority to issue a code compliance certificate if it 'is satisfied that the building work concerned complies with the building code that applied at the time the building consent was granted'.

1.7 The evidence

1.7.1 In order to make this determination I have considered whether there is sufficient evidence to establish that elements identified by the authority in its correspondence with the applicants comply with the Building Code that was in force at the time the consent was issued.

1.7.2 In making my decision I have considered:

- the applicants' submissions
- the inspection report of a contractor to the Ministry engaged to carry out a visual inspection of the house ("the contractor")
- the report from a building surveyor engaged by the applicants
- the other evidence in this matter.

1.7.3 Based on the information and records supplied, I consider there is sufficient evidence available to allow me to reach a conclusion as to whether this building complies with the Building Code. This determination therefore considers whether it is reasonable

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

to issue a code compliance certificate. In order to determine that, I have addressed the following questions:

(a) Is there sufficient evidence to establish that the building work as a whole complies with the Building Code? I address this question in paragraph 5.

(b) If I conclude that the building work does not comply with the Building Code, are there sufficient grounds to conclude that, once any outstanding items identified in this determination are repaired and inspected, the building work will comply with the Building Code and a code compliance certificate is the appropriate certificate to be issued? I address this question in paragraph 9.

2. The building work

2.1 The building work consists of a detached house that is two-storeys high in part and is situated on a large rural north-sloping site in a high wind zone[4] for the purposes of NZS 3604[5]. The house is fairly complex in plan and form and is assessed as having a moderate to high weathertightness risk.

2.2 The house plan is U-shaped and includes a 'boomerang' wing, with the entrance and garage doors facing northwest and ground floor living areas in a north wing. Two bedrooms are provided in the ground floor, with a further two in the upper level.

2.3 Construction is generally conventional light timber frame, with some specifically engineered elements and with driven timber pile foundations beneath the single-storey north wing and remaining foundations of reinforced concrete. Wall and roof claddings are profiled metal, and window and door joinery is aluminium. The 18° pitch gabled roofs have roof overhangs that vary from about 100mm to more than 600mm.

2.4 All walls of the house are clad in horizontal corrugated colour-coated steel fixed through the building wrap directly to the framing timbers. Proprietary folded metal flashings are installed at corners, windows and other junctions.

2.5 The specification calls for the wall and roof framing to be 'Radiata Pine No. 1 Framing Grade H1' treated. However, the contractor was able to sight 'KD' markings on some garage framing, indicating untreated framing. Given the lack of evidence and the date of framing in 2001, I consider the timber framing is untreated.

2.6 The decks

2.6.1 On the ground floor, a veranda with timber posts, spaced timber decking and open balustrades surrounds the living area. The projecting walls of the kitchen and dining areas open onto the ends of the veranda, and timber steps lead up to timber decking that extends past the west dining area to the entrance veranda.

2.6.2 The upper level bedrooms open onto enclosed decks set into the slope of the lower roof, with membrane floors and clad balustrades. The master bedroom deck ("the north deck") extends around the west and north walls beneath the roof overhang. The deck from Bedroom 2 ("the south deck") is recessed beneath the southwest corner of the roof. Both decks include timber roof support posts which penetrate the cappings of the clad balustrades.

[4] According to the engineers bracing calculations
[5] New Zealand Standard NZS 3604:1999 Timber Framed Buildings

3. Background

3.1 The building certifier issued building certificate No. 10300 to the applicants on 18 September 2001 under Section 56 of the former Act. The certifier's scope of engagement included 'on site inspection at all stages of construction' and also noted 'steel floor beams by Engineer'. The authority issued building consent No. 011307 to the applicants on 4 October 2001, based on the building certificate.

3.2 Construction

3.2.1 The building certifier carried out the following inspections:

- Footings and pre-pour slab inspections on 5 October 2001 (which passed, noting 'ground conditions verified by engineer).
- Framing/ bracing and external cladding on 15 November 2001 (which passed, noting 'all metal strap wall bracing elements fixed satisfactorily. OK').
- Pre-lining plumbing inspection on 3 December 2001 (which passed, noting 'pressure test all plumbing. OK to line').
- Pre-lining building inspection on 3 December 2001 (which passed, 'insulation walls – all in place').
- Post-lining building inspection on 3 December 2001 (which passed, 'sheet bracing elements fixed as per plan and Gib spec - OK).
- Progress inspection on 10 February 2002 (which noted 'interior painting/decorating done).

3.2.2 Based on a guarantee dated 4 March 2002, the house was substantially complete by March, when only 'a few minor items were still to be completed'. Based on invoices, it appears that the applicants completed finishing minor work over the next few years and the building certifier issued an interim code compliance certificate (No. 1925) dated 10 February 2003 'in respect of part only of the building work'.

3.2.3 Without issuing a final code compliance certificate, the building certifier ceased to operate as a building certifier at the end of 2003 and the last inspection recorded by the certifier is a 'final' inspection on 10 December 2003, which noted 'INTERIM ONLY – sent to [the authority] with closing reports'.

3.2.4 I have seen no correspondence between the parties until the applicants prepared to sell the property in 2013 and discovered that the authority's property records contained only the building consent and the engineer's bracing calculations. The building certifier provided a statement dated 13 May 2013 which confirmed that 'all the inspections up to the post lining stage were carried out' and noted:

> At the time of closing all the existing jobs in progress were handed over to the relevant local authority complete with up to date inspection details and copies of the work files.

3.3 The building surveyor's inspection report

3.3.1 Following the submission of information able to be located in the builder's records, the applicants requested a code compliance certificate and met with the authority on 7 June 2013. In a letter dated 10 June 2013, the authority confirmed it was 'unable' to issue a code compliance certificate, adding that the applicants 'have the option to

apply for a certificate of acceptance'[6]. A subsequent email noted that before a certificate would be considered, 'a report from a building surveyor or similarly qualified independent third party' would be required.

3.3.2 The applicants engaged a building surveyor who inspected the house on 26 June, 4 July and 11 July 2013; providing an undated report which the applicants forwarded to the authority. The surveyor noted that his inspection was limited to an assessment of the weathertightness and durability of the as-built construction and did not include appraisal of structural aspects, land/ground or services.

3.3.3 The building surveyor took non-invasive moisture readings through linings of external walls, with most readings ranging from 10% to 15%, except for:

- window sill in shower recess to ground floor bathroom (21%)
- north end of the Bedroom 2 southwest window sill beside corner (19%)
- the hallway ceiling below the corner post of the south deck (90%)
- the ceiling below the corner post of the north deck (49% to 65%)
- the soffit framing to the eaves at the northwest corner of the garage (27%)

3.3.4 The building surveyor also included the following comments (in summary):

- High moisture readings and water stained plywood beneath the ground floor shower indicate leaks through the shower base.
- Although there are signs of ponding to the butyl rubber deck membrane, no water is ponding over membrane joints.
- Cladding and floor clearances are below those shown in E2/AS1, with some areas where:
  - cladding/door sills touch the deck membranes
  - cladding/door sills touch the timber decking
  - garden areas cover the bottom of the cladding.
- The subfloor framing is clad with spaced baseboards, with damp floor framing and mould growth on the underfloor wrap. However, the underside of the particle board floor is dry.
- There is no diverter fitted to the lower end of the apron flashing at the junction of the east wall of the dining area with the adjacent veranda roof.
- There are unsealed gaps to the garage roof ridge flashing and high moisture levels in the soffit framing to the eaves at the northwest corner.
- Additional cross bracing is recommended to 1.8m high underfloor piles.
- The corrugated cladding is fixed directly to the framing and flashing folds and junctions are concealed and therefore unable to be assessed.

3.4 The authority's initial position

3.4.1 The applicants and the builder met with the authority on 23 August 2013 to discuss options for resolving the situation. In a letter to the applicants dated 28 August 2013; the authority noted it held no building certifier's inspection records except for the certifier's inspection of the concrete slab.

[6] Although an application for a certificate of acceptance was completed on 13 June 2013, the applicants subsequently withdrew this.

3.4.2 The authority noted that there is no requirement for a code compliance certificate for this building consent but the applicants could proceed with their application for a certificate of acceptance, which would require:

> ...a full set of documentation to show that the building work complies with the Building Code at the time the [certificate of acceptance] is applied for.

3.4.3 The authority also noted that the applicants could formally apply for a code compliance certificate, which would require evidence of the following (in summary):

- that the building work complied with the Building Code that was in force at the time the consent was issued, which would need information from a 'suitably qualified third party'
- that work now concealed was undertaken appropriately, due to the lack of inspections by the authority
- an amendment to the original building consent to 'modify durability to a date when construction was completed'.

3.5 The applicants' proposal

3.5.1 In a letter to the authority dated August 2013, the applicants attached the building surveyor's report and noted that the house had been inspected prior to the August meeting. The applicants confirmed that they wished to obtain a code compliance certificate and therefore intended to carry out work to 'ensure the house is compliant with the 2001 code'; asking the authority to review their proposals and confirm that a code compliance certificate 'can be uplifted or otherwise on this basis'.

3.5.2 The applicants listed 'items of concern' raised by the surveyor and outlined proposed investigations and/or remedial work. The items of concern are categorised and summarised in Table 1.

Table 1: Response to the surveyor's report

Area	Building surveyor's concerns	Applicants' proposals for builder to carry out	Clauses
Elevated moisture readings	Window sill in shower recess to ground floor bathroom	Check flashings and if necessary replace	B2,E2
	Window sill to bedroom 2	As above	
	Ceilings beneath deck posts	Refer below	
	Tiles to ground floor shower	Remove tiles to inspect wall and membrane - repair if necessary	B2, E3
	Ply substrate to shower base	Replace shower base if necessary	
Upper level decks	Drainage outlets/ ponding	Check all outlets for blockages – soak test to ensure free flow. If necessary, replace drain with larger size.	B2,E2
	Deck posts through cappings	Check for flashing/sealant failure – repair as necessary.	
	Concealed saddle flashings	Review and replace if necessary.	
Cladding general	Screw fixings corroding	Replace corroded fixings	B2
	Underlying parts of flashings not known	Review and replace flashings if necessary	B2,E2
Clearances	Floor/cladding clearances to deck membranes	No action as no associated problems over past 10 years.	B2,E2

Area	Building surveyor's concerns	Applicants' proposals for builder to carry out	Clauses
	Floor/cladding clearances to ground floor timber decking	Check areas and cut back decking if necessary to ensure free drainage.	
	Door sill clearance to paving at laundry door	Check for moisture – cut back concrete at laundry door to increase channel	
	Floor/cladding clearances to ground	Lower ground levels	
	Garage floor/cladding clearances	No action as no associated problems over past 10 years	
Sub-floor timbers	Damp sub-floor framing	Review moisture levels and check sub-floor ventilation – increase if necessary	E2
Roof	Lack of diverter to bottom of apron flashing	Repair due to risk of moisture	B2,E2
	Gaps to garage roof ridge flashing	Install additional fixings	
	Elevated moisture to soffit framing	Review and repair to prevent windblown rain penetration	
	Flashing to flue penetration	Over flashing to be installed	
Sub-floor bracing	Additional bracing recommended	Foundations as per consent drawings. No known problems so no action.	B1

3.5.3 Work was subsequently carried out and a statement from the builder identified the following remedial work had been undertaken:

- deck posts flashed and over-clad with timber
- ridge flashings refixed
- underfloor piles and bearers bolted and braced
- new end caps to garage eaves.

3.6 The refusal to issue a code compliance certificate

3.6.1 On 12 September 2013, the applicants submitted a formal application for a code compliance certificate, attaching producer statements, invoices, receipts and various photographs. The authority reviewed the information without inspecting the house and on 21 October 2013 requested further information about structural elements and fixings – particularly in regard to concealed items.

3.6.2 Following a 'full site survey including the removal of cladding and sections of the roof to provide additional evidence as requested' the applicants provided additional photographs and stated that the builder 'has confirmed all works have been constructed in accordance with the relevant codes at the time of construction.'

3.6.3 In a letter to the applicants dated 28 November 2013, the authority noted that it required further information as it 'had not processed the building consent nor carried out inspections for this consent and had limited information on our file'. (I note that the authority had not inspected the house.)

3.6.4 The authority had 'thoroughly examined and considered all of the supporting documentation supplied' but refused to issue a code compliance certificate because it

> ...could not be satisfied on reasonable grounds that all aspects of construction met the requirements of the building code at the time the consent was issued...

3.6.5 The authority provided the following reasons for the refusal (in summary):

- Insufficient evidence of compliance with Clauses B1 and B2 (for example treatment of in-ground posts and hidden structural connections)
- Decks not constructed as per the consent drawings (for example deck fall)
- Issues in the building surveyor's report that need addressing in regard to:
  - elevated moisture readings
  - insufficient clearances
  - waterproofing below shower tiles.

3.7 The building certifier's records

3.7.1 In January 2014, the applicants contacted the building certifier in regard to obtaining some further information on the inspections carried out. Further discussions and correspondence followed over the next few months, with the authority rejecting the initial archived spreadsheet information. However, with further investigation, the building surveyor recovered copies of the original records.

3.7.2 On 10 February 2014, the building surveyor provided the applicants with 'a true and duplicate report of the one that would have been issued at the conclusion' of the project (see paragraph 3.2) and noted that there was no record of a drainage inspection. (I note that this is likely to be the reason that the code compliance certificate issued on 10 February 2003 was interim only.)

3.7.3 The applicants then decided to engage chartered engineers ("the engineer") and the original architect to inspect the house, review available information and to provide reports.

3.8 The architect's report

3.8.1 In a report dated 24 February 2014 the architect considered that the certifier's inspection record showed all components of the house passed at respective stages, with the final inspection on 10 December 2003 providing 'a clear direction to the [authority] to issue the code compliance certificate.'

3.8.2 The architect considered that the building surveyor's report contained errors and omissions. The architect noted that 'minor maintenance issues will be attended to shortly' and considered that the 'house is now twelve years old and has withstood the test of time admirably'. The architect concluded that the authority should reconsider its position and issue the code compliance certificate.

3.9 The engineer's report

3.9.1 The engineer met with the authority on 12 February 2014 and provided a report dated 26 February 2014, which referred to the following documentation:

- the building certifier's statements and records
- the interim code compliance certificate
- producer statements for:
  - the solar hot water installation
  - stormwater and private sewer drains
  - piped services and sanitary plumbing stacks

- electrical certificate of compliance
- gasfitting certification certificate.

3.9.2 In regard to structural compliance, the engineer understood that the interim code compliance certificate included structural matters up to the date of issue on 10 February 2003, noting:

> Since the structure was complete at that date, it is our understanding that the Interim Code Compliance Certificate should now be able to be replaced by the final Code Compliance Certificate, or an equivalent letter, for structural aspects.

3.9.3 In regard to drainage and services, the engineer noted the building surveyor's statement regarding the lack of a final drainage inspection, but considered that producer statements for building services can 'comply with the 2001 regulations in terms of code acceptability of the drainage and electrical systems' providing an authority accepted these as the formal 'instrument of proof of compliance' at the time.

3.9.4 The engineer concluded that 'it would be legally acceptable' for the authority to issue a code compliance certificate and added that:

> … we understand that the drainage systems have performed satisfactorily during the 11 year period since completion. In the same period the structure has successfully resisted the earthquakes of 20 July 2013, 16 August 2013 and 20 January 2014 plus winds up to gale-force at times.

3.10 The third request for a code compliance certificate

3.10.1 The applicants submitted the above reports, producer statements and certifier records under a cover letter to the authority dated 27 February 2014. The applicants noted that since the authority's refusal on 28 November 2013 they had:

- re-engaged the original building certifier and 're-built' the computer system to recover original inspection records and the interim code compliance certificate
- engaged the original registered architect to inspect the house and review the completed project file
- engaged a chartered engineer to review the project file.

3.10.2 The applicants attached the architect's and engineer's reports with the building certifier's recovered records and producer statements. The applicants included the following comments (in summary):

- The building certifier's certificate was issued as an interim certificate only as services were to be signed off by installers by way of producer statements.
- The 'combined team' is of the view that the interim code compliance certificate and producer statements were compiled and issued to the authority with a request for a final code compliance certificate to be issued by the authority.
- It is understood that the authority believes that this information was never received or was misplaced; however, as the information is now located that is no longer of importance.
- In regard to the authority's specific concerns:
  - the original building consent was processed by the authority

- the engineer has completed a detailed structural engineering review of the house and confirmed that it complies with the Building Code that was current at the time of construction
- decks complied with the Building Code that was current at the time of construction
- the building surveyor's report was reviewed on site and in detail with the builder; maintenance items have been addressed and other items dismissed in the architect's report
- all typical maintenance items have now been reviewed and addressed.

3.10.3 The applicants noted that 'a very large amount of time and money has now been spent on getting this resolved' and believed that adequate detail has been provided.

3.10.4 The authority responded on 28 March 2014, stating that it had reviewed the producer statements, certificates and interim code compliance dated 10 February 2003. As certifiers could issue certificates under the 1991 Act, the authority considered no further action was needed other than to 'update' its records. The authority found:

> ... no exclusions as part of this certificate. The supporting certificates all predate this date and the services that they encompass are not excluded from the certificate issued by [the building certifier]. [The authority] is not required to take any further action as under the Building Act 1991 building certifiers could issue these certificates under section 56(3)...

3.10.5 To clarify the situation, the authority subsequently confirmed by an email dated 28 March 2014 that records would be updated to reflect that a code compliance certificate was issued by the building certifier in 2003.

3.11 The property records

3.11.1 On the understanding that code compliance matters had now been resolved, the applicants put the property back onto the market and in July 2014 requested a copy of the building file for a potential purchaser only to discover the file had not been updated. It appears there were problems with the computer file, which had apparently been 'corrupted' and was not updated until September 2014.

3.11.2 In the meantime a prospective purchaser had discovered that although the LIM report referred to a code compliance certificate, the authority had not inspected the house and the code compliance certificate was only interim. It appears that information within the file was confusing and disjointed, with irrelevant information, duplicated copies, and ambiguities between various documents.

3.11.3 Further correspondence followed and on 13 October 2014 the authority provided a draft letter intended for discussion 'setting out the parameters of any statement that the [the authority] would be prepared to make'. The draft letter included the following (in summary):

- The final statement would be included on the property file, with a copy included on any LIM generated.
- The former Act permitted:
  - building certifiers to issue code compliance certificates if satisfied on reasonable grounds that building work complied with the Building Code at the time the certificate was issued
  - interim code compliance certificates to be issued for part of the building work under the building consent.

- The above provisions are no longer part of the current Act and the building certifier no longer operates as a building certifier.
- The authority is not in a position to issue a 'final code compliance certificate' as it had no involvement in this project at the time of construction.
- The authority has received reports on the subject house from the builder, a registered architect and a chartered professional engineer.

3.12 On receiving a copy of the proposed draft letter, the applicants decided that further discussions with the authority would fail to resolve matters to a satisfactory level and the Ministry received an application for a determination on 28 October 2014.

4. The submissions

4.1 The applicants provided a detailed submission dated 28 October 2014, which set out the background to the dispute since 2012 when the applicants obtained a copy of the property file and discovered that the file held no inspection records and no code compliance certificate. The applicants outlined the efforts made to resolve the situation over the following two years, with remedial work carried out in response to a building surveyor's report, copies of certifier's inspection records extracted from archived records and reports from the original architect and an engineer.

4.2 After reading the authority's draft statement purporting to clarify the inspection history and intended to be included on any LIM generated for the property, the applicants decided to apply for a determination.

4.3 The applicants forwarded copies of:

- the consent drawings and specification
- the building certifier's building certificate dated 18 September 2001
- the building consent dated 4 October 2001
- the building certifier's inspection records
- the interim code compliance certificate dated 10 February 2003
- the building surveyor's inspection report
- correspondence with the authority
- the architect's and engineer's reports
- various producer statements, certificates, warranties and other information.

4.4 The authority made no submission in response to the application for determination. In not carrying out an inspection of the house and making no submission, the authority has not provided any evidence as to why they believe the building work is not code-compliant. I do not believe that this is acceptable. It is important that, should an owner be declined a code compliance certificate, they be given clear reasons why. This requirement is set out in section 95A of the Act. The owners can either then act on those reasons or apply for a determination if they dispute them (I address this further in paragraph 10).

4.5 A draft determination was issued to the parties for comment on 12 December 2014.

4.6 The applicants responded on 23 January 2015 noted some typographical errors and omissions, and asked that the determination say at paragraph 12.2 that the code

compliance certificate 'can be issued' after the house is brought into compliance with the Building Code.

4.7 The authority also responded on 23 January 2015 accepting the determination's finding's with respect to compliance. However, the authority noted that:

- It had not received information from the certifier when that business closed [in 2004] and this had been provided by the applicants in February 2014.
- The authority did not believe it had received the completion notice for the fire referred to in paragraph 8.3.1. (I note the notice is date-stamped with the same stamp used by the authority on other documents it received.)
- It had acted in accordance with section 95A in providing reasons for refusing the code compliance certificate in its letter dated 28 November 2013 , and it was of the view that it was not required to 'follow up' on the certifier's work.
- The application for a code compliance certificate had been declined in its letter dated 28 November 2013, and it had not received a new application for a code compliance certificate since that date.

5. Grounds for the establishment of code compliance

5.1 In order for me to form a view as to the compliance of the building work, I established what evidence was available and what could be obtained considering that some elements are not able to be cost-effectively inspected.

5.2 In the case of this house, I observe that:

- records and correspondence generally indicate that:
  - the building certifier carried out satisfactory inspections during construction, with the last inspection recorded as final on 10 December 2003 prior to ceasing operations at the end of 2003
  - the building certifier issued an interim code compliance certificate on 10 February 2003, and apparently this was an interim certificate only due to the lack of final drainage inspections
  - the certifier has stated that all records of incomplete existing jobs were forwarded to the authority for completion of inspections and the issuing of code compliance certificates
  - the authority appears to have mislaid the records, carried out no inspections and for 10 years raised no queries regarding the status of the unresolved building consent
- over the past 12 years, the house has experienced significant earthquake and storm events, which are expected to have tested the building's weathertightness and structural performance.

5.3 In the absence of any evidence to the contrary, I take the view that I am entitled to rely on the building certifier's inspection records and statements, but I consider it important to look for evidence that corroborates or contradicts these records to verify whether inspections were properly carried out. I also consider that the level of reliance is influenced by other information available to me and by the nature of this house.

5.4 In summary, I find that the following evidence will allow me to form a view as to the code-compliance of the building work as a whole:

- The record of inspections carried out by the building certifier, which indicates satisfactory inspections of the building work (refer paragraph 3.2.1).
- The interim code compliance certificate.
- The reports, producer statements and other technical information.
- The contractor's report as outlined below.

6. The site inspection

6.1 In order to verify the impression given by the evidence, the Ministry's contractor visited the house with a Ministry official on 21 November 2014 to carry out a visual inspection. The contractor furnished a report dated 27 November 2014 which was forwarded to the parties along with the draft determination (refer paragraph 4.5).

6.2 General

6.2.1 The contractor noted that the house appeared to have been 'generally built to a good standard although maintenance to some areas is now required after some 12 years'. The contractor and the official carried out some limited moisture testing and invasive investigation, paying particular emphasis to items identified in the building surveyor's report (see paragraph 3.3).

6.2.2 The contractor inspected the interior of the house, noting that:

- the interior appears to be dry, with 'no cracking, creasing, bulging, mould growth or other signs of moisture or movement' on linings and trim
- there is no swelling, joint cracks or other signs of moisture in fibreboard architraves and reveals to window and doors
- there are no visible cracks to plasterboard joints and doors open freely, with no indication of movement
- there is no evidence of moisture damage on ceiling linings directly below the upper decks.

6.2.3 The contractor also inspected exterior wall claddings, noting that:

- the cladding appears to have been competently installed by an experienced applicator and includes proprietary flashings commonly used for corrugated cladding installed at that time
- windows within the metal cladding appear satisfactory, with proprietary metal sill and head flashings that extend above the jamb flashings
- the deck membrane appears in good condition, with well-formed overlaps, two outlets to each deck and no visible sign of moisture penetration.

6.3 Windows and doors

6.3.1 Partially removing away several sections of cladding verified that windows and doors include proprietary formed flashings at heads, jambs and sills, with jamb flashings extended about 100mm behind the cladding and profiled foam strip seals beneath the cladding. The units within the corrugated cladding appeared to be satisfactorily installed in accordance with good trade practice at the time of installation.

6.3.2 However, the contractor noted that some windows are adjacent to corners, with jamb flanges face-fixed over flat metal infill strips. Probing behind the north jamb of the toilet east window revealed that no seals had been installed under flanges. The contractor considered this would be typical of similar locations such as the exposed north end of the east window to Bedroom 2, where elevated moisture levels were recorded by the building surveyor after wet weather (see paragraph 3.3.3).

6.4 Cladding and floor clearances

6.4.1 The contractor noted that the following areas appeared satisfactory in the circumstances:

- Despite limited cladding clearances and overlaps on the east elevation, the ground appears well-drained and dry despite recent rain. Removing cladding revealed no signs of moisture or water stains on building wrap.
- Despite little floor clearance at the east laundry door, the concrete landing is dry and unstained, with a channel that drains water away from the threshold and no signs of moisture damage inside the laundry door.
- Although drainage between decking and cladding is impeded by framing, the decking is in good condition with no sign that moisture is held within timbers. Except for the dining room west wall, the deck/wall junctions are sheltered under verandas and adjacent walls are above ventilated sub-floor areas.
- Despite limited clearances beside garage doors; the driveway concrete is very dry and drains away from the wall, with no sign of water ponding at junctions and no sign of moisture damage to the interior of the partly-lined garage.
- Although clearances at upper deck thresholds are only about 30mm and cladding clearances are about 15mm, the junctions are sheltered beneath deep roof overhangs with no sign of ponding near walls. Removing cladding revealed a well-formed membrane upstand of about 150mm behind the cladding and no signs of moisture on the building wrap.

6.4.2 However, the contractor also noted that stones are built up at the bottom of the cladding along the north and south walls of the garage, and the coating to the bottom of the profiled metal is showing some deterioration.

6.5 The subfloor area and framing

6.5.1 The contractor noted that the sub-floor area is generally well ventilated, with a combination of spaced boarding and open areas providing good air flow through the area. The ground level also falls to the northwest, with water unlikely to accumulate despite rain draining through spaced timber decking. However, the contractor noted damp plywood and timber beneath the tiled shower.

6.5.2 Floor joists are nail-fixed to bearers, with new bolted connections from bearers to poles beneath the living room walls. Elsewhere bearers are only nail-fixed to poles. This required structural verification.

6.6 Roof flashings

6.6.1 Although leaf debris is accumulating in some areas risking gutter overflows, the contractor observed that roofing generally appears satisfactory and ridge flashings are now well fixed. Timber facings that form caps to the ends of the garage eaves

have been replaced, and there are now no gaps likely to allow moisture to penetrate into the soffit framing.

6.6.2 The building surveyor had noted the lack of diverters to the bottom of apron flashings at the entry veranda. The contractor did not consider these necessary as the apron upstand extends under the cladding overlap and prevents any moisture penetrating through the wall cladding.

6.6.3 The contractor noted that the flue through the living room roof has an overflashing that overlaps and is riveted to roofing on the upslope side, with gaps that risk water penetration at the junction.

6.7 Upper decks

6.7.1 The contractor noted that the butyl rubber membrane is in good condition, with well-adhered joints and no indication of lifting or bubbling from the substrate. The deck floors are generally well sheltered beneath deep roof overhangs, although subject to windblown rain. The contractor also expected the membrane upstand observed at the wall to continue behind the cladding of the balustrades.

6.7.2 The contractor observed light marking indicating some limited ponding near drainage outlets which had apparently been blocked in the past. Despite signs of historic ponding, there is no indication of recent water marks and deck outlets are currently clear of debris with butyl rubber dressed neatly into outlets. However, the contractor considered that the lack of covers makes outlets prone to blockages from wind-blown debris which can cause the type of ponding observed by the building surveyor and could lead to moisture penetration into the ceilings below.

6.7.3 The contractor also noted that balustrades are clad in corrugated coloursteel, with flat coloursteel cappings to the tops and apparently satisfactory saddle flashings at balustrade/wall junctions. The capping appeared to be dished at one post holding water against the capping /post junction.

6.7.4 Each deck includes roof support posts that penetrate the cappings and the building surveyor had recorded high moisture levels in ceilings below the posts. The posts were originally exposed timber and it is likely that moisture soaked into the posts and also penetrated post/balustrade junctions. Posts are now clad on all faces with new timber facing boards and the builder stated that underlying junctions were ‘flashed’ when repairs were carried out.

6.7.5 The contractor concluded that, despite the lack of visible evidence, longer term weathertightness of the balustrade/post junctions could not be verified without further investigation, including:

- removal of post facings to confirm the underlying weatherproofing of the post/balustrade junctions
- removal of cladding panels on the deck side of the cladding beneath deck posts to establish moisture levels and the condition of balustrade framing.

6.8 Weathertightness conclusions

6.8.1 The contractor concluded that attention in the form of investigations and/or repairs was required in regard to:

- the lack of jamb seals where some flanges are fixed against flat coloursteel
- weatherproofing of flashing to the flue through the living room roof

- the lack of leaf guards to deck drainage outlets to prevent future pipe blockages
- removal of balustrade cladding below deck posts to verify moisture levels and the condition of timber framing below the post/balustrade junctions
- the lack of sealing of some penetrations through the wall cladding.

6.8.2 The contractor also considered that that following items required attention but could be carried out as maintenance to ensure ongoing weathertightness:

- unpainted cut edges to the colour-coated cladding, which risk corrosion of the bare metal and therefore affect its durability
- sealants to the overlapped riveted joint between sill upstands and flat sheet metal where joinery jambs are fixed against flat metal strips
- corroding fixings on both roofing and wall cladding
- soil and stones against the bottom of the cladding on garage walls and the deteriorated metal coating in some areas
- clearance of debris from some roof and gutter areas
- completion of painting and sealing junctions between boards installed over deck posts to prevent moisture from reaching and soaking into the posts
- refixing and sealing of exterior light fittings, with some fixings not secure.

6.9 Structure (B1)

6.9.1 The contractor observed that interior rooms have no cornice mouldings and many ceilings are sloping, with exposed plastered junctions likely to crack from minor movement of the structure. Despite experiencing significant earthquake and winds events the past 18 months, there were no visible cracks to plasterboard joints and trim or other signs that would indicate the structure had not resisted such movement.

6.9.2 However, within the subfloor area the contractor had observed some questionable items that the contractor considers need verification:

- Some nailed connections appear inadequate and some recently bolted connections appear to be too close to timber edges.
- Deck joists are reduced in depth to allow a step-down from the interior floor joists and are nail-fixed to bearers on the north and to ribbon plates on the west.
- A cross brace to the east is notched into about a third of the diameter of a pole.
- Poles beneath north corners of the veranda appear to rely on nail-fixed connections to deck framing.

6.9.3 The contractor concluded that the lack of any signs of movement indicates that the structure of the house appears to have performed satisfactorily over the 12 years since it was completed in 2002. However, the contractor also considered that the subfloor items as outlined above should be verified to ensure that the structure continues to perform adequately.

6.10 The ground floor shower (E3)

6.10.1 The contractor noted that the building surveyor had recorded very high moisture levels adjacent to the drain outlet in the ground floor tiled shower. The outlet had subsequently been found to be loose and had been repaired.

6.10.2 However, plywood was still obviously damp and water-marked, particularly near the shower perimeter and ply joints. High moisture readings were recorded under the corner of the shower beside the shower/bath partition and elsewhere beneath the tiled wall/floor junction.

6.10.3 The contractor concluded that water is still finding its way through tile joints and underlying waterproof membrane (if any) to saturate the underlying plywood and timbers. The contractor considered that repairs are necessary in the form of:

- tile removal in the shower floor and lower walls to fully investigate the existence and/or condition of the underlying waterproof membrane
- installation of a new membrane prior to retiling the shower.

6.11 Other items

6.11.1 Although the site inspection focussed on the primary areas of concern identified by the building surveyor and subsequently by the authority, the contractor also noted the following items associated with compliance with other relevant clauses of the Building Code:

- the hot water cylinder lacks earthquake restraints (Clause B1)
- the internal staircase lacks a handrail and the handrail to the landing is less than 800mm above floor level (Clause F4)
- some insulation in wall/ceiling partitions between the uninsulated garage and the insulated house has been dislodged and significant gaps will allow heat to escape from occupied areas (Clause H1)
- some underfloor insulation is missing or damaged (Clause H1).

6.12 The contractor concluded that, providing that items identified are 'appropriately investigated and attended to, the house should meet the requirements of the Building Code in force when the building consent was issued in 2001.'

Matter 1: The external envelope

7. Discussion

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

7.2 Weathertightness risk

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

Increasing risk

- the house is two-storey in part and is in a high wind zone
- the house is fairly complex in form, with some complex junctions
- there are two upper decks with clad balustrades situated over lower rooms
- walls have horizontal corrugated cladding fixed directly to the framing
- the external wall framing is not treated to a level that provides sufficient resistance to decay if it absorbs and retains moisture.

Decreasing risk

- there are eaves and verges to shelter some of the walls and junctions
- verandas shelter the upper decks.

7.2.2 Using the E2/AS1 risk matrix to evaluate these features, elevations are assessed as having a moderate to high weathertightness risk rating. If current E2/AS1 details were adopted to show code-compliance, drained cavities would be required for all elevations; however this was not a requirement at the time of construction in 2001.

7.3 Weathertightness performance

7.3.1 I note that an application can be made to the authority for a modification of the durability requirements to allow durability periods to commence from the date of substantial completion in February 2002. Although that matter is not part of this determination (see paragraph 1.5), I have taken the anticipated modification into account when considering the weathertightness performance of the claddings.

7.3.2 Taking account of the contractor's report, claddings appear to have been installed in accordance with applicable manufacturers' instructions at the time of construction. However, the contractor has identified investigation and/or remedial work required in respect of the following areas:

- the lack of jamb seals where joinery flanges are fixed against flat metal strips
- inadequate weatherproofing of the flashing to the flue
- the lack of sealing of some penetrations through the wall cladding
- the lack of leaf guards to deck drainage outlets to prevent future pipe blockages
- investigation/repair of the clad balustrade to upper decks, including:
    - verification of the weatherproofing flashings to post/capping junctions
    - repairs to areas where the flat capping is ponding against junctions
    - verification of moisture levels in and timber condition of framing below junctions
    - if necessary, repair any timber damage resulting from past leaking.

7.3.3 I note the contractor's comments in paragraph 6.8.2 on items requiring attention to ensure ongoing weathertightness and I accept that this work may be carried out during the above remedial work or otherwise as maintenance.

7.3.4 I also note the contractor's opinions in regard to some cladding and floor clearances (see paragraph 6.4.1), and accept that these areas are adequate in the particular circumstances outlined.

7.3.5 Notwithstanding that the horizontal corrugated steel 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 corrugated steel is installed according to good trade practice and to manufacturer's' instructions common at the time of installation.
- Although there is some superficial deterioration in some areas, the corrugated steel cladding is generally in good condition for its age.
- In areas remote from the defects identified in paragraph 7.3.2, there is no evidence of moisture penetration into framing after some 12 years.

7.4 Weathertightness conclusion

7.4.1 Although there is no visual evidence of current external moisture penetration into the timber framing, there has been past moisture penetration into ceilings beneath the upper decks. The condition of timber framing and the adequacy of repairs could not be assessed and therefore the contractor could not confirm that the performance of the building envelope is adequate. Accordingly I hold the view that I do not have reasonable grounds to be satisfied that the house currently complies with Clause E2 of the Building Code.

7.4.2 In addition, the claddings are also required to comply with the durability requirements of Clause B2, which requires that a building continues to satisfy the performance requirements of the Building Code for the periods specified in Clause B2.3.1. Because the identified faults may allow the ingress of moisture in the future, the building work does not comply with the durability requirements of Clause B2.

7.4.3 Because the identified faults in the cladding occur in discrete areas, I am able to conclude that satisfactory investigation and rectification of items outlined in paragraph 7.3.2 will result in the exterior building envelope being brought into compliance with Clauses E2 and B2 of the Building Code.

7.4.4 It is emphasised that each determination is considered on a case-by-case basis. Accordingly, the fact that a particular cladding system has been established as being code-compliant in relation to a particular building does not necessarily mean that the same cladding system will be code-compliant in another situation.

7.4.5 The contractor has identified areas requiring maintenance to ensure ongoing weathertightness (see paragraph 6.8.2). Effective maintenance of claddings is important to 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).

Matter 2: The remaining relevant code clauses

8. Discussion

8.1 Taking account of the contractor's report and the other evidence, the following paragraphs address the compliance of this house with other relevant Building Code clauses in force at the time of construction.

8.2 Clauses B1 Structure

8.2.1 The house is a fairly conventional structure and the building certifier's inspection summary records satisfactory inspections of foundations and floor slab, indicating that ground conditions were verified by the design engineer. The record also notes that metal strap bracing was passed during pre-line inspections and sheet bracing was passed at the post-lining inspection.

8.2.2 The contractor noted no visible signs of structural settlement or external movement, no cracks to internal lining joints and no sticking doors. The lack of movement indicates that the structure of the house has performed satisfactorily over the 12 years since it was completed in 2002. The engineer's report also noted the 'structure has successfully resisted the earthquakes of 20 July 2013, 16 August 2013 and 20 January 2014 plus winds up to gale-force at times' (see paragraph 3.9.4).

8.2.3 However, the contractor raises questions regarding the structural adequacy of some sub-floor fixings and bracing and I accept that an engineer's assessment and report is required regarding the structural compliance of the subfloor fixings and bracing.

8.3 Clause C: Fire safety

8.3.1 In regard to the free standing fire, the applicants provided the authority's standard form completed by the installer and stamped as received by the authority on 1 May 2002. This confirms that the unit is installed in accordance with the manufacturer's installation instructions and met applicable requirements at the time.

8.4 Clause E1: Surface water

8.4.1 Although no final drainage inspection is recorded, the applicants provided a registered drainlayer's producer statement dated 18 December 2001 for construction review of stormwater drains. The drainage systems have also apparently been performing satisfactorily since that time.

8.4.2 The site slopes to the northwest, with good falls away from the building and sloping ground in the ventilated sub-floor and the contractor observed no signs of unsatisfactory surface water drainage.

8.5 Clause E3 Internal moisture

8.5.1 The upper level proprietary shower cubicle is fitted with impervious linings and trays and sanitary fittings were sealed to walls where required. The kitchen benchtop includes satisfactory sealed splashbacks and the contractor noted there was no indication of moisture.

8.5.2 However, the tiled walk-in shower in the ground floor bathroom is not adequate, as water is penetrating tile joints and any underlying waterproof membrane, with water penetrating the underlying plywood substrate and adjacent timbers. I consider that a defective or missing waterproof membrane is the likely cause of high moisture levels noted by the contractor under the shower floor and also previously recorded by the building surveyor behind the lower tiles of the shower walls.

8.6 Clause F2 Hazardous building materials

8.6.1 Toughened glass appears to have been used where required in bathrooms, with a proprietary shower cubicle and conventional door units expected to include appropriate safety glass.

8.7 Clause F4 Safety from falling

8.7.1 Although upper deck balustrades are just below 1m height from deck floors, the contractor noted that roofs on the other sides of the balustrades will reduce the fall height. I consider the height of the balustrades are satisfactory in the circumstances.

8.7.2 The internal staircase lacks a handrail and the handrail to the landing is less than 800mm above floor level.

8.8 Clause G1 to G8 (Personal hygiene, Laundering, Food preparation, Ventilation, Interior environment, Natural light, Electricity and Artificial light

8.8.1 The house generally complies with the consent drawings, the interiors were inspected by the building certifier and the drawings show adequate provision to comply with the requirements.

8.8.2 The applicants have provided an electrical certificate of compliance dated 18 December 2001 and the contractor observed no evidence of non-compliance.

8.9 Clause G11 Gas as an energy source

8.9.1 The applicants have provided a copy of the gasfitting certification certificate. The parts of the copy that can be read show that the certificate applies to installation of the kitchen gas hob, with gas supplied from external LPG cylinders. The certificate indicates that satisfactory testing of the system was carried out on 7 March 2002.

8.9.2 The contractor observed that the LPG cylinders were restrained by chains against seismic movement and gas pipework was visible and accessible within the ventilated subfloor area.

8.10 Clause G12 Water Supplies and G13 Foul Water

8.10.1 The inspection summary records a satisfactory pre-pour inspection and a pre-line plumbing inspection that included a pressure test of all plumbing. The applicants have also provided a registered drainlayer's and plumber's producer statements dated 18 December 2001 for construction review of private sewer drains, piped services and sanitary plumbing stacks.

8.10.2 The plumbing and foulwater drainage systems have apparently been performing satisfactorily for the past 12 years. The contractor noted that water pressure and delivery appeared normal and sanitary fittings appeared to be functioning properly with gulley traps draining freely and no signs of overflow or other problems. I also note that most water and waste pipes are visible and accessible within the subfloor.

8.11 Clause H1 Energy Efficiency

8.11.1 The building certifier's inspection summary indicates that satisfactory preline inspections were undertaken and included a note that all wall insulation was in place. The contractor observed perforated foil draped over the subfloor joists and fibreglass insulation in the dividing walls and ceilings between the uninsulated garage and the occupied areas of the house.

8.11.2 However there is some damage to underfloor foil and dislodged fibreglass insulation that requires attention.

8.12 Conclusion on other clauses

8.12.1 In summary and taking account of the above observations and the contractor's report, I conclude that remedial work, investigation and/or maintenance is necessary in respect of the following areas:

- in regard to Clauses B1 and B2:
  - a structural engineer's assessment and report on the connections and bracing in the sub-floor (see paragraph 6.9.2)
  - the lack of seismic restraints to the hot water cylinder
- in regard to Clauses E3 and B2:
  - the leaking tiled shower floor and walls
  - possible water damage to the plywood substrate and timbers
- in regard to Clauses F4:
  - the lack of a handrail to the internal stairs

- the inadequate height of the barrier at the stair landing.

8.12.2 I consider that the contractor's report, the building certifier's inspection records, the interim code compliance certificate, the producer statements, certificates and the other documentation, allow me to conclude that the remaining building work is likely to comply with the Building Code.

9. The appropriate certificate to be issued

9.1 Having found that the building work can be brought into compliance with the Building Code, I must now determine whether the authority can issue either a certificate of acceptance or a code compliance certificate.

9.2 Section 437 of the Act provides for the issue of a certificate of acceptance where a building certifier is unable or refuses to issue either a building certificate under section 56 of the former Act, or a code compliance certificate under section 95 of the current Act. In such a situation, a building consent authority may, on application issue a certificate of acceptance.

9.3 In this situation, where I have reasonable grounds to conclude that the building work can be brought into compliance with the Building Code, I take the view that a code compliance certificate is the appropriate certificate to be issued in due course.

Matter 3: The authority's exercise of powers

10. Discussion

10.1 Reasons for refusing a code compliance certificate

10.1.1 Section 95A of the Act states that an authority must give an owner 'written notice of the refusal and the reasons for the refusal' to issue a code compliance certificate. In my view, that requires the authority to at least identify the particular aspects of the building work that do not comply. In this case, the authority provided no written notice and in its letter dated 28 November 2013 simply stated that was not in a position to issue a 'final code compliance certificate' as it had no involvement during construction.

10.1.2 I note here that the provisions of section 95A apply irrespective of the background to involvement of a building certifier: if an owner requests a code compliance certificate then an authority is obliged to follow the provisions of section 95A, which is likely to include a detailed assessment of the work concerned. In cases involving a building certifier an authority may suggest an owner to apply for a certificate of acceptance where the issue of the code compliance certificate is refused.

10.1.3 In this instance I do not consider the authority met its obligation in respect of section 95A as it did not place itself in a position where it could make an informed decision about the Building Code compliance of the house. A generalised refusal is not sufficient to comply with Section 95A. If the authority believes code compliance has not been achieved in any given situation it must formally advise an owner of the reasons for the refusal.

10.2 The application for the code compliance certificate

10.2.1 The authority appears to take the view that because the application for a code compliance certificate was declined on 28 November 2013 there is no current application for it to consider. As noted above, I do not consider the authority's advice given its 28 November 2013 letter satisfied section 95A, and it is therefore

arguable that the application for a code compliance certificate had in fact been declined as provided for in the Act.

10.2.2 When an application for a code compliance certificate is refused under Section 95A, the application is no longer valid and a new application would be required. However, the duplication of applicable information from the original application, from a practical point of view, would not seem necessary.

10.2.3 As noted in paragraph 3.10, the applicants submitted a substantive amount of information and entered into dialogue with the authority in response to its 28 November 2013 letter. In this case the additional information provided by the applicants for all practical reasons can be taken to mean a continuation of the previous application.

10.3 The establishment of compliance

10.3.1 When the former Act was superseded by the current Act, building certifiers ceased operating and passed records of incomplete building consents to relevant authorities for completion of inspections to determine whether code compliance certificates could be issued. I consider it necessary that any authority receiving such records inspect the building work carried out under the incomplete consents.

10.3.2 Had the applicants been aware that inspections were not complete these could have been sought from the authority some 10 years ago. Instead certifier's records were apparently mislaid, and the authority made no effort to seek information on the status of the incomplete building consent, which in turn meant that the applicants remained unaware of any outstanding matters until preparing to sell the house.

10.3.3 In regard to this house, the main evidence as to compliance is able to be gathered from the building certifier's inspection records and the issuance of the interim code compliance certificate, the building surveyor's report, the producer statements and certificates, the performance of the exterior envelope and structure over the past 12 years, and a visual assessment of other building elements; which may or may not reveal that further evidence needs to be gathered to determine compliance.

10.3.4 However, the authority has not inspected the building work to assess compliance, which would have allowed it to identify any non-compliant aspects. No account was therefore taken of particular attributes such as the cladding type, workmanship and maintenance levels, risk features and the current compliance level. Instead, the applicants were given no specific reasons for the refusal, and no clear idea what was required in order to obtain a code compliance certificate.

10.3.5 Had an appropriate inspection of this house been carried out in response to requests for a code compliance certificate, the authority should have been able to readily identify any defects requiring attention; without needing the applicants to apply for a determination. Any requirement for a determination should follow such an inspection, not precede it.

10.4 Conclusion

10.4.1 Notwithstanding that this determination has found that the building work does not comply with the Building Code in some respects, I am not satisfied that the authority acted in accordance with section 95A of the Act in its refusal to issue a code compliance for the house.

11. What happens next?

11.1 I note that the building consent was issued to the applicants as the current owners of the house. The authority may issue a notice to a notice to fix that requires the applicants to bring the house into compliance with the Building Code, including the investigations and defects identified in paragraph 7.3.2 and paragraph 8.12.1, and referring to any further defects that might be discovered in the course of investigation and rectification, but not specifying how those defects are to be fixed.

11.2 Alternatively the authority may elect to deal with the matter via a notice issued under section 95A of the Act.

11.3 The applicants can then produce a response, to either the notice to fix or the notice issued under section 95A, in the form of a detailed proposal produced in conjunction with a competent and suitably experienced person, as to the rectification or otherwise of the specified matters. Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination.

12. The decision

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

- external wall claddings do not comply with Building Code Clauses E2 and B2
- there is insufficient evidence to establish on reasonable grounds that sub-floor pile connections and bracing complies with Building Code Clauses B1 and B2
- the unrestrained hot water cylinder does not comply with Building Code Clause B1
- the ground floor tiled shower does not comply with Building Code Clauses E3 and B2
- the internal stairs and landing do not comply with Building Code Clause F4

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

12.2 I also determine that once the above areas are satisfactorily investigated and rectified, the house will comply with the Building Code.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 11 February 2015.

John Gardiner
Manager Determinations and Assurance

Appendix A

A1 The relevant sections of the current Act

95A Refusal to issue code compliance certificate

If a building consent authority refuses to issue a code compliance certificate, the building consent authority must give the applicant written notice of—

(a) the refusal; and

(b) the reasons for the refusal.

437 Transitional provision for issue of certificate of acceptance

(1) This section applies if—

(a) an owner, or the owner's predecessor in title (whether an immediate predecessor in title or otherwise), carried out building work before the commencement of this section for which—

(i) a building consent was required under the former Act; and

(ii) the building consent was not obtained; or

(b) a building certifier is unable or refuses to issue either of the following in respect of building work for which a building consent was issued before the commencement of this section:

(i) a building certificate under section 56 of the former Act; or

(ii) a code compliance certificate under section 95.

(2) A territorial authority may, on application, issue a certificate of acceptance.

(3) For the purposes of subsection (2), sections 96(2) and (3) and 97 to 99 apply with all necessary modifications.

(4) A reference to a building certifier in this section includes a reference to a building certifier that applied for registration, and is registered, under section 191 as a building consent authority.