



## Determination 2017/076

### Regarding the refusal to issue a code compliance certificate for an 18-year-old house with monolithic cladding at 4 Clara Anne Grove, Greytown



#### **Summary**

This determination is concerned with the compliance of an 18-year-old house. The determination considers the authority's reasons for refusing to issue the code compliance certificate and whether the building work complies with the requirements of the Building Code.

#### **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 current 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 owners, Mr & Mrs B and D Lovatt ("the applicants") – the developer acted as an agent for the owners for part of the determination process
  - South Wairarapa District Council ("the authority"), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from the authority's advice that it would not issue a code compliance certificate for the 18-year-old house.

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<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.

- 1.4 Due to a lack of inspection records, the authority is not satisfied that there is sufficient evidence that the building work complies with certain clauses<sup>2</sup> of the Building Code (First Schedule, Building Regulations 1992). The as-built construction differs from the building work approved under the building consent.
- 1.5 The matter to be determined<sup>3</sup> is therefore the authority's purported exercise of its powers of decision that it would refuse to issue a code compliance certificate if an application for one was made. In order to decide whether to confirm, reverse, or modify the authority's decision, I have also considered whether there is sufficient evidence to be satisfied that the building work complies with the Building Code that was in force at the time the building consent was issued. I have considered those Building Code clauses that the authority has expressed concern about. I have also considered matters arising from the site assessment carried out by the independent expert commissioned by the Ministry to advise on this dispute ("the expert").
- 1.6 The applicants will be able to apply to the authority for a modification of durability provisions to allow the durability periods specified in Clause B2.3.1 to commence from the date of substantial completion of the house in 1998. While I take a modification of the durability periods into account in considering the compliance of the building work, I leave this matter to the parties to resolve in due course.
- 1.7 In making my decision, I have considered the submissions of the parties, the report of the expert, and the other evidence in this matter. The decisions under section 184 of the Act to make this determination and under section 187 of the Act to engage a person to assist were made by the previous Manager Determinations.

## **2. The building work**

- 2.1 The building work consists of a two-storey detached house situated on a flat site in a high wind zone<sup>4</sup>. The house is moderately complex in plan and form and is assessed as having a very high weathertightness risk.
- 2.2 The house is over two levels as follows:
- Ground: kitchen, dining, lounge, bathroom, laundry, one bedroom, and a double garage.
  - Level 1: two bedrooms, and a bathroom.
- The upper level is located entirely under the steeply-pitched (45°) roof framing.
- 2.3 The foundation is reinforced concrete and concrete slab on grade. The structure is light timber frame with some steel beams supporting the upper-level floor.
- 2.4 The wall cladding is a monolithic cladding system called EIFS<sup>5</sup> comprising a modified acrylic plaster system over expanded polystyrene board, which is direct-fixed to the timber framing. EIFS is normally finished with a thin plaster system; however, the plaster in this case is heavily textured.

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<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)(b) and 177(2)(d) of the Act

<sup>4</sup> Wind zone as described in New Zealand Standard NZS 3604:1999 Timber Framed Buildings

<sup>5</sup> Exterior insulation and finish system

- 2.5 The pitched roofs ( $9^\circ$  to  $45^\circ$ ) are clad with corrugated steel, and a small flat roof over the ground floor bathroom is clad with butyl rubber on plywood. There are a number of skylights (fixed and openable) installed to the upper level. There is no eaves protection other than roof projections adjacent the entrance and the lounge. The exterior window and door joinery is aluminium.
- 2.6 The expert has noted that exposed roof framing is marked as H1 treated and the exposed wall framing was marked as kiln dried but had no marking to confirm treatment (the specification called for H1 treated framing). Given the date of construction in 1998, it is likely that the wall framing used untreated kiln-dried timber.

### 3. Background

- 3.1 On 10 July 1998 the authority issued building consent no. 6291 under the Building Act 1991 (“the former Act”) for the construction of the house to the developer. I have seen no record of the construction inspections that were carried out during construction. The applicants advise they moved in to the house in December 1998. It appears that a code compliance certificate was not sought when construction was completed and the matter was raised in 2017 when the applicants planned to sell the property.
- 3.2 The developer provided a Producer Statement PS3 – Construction, dated 12 April 2017, in respect of ‘structural steel works’. I note here that the PS3 is in regards to building work carried out ‘in accordance with the contract’ and does not include a statement as to compliance of the building work with the relevant clauses of the Building Code.
- 3.3 A final inspection was carried out by the authority on 20 February 2017 and the result of the inspection was confirmed in a letter to the applicants dated 21 February 2017. The letter said that a code compliance certificate was unable to be issued because the authority had no record of some inspections and:

**Plans:** The work is [not] carried out to the consented plans. Several changes ...have been made onsite.

**Foundation:** ground conditions appeared very soft with standing water pooling around the foundation on the southern face. Confirmation of good ground would be required with evidence that the foundation was installed correctly to meet the requirements of the building code.

**Pre wrap:** Provide evidence to show framing is installed correctly. ...Dormer windows, enclosed decks, stairs, wall framing locations all appear to have changed from the consented plans.

**Pre Cladding/cladding:** We have no information around weather tightness. There are signs of repairs to internal linings around skylights.

**Preline:** no pre internal linings inspections records. Moisture content, engineering inspections for steel portal/beams

**Postline:** No record to show how bracing was achieved. Confirmation of how the changes to the framing layout affect bracing for two storey dwelling

**Plumbing:** No record of plumbing underfloor or in wall inspections being carried out.

3.4 The inspection record noted that the following documentation was required:

- Application for a Code Compliance Certificate
- Drainage Asbuilt (sic)
- Electrical completion certificate
- Waiver form and fee paid
- Other documentation required

3.5 The developer provided architectural drawings dated February 2017 that indicate the changes during construction that differ from the original consent drawings. (It is not known when the drawings were provided to the authority for its consideration.) The drawings consist of ground floor and upper level plans only and contain no construction details, with simply locations of the following changes marked:

***Ground floor***

1. Stair altered
2. Door & wall changed
3. Door position changed
4. Shower & Toilet position changed
5. Window seats added
6. Stove & Oven position changed

***First floor***

1. Skylight added
2. Book nook added
3. Window & Landing added
4. Bathroom fixture positions changed
5. Roof access changed
6. Loft area increased
7. Access to attic spaces

3.6 The developer provided a thermal imaging report, dated 2 May 2107, that included thermal images and non-invasive moisture readings. The readings generally ranged from 17 to 38, with higher readings of 133 to 145 adjacent the ground floor shower. The report contained no commentary or conclusions in relation to compliance. The report recommended invasive testing as the non-invasive testing was “not conclusive”.

3.7 The Ministry received an application for a determination on 23 May 2017.

## **4. The submissions**

4.1 The developer made a submission on behalf of the applicants, which outlined some of the background to the situation and noted that an application for a code compliance certificate had not been made because the authority had advised that it would be unable to form a view on compliance based on the records available.

4.2 The developer provided copies of:

- the building consent and approved plans
- drawings showing changes from consented plans

- a thermal imaging report
  - a PS3 from the structural steel manufacturer/installer
  - the electrical certificate of compliance, dated 21 September 1998
  - photographs taken during construction
  - the developer's build guarantee.
- 4.3 On 28 June 2017 the authority forwarded copies of similar material to the applicants, and noted in its submission:
- It was unable to locate any inspection records for the consented work and there are no authority staff remaining from the time of construction to verify what was inspected.
  - Its position had not changed from that stated in its letter to the applicants dated 21 February 2017.
  - Plans had been provided as a record of the as-built construction and have not been "approved".
- 4.4 In an email dated 8 June 2017 the authority said that it has not refused to issue the code compliance certificate and referred to a previous determination<sup>6</sup> that concerned a "proposed" refusal of a code compliance certificate. The authority noted it had sought information about the compliance of the work and it had not received an application for a code compliance certificate. The authority is of the view a certificate of acceptance is required in respect of the work described in the amended plans.
- 4.5 On 9 June 2017 the Ministry emailed the authority requesting copies of the inspection records, any relevant recent correspondence with the applicants, and a list of building elements that the authority considered were not compliant. The authority provided relevant records on 28 June and confirmed the items the authority considered were not compliant were those in its letter of 21 February 2017 (refer paragraph 3.3).
- 4.6 In an email dated 4 July 2017 the applicants contended (in summary):
- The as-built plans were sufficient for a code compliance certificate. The changes were inspected and verbally agreed. The authority's inspection records were "inadequate".
  - The authority had carried out foundation and pre-lining inspections.
  - Surface water only ponded after heavy rain.
  - A PS3 has been provided for the steelwork.
- 4.7 In an email on 6 July, the authority restated its position (in summary) that the code compliance certificate would not be issued 'due to lack of records being available, no application for Code compliance having been made, and the fact that the work differs from the approved building consent documents'. The authority requested copies of any inspection records that the applicant had. The authority did not identify any specific areas of non-compliance.
- 4.8 A draft determination was issued to the parties for comment on 28 September 2017.

<sup>6</sup> Determination 2017/023 Regarding the compliance of the substitution of automatic fire sprinkler systems for heat detectors in a basement carpark (12 April 2017)

- 4.9 The authority responded on 2 October 2017, accepting the draft subject to non-contentious amendments.
- 4.10 The applicants responded on 11 October 2017, accepting the draft without further comment and advising the developer was no longer acting as their agent.

## 5. The expert's report

### 5.1 General

- 5.1.1 As mentioned in paragraph 1.7, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors and inspected the house on 2 August 2017. The expert's report was forwarded to the parties on 29 September 2017.
- 5.1.2 The expert was engaged to provide comment on the compliance of the building work, particularly in relation to matters of non-compliance raised by the authority in its letter of 21 February 2017 relating to changes to the as-built construction, foundations, weathertightness and plumbing.
- 5.1.3 The expert considered that the wall cladding and the interior linings were:

... finished to a reasonable quality and are straight and true, with only minor cracking adjacent to window openings evident internally. The external cladding is in good condition having been recently recoated, particularly within the reveals of the windows. Some staining is evident to the surface of the walls to the rear and side of the garage due to splashback from the adjacent unpaved ground.

### 5.2 The as-built changes to the consented work

- 5.2.1 The expert noted a number of as-built changes from the approved consent plans as follows (the more significant changes<sup>7</sup> noted):
  - Altered stair layout (orientation, landing size, etc).
  - Alterations to shower and toilet locations to both bathrooms.
  - Alterations and additions to some internal walls.
  - Skylight added to Level 1 bedroom.
  - Level 1 enclosed deck and access doors from bedroom not built (door replaced with a dormer window).
  - Window added to Level 1 adjacent stair landing.
  - Loft space (accessible roof space) increased, access points added.
  - Changes to claddings (profiled to corrugated steel roofing, fibre-cement sheet to EIFS).

### 5.3 Clause B1 Structure

- 5.3.1 The expert noted there was no evidence the foundation to the building was not performing adequately. There were 'no signs of subsidence or cracking to [the foundations] or the cladding to the external walls'.

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<sup>7</sup> For more information on minor variations to building consents, guidance to building consent amendments, and product substitution and variations see: <https://www.building.govt.nz/projects-and-consents/build-to-the-consent/making-changes-to-your-plans/>

- 5.3.2 The expert noted changes to internal and external walls that may have compromised some bracing elements and that their extent and location has not been confirmed, but:
- the ‘alterations to the layout of the dwelling do not appear to be having any structural [effect] on the stability of the dwelling’, and
  - ‘there is no evidence of any sagging or lack of adequate support’; there is no evidence of abnormal movement to suggest the structure was not performing.

## **5.4 Clause E2 External moisture**

- 5.4.1 The expert noted the following:

### ***The cladding generally***

- The EIFS system had a BRANZ appraisal and the cladding is now in excess of 18-years old.
- There is no evidence of any significant cracking to the plaster finish, which appears to have been well maintained.

### ***Ground clearances***

- The ground clearances from the base of the cladding and adjacent ground are between 20 and 170mm, with 10mm clearance under the verandah adjacent the family/dining room. The clearances are less than those described in E2/AS1 and in the cladding manufacturer’s installation instructions.
- Clearance between paved ground and cladding to ground level bathroom at rear of garage is low and the cladding is affected by water splash. However, from non-invasive readings taken there is no evidence of issues relating to failure of the bottom plate.

### ***Cladding details to openings***

- The system as installed does not follow the manufacturer’s details. The joinery is recessed but does not have head flashings. The sills to window joinery are embedded in the plaster, which is also a deviation from the manufacturer’s installation details.
- There is no evidence of cracking to the plaster within the reveals at the sill and jamb junctions of the windows or beneath them to suggest that there is any current failure. There are no internal signs of damage or moisture ingress adjacent to the openings, including around the planted polystyrene mounding around the corner window to the kitchen.
- The expert observed ants present within the recess to the lounge window adjacent to the covered verandah area, which is associated with moisture entering the cladding.
- There is evidence of water staining to the left side of the laundry door; however, as there is no deterioration to the skirting this suggests it is due to condensation.
- Timber facias are generally embedded in the plaster finish.

### ***Moisture readings***

- Invasive moisture readings were taken in areas adjacent to at risk details identified from an external inspection of the house. The first area tested was

internally adjacent the location of the diverter flashing installed to the garage roof (adjacent the rear door to the garage) – this returned a reading of 16%<sup>8</sup>.

- Other invasive readings were undertaken externally adjacent to the areas where the timber fascia was found to have been affected by moisture ingress; where the fascia was found to have rot at the rear of the garage, and adjacent to the other diverter flashing installed at the base of the roof above the dining room. Moisture readings in the fascia at these points were 20% and 21%. The fascia was drilled to allow probes to be inserted into the framing behind the fascia: these readings were 16% and 18%.
- Adjacent a diverter flashing above the dining room and kitchen (the timber fascia was embedded in the plaster at this junction) the moisture reading to the framing was 32%, confirming that moisture was entering the cladding causing undue dampness.

### ***Skylights***

- Drip marks were evident to ceiling linings beneath skylights and some movement cracking was evident which appeared to be related to condensation. All non-invasive moisture readings were low.

### ***Membrane roof***

- The membrane roof over the ground level bathroom has a fall less than the 1.5° recommended by manufacturer and some ponding was evident. There is an open joint to the membrane at a corner. The membrane is not lifting and has not deteriorated significantly. There is no visible evidence of any moisture damage relating to this at present.
- Attention is required to a diverter flashing which is not directing water away from the junction of the metal and membrane roofs.

### ***Roof junctions / flashings generally***

- The flashings to the roof are in reasonable condition, with some diverter flashings appearing to have been installed post-construction.
- Some diverter flashings are in need of maintenance to prevent moisture being directed behind the cladding.

## **5.5 Clause E3 Internal moisture**

- 5.5.1 Elevated capacitance-type moisture readings were obtained from the skirting on either side of the ground floor shower, which the expert attributed to leaks to the shower at these junctions. The junctions had been remediated with sealant; which the expert considered is not a compliant solution.

## **5.6 Clause F2 Hazardous building materials**

- 5.6.1 The shower screens were marked as safety glass, but glazing to the window above the bath in the ground level bathroom did not have any visible markings to confirm that safety glass was installed. (The sill to this window is approximately 900mm above floor level.)

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<sup>8</sup> Moisture levels above 18% generally indicate that external moisture is entering the structure and further investigation is required and that readings over 40% indicate that the timber is saturated and decay will be inevitable over time.

## **5.7 Clause G4 Ventilation**

- 5.7.1 The bathrooms are both provided with wall-mounted mechanical ventilation to remove moisture from both rooms. However, ceiling-mounted ‘heat/light/ventilation’ units are installed to both the ground level bathroom and adjacent walk-in wardrobe.
- 5.7.2 With the ceiling fans running, there is a risk of moisture from the bathroom entering the roof void beneath the membrane roof and moisture from the bathroom being drawn into the wardrobe and into the pitched roof void above. There is no visible evidence of any moisture damage relating to this at present.

## **5.8 Clauses G12 Water supplies, and G13 Foul water**

- 5.8.1 The expert noted “no evidence of any current issues with the plumbing or foul water drainage”. The expert observed the top of the gully trap adjacent the ground level bathroom had been installed at the minimum height of 25mm above the adjacent paved ground as set out in G13/AS2<sup>9</sup>, and the gully trap adjacent the kitchen was less than the minimum 100mm above unpaved ground in G13/AS2. Both have lids to aid in preventing blockage but have no concrete surround to protect the PVC traps from damage.

## **5.9 Summary**

- 5.9.1 The expert concluded:
- evidence found during the inspection indicates the house generally complies with the performance requirements of the Building Code, but water has been allowed to enter the cladding in some areas
  - failure was also evident in respect of Clause E3 where the walls to the side of the ground floor shower are affected by leaks from the shower
  - moisture entering the roof space from the ground floor bathroom did not satisfy Clause G4.

## **6. Discussion**

### **6.1 General**

- 6.1.1 The original 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 this consent. 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’.
- 6.1.2 An application can be made to the authority for a modification of durability requirements to allow durability periods to commence from the date of substantial completion in December 1998. Although that matter is not part of this determination (see paragraph 1.6), I have taken the anticipated modification into account when considering the performance of the claddings.

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<sup>9</sup> Acceptable Solution G13/AS2 Drainage (1 October 2001)

- 6.1.3 In order to determine whether the authority correctly exercised its power in its purported decision to refuse to issue a code compliance certificate, I must consider whether the building work complies with the Building Code that applied when the original building consent was issued.
- 6.1.4 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).
- 6.1.5 The authority has cited missing inspections as a reason for it advising that any application for a code compliance certificate would be declined. The applicant's agent maintains the required inspections were carried out. The lack of inspections cannot be taken to mean that completed work is not compliant.
- 6.1.6 It is also noted the Building Code is performance-based and assessment for a code compliance certificate where an inspection has been missed can also take into account the actual performance of the building work. Proven performance in-use is a valid means of verifying compliance: the house is now over 18-years old.

## **6.2 Clause B1 Structure**

- 6.2.1 Based on the time passed since construction, it is a reasonable assumption that any problem arising from inadequate ground capacity, lack of bracing, inadequate structural components and the like would have become evident during this period. Significant seismic events have also been experienced by this region in recent times<sup>10</sup>.
- 6.2.2 I accept the expert's observation that there is no evidence to suggest the building is not performing adequately with respect to Clause B1. The changes to the ground floor walls and associated bracing elements are not considered significant in regards to the building's structural performance. The upper level is located entirely within the roof structure: the one bracing element to this level that has changed is in a wall that is inherently stable being under the triangulated roof structure. While a PS3 has been provided for the steel members, these are for floor beams with bolted connections that are not exhibiting any signs of failure.
- 6.2.3 In my view, there is sufficient evidence to establish on reasonable grounds that the house is satisfying Clause B1 Structure.

## **6.3 Clause E2 External moisture, and B2 Durability**

### ***The cladding***

- 6.3.1 The EIFS cladding has high-risk weathertightness features. The expert notes that the cladding has not been installed in accordance with the manufacturer's installation instructions, particularly around joinery openings: no head flashings have been installed and the sill sections are buried in the plaster work which will allow no drainage at the sills. The ground clearance in many places is minimal and well short of the clearances described in E2/AS1. Coupled with this is the likelihood that the wall framing is untreated.
- 6.3.2 The expert carried out a limited number of invasive moisture readings to confirm the performance of the cladding but found evidence that the cladding was not satisfying Clause E2 as moisture was entering the cladding causing undue dampness in the wall framing. While the expert considered the cladding was performing based on his

<sup>10</sup> For example, the Castlepoint Event in January 2014 and the Seddon Event in November 2016.

visual inspection and non-invasive readings, in my view the performance of the cladding around joinery openings and where the base of the cladding is in close proximity to the ground should be verified by invasive investigation.

#### ***The roofs***

- 6.3.3 Despite the minimal pitch and some ponding to the membrane roof it appears to be performing adequately. However, the expert noted an open seam at the exterior corner of the roof that requires attention. I consider this is a matter of maintenance.
- 6.3.4 Some diverter flashings require attention and where not presently non-compliant they are considered matters of maintenance only.
- 6.3.5 I accept the expert's view that the skylights are performing adequately. There is no evidence to suggest the metal cladding is not performing.

#### **6.4 Clause E3 Internal moisture**

- 6.4.1 Elevated non-invasive readings were taken from the skirtings adjacent the ground floor shower. I accept the expert's view that while sealant has been applied to address any immediate shortcomings, the long-term effects of any leaks are unknown; invasive investigation to these junctions would be required to establish compliance.
- 6.4.2 I have insufficient evidence to make a decision as to compliance with respect to Clause E3 Internal moisture.

#### **6.5 Clause F2 Hazardous building materials**

- 6.5.1 Glazing to the bathrooms is required to comply with Clause F2 that was in force at the time the consent was issued in July 1998. At that time the Acceptable Solution F2/AS1 cited NZS 4223: Part 3: 1993 as a means of satisfying Clause F2. At that time the Standard required safety glass to shower and bath enclosures. As the window over the bath forms part of the enclosure to the bath (the sill height is about 900mm above the floor) safety glass is required to this window.

#### **6.6 Clause G4 Ventilation**

- 6.6.1 Regarding the ceiling-mounted fans to the ground level bathroom; moisture-laden air should be vented to the exterior of the building in order to satisfy Clause G4.3.3(b). I note the fans could be disconnected given the other mechanical ventilation serving the bathroom.

#### **6.7 Clauses G12 Water supplies, and G13 Foul water**

- 6.7.1 The expert noted no concerns with the operation of the drainage and plumbing pipework to the house. However, he noted the height of the gully trap to the kitchen above unpaved ground was less than the 100mm minimum described in G13/AS2. There are no features that would mitigate for the lesser height, and I consider this gully trap does not comply with Clause G13.

#### **6.8 The additional durability considerations**

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

- 6.8.2 In this case the 18-year delay since the completion in 1998 raises concerns that many elements of the building are now well through or beyond their required durability periods, and may consequently no longer comply with Clause B2 if a code compliance certificate were to be issued effective from today's date.
- 6.8.3 I have considered this issue in many previous determinations and I maintain the view that:
- the authority has the power to grant an appropriate modification of Clause B2 in respect of all the building elements, if requested by an owner
  - it is reasonable to grant such a modification, with appropriate notification, as in practical terms the building is no different from what it would have been if a code compliance certificate for the building work had been issued at the time of substantial completion in 1998.
- 6.8.4 While the cladding is now over 18 years old and has therefore passed the 15-year minimum durability period described in B2.3.1, the expected life of the building as a whole is considerably longer. Careful maintenance is therefore needed to ensure that the cladding protects the underlying framing for its minimum required life of 50 years for the structure.
- 6.8.5 I leave the matter of amending the building consent to modify Clause B2.3.1 to the parties to resolve once the remedial work has been completed.

## **7. What happens next?**

- 7.1 The building consent was issued to the applicant who is also the current owner of the house. Taking into account the findings of this determination, the authority may<sup>11</sup> issue a notice to fix that requires the applicant to bring the building work into compliance with the Building Code, or if an application for a code compliance certificate is made the authority may issue a notice under section 95A.
- 7.2 Either notice should refer to the investigations and defects identified in paragraphs 6.3.2, 6.5.1, 6.6.1, 6.7.1, and any further defects that might be discovered in the course of investigation and rectification, but not specify how those defects are to be fixed – that is a matter for the applicants to propose and for the authority to accept or reject.
- 7.3 Once the building has been brought into compliance with the Building Code that was current at the time the consent was issued, and the durability modification amendment made, the applicants can apply for a code compliance certificate. Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination if necessary.
- 7.4 I note the applicant has provided the authority with revised plans as a record of the as-built work. There would appear to be no further action required of the authority in this respect.

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<sup>11</sup> For further discussion on issuing notices to fix, refer to *Determination 2013/015 The refusal to issue a code compliance certificate and the simultaneous issue of a notice to fix for a 14-year-old house* (8 April 2013)

## 8. The decision

- 8.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:
- the external envelope of the house does not comply with Clauses E2 External Moisture and B2 Durability insofar as it applies to Clause E2,
  - the glazing above the bath to the ground floor bathroom does not satisfy Clause F2 Hazardous building materials,
  - the mechanical ventilation to the ground floor bathroom does not comply with Clause G4 Ventilation,
  - a gully trap surround to one gulley trap does not comply with Clause G13 Foul water,
- and accordingly, I confirm the authority's purported decision to refuse to issue a code compliance certificate for the house.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 30 October 2017.

Katie Gordon  
**Manager Determinations**