



Building Consent Authority Complaint 2015/002

COMPLAINT AGAINST THE BUILDING CONSENT AUTHORITY OF THE THAMES-COROMANDEL DISTRICT COUNCIL

1. The matters of complaint

- 1.1 This is an investigation of a complaint under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) conducted 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 complaint was lodged by C Rowe (“the complainant”) and received by the Determinations and Assurance Team of the Ministry of Business, Innovation and Employment on 23 September 2014. It has been lodged against the Building Consent Authority (“the BCA”) of the Thames-Coromandel District Council, in accordance with section 200 of the Act.
- 1.3 The complainant is seeking an investigation regarding the BCA’s performance of its functions in respect of the following matters (as stated by the complainant in his application, with some minor paraphrasing):
 - ensuring the protection of public health and environment
 - failure to require designs to be provided with building consent applications that comply with the Act, prior to granting a building consent
 - failure to ensure persons who produced designs relating to building consents were appropriately experienced and qualified
 - issuing building consents for applications involving treatment processes and disposal fields that were ‘seriously inadequate’
 - failing to require pre-design soil investigations for disposal fields to comply with the minimum standards under the Building Code²
 - failing to require appropriately competent geotechnical assessment for building consent applications on steep ground

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

² Building Regulations 1992, First Schedule.

- failing, for building consents involving disposal fields on significantly steep ground, to identify understating of slope values, resulting in under-sized systems being proposed
- failing to take account of risk assessment procedures under the Building Code in building consent applications
- failing to require assessments of potential contamination for building consent application for sites located on highly permeable soils close to surface water
- failing to require details to ensure even discharge of effluent to the disposal field's distribution systems consenting proposals that involved pressurised systems of final disposal
- failing to require provision of those details of squirt-line systems that would ensure uniform areal distribution over the infiltrative surface of the receiving soil for consent proposals involving disposal by low pressure effluent disposal systems
- allowing a building consent that explicitly specified the 'diversion of responsibility' for design of a crucial element of design to one of its own officers
- in commissioning and accepting the consultant engineer's report, the BCA failed to ensure all who contributed to its content were sufficiently qualified to do so
- failure to ensure the consultant engineer's report addressed whether or not the cases reviewed complied with the Building Code, or included assessment of systems of final effluent disposal with an appropriate level of expertise and thoroughness
- failure to identify the shortcomings of the consultant engineer's report prior to acceptance.

- 1.4 The complainant provided references to these matters from sections of the Act, the Compliance document for G13 – Foul water, and AS/NZS 1547³ regarding on-site domestic wastewater management.
- 1.5 I broadly take the matters for complaint to be the BCA's failure in assessing, processing and granting building consents involving on-site waste water disposal. The complainant's alleged shortcomings of the BCA's consultant engineer's report forms part of the complaint.
- 1.6 Unless otherwise stated in this complaint, all references to sections are to sections of the Act and all references to clauses are to clauses of the Building Code. All relevant legislation can be found at Appendix A of this decision.

³ Joint Australia/New Zealand Standard AS/NZS 1547: 2012 On-Site domestic wastewater management.

2. Background

- 2.1 The complaint centres on the complainant's concerns with how the BCA was dealing with building consents relating to onsite wastewater systems. The complainant initially raised his concerns with the BCA around March 2013. Following numerous emails and face to face meetings the BCA engaged consultant engineer ("the consultant engineer") as an independent third party to report on the matters raised by the complainant (refer paragraph 3). A copy was sent to the complainant who conducted his own reviews of the six cases that the BCA's consultant engineer looked at and a further 16 on his own accord.
- 2.2 The complainant found what he considers to be 'serious shortcomings' in the BCA's consenting and subsequent oversight of construction and performance-testing of the as-built waste water systems (refer paragraph 1.3). Following an exchange of correspondence and face to face meetings with the BCA, the complainant lodged an application for complaint with the Ministry.
- 2.3 For a summary timeline of correspondence between the complainant and the BCA refer to Appendix B.

3. The BCA's consultant engineer's report

- 3.1 In a report dated 10 March 2014 the BCA's consultant engineer reviewed the building consent applications for a sample of six small wastewater treatment plants.
- 3.2 The summary section of the report noted the following:
- "Four of the six consent applications... consist of small attached growth biological process followed by a disposal field."
 - "The wastewater treatment system installed at these four properties will most likely treat the flows... and loads from these houses to the required standard... within reasonable odour, noise and vector attraction levels."
 - One of the consent applications was an amended consent and had no wastewater treatment proposals.
 - The last consent application included only email discussion between an owner and a designer which is considered accurate and logical; however there is insufficient information to review the suitability of the wastewater system at this property.
- 3.3 The above has been noted in this complaint decision for background information only, it does not imply acceptance of the statements made.

4. The Ministry's Approach

- 4.1 I have undertaken enquiries on this matter including collecting evidence by:
- providing the BCA with an opportunity to make submissions and provide a formal written response to the complaint

- providing the complainant the opportunity to comment on any submission made by the BCA
- engaging an independent expert investigator (“the expert”) (refer paragraph 6) to undertake a full investigative report. The expert was previously a CPEng⁴ engineer and has experience in wastewater, building regulatory issues and local authority operations. I considered the expert suitably qualified to investigate the matters of complaint
- providing the BCA and the complainant the opportunity to comment on a draft version of the investigation report
- providing the BCA and the complainant with the final version of the investigation report
- issuing a draft complaint decision to the parties on 2 April 2015 for the parties comment.

4.2 I have performed a careful and extensive review of the information collected and submissions provided to determine whether there is evidence of a failure and/or negligence on the part of the BCA.

5. Response to the complaint from the BCA

5.1 The complaint application details were sent to the BCA on 2 September 2014. The BCA responded on 15 October 2014. In summary the BCA stated:

- The matter has been through review with an officer from IANZ⁵ on 12 September 2014; the finding was that the complaint was dealt with in a manner consistent with the complaints process, and the complainant had no further case.
- The consultant engineer was engaged to undertake a peer review after advice from IPENZ⁶ on appropriately qualified engineers.
- The BCA submitted the complainant is vexatious, and the matter was ‘closed on 26 May [2014]’ after the complainant refused to accept the consultant engineer’s report.
- Specific officers of the BCA have been trained to assess designs for waste water treatment plants. Despite this, all design assessments are carried out by either a CPEng engineer or approved producer statement authors then verified by the BCA’s own development engineer as complying with Regional Council discharge quality⁷.
- There have been no failures of waste water systems in the BCA’s area (other than age related failures). This would suggest the present use of the

⁴ Chartered Professional Engineer

⁵ International Accreditation New Zealand

⁶ Institute of Professional Engineers New Zealand

⁷ Waikato Regional Council “3 Water Module.” 3.5.7 Implementation Methods On-Site Sewage Discharges Web. 30 March 2015 <http://www.waikatoregion.govt.nz/Council/Policy-and-plans/Rules-and-regulation/Regional-Plan/Waikato-Regional-Plan/3-Water-Module/35-Discharges/357-Implementation-Methods---On-Site-Sewage-Discharges/>

CPEng engineers (deemed competent in waste water systems and internal engineering review and regulatory reviews where required) provides sufficient evidence as to a competent process.

5.2 On 13 November 2014 the complainant provided a response to the BCA's submission. I will not reproduce the complainant's rebuttal in full, the substantive points made are as follows:

- In relation to offering consultancy to the BCA the complainant was primarily concerned with the risk to public health and the environment the BCA consenting actions were creating.
- In relation to the BCA obtaining independent advice from IPENZ, the complainant notes the BCA has not been concerned with the competencies of the particular individuals who would conduct the review.
- In relation to his complaint being 'vexatious' he is not motivated by malice but the protection of public health, natural environment and the interests of the BCA.
- The complainant challenged the basis on which the BCA had accepted the consultant engineer's report, and did not suggest the BCA should seek another consultant.
- In respect of training, this is no guarantee of competence.
- The complainant noted failure of onsite waste water systems will typically be 'delayed and insidious' and failures will often be difficult to link to particular installations.

6. The expert's investigation report

6.1 As noted in paragraph 4.1, I engaged an independent expert to assist in the investigation. The expert produced a draft report which was sent to the parties on 28 January 2015 for comment. The complainant provided submissions on 1, 11 and 15 February 2015 in response. The BCA provided a submission on 11 February 2015. I have not reproduced these submissions in full or in summary for the purposes of this complaint decision. The expert was provided with copies of these submissions to take into account, and produced a final report dated 18 February 2015. The final expert report was sent to the parties on 23 February 2015.

6.2 The expert found in respect of the assessment, processing and granting of building consents for onsite waste water systems, the BCA had failed to meet its obligations as a BCA under section 49 of the Act. The BCA had not complied with section 19 of the Act in regards to establishing compliance with the Building Code Clause G13; either by using G13/VM4⁸, which in turn cites AS/NZS 1547:2012, nor by carrying out a robust technical evaluation of TP58⁹ in order to accept it as an

⁸ The relevant (and only) Verification Method for Clause G13 of the Building Code

⁹ Technical Publication 58 Gunn, I. 1994: On-Site Wastewater Disposal From Households And Institutions. *Auckland Regional Council Environment Technical Publication no.58 (2nd ed.)*, Auckland Regional Council, Auckland.

alternative solution. The expert noted there was no evidence the BCA has failed to comply with section 94 of the Act.

6.3 The expert provided a full investigation report. I have summarised the main findings below.

6.4 Compliance requirements

6.4.1 The BCA's role is specified under section 12(1) of the Act to issue building consents, inspect building work for which it has granted a building consent and issue code compliance certificates. Section 49 states a BCA must grant a building consent if it is satisfied on reasonable grounds that the provisions of the Building Code would be met if the building work was properly completed in accordance with the plans and specifications that accompanied the application. Section 19 states a Verification Method is an established means of complying with the Building Code. No other Verification Method is specified as a means of compliance. The relevant Verification Method, G13/VM4 in turn refers to AS/NZS 1547.

6.4.2 Section 94 of the Act states a BCA must issue a code compliance certificate if it is satisfied, on reasonable grounds that the building work complies with the building consent.

6.5 The BCA's processes

6.5.1 The expert reviewed:

- the BCA's processes for determining compliance of onsite wastewater disposal systems with the Building Code for the purposes of granting a building consent; and
- the BCA's processes for issuing of code compliance certificates for on-site wastewater systems.

6.5.2 The expert found the BCA considered the relevant compliance requirements for on-site wastewater systems was the Waikato Regional Plan. The rules contained in the plan promote the use of TP58. The expert considered the BCA did not have delegated authority from the Waikato Regional Council to enforce these provisions, and it is illogical to argue the BCA's functions are fulfilled through the performance of its responsibilities as a Territorial Authority.

6.5.3 The expert found the compliance of the Regional Plan (specifically TP58) as an 'alternative solution' had not been approved as such, and the performance requirements were 'not the same or equivalent to the objectives of G13 of the Code'.

6.5.4 In relation to the consultant engineer's report, there is no reference in the consultant engineer's report to the Building Code requirements (nor G13/VM4). The assessment was against Rule 3.5.7.6(1) of the Waikato Regional Plan.

6.5.5 In relation to the report from IANZ, it did not address the particular matters concerning the complainant and focussed on the policies for addressing a complaint.

6.5.6 The expert carried out a desktop review of 20 of the BCA's building files for wastewater treatment and disposal systems consented during 2014 (not including the 6 reviewed by the consultant engineer). The expert found that the BCA did not

consistently comply with its adopted procedures for processing applications for building consents for onsite waste water systems for the following reasons:

- Not all designs of onsite wastewater treatment and disposal systems were carried out by a currently registered CPEng.
- The BCA does not have a list of approved producer statement authors for onsite wastewater systems
- Not all designs are currently verified by the BCA's development engineer for compliance with the Waikato Regional Plan.
- Many of the inspections were not carried out by the four staff members with specific training in onsite waste water systems.
- Producer statements for construction are not routinely provided.
- Producer statements for construction review had not been routinely required from CPEng responsible for specific design.

6.5.7 The expert concluded the BCA was issuing building consents and code compliance certificates without ensuring the Building Code was complied with.

6.6 Review of particular matters of complaint

6.6.1 The expert found no specific evidence of danger to public health and or the environment.

6.6.2 The expert was not satisfied there was a systemic problem with plans and specifications provided to the BCA.

6.6.3 The design of onsite wastewater systems is not Restricted Building Work as defined under the Building (Definition of Restricted Building Work) Order 2011; there are no statutory requirements for the qualifications and experience of designers. The BCA should rigorously apply its own procedures in relation to the acceptance of producer statements satisfactorily as the expert found instances where this was not the case.

6.6.4 The expert established the BCA did not ensure building consent applications were assessed against G13/VM4.

6.6.5 The expert did not find that the BCA had failed for proposals involving disposal fields on steep ground to require appropriately competent geotechnical assessment. The expert reviewed the site soil assessments and identified in a number of cases they were conducted by a CPEng specialised in geotechnical matters and specific consideration had been given to slope stability.

6.6.6 The expert was unable to find evidence of some of the complainant's claims due to a lack of specific evidence being provided to support the claims.

6.7 Further correspondence

6.7.1 As noted in paragraph 6.1, the BCA and complainant provided further correspondence in response to the expert's draft report. Though I have not summarised those submissions in this document, they have been taken into account in reaching my decision.

6.7.2 Of particular note was the BCA's comment in an email of 11 February 2015 regarding TP58. The BCA noted that it considers that compliance with AS/NZS1547 and TP58 'achieve the same result, by way of different routes'. The BCA holds the view that TP58 can be considered an alternative solution, and 'there is no proof that TP58 does not satisfy the performance requirements of G13 as an alternative solution'.

6.7.3 The BCA set out a number of corrective actions that it would be implementing immediately, in summary:

- Ensuring that the designs of waste water treatment systems are prepared in accordance with NZS1547, and that the designs (and PS1) establish compliance with the Building Code.
- Concerns about a site or design to be referred to development engineers.
- All designs by non-CPEng designers to be referred to development engineers.
- For all designs, on-site appraisals to be undertaken to establish soil categories.
- Documentation of ground slope/topography for the disposal field to be documented, and if sloped, the processing officer to decide whether slope stability analysis is required.
- Where either an engineer's site report or a geotechnical report is available, any recommendations about the location of a disposal field are followed at the building consent stage, and any consent requirements in respect of waste water treatment systems to be taken into account before a code compliance certificate is issued.

7. The draft complaint decision and further submissions

7.1 On 2 April 2015 I issued a draft complaint decision to the parties.

7.2 The complainant's further submission

7.2.1 On 27 April 2015 the complainant provided a written response to the draft complaint decision. The complainant provided extensive comments, in summary the substantive matters raised are as follows:

- In relation to the inspections carried out by the four BCA staff members with specific training in onsite wastewater systems the complainant submitted the training was only in "site and soil assessment" which is 'only one of a number of areas of technology in which high levels of competence are essential'.
- The development engineer's training and competence is inadequate. The lack of a CPEng credential indicates they lack the competence that would qualify them 'to pass judgement on those who do possess it'.
- In relation to the BCA Regulations, the complainant submitted the BCA failed under section 8(1) to ensure it had enough employees and contractors, and

under section 9, for allocating the onsite wastewater component of its building control work to employees or contractors who were competent to do the work. The complainant alleged the BCA failed under section 10(3)(a) and (b) to have a competence assessment system to have understanding and knowledge of onsite wastewater components in building design, construction, products and methods.

- The BCA failed in several related aspects under sections 11 and 14 of the BCA regulations.
- In relation to the BCA carrying out inspections for consented building work, the complainant considers this section needs to be expanded such that all commissioning tests that are the subject of AS/NZS 1547 be subject to witnessing by a BCA inspector, the issuing of a code compliance certificate should be subject to a BCA inspector certifying that all system components were installed and operate to his/her satisfaction and in conformity with the approved design.
- The complainant submitted the alternative solution should be reviewed and endorsed by an independent expert in the design of onsite wastewater systems that are compliant with AS/NZS 1547.

7.2.2 In addition the complainant provided further comments on the expert's final report that have not been covered in the above comments on the draft complaint decision. I will summarise these points for completeness, however, as the final expert report has already been issued not all the comments are able to be taken into account for the purposes of this complaint. In summary:

- The complainant noted the CPEng qualification does not provide assurance of a person's competence in any particular field of engineering, the practice field and area are essential details that need to be taken into account.
- The complainant had offered to provide the identity and the asserted shortcomings, in the absence of an agreement on confidentiality the complainant stated he still provided specific examples of numerous cases and their shortcomings.
- The complainant noted six cases were identified and the information relating to specific details was available on the BCA's files.
- The complainant considered in the interests of public health and the environment as well as the users of the wastewater systems, the Ministry should commission a further report by a person who is a recognised expert in onsite wastewater systems.

7.2.3 In response I note that I was satisfied as the qualifications of the appointed expert in this matter (refer paragraph 4.1) the expert was engaged for his understanding of the building regulatory regime in relation to building consent authorities and although I noted his experience in wastewater he was not engaged as a technical expert in wastewater systems. I do not consider a further report necessary.

7.3 The BCA's further submissions

7.3.1 On 28 April the BCA provided a written response to the draft complaint decision. In summary:

- Of the 20 building files reviewed by the expert the BCA submitted 17 used NZS1547 to prove compliance with Clause G13, one application used both TP58 and G13 for compliance and three applications were assessed as using TP58 as an alternative solution to NZS1547.
- The Building Act allows for the construction of on-site wastewater systems in accordance with the provisions of the Building Code. The discharges from such systems are covered under section 15 of the Resource Management Act 1991 ("RMA") which refers to discharges needing to comply with the rules in a Regional Plan or consent.
- The relevant rules of a Regional Plan or discharge consent specify the design criteria the system design must meet, before any discharge from the system is authorised under the RMA. Thus it is the regional rules and or resource consent, not the Building Act, that ultimately specify design criteria for an on-site wastewater system.
- Under current BCA procedure, if an application involves an alternative solution, the applicant is required to provide sufficient information to justify the use of the building method, product, system and its compliance with the Building Code. The decision is recorded.
- The BCA's neighbouring councils (Auckland and Hamilton) use TP58 as the only means of compliance. TP58 is well established in these areas. The guidelines state they 'may apply equally to domestic wastewater management systems outside the Auckland region...with due consideration of the specific environmental circumstances particular to that region'.
- When applications are received by the BCA using TP58 as an alternative solution these are referred to the development engineer for comment and assessment; however the final approval of the system is by a BCA officer. Assessments are undertaken every time an alternative solution is presented; they are not individually formalised.
- The BCA primarily accepts AS/NZS1547 as the recognised means of compliance.
- Any onsite waste water designs not produced by a CPEng are referred to the development engineer.
- There is no specific status for producer statements in the Act, however these are widely used for helping establish compliance with the Act and Code and it is important that the BCA can have confidence in its reliability when accepting them.
- BCA officers are only allocated to inspect jobs that fall within their current competency levels. This is checked at processing and inspection times. This is audited by section 9 of the BCA Regulations and officers have competency

assessments to ensure they are performing duties at the correct level as per section 10 of the BCA regulations. In addition to the four specially trained officers the BCA has officers with suitable experience in the field, and can undertake inspections under supervision. There are regular in-house training completed for staff, satisfying section 11 of the BCA Regulations.

- The corrective actions previously suggested are being implemented.
- The BCA considers the training is adequate and requests a definition of what is considered adequate training if this is disputed by the Ministry.
- In conclusion, the BCA ‘strongly disputes’ that it has failed to properly perform its functions in issuing building consents for onsite wastewater systems in the Thames-Coromandel district. The objectives and performance requirements of the relevant Building Code Clauses have been met in all instances with no known failures.
- The BCA agrees to formalise TP58 as an alternative solution.

7.4 I have taken account of the parties’ submissions where appropriate. Minor corrections have been amended accordingly.

8. Analysis

8.1 The BCA’s functions

8.1.1 Under section 203 of the Act the Chief Executive of the Ministry has specified powers regarding a complaint. After conducting an investigation and considering the submissions made by the BCA, I must be satisfied the BCA has failed, without good reason, to properly perform its functions or has been negligent in performing those functions.

8.1.2 The functions in question for the purposes of this complaint relate to the building consent processes (including the issuing of a building consent, carrying out inspections of building work for which it had granted consent and its decisions to issue code compliance certificates) relating to onsite wastewater systems in the Thames-Coromandel area. The primary source of legislation setting out these functions is the Building Act; however, they are also supported by the *Building (Accreditation of Building Consent Authorities) Regulations 2006* (“the BCA Regulations”), (refer Appendix A).

The issuing of building consents for onsite wastewater systems

8.1.3 When issuing a building consent under section 49 of the Act the authority must be satisfied on reasonable grounds the building work once completed will comply with the Building Code. The relevant provision of the Building Code is Clause G13 (refer Appendix A) for Foul Water.

8.1.4 The Verification Method available is G13/VM4. This specifies at paragraph 1.1.2 that for onsite disposal of foul water:

1.1.2 A design method, given in Part 4 of AS/NZS 1547, for the treatment of *foul water* for flow rates up to a maximum 14,000 litres/week from a population

equivalent of up to 10 persons, may be verified as satisfying the performance criteria of G13 Foul Water.

The joint Australia/New Zealand Standard AS/NZS 1547 is the relevant Standard that must be complied with if using the Verification Method as a means to establish compliance with Clause G13 for onsite waste water systems. The Standard has a strong focus on the protection of public health and the environment.

- 8.1.5 I note compliance with a Verification Method and associated New Zealand Standard is not the only means of showing compliance with the Building Code.
- 8.1.6 However, in this case I see no evidence that an alternative solution has been assessed as an alternative means of compliance with Clause G13. The BCA submitted it requires an application for a building consent to provide sufficient evidence to justify the use of the building method or product and its compliance with the Building Code. The BCA individually assesses the alternative solution, however, these are not individually formalised. The BCA submitted it primarily accepts AS/NZA1547 as a recognised means of compliance.
- 8.1.7 The BCA has relied on the use of TP58 as a means of establishing compliance with the Building Code, as an alternative solution in some instances of building consents reviewed by the expert. I note that TP58 is a guidance publication from Auckland Regional Council to 'provide guidance for the design and maintenance of onsite treatment and disposal system for domestic wastewater from households and institutions'. TP58 is not a stated means of compliance with the Building Code under section 19 of the Act and has more relevance to matters under the Resource Management Act and the District Planning regulations which are outside the scope of this investigation.
- 8.1.8 I agree with the findings of the expert that in issuing building consents the BCA has not had regard to the relevant compliance documents being G13/VM4 and the associated Standard AS/NZS 1547, nor has it undertaken an assessment of the proposed means of compliance as an alternative solution. The BCA has been 'merging' the Waikato Regional Plan Rules with the performance requirements of the Building Code.
- 8.1.9 As a BCA it is important to maintain the functions under section 49 of the Act and section 7 of the BCA regulations which states a BCA must have policies and procedures to cover 'processing the applications to establish whether they comply with the requirements that the Act, the building code, and any other applicable regulations under the Act specify for buildings'.
- 8.1.10 This has been echoed in relevant producer statements in the files reviewed by the expert that refer to compliance with both AS/NZS 1547 and TP58. The BCA should ensure that for building consents, matters relating to Regional Plans for the purposes of proving compliance with the Building Code are omitted.
- 8.1.11 The BCA claimed that *all* designs for wastewater treatment plants were carried out by a CPEng or an approved producer statement author. I accept the findings from the expert at paragraph 6.6.3 that the BCA has not been following its own policies and procedures for accepting producer statements and issuing building consents

for onsite wastewater systems as not all designs were by a CPEng or approved producer statement author.

The carrying out of inspections for building work consented

- 8.1.12 The BCA stated all inspectors are trained in onsite waste water systems. Of the 20 files reviewed by the expert, only half were inspected by staff specifically trained in onsite waste water systems. I consider either further training should be supplied to those inspecting wastewater systems who have not yet received the training, or the BCA should prioritise the staff members who have received the training to carry out the inspections of onsite wastewater systems, or supervise these inspections. The BCA should refer to its policies relating to competence of employees and training of staff, established under sections 10 and 11 of the BCA Regulations.
- 8.1.13 The complainant has alleged the training provided is inadequate (refer paragraph 7.2.1) for the staff members trained and the development engineer, and regulations 8 and 10 specifically have not been met.
- 8.1.14 I see no evidence that the BCA has failed in relation to regulation 8(1) to have enough employees and contractors. There is no information that a building consent was delayed or failed to be issued, or failed to be inspected due to a shortage of staff. I note the BCA regulations are framed in broad terms under regulations 10, 11 and 14 in relation to employees' understanding of building design and construction, building products and methods, training and ensuring technical resources are provided.
- 8.1.15 The national competency assessment system is a framework to assist BCAs to assess the competency of their technical building control staff using a national set of performance indicators and specifications which defines what 'competence' is in the building control context. All BCA building officials are not required to be specialist onsite wastewater personnel, and I note the work is not restricted building work. The BCAs building officials involved in the building consenting process are required to have an understanding of the Act and associated regulations and understand the scope of their technical knowledge and not to work outside their levels of technical competence. I see no evidence that the BCA has systemically failed to meet this requirement.

The issuing of a code compliance certificate

- 8.1.16 The expert concluded on a review of the 20 files few producer statements (PS3 or PS4) were identified. I can see no evidence that the BCA has failed to properly perform its function under section 94 of the Act in issuing code compliance certificates, however I consider the BCA could be more robust in following its processes and policies. This could include the quality assurance of these processes and policies (refer section 17 of the BCA Regulations).

8.2 Other matters raised by the complainant and the BCA

- 8.2.1 Regarding the consultant engineer's report I consider the BCA took the right action to engage an engineer to investigate the claims from the complainant. However, I consider when engaging the consultant engineer the BCA should have

provided a brief that covered matters under the Building Act and Building Code and the particulars of the complainant's concerns; in which case many of the matters raised by the complainant would have been dealt with.

9. Recommendations

9.1 In the BCA's submission of 11 February 2015 it has suggested some corrective actions to implement immediately, refer paragraph 6.7.3. In addition, I consider the BCA should take the following actions:

- I note the BCA has stated they will ensure designs for wastewater treatment systems are prepared in accordance with NZS1547. I consider *if* the BCA wishes to use TP58 as an alternative solution they should have this formalised and then written into procedures that either NZS1547 or the (then) established alternative solution of using TP58 can be used to prove compliance with the Building Code, as well as recognising that applicants are also able to provide alternative solutions as long as they provide evidence of compliance with the performance clauses of G13.
- Ensure adequate training for staff (refer paragraph 8.1.12) and prioritise specifically trained staff to the appropriate inspections.

10. Decision

10.1 Under section 203 of the Act I consider the BCA has failed, without good reason to properly perform its functions in issuing building consents for onsite wastewater systems in the Thames-Coromandel district.

10.2 I consider the BCA should take into account the findings of this investigation and implement the corrective actions the BCA has put forward in paragraph 6.7.3 and the additional recommendations in paragraph 9.1. I ask for the BCA to provide me a written report in six months' time providing a review of the implementation of this complaint decision and recommendations. I ask that a copy of the written report is sent to the complainant for his information.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 27 May 2015.

Yours sincerely

John Gardiner
Manager Determinations and Assurance

Appendix A – The legislation.

A.1 The relevant sections of the Act

3 Purposes

This Act has the following purposes:

- (a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—
 - (i) people who use buildings can do so safely and without endangering their health; and
 - (ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and

12 Role of building consent authority and territorial authority

(1) Under this Act, a building consent authority—

- (a) issues building consents, but not if a building consent is required to be subject to a waiver or modification of the building code; and
- (b) inspects building work for which it has granted a building consent; and
- ...
- (d) issues code compliance certificates; and

19 How compliance with building code is established

(1) A building consent authority must accept any or all of the following as establishing compliance with the building code:

- ...
- (ba) compliance with a verification method:

20 Regulations may specify that there is only 1 means of complying with building code

- (1) Regulations may be made under section 401 that specify that there is only 1 means of complying with all or any of the provisions of the building code.
- (2) Without limiting subsection (1), the regulations may specify the means of compliance with the building code by requiring the use in the prescribed circumstances (if any) of all or any of the following:
 - (b) prescribed verification methods...

22 Acceptable solution or verification method for use in establishing compliance with building code

- ...
- (2) A person who complies with an acceptable solution or a verification method must, for the purposes of this Act, be treated as having complied with the provisions of the building code to which that acceptable solution or verification method relates.

49 Grant of building consent

(1) A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

A.2 The relevant clauses of the Building Code

Clause G13 – Foul Water

Objective

G13.1 The objective of this provision is to:

- (a) safeguard people from illness due to infection or contamination resulting from personal hygiene activities, and
- (b) safeguard people from loss of amenity due to the presence of unpleasant odours or the accumulation of offensive matter resulting from foul water disposal.

Functional requirement

G13.2 Buildings in which sanitary fixtures and sanitary appliances using water-borne waste disposal are installed must be provided with—

- (a) an adequate plumbing and drainage system to carry foul water to appropriate outfalls; and
- (b) if no sewer is available, an adequate system for the storage, treatment, and disposal of foul water.

Performance

G13.3.1 The plumbing system shall be constructed to:

- (a) convey foul water from buildings to a drainage system,
- (b) avoid the likelihood of blockage and leakage,
- (c) avoid the likelihood of foul air and gases entering buildings, and
- (d) provide reasonable access for maintenance and clearing blockages.

G13.3.2 The drainage system shall:

- (a) convey foul water to an appropriate outfall,
- (b) be constructed to avoid the likelihood of blockage,
- (c) be supported, jointed and protected in a way that will avoid the likelihood of penetration of roots or the entry of ground water,
- (d) be provided with reasonable access for maintenance and clearing blockages,
- (e) be ventilated to avoid the likelihood of foul air and gases accumulating in the drainage system and sewer, and

(f) be constructed to avoid the likelihood of damage from superimposed loads or normal ground movement. G13.3.3 Where a sewer connection is available, the drainage system shall be connected to the sewer, and the connection shall be made in a manner that avoids damage to the sewer and is to the approval of the network utility operator.

G13.3.4 If no sewer is available, facilities for the storage, treatment, and disposal of foul water must be constructed—

- (a) with adequate capacity for the volume of foul water and the frequency of disposal; and
- (b) with adequate vehicle access for collection if required; and
- (c) to avoid the likelihood of contamination of any potable water supplies in compliance with Clause G12 Water supplies; and
- (d) to avoid the likelihood of contamination of soils, ground water, and waterways except as permitted under the Resource Management Act 1991; and
- (e) from materials that are impervious both to the foul water for which disposal is required, and to water; and
- (f) to avoid the likelihood of blockage and leakage; and
- (g) to avoid the likelihood of foul air and gases accumulating within or entering into buildings; and
- (h) to avoid the likelihood of unauthorised access by people; and
- (i) to permit easy cleaning and maintenance; and
- (j) to avoid the likelihood of damage from superimposed loads or normal ground movement; and
- (k) if those facilities are buried underground, to resist hydrostatic uplift pressures.

A.3 The relevant sections from the Building (Accreditation of Building Consent Authorities) Regulations 2006.

7 Performing building control functions

- (1) A building consent authority must have policies and procedures for performing its building control functions.
- (2) The policies and procedures must cover the following:
 - ..
 - (c) checking that the applications comply with the requirements that the Act and any applicable regulations under the Act specify for applications; and
 - (d) for applications that comply with the requirements that the Act and any applicable regulations under the Act specify for applications,—
 - ...
 - (iv) processing the applications to establish whether they comply with the requirements that the Act, the building code, and any other applicable regulations under the Act specify for buildings; and
 - (e) planning, performing and managing inspections
 - (f) issuing and refusing to issue code compliance certificates...
 - (g) receiving and managing inquiries about building control functions, in addition to the inquiries that are received and managed under paragraph (a); and

- (h) receiving and managing complaints about building control functions

10 Establishing and assessing competence of employees

(1) A building consent authority must have a system for establishing the competence of a person who applies to it for employment as an employee performing building control functions. A building consent authority must have a system for assessing annually (or more regularly) the competence of its employees performing building control functions.

The competence assessment system must cover the following:

- (a) employees' understanding of the philosophy and principles of building design and construction; and
- (b) employees' understanding and knowledge of building products and methods; and
- (c) employees' knowledge and skill in applying the Act, the building code, and any other applicable regulations under the Act; and
- (d) employees' ability to—
 - (i) process applications for building consents; and
 - (ii) inspect building work; and
 - (iii) certify building work; and
- (e) employees' ability to communicate with internal and external persons; and
- (f) employees' ability to comply with the building consent authority's policies, procedures, and systems.

11 Training employees

(1) A building consent authority must have a system for training its employees who perform the authority's building control functions by doing a technical job.

(2) The system must cover the following:

- (a) making regular training needs assessments; and
- (b) preparing training plans that specify the training outcomes required; and
- (c) ensuring that employees receive the training agreed for them; and
- (d) monitoring and reviewing employees' application of the training they have received, including by observing relevant activities; and
- (e) supervising employees under training; and
- (f) recording employees' qualifications, experience, and training; and
- (g) recording continuing training information.

17 Assuring quality

(1) A building consent authority must have a system for assuring the quality of its performance of its building control functions.

The quality assurance system must cover the following:

- (a) the policies, procedures, and systems described in regulations 5 to 16; and
- ...
- (e) the procedure for continuous improvement in the performance of the building consent authority's functions; and

Appendix B – Timeline of correspondence

Timeline of substantive correspondence between the complainant and the BCA, minor correspondence has been omitted for the purposes of this complaint.

Date	Recipient/Sender	Regarding
22 March 2013		Meeting between Complainant and the BCA to discuss complainant's concerns with onsite wastewater systems
23 March 2013	Complainant emailed BCA	Follow-up to earlier meeting, complainant provides credentials and experience
19 July 2013	Complainant emailed BCA	Confirmation of meeting with BCA to discuss building consents for onsite wastewater systems. Issues to be discussed include: <ul style="list-style-type: none"> • Public health and safety concerns • The competencies of Designers and Design Verifiers
24 July 2013		Meeting between Complainant and BCA
6 August 2013	Complainant emailed BCA	Follow-up to meeting regarding serious shortcomings and seven new cases scattered around the District in more or less evenly separated locations with different designers
28 August 2013 and 3 September 2013	Complainant emailed BCA	Requests for further meetings to discuss issues
10 September 2013		Meeting between Complainant and BCA
11 September 2013	Complainant emailed BCA	Follow-up to meeting regarding risk of water-borne disease and physical injury or damage resulting from collapse of steep slopes. The complainant supports the idea of an independent review as the issues are widespread and it would be unfair to focus on a few designers at this stage
12 November 2013	Complainant emails BCA	Complainant acknowledges advice from the BCA that they have engaged four independent engineers to investigate and report on the concerns he raised. Complainant cautions the BCA to use those knowledgeable with onsite

		wastewater system design.
15 April 2014	Complainant emailed BCA	Complainant enquires from BCA whether the review has been completed, and if so seeks information regarding the review (findings, who completed the review, what actions are proposed).
9 May 2014	BCA emailed Complainant	Provided a copy of the consultant engineer's report to the complainant
25 May 2014	Complainant emailed BCA	The complainant provides the BCA with his own conclusions relating to onsite wastewater cases subject to the recent review. The complainant again requests a meeting with the BCA to discuss.
26 May 2014	Complainant emailed BCA and BCA emailed complainant	<p>BCA emails noting the difference of opinions between engineers, and noting the matter will not be discussed further.</p> <p>Complainant replied regarding the administrative processes involved in the consultant engineer's report the complainant contended (in summary):</p> <ul style="list-style-type: none"> • The scope of the report was insufficient • The Building Code (not the Waikato Regional Council's Regional Plan) should be the focus of the report • The engineer did not have sufficient experience and competence
6 June 2014	Complainant emailed BCA	Regarding lodging a request for service on matters of the BCA's administrative process and matters of serious technical shortcomings in relation to building consents issued by the BCA. Request for service was lodged 20 June 2014.
3 July 2014	BCA emailed complainant	BCA confirms internal engineer is dealing with the request for service.
6 July 2014	Complainant emailed BCA	Regarding the BCA's dealing with his request for service
7 July 2014	BCA emailed complainant	Regarding investigating the complainant's dealings with the BCA and report back on conclusions
25 July 2014	BCA emailed complainant	BCA provide information regarding request for service (noting it is not the appropriate process to use) and

		background to the appointment of the external engineers who conducted the report.
27 July 2014 and 7 August 2014	Complainant emails BCA	Complainant seeks further response to queries, assumes no reply is forthcoming.
23 September 2014		Complaint application received by the Ministry.