



## Determination 2013/045

### Regarding the issue of notices to fix for a rest home at 54 Church Street, Winton



#### 1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“the Act”) made under due authorisation by me, 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 building owner, F Kidd (“the applicant”)
- Southland 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 issue notices to fix for a rest home because it is not satisfied that the building work complies with the requirements of certain clauses of the Building Code<sup>2</sup> (First Schedule, Building Regulations 1992). The authority’s concerns primarily relate to the weathertightness of the exterior building envelope, durability, surface water and protection from fire.

1.4 The applicant is of the view that the notices to fix are not reasonable in their requirements and that the items listed in the notices either have already been addressed or are trivial matters that do not affect the building’s compliance with the Building Code.

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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.dbh.govt.nz](http://www.dbh.govt.nz) or by contacting the Ministry on 0800 242 243.

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

1.5 The matter to be determined<sup>3</sup> is therefore whether the authority correctly exercised its powers in issuing the notices to fix. In deciding this matter I must also consider whether the authority correctly identified the particulars of contravention in the notices to fix.

1.6 In making my decision, I have considered the submissions of the parties, the report of an independent expert (“the expert”) commissioned by the Ministry to advise on this dispute, and the other evidence in this matter.

1.7 The relevant legislation referred to in this determination is set out in Appendix A.

## 2. The building

2.1 The building is a rest home located on a largely flat site in Church Road in Winton. The large single storey building is generally a long rectangular shape, consisting of:

- 19 studio units
- 2 one-bedroom units
- 1 two-bedroom unit
- a main communal area, which includes the administration area (reception, office, staff room and staff WC), a sitting room, television room, dining room, kitchen, two accessible WCs and a laundry
- an attached manager’s residence which includes two bedrooms, an open plan living-dining-kitchen space, a bathroom and an attached garage.

2.2 A pool and pool house are also being constructed on the site; however these have been consented separately and are not addressed further in this determination.

2.3 The rest home building comprises of a concrete floor slab and compressed particle board structural panels. The as-built cladding is a mix of a proprietary plastered polystyrene system, timber weatherboard, and grooved plywood. Window and door joinery is aluminium and the roof cladding is profiled steel sheet.

2.4 Although the building is more than 100m in length (~107m), it is not particularly complex in form and has a low weathertightness risk score. Eaves widths are generally good and the building employs commonly used cladding systems.

2.5 The building contains a range of specified systems, for which draft compliance schedules have been issued.

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<sup>3</sup> Under sections 177(1)(b) and 177(2)(f) of the Act

### 3. Background

- 3.1 The applicant first applied for a building consent in 2007. The authority requested more information to support the building consent application, and having not received any further information from the applicant, the authority eventually refused to issue the consent on 23 October 2009.
- 3.2 The applicant re-applied in November 2009, and consent No. 2009/44458/1 (“the first stage”) was issued for the construction of the foundations. I have not seen a copy of the approved consent for this stage.
- 3.3 On 28 April 2010 consent No. 2009/44458/2 (“the second stage”) was issued for the building work associated with the “terrace”. I have not seen a copy of the approved consent for this stage.
- 3.4 On 4 February 2011 consent No. 2009/44458/3 was issued for the construction of the rest home itself (“the third stage”). The work is described in approved consent as ‘Stage 3 – Construct Rest Home’
- 3.5 Another application for consent was made on 1 June 2011, to change the cladding on the building. It also included some changes to the downpipes and drainage. Stage 4 No. 2009/44458/4 was issued on 3 June 2011. I have not seen a copy of the approved consent for this stage.
- 3.6 During construction the authority became concerned with a number of issues, which it then raised in site notices. The site notices were altered as necessary to reflect issues that had been resolved or to detail new defects that had become apparent.

#### 3.7 The notices to fix

- 3.7.1 Various notices to fix have been issued that are summarised as follows:

Date	Title	Stage issued under	Reference to previous notices	Building Code breaches described
15 December 2010	Notice to fix	Stage 2	n/a	E1
26 July 2011	Notice to fix	Stage 4	n/a	E1, E2
3 July 2012	Notice to fix	Stage 3	Ref. to failed inspection	B1, B2, C3, D1, E1, E2, F6, G1, G5, G13
5 November 2012	Notice to fix Re-issued (2)	Stage 2	Ref. to ‘previous notice to fix’, & failed inspection	B2, C3, D1, E1, E2, E3, F6, F8, G1, G4, G5, G13
30 November 2012	Notice to fix Re-issued (3)	Stage 3	Ref. to ‘previous notice to fixes’, & failed inspections	B2, C3, D1, E1, E2, E3, F8, G1, G4, G13,
25 January 2013	Notice to fix Re-issued (4)	Stage 3	Nil, includes appendix of outstanding items	B2, C3, D1, E1, E2, E3, F8, G1, G4, G5, G12, G13

- 3.7.2 Each issue of the notices to fix cite section 17 of the Act as the breach and four of the six notices also cite a breach of section 40. The re-issued notices do not specifically identify the previously issued version of the notice; some notices appear to have been issued against the wrong consent stage.
- 3.7.3 The notices identify the breach(es) by Building Code clause, and the later notices also provide advice (from the Acceptable Solutions and similar) that the applicant can use to arrive at a compliant solution. Where specific matters of non-compliance had carried over from the previous issues of the notice to fix, the authority noted that these were still not resolved. ]
- 3.7.4 The last notice to fix (January 2013) included Appendix A that listed 34 items that formed a checklist of the outstanding items (“the checklist”). The last notice to fix also listed the supporting information to be supplied in support of the application for code compliance certificate.
- 3.8 The Ministry received an application for a determination on 7 February 2013.

## **4. The submissions**

- 4.1 The applicant made no submission on the matter but provided copies of the following with the application:
- Site Plan and Floor Plan.
  - Electrical plans.
  - Appendix A to the 25 January 2013 Notice to the Fix, which listed all defects in the building and possible solutions.
  - Application for Code Compliance Certificate. (The form does not specify which of the staged consents this applies to.)
  - Correspondence between the applicant and the suppliers of the compressed particle board structural panels.
  - Two Fire Reports (neither of which are dated) and accompanying drawings, including fire wall details, fire egress plans, fire sprinkler system plans and details,
  - Fire Alarm Certificate, dated 25 October 2012.
  - Producer Statements for the following:
    - Emergency Lighting and Exit Signage, dated 20 October 2012.
    - Auto Entry Door and Heating System, dated 28 November 2012.
    - Interfaced Doors, dated 20 October 2012.
    - Emergency warning, dated 30 October 2012.
  - Electrical Certificates of Compliance
  - Gasfitting Certificate of Compliance, dated 11 June 2012.
  - A 15 year Warranty for the cladding system, dated 14 May 2013.

- 4.2 The authority did not make a submission, but provided copies of the consent documentation (including application forms, consents, notices to fix, inspection notices) during the expert's visit to the authority.
- 4.3 A draft determination was issued to the parties for comment on 27 June 2013.
- 4.4 The authority accepted the draft without further comment in a response received on 9 July 2013.
- 4.5 The applicant did not accept the draft and in a letter dated 8 July 2013 set out the following comment:
- The outside area is not complete. It will have a double-fence system for access.
  - The grease trap was installed and was subsequently uncovered for inspection when a 'little more fall' was also created. The officer of the authority approved the installation and it was recovered and sealed. The fitting plans require two inspection-cleaning eyes as well as an air vent; the eyes are evident but the air vent is not and this would now be 'a major undertaking as there is nowhere to install this'. The applicant considers that the alternative of erecting a concrete pillar would not be appropriate at the main entrance to the building.
  - The drain was put together but not glued at the time it was inspected by the authority and the applicant was advised he could cover it over. The plumber had not glued the drain before it was covered over. The applicant considers it was for the authority to check this before giving approval for the drain to be covered. The applicant also described the ground work and positioning of the drain.
- 4.6 The applicant disputed the statement that there were a number of changes to the plan, but noted:
- The floor to Apartment 22 was raised by 100mm under instruction from the officer of the authority. The resulting change was that the planned wet shower was unable to be installed in the last two units and they were accordingly designated as 'standard units' rather than 'wheelchair units'.
  - Sumps on the plans were marked as approximations.
  - There was no window allocated on the plan for the Manager's Office; this was installed for 'health and safety'.
  - The lounge area has had a partition erected; the area is still open at the west end and not fully enclosed as per plan. The "wall" is a unit that allows viewers to watch the TV from either side and there are speakers behind the seats. The maximum 'viewing capacity' is 8 for each side.
  - The lounge area provides capacity for 15 and the restaurant for a maximum of 36 persons.
  - Timber weatherboard was used instead of the proprietary bevel-baked fibre-cement weatherboard, and plywood panelling has been used on the front entrance of the units.

- 4.7 The applicant noted the following items were intended to be addressed:
- The roof valley and ridging
  - The lifting of the toilet handrails need by 20mm and made continuous.
  - A fire report by a firm of architectural and structural designers.
- 4.8 The applicant also considered that a number of items had been approved by an officer of the authority during various inspections, but that the authority's view changed later on, and that this was not reasonable.

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

### **5.1 General**

- 5.1.1 As noted in paragraph 1.6, I engaged an expert to assist me. The expert is a specialist in the field of building controls and the local government regulatory environment. The expert was engaged to review the documentation and provide a report about the building work and the notices to fix. The expert met with the parties and made a site visit to the rest home on 23 March 2013. The expert provided a report dated 3 May 2013, a copy of which was sent to the parties on the same day.
- 5.1.2 The expert's report provided an overall description of the rest home, the consent documentation and the compliance issues, and discussed the items listed in the notices to fix. The expert appended the checklist from the January 2013 notice to fix (refer paragraph 3.7.4) with notations to indicate those items which the applicant disputed and others where the applicant indicated work had been completed.

### **5.2 Variations from the approved consents**

- 5.2.1 The expert observed some elements of the project where the building work has not been undertaken in accordance with the consent; for example some changes to the floor plan.
- 5.2.2 The expert noted that while the applicant may be of the belief that, in respect of some of the departures from the approved plans, some of the requirements 'imposed by the authority' are not necessary to achieve compliance. However, no amendment to the consent has been sought as yet so the authority is not in a position to consider these changes.
- 5.2.3 The expert commented that where the applicant disagrees with aspects of the design this should first be addressed with the designer; any changes to the consented design should then be presented to the authority for review.
- 5.2.4 The expert was of the opinion that while the changes to the approved design may seem minor, added together they amount to a major amendment and an application to formally amend the consent should be made.
- 5.2.5 The expert also noted that the applicant had not received professional advice about the consent processes for this type of commercial building and did not engage the original designers to oversee the construction of the project. Although the building design is relatively simple in terms of construction sequencing, it is very complex in

terms of Building Code requirements. In regards to many of the issues raised by the authority, the applicant has been relying on advice from contractors but did not provide this advice in writing for the authority to consider.

### **5.3 The notices to fix**

- 5.3.1 The expert's report commented on the items identified by the authority in the notices to fix. I have summarised the expert's findings in the paragraphs below with reference to the item numbers from the checklist.
- 5.3.2 The expert noted that clause F6 Visibility in Escape Routes had not been addressed in the checklist.

### **5.4 Clauses C1-C4: Fire Safety**

- 5.4.1 A fire report was submitted to the authority as part of the building consent application.
- 5.4.2 It is not disputed that some of the requirements of the fire report have not been met, especially as it relates to the provision of fire separations and the D1 Access requirements for links to escape routes. However the applicant believes that the fire report is excessive in its requirements.
- 5.4.3 The latter notices to fix require the following to be addressed:
- Fire separation walls with penetrations that are not sealed with fire rated construction. (Items 3 and 4 from the checklist)
  - Ventilation systems without fire dampers to prevent fire spread. (Item 5)
  - Gaps in the smoke seals fitted to the top surface of manhole architraves. (Item 6)
  - Electrical fittings and down-lights that do not have appropriate fire rating features. (Items 7 and 8)
- 5.4.4 The expert is of the opinion that the Fire Safety issues raised by the authority are relevant in terms of compliance with both the Building Code and the consent.
- 5.4.5 The expert is of the view that the applicant should discuss the fire report further with the designer, and if applicable, have the fire report updated. This would then need to be submitted to the authority as part of an application for an amendment to the consent.

### **5.5 Clause D1: Access**

- 5.5.1 The latter notices to fix require accessible ramps be provided to the doors exiting to the west side of the shared dining area and the western end of the accommodation corridor (Item 9).
- 5.5.2 The expert is of the opinion that these exits are mistakenly being treated by the authority as accessible routes.

- 5.5.3 The expert also noted that the applicant intends to create a fenced-in patio area outside these exits. Fencing off this area would prevent people moving away from the building in the event of a fire, so this should be discussed with the fire designer.

## **5.6 Clause E1: Surface Water**

- 5.6.1 One of the authority's major concerns was with the PVC surface water drain that was back-filled without gluing the joints.

- 5.6.2 The expert understands that this drain, which is located at the rear terraces of the units, discharges into a subsoil field drain. Given the wide roof overhang, the expert believes that minimal water will drain this way. The relevant Code provisions are as follows:

E1.3.3 Drainage systems for the disposal of surface water shall be constructed to:

- (a) convey surface water to an appropriate outfall using gravity where possible
- (b) avoid the likelihood of blockages
- (c) avoid the likelihood of leakage, penetration by roots, or the entry of ground water where pipes or lined channels are used

- 5.6.3 The expert is of the opinion that Clause E1.3.3(a) has been met, but that (b) and (c) may not be met for the required life of the drain, being 50 years, especially if a connection opens and any of the events outlined in (c) occur.

- 5.6.4 The notices to fix also raised concerns in regard to the downpipes discharge points in the channels around the building and the lack of protection from debris blocking the drain (Item 10). Where the downpipe connects to the drain in the channel, holes have been drilled into the pipe to allow water from the channel to flow into the drain, and the authority has stated that this work has not been completed in accordance with the consent.

- 5.6.5 As the applicant states that this solution is working, the expert recommended the applicant propose this solution to the authority as an alternative solution. The expert also noted that while the channel detail is similar to that shown in Figure 17B of E2/AS1, there is no grate covering the channel.

## **5.7 Clauses E2: External Moisture**

- 5.7.1 The expert agrees with the authority's concerns regarding the lack of control joint flashings in the roofing (Item 11). The expert notes that a loss of weathertightness can occur if there are no allowances for the shrinkage and contraction of the steel roofing.

- 5.7.2 The roofing installers contracted by the applicant appear to disagree with the authority's concerns. The expert suggested that the applicant seek written advice from the installers to submit to the authority for their consideration.

- 5.7.3 During the site visit, the expert could not identify any control joints in the plaster cladding system on the gable ends or the longer lengths of walls. The expert



suggests that further investigation may be required as the proprietary plaster system requires control joints.

- 5.7.4 The expert also noted, during the site visit, that the rain head details over the main entrance and adjacent to the rear roof junctions require further investigation as they do not appear to deflect water adequately.
- 5.7.5 In regards to the level entry at the main entrance to the reception area (Item 14), there has been much discussion between the authority and the applicant as to whether water will be able to be collected and drained. The expert is of the opinion that the wide roof overhang (approximately 3.5m) would likely prevent moisture from entering under the automatic sliding doors.

## **5.8 Clause G1: Personal Hygiene**

- 5.8.1 In respect of items 25 and 26, the expert noted that the handrails which have been installed in the accessible units do not comply with the Acceptable Solutions. Figures 7 and 8 of G1/AS1 require L-shaped rails in accessible toilets. In the accessible toilets in the common area, an additional vertical rail has been fitted; however this results in the L-shape of the rail not being continuous.
- 5.8.2 As G1/AS1 has been nominated as the means of compliance in the building consent, the applicant must either follow this acceptable solution or seek an amendment to the building consent.

## **5.9 Clause G5: Interior Environment**

- 5.9.1 A notice to fix notes that a hearing loop is required in the TV room in the common area of the rest home (Item 28). The applicant's view is that a hearing loop is not required as the TV room is split into two spaces, thereby reducing the occupancy of each space.
- 5.9.2 The dividing wall is not shown on the approved plans, and based on the occupancy level outlined in the fire report the expert is of the opinion that a hearing loop is required.
- 5.9.3 The expert noted that if the applicant does not intend to install a hearing loop this should be put to the authority by way of an application for amendment to the consent.

## **6. Discussion**

- 6.1 The applicant is of the view that the notices to fix are not reasonable in their requirements and that the items listed in this notices either have already been addressed or are trivial matters that do not affect the building's compliance with the Code.
- 6.2 The matter to be determined is whether the authority correctly exercised its powers in issuing the notices to fix and in deciding this matter I have considered the compliance of the items listed in the notices to fix and accordingly whether these were correctly identified.

### **6.3 Clause B2 – Durability**

6.3.1 I agree with the authority’s view that the soffit linings on the western side of the building require painting in order to meet the provisions of Clause B2 insofar as it relates to Clause E2.

### **6.4 Clause C2 – Means of Escape**

6.4.1 I note that the previous Fire Safety clauses of the Building Code (“the Fire Safety clauses”) are applicable, as the consent was issued before the new Protection from Fire clauses came into effect in April 2012.

6.4.2 The objective of Clause C2 Means of Escape is to ‘safeguard people from injury or illness from a fire while escaping to a safe place, and to facilitate fire rescue operations’.

6.4.3 I concur with the expert’s opinion in regard to the applicant’s intention to create a fenced off patio outside the western end of the dining room. I note here that no such fencing was indicated on the approved plans or fire report and that the additional fencing may impact on compliance with Clause C2. I am of the view that the applicant should discuss this matter with the fire designer before proceeding with this work, to ensure that the provisions of C2 Means of Escape are met.

### **6.5 Clause C3 – Spread of Fire**

6.5.1 The functional requirement of clause C3 Spread of Fire states that ‘buildings shall be provided with safeguards against fire spread. The performance requirements for Clause C3 includes requirements for interior surfaces, fire separations, ventilation systems, smoke control systems, and fire safety systems<sup>4</sup>.

6.5.2 The fire reports included in the building consent application have not been entirely adhered to. While the applicant believes that the requirements of the fire report are more onerous than necessary, the report was accepted by the authority as part of the consent approval process.

6.5.3 I agree with the expert’s recommendation that the applicant discuss the requirements of the fire report and the as-built construction with the fire designer in the first instance. If the fire report is amended as a result, it should be resubmitted to the authority for approval as part of an application for amendment to the consent.

6.5.4 I consider that aspects of the as-built work are non-compliant and the authority was correct to include those items in the notice to fix.

### **6.6 Clause D1: Access**

6.6.1 In the notices to fix, the authority states that the external access from the shared dining area and the western end of the accommodation corridor does not comply with Clause D1. The notices to fix specifically state that an accessible ramp needs to be

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<sup>4</sup> As specified in Clause C3.4 of Schedule 1 of the Building Regulations 1992.

provided at each of these access points, as well as at the stepped access to the manager's flat.

6.6.2 The expert's opinion is that while these exits are emergency exits under the Fire Safety clauses, they are not on accessible routes. Therefore, they only need to meet the requirements of D1.3.3 as an access route, and are not required to meet the additional requirements of D1.3.4.

6.6.3 I accept the expert's opinion and therefore conclude that these items were incorrectly included in the notices to fix.

## **6.7 Clause E1: Surface Water**

### **Downpipe discharge points**

6.7.1 In regards to the downpipe discharge points into the channels around the building, I am of the view that some measure of protection is required to prevent leaves and debris from entering and blocking the channel, or that the discharge from the channel is protected so any debris entering the channel is prevented from entering the surface water system. I note that the notice to fix dated 25 January 2013 included annotation from the authority that there were signs of debris blocking the drain.

6.7.2 In respect of the diameter of the downpipe discharge points, I accept the expert's suggestion that the applicant apply for an amendment to the consent by proposing the current configuration to the council as an alternative solution.

### **Internal gutter – thermal expansion**

6.7.3 A notice to fix observed that the internal gutter does not have any provision for thermal expansion and required 'details of how expansion is to be accommodated' for consideration by the authority. I note the authority also referred to paragraph 5.4 and Table 7 of E1/AS1, and offered a possible solution to bring the gutter into compliance.

6.7.4 The applicant disagrees with the authority on this matter; however I have received no statement from the applicant as to any mitigating features that would support the view that this item complies as an alternative solution. Accordingly I consider the authority was correct in requiring further details to establish compliance.

6.7.5 I note however that compliance with the Acceptable Solution is not the only method of compliance with the Building Code. The applicant should seek written advice from the roofing contractors as to the compliance of the internal gutter as built as an alternative solution, which can then be submitted to the authority for assessment against the requirements of the Building Code.

### **Surface water drain**

6.7.6 In regards to the surface water drain along the northern side of the building which failed to hold a water test, I am of the opinion that it does not meet the performance requirements of the Building Code.

## **6.8 Clause E2: External Moisture**

### **The main entry doors**

- 6.8.1 The authority's concern is related to maintenance washing down in this area, which could lead to moisture entering the building under the automatic doors, where there is no provision for collection and drainage of this moisture.
- 6.8.2 I note that Clause E2 does not include provisions for preventing moisture from entering the building during maintenance. Taking account of the expert's report, I note that the wide overhang of the roof above the automatic main entry doors should prevent rain from entering the building at this point.
- 6.8.3 I therefore consider the authority to be incorrect in requiring the applicant to address this issue.

### **The ridge flashing**

- 6.8.4 In regards to the ridge flashing and the requirement for expansion junctions, I note that the designer specified E2/AS1 as the means of compliance with Clause E2, yet this flashing does not comply with the Acceptable Solution (refer paragraph 4.5.2 of E2/AS1 which, in this situation, requires control joints at 12m centres).
- 6.8.5 The applicant stated that the roofing contractors believe that the roof, as constructed, is compliant. If the applicant is of the view that the detail as built complies as an alternative solution then the applicant has the option of seeking written advice from the roofing contractors and submitting this to the authority for its consideration. The applicant subsequently submitted that the roofing contractors will be addressing the issue.

### **Remaining Clause E2 items**

- 6.8.6 The remaining E2 issues outlined in the notices to fix appear to be reasonable and the applicant should resolve these by either addressing the items as per the notices to fix or applying for an amendment to the consent and provide sufficient information to allow the authority to consider the details of the as-built construction as alternative solutions.
- 6.8.7 The expert also noted that he could not identify any control joints in the plaster cladding system on the gable ends or long lengths of the building, and that some rain head details that did not appear to adequately deflect water. I suggest that further investigation is carried out, and that remedial action is taken if required.

## **6.9 Clause E3: Internal Moisture**

- 6.9.1 A notice to fix states that up-stands on all kitchen benches and vanity units must be continuously sealed to the wall to prevent moisture penetration behind these fittings.
- 6.9.2 I accept the authority's view and recommend that the applicant ensure that these fittings are well sealed to the wall linings.

## **6.10 Clause F8: Signs**

- 6.10.1 Signs showing the provision and location of accessible entry, hearing assistance, and accessible car parking spaces are to be required to meet the provisions of Clause F8 Signs.
- 6.10.2 The authority is correct in requiring these signs to be provided.

## **6.11 Clause G1: Personal Hygiene**

- 6.11.1 The notices to fix list two items in relation to Clause G1 Personal Hygiene:
- In the designated accessible bathrooms, the shower handrail shall have a vertical section and the horizontal bar must sit at 900mm above floor level.
  - In the designated accessible toilets, the toilet handrails have been placed in the wrong position.
- 6.11.2 I note that the grab rails for both the accessible showers are incorrectly positioned. These should be moved to those positions shown in the Acceptable Solution.
- 6.11.3 The grab rails in the accessible toilets are also in the incorrect position and the expert notes that they do not have a vertical section of rail that is continuous from the horizontal section. I am of the opinion that the rails should be moved into the correct position and that a continuous rail is more appropriate as the corner of the rail is often used for support.
- 6.11.4 As the applicant has nominated the acceptable solution G1/AS1 as the means of compliance, this needs to be followed. Otherwise the applicant will need to seek an amendment to the consent, justifying the change.

## **6.12 Clause G4: Ventilation**

- 6.12.1 The notices to fix include lack of ventilation to the exterior from the kitchen extraction fan, the communal accessible toilet, and the staff toilet in the kitchen area.
- 6.12.2 The performance requirements of G4.3.3 require that buildings have a means of collecting or removing 'moisture from laundering, utensil washing, bathing and showering' and 'odours from sanitary and waste storage spaces' from the spaces in which they were generated.
- 6.12.3 The communal extract fan, the communal accessible toilet, and staff toilet do not meet these requirements.

## **6.13 Clause G5 Interior Environment**

- 6.13.1 The notices to fix include the requirement for a hearing loop in the common area's TV room.

- 6.13.2 Clause G5.3.5, which applies to 'assembly spaces in old people's homes occupied by more than 20 people' requires that 'buildings shall be provided with listening systems which enable enhanced hearing by people with hearing aids'.
- 6.13.3 The consented plans show the TV room to be one larger room; however, it has been constructed with a permanent partition in the centre, which effectively divides it into two smaller spaces. I note that the partition does not entirely separate the two spaces as it does not span the entire width of the room.
- 6.13.4 The fire report specifies an occupant load of 78 people in the sitting and dining areas. Based on this figure, I am of the opinion that a listening system is required to meet the provisions of Clause G5.

#### **6.14 Clause G12: Water Supplies**

- 6.14.1 The notices to fix require that the water supply to all sanitary fixtures be set at a maximum temperature of 45 degrees.
- 6.14.2 Clause G12.3.6 requires that hot water to sanitary fixtures and appliances used for personal hygiene 'must be delivered at a temperature that avoids the likelihood of scalding.'
- 6.14.3 Acceptable Solution G12/AS1 sets out the maximum temperature for water supply to sanitary fixtures for personal hygiene in old people's homes as 45 degrees. This provision is to safeguard people from injury caused by contact with excessively hot water.
- 6.14.4 I consider that the authority is correct in requiring that the water supply be set at this maximum temperature.

#### **6.15 Clause G13: Foul Water**

- 6.15.1 A notice to fix states that the grease trap has not been installed as per the consented details, as neither the clearing eye access points nor the vent have been constructed. The applicant has submitted that the grease trap two inspection-cleaning eyes are evident but the air vent is not and would be difficult to install.
- 6.15.2 The notice to fix also states that some toilet compartments throughout the building are yet to be completed and the drain penetration through the footing to the west end of the accommodation wing needs to be sleeved and plastered around.
- 6.15.3 I consider these to be reasonable requests. As the grease trap was not constructed according to the consented details, the applicant should seek an amendment to the consent with sufficient information to establish compliance with the performance requirements of the Building Code.

#### **6.16 Summary**

- 6.16.1 Taking into account the expert's comments and the authority's records, the following table summarises my conclusions on the items in the notices to fix:

Notice to fix		My conclusions	Paragraph references
Item	Summarised requirements		
<b>B2 Durability</b>			
1	Western soffit linings require painting	Remedial work required	6.3.1
<b>C2 Means of Escape</b>			
	Fencing in patio area outside dining room will prevent movement to safe place away from building	Compliance to be established	6.4.3
<b>C3 Spread of Fire</b>			
2	Continuous stopping of fire separations with roof cladding	Remedial work required	6.5.4
3	Ventilation duct through fire separation not stopped/no collars	Remedial work required	6.5.4
4	Penetrations through fire separations in roof space without collars	Remedial work required	6.5.4
5	No explanation of smoke dampers system	Remedial work required	6.5.4
6	Manholes to ceiling cavity not smoke sealed	Remedial work required	6.5.4
7, 8	Electrical penetrations through smoke and fire separations without fire/smoke stop provisions	Remedial work required	6.5.4
<b>D1 Access Routes</b>			
9	Accessible ramp required to external doors from dining area and western end of accommodation corridor	Adequate as not accessible route	6.6.3
<b>E1 Surface Water</b>			
10	Diameter of downpipe discharge point in channel not wide enough and no grill	Remedial work required	6.7.1, 6.7.2
11	Internal gutter no provision for thermal expansion	Remedial work required	6.7.4
12	Stormwater drain to north failed water test. Likely due to pipe joins not being glued	Remedial work required	6.7.6
<b>E2 External Moisture</b>			
13	Sill flashing at sprinkler cupboard door requires sealing	Not disputed	
14	Main entry auto door does not have adequate provision for collecting and draining water	Adequate as overhang protects from water entry	6.8.3
15	Box gutter flashing at western end of building needs sealing at junction with triangular flashing above	Not disputed	
16	Inadequate floor slab to ground clearance along north side of building	Remedial work required	6.8.6
17	Building paper on east end of accommodation needs to be trimmed	Not disputed	
18	Fire sprinkler head penetrations of northern soffit lining require correctly fitted covers	Not disputed	
19	Fire alarm panel penetration needs sealing	Not disputed	
20	Underside of beam at main entry to be completed to exclude moisture	Not disputed	
21	Tiling around drain access to north of building incomplete	Not disputed	
	Overflow drain penetrations of northern cladding require moisture proofing		6.8.6
22	Ridge flashing junction requires sealing and expansion junctions required at 12m centres	Remedial work required	6.8.5
<b>E3 Internal Moisture</b>			
23	All kitchen bench and vanity up-stands require continuous sealing to tiles/wall	Remedial work required	6.9.2
<b>F8 Signs</b>			

Notice to fix		My conclusions	Paragraph references
Item	Summarised requirements		
24	Signage not provided for accessible entry, hearing assistance or designated accessible vehicle parking	Remedial work required	6.10.2
<b>G1 Personal Hygiene</b>			
25	Three Eastern units no longer accessible due to shower type	Remedial work required	6.11.4
	Shower handrail has no vertical section and installed at wrong height	Remedial work required	6.11.4
26	Toilet handrails to accessible units and common area accessible toilet have no vertical section and installed in wrong position	Remedial work required	6.11.4
<b>G4 Ventilation</b>			
27	Kitchen extraction fan, accessible toilet in corridor and staff toilet of kitchen entry not externally vented	Remedial work required	6.12.3
<b>G5 Interior Environment</b>			
28	Common area to be provided with listening system	Remedial work required	6.13.4
29	Ceiling insulation in all areas to be installed without gaps	Remedial work to be inspected	
<b>G12 Water Supplies</b>			
30	Water supply to sanitary fixtures to be set at a maximum temperature of 45 degrees	Remedial work required	6.14.4
<b>G13 Foul Water</b>			
31	Grease trap cleaning access and venting not provided	Remedial work required	6.15.3
32	Toilet compartments adjacent to kitchen lobby and off main corridor incomplete	Remedial work required	6.15.3
33	Drain penetration through footing at west end of accommodation block required to be sleeved and plastered	Remedial work required	6.15.3

## 6.17 Conclusions

- 6.17.1 Under section 164 of the Act, an authority may issue a notice to fix if it ‘considers on reasonable grounds that a specified person is contravening or failing to comply with this Act or the regulations’.
- 6.17.2 Taking into account the expert’s report and the other evidence, I am satisfied that whilst the building is compliant in some respects, there are aspects of it that do not comply with the Building Code or the building consent and therefore the authority was correct in its decision to issue the notices to fix for those items.
- 6.17.3 However, I am also of the view that some items identified in the notices are likely to be adequate and I have also identified additional items that need to be addressed; the notice(s) should be modified accordingly.
- 6.17.4 Some of the items in the notices to fix refer to parts of the construction that have not been installed in accordance with the relevant Acceptable Solutions. I note that Acceptable Solutions are non-mandatory and compliance with Acceptable Solutions is not the only method of compliance nor can it be required. Non-compliance with an Acceptable Solution does not mean non-compliance with the performance requirements of the Building Code.



- 6.17.5 Section 40 of the Act requires that building work must be carried out in accordance with the building consent. In this case the designer has specified the Acceptable Solution as the means of compliance and the consent was issued on that basis. Where the as-built work departs from the consented documents, whether a specified Acceptable Solution or alternative solutions detailed in the approved plans, that departure may give rise to concerns about the compliance of the building work.
- 6.17.6 I note that the latter notices to fix provide possible solutions to resolve matters of non-compliance. I note here that it is not for the notice to fix to provide a solution, however, I acknowledge the proactive approach taken by the authority to resolve matters with the applicant.

## **6.18 The application for a code compliance certificate**

- 6.18.1 An application for a code compliance certificate has been submitted to the authority. The authority has not made a decision to issue or refuse to issue the code compliance certificate, so this is not a matter for determination; however I can comment as follows.
- 6.18.2 Section 92 of the Act sets out the requirements for an application for a code compliance certificate:
- An owner must apply to a building consent authority for a code compliance certificate after all building work to be carried out under a building consent granted to that owner is completed.
- 6.18.3 The building work is clearly not complete as there are outstanding matters of compliance that need to be addressed: the applicant should not yet have applied for a code compliance certificate.
- 6.18.4 Section 93 of the Act requires that the authority decide whether to issue a code compliance certificate within 20 days of an application being submitted. I am of the view that the authority should formally refuse to issue the code compliance certificate on the grounds that the building work is not complete and there are still items of non-compliance that need to be resolved.

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

- 7.1 The authority should formally refuse to issue the code compliance certificate providing its reasons in writing as required under section 95A. The authority should also modify one or more of the notices to fix to take account of the findings of this determination, removing those items I have concluded are compliant, and including additional items that have been identified and those requiring further investigation.
- 7.2 The applicant should produce a response to the notice to fix in conjunction with suitably competent and experienced professionals, setting out a detailed proposal for remedial work to be carried out or applying for amendment of the consent in respect of the alternative solutions used in the completed work.
- 7.3 The applicant has submitted that some remedial work has been undertaken to remedy items of non-compliance identified in the checklist appended to the notice to fix.

The authority will need to satisfy itself as to the compliance of the remedial work when it considers the issue of the code compliance certificate.

7.4 Any outstanding items of disagreement can be referred to the Chief Executive for a further binding determination.

## **8. The decision**

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

- the authority correctly exercised its powers under section 164 in the issuing of the notices to fix in respect of those items that do not comply with the Building Code
- the authority is to modify one or more of the notices to fix to take account of the findings of this determination.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 5 August 2013.

John Gardiner  
**Manager Determinations and Assurance**

## Appendix A

A.1 Relevant sections of the Building Act 2004 include:

### **17 All building work must comply with building code**

All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

### **40 Buildings not to be constructed, altered, demolished, or removed without consent**

(1) A person must not carry out any building work except in accordance with a building consent.

...

### **93 Time in which building consent authority must decide whether to issue code compliance certificate**

(1) A building consent authority must decide whether to issue a code compliance certificate for building work to which a building consent relates within—

(a) 20 working days after the date specified in subsection (2); or

(b) any further period after the date specified in subsection (2) that may be agreed between the owner and the building consent authority concerned.

(2) The date referred to in subsection (1)(a) and (b) is—

(a) the date on which an application for a code compliance certificate is made under section 92.

...

### **164 Issue of notice to fix**

(1) This section applies if a responsible authority considers on reasonable grounds that—

(a) a specified person is contravening or failing to comply with this Act or the regulations [...];

...

(2) A responsible authority must issue to the specified person concerned a notice (a notice to fix) requiring the person—

(a) to remedy the contravention of, or to comply with, this Act or the regulations;

...