



Determination 2014/056

Regarding the refusal to issue a certificate of acceptance for weathertightness remedial work to three Units at 270 Sunset Road, Windsor Park, Auckland

1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“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 owners of the three units, collectively “the applicants” (Unit Q, G Rae; Unit I, Deeb Properties Ltd; Unit M, M Grey) acting through one of the owners, G Deeb, as their agent
- Auckland Council² carrying out its duties as a territorial authority or building consent authority (“the authority”).

1.3 I also consider Body Corporate No.188529 (“the body corporate”) to be a person with an interest in this matter.

1.4 The determination arises from an application for a certificate of acceptance for building work carried out without consent. The authority refused to issue the certificate of acceptance on the basis that it considered it had insufficient information to establish on reasonable grounds that the building work complies with the relevant clauses of the Building Code (Schedule 1 of the Building Regulations 1992)³.

1.5 The matter to be determined⁴ is whether the authority was correct to refuse to issue the certificate of acceptance for building work carried out without a building consent first being obtained. In making this decision I must first consider whether the building work required consent or was exempt building work under Schedule 1.

1.6 I note that during the period of time in which the remedial work was carried out Schedule 1 was amended. The relevant sections of the Act and the applicable amendments to Schedule 1 are set out in Appendix A.

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

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

² The building work was undertaken when the property was within the jurisdiction of North Shore City Council, which was transitioned into the Auckland Council. The term authority is used for both.

³ 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.

⁴ In terms of sections 177(1)(b) and 177(3)(b) of the Building Act 2004.

Building Code insofar as it pertains to the information provided in the applications for certificates of acceptance.

2. The building work and background

- 2.1 The three units in question are part of a larger complex of 21 residential units (Units A to U), comprising four free-standing blocks that range in size from two semi-detached townhouses to seven semi-detached townhouses. The development is situated in a medium wind zone⁵ and corrosion zone C. Of the blocks containing the three subject units, one block is on level ground and the other steps down a sloping site.
- 2.2 Each of the three units is two storied and wooden framed with a concrete ground floor. Two of the units (I and Q) are within blocks and only have external walls front and rear. The third unit (M) is an end unit and so has an external side wall as well.
- 2.3 The cladding to the three units is texture coated fibre-cement sheet fixed directly to the framing, with 15° concrete tiled roofs with little or no roof overhang to provide protection to the cladding. All three of the units have membrane clad decks on the northwest elevation that are situated over habitable rooms.
- 2.4 The units were originally constructed in 1997/1998 under building consent No. A12258 issued by the authority under the Building Act 1991 (“the former Act”). A code compliance certificate was issued for this consent on 11 September 1998.
- 2.5 Water ingress became apparent by 2004 and a list of remedial work was prepared by a firm of architectural designers; the list included 18 items that were largely related to weathertightness details. By 2005 extensive remedial works to the external envelopes were underway.
- 2.6 Due to the limited detail in the information provided, it is unclear exactly when the remedial work was carried out, with some references to 2004 through to 2007 and others referring only to 2005/2006. However, it is my understanding from briefs of evidence provided by building surveyors and building consultants for a previous court hearing that the bulk of the remedial work to the three subject units was carried out in 2005/2006 (“the 2005 remedial work”) beginning after 31 March 2005, with additional work carried out in 2009 (“the 2009 work”).
- 2.7 It appears that there was limited supervision or monitoring by an engineer while the work was carried out. As the work was not consented, inspections were not conducted by the authority.
- 2.8 The 2005 remedial work included:
- replacement of the original cladding with the same direct fixed texture coated fibre-cement. (The exact scope of the remedial work is not clear from the information provided, but based on invoices for materials it appears likely to have involved extensive re-cladding.)
 - reconstruction of the decks and the wing walls
 - in situ preservative treatment to framing timber.
- 2.9 A building surveyor with expertise in weathertightness work (“the weathertightness expert”) was engaged by the architectural designers to carry out inspections of the units (but not the adequacy of the remedial work) in 2005/2006.

⁵ Taken from the bracing calculations in the original building consent for the development

2.10 The architectural designers' list of remedial work (refer paragraph 2.5) was then updated in 2009, with a further five items added that were relevant to all units. (I note that the copy of this list provided in the application for determination is dated as 'revised Feb 2010'). The additional items included:

19. Lack of soakers to the barge and fascia board joints, junctions & corners potentially allowing moisture ingress into the wall cladding & framing.
20. The potential and probable failure of joinery sill corner mitres and mullion to sill junctions.
21. The failure to install a ponding board has led to a deterioration of the roofing underlay from standing water, and thus the potential for moisture ingress into the roof space.
22. The unsealed junction between the texture coated cladding and the barge/fascia board where there is no soffit is a potential moisture ingress point.
23. The absence of adequate kick-outs to the down slope ends of apron flashings, and the inadequate length of apron flashings at the roof to wall junctions, is a potential moisture ingress point.

2.11 The 2009 work on the three units included (variously):

- installation of head flashings above doors
- installation of cap flashings to the tops of parapet walls
- soakers to 'cedar board joints'
- completion of movement joints
- wing wall repair and flashing
- spouting to deck
- plaster work and coating to exterior walls
- work to windows/window sealing.

2.12 The destructive investigation

2.12.1 The weathertightness expert was engaged in April 2011 to investigate 12 of the units (including Units I, Q & M) in order to ascertain whether the repair work undertaken was performing and whether recladding was necessary. As part of that investigation the weathertightness expert carried out destructive investigations of ten units, including the three subject units, in August and September 2011. In a brief of evidence provided to the court, dated 13 October 2011, the expert concluded that the units 'now comply with the requirements of E2 of the New Zealand Building Code in that they do not permit water ingress'. The expert's brief noted that timber had been replaced in a number of locations, there were also elevated moisture readings noted in two locations in Unit Q where framing appeared to be original, and in one location in Units I and M. (See also paragraph 4.5.3.)

2.13 The certificate of acceptance applications

2.13.1 The applications for certificates of acceptance were lodged with the authority in December 2012, and in addition to the completed forms, included copies of:

- the relevant certificates of title
- the code compliance certificate issued for the original consented construction
- the architectural designer's list of remedial work (marked as revised Feb 2010)

- as- built details, dated May 2010 prepared by the architectural designers with supporting photographs and specifications
- producer statements and warranties (see also paragraph 4.5.2)
- various briefs of evidence prepared for the court.

2.13.2 On 9 August 2013 the authority carried out inspections to each of the three units. The site inspection record for Unit Q identified various items requiring attention as follows (in summary):

Unit Q

- Plans require specific details for repairs; type and location of membranes used also required.
- ‘Rebuilt decks ... impact on “IT” walls (northern elevation):
 - a) penetrations of handrail brackets on deck
 - b) threshold issues – cladding clearances to deck
 - c) membrane upstand to original walls
 - d) falls to be confirmed’
- Adequacy of existing fire ratings
- Adequacy of timber replacement
- Evidence of moisture ingress in master bedroom – it is not clear whether this was existing or further ingress is occurring
- Cracking to vertical joint above joinery; internal corner vertical joint of exterior wall and IT wall cracking
- Membrane flashing at garage door junction

The record notes that access was required to the roof to enable the authority to inspect the repairs to the roof areas.

The authority also considers these items requiring attention on Unit Q to equally apply to Units I and M.

2.13.3 The authority wrote to the owners of the three subject units in separate letters (dated 2 September/Unit I, and 27 September 2013/Units Q and M). The authority advised that it was refusing to issue the certificates of acceptance, stating in all three letters the reason for refusal as follows:

This decision was made because the [authority] cannot be satisfied, to the best of its knowledge and belief and on reasonable grounds, that, insofar as it could ascertain the building work complies with the Building Code.

The authority did not expand any further on its reasons for refusal.

2.13.4 On 3 October 2013 the owner of Unit I wrote to the authority requesting that the authority provide reasons for its refusal to issue the certificate of acceptance beyond the statement that it could not be satisfied as to compliance of the building work. The owner noted that the authority had inspected the unit on two occasions and referred to the Ministry’s guidance⁶ to authorities on certificates of acceptance. I have seen no response from the authority to this letter.

⁶ Information for Building Officials on Certificates of Acceptance: <http://www.dbh.govt.nz/bofficials-certificates-of-acceptance>

2.14 The Ministry received an application for a determination on 24 October 2013.

3. The submissions

3.1 The applicants provided a detailed submission which set out the background to the dispute and their views on the Building Code requirements, and supplied the documents listed in paragraph 2.13.1.

3.2 The authority acknowledged the determination application and provided a submission by letter dated 4 November 2013 in which it set out some of the background and noted that the authority was of the view that the building work had required consent. The authority stated that ‘full inspections of the units’ were made after the applications for certificates of acceptance were received and that much of the work undertaken could not be inspected as it could not be seen. Accordingly the authority believed it had satisfied its obligations under section 96(2) and concluded that it did not have sufficient information to reliably conclude that the building works comply.

3.3 The authority provided two CD ROMs containing property file records relating to the subject units. I note here that I could not see any record of the inspections the authority carried out subsequent to the applications for certificates of acceptance.

3.4 On 27 January 2014 I requested from the authority a copy of records from inspections carried out after the applications for certificates of acceptance were lodged (refer paragraph 3.2). I received copies of three site inspection record dated 9 August 2013.

3.5 Submissions in response to the first draft determination

3.5.1 A first draft determination was issued to the parties for comment on 4 March 2014. The first draft concluded that: the application for a certificate of acceptance included work for which consent was not required (the 2005 remedial work) and that a certificate of acceptance could not be issued in respect of that work; while the authority refused to issue the certificate of acceptance, it had the ability under section 98(2) to seek further information from before making this decision; and while the authority was correct to refuse to issue the certificate of acceptance, it had exercised its powers incorrectly in doing so.

3.5.2 The authority did not provide a response to the first draft determination.

3.5.3 The owner for Unit I requested an extension for the period in which to respond in order to obtain further information. In an email on 23 April 2014 the owner for Unit I requested that the expert meet with the supervising engineer who oversaw the remedial work (“the consulting engineer”) in order to provide further information. I have listed the points raised in paragraph 4.6.1.

3.6 Submissions in response to the second draft determination

3.6.1 A second draft determination was issued to the parties for comment on 30 September 2014. The second draft took into account the expert’s second report (refer paragraph 4.7) and concluded that: the application for a certificate of acceptance was for work that did not require consent, both the 2005 and 2009 building work, and so a certificate could not be issued in respect of that work; while the authority was correct to refuse to issue the certificate of acceptance, that decision was made on different grounds.

- 3.6.2 A letter from the authority, dated 30 September 2014, was received on 24 October 2014 in response to the second draft. The authority accepted the decision, but noted it ‘reserves its position with respect to the reasoning at paragraphs 5.2.1 and 5.2.2’. The authority made no further comment on the draft nor did it provide any further explanation as to why it reserved its position on those two paragraphs.
- 3.6.3 The applicants provided a submission by letter dated 21 October 2014, stating that if the authority had any valid grounds (which the applicants dispute) for not accepting the reasoning in the draft, it should state those grounds so that they may be dealt with in the determination.
- 3.6.4 In an email on 6 November the authority advised that it withdrew its reservations with respect to paragraphs 5.2.1 and 5.2.2.
- 3.6.5 I note that paragraph 5.2.1 was subsequently amended to accurately record the Third Schedule to the former Act, but no change was made to paragraph 5.2.2.

4. The expert’s report

- 4.1 As mentioned in paragraph 1.7, I engaged an independent expert, who is a registered building surveyor, to assist me. The expert undertook a review of the information that was provided to the authority in the applications for certificates of acceptance and the application for determination, and furnished a report on 9 January 2014. A copy of that report was provided to the parties on 13 January 2014.
- 4.2 The expert outlined the timing of the remedial works in relation to the changes to Schedule 1 covering exempt building work under the Act and the former Act. The expert concluded that the 2005 remedial work could be considered exempt building work under Schedule 1 at that time, but noting also that further work was carried out after the Schedule 1 was amended.
- 4.3 The expert considered that some of the 2009 remedial work was related to weathertightness, and that in the absence of flashings in the years prior some damage to the underlying structure may have occurred. The expert did not see any evidence that this possibility was considered and/or investigated.
- 4.4 The expert went on to comment that if damage had occurred a building consent would have been required, as the work would have fallen within Schedule 1(a)(iii) being components subject to durability failure; if there was no damage the expert was of the view that the work could have been considered ‘finishing’ of the work that had begun in 2005.

4.5 The documentation

- 4.5.1 As the matter for determination considers the authority’s refusal to issue the certificates of acceptance, the expert was also requested to comment on the documentation provided in the applications.
- 4.5.2 In regards to the documentation provided in the three applications, the expert noted that:
- nothing was provided that detailed exactly where individual lengths of timber had been replaced, whether testing of framing samples was undertaken, how the framing retained was determined to be sound, or what/how much in situ treatment was applied; the expert thought it likely that original framing was untreated

- though it appears that all the decks were either partly or fully rebuilt, there is no information detailing what was done
- there were no marked elevations to indicate the area of cladding that was replaced or any areas that weren't replaced
- no risk matrix is provided, no joinery installation flashing details, nor technical installation instructions
- the remedial works list dated February 2010 which describes 23 items as requiring remedial work includes some items that were attended to in the 2009 work, but there is no detailed response to indicate to the authority whether all items have been remedied
- the producer statements that cover the application of the membrane to the decks and the application of the coating to the fibre-cement cladding were provided by a company that was not registered until well after the 2005 remedial work was completed (but this company was registered before the 2009 work); the bulk of the work was carried out by a different company that was in liquidation from 8 December 2010 before being struck off the Companies Register on 9 February 2011
- warranties included for the products used in waterproofing to the decks and coating to the fibre-cement cladding were for products that were not applied by the company that issued the warranties
- the in situ preservative treatment used in the 2005 remedial work has since been shown to be 'not as satisfactory as [another preservative treatment]', in terms of ensuring durability, in particular in situations where the timber gets wet due to a subsequent leak.

4.5.3 The expert noted that it appeared from the weathertightness expert's brief of evidence that it was not apparent exactly how much of the original exterior framing was replaced during the remedial works, though there were observations of what was considered to be original timber in many of the cut-outs. The expert also observed that:

- there was no direct comment on the risk features which were still present, such as roof/wall junctions, joinery/cladding junctions, flashings, or the cladding system itself and compliance (of the completed work) with Clause B2 – Durability
- there were at least two moisture content readings taken in framing to Units I and Q that were elevated in comparison to others taken during the expert's investigation.

4.6 The owner's response

4.6.1 As noted in paragraph 3.5.2, one of the owners raised a number of issues and requested the expert meet with the consulting engineer who was involved when the remedial work was carried out in order to provide further information concerning these issues which are listed below:

- Treated timber was used in construction of the units and a laboratory report has been obtained to verify that.

- Flashings to the parapet walls were not required but installed as a precautionary measure; the membrane under the flashing caps provided waterproofing.
- Reason for head flashings over bi-fold doors.
- The 2009 works were not weathertightness remedial work but was merely ‘finishing off’ the legitimately started previous work.
- An explanation of a document attached to the application for a certificate of acceptance may have been misinterpreted.
- The remedial work carried out was not a ‘total reclad’ but only a partial reclad of the north elevation.
- It was not necessary for consent to be sought for the remedial work for the units, and for this reason alone certificates of acceptance could not be issued by the authority – not for the reason that such remedial work was not carried out correctly.

4.7 The expert’s second report

4.7.1 The expert met with the consulting engineer on 12 May 2014 to consider the abovementioned issues. On 13 August 2014 the expert then met with the consulting engineer and the builder who was involved in the repair work. Copies of the following were provided to the expert:

- A laboratory report dated 8 March 2013
- Briefs of evidence dated August 2007 from an architect and a building surveyor who had carried out assessments of the remedial work in 2006/2007
- Photographs provided by the builder which show the first floor decks at the rear of the units that had been completely rebuilt.

4.7.2 The expert provided a second report dated 13 August 2014. I summarise the points noted in the report as follows:

- The laboratory report contains analysis of eight samples taken from a unit in Block A in 2013. All returned a positive reading for Boron. As all the units were built at the same time in 1997 this makes it highly likely the framing in the three subject units was also Boron treated.
- The consulting engineer was confident that the works which remained to be done in December 2008 for Unit Q alone were mostly cosmetic ‘finishing work’ and not weathertightness related. The vast majority of the work had been completed by 2006.
- The cap flashings were only required for the short parapets to the garages on Block B (these being only relevant to Unit I). A membrane had been applied within the plaster to the top, so a cap flashing was not necessary.
- The ‘head flashings’ were in fact ‘eye brow’ flashings and only required on some exposed sliding folding units. They were added to the joinery itself to help prevent water blowing in between the sliding folding sashes and the joinery frames.
- No concrete nib walls had been installed to elevate the bottom plates either side of the garage doors in one or more blocks. The expert considered that these framing timbers remain vulnerable.

- Assessments in 2006 and 2007 identified inadequacies in the remedial works that had been carried out up to that point, but it is not clear how many of the issues were attended to later.

4.7.3 The expert concluded that in his view, on the balance of probabilities, it was more correct to describe the works done after 16 October 2008 as finishing work which had been legitimately started, rather than new work required to address weathertightness failure. Accordingly that would mean there was no work to consider under an application for a certificate of acceptance.

5. Discussion

5.1 General

5.1.1 Section 96 of the Act states that an authority may issue certificate of acceptance for building work already carried out in certain circumstances, of which one is:

(a) if—

- (i) the work was done by the owner or any predecessor in title of the owner; and
- (ii) a building consent was required for the work but not obtained;

5.1.2 Accordingly, if the building work did not require consent, as allowed for under Schedule 1, then the authority cannot issue a certificate of acceptance.

5.2 Did the building work require consent?

5.2.1 Prior to 31 March 2005, the Third Schedule to the former Act (refer Appendix A.4) set out building work that did not require consent. This included:

(ab) Any other lawful repair with comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, but excluding –

- (i) The complete or substantial replacement of any system listed in section 44(1) or section 44(5) of this Act;
- (ii) The complete or substantial replacement of any component or assembly contributing to the structural behaviour or fire-safety properties of the building;
- (iii) The repair or replacement of any component or assembly that has failed to satisfy the provisions of the building code for durability;

5.2.2 It is apparent that the building work carried out in 2005 was to remediate existing weathertightness issues where the original construction had failed to perform, and this would not have been exempt under the former Act. However, there has been no information provided to me that indicates the 2005 remedial building work to the three subject units was carried out prior to 31 March 2005.

5.2.3 On 31 March 2005 Schedule 1 of the Building Act 2004 came into force, which provided for exempt building work as including:

- (a) any lawful repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, including all lawful repair and maintenance of that nature that is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976

5.2.4 This was amended on 15 March 2008 to incorporate a number of exclusions to the exemption, including:

- (iii) repair or replacement (other than maintenance) of any component or assembly that has failed to satisfy the provisions of the building code for durability, for example, through a failure to comply with the external moisture requirements of the building code;

- 5.2.5 Based on the information provided and the findings set out in the expert's report, I consider it very likely that the '2005 remedial work' was carried out after 31 March 2005 and prior to the amendment of October 2008. Accordingly, I must consider whether the 2005 remedial work can be considered 'repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position'.
- 5.2.6 I have considered the terms 'repair and maintenance using comparable materials' and 'replacement with a comparable component or assembly' in two previous determinations (2013/058 and 2013/071)⁷. Although these determinations considered repairs to foundations in terms of Schedule 1 after its amendment in October 2008, I consider that approach taken in the determinations also applies in this case in respect of Schedule 1(a) that was current at the time the building work was carried out.
- 5.2.7 Based on the information provided, I conclude that the 2005 remedial work can be considered a 'replacement with a comparable component or assembly', and accordingly was exempt from the requirement for a building consent under Schedule 1(a) that was current at the time the building work was carried out. However, I note here that under section 17 of the Act the building work was still required to comply with the Building Code regardless of whether or not consent was required.
- 5.2.8 Further work was carried out in 2009 on weathertightness details that had not been installed or completed in 2005. There is a paucity of information on any investigations carried out prior to or after this building work that identifies any undue dampness or damage that may have been present, either from the time of construction or occurring after the 2005 remedial work was carried out. I note that the weathertightness expert recorded some elevated readings in each of the three units and I consider those indicate moisture was penetrating the envelope in at least those locations.
- 5.2.9 The details to the external envelope that were left unfinished between the 2005 and 2009 works posed a risk to the ability of the external envelope to achieve or maintain compliance with Clause E2 from 2005; in addition there is a lack of evidence to support the view that the building as a whole, including elements retained from the original construction, complies with Clause B2.
- 5.2.10 However, I accept the view put forward by the expert that the 2009 work was finishing work that formed part of the work begun in 2005, and was not new work that required building consent.
- 5.2.11 Section 96 sets out the circumstances in which an authority may issue a certificate of acceptance. Section 96(1) states:
- (1) A territorial authority may, on application, issue a certificate of acceptance for building work already done –
 - (a) if –
 - (ii) a building consent was required for the work but not obtained; ...

⁷ Determination 2013/058: Regarding the authority's exercise of its powers of decision in respect a notice to fix issued for work done under Schedule 1(a)

Determination 2013/071: The compliance of proposed repairs to an earthquake-damaged foundation including partial replacement of a concrete perimeter foundation wall

5.2.12 As I have found that the 2009 work did not require consent, a certificate of acceptance is not required.

5.3 Conclusions

5.3.1 The application for a certificate of acceptance was for building work for which consent was not required, and therefore in my view a certificate of acceptance cannot be issued in respect of that work.

5.3.2 While the authority was correct to refuse the certificate of acceptance, that decision was made on different grounds.

6. The decision

6.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the application for a certificate of acceptance was for building work that did not require consent and a certificate of acceptance cannot be issued in respect of that work; accordingly I confirm the authority's refusal to issue a certificate of acceptance, albeit on different grounds.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 1 December 2014.

John Gardiner
Manager Determinations and Assurance

Appendix A

A.1 The relevant sections of the Building Act 2004 include:

s96 Territorial authority may issue certificate of acceptance in certain circumstances

(1) A territorial authority may, on application, issue a certificate of acceptance for building work already done—

(a) if—

(i) the work was done by the owner or any predecessor in title of the owner; and

(ii) a building consent was required for the work but not obtained; or

...

(2) A territorial authority may issue a certificate of acceptance only if it is satisfied, to the best of its knowledge and belief and on reasonable grounds, that, insofar as it could ascertain, the building work complies with the building code.

A.2 Schedule 1 to the Act, which came into force on 31 March 2005:

(1) A building consent is not required for the following building work:

(a) any lawful repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, including all lawful repair and maintenance of that nature that is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976

Schedule 1 paragraph (a): substituted, on 15 March 2008, by section 91(1) of the Building Amendment Act 2008 (2008 No 4).

A.3 Schedule 1 Clause 1(a) to the Act which came into force on 15 March 2008:

(1) A building consent is not required for the following building work:

(a) any lawful repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, including all lawful repair and maintenance of that nature that is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976, except—

...

(iii) repair or replacement (other than maintenance) of any component or assembly that has failed to satisfy the provisions of the building code for durability, for example, through a failure to comply with the external moisture requirements of the building code; or

...

Schedule 1 clause 1(a): substituted, on 15 March 2008, by section 91(1) of the Building Amendment Act 2008 (2008 No 4)

A.4 Third Schedule⁸ to the Building Act 1991: Exempt buildings and building work:

A building consent shall not be required in respect of the following building work:

(ab) Any other lawful repair with comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, but excluding –

⁸ (ab) inserted, as from 15 September 1993, by section 21(1) of the Building Amendment Act 1993.

- (i) The complete or substantial replacement of any system listed in section 44(1) or section 44(5) of this Act:
- (ii) The complete or substantial replacement of any component or assembly contributing to the structural behaviour or fire-safety properties of the building:
- (iii) The repair or replacement of any component or assembly that has failed to satisfy the provisions of the building code for durability: