



## Determination 2019/013

# Regarding the refusal to issue a code compliance certificate for the relocation of and 18-year-old alterations to a house at 9 High Street, Waddington

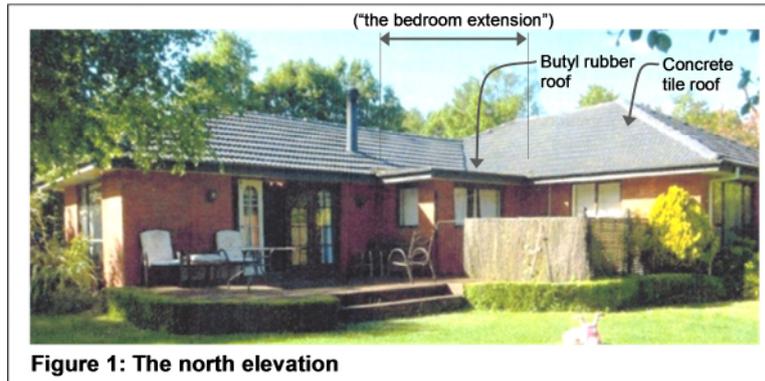


Figure 1: The north elevation

### Summary

This determination considers the compliance of consented work for the relocation of an existing building onto a new site and alterations to the building. The authority refused to issue the code compliance certificate for the work because of concerns over the performance of a membrane roof to a new extension built as part of the relocation consent.

## 1. The matters to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“the Act”) made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are:
  - The current owner of the house, R Dempsey (“the applicant”)
  - Selwyn District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 The application for this determination arises from the authority’s refusal to issue a code compliance certificate because it was not satisfied that the completed house complied with certain clauses<sup>2</sup> of the Building Code<sup>3</sup>, in particular in regard to the age of the building work and the weathertightness of the butyl rubber membrane to the bedroom extension roof (“the membrane roof”).

<sup>1</sup> The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at [www.building.govt.nz](http://www.building.govt.nz) or by contacting the Ministry on 0800 242 243.

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

<sup>3</sup> First Schedule, Building Regulations 1992

1.4 The matter to be determined<sup>4</sup> is therefore the authority's exercise of its powers in refusing the code compliance certificate for the alterations in 2007. In deciding this matter, I must consider whether the membrane roof to the bedroom extension complies with Clause B2 Durability and Clause E2 External moisture of the Building Code that was in force at the time the consent was granted.

## 1.5 Matters outside this determination

1.5.1 In its refusal (dated 8 May 2007), the authority limited its concerns to items associated with the Clauses B2 and E2 (see paragraphs 2.6.1 and 2.6.2). However in its last site inspection (dated 21 February 2007, see paragraph 2.5.2) the authority raised two additional minor items. Apart from the discrepancy regarding the entry porch noted by the expert during his inspection, this determination does not address other areas of the house or other clauses of the Building Code.

1.5.2 As the authority has limited its concerns to the matter outlined in paragraph 2.6.1 and 2.6.2, this determination is limited to the membrane roof constructed as part of building work carried out under Building Consent (No. BC990766) dated 8 November 1999. I have not considered other elements of the alterations or the original house which are remote from the bedroom extension roof as shown in Figure 1.

1.5.3 This determination does not consider the detached garage in the south corner of the site as shown in Figure 2.

1.5.4 I also note that the owner will be able to apply to the authority for a modification of durability provisions to allow the durability periods specified in Clause B2.3.1 to commence from the date of substantial completion in May 2000. Although I take the 18-year-old age of the membrane roof into account, I leave this matter to the parties to resolve after other matters are satisfactorily resolved.

1.6 In making my decisions, 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.

## 2. The building work and background

2.1 The building work consists of a small single-storey house relocated onto a flat site in a high wind zone<sup>5</sup> for the purposes of NZS 3604<sup>6</sup>. The relocated altered house is simple in plan and form and is assessed as having a low weathertightness risk<sup>7</sup>.

### 2.2 The original relocated house

2.2.1 The original building was a small single-storey traditional 1960's house ("the original house"), which had a perimeter concrete foundation wall with interior concrete pile foundations, timber-framed walls, clay brick veneer cladding, timber windows and a concrete tile hipped roof. The 110m<sup>2</sup> house was L-shaped in plan, with two bedrooms, bathroom, toilet, laundry, kitchen/dining area and a lounge.

2.2.2 The design engineer ("the engineer") inspected the house on its original site on 25 August 1999 and reported to the previous owner on 9 September 1999, attaching

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<sup>4</sup> Under sections 177(1)(b) and 177(2)(d) of the Act

<sup>5</sup> According to the bracing calculations

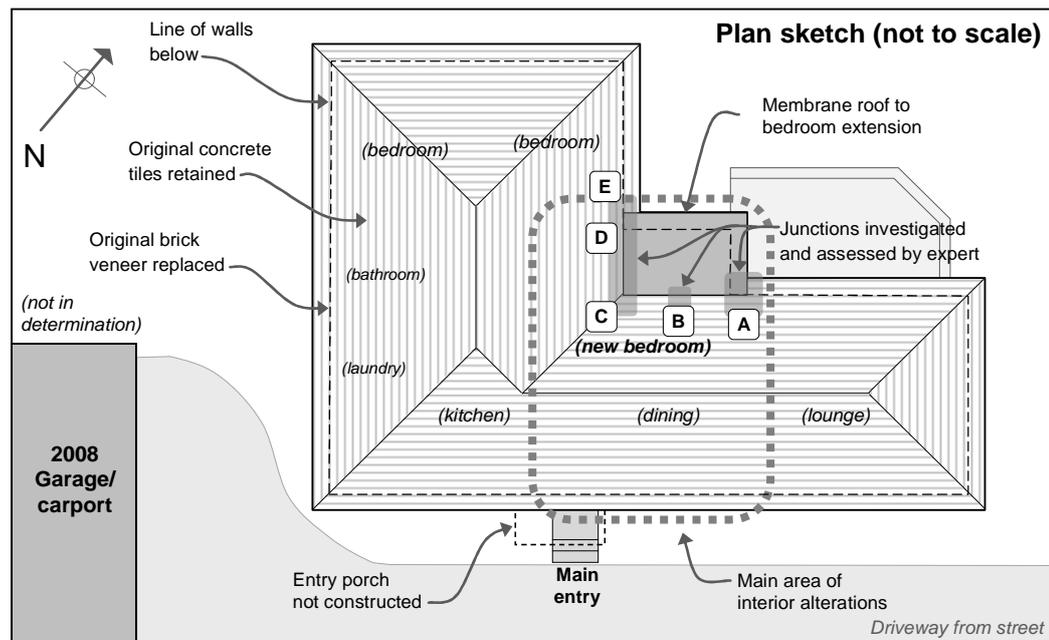
<sup>6</sup> New Zealand Standard NZS 3604:1999 Timber Framed Buildings

<sup>7</sup> Paragraph 3 of the Acceptable Solution for Clause E2, E2/AS1, provides a method of assessing the weathertightness risk of a building's envelope based on environmental factors, and building features and complexity

bracing requirements for the increased wind zone of the new site and noting that the house was 'suitable for relocation'.

## 2.3 The altered house

2.3.1 As shown in the sketch in Figure 2, alterations to the relocated house were generally limited to the central area and included a new 3m wide central extension including an extension/addition to the internal north corner with interior alterations to the layout to provide a third bedroom and to form a larger "L" shaped house.



**Figure 2: Approximate plan**

2.3.2 The completed house now accommodates the following:

- the two original bedrooms to the northwest, with the bathroom/toilet to the Southwest
- a third bedroom to the north internal corner
- the original lounge to the northeast, opening onto a deck
- dining area and main entry to the southeast
- rear door, laundry and kitchen in the south corner.

2.3.3 The relocation alterations are of light timber frame construction, with a new reinforced concrete perimeter foundation wall and treated timber pile foundations supporting the original timber-framed floor. The original concrete chimney and brick veneer wall cladding were removed as part of removal operations; with new insulation, building wrap and brick veneer installed during the alteration work, and plasterboard bracing provided in accordance with the engineer's report.

2.3.4 According to the consent drawings, the original 28° pitch clay tile roof is retained, along with joinery, which is a mix of original timber and new aluminium – including some relocated joinery. The bedroom extension has aluminium windows, with a 3° pitch butyl rubber membrane roof ("the membrane") that extends back to intersect with the second course of tiles of the roof of the remainder of the house.

2.3.5 Given its age, the original framing to the relocated house is likely to be heart rimu and the expert observed no evidence of timber treatment in the new framing. Given the lack of evidence and the construction of alterations in 2000, I am unable to determine the particular level and type of treatment, if any, applied to any new exterior framing. I therefore consider that wall and roof framing to the extension may not be treated to a level that will provide resistance to fungal decay.

## **2.4 The building consent and construction**

2.4.1 A house removal company lodged the application for a building consent on behalf of the previous owner on 18 October 1999. Included in the consent documentation for the building work was the engineer's report, the effluent disposal design and two drawings.

2.4.2 The authority issued a building consent (No. BC990766) on 8 November 1999 under the Building Act 1991 ("the former Act") for a 'relocated dwelling'. The attached conditions included a list of required inspections which were carried out during 2000.

2.4.3 On 25 May 2000, the previous owner advised the completion of items relating to a freestanding woodburner, and the authority issued an interim code compliance certificate on 30 May 2000 under Section 43(4) of the Building Act 1991.

2.4.4 The certificate stated that it was issued 'in respect of part only, as specified in the following particulars, of the building work'. The 'particulars' state:

Further building work is required to be completed as detailed in the most recent building inspection site sheet. When all works are completed the building owner is required to notify [the authority] where a further inspection may be required to ensure compliance. When all building works approved under the above building consent comply, a full Code Compliance Certificate will be issued.

## **2.5 The 2007 final inspection**

2.5.1 It appears the previous owner did not call for another inspection until 2006. The authority re-inspected the house on 21 February 2007.

2.5.2 The 'inspection notice' noted completion of the freestanding woodburner installation and advised the previous owner to contact the authority when the following three items were completed:

1. Require vermin cap on [Terminal vent]
2. Require stays on vent of [Hot water cylinder]
3. Require [butyl rubber membrane] dressed onto flashing into gutter & side onto roof.

## **2.6 The refusal to issue a code compliance certificate**

2.6.1 In a letter to the previous owner dated 8 May 2007, the authority noted that the durability requirements of the Building Code commenced from the time of issue of the code compliance certificate and it was more than 7 years between the issue of the building consent and the final inspection. The authority advised it could not:

...now be satisfied on reasonable grounds that the building work ... will continue to satisfy the durability provisions of the Building Code for the prescribed [periods] after the Code Compliance Certificate has been issued.

2.6.2 The authority also raised concerns about the membrane roof, noting that the:

...durability of some of the building elements has also been compromised given that the [butyl rubber membrane] was incorrectly installed for some time. As identified by the inspection carried out on 21/2/2007.

- 2.6.3 In an undated<sup>8</sup> statement the previous owner set out a summary of events and confirmed that the three items identified in the 2007 final inspection had been attended to and confirmed as satisfactory by a ‘Master Builder’. The applicant purchased the house in July 2012.
- 2.6.4 On 6 September 2018 the Ministry received an application for determination. The Ministry accepted the application for determination on 13 September 2018 and sought additional information from the authority, which was received on 18 September 2018.

### **3. The submissions**

#### **3.1 The initial submissions**

- 3.1.1 The applicant outlined the background to the situation, noting that the items identified by the authority in its final inspection had been attended to.
- 3.1.2 The applicant provided copies of:
- the original building consent for the relocation alterations dated 8 November 1999
  - the authority’s inspection records
  - the interim code compliance certificate dated 30 May 2000
  - the authority’s refusal to issue a code compliance certificate dated 8 May 2007
  - the previous owner’s timeline and summary of events (see paragraph 2.6.3)
  - various other statements and information.
- 3.1.3 In its submission dated 18 September 2018; the authority noted that its last visit to the property was to carry out the final inspection on 21 February 2007, which identified ‘incorrectly installed [butyl rubber] roof’.
- 3.1.4 The authority provided its property records, which contained some additional documents pertinent to this determination including:
- the engineer’s report on the original house dated 9 September 1999
  - photographs of the house on its original site
  - the application for the building consent dated 18 October 1999
  - the consent drawings.

#### **3.2 The first draft determination and submissions received in response**

- 3.2.1 The first draft determination was issued to the parties for comment on 13 November 2018. The first draft determination concluded the authority was correct to refuse to issue a code compliance certificate because:
- the expert’s investigations found some defects that require attention to ensure that the membrane roofing protects the underlying timber framing structure from damage for the further 32 years required to meet the minimum durability of 50 years required by the Building Code Clause B2 Durability, and

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<sup>8</sup> It is assumed this statement was made sometime between 2007 and the sale of the property to the applicants in 2012.

- evidence of limited historic water staining and limited moisture penetration indicates a lack of weathertightness in the past, therefore the butyl membrane roof does not comply with Clause E2 External moisture of the Building Code.
- 3.2.2 The authority accepted the draft on 21 November 2018 and made a submission as summarised below:
- The extent and location of the consented alterations were clarified.
  - The building is “now considered to be in the Very High wind zone”. The authority had “recently published ... local wind zone information” that showed the site to be in a ‘Very High’ wind zone, stating “where applicable any amendment to the building consent will need to consider this”.
- 3.2.3 The authority also cited the transitional provisions of section 436 of the Act which it took to mean:
- Section 436 requires code compliance certificates for work consented under former Act to be treated as if section 43 of the former Act remains partly in force, therefore the authority could not issue a notice under 95A of the Act.
  - To refuse to issue a code compliance certificate under section 43 of the former Act requires an authority to issue a ‘notice to rectify’<sup>9</sup> under section 42 of the former Act.
  - Some determinations<sup>10</sup> have stated that an authority cannot issue a notice to fix to a new owner that was not the person who contravened the Act or its regulations.
- 3.2.4 The applicant responded on 5 December 2018 accepting the draft determination without comment.

### **3.3 The second draft determination and submissions received in response**

- 3.3.1 The second draft determination was issued to the parties for comment on 11 March 2019.
- 3.3.2 The applicant responded on 18 March 2019 accepting the draft determination without comment.
- 3.3.3 The authority responded on 21 March 2019 accepting the draft determination subject non-contentious comments. I have amended the determination accordingly.

## **4. The expert’s report**

### **4.1 General**

- 4.1.1 As mentioned in paragraph 1.6, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors and inspected the house on 1 November 2018, providing a report dated 5 November, a copy of which was forwarded to the parties on 7 November 2018.
- 4.1.2 The expert noted that the scope of his inspection was to provide an assessment of the matters raised by the authority (see paragraph 2.5.2, 2.6.1 and 2.6.2) and to form a

<sup>9</sup> In accordance with Section 435 of the Act, notices to rectify under section 42 of the former Act, must be treated as a ‘notice to fix’ under section 164 of the Act

<sup>10</sup> Determinations issued since and including Determination 2014/035: The issue of a notice to fix for weathertightness remedial work carried out by a previous owner (15 August 2014)

view as to compliance, taking into account the age, risk profile and performance in use since completion.

4.1.3 The expert considered the interior finish had ‘generally been finished to an acceptable trade standard’ and the quality of finish in regard to the exterior was also ‘generally to an acceptable standard’ except for the perimeter of the butyl roof.

4.1.4 The expert noted that the overall shape and form of the extension is ‘largely in accordance with the architectural design concept of the construction drawings reviewed’. However, the expert noted the entry porch shown on the floor plan had not been constructed.

## **4.2 The membrane roof to the bedroom extension**

4.2.1 The applicant advised the expert that the bedroom had not been redecorated since the house was purchased in 2012. The expert inspected the room observing that the paintwork appeared original, with ‘no tell-tale signs’ of repainting since construction.

4.2.2 The expert inspected ceiling linings below junctions with the tile roof and external walls below the perimeter of the membrane roof observing:

- that non-invasive moisture scan readings taken at 100mm centres across the ceiling were ‘very low at the time of inspection’
- no water marks or indications of roof leaks to the plasterboard ceiling
- no sign of swelling in skirtings to the two exterior walls and no elevated moisture readings in these walls.

4.2.3 The expert inspected the membrane roof to the bedroom extension, observing that:

- the membrane has lapped joints and together with timber roof construction forms approximately 600mm wide eaves
- adequate falls are provided to drain water into the northwest gutter
- the membrane roof provides an adequate overhang of about 40mm above the northwest gutter, with:
  - outer edges of the membrane bent around the plywood substrate
  - square (not rounded) plywood edges, which will lead to the membrane eventually perishing
  - the membrane extended past plywood to form a drip edge above northwest gutter but the membrane itself is unsupported
- on the northeast edge of the roof:
  - there is no drip edge
  - the membrane is wrapped around and under the square edge of the plywood
  - a timber batten holds the membrane against the timber fascia beneath
  - the membrane not lapped over the edge of the gutter, which would allow water to flow between the fascia and the gutter.

## **4.3 Destructive investigations of the membrane / tile junction (see Figure 2)**

4.3.1 The expert removed concrete tiles at the northeast end of the membrane/tile junction (Area A) to investigate the underlying construction and observed:

- an underlying metal back flashing intended to channel any water that spills over the membrane edge down into the adjacent gutter
- plastic mesh over the above junction to prevent debris entering and blocking the underlying back flashing
- a build-up of wind-blown leaf debris within the soffit cavity, but no sign of any dampness or moisture penetration despite recent heavy rain
- at the internal corner, water stains to the original soffit framing but no evidence of current moisture, with all timber apparently sound and undamaged.

4.3.2 At the southeast membrane/tile junction (Area B), the expert noted:

- the upper edge of the membrane extends up under the adjacent concrete tile and past the underlying timber tile batten
- the bottom of concrete tiles rest on the butyl, which will eventually cut through the membrane. There appeared to have been a separating element between the tiles and the membrane in the past.

4.3.3 The expert also removed concrete tiles along the southwest butyl/tile junction to investigate the underlying construction and noted the following:

- The membrane turned up to form an upstand with varying height to suit the butyl slope up under the concrete tile, but lacked any support to the membrane behind the upstands at junctions with tiles.
- In regard to the southeast end of the junction (Area C):
  - the lap joint has opened, with a ruler able to be inserted
  - old water stains and a recent damp patch on the underlying timber
  - very low invasive moisture readings in the timber with the old stain.
- In regard to the northwest end of the junction (Area D):
  - the lap joint has also opened, with a ruler able to be inserted
  - a damp patch from recent rain on underlying timber
  - very low invasive moisture readings in the adjacent top plate.
- In regard to the western end of the junction (Area E):
  - ‘ample upstand’ to the membrane to prevent water flowing into the roof cavity
  - no support provided to the membrane at the upstand
  - no evidence of past or current moisture penetration into the soffit cavity.

#### 4.4 The expert’s conclusions

4.4.1 The expert also checked the two other items identified by the authority in its last site inspection dated 21 February 2007 (see paragraph 2.5.2) and noted:

- a vermin cap has been fitted to the top of the terminal vent (item 1)
- stays have been fitted to the vent pipe from the hot water cylinder (item 2)

4.4.2 In regard to concerns about the membrane roofing (item 3), the expert noted that:

Attention is still required to all four sides of the [membrane] roof. However, extensive deconstructive investigations revealed no timber decay or other damage as a result of the [membrane’s] deficiencies.

- 4.4.3 To ensure compliance with Clauses E2 and B2, the expert concluded that the membrane roof to the bedroom extension required the following remedial work:

The [membrane] roof is leaking at the lap joints where they turn up the flat roof-to-pitched roof junction on the SW side of the flat roof.

Attention is required to all four sides of the [membrane] roof.

## 5. Compliance of the alteration work

### 5.1 General

- 5.1.1 The building consent considered in this determination was issued under the former Act, and accordingly the transitional provisions of the Act apply when considering the issue of a code compliance certificate for work completed under this consent. Section 436(3)(b)(i) of the transitional provisions of the current Act requires the authority to issue a code compliance certificate only if it 'is satisfied that the building work concerned complies with the building code that applied at the time the building consent was granted'.
- 5.1.2 In order to determine whether the authority was correct in refusing to issue a code compliance certificate, I must therefore consider whether the building work in dispute (refer paragraph 2.5.2) complies with the provisions of the Building Code that applied when the building consent was issued in 1999.

### 5.2 Compliance with Clauses B2 and E2

- 5.2.1 The matter is limited to the authority's refusal to issue a code compliance certificate and whether the membrane roof to the bedroom extension complies with Clause B2 Durability and Clause E2 External moisture of the Building Code that was in force at the time the consent was granted.
- 5.2.2 The relevant performance requirements of Clause B2 is provided in Clause B2.3.1:
- B2.3.1** *Building elements* must, with only normal maintenance, continue to satisfy the performance requirements of this code for the lesser of the *specified intended life* of the *building*, if stated, or:
- (a) the life of the building, being not less than 50 years, if:
- (i) those *building elements* (including floors, walls, and fixings) provide structural stability to the building, or
- ...
- (b) 15 years if:
- (i) those *building elements* (including the building envelope, exposed plumbing in the subfloor space, and in-built chimneys and flues) are moderately difficult to access or replace, or
- ....
- 5.2.3 For the purposes of clarity, I consider the roof structure has a 50-year minimum durability period and the overlying membrane roof has a 15-year minimum durability period.
- 5.2.4 The relevant performance requirement of Clause E2 is provided in Clause E2.3.2:
- E2.3.2** Roofs and exterior walls must prevent the penetration of water that could cause undue dampness, damage to *building elements*, or both.

**Compliance with Clause E2**

- 5.2.5 A final re-inspection was not carried out until almost 7 years after the building work was completed and the authority identified three defects, two of which were attended to (refer paragraph 5.3.2). The expert did not inspect the membrane roofing to the bedroom extension until a further 11 years had passed, some 18 years after completion of the extension.
- 5.2.6 The expert found evidence of limited minor historic and current moisture entry associated with the membrane roofing. However, despite his inspection taking place some 18 years after completion of the extension, the expert found no evidence of damage or dampness caused by any moisture entry into the underlying timber framing during that time.
- 5.2.7 I consider Clause E2.3.2 is satisfied so long as moisture ingress does not cause 'undue dampness, damage to building elements, or both'. While minor water entry and staining may be present, as noted by the expert, there is no evidence to suggest the membrane roof is failing in respect of Clause E2.3.2. Given the expert's observations of the as-built junctions and installation of the membrane I consider the construction of the membrane roof is high risk, especially given the expert's lack of observed evidence of timber treatment in the new framing. However I consider it likely the site conditions contributed to the membrane's unexpected in-service history performance over the past 18 years (3 years in addition to the 15-year minimum durability period). Taking regard of the expert's findings and the in-service history performance of the membrane, I am satisfied the membrane roof complied with Clause E2.3.2 for its 15-year minimum durability period.
- 5.2.8 I acknowledge the installation of the membrane is not standard industry practice and would not usually expect the membrane to have performed as it has; in this respect I consider the authority in its refusal letter dated 8 May 2007 (see paragraph 2.6.2), being 7 years after the substantial completion of the work, correct at the time in its decision to refuse to issue the code compliance certificate.

**Compliance with Clause B2**

- 5.2.9 A modification of the Building Code's durability provisions will allow the durability periods stated in Clause B2.3.1 to commence from the date of substantial completion in May 2000 (refer paragraph 1.5.4). This means that in respect of the butyl rubber membrane cladding the required durability period of 15 years expired over 3 years ago. While the expert observed some historic leaks, it is not possible to say when these leaks occurred (i.e. within the required 15-year durability period or not). Despite when the observed leaks occurred, the extent of water ingress does not equate to 'undue dampness, damage to building elements, or both' and I have concluded in paragraph 5.2.7 the membrane complies with E2.3.2. I am therefore satisfied the membrane has complied with B2.3.1(b)(i) insofar as it relates to Clause E2.
- 5.2.10 The membrane roof cladding may have satisfied the 15-year minimum durability period required by the Building Code, but the expected life of the building itself is a minimum of 50 years and careful attention to the performance and maintenance of the membrane cladding is needed to ensure that the membrane continues to protect the underlying structure for its minimum required life of 50 years (In other words, meet Clause B2.3.1(a)(i) insofar as it relates to Clause B1 especially given the installation and lack of observed evidence of timber treatment in the new framing).

- 5.2.11 In this case, and for the benefit of the applicant, the membrane has some high risk features (especially given the installation and lack of observed evidence of timber treatment in the new framing), and the expert has identified some areas which require careful attention in order to ensure ongoing weathertightness of the roof cladding:
- the lap joints to the butyl rubber membrane
  - the edges of the membrane roof.
- 5.2.12 Effective maintenance of the house is important to ensure ongoing compliance with the Building Code and is the responsibility of the building owner. The Ministry has previously described maintenance requirements associated with the external building envelope, including examples where the external wall framing of the building may not be treated to a level that will resist the onset of decay if it gets wet (for example, Determination 2007/60).
- 5.2.13 Clause B2.3.1 of the Building Code requires that the cladding be subject to ‘normal maintenance’, however that term is not defined in the Act. I take the view that normal maintenance is that work generally recognised as necessary to achieve the expected durability for a given building element. With respect to the cladding, the extent and nature of the maintenance will depend on the material, or system, its geographical location and level of exposure. I note Schedule 1 of the Building Act outlines building work for which building consent is not required, and allows for general repair, maintenance and replacement.

### **5.3 Other items identified by the authority**

- 5.3.1 In paragraph 1.5.1 I noted the authority limited its concerns to the butyl rubber roofing to the bedroom extension and compliance with the Clauses B2 and E2. However, in its last site inspection (dated 21 February 2007) the authority also raised two other minor items, namely it required; a vermin cap to be installed to the terminal vent, and stays to be installed to the vent of the hot water cylinder.
- 5.3.2 Taking account of the expert’s conclusion at paragraph 4.4.1, I am satisfied that these remaining two items identified by the authority have been satisfactorily attended to.

## **6. The Act’s transitional provisions in relation to the issue of a code compliance certificate**

- 6.1 In its response to the draft determination the authority referred to the transitional provisions and questioned how they applied in this case. The transitional provisions of the Act apply when an application for a code compliance certificate is received in respect of a building consent issued under the former Act. The transitional provision in section 436(3)(a) of the Act requires an authority to consider such an application under the former Act as if the Building Act 2004 had not been passed.
- 6.2 This has previously been considered in Determination 2013/015<sup>11</sup> (refer paragraphs 4.1.1 to 4.1.4 of that determination). I remain of the view that section 436 does not apply to any subsequent decisions or enforcement action by an authority after it has made a decision whether to issue a code compliance certificate.
- 6.3 The authority has correctly identified that it cannot issue a notice to fix as the non-compliant building work was undertaken by the previous owner and the current

<sup>11</sup> Determination 2013/015: The refusal to issue a code compliance certificate and the simultaneous issue of a notice to fix for a 14 year old house (8 April 2013).

owners have ‘not contravened or failed to comply with the Act or Regulations’, being the requirement for issuing a notice to fix under section 164(1)(a) of the Act.

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

- 7.1 As noted in paragraph 5.2.8, I consider the authority was correct in its refusal to issue a code compliance certificate in May 2007. However, I now have evidence of in-service history performance of Clause E2.3.2 and B2.3.1(b)(i) insofar as it relates to Clause E2.
- 7.2 I noted in paragraph 4.1.4 that the expert noted the entry porch shown on the building consent floor plan had not been constructed. I leave this matter to the parties to amend the building consent accordingly.
- 7.3 Given my conclusion above in paragraph 7.1, and assuming the outstanding matter in paragraph 7.2 is resolved, a code compliance certificate will be able to be issued once the matter of amending the building consent to modify Clause B2.3.1 has been resolved.
- 7.4 For the benefit of the applicant I reiterate paragraphs 5.2.10 to 5.2.13 in regards to the need for careful maintenance to ensure that the membrane continues to protect the underlying structure for its minimum required life of 50 years.

## **8. The decision**

- 8.1 In accordance with section 188 of the Building Act 2004, I hereby determine that;
- (a) The authority was correct, for the reasons outlined in paragraph 5.2.8, in its decision to refuse to issue the code compliance certificate at the time.
  - (b) The membrane roof to the bedroom extension complied with Clause E2.3.2 and Clause B2 as it relates to Clause E2 for its 15-year minimum durability period.
  - (c) Accordingly, I reverse the authority’s decision to refuse to issue a code compliance certificate for the Building Consent (No. BC990766), requiring the authority to make a new decision taking into account the findings of this determination.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 18 April 2019.

Katie Gordon  
**Manager Determinations**