



Determination 2020/005

Regarding the refusal to issue a code compliance certificate for a 22-year-old house at 63b Thirteenth Avenue, Tauranga



Summary

This determination considers the reasons given by a building consent authority to issue a code compliance certificate for a 22-year-old house. The reasons for the refusal included the lack of energy works certificates for electrical and gas services. The house was the subject of significant consented alterations that are now 12 years old, and for which a code compliance certificate was issued.

1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004 (“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 Ministry¹.
- 1.2 The parties to the determination are:
 - the owner of the property, P and W Thomas, as the applicant (“the applicant”)
 - Tauranga City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from the authority’s decision to refuse to issue a code compliance certificate for a 22-year-old house. The refusal arose because the authority is not satisfied that the building work complies with certain clauses of the Building Code (First Schedule, Building Regulations 1992). The authority’s concerns about the compliance of the building work relate primarily to the weathertightness and durability of the exterior cladding.

¹ The Building Act and Building Code (Schedule 1 of the Building Regulations 1992) are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents and guidance issued by the Ministry is available at www.building.govt.nz.

- 1.4 The matter to be determined² is therefore the authority's exercise of its powers of decision in refusing to issue a code compliance certificate for the reasons given in its letter dated 20 October 2017; being the weathertightness and durability of the exterior cladding, access to the subfloor space and the lack of energy works certificates for the electrical and gas services.
- 1.5 In making my decisions, I have considered the submissions of the parties and the other evidence in this matter. I have not considered any other aspects of the Act or Building Code beyond that required to decide on the matter to be determined.
- 1.6 Refer to Appendix A for relevant extracts from the legislation.

1.7 Matters outside of this determination

- 1.7.1 This determination does not consider the alterations undertaken to the applicant's house in 2008 which were subject to a separate building consent application and have been issued with a code compliance certificate.
- 1.7.2 I also note that the applicant may apply to the authority for a modification of durability provisions to allow the durability periods specified in Clause B2.3.1 to commence from the date of substantial completion of the original house in April 1997. I leave this matter to the parties to resolve.

2. The building work

- 2.1 The building work consists of a detached house that is three-storeys high in part and is simple in plan and form. The construction is of light timber frame, a mix of timber subfloor and slab foundation, 40° pitched corrugated steel gable roofs, and aluminium door and window joinery. The upper level includes an enclosed membrane deck with enclosed parapet balustrades.
- 2.2 The approved drawings specify the external cladding ("the cladding") to be fibre-cement sheets on building paper, direct-fixed to the framing and finished with an applied textured coating system. Timber shingles are installed as a feature to the gable ends.

3. Background

- 3.1 On 24 October 1996 the authority issued building consent (96/2669) ("the building consent") under the Building Act 1991 ("the former Act") to "erect dwelling". I have not seen a copy of the building consent but it appears this was issued on the basis of a building certificate issued by a building certifier.
- 3.2 Various inspections were carried out (and all passed as satisfactory) between 25 October 1996 and 28 January 1997, including footing, bond beam, underfloor, slab, preline/building, preline/plumbing and insulation. On 18 April 1997 a final building inspection was marked as fail with the inspection record noting:
- Handrail upstairs, rangehood to vent to outside air. Ventilation under timber floor required or alternatively ground to be sealed with polythene.
- 3.3 On 7 July 2008 the authority issued a building consent for alterations to the building with the description of building work being "Add cellar under garage, add to kitchen

² Under sections 177(1)(b) and 177(2)(d) of the Act

on ground floor and deck on first floor of dwelling”. On 3 November 2008 the authority issued a code compliance certificate for that building work.

- 3.4 In October 2017, the applicants applied for a code compliance certificate for the original building work. The authority inspected the property on 12th October 2017 and wrote to the applicants on 20th October 2017 advising that the code compliance certificate had been refused. In the refusal letter the authority stated “Some of the items identified (but not limited to) are listed below”. With regard to the cladding, the authority gave its reasons for refusal as:

The cladding has not been installed in accordance with the manufacturer's installation instructions, whilst it has been well maintained we have concerns in relation to clearance to apron flashing deck balustrade details and to some extent cladding to ground. The material used further exacerbates this concern, which is a [fibre-cement sheet] product with textured coating. (E2)³

The authority noted in its refusal letter:

If you choose to advance this process, we recommend that you engage the services of a suitably qualified individual (Registered Building Surveyor) who is qualified in weather tightness and remedial design. The person must further investigate the performance of this building... and provide a "scope of works" and any recommendation to [the authority] for further review before carrying out any work

- 3.5 The authority also listed the following as its reasons for refusal:

Access required to subfloor space — preferably from internally through the floor — to be discussed prior to work taking place. (B1/B2)⁴

In the event that the aforementioned are addressed satisfactorily an energy works certificate will be required for the electrical installation and gas hot water cylinder. (G9/G11)⁵

- 3.6 An application for a determination was received by the Ministry on 26 August 2019.

4. The submissions and the draft determination

4.1 The initial submissions

The applicant

- 4.1.1 The applicant provided copies of the following with the application:

- A covering letter which included photos of applicant’s house.
- A letter from the authority refusing the code compliance certificate.
- A land information memorandum dated 14 July 2017.
- Limited drawings from the original building consent.
- The building consent, approved drawings, inspection records, photos and code compliance certificate for the 2008 alterations.

- 4.1.2 In a covering letter dated 7 August 2019 the applicant noted the following (in summary):

- No defects in the cladding had been identified by the authority.

³ Clause E2 – External Moisture

⁴ Clause B1 – Structure and Clause B2 - Durability

⁵ Clause G9 – Electricity and G11 – Gas As An Energy Source

- There is no obvious evidence of water ingress, cladding failure, interior plaster board swelling, damp or mould or other evidence consistent with a failed cladding system.
- The house has been well maintained including annual exterior cleaning and application of a flexible sealer. Minor expansion cracks in cladding joins are also re-painted with elastomeric exterior paint.
- Access to the sub-floor space is accessed through a removable panel under the stairwell and has been in place since the house was constructed.
- The installation of gas and electrical systems were carried out by registered gas fitters and electricians according to relevant standards.

4.1.3 With regard to the alterations carried out in 2008 (refer paragraph 3.3), the applicant noted:

- The 2008 alterations to the kitchen area necessitated complete removal of some exterior cladding, interior lining, flooring and floor framing. At the same time the deck area was substantially opened up to install beams and framing for the extension. There was no evidence of decay, mould or other indication of water ingress noted by either the builders or the authority's inspectors.

The authority

4.1.4 The authority acknowledged the application for a determination on 3 September 2019 and provided the original refusal letter and photos from the final inspection in support of the decision to refuse to issue the code compliance certificate.

4.2 The draft determination and responses received

4.2.1 The draft determination was issued to the parties for comment on 1 November 2019.

4.2.2 The applicant responded on 3 November 2019 accepting the draft determination without comment.

4.2.3 On 27 November 2019 the authority responded saying it did not accept the draft determination's decision. The authority submitted (in summary) that:

- The authority accepted it has a statutory duty to give reasons for its decision and contended that "the reasons given by the authority were entirely consistent with its statutory obligations". Providing more detail "would be reading additional requirements and obligations into the legislation". The Act "simply requires that a building consent authority give 'reasons for the refusal'".
- The matter has been considered in the context of the Local Government (Transitional Provisions) Act 2010, with a High Court decision⁶ saying:

[53] Context is important in determining the extent to which it is necessary for reasons to be given. ...

and

[54] The extent of the obligation to give reasons will also be dependent on the functions cast on the particular tribunal responsible for making the relevant decision. In common with the approach taken to application of the principles of natural justice where Parliament has established a special procedure, the extent

⁶ Hollander v Auckland Council [2017] CIV 2016-404-2322 NZHC 2487

of reasoning required to support a decision will be moulded to fit the purpose of the process.

- It was not accepted that the reasons for the refusal failed to identify the work considered non-compliant and that the section 95A notice “clearly identified” these.
- The need to engage a building surveyor to “investigate the performance of the building” with respect to Clause E2 was also clearly explained.

4.2.4 With regard to the energy works certificate the authority submitted (in summary):

- Section 92(4) “imposes a mandatory requirement” and that “an application for a code compliance certificate must include an energy works certificate if the building work comprises or includes energy work...”. While section 94(3) says the lack of an energy work certificate is a “sufficient reason” to refuse a code compliance certificate, this section “does not override the mandatory requirement in [section] 92(4)”.
- It is the authority’s practice to request an energy works certificate for “historic” code compliance certificate applications.

4.2.5 The submissions have been taken into consideration and the determination amended as appropriate.

5. Discussion

5.1 General

5.1.1 The matter to be determined is whether the authority has correctly exercised its powers of decision in refusing to issue a code compliance certificate.

5.1.2 As noted in paragraph 3.1, the building consent was issued under the former Act, and accordingly the transitional provisions of the current Act apply when considering the issue of a code compliance certificate for work completed under this consent. Section 436(2) of the transitional provisions states an application for a code compliance certificate in respect of building work to which this section applies must be considered and determined as if this Act had not been passed.

5.1.3 Section 436(3) of the transitional provisions states for the purposes of subsection (2), section 43 of the former Act remains in force as if this Act had not been passed; but must be read as if a code compliance certificate may be issued only if the territorial authority is satisfied that the building work concerned complies with the building code that applied at the time the building consent was granted; and section 43(4)⁷ were omitted.

5.1.4 Section 43 of the former Act provides for code compliance certificates with section 43(3) of the former Act requiring an authority to issue a code compliance certificate if it is satisfied on reasonable grounds that the building work complies with the Building Code that applied at the time the building consent was granted.

5.1.5 To satisfy this requirement, the authority is required to make a current decision about the compliance of the building work. This is likely to include an inspection and detailed assessment of the building work concerned. In the current case the authority can gain information from the inspection records, including those carried out as part of the alteration consent in 2008, and the performance of the building over the past

⁷ Section 43(4) of the former Act considered interim code compliance certificates.

22 years based on a visual assessment of the building elements, which may or may not reveal that further evidence needs to be gathered to determine compliance.

- 5.1.6 If an authority makes the decision to refuse to issue a code compliance certificate, subsection 43(5) of the former Act (which is substantively the same as section 95A of the current Act) requires the authority to notify the applicant specifying the reasons why the application is refused. Section 43(5) of the former Act sets out:

Where a ... territorial authority refuses to issue a code compliance certificate, the applicant shall be notified in writing specifying the reasons.

5.2 The authority's regulatory actions

The reasons for the refusal

- 5.2.1 In its refusal letter (refer paragraph 3.4) the authority states “the cladding has not been installed in accordance with the manufacturer's installation instructions”, but it does not describe in what respect, nor does it elaborate on how this translates to the cladding being non-compliant with the Building Code. The authority also states it has “concerns in relation to clearance to apron flashing deck balustrade and to some extent cladding to ground” and that the type of cladding system “exacerbates this concern” yet no actual failure or non-compliance has been identified.
- 5.2.2 Furthermore, the authority required the applicant to engage the services of a Building Surveyor to “investigate the performance of this building and provide a "scope of works” and provide any recommendation to the authority for further review”. The authority has not stated why it considers a building surveyor is required to investigate the building, but appears to be based solely on the age of the building and the risks associated with this type of cladding system and not on the actual performance of the building.
- 5.2.3 The authority has submitted (refer paragraph 4.2.3) it must simply give “reasons for the refusal” and the Act and the former Act do not stipulate the level of detail that an authority must include in a refusal notice. The authority considers the Act stipulates the minimum requirements for giving reasons and the reasons given in the refusal notice identifying Building Code non-compliances were consistent with its statutory obligations.

Appropriate reasons

- 5.2.4 Reasons for refusing a code compliance certificate have been discussed in previous determinations⁸, and I reiterate the following relevant key points below:
- The requirement that an authority provide reasons in writing for refusing to issue a code compliance certificate provides an owner with notice of the work required in order to obtain a code compliance certificate. The reasons provided by the authority will concern the areas of the building work where the authority does not believe the building work complies with the Building Code.
 - It is important that an owner be given clear reasons why compliance has not been achieved so the owner can consider the work required to remedy the situation.

⁸ Such as 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), Determination 2010/127: Refusal to issue a code compliance certificate for a 6-year-old addition to a house (15 December 2010), Determination 2013/027 – Refusal to issue CCC for a 10 year old unit (23 May 2013).

- The authority's letter to the applicants is not sufficiently explicit as to the reasons why the authority would not issue the code compliance certificate.
- An inspection will provide the authority with sufficient information to make the letter more meaningful and helpful to the applicants in terms of the specific reasons why it was unable to issue the code compliance certificate.

5.2.5 I concur with the conclusions reached in those previous determinations; section 43(5) of the former Act requires, at a minimum, that where an authority makes the decision to refuse a code compliance certificate, an owner be given sufficiently explicit, specific and clear reasons why it believes the building work does not comply with the Building Code. The owner can then consider the work required to remedy the situation.

Adequacy of reasons provided

- 5.2.6 In its refusal letter, the authority has not identified or provided evidence of any findings of actual failure or building work which it considers is non-compliant with the Building Code. Additionally, the reasons given by the authority in its refusal letter for why it would not issue the code compliance certificate are not sufficiently explicit, specific or clear. A generalised refusal that does not identify non-complaint aspects of the building work is not sufficient for the authority to meet its obligations in respect of section 43(5) of the former Act or section 95A of the current Act.
- 5.2.7 The authority has not made an informed judgement about the compliance of the cladding and has not provided the applicant specific, clear and appropriate reasons or evidence why the building work does not comply with the Building Code. In light of this, the owners are not in a position to properly understand the non-compliance or act on those reasons to a level of specificity to allow them to consider the work required to remedy the situation to comply with the Building Code.
- 5.2.8 Providing adequate reasons for a decision is fundamental to fair decision making, and help to ensure legitimacy, openness and public accountability for decisions.
- 5.2.9 In considering this matter, I have also considered the purposes in section 3(b) of the Act and the principles in section 4(2)(q) of the Act, which include promoting the accountability of owners and building consent authorities who have responsibilities for ensuring that building work complies with the Building Code, and that where a building consent has been issued, the building work complies with that building consent. I note that in this case, due to the consent being issued under the former Act, the test for issuing the code compliance certificate is compliance with the building code rather than the building consent.
- 5.2.10 I note that a local authority⁹ is subject to more detailed obligations in respect of the general requirement to provide reasons for decisions made by a local authority in respect of any person under section 22(1) of the Local Government Official Information and Meetings Act 1987 ("LGOIMA"). That Act is classified as a "constitutional measure" along with its compatriot, the Official Information Act 1982¹⁰. The broad based obligation in section 22 of LGOIMA supports the approach that I have taken to section 43(5) of the former Act; that, at a minimum, an owner should be given sufficiently explicit, specific and clear reasons why an authority believes the building work does not comply with the Building Code.

⁹ Which includes the authority.

¹⁰ *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385 at 391 (CA).

- 5.2.11 Section 22(1) of LGOIMA provides that where an authority makes a decision in respect of any person, that person has the right to be given a written statement of:
- the findings on material issues of fact, (LGOIMA section 22(1)(a)); and
 - a reference to the information on which the findings were based (LGOIMA section 22(1)(b)); and
 - the reasons for the decision (LGOIMA section 22(1)(c)).
- 5.2.12 The authority’s submission, at paragraph 4.2.3 2nd bullet point, quotes an extract from the High Court case of *Hollander v Auckland Council*. I agree with these statements, and that the context of a decision is particularly important in determining the extent to which it is necessary for reasons to be given.
- 5.2.13 Furthermore, decisions of the High Court and Court of Appeal can provide further insight into the adequacy of reasons to enable fair and legitimate decision making of decision-making bodies. Various court decisions have discussed statutory provisions requiring reasons, noting that:
- reasons provided must be “proper, adequate and intelligible”¹¹
 - the reasons must be appropriate to the nature of the decision-making¹²
 - the reasons must be adequate to enable proper consideration of the decision on appeal or review¹³.

Conclusion

- 5.2.14 In conclusion, if an application for a code compliance certificate is refused, the authority is required to identify specific findings of actual failure or building work it considers does not comply with the Building Code and provide sufficiently explicit, clear and appropriate reasons which identify specific Building Code clause performance criteria for which a non-compliance exists together with sufficient description of the non-compliant building work. A detailed proposal to rectify any non-compliance can then be developed by the owner and submitted to the authority for its approval.

5.3 Other items identified by the authority

- 5.3.1 With regard to the other matters identified by the authority (refer paragraph 3.5), I note the following:

Access to the subfloor space

- 5.3.2 The applicant has submitted that access to the subfloor space is provided through a removable panel under the stairwell. This matter no longer appears to be in dispute and is not considered further.

Provision of energy works certificates

- 5.3.3 In its refusal letter dated 20 October 2017 (refer paragraph 3.5), the authority noted “an energy works certificate will be required for the electrical installation and gas hot water cylinder”. The authority considers section 92(4) “imposes a mandatory requirement” that an application for a code compliance certificate must include an energy works certificate if the work described in the building consent includes energy work.

¹¹ *Chan v Minister of Immigration* HC Auckland CP80/89, 08 May 1989 at 14.

¹² *R v Awatere* [1982] 1 NZLR 644 (CA) at 649.

¹³ *Singh v Chief Executive, Department of Labour* [1999] NZAR 258 (CA) at 263.

- 5.3.4 I note here that in its submission (refer paragraph 4.2.4) the authority has referred to the provisions of the current Act in relation to energy work. However, as noted in paragraphs 3.1 and 5.1.2, the building consent was issued under the former Act, and accordingly the transitional provisions of the current Act apply when considering the issue of a code compliance certificate for work completed under this consent.
- 5.3.5 The former Act provision that considers energy work, section 32A, was added by the Building Amendment Act 1992¹⁴. I also note the energy work provisions of the current Act are essentially the same as the former Act.
- 5.3.6 Energy work is defined in section 2 of the former Act¹⁵ as:
- (a) gasfitting; or
 - (b) prescribed electrical work
- 5.3.7 Section 32A of the former Act¹⁶ considers when a building consent was required for energy work:
- 32A Exemption for energy work**
- (1) Subject to subsections (2) to (4) of this section, energy work does not require a building consent.
 - (2) Subsection (1) of this section does not apply in respect of any energy work that relates to any system or feature—
 - (a) That is contained in, or proposed to be contained in, any building (whether existing or proposed); and
 - (b) That—
 - (i) In the case of any such existing system or existing feature, is covered by a compliance schedule, or would be so covered if a compliance schedule were issued in respect of the building;
 - (ii) In the case of any proposed system or proposed feature, will be required to be covered by a compliance schedule.
 - (3) Subsection (1) of this section does not apply in respect of any energy work in any case where, if that work required a building consent, such a consent could not be granted unless it were granted subject to a waiver or modification of the building code or any document for use in establishing compliance with the building code.
 - (4) Where any owner wishes to obtain a building consent in respect of any energy work that does not require a building consent, the owner may apply for a building consent in respect of that work (whether or not the application also relates to any other building work), and in any such case this Act shall apply in all respects as if the energy work to which the application relates required a building consent.]
- 5.3.8 I note here energy work is also subject to the controls specified in the Electricity Act 1992 (for prescribed electrical work) and the Gas Act 1992 (for gasfitting) and those Acts established a self-certifying regime under which the person undertaking the prescribed work issues a certificate to the effect that it complies with the respective regulations.
- 5.3.9 As discussed in paragraph 5.2.12, section 436(2) of the transitional provisions states an application for a code compliance certificate in respect of building work to which this section applies must be considered and determined as if this Act had not been passed. The effects of section 436 require an authority to consider section 32A of the former Act when deciding to issue a code compliance certificate.

¹⁴ Section 32A was inserted, as from 1 April 1993, by Section 6(1) Building Amendment Act 1992 (1992 No. 126)

¹⁵ The definition of energy work is identical to that in the current Act.

¹⁶ The energy work provisions of the current Act are essentially the same as the former Act.

- 5.3.10 As noted in paragraph 5.1.4, section 43 of the former Act provides for code compliance certificates, with subsection 43(3) of the former Act requiring an authority to issue a code compliance certificate if it is satisfied on reasonable grounds that the building work complies with the Building Code.
- 5.3.11 Section 43 of the former Act considers energy work in relation to a code compliance certificate as follows:
- (2A)¹⁷ In any case where the building work comprises or includes energy work in respect of which a building consent has been issued, the owner shall include with that advice any energy work certificate that relates to that energy work.
- (3A)¹⁸ Failure to provide to a territorial authority an energy work certificate in respect of any energy work in respect of which a building consent has been issued shall be sufficient grounds for the territorial authority to refuse to issue a code compliance certificate in respect of that energy work.
- 5.3.12 Under subsections 32A(2) and (3) of the former Act a building consent is not required for energy work unless:
- the energy work relates to a specified system contained in a building and which is covered by a compliance schedule, or
 - the energy work would require a waiver or modification of the Building Code.
- 5.3.13 In the owner's case, the energy work does not relate to a specified system in the building which is covered by a compliance schedule, nor was energy work subject to a waiver or modification of the Building Code.
- 5.3.14 Under subsection 32A(4) of the former Act an owner can elect whether to obtain a building consent for energy work where a building consent is not required under subsection 32A(2) or (3).
- 5.3.15 Where an energy work certificate is required under subsections 32A(2) or (3) of the former Act, or where an owner has elected to obtain a building consent for energy work under subsection 32A(4) of the former Act, subsection 43(2A) of the former Act requires the owner to provide to the authority any energy work certificate that relates to the energy work.
- 5.3.16 Furthermore, under subsection 43(3A) of the former Act the authority is entitled to refuse to issue a code compliance certificate in respect of the energy work if the owner fails to provide an energy work certificate which was subject to a building consent.
- 5.3.17 I am of the view that under subsection 32A(4) an owner must expressly seek a building consent for energy work that otherwise does not require a building consent. Based on the information provided to me, I am of the view that the owners did not expressly seek to have the energy work included in the building consent.
- 5.3.18 I do note the approved plans and specifications include reference to the inclusion of energy work, but the energy work referenced was not energy work which required a building consent and in my view, references to energy work on plans and specifications does not automatically equate to a request by the owner for a building consent for that energy work.

¹⁷ Equivalent to section 92(4) of the current Act - Subsections (2A) was inserted, as from 17 December 1992, by s 8(1) and 8(2) Building Amendment Act 1992 (1992 No 126).

¹⁸ Equivalent to section 94(3) of the current Act - Subsections (3A) was inserted, as from 17 December 1992, by s 8(1) and 8(2) Building Amendment Act 1992 (1992 No 126).

- 5.3.19 Consequently, and in the owner's case, I consider the building work described in the building consent does not comprise or include energy work in respect of which a building consent was required or in respect of which a building consent has been granted. I therefore conclude that the owner is not required to include an energy work certificate with the application for code compliance certificate, and the authority was incorrect to refuse to issue a code compliance certificate on the basis that an energy works certificate has not been provided.
- 5.3.20 In considering this matter, I have considered the purposes in section 3(a)(i) of the Act that sets performance standards for buildings to ensure that people who use buildings can do so safely and without endangering their health. I have also considered the principles in section 4(2)(a) and (q) of the Act, regarding the role that household units play in the lives of the people who use them, the importance of ensuring household units comply with the Building Code, and the need to ensure that owners and building consent authorities are accountable for their role in ensuring that the necessary building consents are obtained for proposed building work and that building work for which a building consent is issued complies with that building consent.

6. The decision

- 6.1 In accordance with section 188 of the Building Act 2004, I determine that the authority was incorrect to refuse to issue a code compliance certificate. Accordingly, I reverse the authority's decision to refuse to issue the code compliance certificate and require 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 7 May 2020.

Katie Gordon
Manager Determinations

Appendix A: The legislation

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

43 Building consent not required for energy work

- (1) Energy work does not require a building consent.
- (2) However, the following energy work requires a building consent:
 - (a) energy work that relates to any specified system that is contained in, or proposed to be contained in, any building (whether existing or proposed) and that,—
 - (i) in the case of an existing specified system, is covered by a compliance schedule, or would be covered if a compliance schedule were issued in respect of the building; or
 - (ii) in the case of a proposed specified system, will be required to be covered by a compliance schedule; and
 - (b) energy work in any case where, if that work required a building consent, a consent could not be granted unless it was granted subject to a waiver or modification of the building code.
- (3) An owner who wishes to obtain a building consent for energy work that does not require a building consent may apply for a building consent for that work (whether or not the application also relates to any other building work), and in that case this Act applies as if the energy work required a building consent.

92 Application for code compliance certificate

- (1) 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.
- (2) ...
- (3) ...
- (4) If the building work comprises or includes energy work in respect of which a building consent has been granted, the owner must also include with the application any energy work certificate that relates to the energy work.

94 Matters for consideration by building consent authority in deciding issue of code compliance certificate

- (1) A building consent authority must issue a code compliance certificate if it is satisfied, on reasonable grounds,—
 - (a) that the building work complies with the building consent; and
 - (b) ...
- (2) ...
- (3) If the owner fails to provide to a building consent authority an energy work certificate in relation to energy work in respect of which a building consent has been granted, the failure is a sufficient reason for the building consent authority to refuse to issue a code compliance certificate in respect of the energy work.
- (4) ...

95A Refusal to issue code compliance certificate

If a building consent authority refuses to issue a code compliance certificate, the building consent authority must give the applicant written notice of—

- (a) the refusal; and
- (b) the reasons for the refusal.

436 Transitional provision for code compliance certificates in respect of building work carried out under building consent granted under former Act

- (1) This section applies to building work carried out under a building consent granted under section 34 of the former Act.
- (2) An application for a code compliance certificate in respect of building work to which this section applies must be considered and determined as if this Act had not been passed.
- (3) For the purposes of subsection (2), section 43 of the former Act—
 - (b) must be read as if—
 - (i) a code compliance certificate may be issued only if the territorial authority is satisfied that the building work concerned complies with the building code that applied at the time the building consent was granted; and
 - (ii) section 43(4) were omitted.