



Determination 2020/013

Regarding the refusal to issue a certificate of acceptance at 16 Tai Close, Kaiuma Bay, Havelock



Summary

This determination considers an authority's refusal to issue a certificate of acceptance for internal work to construct two rooms inside a pole shed. The determination discusses the scope of the work covered by the application for a certificate of acceptance and the reasons given for the refusal.

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 Ministry.¹
- 1.2 The parties to the determination are:
 - the owners of the property, P and B Sykes (“the owners”), who applied for the determination
 - Marlborough District Council (“the authority”) carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from the decision of the authority to refuse to issue a certificate of acceptance for building work consisting of insulated timber framed walls and an insulated framed ceiling in an existing pole shed building (“the pole shed”).

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 building work was undertaken to create two rooms. The use of these rooms was stated in the application for the certificate of acceptance as being for storage and a home office. The authority has refused to issue a certificate of acceptance for the building work because it considers the use of the rooms for habitation or a home office would fall within the category of an importance level 2² structure, whereas the pole shed in which the rooms have been constructed is an importance level 1 structure.
- 1.5 The matter to be determined³ therefore is the authority's exercise of its powers of decision in refusing to issue a certificate of acceptance for the reasons given in its letter dated 16 September 2019. I have also considered additional reasons the authority has given for its refusal that have been submitted as part of this determination process (refer paragraph 3.2.3).
- 1.6 The issue of whether there has been a change of use⁴ of part of the building is relevant to the authority's assessment of the compliance of the building work for the purpose of issuing a certificate of acceptance. This determination discusses the framework for the authority's decision as to whether the building work complies with the Building Code in relation to the intended use of the rooms, but does not determine what the new use is; I leave that for the parties to resolve in due course.
- 1.7 In making my decision, 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.
- 1.8 Relevant extracts from the legislation are set out in Appendix A. In this determination references to sections are to sections of the Act, and references to clauses are to clauses of the Building Code.

1.9 Matters outside this determination

- 1.9.1 This determination is limited to the matter described in paragraph 1.5 and does not consider the notice to fix⁵ mentioned in the owners' covering letter to the application for determination or any other building or building work on the owners' property.
- 1.9.2 Determinations can consider matters of Building Code compliance and decisions of an authority, and this determination does not consider matters which are associated with liability or other civil disputes beyond the scope of section 177. Other issues raised by the parties are referred to only in providing the context leading to the determination.

2. The background and building work

2.1 The building consent for the pole shed

- 2.1.1 The existing pole shed is a 12m x 7m (84m²) proprietary structure comprised of SED⁶ timber poles in concrete footings, a reinforced concrete floor, timber rafters and purlins, and timber girts fixed horizontally to the poles to support the external cladding. The wall and roof cladding is profile metal. The shed has two roller doors and a personnel access door.

² Importance levels are set out in Clause A3 of the Building Code for the purposes of Clause C, which concerns fire safety requirements.

³ Under section 177(1)(b) and (3)(b).

⁴ As described in regulation 5 and Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005, herein referred to as "the Change of Use Regulations".

⁵ I have not seen a copy of the notice to fix.

⁶ Small end diameter.

- 2.1.2 The building consent for the pole shed (BC140069) was granted on 4 March 2014 and the authority issued a code compliance certificate for the pole shed on 19 December 2014. The code compliance certificate noted the use as “Intermittent Low”⁷ and the maximum occupancy number as “N/A”.

2.2 The application for certificate of acceptance

- 2.2.1 The owners applied for a certificate of acceptance on 25 July 2019⁸. The application form⁹ described the building work, which was carried out in 2014, as:

Two store/ office rooms built within the confines of a pole shed.
Exterior walls have a 90x45 H1.2¹⁰ wall built inside of the pole shed frame.
Black building moisture barrier is between the shed and in internal framing.
R2.8 batts to exterior and interior walls. R3.6 to ceiling.

- 2.2.2 The application form noted the current, lawfully established, use of the building as “shed”.
- 2.2.3 Included with the certificate of acceptance application were sketches of the building work, construction photographs, a list describing timber framing sizes and centres, insulation values and type of wall underlay.
- 2.2.4 The information supporting the application indicates the presence of ceiling framing. Although the timber sizes and spaces of the timber framing are not specified, it is reasonable to conclude from the photos provided that the ceiling members are 90x45mm at 600mm centres.
- 2.2.5 The rooms created measure approximately 8m x 3.5m for the larger room and 4m x 3.5m for the smaller room, which equate to half the floor area of the pole shed. An internal door is provided between the larger room and the smaller room.
- 2.2.6 Photos of the pole shed also show a veranda and a number of doors and windows have been installed without building consent. This work was not included in the certificate of acceptance application and is not considered in this determination.

2.3 The refusal

- 2.3.1 On 12 August 2019 the authority carried out an inspection of the pole shed and took photographs. The inspection record notes included the comment:

The pole shed is being used as a residence

- 2.3.2 From the inspection photos it appears that at the time of the authority’s inspection the smaller room was being used as a bedroom, with the larger room containing a living area and kitchen with a cooker and fridge.
- 2.3.3 Correspondence took place between the parties from 30 August 2019 to 5 September 2019, and I have noted the key points below.
- 2.3.4 The owners:
- advised the rooms would not be used as an office but will be used as store rooms and asked the authority if it was acceptable that the walls were insulated and lined

⁷ Intermittent Low or IA is a use related to intermittent activities described in Schedule 2 of the Change of Use Regulations.

⁸ The title page records the application as being received by the authority on 25 July 2016. The date the application was signed on 25 July 2019 and all other pages are stamped as received on 25 July 2019.

⁹ The authority’s form is entitled “Application for minor certificate of acceptance” and, according to the form itself, is intended for use where the footprint of the building concerned has not changed.

¹⁰ Hazard class ratings (Hx) are specified in New Zealand Standard NZS 3640:2003 Chemical preservation of round and sawn timber. H1.2 is for timber products used in situations protected from the weather but where there is a risk of moisture exposure conducive to decay.

- noted only the insulation required building consent, and that this could be removed by taking off the wall cladding
- asked why the pole shed cannot be retrofitted with insulation and queried which parts of the Building Code were at issue.

2.3.5 The authority:

- stated it is not in a position to “give ... permission to have the store room lined with insulated walls”
- noted the owners were correct in that the insulation required building consent
- suggested the “easiest option is to change the shed back to its original condition by removing the internal linings and insulation”, but later noted “if the insulation is removed the linings can remain”
- advised the timber framing, windows, doors and veranda can remain
- advised the pole shed cannot be retrofitted with insulation and noted its reasons – those reasons related to the importance levels in respect of the building’s use and had been provided in a request for information dated 30 August 2019 and duplicated in the refusal letter dated 16 September 2019.

2.3.6 On 16 September 2019 the authority wrote to the owners advising that the application for the certificate of acceptance was refused. The authority gave its reasons as:

The pole shed is [an] Importance level 1 structure, and the specific structure is not fit for human habitation, however it can be used as storage.

An office [is an] Importance level 2 building. This means that for you to use it as a home office ... it will [be required] to comply with the [Building Code]. The current pole shed is not of the higher importance level and it will be very difficult to prove to [the authority] that the building complies with the required Building Codes (*sic*). If the building is being used as a home office ... all the [Building Code] requirements in regards to fire, minimum floor heights, etc should be complied with. ...

I note here the authority’s reference to the structure being “not fit for human habitation” indicates that the importance levels the authority is referring to are those in Clause A3 Building importance levels, which relates to the C clauses of the Building Code, as opposed to AS/NZS1170¹¹ which concerns the structural design.

2.4 The application for determination

2.4.1 The matter remained unresolved and the Ministry received an application for determination from the owners on 24 October 2019. Prior to accepting the application for determination, the Ministry sought more information about the building work from the parties.

2.4.2 On 7 November 2019, the owners confirmed that the building consent for the pole shed did not include insulation to the walls, and what was described as the “exterior walls” in correspondence were those built inside the pole shed to form the two new rooms.

2.4.3 The application for determination was accepted by the Ministry on 8 November 2019.

¹¹ Importance levels are also categorisations used in Australian/New Zealand Standard AS/NZS 1170:2002 Structural design actions, Part 0: General principles, which is cited in Verification Method B1/VM1 as a means of establishing compliance.

3. The submissions and draft determination

3.1 The owners

3.1.1 The owners provided copies of the following with the application:

- a summary of events
- the certificate of acceptance application and documentation
- correspondence between the parties
- the refusal letter.

3.1.2 In their summary of events the owners submitted:

- the owners had initially intended to live in the pole shed while building a house – there is a separate shower, toilet and washroom that was constructed under a building consent
- they have since moved into a caravan and now intend to use the shed for storage
- they understood what different importance level buildings were, and are now aware that staying in the pole shed was “not legal” even though there are sanitary facilities on site
- the insulation in the pole shed is installed properly and there seems no logic to having to now remove that insulation.

3.1.3 In response to the authority’s submission (refer paragraph 3.2.3) the owners noted the following (in summary):

- they were not aware of the additional reasons the authority had given for refusing the certificate of acceptance
- aside from the cladding to the foundation, the additional items could have been remedied
- if the pole shed is an importance level 1 the floor level is not an issue.

3.2 The authority

3.2.1 In its submission the authority provided copies of:

- the certificate of acceptance application and documentation
- the authority’s request for further information sent to the owners, dated 30 August 2019
- the inspection record and inspection photographs.

3.2.2 In its covering letter the authority submitted the following (in summary):

- the pole shed is designed for importance level 1; the authority quoted the description of importance level 1 building types from Clause A3 and noted “these buildings are not fit for human habitation”
- during the site visit it was observed that the shed was being used as a habitable space
- the authority repeated its comments from the refusal letter (refer paragraph 2.3.6).

3.2.3 In addition to the comments above the authority also submitted the following as reasons why the certificate of acceptance was refused:

The [bottom of] cladding [overlap] to the foundation does not comply with [Clause] E2 [External Moisture], in particular [Clauses] E2.3.2; E2.3.3 and E2.3.5.

The [door and window] head, sill and jambs flashings do not comply with [Clause] E2, in particular [Clause] E2.3.5, as no detail was provided on the construction of these flashings.

The plans provided with the application indicated that the new installed ceiling is supported by the roof purlins of the shed. Does not comply with the requirements of [Clause] B1.3.3. The shed roof was not designed to carry additional loads, like suspended ceilings.

Schedule 1 exemption was taken into consideration [with regard to the scope of the certificate of acceptance], however [section] 17 clearly states that all building work must comply with the building code whether or not building consent is required.

3.3 The draft determination and submissions received in response

3.3.1 A draft of this determination was issued to the parties for comment on 26 February 2020. The draft concluded the authority incorrectly exercised its powers of decision in refusing to issue a certificate of acceptance because the reasons given for the refusal concerned the change in use of part of the building rather than the compliance of the building work.

3.3.2 On 9 March 2020 the authority responded saying it did not accept the draft determination, and submitted (in summary):

- The authority agrees that the existing wall cladding does not form part of the application for a certificate of acceptance and is aware that the work carried out to the windows and exterior doorways is exempt under Schedule 1 of the Act. However there is still a requirement for exempt building work to comply with the Building Code.
- The authority decided to include the installation of the doors and windows into its assessment of the application for a certificate of acceptance to address the issue of compliance of that building work.
- Once the final determination is issued the authority stated it will provide the following reasons for refusing to issue the certificate of acceptance:

The ceiling framing does not comply with Clause B1 Structure as the existing roof framing has not been designed to carry additional loads.

The penetrations [windows and doors] in the existing cladding do not comply with Clause E2.

3.3.3 The authority noted Form 8 Application for a certificate of acceptance¹² requires an applicant to state the “Current, lawfully established use” and “if use was changed by the building work this application relates to, state previous use”¹³. Form 9 Certificate of acceptance does not refer to a lawful use. The authority asked if it should apply the existing use (shed) or that provided in Form 8 for which the building work was undertaken (office) when considering the compliance of the building work, noting the two uses (commercial or outbuildings) are “vastly different from each other” with regard to compliance requirements.

¹² As described in the Schedule to the Building (Forms) Regulations 2004.

¹³ I note here the authority’s form “Application for a minor certificate of acceptance” that was used by the owners does not include a field where information about the previous use is to be provided.

- 3.3.4 The owners responded on 11 and 20 March 2020 accepting the draft determination. The owners described how the doors and windows had been installed, noted there is no evidence of water ingress and also that doors and windows are exempt under Schedule 1 and should not have been included in the authority's assessment of the application for a certificate of acceptance. The owners also noted that the pole shed was not being used as an office.
- 3.3.5 The submissions on the draft determination have been taken into account and the determination amended as appropriate.

4. Discussion

- 4.1 The matter to be determined is whether the authority has correctly exercised its powers of decision in refusing to issue a certificate of acceptance for the reasons given in its letter dated 16 September 2019.

4.2 The basis for issuing a certificate of acceptance

- 4.2.1 Section 96(1)(a) allows for an authority to issue a certificate of acceptance for building work already done if building consent was required for the work but not obtained. In such a situation, under section 96(2) a territorial authority may, on application, issue a certificate of acceptance but "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."
- 4.2.2 On application for a certificate of acceptance, under section 96(2) an authority is required to consider all the available evidence such as plans and specifications, producer statements, the builder's records, the owner's records, any expert reports, and the authority's own experience and knowledge of the builders and designers involved in the work in order to ascertain whether the building work complies with the Building Code.
- 4.2.3 When issuing a certificate of acceptance, section 99(2) and Form 9 Certificate of acceptance both provide for a certificate of acceptance to attach a list of the building work an authority has been able to inspect. I note that previous determinations¹⁴ have considered the categories of building work that could be listed in a certificate of acceptance as follows:
- the building work the authority has been able to inspect
 - building work the authority has been able to ascertain complies with the Building Code, where this conclusion is based on inspection and/or supporting information and documentation
 - building work the authority has *not* been able to ascertain complies with the Building Code, because the authority has not been able to inspect the building work and there is no other supporting information or documentation as to whether the building work complies or not.
- 4.2.4 Where a certificate of acceptance does not cover all the work that is the subject of the application (i.e. work the authority has not been able to ascertain complies) it is essential the certificate clearly sets out the nature and extent of the work that is not covered by the certificate to ensure the certificate is not misleading.

¹⁴ For example, Determination 2009/113 *The refusal to issue a certificate of acceptance for building work to a relocated house* (24 December 2009).

4.3 The use of the building

- 4.3.1 In considering the compliance of the building work for which an application for a certificate of acceptance has been made, the authority must take into account the intended use of the building, in this case the part of the building consisting of the two new rooms. This is because the Building Code prescribes performance criteria with which a building must comply in its “intended use” under section 16, and the obligations and limitations on application are expressed in terms of a building’s (or part of a building’s) classified use.
- 4.3.2 In the application for a certificate of acceptance the owners described the intended use of the new rooms as “Two store / office rooms”, but this did not accord with the authority’s observations and inspection photographs that appear to show the two new rooms being used as a bedroom and living area. The owners have since stated they are no longer residing in the pole shed and have moved into a caravan.
- 4.3.3 When the “Current ... use” described on an application form for a certificate of acceptance varies from the actual (or observed) use, in my view it is the observed use that should be applied by territorial authorities to determine the level of compliance required. Accordingly, I consider the authority was correct to raise the issue regarding the building being used in a way it was not designed for.
- 4.3.4 In this case, if the authority considered the pole shed was being used in a way it was not designed for, the appropriate regulatory action is to issue a notice to fix under section 164 for a breach of section 114 and section 115, which are the provisions of the Act that concern changing the use of the building.
- 4.3.5 Under section 114, where an owner intends to change the use of a building, and the requirements for compliance in the new use are more onerous than the previous use, the owner must give written notice to the authority. The owner must not change the use of the building unless the authority gives the owner written notice that it is satisfied, on reasonable grounds, that the building in its new use will comply with the requirements of the Building Code to the extent set out in section 115.
- 4.3.6 Before the certificate of acceptance application is further considered by the authority, the issue of the use of the new rooms will need to be resolved. If there is a change of use, the owner will need to give written notice to the authority (section 114) and it is for the authority to make an assessment as to compliance under section 115.
- 4.3.7 Once the matter of the use is clarified and the authority has approved the change of use (if any), the authority can then assess the building work which is the subject of the application for a certificate of acceptance against that use.

4.4 The scope of the application for a certificate of acceptance

- 4.4.1 The building work carried out without a building consent and for which building consent was required is limited to the installation of wall and ceiling framing within the pole shed to create the two rooms, insulation to walls and ceiling of those two rooms, and the installation of a wall underlay between the existing pole shed and the new wall framing.
- 4.4.2 As mentioned in paragraph 2.2.3, documents supporting the certificate of acceptance application included sketches of the building work, construction photographs, a list describing timber member sizes and centres, insulation values and the type of wall underlay.

- 4.4.3 I am of the view that, subject to clarification of the intended use of the rooms, sufficient evidence has been provided to the authority in order for it to make a compliance decision on this particular work.
- 4.4.4 I note here that in providing additional reasons for its refusal the authority has referred to work that is outside the scope of the certificate of acceptance. Also, in response to the draft determination the authority has stated that it will amend those reasons to include the non-compliance of the “penetrations” with Clause E2, which I understand to mean the installation of windows and doors in the existing cladding.
- 4.4.5 The installation of the doors and windows in the external wall of the pole shed is not within the scope of the building work for which the certificate of acceptance was sought. Therefore the authority was incorrect to include matters relating to the existing cladding and installation of doors and windows in the external walls as a reason for deciding to refuse to issue the certificate of acceptance.
- 4.4.6 The correct mechanism to address concerns the authority has about the compliance of building work that is exempt under Schedule 1 and that is outside the scope of the application, is either a site notice or notice to fix requiring the owners bring the building work into compliance with the Building Code.

4.5 Refusing a certificate of acceptance

- 4.5.1 Section 99A states that if the authority refuses to grant an application for a certificate of acceptance it must give the applicant written notice of—
- (a) the refusal; and
 - (b) the reasons for the refusal.
- 4.5.2 In its letter dated 16 September 2019, the authority’s reasons for refusing to issue a certificate of acceptance related to the pole shed being an importance level 1 structure, and that an office would fall within importance level 2. The authority refused the application on the basis that the pole shed is being used in a way it is not designed for, i.e. the use of the new rooms is one which has a higher importance level than that of a pole shed.
- 4.5.3 Grounds for refusing to issue a certificate of acceptance would be that the building work undertaken without a building consent was not compliant. In order to make that assessment it would have to be confirmed what the intended use of the two rooms is.
- 4.5.4 As noted in paragraph 4.3.3, the authority is correct to be concerned about the building being used in a way it is not designed for. However it is incorrect for the authority to give its reasons for refusing to issue a certificate of acceptance in the manner it has. The importance level of the building is relevant in terms of the use of the building and whether that use has changed.
- 4.5.5 Should the use of the building (or that part of the building consisting of the two rooms) have changed, the assessment would include Clauses C1-6 to the extent set out in section 115. As noted in paragraph 2.3.6, building importance levels are provided for in Clause A3 and are for the purpose of establishing when certain Clauses of C1-6 Protection from fire are applicable.
- 4.5.6 However, the reasons given for refusal did not clearly articulate that the authority considered there had been a change of use of part of the building and what aspects of the building work the authority considered did not comply to the extent required under sections 17 and 115.

4.5.7 Providing clear and appropriate reasons for the refusal allows an owner to take the appropriate steps to address any deficiencies, by bringing building work into compliance with the Building Code (which may require building consent) or providing additional information, or as in this case clarifying the intended use. If no action is taken and the application not resubmitted, the authority can then consider other appropriate regulatory action available to it.

4.5.8 The authority has indicated that the certificate of acceptance could be considered with the use of the rooms as storage, with the owners either removing the internal linings and insulation or removing only the insulation (see paragraph 2.3.5). I note that, notwithstanding section 18, building work can exceed the minimum performance requirements of the Building Code.

4.6 The additional reasons for refusal

4.6.1 In its submission to the Ministry, the authority provided additional reasons for deciding to refuse to issue the certificate of acceptance (refer paragraph 3.2.3). The additional reasons were given as:

- aspects of the existing cladding do not comply with Clause E2
- the ceiling framing [of the new internal rooms] does not comply with Clause B1 as the existing roof framing has not been designed to carry additional loads.

4.6.2 I reiterate that the work carried out to the existing cladding was not within the scope of the application for a certificate of acceptance and accordingly the authority is incorrect to include that work in its proposed refusal.

4.6.3 However, the ceiling framing does form part of the building work within scope of the application and the authority has submitted its reasons why it considers the ceiling framing does not comply with the Building Code. It would have been appropriate for the authority to have listed this in the section 99A refusal letter as a reason for refusing to issue the certificate of acceptance.

4.7 Conclusion

4.7.1 In conclusion, I note the following:

- The scope of the application for a certificate of acceptance is limited to those building elements described in paragraph 4.4.1, and the authority is incorrect in its proposal to include matters relating to the existing cladding and installation of doors and windows in the external walls as a reason for deciding to refuse to issue the certificate of acceptance.
- The authority is correct to be concerned about the pole shed being used in a way it was not designed for. However, the reasons given for refusal did not clearly articulate that the authority considered there had been a change of use and identify which aspects of the building work within the scope of the application for a certificate of acceptance the authority considered did not comply to the extent required under sections 17 and 115.
- The issue concerning the building's use will need to be resolved before the authority can assess the compliance of the building work for the purpose of the certificate of acceptance application.

5. The decision

- 5.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the authority was incorrect to refuse to issue a certificate of acceptance for the reasons given in its letter of 16 September 2019. Accordingly, I reverse the authority's decision to refuse to issue the certificate of acceptance; subject to confirmation of the use of the rooms the authority is 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 30 June 2020.

Katie Gordon
Manager Determinations

Appendix A: Relevant legislation

A.1 The Building Act 2004

16 Building code: purpose

The building code prescribes functional requirements for buildings and the performance criteria with which buildings must comply in their intended use.

17 All building work must comply with building code

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

18 Building work not required to achieve performance criteria additional to or more restrictive than building code

- (1) A person who carries out any building work is not required by this Act to—
 - (a) achieve performance criteria that are additional to, or more restrictive than, the performance criteria prescribed in the building code in relation to that building work; or
 - (b) ...

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

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

96 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
 - (b) if section 42 (which relates to building work that had to be carried out urgently) applies; or
 - (c) if subsections (3) and (4) of section 91 (which apply if a building consent authority that is not a territorial authority or a regional authority is unable or refuses to issue a code compliance certificate in relation to building work for which it granted a building consent) apply.
- (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.

99 Issue of certificate of acceptance

- (1) A certificate of acceptance must—
 - (a) be issued in the prescribed form; and
 - (b) have attached to it,—
 - (i) if a compliance schedule is required as a result of the building work, the compliance schedule for the building; or
 - (ii) if an amendment to an existing compliance schedule is required as a result of the building work, the amended compliance schedule for the building.

- (2) A certificate of acceptance may, if a territorial authority inspected the building work, be qualified to the effect that only parts of the building work were able to be inspected.
- (3) A territorial authority's liability for the issue of a certificate of acceptance is limited to the same extent that the territorial authority was able to inspect the building work in question.

99A Refusal of application for certificate of acceptance

If a territorial authority refuses to grant an application for a certificate of acceptance, the territorial authority must give the applicant written notice of—

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

114 Owner must give notice of change of use, extension of life, or subdivision of buildings

- (1) In this section and section 115, change the use, in relation to a building, means to change the use of the building in a manner described in the regulations.
- (2) An owner of a building must give written notice to the territorial authority if the owner proposes—
 - (a) to change the use of a building; or...

115 Code compliance requirements: change of use

An owner of a building must not change the use of the building,—

- (a) in a case where the change involves the incorporation in the building of 1 or more household units where household units did not exist before, unless the territorial authority gives the owner written notice that the territorial authority is satisfied, on reasonable grounds, that the building, in its new use, will comply, as nearly as is reasonably practicable, with the building code in all respects; and
- (b) in any other case, unless the territorial authority gives the owner written notice that the territorial authority is satisfied, on reasonable grounds, that the building, in its new use,—
 - (i) will comply, as nearly as is reasonably practicable, with every provision of the building code that relates to the following:
 - (A) means of escape from fire, protection of other property, sanitary facilities, structural performance, and fire-rating performance:
 - (B) access and facilities for people with disabilities (if this is a requirement under section 118); and
 - (ii) will,—
 - (A) if it complied with the other provisions of the building code immediately before the change of use, continue to comply with those provisions; or
 - (B) if it did not comply with the other provisions of the building code immediately before the change of use, continue to comply at least to the same extent as it did then comply.

Schedule 1 Building work for which building consent not required

Part 1 Exempted building work

Existing buildings: additions and alterations

8 Windows and exterior doorways in existing dwellings and outbuildings

Building work in connection with a window (including a roof window) or an exterior doorway in an existing dwelling that is not more than 2 storeys or in an existing outbuilding that is not more than 2 storeys, except,—

- (a) in the case of replacement, if the window or doorway being replaced 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
- (b) if the building work modifies or affects any specified system.

A.2 Relevant parts of Building Code Clause A3 Building importance levels

Importance level	Description of building type	Specific structure
Importance level 1	Buildings posing low risk to human life or the environment, or a low economic cost, should the building fail. These are typically small nonhabitable buildings, such as sheds, barns, and the like, that are not normally occupied, though they may have occupants from time to time.	<ul style="list-style-type: none"> • Ancillary buildings not for human habitation • Minor storage facilities • Backcountry huts
Importance level 2	Buildings of a higher level of societal benefit or importance, or with higher levels of risk-significant factors to building occupants. These buildings have increased performance requirements because they may house large numbers of people, vulnerable populations, or occupants with other risk factors, or fulfil a role of increased importance to the local community or to society in general.	<ul style="list-style-type: none"> • All buildings and facilities except those listed in importance levels 1, 3, 4, and 5

A.2 Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005

5 Change the use: what it means

For the purposes of sections 114 and 115 of the Act, change the use, in relation to a building, means to change the use (determined in accordance with regulation 6) of all or a part of the building from one use (the old use) to another (the new use) and with the result that the requirements for compliance with the building code in relation to the new use are additional to, or more onerous than, the requirements for compliance with the building code in relation to the old use.