

# Determination 2022/023

**Regarding decisions relating to two building consents  
issued for building work**

13 Elmsley Road, Maungatapere, Northland

## **Summary**

This determination considers the decision to grant a building consent and issue a code compliance certificate for additions and alterations to an existing building that did not have a code compliance certificate.

The legislation discussed in this determination is contained in Appendix A. In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building Code are available at [www.legislation.govt.nz](http://www.legislation.govt.nz). Information about the legislation, as well as past determinations, compliance documents (e.g., Acceptable Solutions) and guidance issued by the Ministry, is available at [www.building.govt.nz](http://www.building.govt.nz).

## 1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Peta Hird, Principal Advisor Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry<sup>1</sup>.
- 1.2. The parties to the determination are:
  - 1.2.1. the owners of the house, C. Rodney, and BA Burt (“the owners”), who applied for this determination
  - 1.2.2. Whangarei District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. This determination concerns decisions made by the authority in relation to building work carried out under two building consents: no. 935560 to erect a dwelling (“the first consent”) and no. 9512328 to enclose the then existing carport and erect a new garage (“the second consent”).
- 1.4. The owners consider the decision to issue the second building consent unlawful. The owners are also of the view that a code compliance certificate should be issued for the building work carried out under the first building consent.
- 1.5. Based on the findings of an inspection in March 2019 (“the March 2019 inspection”), the authority proposed to decline to issue a code compliance certificate. The owners consider this proposed decision incorrect.
- 1.6. Accordingly, the matters to be determined<sup>2</sup> are whether the authority was correct in its:
  - 1.6.1. exercise of its power to grant building consent no. 9512328
  - 1.6.2. proposed exercise of its power to refuse to grant a code compliance certificate for building consent no. 935560.

---

<sup>1</sup> The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

<sup>2</sup> Under section 177, subsections (1)(b), (2)(a) and (2)(d)

## 2. The building work

- 2.1. The owners' property is a 1.2 hectare block with a mainly flat contour located in a rural area near the village of Maungatapere in Northland.
- 2.2. On 8 November 1993, a previous owner of the property applied for the first building consent to erect a dwelling (which included a carport) on the property. The authority granted the first building consent on 14 January 1994. The approved plans and specifications show the dwelling was to be clad in H3 treated plywood sheathing ("plywood sheathing"), which was to be installed over building paper. No amendments have subsequently been noted on these plans.
- 2.3. Throughout 1994, the authority carried out inspections of the building work as it was underway, and in January 1995 conducted a final inspection ("the original final inspection"). The authority issued a field advice note for this inspection, noting five outstanding items relating to the external drainage and stormwater that needed to be rectified to achieve compliance. The advice noted that, apart from the outstanding items, the 'exterior structure [was] completed' and that a further inspection would be required once the outstanding work had been rectified.
- 2.4. No further inspection was carried out in relation to the first consent until 24 years later in 2019 (see paragraph 3.2), and no code compliance certificate has been applied for or issued in relation to it.
- 2.5. The property changed hands, and on 14 July 1995, the new owner applied for the second consent to erect a garage on the property and to enclose the carport erected under the first consent. This second consent was granted by the authority on 23 August 1995 (no. 9512328). The approved plans for the second consent show the external walls of the carport and garage were to be clad in the same plywood sheathing, as had been specified for use on the dwelling. The plans also show existing elevations for the dwelling clad in the plywood sheathing.
- 2.6. On 12 December 1997, amended plans were submitted for the second consent showing a change in the cladding to solid plaster over a cement backer board. A note on the plans states:

Cladding on extension and existing, change. [cement board product] to be used. Nailed to framing to provide bracing to N.Z. Building code req. Min 21mm solid plaster depth reinforced with netting.
- 2.7. The authority approved this amendment to the second consent on 21 December 1997.
- 2.8. On 23 April 1998, the authority received a drawing and engineer's calculation to change the bracing on the new garage to a plaster board product, and this amendment to the second consent was approved on 1 May 1998. There is no note as to why the bracing was changed, although there was a hand-written note on one

of the plan sheets which refers to a type of exterior insulation and finishing system cladding (“EIFS” cladding).

- 2.9. The authority carried out four inspections of the building work covered by the second consent during construction and a final inspection on 5 June 2002. The authority issued a code compliance certificate for the second consent on 6 June 2002.
- 2.10. At some point, the cladding on the dwelling was over-clad with an EIFS cladding. There is no hard evidence about when exactly the cladding was applied. Based on the recollections of the former owner of the property and the note on the plan sheet of 1 May 1998, it is probable the EIFS cladding was applied to the dwelling, detached garage and enclosed carport before the final inspection for the second consent on 6 June 2002.

### **3. Background**

- 3.1. The current owners purchased the property in June 2003.
- 3.2. On 25 March 2019, at the owners’ request, the authority did a further final inspection of the building work carried out under the first consent (‘the March 2019 inspection’). The field advice notice issued for this inspection (no. 33524CC) noted 21 outstanding items that needed to be addressed before a code compliance certificate would be issued.
- 3.3. A supplementary sheet issued with the field advice notice identified issues with the EIFS cladding, which was direct fixed, had high moisture level readings in some areas, and was also cracked and damaged in places. Due to these issues, the authority advised the owners that further investigation of the building’s in-service performance, such as a report from a building surveyor experienced in weathertightness assessments, would be needed.
- 3.4. On 22 October 2019, the authority carried out another inspection to recheck the items identified in field advice notice 33524CC. At this inspection, the owners advised they did not want to rectify the outstanding items listed in the notice; the owners were of the view the authority should instead rely on the findings of the inspection conducted in January 1995.
- 3.5. The parties corresponded via email in an attempt to resolve their differing viewpoints on the status of the March 2019 inspection and the issues raised by it.
- 3.6. The owners considered the second building consent had been issued in error and the authority should not have issued a code compliance certificate in respect of it.
- 3.7. In the owners’ opinion, any inspection of the building work carried out under the first consent must be limited to the matters raised in the original final inspection in 1995.

- 3.8. The authority was of the view that, although no code compliance certificate had yet been issued for it, the building work in the scope of the first consent was complete before the second consent was issued, and any cladding changes agreed to related solely to the second consent and did not extend to the dwelling.
- 3.9. The authority considered the second building consent was a separate discrete application and had been treated as such throughout the consenting process. The authority restated that if the owners wished to obtain a code compliance certificate for the first consent, then all the matters identified in the authority's March 2019 field advice notice "would need to be addressed to the authority's satisfaction".
- 3.10. The owners made two applications for determination, dated 2 November 2020 and 12 December 2020. After consultation with the parties, the Ministry advised the two matters could be dealt with as one application and accepted the application on 26 January 2021.
- 3.11. A draft determination was issued to the parties for comment on 17 March 2022.

## 4. Submissions

### The owners' submissions

- 4.1. The owners made submissions in support of their application for a determination and in response to the authority's submission. The owners set out their view that the second building consent should never have been issued, and the authority's latest inspection for the first building consent was 'seriously flawed'.
- 4.2. In the owners' view, the authority should not have granted the second consent or the subsequent code compliance certificate for it because the second consent altered aspects of the building work carried out under the first consent (including the cladding) that had not yet received a code compliance certificate. In the owners' view, the alterations to the dwelling and carport should have been approved as an amendment to the first consent rather than via the second building consent.
- 4.3. The owners also consider that the first building consent should not now be issued with a code compliance certificate because it is impossible to inspect the building work carried out under that consent 'in its original form' due to the alterations.
- 4.4. The other points made in the owners' submissions can be summarised as follows.
  - 4.4.1. The cladding change made to the second building consent applied to both the existing dwelling and carport, and the new garage.
  - 4.4.2. The owners provided emails from the former owner of the property responsible for the installation of the EIFS cladding on the dwelling, carport and garage. The former owner was unsure if the change of cladding to the

dwelling was treated as an amendment to the first consent. However, the former owner was certain the dwelling, carport, and new garage were clad in EIFS at the same time, and that this was prior to the final inspection for the second consent. The owners conclude from this that the change in cladding for the dwelling was made with the authority's approval but consider this was inappropriate because the second building consent was granted unlawfully.

- 4.4.3. The owners state the EIFS cladding is now covering the original plywood sheathing on the dwelling.
- 4.4.4. In deciding whether to issue a code compliance certificate for the building work carried out under the first consent, the owners are of the view the authority should be able to rely on its final inspection of 26 January 1995 which listed five items to be addressed. The later inspection on 25 March 2019 should not inform the authority's decision, and the authority should not raise any additional items to those listed in the January 1995 inspection.
- 4.4.5. The authority has erred in listing items in the March 2019 inspection that relate to building work carried out under the second building consent, in particular in relation to cladding, because a code compliance certificate has been already issued for the cladding installed under the second consent.
- 4.4.6. The March 2019 inspection does not identify any 'non-compliant issues', only items that had passed the January 1995 inspection, or that are 'clearly repairs and maintenance'.

### **The authority's submissions**

- 4.5. The authority made a submission in response to the application for determination, in which it stated it had acted correctly in relation to both building consents. The main points from this submission can be summarised as follows:
  - 4.5.1. There is no evidence the authority ever approved changing the external cladding on any of the buildings to EIFS cladding. The only reference to an EIFS cladding on the plans is one hand-written reference.
  - 4.5.2. The authority has no record of why the bracing on the garage was changed, but this may have been to accommodate the change in cladding from solid plaster to EIFS. At some stage, the EIFS cladding was extended over all of the buildings.
  - 4.5.3. With respect to its proposed decision not to issue a code compliance certificate for the first building consent, the authority concluded:

14. When a historic final inspection is requested (as per FAN 33524 on 25 March 2019) it is [the authority's] policy to undertake a full inspection of

the complete build. In this case several noncompliant issues were identified, which were either missed at the first inspection or have developed over the last 20 odd years. Only some of these items effect [the first building consent].

15. Importantly, the [EIFS] cladding has developed some defects which may have affected the structural integrity of parts of [the dwelling constructed under the first building consent] as indicated by cracking of the cladding surface, high moisture readings and lack of appropriate sealing in some areas.

16. Consequently [the authority] would not issue a Code Compliance Certificate for [the first building consent] because:

(a) There is no evidence that [the authority] approved, or inspected the [EIFS] cladding now over the entire structure, including the dwelling; and

(b) Without rectifying the outstanding items listed in FAN 33524 and demonstrating compliance, [the authority] does not have reasonable grounds to be satisfied that the building complies with the NZ Building Code, that was current at the time of construction (s43 Building Act 1991).

- 4.5.4. With respect to its decision to issue the second building consent, the authority contended it acted 'correctly and lawfully', as all of the plans and specifications supplied met the provisions of the Building Code. Section 33(3) of the Building Act 1991 ("the former Act"), which was in force at the time of application, allowed for several building consents to be sought and approved. There is no requirement in the Act that a code compliance certificate needs to have been issued for previous consents before another consent is issued.

## 5. Submissions in response to the draft determination

- 5.1. A draft determination was issued to the parties on 17 March 2022.
- 5.2. The authority accepted the draft on 31 March 2022 without comments.
- 5.3. The owner responded on the 18 March 2022 and did not accept the draft. They provided additional comments on 25 March 2022.
- 5.4. The owner submitted (in summary):
- 5.4.1. The consents issued where not 'staged' under section 33(3).
- 5.4.2. The authority acted incorrectly and unlawfully in approving BC12328 'because it included in the consent the unlawful enclosing of the carport in a separate one off, single stage, stand alone building consent BC5560'.

- 5.4.3. 'All of the alterations to BC5560 should have been amendments to BC5560'.
- 5.4.4. 'There is [no] provision in the [former] Act that permits an owner to apply alterations to another consent granted under another separate consent'.
- 5.4.5. 'There is [no] provision in the [former] Act that allows councils, in this case WDC, to approve alterations to another consent granted under another separate consent.

## 6. Discussion

- 6.1. This determination is limited to two matters.
  - 6.1.1. The authority's decision to grant the second building consent (no. 9512328: to enclose the carport and construct a garage).
  - 6.1.2. The authority's proposed decision to refuse to issue a code compliance certificate for the first building consent (no. 935560: to construct a dwelling), based on the outcome of the March 2019 inspection.

### Matter one: The decision to grant the second building consent

- 6.2. The owners consider this second building consent was issued unlawfully because it made alterations to building work constructed under the first consent (by enclosing the carport), when the first building consent had not yet been issued a code compliance certificate.
- 6.3. The basis for the owners' view is their interpretation of section 33 of the former Act, which was in force at the time the second consent was granted. The relevant provisions of section 33 read:

#### 33. Applications for building consents

- (1) An owner intending to carry out any building work shall, before the commencement of the work, apply to the territorial authority for a building consent in respect of the work.
- (2) ...
- (3) A series of applications for building consent may be made in respect of stages of the proposed building work.
- (4) An application for an amendment to a building consent shall be made in the same manner as the original application. ...

- 6.4. It is not uncommon for building work, especially large developments or commercial projects, to be carried out in phases over an extended period of time. Section 33(3) allowed owners to "stage" a project, by making a series of associated applications



that cover specific elements of the proposed work. In this way, an owner could obtain approval and begin working on one stage, for example site work and foundations, while other parts of the proposed work are being designed and prepared for approval.

- 6.5. For the purpose of confirming compliance of the Building Code to the whole of the building (such as for Clause H1 Energy efficiency), the series of applications must be read together. The staged applications, once approved, form a single building consent. Once the entire project is completed, a single code compliance certificate can be issued for all of the building work carried out under the one building consent.
- 6.6. I consider, based on the building consent documentation and the correspondence that is available to me, there was no intention by the owner or previous owners to apply for a series of building consents to stage the proposed building work as described in section 33(3), and the authority did not issue a series of consents as described in section 33(3).
- 6.7. The provisions in section 33 are not limiting provisions; that is, they did not prevent the previous owners from applying for a new building consent when there was an existing “open” building consent (i.e., a building consent that had not been issued with a code compliance certificate).
- 6.8. It is arguable whether in this case the proposed building work in the second building consent application should have been managed through separate applications, with the alteration to the carport as an amendment to the first building consent and construction of the garage under a new building consent. However, there is nothing in the provisions of the former Act that limited an owner from seeking a new building consent in these circumstances.
- 6.9. In my opinion, there is no reason to suggest approval for the alteration had to be sought by way of an amendment to the first consent rather than as part of the second building consent. The alteration to the garage was the addition of building elements to the existing carport to enclose it, and alterations to existing building elements (constructed under the first building consent) would have been limited.
- 6.10. The owners consider the authority acted unlawfully by granting a building consent in this situation, but this is not the case. There is nothing in the former Act that prevented authorities from issuing consents in these circumstances as long as the test in section 34 of the former Act (see Appendix A) was met.
- 6.11. The test for issuing a consent under section 34 of the former Act is that the authority has reasonable grounds to be satisfied that the building work, if constructed in accordance with the plans and specifications, will comply with the Building Code.

- 6.12. Where new building work is an alteration of an existing building or will interact with an existing building, such as at joints and junctions, the building consent authority needs to turn its mind to how one may affect the other. The building consent authority must be satisfied the existing building will continue to comply to the extent that it did prior to the addition or alteration.<sup>3</sup> Also, where the compliance of the new work in some way relies on the performance of existing building elements, the authority must be satisfied that the new work will achieve compliance regardless of the performance of the existing building elements.<sup>4</sup>
- 6.13. In this case, to issue the second building consent the authority needed to be satisfied:
- 6.13.1. the dwelling and carport would continue to comply to the same extent as they did before the carport was enclosed, and
  - 6.13.2. the building work would achieve compliance with the Building Code, notwithstanding the in-service performance of the existing carport.
- 6.14. This is not the same as requiring the previous work to have a code compliance certificate before any new work can be approved. It just means the authority needs to turn its mind to the existing works when making a decision on the new work.
- 6.15. The authority has stated the plans and specifications supplied for the second consent met the provisions of the Building Code, and it was satisfied that compliance would be achieved. This includes consideration of the existing building under s38 of the former Act. I have seen no evidence from parties to suggest this was not the case. The authority had records of previous inspections that did not identify anything that would suggest the proposed building work, in reliance on the existing building work, would not achieve compliance. Accordingly, I conclude the authority's decision to issue the second building consent was in accordance with the provisions of the former Act.
- 6.16. I also confirm one building consent does not supersede the other. They are separate applications and can have their own code compliance certificates once the work is completed to the requirements of the Act.
- 6.17. Notwithstanding the above, I note the practice of granting consents, where later building work in some way alters building work carried out under earlier consents, can create administrative issues and raise challenges when it comes to obtaining a code compliance certificate. For example:
- 6.17.1. Before the code compliance certificate can be issued for an earlier building consent, the documentation would need to accurately reflect that not all of the proposed building work remains. Any building work covered up by subsequent alterations may no longer be able to be inspected. In

---

<sup>3</sup> Section 38 of the former Act (see 112(1)(b) of the Act).

<sup>4</sup> Section 34(3) of the former Act

circumstances like this, building consent authorities need to consider whether they have sufficient evidence of compliance for the work that is covered, for example, records of earlier inspections or evidence of in-service performance.

6.18. These are matters the parties will now have to consider in the context of the first building consent before a code compliance certificate is applied for. However, these matters did not impact on the authority's decision to grant the second building consent.

## **Conclusion on the second consent**

6.19. I conclude the authority exercised its powers correctly in granting the second building consent.

## **Matter two: The proposal to refuse to issue a code compliance certificate**

6.20. The second matter for determination relates to the authority's proposal<sup>5</sup> to refuse to issue a code compliance certificate in relation to the first building consent, should one be applied for.

6.21. Because the first building consent was issued under the former Act, the transitional provisions in section 436 of the Act apply.

### **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—

(a) remains in force as if this Act had not been passed; but

(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

---

<sup>5</sup> Based on the authority's findings from the March 2019 inspection.

(ii) section 43(4) were omitted

- 6.22. This means the test for issuing a code compliance certificate will be whether the building work complies with the Building Code that was in force at the time the consent was issued and that the existing building continue to comply with the other provisions of the building code to at least the same extent as before the alteration<sup>6</sup>.
- 6.23. I note the owner may apply to the authority for a modification of durability Clause B2.3.1 to allow the specified durability periods to commence from the date of substantial completion of the building work. This would require consideration of those elements that complied with the Building Code at the date of practical completion and the ongoing performance of various building elements. The authority can then take into account the period of time that has already elapsed when considering whether the building work has complied for the specified periods in Clause B2.3.1. I leave this matter to the parties to resolve in due course.
- 6.24. In its submission, the authority has stated that the basis for its proposed decision is:
- 6.24.1. there is no evidence that the authority approved or inspected the EIFS cladding now on the dwelling
  - 6.24.2. without rectifying the outstanding items listed in the March 2019 inspection field advice notice, and demonstrating compliance, the authority does not have reasonable grounds to be satisfied that the building work complies with the Building Code that was current at the time of construction.
- 6.25. The owners consider that the EIFS cladding currently on the dwelling was approved by the authority as a minor amendment to the first consent at the same time that the authority approved the cladding change for the carport and garage. They also consider the authority cannot now raise additional matters of compliance and instead is limited to only considering the five matters raised in its original inspection in 1995.
- 6.26. As a preliminary matter, there was some confusion between the parties as to which version of the Building Code the building work must comply with. In its correspondence, the authority had previously suggested that it was assessing compliance against the version of the Building Code that is currently in force. The owners, quite rightly, challenged this approach, and I note the authority has acknowledged it is the Building Code in force at the time of construction that the building work must achieve compliance with.

## **The cladding on the dwelling**

- 6.27. I will turn first to the question of the alteration of the cladding to the dwelling, and whether this building work was approved. If it was approved, I will then consider

---

<sup>6</sup> Section 38 of the former Act.

whether it was building work carried out under the first consent or building work carried out under the second consent.

- 6.28. The authority has submitted that there is no evidence it ever considered, approved, or inspected the current cladding on the dwelling.
- 6.29. It is impossible to say with any certainty, at this distance in time and in the absence of any records, what the authority's knowledge and decision-making process was with respect to the substitute cladding. I can only look at the weight of the evidence presented and form an opinion.
- 6.30. There is some suggestion (but not certainty) that the authority did know about and may have approved the use of the EIFS cladding on the carport and garage, based on the handwritten note referring to the EIFS cladding on the plans and the approved change in bracing in 1998.
- 6.31. In my opinion, based on the owner's statements on when the work was being carried out, and the timing of the inspections undertaken, this EIFS cladding had been installed at the time of the final inspection for the second consent. I consider it likely the work would have been inspected at the same time as the rest of the building work carried out under the second building consent.
- 6.32. I accept based on the weight of the evidence the EIFS cladding was in place at the point of the final inspection for the second consent and would have been visible to the inspecting officer given the scope of building work they were on the property to inspect. There is no evidence the inspecting officer raised the change of cladding proposed in the plans for the second consent, the extension of that cladding to the dwelling as an issue, or brought it to the attention of the previous owner as a problem. In my opinion the weight of the evidence points to the work being included in the second consent at the final inspection on 5 June 2022. The lack of clear record keeping does not in itself mean the work is excluded.
- 6.33. The owners are also concerned about the authority's March and October 2019 inspections for the first building consent. This inspection noted several additional matters to those identified as non-compliant at the 1995 inspection.
- 6.34. The owners have rejected the March and October 2019 inspections and say that the authority is limited in the matters it can re-inspect to the items listed as non-compliant in the January 1995 inspection.
- 6.35. Inspections for the purpose of establishing whether a code compliance certificate can be issued should address the compliance of the building work carried out. The authority is not limited in its inspection to items that were identified in previous inspections.
- 6.36. The performance of any alterations to the original building work can also be relevant, as they may impact on the compliance of the consented work.

- 6.37. The authority has concerns about the compliance of the cladding and the adverse impact any non-compliance may have had over time on underlying elements. Many of these elements are not now able to be fully inspected (for example, structural timbers that are now covered with claddings and internal linings that may be subject to decay if the cladding is not performing). It is for this reason that the authority has suggested a third-party assessment of the cladding.
- 6.38. I have found that the EIFS cladding was approved as part of the second building consent and that work has a code compliance certificate. The authority would still be required to pay attention to the EIFS cladding but only in terms of its impact on the building work carried out under the first consent. To be clear, the assessment should be whether the building work in the first consent is impacted by the performance of the cladding, not whether the cladding itself complies.
- 6.39. Similarly, in deciding whether to issue a code compliance certificate for the first consent, the authority can take into account both the inspection records and the current evidence of in-service performance of the building work. It is not limited to the findings in its 1995 inspection if there is evidence that building work covered by the first building consent is now starting to fail.
- 6.40. In its correspondence, the authority has suggested that the 1995 inspection was now 'largely irrelevant'. I disagree with the authority on this point. The authority can refer to and rely in-part on its earlier inspections to provide evidence of the compliance of aspects of the building work that it may not now be able to inspect, but it is not limited to only considering those inspections.
- 6.41. The authority has also stated that not all matters listed in the March 2019 inspection field advice notice are relevant to the first building consent. However, the inspection field advice notice should either be limited to the matters that affect compliance of the building work in the first building consent, or make clear which matters affect compliance and which do not. It is important that the owners have a clear picture of what matters need to be rectified in order for a code compliance certificate to be obtained for the first building consent.

## **Conclusion on the code compliance certificate**

- 6.42. There is insufficient information to confirm that the building work on the dwelling complies with the Building Code that was in force at the time, and the authority was correct in its proposed decision to refuse to issue a code compliance certificate for the first consent.

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

- 7.1. It is not within my powers to direct how authorities conduct or record their inspections. However, I suggest it may be useful if the authority provides a revised inspection field advice notice that is limited to matters relating to the compliance of

the building work carried out under the first building consent, especially considering the decision made in this determination as to the work covered by the second building consent.

- 7.2. It is then for the owners to either rectify the identified items or provide sufficient evidence of their compliance to the authority. Depending on the extent of any remedial work that may be required, an amendment to the first building consent may be necessary.
- 7.3. When it comes to making its compliance decision, the authority can refer to its historical inspection records, as well as the evidence now before it, including the performance of the building.
- 7.4. The authority should also keep in mind its ability to modify the durability periods described in Clause B2.3.1 (on application for an amendment to the building consent). The durability periods can commence when compliance with Clause B2 would, to all practical purposes, have been achieved if the code compliance certificate had been issued at the time the building work was substantially completed. Such modifications may be appropriate for building elements that are unaffected by any potential cladding issues and that are now beyond their required durability life.

## 8. Decision

- 8.1. In accordance with section 188 of the Building Act 2004, I determine that the authority:
  - 8.1.1. correctly exercised its powers to grant building consent no. 9512328, and I confirm that decision.
  - 8.1.2. was correct in its proposal to refuse to grant a code compliance certificate for the first building consent no. 935560.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 8 November 2022.

**Peta Hird**

**Principal Advisor Determinations**

## **APPENDIX A: The legislation**

### **BUILDING ACT 1991 ('THE FORMER ACT')**

---

#### **34. Processing building consents**

(3) After considering an application for building consent, the territorial authority shall grant the consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work was properly completed in accordance with the plans and specifications submitted with the application.

#### **38. Alterations to existing buildings**

No building consent shall be granted for the alteration of an existing building unless the territorial authority is satisfied that after the alteration the building will—

(a) Comply with the provisions of the building code for means of escape from fire, and for access and facilities for use by people with disabilities [(where this is a requirement in terms of section 47A of this Act)], as nearly as is reasonably practicable, to the same extent as if it were a new building; and

(b) Continue to comply with the other provisions of the building code to at least the same extent as before the alteration.