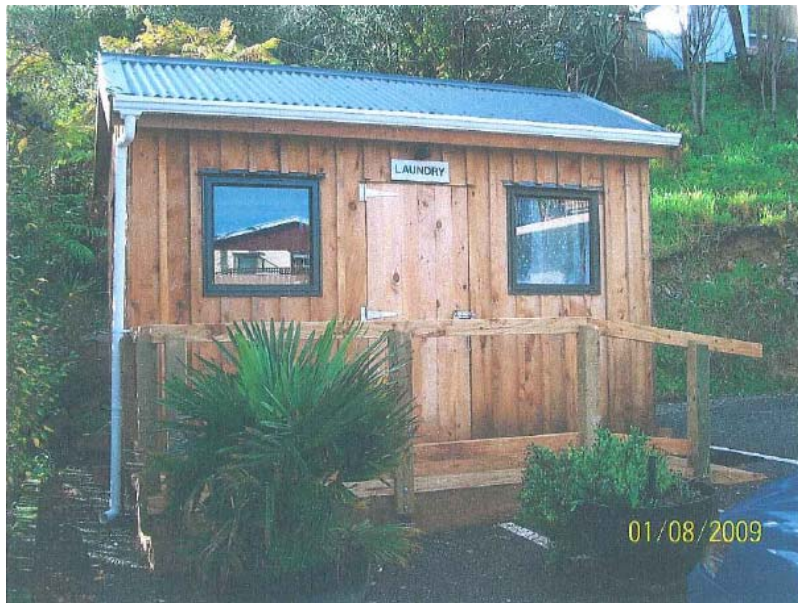


Determination 2010/008

The refusal to issue a certificate of acceptance for a prefabricated, stand alone laundry building at a motel at 14 Smith Street, Greymouth



1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The following are the parties to this determination:

- The owner of the motel, Mr P Robertson (“the applicant”) acting through a building consultant (“the consultant”)
- The Grey District Council carrying out its duties and functions as a territorial authority or building consent authority (“the authority”).

1.2 This determination arises from the decision of the authority to refuse to issue a certificate of acceptance for a stand alone laundry building (“the building”) because it is not satisfied that the building complies with the Building Code (Schedule 1, Building Regulations 1992) and the decision of the authority to issue a notice to fix for the building.

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

- 1.3 I therefore take the view that the matters for determination² are:
- whether the decision of the authority to refuse to issue a certificate of acceptance for the building was correct; and
 - whether the decision of the authority to issue a notice to fix for the building was correct.
- 1.4 In making my decision I have considered the application and submissions, and the other evidence in this matter.

2. The building work

- 2.1 The building is situated on a level area within a carpark of a motel, adjacent to the main motel buildings, in a high wind zone and sea spray zone for the purposes of NZS 3604³.
- 2.2 The building is small, with a floor area of 9.43m² that is divided into two rooms. One room contains the laundering machines and the other is a store room.
- 2.3 The building is a light weight timber framed building constructed of untreated Douglas Fir to the subfloor, and clad with Macrocarpa untreated vertical shiplap weatherboards with cover battens over a mixture of building paper and foil laminate insulation. The roofing is corrugated steel with soft edge ridging and barge capping and small eaves.
- 2.4 The windows are four aluminium framed sash windows. The door is constructed of Macrocarpa untreated vertical shiplap weatherboards and has an external lock. The ramp is constructed using treated timber. The ramp joists are supported on the ground or on timber packers and is secured to the building by bolts through the deck joists and into the bearer of the building.

3. Background

- 3.1 It appears that the applicant purchased the building sometime in 2008, which was constructed off site and relocated to the motel. The applicant had understood that ‘a relocatable building under [10m²] does not need a building consent’. A plumber commenced work on the building in early 2009 and advised the applicant that a building consent may be required for the plumbing and drainage to the building.
- 3.2 The authority inspected the building on 6 March 2009 and advised the applicant that the building did not comply with the Building Code.
- 3.3 In a letter dated 9 March 2009 to the applicant, which the applicant states was not received, the authority stated:

...the application to install sanitary facilities into a newly constructed 10m² building has been declined on the grounds that the building does not comply with the [Building Code] at all.

It is obvious the builder that constructed the unit you have on your property has no knowledge of the [Building Code] whatsoever. The non compliance includes:

1. The subfloor, wall and roof framing.
2. The use of double sided foil as building wrap.

² In terms of sections 177(c)(ii) and 177(c)(iv) of the Act. In this determination, unless otherwise stated, references to ‘sections’ are to sections of the Act, and references to ‘clauses’ are to clauses of the Building Code.

³ New Zealand Standard NZS 3604:1999 Timber Framed Buildings

3. The wall cladding.
4. Window and door flashings.
5. Roof and roof flashings.
6. The building is sited closer than its own height to the [north-west] boundary.

After a closer inspection... the above was revealed and as a result [the authority is] requesting the building to either be returned to the supplier or demolished. If this request is not complied with then a notice to fix under [section 164] will be issued.

- 3.4 Following the inspection by the authority, the applicant proceeded with constructing a ramp to the building and some minor alterations.
- 3.5 A notice to fix dated 12 May 2009 was issued to the applicant for the building. The notice described the particulars of contravention or non-compliance as ‘erection of a building and associated services without a building consent as required under section 40 of [the Act]’ and ‘conducting building work which does not comply with the [Building Code] as required under section 17 of [the Act]’. The notice required that ‘to remedy the contravention or non-compliance [the applicant] must remove the laundry building and associated services.’
- 3.6 The applicant engaged a consultant to inspect the building work and prepare a report on the compliance of the building work for an application for a certificate of acceptance.
- 3.7 In a letter to the applicant from the authority dated 8 October 2009, the authority refused to issue a certificate of acceptance for the building stating ‘...the building will not comply with the Building Code without being demolished and reconstructed using the appropriate materials.’
- 3.8 An application for a determination was received by the Department on 9 November 2009.

4. The submissions

- 4.1 The application, dated 28 October 2009 (received in full by the Department on 9 November 2009), included a building inspection report from the consultant that describes the compliance of the building, a letter from the applicant, and copies of correspondence with the authority.
- 4.2 The building inspection report describes elements of the building work, including elements that do not comply with the Building Code and noted the parts of the building work that in the consultant’s opinion meet the performance criteria of the Building Code.
- 4.3 The applicant made a further submission dated 4 November (received by the Department on 13 November 2009) that explained that the elements of the building that the consultant stated did not comply with the Building Code were low risk or could be easily rectified. The applicant also stated:

I believe the building is structurally sound and has been further improved on site by lining the inside with treated plywood. We would be agreeable for the building to be given a reduced intended life to between seven and ten years if necessary. We would also be prepared to rectify any of the Building Code deficiencies as a condition of any determination that was granted. ... we believe it would be fair and reasonable for our application for a determination to be granted allowing us to continue to use the building for a limited time period.

- 4.4 The authority made a submission dated 16 November 2009 (received by the Department on 23 November 2009). The authority provided details of 23 items relating to the building that it considered did not comply with the Building Code. The authority stated:

The authority refused to issue a certificate of acceptance... for [the building]. This was due to the [authority] believing on reasonable grounds that parts of the building were unable to meet various clauses of the [Building Code].

The [authority] recognises that it is possible work could be undertaken to bring the building up to a suitable standard for a limited life. The [authority] sees itself as a compliance agency and not a construction consultant. Therefore it is not up the [authority] to recommend construction methods or take on a design role to remedy the current situation.

- 4.5 A draft determination was sent to the parties on 20 January 2010.
- 4.6 The applicant accepted the draft determination without comment.
- 4.7 The authority accepted the draft determination, and noted it had been of the view the building was dangerous in terms of section 121 of the Act in respect of the lock to the door, however, after receiving an opinion from the New Zealand Fire Service, it has reviewed its decision and concluded that the building is not dangerous. The authority also noted it believed the building was earthquake prone as the building was insufficiently tied to the ground. The authority also stated:

The authority considered that the most efficient way for the structure to meet the Building Code requirements was for the building in part to be demolished to allow the rebuilding of the structure. Therefore our Notice to Fix outlined in our opinion the most practical and effective method for meeting the Building Code requirements. After reading the draft determination and on reflection, the authority realises it was not within the authority's remit to only offer to remove or demolish the building.

5. Assessment of the building work

- 5.1 Both the authority and the consultant have assessed the state of the building and its compliance with the Building Code as follows:

Table 1: Assessment of the building work by the authority and the consultant

Description of building element where required	Summary of observations by consultant	Summary of observations by authority
Foundations		
The ground to bearer fixing is a 12mm reinforcing bar, fixed at one end of each of the two bearers. The bearers are packed off the ground with timber blocks.	The ground to bearer fixing, with timber blocks only and no piles, is outside the scope of NZS3604.	The ground to bearer fixing is not sufficient to resist loads and the treatment to the bar is insufficient. The timber blocks are not sufficiently fixed to the ground and do not provide suitable support for lateral loads. The blocks are not treated to H5 and there is no damp proof course between the timber block and untreated bearer.

Sub floor bearers and joists		
<p>The subfloor is constructed between two 200x75 Douglas Fir untreated bearers, that extend 200mm past the ends of the building and which are fixed at one end with 12mm reinforcing bars.</p> <p>The 150x50 untreated Douglas Fir floor joists at 600mm centres span 2.1 metres, are assumed to be number 1 framing, and are butt jointed and skew nailed into the bearers.</p>	<p>The bearers are secured by steel pins at one end only.</p> <p>Assuming the timber is number 1 framing, the span of the joist is outside the scope of NZS3604.</p>	<p>The two untreated bearers are in close proximity to the ground and exposed at each end of the building.</p> <p>The span of the joists exceeds the permitted span assuming the timber is number 1 framing according to NZS3604 for a 1.5kPa floor loading and in this case, a 3kPa floor loading is appropriate due to the loads from the laundry machinery.</p>
Interior linings		
<p>17.5mm H3.2 treated plywood with no subfloor insulation. The floor covering is vinyl.</p> <p>The interior wall lining is 17.5mm H3.2 treated, varnished plywood.</p>	<p>The flooring complies with Clause E3.3.3.</p>	<p>Foil laminate insulation does not comply with Clause E3 as the insulation may act as a vapour barrier and moisture may be held against timber members.</p>
Wall framing		
<p>The framing is 100x50 studs at 400 centres and two rows of dwangs.</p>		<p>The untreated wall framing does not comply Clause B2.</p> <p>There is no evidence of sufficient wall bracing in accordance with NZS3604 and Clause B1. The bottom plate to stud connections are unable to be inspected and it cannot be ascertained how much the interior plywood lining is contributing as a bracing element.</p>
Ventilation		
<p>Ventilation is provided by way of the 4 aluminium windows.</p>	<p>The building complies with Clause G4.3.1.</p>	
Wall cladding		
<p>The building is lined with building paper and foil laminate insulation and 200x25 untreated macrocapa vertical shiplap weatherboards with 50x25 cover battens.</p>	<p>The flashings to the penetrations, windows and doors do not meet the minimum performance requirements of Clause E2.</p>	<p>The installation of the flashings to the windows and doors is poor and therefore does not comply with Clause E2.</p>
Roof framing		
<p>The construction of the roof framing consists of a bottom chord, rafters, and 100x50 centre strut, with the framing at 1.01 centres. The joints are skew nailed including the rafter to top plate fixing.</p> <p>The purlins are 70x45 located top, bottom, and central down each side of the gable roof. The ceiling lining consists of 150x25 sarking and building paper.</p>	<p>The construction is outside the scope of NZS3604.</p> <p>There is no evidence of roof bracing.</p>	<p>The construction of the roof framing is outside the scope of NZS3604 and the fixings are inadequate for the wind zone.</p> <p>The fixings of the roof purlins were not able to be inspected.</p> <p>There is no evidence of roof bracing in accordance with NZS3604 and Clause B1.</p>
Roof cladding		
<p>The roofing is corrugated steel with soft edge ridging and barge capping.</p>	<p>The steel roofing does not meet the Manufacturer's requirements for securing the roofing against uplift.</p> <p>The capping has been installed with the lap over the ridging instead of under it.</p>	<p>The roof cladding is not fixed in accordance with the Manufacturer's requirements.</p> <p>The capping of the barge flashing is incorrect and may allow moisture to enter the building.</p>

Disposal of roof water		
The roof water is collected by spouting and downpipes that discharge directly to the ground.	The downpipes discharge directly to the ground. The system complies with Clause E1.2.2(b).	The roof water is not disposed of using an approved method or approved outfall.
Ramp		
The ramp is constructed with H3.2 treated timber. The structural fixings are galvanised. The ramp has 300x50 and 200x50 joists shaped to the ground level supported by the ground or timber packers. The deck is secured to the building by bolts through the deck joists and into the bearer. The handrail is 100x50 timber fixed on edge with 5mm arrised edges.	The fixings for the ramp to the ground and barrier to the ramp do not comply with Clause B2. The construction of the ramp complies with Clauses B1.3.1 and B1.2.2, and B2.3(a). The access complies with Clauses D1.3.2(a) and D1.3.3(c) and the barrier complies with Clause F4.3.4(a).	The galvanised fixings to the ramp do not meet the requirements of Clause B2 as the building is in a sea spray zone. The handrail does not comply with D/AS1 and the ramp does not have a level landing adjacent to the door.
Activity space		
	The building complies with Clauses G2.3.1, G2.3.2.	There is inadequate activity space for people with disabilities and the height of the clothes drier is unsuitable.
Water and waste water		
The waste pipes discharge to a sump and are then pumped to the foul water system.	The pipes from the building to the sump are unprotected. The system complies with Clauses G13.3.1 and G13.2(a, b, d, e). The water supply complies with Clause G12.3.1.	The pipes discharging into the pump chamber are unprotected between the building and sump.
Exterior door		
The exterior door is locked with a pad-bolt lock		The exterior door cannot be unlocked from inside.
Electricity		
	The building complies with Clause G9.3.1.	
Building location		
		The building is located closer than its own height to the boundary.

The issuing of the notice to fix

6. Discussion

The notice to fix provisions

- 6.1 The provisions in the Act for notices to fix are broadly worded and empower an authority to issue a notice to fix if the authority ‘considers on reasonable grounds a specified person is contravening or failing to comply with this Act or regulations.’ The notice must require the person ‘to remedy the contravention of, or comply with’ the Act.

- 6.2 As the statutory requirements for a notice to fix do not prescribe the specific detail that must be included in the notice the authority has a degree of discretion around what to include in the notice. However, the authority must have reasonable grounds for issuing the notice, and must decide on the appropriate terms to be included in the notice. The authority is required to consider the matters listed in section 165 and the circumstances relating to the building work in deciding what the appropriate terms are for a notice to fix.

Demolition of buildings

- 6.3 I have considered the other provisions of the Act for the purposes of identifying instances in which demolition of all or part of a building may be appropriate. I note that under section 127, work required or authorised under the dangerous, earthquake prone, and insanitary buildings provisions of the Act may include the demolition of all or part of a building.
- 6.4 Because the purpose of the dangerous, earthquake prone, and insanitary provisions of the Act is to protect the health and safety of building users, an authority must be satisfied the building is dangerous, and must take the appropriate course of action under section 124 to protect the health and safety of building users. It is clear from section 124 that while demolition of a dangerous building may sometimes be the necessary course of action, even for a dangerous building, demolition will not always be appropriate or reasonable.
- 6.5 In a 1995 case⁴ about whether it was reasonable for an authority to demolish a building, the Court noted that the owner had given evidence of being ready to repair the building. The Court further observed that had it been satisfied that the building was insanitary, it would not have considered the demolition to be reasonable without affording the owner an opportunity to undertake the remedial work that he had assured the Court he was about to do.
- 6.6 In regard to demolition of buildings that are not dangerous or insanitary, the following view was held in Determination 1999/6:
- (a) Demolition of private property which is neither dangerous nor insanitary is a drastic step which should only be taken for a compelling reason and in the public interest;
 - (b) The [Building Industry Authority] does not consider that there is any such compelling reason in this case; and
 - (c) Even if there appeared to be such a reason, it should generally be tested in Court, as would be the case with a notice issued under section 65 [of the Building Act 1991] in respect of a building deemed to be dangerous or insanitary under section 64 [of the Building Act 1991].
- 6.7 The following view was held in Determination 2000/1:
- The [Building Industry Authority] recognises that if building work that was done unlawfully is not demolished then the owner would appear to benefit from its unlawful actions. Nevertheless, if that building work, although done unlawfully, complies with the Building Code, then the [Building Industry Authority] considers that it is unreasonable to require it to be demolished so that it can be constructed again. ...

⁴ (Malborough DC v Chaytor 16/3/95, Judge Walker, DC Blenheim M76/94 [1995] DCR 382)

[The Building Industry Authority] notes that the issuing of the notice to rectify has the following adverse consequences for the owner:

- (a) The notice will be mentioned in any land information memorandum issued in respect of the building.
- (b) Failing to comply with the notice is an offence, and some circumstances a continuing offence, under section [168].
- (c) Where there is a continuing offence, a prosecution may be commenced later than would otherwise be required by section [378].

6.8 In Determination 2009/115, I considered whether it was appropriate and reasonable for an authority to require the demolition of a building through a notice to fix. I took the general view that demolition of building work, which is neither dangerous nor insanitary, is a drastic step which should only be taken for compelling reasons. This determination was in regard of building work, some of which was built without a building consent, I said:

The [notice to fix] requires the removal or demolition of the building. I accept that the building work in this case appears to be unlawful, in that it was not constructed in accordance with the building consent. However, I do not consider that the breaches of the Act at the time of the [notice to fix] constitute compelling reasons for the requirement that the building be removed or demolished.

The remedy of the notice to fix

- 6.9 I continue to hold the views discussed in paragraphs 6.6 to 6.8, and in particular consider that under the Act, demolition or removal of building work which is neither dangerous nor insanitary is a drastic step which should only be taken for compelling reasons.
- 6.10 In this case, the notice to fix requires the removal of the building (refer to paragraph 3.5) and describes the particulars of the contravention and non-compliance as ‘erection of a building and associated services without a building consent as required under section 40 of [the Act]’ and ‘conducting building work which does not comply with the [Building Code] as required under section 17 of [the Act]’.
- 6.11 I note that the construction of the building is not building work that is exempt, under Schedule 1, for the requirement to obtain a building consent. In terms of Schedule 1(i)(iv), it is closer than its own height to the boundary and contains sanitary facilities. Therefore, the work was undertaken without a building consent when it required one and it is clear from the assessments of the building work carried out by the consultant and the authority that there is a considerable amount of the building work that was not constructed in accordance with the Building Code. However, I do not consider that the breaches of the Act constitute compelling reasons for the requirements for the building to be removed.
- 6.12 I therefore conclude that the authority should modify the notice to require the applicant to bring the building into compliance with the Building Code (refer paragraph 8.1). The authority may include a further option of the removal or demolition of the building on the notice to fix.

The refusal to issue a certificate of acceptance

7. Discussion

The basis for issuing a certificate of acceptance

- 7.1 Section 40 states that building work must not be carried out except in accordance with a building consent, and section 96(1)(a) provides for the issue of a certificate of acceptance where an owner has carried out building work without obtaining a building consent. In such a situation, 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.'
- 7.2 Section 96(2) requires an authority 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.
- 7.3 Section 96(2) is silent on work that cannot be inspected and for which there is no evidence available to determine whether it complies with the Building Code. However, Form 9 requires an authority to list the building work that complies with the Building Code and in my view this list provides the basis for an authority to list only the building work that can be ascertained complies with the Building Code.
- 7.4 The description of the work covered by Form 9 could be:
- a description of the physical building work, or
 - a description of the Building Code clauses the building work complies with, or
 - a combination of both.
- 7.5 Where a certificate of acceptance does not cover work that is the subject of the application it is essential the certificate clearly set out the nature and extent of the work that is not covered by the certificate of acceptance to ensure the certificate is not misleading. This list of building work that is expressly excluded from the scope of a certificate of acceptance could appear immediately after the list of work that complies with the Building Code. In this way, the contrast between the work that complies with the Building Code and the work that is excluded from the certificate will be clearly apparent to persons reading the certificate.
- 7.6 Section 99(2) and Form 9 both provide for a certificate of acceptance to attach a further list of the building work an authority has been able to inspect for the purpose of limiting the liability of the authority to that work it has been able to inspect. This attachment listing the building work inspected will obviously be narrower than the description of work covered by the certificate of acceptance. This is because the extent to which an authority has been able to 'inspect' work will usually be less than the extent to which an authority has been able to 'ascertain' whether building work complies with the Building Code. In ascertaining, the authority will take into account all the relevant evidence available, including its knowledge and belief of the circumstances surrounding the building work and the builders and designers who undertook the work, and statements of opinion provided such as producer statements.

Assessment of the building work for a certificate of acceptance

- 7.7 With respect to an application for a certificate of acceptance, the applicant must provide (if available) plans and specifications, and any other information that the authority reasonably requires. Under section 97 with respect to an application for a certificate of acceptance, it is the applicant who must provide sufficient information to the authority to establish the level of compliance achieved. I note also that the authority may inspect the building work and that this information, along with that supplied by the applicant, would assist the authority in forming a view as to compliance with the Building Code.
- 7.8 I have considered whether in this case there is sufficient evidence that I can be satisfied, to the best of my knowledge and belief, and on reasonable grounds, that the building work complied with the Building Code at the time of the application for a certificate of acceptance.
- 7.9 For the building work, I have considered:
- whether the particular elements of the building work could be inspected
 - whether the information, specifications, and drawings accurately reflect what was built and whether there is any variation between the supporting documents provided with the application and what was observed on-site by the authority and the consultant.
- 7.10 For the elements of the building work that were able to be inspected and have sufficiently detailed and accurate information reflecting what is built, I have assessed whether these elements comply with the Building Code.
- 7.11 For the elements of the building work that could not be inspected or for which the information is insufficiently detailed or inaccurate, I have concluded that there is insufficient information and no reasonable grounds to ascertain compliance with the Building Code.
- 7.12 The following elements of the building work were able to be inspected and are supported by sufficiently detailed and accurate documentation that reflects what is built, and for which I therefore have reasonable grounds to conclude complies with the Building Code:

Table 2: elements of the building work that I conclude have been constructed in accordance with the Building Code

Building Code Clause	Element of the building work	Substantiation
B1	The ramp	The construction of the ramp complies with Clause B1.
G4	Ventilation to the building	I note the consultant referred to compliance only with G4.3.1, however, based on the information provided I consider the building will meet the performance requirements of Clause G4. I note in particular that the four windows provide a net openable area of greater than 5% of the floor area of the building.

- 7.13 The following elements of the building work were able to be inspected and I have reasonable grounds to conclude the elements do not comply with the Building Code:

Table 3: elements of the building work that I conclude have not been constructed in accordance with the Building Code

Building Code Clause	Element of the building work	Substantiation
B2	The wall framing	With the configuration of the building, the untreated external wall framing will not meet the requirements of Clause B2 to the level of performance required by B2/AS1 and NZS3602.
C2	The exterior door	The door, which provides the means of escape from the building, does not comply with Clause C2 as the lock is a bolt fastening that cannot be operated from inside the door.
C3	The walls	The building is located closer than its height to the boundary and the external walls that are close to the boundary are not fire rated.
D1	The ramp and handrail	The ramp does not have a level landing to comply with Clause D1 and the handrail is not sufficient to comply with Clause D1 to provide access to people with disabilities. I note that as the fall is less than 1 metre, the handrail is not required to be a barrier to prevent people from falling and comply with Clause F4.
E2 and B2	The subfloor	The elements of the subfloor are in close proximity to the ground are not treated or protected to prevent the moisture being absorbed or transmitted or the elements damaged and will not meet the requirements of Clauses E2 and B2 to the level of performance required by B2/AS1 and E2/AS1.
E2 and B2	The wall cladding	The detail of the flashings is not adequate to meet the performance requirements of Clause E2, therefore the cladding does not comply with clauses E2 and B2.

7.14 The following elements of the building work could not be inspected or the information provided was insufficiently detailed or inaccurate, and I therefore have concluded that there is insufficient information and no reasonable grounds to ascertain compliance with the Building Code:

Table 4: elements of the building work that I cannot ascertain and reach a conclusion about whether the elements have been constructed in accordance with the Building Code

Building Code Clauses	Element of the building	Substantiation
B1	The structure, including the foundations and subfloor, the wall framing and bracing, and the roof framing	There is insufficient information to conclude the structure complies with Clause B1. I note that there are no calculations and much of the structure is outside of NZS 3604, and elements of the structure such as the bracing, roof purlins, and bottom plate to stud connections were not able to be inspected and no information was provided.
B2	The ramp	Using the Acceptable Solution as a benchmark, the fixings and connections for the ramp are required to last 50 years for fixings of structural elements and 15 years for fixings to non structural elements. Although I note the timber used to construct the ramp is H3.2, there is insufficient information as to how the ramp, and its fixings and connections has been constructed to comply with Clause B2.
D1	The laundry area	There is insufficient information as to whether the layout of the building is adequate for people with disabilities to carry out normal activities and processes in the building.
E2 and B2	The roof cladding	There is insufficient information to conclude that the installation of the roof cladding has been installed to comply with Clauses B1, B2 and E2.

E1	The drainage system	There is insufficient information to conclude the drainage system complies with Clause E1, given the downpipes discharge directly to the ground.
E3	Internal linings	There is insufficient information to conclude that the internal surfaces comply with Clause E3. I note the laundry includes both sanitary fixtures and appliances and internal surfaces are required to be impervious and I note the foil laminate insulation may act as a vapour barrier.
G9	The electrical installation	There is insufficient information as to whether the electrical installation complies with the Building Code, as I note no energy work certificate has been provided.
G12 and G13	The plumbing	There is insufficient information as to how the plumbing meets the requirements of Clauses G12 and G13.

7.15 I am of the view that there is not sufficient information and reasonable grounds for me to conclude the elements in Table 4 (paragraph 7.14) comply with the Building Code, however, based on the evidence provided and observations of the consultant and the authority, I am satisfied that these elements are not dangerous or insanitary.

8. What is to be done now?

The notice to fix

8.1 The authority should modify the notice to fix for the building requiring the applicant to bring the building into compliance with the Building Code. The notice to fix should note, in accordance with Table 3 (paragraph 7.13), the elements of the building work that do not comply with the Building Code. The authority may include a further option of the removal or demolition of the building on the notice to fix.

The certificate of acceptance

8.2 A certificate of acceptance can be issued for the following elements of the building work in accordance with Table 2 (refer to paragraph 7.12):

- compliance with Clause B1 of the ramp
- compliance with Clause G4 of the building

The certificate of acceptance should exclude in accordance with Table 3 (refer to paragraph 7.13):

- compliance with Clause B1 of the structure, including the foundations and subfloor, the wall framing and bracing, and the roof framing
- compliance with Clause B2 of the ramp
- compliance with Clause D1 of the laundry area
- compliance with Clauses E2 and B2 of the roof cladding
- compliance with Clause E1 of the drainage system
- compliance with Clause E3 of the internal linings
- compliance with Clause G9 of the electrical installation
- compliance with Clauses G12 and G13 of the plumbing.

The certificate of acceptance should also note the elements of the building work that do not comply with the Building Code in accordance with Table 4 (paragraph 7.14), and should refer to the notice to fix.

The remedial work

- 8.3 If the building is to remain, remedial work will be required to achieve Building Code compliance and the applicant may need to apply for a building consent for this work. Any application for a building consent will need to show, to the satisfaction of the authority, how the building will be brought into compliance with the Building Code and this will require further investigation and analysis by a suitably qualified person.
- 8.4 The applicant has indicated that he is prepared to rectify 'any Building Code deficiencies'. Any application for a building consent for remedial work will give the authority the opportunity, amongst other things to consider applying the provisions of section 113 for buildings with specified intended lives. Provided compliance with the Building Code can be demonstrated by the applicant, the authority may consider granting a building consent for the building to have a limited life subject to the condition that the building be altered, removed, or demolished on or before the end of the specified life. If this is the case, I note that it is up to the applicant to demonstrate, to the satisfaction of the authority, how Building Code compliance will be achieved, in particular how compliance will be achieved with Clauses E2 and B2 for the protection from the absorption or transmittal of moisture to the elements of the subfloor for the life of the building.
- 8.5 Undertaking the remedial work, given the extent of work required, may also provide an opportunity for the applicant to show compliance with the Building Code of those elements for which I concluded there was insufficient information and that are excluded from the certificate of acceptance (Table 4, paragraph 7.14). If non compliant elements are removed for remedial work the authority may also be able to inspect other elements for which there is insufficient information and form a view as to whether these elements comply with the Building Code. If the authority can be satisfied, on reasonable grounds and to the best of its knowledge and belief that these elements comply with the Building Code, it may be able to include those elements in any certificate issued. I note that as discussed in paragraph 7.7, with respect to an application for a certificate of acceptance, it is the applicant who must provide sufficient information to the authority to establish the level of compliance achieved.

9. The decision

9.1 In accordance with section 188 I hereby determine that:

- the notice to fix is to be modified, taking into account the findings of this determination
- the decision of the authority to refuse to issue a certificate of acceptance is reversed and a certificate of acceptance:
 - should be issued for compliance with Clause B1 of the ramp and compliance with Clause G4 of the building; and
 - should exclude compliance with Clause B1 of the structure, including the foundations and subfloor, the wall framing and bracing, and the roof framing, compliance with Clause B2 of the ramp, compliance with, clause D1 of the laundry area, compliance with Clauses E2 and B2 of the roof cladding, compliance with Clause E1 of the drainage system, compliance with Clause E3 of the internal linings, compliance with Clause G9 of the electrical installation, and compliance with Clauses G12 and G13 of the plumbing; and
 - should refer to the modified notice to fix to be issued for the elements of the building work that do not comply with the Building Code.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 11 February 2010.

John Gardiner
Manager Determinations

Appendix: The legislation

The relevant provisions of the Building Act are:

- 7 Interpretation**
building work—
 (a) means work
 (i) for, or in connection with, the construction, alteration, demolition, or removal of a building
 (ii) on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code;...
- 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...
 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.
 3. This section —
 (a) does not limit section 40 (which provides that a person must not carry out any building work except in accordance with a building consent); and
 (b) accordingly, does not relieve a person from the requirement to obtain a building consent for building work.
- 97 How to apply for certificate of acceptance**
 1. An application for a certificate of acceptance must—
 (a) be in the prescribed form; and
 (b) if available, be accompanied by plans and specifications that are—
 (i) required by regulations made under section 402; or
 (ii) if the regulations do not so require, required by the territorial authority; and
 (c) contain or be accompanied by any other information that the territorial authority reasonably requires; and...
- 99 Issue of certificate of acceptance**
 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.
- 113 Buildings with specified intended lives**
 1. This section applies if a proposed building, or an existing building proposed to be altered, is intended to have a life of [less than 50 years].
 2. A territorial authority may grant a building consent only if the consent is subject to—
 (a) the condition that the building must be altered, removed, or demolished on or before the end of the specified life; and
 (b) any other conditions that the territorial authority considers necessary.

164 Issue of notice to fix

1. This section applies if a responsible authority considers on reasonable grounds that—
 - (a) a specified person is contravening or failing to comply with this Act or the regulations (for example, the requirement to obtain a building consent);
2. A responsible authority must issue to the specified person concerned a notice (a notice to fix) requiring the person—
 - (a) to remedy the contravention of, or to comply with, this Act or the regulations;

Schedule 1 Exempt building work

A building consent is not required for the following building work:

- (i) building work in connection with any detached building (... or a building closer than its own height to any residential accommodation or to any legal boundary) that—
 - [(iv) does not exceed 1 storey, does not exceed 10 square metres in floor area, and does not contain sanitary facilities or facilities for the storage of potable water, but may contain sleeping accommodation (without cooking facilities) if the detached building is used in connection with a dwelling:]

Form 9 Certificate of Acceptance**Acceptance of compliance**

The territorial authority named below is satisfied, to the best of its knowledge and belief and on reasonable grounds, that, insofar as it can ascertain, the building work described below complies with the building code: [insert details]

‡The territorial authority was only able to inspect the following parts of the building work and this certificate is qualified as follows: [insert details]