



Determination 2015/031

The refusal to issue code compliance certificates for a 12-year-old shop/dwelling and an 8-year-old toilet block, and alterations carried out without a building consent at 2515 Oxford Road, Oxford

1. The matters to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the current Act”) made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are:
- the owner of the dwelling, L Buttlng (“the applicant”)
 - Waimakariri District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.

1.3 The reasons for this determination

- 1.3.1 The application for this determination arises from the following:
- A building consent was issued in 2000 (“the 2000 consent”) under the Building Act 1991 (“the former Act”) for a building containing retail and accommodation areas (“the shop/dwelling”). The shop/dwelling was completed over some years by the co-owner of the property (“the owner/builder”) under the supervision of a building certifier.
 - A separate toilet building (“the toilet block”) was constructed under a building consent issued in 2004 (“the 2004 consent”) under the former Act, under the supervision of a different building certifier contracted to provide building regulatory services on the authority’s behalf (“the authority’s contractor”).
 - The shop subsequently ceased operating and in 2010 an application was made for consent to convert the area into accommodation. Further information was requested but not all was received and no building consent was issued.
 - Alterations were carried out from 2010 to 2013 (“the alterations”), with the owner apparently unaware that no building consent had been issued. Damage sustained during the earthquakes² was also repaired during 2011³.

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

² Shortly after the 22 February 2011 Christchurch earthquake

³ Under the supervision of the Earthquake Commission (“EQC”)

- 1.3.2 This determination arises from the decision of the authority to refuse to issue code compliance certificates for the building work. The refusal arose because the authority is not satisfied that the building work complies with certain clauses⁴ of the Building Code (First Schedule, Building Regulations 1992) because:
- the building work under the 2000 consent for the shop/dwelling had been undertaken under the supervision of a building certifier that was registered as a building certifier under the Building Act 1991, but which ceased operating as a certifier before it had issued a code compliance certificate for the building work
 - only limited inspections had been undertaken by the building certifier
 - the alterations to the shop/dwelling were undertaken without a building consent and no inspections were carried out during construction
 - water supply installed to the toilet block under the 2004 consent has now been disconnected, and the authority requires changes to be made in order to allow for its change of use to a storage shed.
- 1.4 The matter to be determined⁵ is therefore whether the authority was correct to refuse to issue the code compliance certificates. In deciding this, I must consider:
- 1.4.1 Matter 1: The shop/dwelling**
- Whether what remains of the building work undertaken under the 2000 building consent complies with the relevant clauses of the Building Code. I consider this in paragraph 7.
- 1.4.2 Matter 2: The toilet block**
- Whether the building work undertaken under the 2004 building consent complied with the relevant clauses of the Building Code; I consider this in paragraph 8.
- 1.5 It appears the consent was supported by documents approved by a building certifier, and it is evident that another building certifier was involved in the inspection of the onsite work during construction. I have not been provided with any building certificates from either certifier or other information that clarifies the work performed by either certifier. For the purposes of the determination I have referred to both certifiers as “the building certifier”.
- 1.6 In order to assist the parties I have also discussed the status of the recent alterations; whether building consent was required and whether the building work as completed complies with the relevant clauses of the Building Code. Refer paragraph 9.
- 1.7 The evidence**
- 1.7.1 This determination considers whether it is reasonable to issue code compliance certificates for the buildings. In order to determine that matter, I have considered whether there is sufficient evidence to establish that the subject elements comply with the Building Code. I address this in paragraph 5.

⁴ 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.

⁵ Under sections 177(1)(b), 177(2)(d) and 177(3)(b) of the Act

1.7.2 In making my decisions, I have considered:

- the submissions of the parties
- the report of the property inspection company engaged by the applicant to report on the dwelling (“the inspection company”)
- the report of the expert commissioned by the Ministry to provide advice (“the expert”)
- the other evidence in this matter.

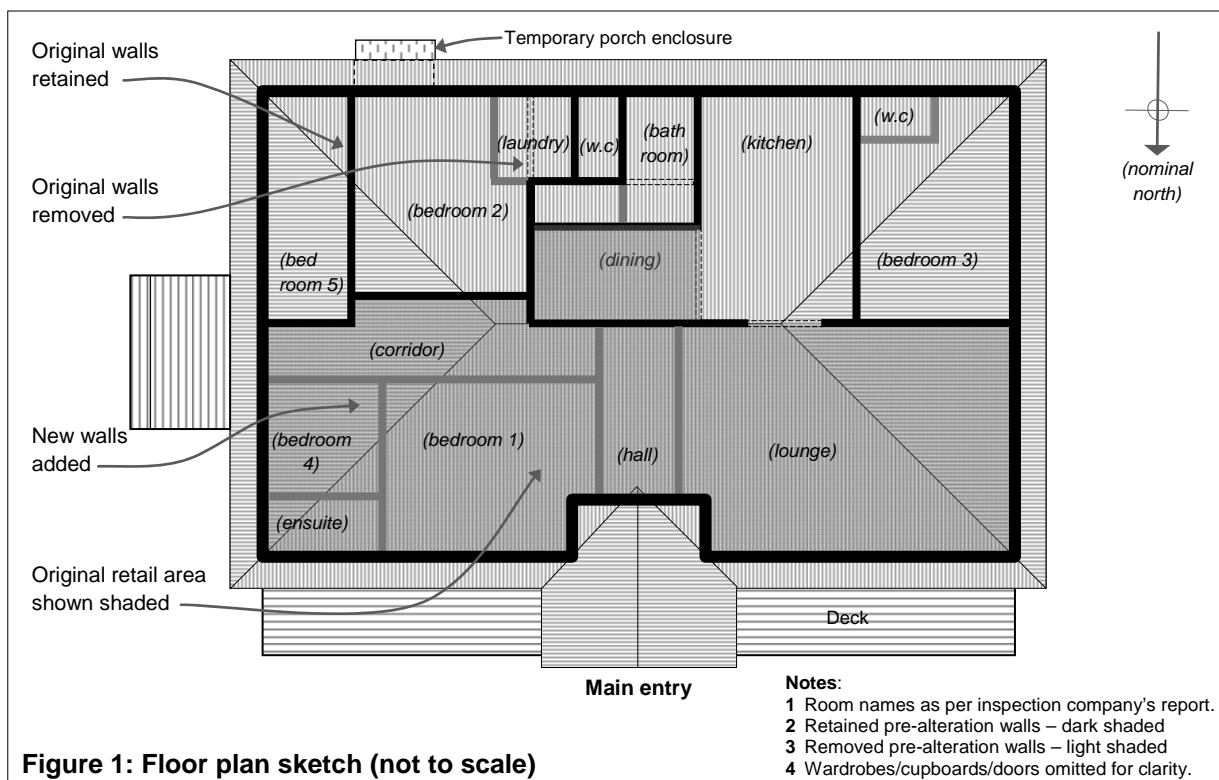
2. The building work

2.1 The building work considered in this determination consists of a five bedroom single-storey detached dwelling and a toilet block on a flat site in a medium wind zone⁶ for the purposes of NZS 3604⁷. Both buildings are simple in plan and form and are assessed as having a low weathertightness risk.

2.2 The shop/dwelling

2.2.1 Construction of the building is generally conventional light timber frame, with reinforced concrete foundations and floor slab, monolithic wall cladding, profiled metal roofing and aluminium doors and windows. The hipped roof has eaves deeper than 700mm overall and a gable extends to form an entry canopy.

2.2.2 Interior alterations were carried out from 2010 to 2013, which changed the as-built shop/dwelling into a five bedroom dwelling as shown in Figure 1:



⁶ According to the bracing calculations

⁷ New Zealand Standard NZS 3604:1999 Timber Framed Buildings

2.2.3 As outlined in paragraph 3.3.2, prior to the recent alterations, areas in the building appear to have been constructed and used as follows (in contrast to the 2000 consent drawing for the shop/dwelling):

- office used as small bedroom (“bedroom 5”)
- store used as a lounge
- back porch added to accommodate laundry facilities shown in store area
- kitchen located at exterior wall
- area shown as kitchen partitioned off and used as a storeroom for shop.

2.2.4 The recent alterations included:

- subdivision of the original open shop area to provide a new lounge, master bedroom (“bedroom 1”), ensuite bathroom, a small bedroom (“bedroom 4”), entry hall and corridor
- partition to small storeroom removed and doorway to shop closed up
- opening added to original wall separating retail and dwelling areas
- conversion of the lounge into a bedroom (“bedroom 2”)
- a toilet added to the southeast bedroom (“bedroom 3”)
- extension of the original shower room to provide a laundry
- extension of the original bathroom to accommodate a shower.

2.2.5 The cladding to exterior walls is a monolithic cladding system described as stucco over a solid backing. In this instance it consists of plywood bracing sheets fixed through the building wrap directly to the framing timbers, and covered by a slip layer of building wrap, metal-reinforced solid plaster and a flexible paint coating.

2.2.6 The specification for the original dwelling called for the framing timber to be ‘Treated No. 1 Radiata Pine’ and the expert noted that the visible framing in the roof space was marked ‘Boric H1’. Given this evidence, I consider it likely that the framing is treated to resist fungal decay.

2.3 The toilet block

2.3.1 The toilet block is a small rectangular building which originally accommodated two separate toilets. The south toilet room is no longer used and water supply has been disconnected though the sanitary fittings remain. Water supply is still connected to the north toilet room.

2.3.2 The building has a concrete slab and foundation, concrete block walls with fibre-cement above to the end walls, two timber doors, no windows, a timber-framed monopitched roof and low-pitched profiled metal roofing. The roof has eaves of about 200mm and no verge overhangs.

3. Background

3.1 The shop/dwelling

3.1.1 The authority issued the 2000 consent (No. 001096) on 6 April 2000 for a 'new dwelling & retail shop' under the former Act. The consent conditions included as item 12:

24 HOURS NOTICE MUST BE GIVEN: - Prior to pouring ANY concrete – Prior to laying ANY floor – Prior to fixing ANY wall or ceiling lining...

3.1.2 I note that concrete invoices indicate foundations and floor slab were poured on 8 March 2001, so any pre-pour inspection would have been prior to the building certifier notifying the authority of his formal engagement on 15 March 2001. Notwithstanding that, although the 'site inspection sheet' records no date for a pre-pour inspection the building certifier implies that reinforcing to foundations and floor slab were observed by stating:

- in regard to foundations, 'D12 stirrups at 600, d12 starters'
- in regard to the floor slab, 'Polythene with mesh'.

3.1.3 An Electrical Certificate of Compliance for mains supply to the building site was signed on 6 November 2001 and copies of invoices indicate that roof trusses were delivered in October 2001, and roofing and windows in January 2002.

3.1.4 Records provided to the authority indicate that the building certifier carried out the following inspections:

- Pre-line building and plumbing inspection on 21 February 2002 (which passed bracing, insulation, timber moisture content and plumbing).
- Pre-plaster inspection on 5 March 2002 (which apparently passed).

3.1.5 Due to personal circumstances, construction was protracted and the shop/dwelling was substantially completed during 2002. An inspection of the 'Icecream Parlour' was undertaken on 25 November 2002 by the authority's environmental health officer and the record notes that the area includes a sink with a water heater and concludes licence 'to be issued' with 'minor items to be completed.'

3.1.6 The building certifier's approval as a certifier expired on 30 December 2004 with no final inspection and no code compliance certificate issued for the building work.

3.2 The toilet block

3.2.1 The authority issued building consent (No. 041242) on 19 November 2004 under the former Act.

3.2.2 The building certifier carried out inspections during construction, with the final inspection record on 21 June 2007 indicating that all work complied with the building consent and no further inspections were required. However no code compliance certificate was issued.

3.2.3 The authority wrote to the applicant on 13 October 2008, noting that during its 'auditing process, we identified several items that needed to be inspected'. It appears that a further inspection was carried out, which also identified some additional items that the authority stated 'should have been picked up during one of our previous inspections'. The authority listed 14 items to be attended to before it would consider issuing a code compliance certificate.

3.2.4 The authority carried out a final re-inspection on 14 October 2011 and identified that the seven items relating to accessibility were now satisfactory as there was no longer a shop on premises and accordingly accessible facilities were no longer required. However the authority stated that the following items still required attention:

- install downpipe to drain to soakage
- fully lag and attach water supply pipe to external wall
- seal pipe penetration through concrete block wall
- install terminal vent pipe above roof line.

3.3 The alterations to the shop/dwelling

3.3.1 The applicant operated the business as an ice cream parlour, tea rooms and crafts shop until 2010. When the business closed the public toilets were no longer required and water supply to one toilet was later disconnected.

3.3.2 The authority received a building consent application for internal alterations to the dwelling on 13 September 2010 (No. 101201). An attached plan showed subdivision of the north end only of the retail area into two bedrooms and an ensuite and a sketch of the existing building showed the as-built shop/dwelling at that time (see paragraph 0). In the application form, the applicant stated:

We are changing the shop, ½ will be shop with crafts, plants, clothing etc., and the other ½ we are putting into 2 bedrooms and 1 bathroom, hallway leading to back door for fire exit.

3.3.3 In response to requests for further information, some additional information was provided. In a statement received by the authority on 21 October 2010 the applicant explained that additional family had moved into the dwelling and the existing lounge was too small; the area originally intended to remain as a shop would be used as a lounge and the entire building would now be used as a home. A building consent was not issued and the application was later marked by the Authority as cancelled.

3.3.4 According to the applicant, internal alterations were carried out following the February 2011 earthquake, together with repairs relating to minor earthquake damage. Invoices indicate that most work was carried out during September 2011 although some further plumbing work was invoiced in 2013.

3.4 The authority's final inspection

3.4.1 The matter of code compliance certificates arose when the applicant decided to sell the property. The authority visited the shop/dwelling and the toilet block on 9 April 2014, with the record noting that unauthorised alterations meant that updated drawings and a certificate of acceptance may be required. The record also noted:

Earthquake repairs to exterior plaster have been completed.
Plumbing to public toilets disconnected (no longer used as toilets).

3.4.2 The authority wrote to the applicant on 11 June 2014 noting that it was unable to process the application for a code compliance certificate as the buildings were constructed under the 1991 Building Act which:

...necessitates a review of the original file and subsequent inspection notices to allow us to be satisfied on reasonable grounds the building is compliant.

Regrettably, there are some inspection records from the building certifier that [the authority] does not have on record and are needed for [the authority] to be satisfied on reasonable grounds that all work was inspected and is compliant. The

inspections are as follows; Foundation, Floor Slab (including sub-slab waste pipes) & Drainage.

3.4.3 The authority also referred to the recent alterations and attached an application form for a certificate of acceptance, noting:

In addition, some building work has been completed without a building consent. Some of the building work in question was originally intended to be covered under the Building Consent application #101201, but consent was never granted so you will now need to apply for a certificate of acceptance for this work.

3.4.4 The authority also provided contact details of some local 'certified weathertightness surveyors' and suggested that the applicant:

...may wish to engage the services of an independent building consultant to provide evidence of how the building work in question complies with the Building Code. This would include the missed inspections and the work carried out without consent.

3.4.5 The authority also stated that, in order to issue a code compliance certificate for the toilet block, the 'toilet pans will need to be removed and the toilet risers capped off etc', and required the applicant to confirm in writing that 'you no longer need the public toilets and wish to utilise the building as a storage shed.'

3.5 The inspection company's report

3.5.1 The applicant engaged an inspection company which inspected the dwelling on 25 June 2014 and provided a report to the applicant on the same date. (I note the inspection company was not included on the list of surveyors provided by the authority.) The report format appears to be that of a conventional pre-purchase assessment.

3.5.2 The inspection company inspected exterior claddings, roof spaces and all rooms, recording all areas as 'good' or 'generally good'. The report noted that the 'condition and treatment type of internal framing is not known' and carried out non-invasive moisture testing at 'random areas of possible concern', with readings 'acceptable in all areas checked' and no further investigation recommended.

3.5.3 The inspection company also referred generally to 'work carried out without consent', without specifying what had been done.

3.6 In the application for determination the applicant provided a handwritten list of minor items to be attended to, including some identified by the inspection company, with the items ticked off as completed. The list included the following (in summary):

- several loose roofing nails
- repair cracking and other plaster to some interior linings
- deteriorating paint to some trim
- repair and plaster some stucco cracks
- deteriorating coating to decking
- regrouting of some tiling to toilets
- remove water filter from back wall, plaster and paint
- complete plaster and paint to various interior lining
- clean out all gutters.

- 3.7 It is not clear what information was subsequently forwarded to the authority as I have no record of further communication between the parties.
- 3.8 The Ministry received an application for a determination on 30 September 2014 and sought further information, which was received from the applicant on 21 October 2014.

4. The submissions

4.1 The applicant's submission

4.1.1 In an email to the Ministry dated 4 November 2014, the applicant outlined the background to the situation; noting that she was aware that the builder had applied for a building consent for the alterations and the applicant had understood the authority would 'send me some form of paperwork in due course but that didn't happen', and that all work had been carried out by 'qualified trades people'.

4.1.2 The applicant forwarded copies of:

- some sketches and drawings
- the building certifier's inspection sheets
- the authority's inspection record
- the inspection company's report dated 25 June 2014
- various other invoices, certificates, statements and other information.

4.2 The authority's submission

4.2.1 In an email to the Ministry dated 20 October 2014, the authority acknowledged the application and referred to the building certifier's missing inspection notices.

4.2.2 The authority stated that the applicant could have the recent alterations included under the original 2000 consent. If a certificate of acceptance was wanted instead, that could be applied for once the original building consent was resolved. However, the authority also noted that it was unclear how much of the total work was undertaken without a building consent and stated:

As the building consent for the additions has never been issued we have not undertaken any inspection on this work. So if [the applicant] was to request a COA it may be very difficult to determine compliance.

4.2.3 The authority forwarded copies of:

- its letter to the applicant dated 11 June 2014
- an electronic copy of the property file containing various documents relevant to this determination.

4.3 In response to receiving a copy of the expert's report (see paragraph 6 below), the applicant advised by email on 5 February 2015 that the fireplace would be secured and the toilet block brought into compliance.

4.4 A draft determination was issued to the parties for comment on 4 March 2015.

4.5 The authority accepted the draft without further comment in a response received on 23 March 2015.

- 4.6 Despite a reminder sent on 22 April 2015, no response to the draft determination was received from the applicant.

5. Grounds for the establishment of code compliance

- 5.1 In order for me to form a view as to the code compliance of the building work carried out under the 2000 consent and the recent alterations, I established what evidence was available and what could be obtained considering that work is completed and some elements cannot be cost-effectively inspected.
- 5.2 In the absence of any evidence to the contrary, I take the view that I am entitled to rely on the building certifier's inspection records, but I consider it important to look for evidence that corroborates or contradicts these records. I also consider that the level of that reliance is influenced by the information available to me and also by my evaluation of the dwelling and its performance over the years since construction, taking into account its low weathertightness risk profile, simple form and construction.
- 5.3 In summary, I find that the following evidence allows me to form a view as to the code compliance of the building work:
- The inspections carried out by the building certifier of work under the 2000 consent, including references to the concrete slab and foundations (see paragraph 3.1.2) and satisfactory inspections of inaccessible components within the timber framing and prior to the exterior stucco (see paragraph 3.1.4).
 - The inspection company's report and the invoices, certificates and statements submitted by the applicant for the original construction and recent alterations.
 - The expert's report (see below).

6. The expert's report

- 6.1 As mentioned in paragraph 1.7.2, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors. The expert inspected the dwelling and toilet block on 18 November and 8 December 2014, providing a report dated 7 January 2015 which was forwarded to the parties on 13 January 2015.

6.2 General

- 6.2.1 Although the expert did not describe overall construction quality as good, he noted the dwelling was 'generally well presented and maintained' and 'no evidence was found of adverse effects' due to various deficiencies. The expert noted that the exterior and interior had been redecorated about three years ago following the earthquakes.
- 6.2.2 The expert noted that, although the 'overall architectural shape and form' of the dwelling generally accords with the original drawing, interior planning had been extensively modified prior to and during the recent alterations (as described in paragraphs 2.2.3 and 2.2.4 and shown in Figure 1). Other changes included:
- window and doors
 - skylights not installed

- entry porch soffit lined
- a crudely constructed porch was added to the south door
- solid fuel heater installed in different position and brand changed.

6.3 The wall cladding (Clauses E2 and B2)

- 6.3.1 At a trapdoor in the north decking, the expert was able to examine the bottom of the stucco; noting that 30mm solid plaster had been applied over a slip layer of building paper and direct-fixed plywood backing sheets, which also acted as bracing.
- 6.3.2 The expert observed sealant-filled control joints installed below windows in the north, west and south elevations and exposed sealant when drilling for moisture testing, noting the sealant appeared to be in good condition. A hairline crack on the east elevation appeared to have been intended as a control joint but, unlike other joints, sealant had not been installed to the joint.
- 6.3.3 The expert noted that windows were face-fixed against the stucco, with metal head flashings but no jamb or sill flashings. The east side door and the front entry door lack head flashings. While sheltered from rain beneath eaves or the entry canopy, the expert noted that the door heads would still be subjected to hose water during cleaning. Although the expert considered that retrofitting conventional flashings could cause undue cladding damage, I note that purpose-made flashings could be installed over the plaster, with the upstand extending up to and sealed against the underside of the soffit lining.
- 6.3.4 The expert noted no evidence of moisture penetration on the inside of the dwelling and took eight invasive moisture readings through the cladding into bottom plates and below jamb/sill junctions. Readings ranged from 7% to 14% and the expert noted that ‘drill shavings looked in good condition in each case.’
- 6.3.5 Commenting specifically on the external envelope, the expert noted:
- unlike other control joints, the control joint at the hairline crack to the east elevation lacks sealant
 - the window head flashings lack sealant at the ends
 - the entry doors and the east side door lack head flashings
 - some pipe penetrations through the cladding are poorly sealed
 - the rear porch structure appears to be temporary and should be removed, as it has no flashings and has framing that is exposed to the weather.
- 6.3.6 The expert made the following additional comments:
- Although there is no overlap over the foundation wall at the bottom of the stucco, cladding clearance above the ground is generally satisfactory and there is no evidence of associated moisture penetration after more than 12 years.
 - Although some window head flashings do not extend past the jambs, the window heads are well protected beneath deep eaves and there is no evidence of associated moisture penetration.
 - Although the meter box lacks a head flashing, the top appears to be well sealed and protected by the eaves above, with no evidence of moisture penetration.

- Although the front deck has not been constructed to any ‘recognised standard or accepted trade practice’, it is not connected to the dwelling and there is no indication of sagging or deflection after more than 12 years.

6.3.7 The expert concluded that in his opinion:

Despite some poor cladding detailing, the dwelling has wide eaves and no evidence of water entry through the cladding was found. The cladding has almost reached the end of the 15-year external moisture and durability requirements of the building code, with satisfactory in-service performance.

6.4 The structure (Clauses B1 and B2)

6.4.1 The applicant advised the expert that stucco and plasterboard had cracked during the first earthquake and the frame of the door between the original lounge and the office had bowed sufficiently to make the door difficult to close. In 2011, cracks were repaired⁸ and the strike plate was packed out slightly to alleviate the door operation. The expert noted that all other doors were operating freely and there were no cracks to plasterboard linings or to the tiled floor in the original toilet.

6.4.2 No formal inspections of the foundations and floor were recorded by the building certifier prior to pouring concrete (see paragraph 3.1.2). At the edge exposed by the trapdoor to the front deck, the expert observed that the slab had been ‘roughly poured against turned up polythene’.

6.4.3 The expert observed that the single hairline crack on an inadequately formed control joint was the only evidence of structural movement to the stucco and there was no cracking to the plastered foundation wall or unplastered concrete visible at the deck trapdoor.

6.4.4 According to the concrete invoices, the foundations and floor slab were poured in March 2001 and the expert concluded that:

After approximate 14 years and two significant earthquakes, the concrete foundations and floor slab are providing satisfactory in-service performance, indicating that the concrete work is adequately reinforced.

6.5 The solid fuel heater (Clause C)

6.5.1 The expert observed the solid fuel heater installed in the dining area and noted that a heat shield is installed behind the 150mm diameter flue and wall clearances comply with the manufacturer’s instructions, with a ceiling plate installed around the flue. The expert noted that the 250mm diameter triple skin flue in the roof space appeared satisfactory.

6.5.2 However, the expert also observed that the solid fuel heater was not fixed to the floor and therefore does not comply with Clause C of the Building Code by risking the spread of fire resulting from seismic movement.

6.6 Stormwater drainage, water supply and foul water drains (Clauses E1, G12 and G13)

6.6.1 The as-built plan shows three stormwater soakholes; at the northwest and northeast corners, and midway along the south elevations. The expert noted that the stormwater drainage system as installed appeared to be operating satisfactorily. The water supply is from an onsite bore via a water pump to a tank located to the rear of the dwelling.

⁸ Under EQC supervision

- 6.6.2 The expert noted that the kitchen had been relocated to the south wall and the new shower to the bathroom is installed on a plinth. Subfloor pipe work is therefore limited to a short drain from the ensuite shower, which appears to have been installed into the waste pipe from a sink bench originally installed to the ice cream parlour (see paragraph 3.1.5). The expert noted that the ensuite shower waste appeared to be operating satisfactorily.
- 6.6.3 The as-built plan shows sewer drains extending along the south and east elevations to a septic tank, pump chamber and effluent field to the east of the dwelling. The expert noted that the new ensuite waste runs in the ground along the north elevation to connect to existing pipe work on the west elevation. The expert removed the lid to the septic tank and noted that it appeared to be operating satisfactorily.
- 6.7 The toilet block**
- 6.7.1 The expert assessed the toilet in the light of outstanding items identified during the final inspection on 14 October 2011, noting a downpipe had been installed to drain into the rock garden behind the building. However, water supply to the south toilet was disconnected and the following plumbing items had not been completed:
- uninsulated and unattached external water supply pipe
 - unsealed pipe penetration through concrete block wall
 - no terminal vent pipe above roof line.
- 6.7.2 The expert also noted that features relating to the accessibility provisions of NZS 4121:2001 had been identified but had not been completed, and suggested that these may need to be completed. However, I note that the authority's final inspection listed the accessibility features as no longer required as the shop no longer operated.
- 6.8 The expert observed no other items in the dwelling or the toilet block which required attention in order to achieve compliance.

Matter 1: The altered shop/dwelling

7. Discussion

- 7.1 Taking account of the expert's report and the other evidence, the following paragraphs address the compliance of what remains of the shop/dwelling constructed under the 2000 consent with relevant clauses of the Building Code that was in force at the time of construction.
- 7.2 Clauses B1 and B2: Structure**
- 7.2.1 Although no formal pre-pour inspections of the foundations and floor were recorded, the building certifier's records imply that reinforcing to foundations and floor slab were observed by describing the reinforcing and polythene (see paragraph 3.1.2) and confirm that bracing and framing were inspected and passed.
- 7.2.2 The dwelling is a simple conventional structure and the expert noted no significant signs of structural settlement or external movement, no cracks to internal lining joints and no sticking doors. The lack of movement indicates that the dwelling has performed satisfactorily over the 12 to 14 years since structural elements were completed, during which it resisted two significant earthquakes with minor damage occurring.

- 7.2.3 Based on the above, I am satisfied that the dwelling complied with the structural provisions of the Building Code at the time it was constructed. However, the continuing compliance must also be considered in the light of the alterations. Although the alterations have generally added interior walls as shown in Figure 1 (see paragraph 2.2.2) and are therefore unlikely to have decreased bracing, no calculations have been submitted to verify that assumption.
- 7.2.4 The durability requirements of Clause B2 require the structure to continue to comply with the Building Code for a minimum effective life of 50 years. Due to the lack of consent and inspections for the alterations, I am not able to be satisfied that the bracing in the altered dwelling complies with Clause B1 and Clause B2. To ensure the current and continuing structural compliance of the dwelling, I therefore consider that that an engineer's assessment and report is required.

7.3 Clause C: Fire safety

- 7.3.1 In regard to the solid fuel heater, the expert reported that the appliance is installed in accordance with the manufacturer's installation instructions and meets applicable requirements apart from the lack of seismic restraint in the form of mechanical fixing to the floor slab.

7.4 Clause E1: Surface water

- 7.4.1 The as-built plan also shows three stormwater soakholes and the expert noted that the stormwater drainage system as installed appears to be operating satisfactorily with no signs of unsatisfactory surface water drainage.
- 7.4.2 Invoices provided by the applicant indicate that a registered drainlayer installed drains to both the shop/dwelling and the toilet block; and the drainage systems have apparently been performing satisfactorily since that time. I conclude that these comply with Clause E1.

7.5 Clause E2 External moisture

- 7.5.1 I note that an application can be made to the authority for a modification of the durability requirements to allow durability periods to commence from the date of substantial completion in 2002. Although that matter is not part of this determination, I have taken the anticipated modification into account when considering the performance of the claddings.
- 7.5.2 Notwithstanding that the stucco is fixed directly to timber framing, thus inhibiting drainage and ventilation behind the cladding, I note certain factors that assist the performance in this case:
- The stucco is generally installed according to good trade practice at the time of installation.
 - The stucco cladding has been well maintained and is generally in good condition for its age.
 - There is no evidence of moisture penetration into framing after some 12 years.
- 7.5.3 I note also the expert's opinion in regard to some specific items (see paragraph 6.3.6), and I accept that these areas are adequate in the particular circumstances outlined.

- 7.5.4 I consider the expert's report establishes that the current performance of the cladding is adequate because there is no evidence of moisture penetration into the timber framing. Consequently, I am satisfied that the external building envelope currently complies with Clause E2 of the Building Code.
- 7.5.5 In addition, the claddings are also required to comply with the durability requirements of Clause B2, which requires that a building continues to satisfy the performance requirements of the Building Code for the periods specified in Clause B2.3.1.
- 7.5.6 A modification of the Code's durability provisions will allow the durability periods stated in B2.3.1 to commence from the date of substantial completion. This means that the wall claddings have nearly met the 15-year minimum durability period required by the Building Code. However, the expected life of the building itself is a minimum of 50 years and careful attention to the performance of the claddings is needed to ensure that the external envelope continues to protect the underlying structure for its minimum required life of 50 years.
- 7.5.7 In the case of this particular dwelling, and for the benefit of the applicant, I note that although the cladding appears to have been installed to good trade practice at the time of the construction, the expert has identified some areas that present a risk to the ongoing durability (refer paragraph 6.3.5). These require careful attention to their performance in order to ensure ongoing protection of underlying building elements that have a longer durability requirement. Particular attention should be paid to:
- the control joint at the hairline crack to the east elevation
 - the lack of sealant at the ends window head flashings
 - the lack of head flashings at entry doors and the east side door
 - sealing of the pipe penetrations through the cladding.
- I note also that the rear porch structure has no flashings and has framing that is exposed to the weather and is unlikely to be durable in terms of its structure.
- 7.5.8 Effective maintenance of claddings is important to ensure ongoing compliance with Clauses B2 and E2 of the Building Code and is the responsibility of the building owner. The Ministry has previously described these maintenance requirements, including examples where the external wall framing of the building may not be treated to a level that will resist the onset of decay if it gets wet (for example, Determination 2007/60).

7.6 Clause E3 Internal moisture

- 7.6.1 The inspection company's report notes that bathroom and toilets are in good condition and photographs indicate that wash hand basins and vanities appear to be adequately sealed against painted plasterboard linings. In the main bathroom prefinished impervious linings are used behind the original bath and the new shower is a proprietary unit. The kitchen sink bench appears to include a splashback.
- 7.6.2 The expert made no comment in respect of interior moisture and I note that the authority is easily able to verify the apparent finishes described above.

7.7 Clause F2 Hazardous building materials

- 7.7.1 I note that the aluminium window guarantee dated 28 January 2002 covers compliance of the joinery with 'relevant statutes and building codes.' and that the

two showers installed in the recent alterations use conventional proprietary shower doors expected to include appropriate safety glass. The expert made no comment in respect of Clause F2 and I note that the authority is easily able to verify compliance.

7.8 Clauses G1 to G8 (Personal hygiene, Laundering, Food preparation, Ventilation, Interior environment, Natural light, Electricity and Artificial light)

- 7.8.1 The expert noted only that there was no natural light in the ensuite, however there is no requirement under clause G7 as the ensuite is not a habitable space; it is unclear to me whether the ensuite has an extract fan (G4), however the authority is easily able to verify compliance. The expert made no comment regarding non-compliance in respect of the remaining clauses G1 to G8; the interiors were also assessed as satisfactory by the inspection company and the photographs show adequate provision to comply with the requirements.
- 7.8.2 The applicant has provided electrical certificates of compliance covering electrical work carried out during construction of the shop/dwelling and the recent alterations.

7.9 Clause G12 Water Supplies and G13 Foul Water

- 7.9.1 The building certifier carried out a satisfactory pre-line plumbing inspection that noted a pressure test during the original construction. The original plumbing and foulwater drainage systems have apparently been performing satisfactorily for the past 12 years. A licensed certifying plumber provided certification dated 16 April 2014 on pressure tests carried out to plumbing installed during recent alterations.
- 7.9.2 The expert noted that the only subfloor waste pipe is a short drain from the ensuite shower, apparently installed for the sink bench in the original ice cream parlour, and the wastepipe appears to be operating satisfactorily. The expert also described sewer drains to the septic tank, which he noted appeared to be operating satisfactorily.

7.10 Clause H1 Energy Efficiency

- 7.10.1 The building certifier's inspection records show a satisfactory preline inspection which included a note of the wall and ceiling insulation installed. The expert and the inspection company observed fibreglass insulation in the ceiling.

7.11 Conclusion

- 7.11.1 In summary and taking account of the above observations and the expert's report, I conclude that remedial work is necessary in respect of the lack of fixing of the solid fuel heater to the floor for seismic restraint and that an engineer's assessment and report is required in respect of clause B1 taking into account the alterations.
- 7.11.2 I suggest that the items set out in paragraph 7.5.7 be attended to in order to ensure the ongoing performance of the cladding and protection of the underlying structure.
- 7.11.3 I consider that the expert's report, the property inspection report, the building certifier's inspection records, the producer statements, certificates and the other documentation, allow me to conclude that the building elements in the dwelling that remain from the 2000 consent comply with the Building Code.

Matter 2: The toilet block

8. Discussion

- 8.1 The applicant disconnected the water supply to the south toilet room when the toilets were no longer required following the conversion of the shop into living accommodation, although the north toilet remains connected. The applicant has also stated that she wishes to retain the ability to use the facility in future.
- 8.2 The expert's report identified outstanding items remaining from the authority's final inspection on 14 October 2011 and noted that features relating to the accessibility provisions under Clause D1.1(c) of the Building Code had not been completed.
- 8.3 I note however that the authority's final inspection listed the accessibility features as satisfactory as public use of the toilets was no longer required. This would indicate that the applicant intended to change the use of the toilet block.
- 8.4 The authority is of the opinion that the toilet pans will need to be removed before the building work can be issued a code compliance certificate. In my view this is reasonable as the pans being left in place give every indication they can be used when this is not the case. It appears the pans can be readily removed and the foul water drain capped.
- 8.5 Providing the other items outlined by the expert in paragraph 6.7.1 are satisfactorily completed, I am of the view that the toilet block would comply with the Building Code. This is with the proviso that the toilet block will be an outbuilding used in association with the dwelling and not for the purpose for which it was consented. Having reached the above conclusion, it is for the applicant and the authority to address the intended use of the toilet block.

9. The status of the alterations and the appropriate certificates to be issued

9.1 The alterations

- 9.1.1 Section 40 of the Act states that building work must not be carried out except in accordance with a building consent.
- 9.1.2 In September 2010, the applicant applied for consent to convert part of the retail area into bedrooms but the following month decided to convert the remaining retail area into a new lounge area and advised the authority of that intent. However, no amended application was submitted and the consent application was later cancelled.
- 9.1.3 Section 41 (1)(b) of the Act exempts some types of building work, including those described in Schedule 1, from the requirement to obtain consent. I note that much of the internal works carried out during the alterations fall within Schedule 1⁹ as exempt building work for which consent was not required (refer Appendix A); specifically the installation or removal of windows or exterior doorways, and the construction or removal of internal walls (both subject to conditions).
- 9.1.4 However other building work was carried out that does not fall within Schedule 1 and building consent was required; specifically the addition of new sanitary appliances.

⁹ In this determination references to Schedule 1 are to the Schedule that was current at the time the alterations were carried out, being sometime between September 2010 and September 2011.

- 9.1.5 Section 96 of the Act makes provision for the issue of a certificate of acceptance in certain circumstances. One of these is where 'a building consent was required but not obtained'. In these circumstances the authority may, on application, issue a certificate of acceptance if it is satisfied that the work complies with the Building Code.
- 9.1.6 In the case of these unauthorised alterations, the expert's report and the other evidence provide grounds for me to form a view that the current completed dwelling can be brought into compliance with the Building Code providing outstanding matters are resolved and the compliance of the building's structure is confirmed.

9.2 The 2000 consent

- 9.2.1 The original 2000 consent was issued under the former Act, which requires an authority to issue a code compliance certificate only if it is satisfied on reasonable grounds that the building work complies with the Building Code that was current at the time the consent was issued.
- 9.2.2 There may be some instances where as-built work does not comply with the consent but still complies with the Building Code, in which case consent amendments may be the most appropriate regulatory action to correct the matter. In the case of this building, the as-built shop/dwelling differed significantly from the 2000 consent drawings even prior to the unauthorised alterations.
- 9.2.3 In this situation, where I have reasonable grounds to conclude that that the current completed dwelling can comply with the Building Code once outstanding items are resolved, I take the view that a code compliance certificate is the appropriate certificate to be issued. The consent should first be amended in respect of:
- the durability periods, to reflect the date the building work was substantially completed¹⁰, and
 - those building elements that were removed as part of the alterations.

Any amendment to the consent should not include the building elements that were installed as part of the alterations; the durability period for these elements will have a much later start date and in addition some of the alterations will require a certificate of acceptance with the remainder being exempt under Schedule 1 (refer paragraph 9.1 above).

9.3 Conclusion

- 9.3.1 In respect of the unauthorised alterations, the expert's report and the other evidence provide me with reasonable grounds to conclude that the that the current completed dwelling will comply with the Building Code providing areas outlined in paragraph 7.11.1 are remediated and the matter of compliance of the building's structure is satisfactorily resolved.
- 9.3.2 The applicant will need to apply for a certificate of acceptance for some of the building work carried out during the alterations that does not fall within Schedule 1 of the Building Act.

¹⁰ More information on durability modifications is available in an article titled 'Modification of durability periods' in Codewords Issue 39, August 2009. Codewords articles are published by the Ministry and are available on the Ministry's website at www.dbh.govt.nz/codewords-index.

- 9.3.3 The 2000 building should be amended to record those building elements that no longer remain and to modify the start date of the durability periods. Subject to the compliance of the solid fuel heater (assuming that was part of the 2000 consent) the authority can issue a code compliance certificate.

10. What happens next?

- 10.1 I suggest that:
- the parties resolve the intended use of the toilet block
 - the authority advises the applicant of the requirement to submit a formal application for the amendment to the 2000 building consent for the shop/dwelling, including the provision of appropriate as-built documentation.
- 10.2 It is then for the authority to consider whether a notice to fix is to be issued for the non-compliant items in relation to the dwelling and toilet block, requiring the owner to bring the buildings into compliance with the Building Code. The notice should identify the areas that do not comply (for example those listed in paragraph 7.11.1 and paragraph 6.7.1) and refer to any further defects that might be discovered in the course of investigation and rectification.
- 10.3 The applicant should produce a detailed proposal for the building as to the rectification or otherwise of the non-compliance, either subsequent to this determination or in response to a notice to fix. That proposal should be produced in conjunction with competent persons with suitable experience in the areas identified.
- 10.4 Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination.

11. The decision

11.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:

- (i) In regard to the complete and altered shop/dwelling building:
 - there is insufficient evidence to be satisfied on reasonable grounds as to the compliance of the bracing with Clauses B1 and B2 of the Building Code, and
 - the solid fuel heater does not comply with Building Code Clause C,
 - and accordingly, I confirm the authority's refusal to issue a code compliance certificate for the 2000 consent.
- (ii) In regard to the toilet block:
 - some plumbing work does not comply with Clauses G12 and G13 of the Building Code,
 - and accordingly I confirm the authority's refusal to issue a code compliance certificate for the 2004 consent.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 5 June 2015.

John Gardiner
Manager Determinations and Assurance

Appendix A

A.1 Relevant paragraphs of Schedule 1 Exempt building work (as at 1 January 2011)

- 1 A building consent is not required for the following building work:
 - (ae) the installation, replacement, or removal in any existing building of a window (including a roof window) or an exterior doorway if—
 - (i) compliance with the provisions of the building code relating to structural stability is not reduced; and
 - (ii) in the case of replacement, the window or doorway being replaced satisfied the provisions of the building code for durability:
 - (ca) the construction, alteration, or removal of an internal wall (including the construction, alteration, or removal of an internal doorway) in any existing building if—
 - (i) compliance with the provisions of the building code relating to structural stability is not reduced; and
 - (ii) the means of escape from fire provided within the building are not detrimentally affected; and
 - (iii) the wall is not made of units of material (such as brick, burnt clay, concrete, or stone) laid to a bond in and joined together with mortar: