MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

# Determination 2015/080

# Regarding the refusal to issue a code compliance certificate for a 14-year-old kitset outbuilding at 84 Bethels Road, Selwyn

**Summary**

This determination considers the authority's decision to refuse to issue a code compliance certificate; the grounds for the refusal were the authority's concerns regarding the performance of the exterior cladding in terms of weathertightness and durability. The determination reviewed the reasons given for the refusal and considered whether the items identified in the refusal comply with the Building Code.

## 1. The matters to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004[1] ("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 outbuilding, J Halliday ("the applicant")
- Selwyn District Council ("the authority"), carrying out its duties as a territorial authority or building consent authority.

1.3 This determination arises from the decision of the authority to refuse to issue a code compliance certificate code compliance certificate for a 14-year-old garage/ storeroom ("the outbuilding") because it was not satisfied that the building work complied with certain clauses[2] of the Building Code (First Schedule, Building Regulations 1992). The authority's concerns about the compliance of the building work relate primarily to the structure and weathertightness of the outbuilding, given the building's age.

[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] 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.

1.4 The matter to be determined[3] is therefore the exercise of the authority's power of decision in refusing to issue the code compliance certificate for the reasons given in its refusal dated 14 July 2015 (refer paragraph 3.5). In deciding this matter, I must consider:

(a) Whether the external building envelope of the outbuilding complies with Clause B2 Durability and Clause E2 External moisture of the Building Code that was in force at the time the consent was issued. The building envelope includes the components of the systems (such as the metal wall cladding, the windows and the roof cladding) as well as the way the components have been installed and work together. Structural implications related to weathertightness are included within this matter.

(b) Whether other items identified by the authority comply with the relevant clauses of Building Code: namely Clauses B1 Structure, E1 Surface Water and H1 Energy Efficiency.

### 1.5 Matters outside this determination

1.5.1 I note that the applicant will be able to apply to the authority for a modification of durability provisions to allow the durability periods specified in Clause B2.3.1 to commence from the date of substantial completion in 2001. While I leave this to the parties to resolve in due course, I comment on the matter in paragraph 6.7.

1.6 In making my decision, I have considered the submissions of the parties, the report of the expert commissioned by the Ministry to advise on this dispute ("the expert"), the nature and age of the outbuilding, and the other evidence in this matter.

## 2. The building work

2.1 The building work consists of a proprietary prefabricated detached outbuilding on a level rural site, which is in a high wind zone for the purposes of NZS 3604[4]. The expert takes the garage door as facing southwest and this determination follows that convention. The outbuilding is simple in plan and form and is assessed as having a low weathertightness risk.

2.2 The outbuilding is a simple 6m x 9m rectangle with the rear third described in the building consent as a separate storage area. The storage area is lined to walls and ceiling with plasterboard, with a window and ranchsliders to the gable end wall.

2.3 Construction is generally conventional light timber frame, with concrete foundations and floor slab; part of which was apparently laid during the 1980's for a smaller garage that was later demolished. The outbuilding has profiled wall and roof claddings and aluminium windows. The low-pitched gabled roof has no eaves or verge overhangs. The unlined portion of the outbuilding has no underlay to roof or walls.

2.4 The expert noted that the timber framing exposed in the garage area appeared to be 'chemical free Pinus Radiata' and, given the date of construction, I consider the framing is untreated.

[3] Under section 177(1)(b) section 177(2)(d) of the Act
[4] New Zealand Standard NZS 3604:1999 Timber Framed Buildings

## 3. Background

3.1 The authority issued the original building consent (No. 011231) to the applicant on 2 October 2001 under the Building Act 1991 ("the former Act"). I have not seen any records of what, if any, inspections were carried out during construction, but it is likely that the outbuilding was substantially completed by the end of 2001. The consented work was described as 'Garage / Storage Room'.

3.2 The authority carried out a final inspection on 21 November 2003, which identified several items to be attended to but noted the inspection as 'satisfactory' and recording a reinspection was required. No further inspections were recorded and no code compliance certificate was issued.

3.3 The applicant was unaware no code compliance certificate had been issued until the property was prepared for sale in 2015. The applicant had apparently completed the items that had been identified in the 2003 inspection and applied for a code compliance certificate on 8 June 2015.

3.4 The authority carried out an inspection on 8 July 2015; the inspection notice recorded a 'fail' because the building work did not comply with Clauses B1, E1 and E2. The record described the construction, noting that the storage area had been converted into a sleepout and identifying the following items:

> 1.6 To the exterior at the rear of the storage area a soak pit has been dug, this is too close to the structure and may have possibly undermined the structure.
>
> 1.7 The storage area has a damp musty smell to it, this may be due to moisture ingress.
>
> 1.8 The exterior cladding does not comply with NZBC E2
>
> 1.9 Insufficient cladding clearance between the cladding and the surrounding ground.
>
> 2.0 The bracing to the garage not fixed as per the manufacturers installation instructions.
>
> 2.1 The insulation in-between the garage and the sleepout has the ability to absorb moisture as the walls on the garage side have not been lined.

3.5 The authority wrote to the applicant on 14 July 2015 stating that the final inspection had observed that the outbuilding did not comply with Clauses B1, E1 and E2 of the Building Code and concluding:

> Due to the extended period of time which has elapsed between the date on which the building consent was granted, and the later date on which the practical completion inspection was carried out (being over 14 years), [the authority] considers that it is unable to meet the statutory obligation in terms of section 94 of the NZ Building Act 2004, and the application for issue of a Code Compliance Certificate for the building work authorised by the above Building Consent is refused.

3.6 I note here that previous determinations[5] that involve this authority have addressed the issue of code compliance certificates being sought where buildings have long been completed. I reiterate here that the period of delay between the issue of a building consent and the request for a final inspection or code compliance certificate does not prevent the authority making a decision with respect to compliance, and is not a ground under the Act for refusing to issue a code compliance certificate. In addition, the requirement under section 95A that an authority provide reasons in writing for refusing to issue a code compliance certificate should be providing an owner with notice of the work required in order to obtain a code compliance certificate.

[5] See for example Determination 2014/006: Regarding the refusal to issue a code compliance certificate for a 13-year-old house with monolithic cladding at 46 Stott Drive, Darfield, *Ministry of Business, Innovation and Employment*, 3 February 2014

3.7 The situation remained unresolved and the Ministry received an application for a determination on 24 August 2015. The Ministry sought further information on the outbuilding, which was received on 4 September 2015.

## 4. The submissions

4.1 The applicant described the background to the situation; noting that all requirements of the 2003 inspection had been fulfilled but the recent inspection had 'unearthed new requirements' and the authority seemed unable to provide to the applicant 'the details of what I now need to do'.

4.2 The applicant provided copies of:

- the consent documentation for the outbuilding
- the final inspection record dated 21 November 2003
- the land information memorandum (LIM summary)
- the final inspection record dated 8 July 2015
- the letter from the authority dated 14 July 2015.

4.3 The authority did not make a submission in response to the application, or after the expert's report was provided to the parties for comment. The authority provided the consent documentation from its records.

4.4 A draft determination was issued to the parties for comment on 16 November 2015.

4.5 The applicant accepted the draft determination in a response received on 18 November 2015.

4.6 The authority did not accept the draft, and in a response received on 25 November 2015 submitted the following (in summary):

- The current owner and the building consent applicant are the same – references in the draft to the former owner should be to the current owner.
- The 2003 inspection record noted a re-inspection was required.
- The authority did not receive a copy of the application until after the draft determination was received.
- The manufacturer's "Master Design Booklet" (excerpts attached to the authority's submission) 'which formed part of the specification for [the] building and is the basis of the engineer's producer statement design, requires':
    - The trusses in the building are to be at a maximum spacing of 1200mm.
    - The truss/top plate detail calls for specific hold-down fixings (nailing, a mild steel strap, and nail plates) fixing the end of the trusses to the wall framing.
- The trusses are twice the maximum spacing (2.4m) with insufficient hold-down fixings. The as-built work cannot be considered as being generally in accordance with the consent drawings.
- The 'structural parts of the exterior cladding (bracing elements) also have a minimum expected life of 50 years'. The proximity of these elements to the ground and the lack of maintenance 'mean that achieving this minimum could be problematic'.

- The specification called for "DPC to underside of bottom plate".
- The authority was verbally advised in July 2015 'that the storage room was going to be used as a bedroom'. The original consent was for a garage and storage, which the authority considers falls under use IA in the Regulations[6], the features such as insulation and lining, and the intended use as a habitable space mean that it is use SH. (Refer to Appendix A.4 for uses as described in Schedule 2 of the Regulations).
- The authority is of the view that the room is a habitable space used to provide an additional bedroom to the existing cottage on the property.
- If the determination is not amended to reflect the use of the room as a sleepout, then the authority requests the determination outline what would prevent the owner or any subsequent owner from using it as such and how could they be satisfied that it would be safe to do so.

4.7 The applicant made a further submission on 26 November 2015 in response to the points raised by the authority, noting the applicant has no intention to, and did not indicate to the authority any intention to use the storage room as a bedroom. The tenants had been asked to remove the bed and were advised the building was not to be used as a sleepout.

4.8 It was also submitted that the applicant was not the original owner and had not uplifted the consent. Correspondence received from both the applicant and the authority on 30 November 2015 clarified that the applicant was in fact the original owner and had uplifted the consent.

4.9 In response to an email from Ministry dated 27 November 2015, on 30 November the authority provided a copy of the Master Design Booklet referred to in paragraph 4.6 (the authority advised verbally that the booklet was in the authority's technical library).

# 5. The expert's report

## 5.1 General

5.1.1 As mentioned in paragraph 1.6, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors and inspected the outbuilding on 17 April 2015, providing a report completed on 15 May 2015, which was forwarded to the parties on 23 October 2015.

5.1.2 The expert noted that the scope of his investigation was to report on the concerns identified by the authority with regard to compliance with parts of Building Code clauses B1, B2, E1, E2 and H1.

5.1.3 The expert found that the outbuilding generally accorded with the consent drawings in overall shape and form, and also noted that timber framing appeared to be 'chemical free Pinus Radiata' (i.e. not treated to resist decay).

## 5.2 Weathertightness (Clauses B1, E2, and B2)

5.2.1 The expert observed the following areas of moisture ingress:

- Badly decayed bottom plate adjacent to the east side of the tilting garage door.

[6] *Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005:* Schedule 2 Uses of all or parts of buildings

- Bottom plate adjacent to the west side of the tilting garage door badly discoloured, and likely decayed.
- Elevated moisture reading (23%) at the base of the wall at one corner of the ranchslider.
- Elevated moisture reading (20%) at south corner of the storage room.

5.2.2 In regard to the profiled metal wall cladding, the expert noted that:

- daylight is visible at external corners where horizontal profiled cladding is poorly sealed to metal corner soakers; allowing minor water ingress
- although minor water ingress within the unlined garage area is not significant, such moisture penetration at corners of the lined/insulated storage room could initiate decay in the untreated timber framing.

5.2.3 In regard to window and door installation, the expert noted that:

- window and door reveals are fixed with single nails at centres well beyond the 450mm maximum centres between pairs of nails generally recognised as good trade practice for installing aluminium joinery at the time of construction
- head flashings slope back towards the head junctions, with elevated moisture readings recorded in framing at the door threshold.

5.2.4 In regard to ground clearances, the expert noted that:

- there is no fall away from the external walls to prevent water from ponding against the foundations
- clearances from ground level to the finished floor slab vary from about 50mm to 150mm, with a cladding overlap of about 50mm
- the cladding contacts unpaved ground at the sides of the garage door, with no visible DPC under bottom plates and severe decay/ water stains apparent.
- there are also elevated moisture levels in the south corner of the storage area, where clearances to the floor level vary from only 50mm to 80mm along the south east wall.

5.2.5 In regard to the roof, the expert noted that:

- roofing is not turned up at the top edges under the ridge capping, which is considered good practice particularly for low-pitched roofs in high wind zones
- although fixings and the lack of turn-ups do not meet recommended good practice at the time[7], the roof has experienced extreme wind storms over the past 14 years with no evidence of damage.

5.2.6 The expert noted that in regard to weathertightness, an unlined outbuilding is beyond the scope of the Acceptable Solution E2/AS1, because any moisture entering the cladding is able to dissipate from timber framing.

## 5.3 The bracing (Clause B1)

5.3.1 The bracing specified in the consent documentation is not clear, but appears to be a combination of plywood and metal bracing. The expert assessed the bracing installed in the outbuilding and noted that:

[7] Profiled Metal Handbook 1995 and BRANZ publications

- diagonal metal strap bracing is fitted between roofing and framing
- no diagonal strap bracing is visible in the garage walls or detectable with a magnet behind linings in the storage area
- no plywood bracing is installed behind the cladding to the storage room, where external cladding was able to be pulled away at a corner to investigate construction.

5.3.2 However, despite the lack of bracing to the walls, the expert noted that the outbuilding had withstood severe movement from storms and earthquakes since construction, with no evidence of damage in the form of lining cracks and the metal cladding straight and generally undamaged.

## 5.4 The surface water soak hole (Clause E1)

5.4.1 The expert noted that an old soak pit had been installed in response to the 2003 final inspection. The original soak pit was only 250mm from the east corner of the garage and had recently started to overflow, so was therefore replaced with new soak pit.

5.4.2 The new soak pit is approximately 600mm from the foundations, so is unlikely to undermine the foundations. The expert could see no evidence of subsidence at the east corner despite the proximity of the holes, but noted that the original soak hole should be filled with well compacted hardfill to avoid any problems in the future.

## 5.5 The insulation (Clause H1)

5.5.1 The expert observed that the ceiling and the storage partition were partially insulated. He was also able to detect insulation behind the metal cladding to the storage area so considered it likely that all exterior walls to the storage area were insulated.

5.5.2 The expert noted that, at the time of inspection, the area was not used as a sleepout and would therefore be classified as a non-habitable area that would not need to be insulated. The existing insulation could therefore be removed if the applicant so desires.

## 5.6 Summary

5.6.1 Taking into account that it is an outbuilding and not currently used as a sleepout, the expert concluded that the following areas required remedial work to comply with Clauses B1, B2 and E2 of the Building Code:

- investigation and repair as necessary of timber framing to the storage area (the expert noted the option of removing linings and insulation from exterior walls to reduce future risks from moisture penetration – I comment on this at paragraph 6.4.2)
- the damaged bottom plates either side of the garage door
- back sloping head flashings to storage area window and ranch slider
- ground levels falling towards external walls and cladding clearances below 50mm in some areas
- the redundant open soak hole at risk of ponding and undermining foundations.

5.6.2 The expert considered that other items identified by the authority are satisfactory in the circumstances.

# 6. Compliance of items identified by the authority

## 6.1 Compliance generally

6.1.1 I note that the building consent was issued under the former Act, and accordingly the transitional provisions of the Act apply when considering the issue of a code compliance certificate for work completed under these consents. Section 436(3)(b)(i) of the transitional provisions of the current Act requires the authority to issue a code compliance certificate if it 'is satisfied that the building work concerned complies with the building code that applied at the time the building consent was granted'.

6.1.2 In order to determine whether the authority correctly exercised its power in refusing to issue a code compliance certificate for this building work, I must consider whether areas identified by the authority comply with the associated parts of the Building Code.

## 6.2 Clause E2: External moisture

6.2.1 I consider the expert's report establishes that the current performance of the outbuilding envelope is not adequate because there is evidence of moisture penetration into some of the timber framing. Consequently, I am satisfied that the cladding currently does not comply with Clause E2 of the Building Code that was current at the time the consent was issued.

6.2.2 Given the damage to the garage bottom plate despite its being unlined, I am also satisfied that the cladding has not complied with Clause E2 for some time. The level of obvious decay damage to the bottom plate and the likelihood of further hidden damage to untreated framing behind linings also satisfy me that the timber framing may not comply with the performance requirements of Clause B1 of the Building Code.

6.2.3 It is noted that the extent to which the building is required to comply with Clause E2 is related to its use. The Function requirement E2.2 that was in force at the time the consent was issued said:

> E2.2 Buildings shall be constructed to provide adequate resistance to penetration by, and the accumulation of, moisture from the outside.

The limitation on application for Clause E2.2 says:

> Requirement E2.2 shall not apply to buildings in which moisture from outside would result in effects which are no more harmful than those likely to arise indoors during normal use.

6.2.4 As noted in past determinations[8], the outbuilding is required to comply with Clause E2, its compliance must be determined against ingress that is 'no more harmful' than what may arise from normal indoor use, taking account of the likely effects of damage cause by moisture ingress, and the level of amenity that will be provided. In my view Clause E2 must allow for such considerations given the limits on the application of Clause E2.2. Water-laden air will enter the garage, whether the garage door is open or closed, and water will be brought into the garage on a wet vehicle.

[8] For example - Determination 2012/014: The code compliance of a deck incorporating a floating in-situ concrete slab over a waterproofing membrane at 38 View Road, Waiheke Island *Department of Building and Housing*, 1 March 2012

## 6.3 Clause B2: Durability of the cladding and framing

6.3.1 The outbuilding is also required to comply with the durability requirements of Clause B2, which requires a building to satisfy all the objectives of the Building Code throughout its effective life. The building envelope is required to satisfy Clause E2 for a minimum of 15 years although the expected life of the underlying framing is a minimum of 50 years.

6.3.2 Although claddings are now 14 years old, the expert's investigations indicate moisture ingress has occurred over an extended period. Because of the decay damage apparent to the bottom plate and the likelihood of further undiscovered damage, I am therefore satisfied that the building envelope has not complied with Clause B2 insofar as it applies to Clause E2 and the timber framing has not complied with Clause B2 insofar as it applies to Clause B1.

## 6.4 Clause B1 Structure

6.4.1 The expert found no evidence of bracing to the walls of the outbuilding, however the building has performed in service to date and I am of the view that subject to necessary remedial work being carried out as noted above, the structure will continue to perform the remaining period.

6.4.2 However, in forming that view I have taken into account that the lined section of the garage is likely to be providing bracing to the structure. Accordingly, should the applicant consider removing the lining the structure may not remain adequately braced.

6.4.3 In response to the authority's submission about the roof truss spacing and the hold-down fixings I note the following:

- The consented plans state "Truss crs = 2.4m max or 1.2 if ceiling to be lined'. The longitudinal section shows two trusses along the 9 metre length of the building. The expert's report shows the trusses at 2.4 metre centres to the unlined portion of the garage, but at centres much closer than this to the lined section.
- The authority supplied a copy of the consent for the work – this did not include the master design booklet referred to in paragraph 4.6 above. While the consented plans referred to the booklet I do not believe the booklet itself formed part of the specification as is contended by the authority.
- The authority's final inspection completed in November 2003 does not refer to the matters raised above.
- Despite the authority's misgivings about the adequacy of the structure it has performed adequately for 14 years since construction. This period has included the Canterbury Earthquakes (September 2010, February 2011), and a severe wind storm event (September 2013).

## 6.5 Remaining items (E1 & H1)

6.5.1 I accept that the new soak hole is sufficiently distant from the foundations and I consider that filling in the old soak hole will bring this item into compliance.

6.5.2 The limits on application state that Clause H1.2(a) does not apply to outbuildings; accordingly there are no obligations to meet the performance requirements of Clause H1 in respect of insulation.

## 6.6 Conclusion

6.6.1 In concluding on the adequacy or otherwise of the areas identified by the authority in its refusal to issue a Code Compliance Certificate, I have taken into account the following current and anticipated circumstances for this outbuilding:

- the expert's observation and assessment of defects in the building
- the 14-year performance of the outbuilding
- the current use of the storage area.

6.6.2 Based on the above, Table 1 summarises my conclusions on the authority's concerns identified for such an uninhabited and unlined outbuilding.

**Table 1**

| The authority's concerns (in summary using the item numbers) | | Comments | Conclusion |
|---|---|---|---|
| 1.6 | Soak hole too close to foundations (E1) | • New soak hole now installed – away from foundations<br>• Redundant hole currently unfilled | Adequate if old soak hole filled |
| 1.7 | Moisture ingress into storage area (E2, B2) | • Some elevated moisture readings<br>• Investigation required<br>• Lining removal recommended | Investigation/remedial work required |
| 1.8 | Cladding not compliant with Clause E2 | • Window head flashings back-sloped<br>• Decay to garage bottom plate<br>• Unsealed corner soakers satisfactory if linings/insulation removed. | Investigation/remedial work required |
| 1.9 | Insufficient cladding clearances (E1,E2,B2) | • Clearances less than 50mm insufficient, with some ground falls toward foundations<br>• Other clearances sufficient providing lining/insulation removed. | Some remedial work required to ground levels |
| 2.0 | Bracing (B1) | • No diagonal wall bracing evident<br>• No plywood bracing evident<br>• No sign of damage after 14 years | Adequate providing lining not removed<br>If lining removed bracing to be reviewed |
| 2.1 | Insulation (H1) | • Partition and ceiling partly insulated<br>• Likely that all exterior walls insulated<br>• Non-inhabited storage area not required to be insulated<br>• Lining/insulation removal recommended | H1 does not apply to outbuildings |

6.6.3 Because the identified moisture penetration and cladding faults occur in discrete areas, I am able to conclude that satisfactory investigation and rectification of areas outlined in paragraph 5.6.1 will result in the outbuilding being brought into compliance with Clauses B1, B2, E1 and E2 of the Building Code.

## 6.7 The durability considerations

6.7.1 The relevant provision of Clause B2 of the Building Code requires that building elements must, with only normal maintenance, continue to satisfy the performance

requirements of the Building Code for certain periods ("durability periods") "from the time of issue of the applicable code compliance certificate" (Clause B2.3.1).

6.7.2 The relevant provision of Clause B2 of the Building Code requires that building elements must, with only normal maintenance, continue to satisfy the performance requirements of the Building Code for certain periods ("durability periods") "from the time of issue of the applicable code compliance certificate" (Clause B2.3.1).

6.7.3 In this case the delay since the completion of the outbuilding in 2001 raises concerns that many elements of the building are now almost through or beyond their required durability periods, and would consequently no longer comply with Clause B2 if a code compliance certificate were to be issued effective from today's date.

6.7.4 I have considered this issue in many previous determinations and I maintain the view that:

(a) the authority has the power to grant an appropriate modification of Clause B2 in respect of all the building elements, if requested by an owner

(b) it is reasonable to grant such a modification, with appropriate notification, as in practical terms the building is no different from what it would have been if a code compliance certificate for the building work had been issued at the time of substantial completion.

I therefore leave the matter of amending the building consent to modify Clause B2.3.1 to the parties to resolve when matters identified in paragraph 5.6.1 are addressed.

## 7. The building's use under the Regulations

7.1 The authority's submission refers to the use of the building as a garage and storage room under the Regulations as being IA, and that use of the storage room as a bedroom would constitute a change of use to SH. The authority is also concerned as to the safety of the occupants should the storage room be used as a habitable space.

7.2 Use SH under the Regulations includes "detached dwellings", "self-contained spaces such as granny flats when occupied by a member of the same family" and "garages (whether detached or part of the same building) if primarily for storage of the occupants' vehicles, tools, and garden implements" (refer Appendix A.4). A garage, if used for the storage of the occupants' vehicles, tools and garden implements, falls within use SH. Therefore, if a garage that is used by the occupants of a dwelling is converted to a sleepout, the building still falls within use SH under the Regulations in both its original use as a garage and its new use as a sleepout (refer also Determination 2009/021[9]).

[9] Determination 2009/021: Whether proposed building work for conversion of a garage to a sleep-out complies with the Building Code to the extent required by the Building Act at 160 Brecon Road, Stratford *Department of Building and Housing*, 20 March 2009

## 8. What happens next?

8.1 If the applicant wishes to seek a code compliance certificate for the outbuilding, a proposal addressing the remedial work required should be submitted to the authority for its approval. That proposal should specifically address the matters of non-compliance and investigation described in paragraph 6.6.3. Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination. A code compliance certificate will be able to be issued once these matters have been resolved and rectified.

## 9. The decision

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

- timber wall framing does not comply with Building Code Clause B1 and B2
- the cladding does not comply with Building Code Clauses E2 and B2
- some ground slopes and the unfilled original soak hole do not comply with Building Code Clause E1

and accordingly, I confirm the authority's decision to refuse to issue a code compliance certificate for the outbuilding.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 3 December 2015.

John Gardiner
**Manager Determinations and Assurance**

# Appendix A

A.1 Relevant performance Clauses of the Building Code that were current at the time the building consent was issued:

**B1.3.1** *Buildings, building elements* and *sitework,* shall have a low probability of rupturing, becoming unstable, losing equilibrium, or collapsing during *construction* or *alteration* and throughout their lives.

**B1.3.2** *Buildings, building elements* and *sitework* shall have a low probability of causing loss of *amenity* through undue deformation, vibratory response, degradation, or other physical characteristics throughout their lives, or during *construction* or *alteration* when the *building* is in use.

**B2.3.1** *Building elements* must, with only normal maintenance, continue to satisfy the performance requirements of this code for the lesser of the *specified intended life* of the *building*, if stated, or:

(a) The life of the building being not less than 50 years, if:

(i) Those *building elements* (including floors, walls, and fixings) provide structural stability to the *building, or…*

(b) 15 years if:

(i) Those *building elements* (including the *building* envelope, exposed plumbing in the subfloor space, and in-built chimneys and flues) are moderately difficult to access or replace, or …

**E1.3.2** *Surface water*, resulting from a storm having a 2 % probability of occurring annually, shall not enter *buildings.*

**E2.3.2** Roofs and exterior walls shall prevent the penetration of water that could cause undue dampness, or damage to *building elements.*

**H1 Functional requirement**

**H1.2** *Buildings* must be *constructed* to achieve an *adequate* degree of energy efficiency when that energy is used for –

(a) Modifying temperature or humidity, or both; or…

***Limits on application***

Requirement H1.2(a) does not apply to *assembly service buildings, industrial buildings, outbuildings, ….*

A.2 Clause A1 of the Building Code: Classified uses

**Clause** A1—Classified Uses

**1.0** Explanation

**1.0.1** For the purposes of this building code *buildings* are classified according to type, under seven categories.

**1.0.2** A *building* with a given classified use may have one or more *intended uses* as defined in the Act.

**2.0** Housing

**2.0.1** Applies to *buildings* or use where there is self care and service (internal management). There are three types:

**2.0.2** Detached dwellings

Applies to a *building* or use where a group of people live as a single household or family. Examples: a holiday cottage, boarding house accommodating fewer than 6 people, dwelling or hut.

**7.0** Outbuildings

**7.0.1**

Applies to a *building* or use which may be included within each classified use but are not intended for human habitation, and are accessory to the principal use of associated *buildings*. Examples: a carport, farm *building*, garage, greenhouse, machinery room, private swimming pool, public toilet, or shed.

## A.3 Clause A2 of the Building Code: Interpretation

**habitable space** a space used for activities normally associated with domestic living, but excludes any bathroom, laundry, water-closet, pantry, walk-in wardrobe, corridor, hallway, lobby, clothes-drying room, or other space of a specialised nature occupied neither frequently nor for extended periods

## A.4 *Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005*: Schedule 2 Uses of all or parts of buildings

| Use | Spaces or dwellings | Examples |
|---|---|---|
| *Uses related to sleeping activities* | | |
| SH (Sleeping Single Home) | detached dwellings where people live as a single household or family, including attached self-contained spaces such as granny flats when occupied by a member of the same family, and garages (whether detached or part of the same building) if primarily for storage of the occupants' vehicles, tools, and garden implements | dwellings or houses separated from each other by distance |
| *Uses related to intermittent activities* | | |
| IA (Intermittent Low) | spaces for intermittent occupation or providing intermittently used support functions—low fire load[1] | car parks, garages, carports, enclosed corridors, unstaffed kitchens or laundries, lift shafts, locker rooms, linen rooms, open balconies, stairways (within the open path)[3], toilets and amenities, and service rooms incorporating machinery or equipment not using solid-fuel, gas, or petroleum products as an energy source |