



Determination 2017/043

Regarding a certificate of acceptance issued subject to qualifications for substituted imported composite slate roofing tiles on a house at 3 Giarni Place, Papakura

(to be read in conjunction with Determination 2016/046)

Summary

This determination considers exclusions listed in a certificate of acceptance issued for the installation of imported composite slate roofing tiles.

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, Tony Marshall, Manager Determinations and Assurance (Acting), 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:

- C Hamlin, the licensed building practitioner² (“the applicant”), who supplied and installed the slate roofing tiles and applied for this determination. The applicant is acting through Platinum Homes (Manukau & Counties), (“the developer”) as his agent
- Auckland Council carrying out its duties and functions as a territorial authority or building consent authority (“the authority”)
- the owner of the house, M Strydom (“the owner”).

1.3 I have previously described certain building matters regarding this house in Determination 2016/046 (“the first determination”). That determination concerned the authority’s refusal to amend the building consent for the substitution of the roofing tiles (“the substituted tiles”) and whether the roofing system as installed complied with ³Clauses B1, B2, E2 and E3.

1.4 The current determination arises because the authority issued a certificate of acceptance for the installation of the substituted tiles but listed in the certificate a number of exclusions⁴. The applicant is of the view that the exclusions were improperly included in the certificate and that a code compliance certificate should be issued for all of the building work.

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 Licensed Building Practitioner Number BP126423 (one of two directors of Enable Roofing Limited, Christchurch)

³ In this determination, unless otherwise stated, references to clauses are to clauses of the Building Code and references to sections are to sections of the Act.

⁴ Also referred to herein as qualifications

- 1.5 The first determination addressed the matter of issuing a code compliance certificate in respect of the substituted tiles that were installed without an amendment first being granted. I do not consider this issue further in this determination.
- 1.6 The matter to be determined⁵ is therefore whether the authority was correct in its decision to issue the certificate of acceptance with the exclusions provided.
- 1.7 In making my decision I have considered the submissions of the parties and the other evidence in this matter.

2. The building work and background

- 2.1 The building work was a new single storey residential home. The roof is a conventional design, with small sections of skillion roof above the lounge and family room, and an open ceiling space elsewhere.
- 2.2 The 29° pitch hipped and gabled roof of truss and rafter construction was originally designed and consented to be clad in heavy weight concrete tiles over transverse battens, with an overlay located over the rafters/trusses.
- 2.3 The developer applied for an amendment to the original consent to substitute the concrete roof tiles with the substituted tiles, but the authority did not consider the information provided to it was sufficient to approve the substitution.
- 2.4 Although no amendment to the consent had been formally issued, the house was completed in June 2015 with the roof clad in the substituted tiles. All inspections had been completed (refer Appendix A), which left a ‘document review’ to be completed by the authority. The house was sold to the current owner on 15 June 2015 without a code compliance certificate. Further correspondence, meetings and the provision of additional information followed, with no resolution of the substitution.
- 2.5 An application for the first determination was received on 15 April 2016, and the first determination was issued on 26 September 2016. The first determination considered the information available and concluded that the roof as installed complied with the following performance clauses of the Building Code:
- Clause B1.3.3 – in relation to design wind speed and gravity and live loads
 - Clause B2.3.1 – in relation to UV light and compatibility with metal flashings
 - Clause E2.3.1, E2.3.2 – in relation to shedding precipitation and preventing undue penetration of water
 - Clause E3.3.1 – in relation to ventilation of the roof space.
- 2.6 The first determination also considered the amendment to the building consent that had been applied for but not approved before the substituted tiles were installed, and came to the view that the amendment could not be issued retrospectively. That being the case the first determination concluded:
- 8.12 I am of the view that, in light of the above, the building consent should be amended to remove the concrete tiles, and a code compliance certificate applied for in respect of the amended building consent. A certificate of acceptance may be applied for in respect of the installation of the slate roof tiles without a building consent. This determination will obviously be of considerable assistance to the authority in considering that application, as I have reached the conclusion that the slate tile roof system as installed meets the performance

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

requirements of the relevant clauses of the Building Code. I also note that any certificate of acceptance should be able to be issued in respect of all the applicable Building Code clauses.

2.7 The code compliance certificate

- 2.7.1 The authority issued a code compliance certificate for the building work carried out under building consent number B/2014/12969 on 26 October 2016. The building consent was subject to two amendments, one reducing the size of the original design, and the second the removal of the roof details as per the first determination.

2.8 The certificate of acceptance

- 2.8.1 The authority issued a certificate of acceptance on 20 December 2016 for 'Installation of a Cambrian Slate Tile Roof'. Under the title 'acceptance of compliance' was the following:

[The authority] is satisfied, to the best of its knowledge and belief and on reasonable grounds, that, insofar as it can ascertain, the building work complies with the following Building code clauses:

- [The authority is] satisfied there is adequate provision for:
 - B1 Structure
 - B2 Durability
 - E2 External Moisture
 - E3 Internal Moisture.

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

N/A Inspection carried out under Building Consent B/2014/12969

NB: visual inspection of the building works only; no destructive or invasive testing of elements has been undertaken.

[The authority] was not able to inspect the following parts of the building work and this certificate is qualified as follows:

- All concealed structural fixings and fastenings
- All concealed flashings and weatherproofing sealants
- All concealed framing, insulation and building wraps

[The authority] has relied upon the following documents to establish compliance with the Building Code:

- Signed application form
- Certificate of title
- Plans and specifications submitted with the application
- Determination 2016/046
- Producer Statement – PS3 – Slate installation

3. The submissions

- 3.1 The Ministry received an application for a determination on 5 April 2017. The developer provided copies of the following documents:

- The code compliance certificate and covering letter.
- The certificate of acceptance.
- An application form for a code compliance certificate for B/2014/12969.

- The authority's schedule of inspections and documentation for the building work carried out under B/2014/12969.

3.2 The developer raised the following issues in a submission with the application:

- The items excluded on the certificate of acceptance (concealed structural fixings and fastenings, concealed flashings and weatherproofing, and concealed framing, insulation and building wrap), do not form part of a roof inspection, and that the exclusion carries an implication that the product and/or workmanship does not meet the requirements of the Building Code. The developer requested that the exclusions be removed from the certificate of acceptance.
- The normal inspections were carried out during construction as per the schedule set by the authority, and each one passed without comment. The final inspections on 14 and 15 July passed the slate tile roof and noted 'slate roof was an amendment'.
- The developer also seeks to have a code compliance certificate issued for all of the building work⁶.

3.3 The authority acknowledged the application, and asked for clarification regarding the matters that would be considered in the determination. That clarification was provided on 17 April 2017, and the authority responded the following day with a brief submission:

... the wording on the [certificate of acceptance] is reflective of the position [the authority] was placed in, in that:

- (1) the roof had already been completed at the time of the pre-line inspection, which meant that structural fixings or fastenings, flashings, sealants and other associated aspects of the building work were concealed; and
- (2) inspection records are not specific to the excluded items.

3.4 A draft determination was issued to the parties for comment on 25 May 2017.

3.5 The authority responded on 7 June 2017. The authority is of the view that removal of the exclusions from the certificate of acceptance is unjustified. The authority submitted that as the roofing system was a complete change to the approved plans the construction and installation details had not been reviewed, with the effect that 'inspectors did not have the working guidance documentation normally available on-site... which in turn means reliance on such inspections must be diminished.' The authority considered this was 'exacerbated by little or no access'.

3.6 The developer did not provide a submission in response to the draft, but responded to the authority's submission in an email on 8 June 2017. The developer noted that 'working guidance documentation' was provided to the authority with the application for amendment. (I note here that the first determination records revised drawings were dated 23 January 2015.) The developer is of the view that the inspections were in no way diminished, and the process followed was the same as for other roofs where this product has been installed. The developer noted that a roof is not subject to specific inspection but slate or shingle roofs require ply fixing inspections, and that PS3s are generally provided by the installer. (I note here that the first determination records that a PS3 for the roof installation was provided to the authority on 18 November 2015.)

⁶ The first determination addressed the matter of issuing a code compliance certificate in respect of the substituted tiles that were installed without an amendment first being granted.

- 3.7 A solicitor acting for the owner responded on 8 June 2017. The owner did not accept the findings of the draft determination and considers the provision of a certificate of acceptance to be unsatisfactory.

4. Discussion

- 4.1 The issue of a certificate of acceptance provides for instances where an owner has carried out building work without first obtaining a building consent. The purpose of a certificate of acceptance, if requested, is to provide regulatory sign-off for building work that is considered by the relevant authority to comply with the Building Code.
- 4.2 In this case the certificate of acceptance has been sought for the building work relating to the installation of the substituted tiles because an amendment to the building consent for the substituted tiles had not been granted before the building work was carried out. The authority had not granted the amendment as it considered it did not have sufficient information to establish that the substituted tiles would comply with certain clauses of the Building Code (First Schedule, Building Regulations 1992) because:
- certification and documentation provided by the roofing company and the United Kingdom manufacturer were insufficient to demonstrate compliance with relevant clauses of the New Zealand Building Code
 - the drawings submitted for the substitution did not comply with the manufacturer's specifications.
- 4.3 The first determination concluded there were reasonable grounds to be satisfied that the roofing system as installed complies with the Building Code Clauses B1 Structure, B2 Durability, E2 External moisture, and E3 Internal moisture.
- 4.4 The authority subsequently issued a certificate of acceptance that states the authority 'was not able to inspect' various parts of the building work and accordingly the certificate is 'qualified' (refer paragraph 2.8.1).
- 4.5 Section 99(2) of the Act provides:
- 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.
- 4.6 The identification of building work the authority has been able to inspect is for the purpose of limiting the liability of the authority to that work.
- 4.7 Typically when a certificate of acceptance is sought the authority would not have had the benefit of carrying out inspections of the work during construction. In those circumstances, inspections for the purpose of establishing compliance may be limited by the fact that building work has been completed, and some building elements are no longer able to be inspected.
- 4.8 However, in this case the authority carried out all scheduled inspections during construction (refer Appendix A) and any issues relating to the construction, including the installation of the roofing, were addressed at the time. In regards to the documentation available to the authority's inspectors, I note that the first determination records that the drawings provided for the application for an amendment of the building consent were dated 23 January 2015, and that the authority responded to the application for amendment on 16 February 2015. Based on the authority's records, the only inspections that had occurred by that time were

for the floor slab, plumbing, and drainage – the framing was not inspected until 24 March 2015.

- 4.9 The first determination also records that a standard form titled ‘Pre CCC findings’ dated 13 July 2015 noted:

B/2014/12969/B: Roof cladding changed to Cambrian Slate (in progress with Processing Team, RFI’s outstanding to complete and issue BC)

Inspector- to verify what plans for the roof are onsite as material has changed from original consent. Cambrian Slate is not BRANZ approved so this amendment will need to be issued before CCC will be issued.

- 4.10 The final inspection occurred on 15 July 2015, and recorded the building work as being completed in accordance with the consented plans. The inspection included assessment of the roof cladding, flashings and penetrations: the inspection passed. The inspection record notes ‘slate roof was an amendment’.
- 4.11 The authority’s concerns that resulted in the amendment not being granted and the application for the first determination being sought did not relate to the workmanship of the installation of the substituted tiles; rather they related to the use of the substituted product and whether there was sufficient information to establish compliance of that product.
- 4.12 In conclusion, I am of the view that the authority should not have included the qualification with respect to it not being ‘able to inspect’ the building work; the authority had carried out scheduled inspections during construction and can rely on those inspections for the purpose of issuing the certificate of acceptance.

5. The decision

- 5.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the authority incorrectly exercised its powers of decision when it issued the certificate of acceptance with the qualifications stated. The certificate is to be modified to remove the qualifications and reissued.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 15 June 2017.

Tony Marshall
Manager Determinations and Assurance (Acting)

Appendix A: The authority's inspections

A.1 The list of required notifiable inspections set out in Section B of the 'Schedule of inspections and documentation required for compliance' for building consent no. B/2014/12969 relevant to the matter being considered in this determination:

| Req'd | Number of inspections | Inspection type | Description of inspection [summarised]: |
|-------|-----------------------|----------------------------|--|
| ✓ | 1 | Wall / roof framing IFG | To check hold down straps, bolts, wall and roof framing members; bracing; tie downs; wall framing; beams and lintels; plywood substrates for membranes including falls and outlets |
| ✓ | 1 | Wraps/cavity ICA | To check the wrap is correctly fixed; tapes, flashings, sealants, etc around all penetrations are installed, prior to the cladding or rigid backing beings installed |
| ✓ | 0 | Wraps/cavity ICA | To check cavity has been formed; cavity battens; cavity closers and flashings all in place |
| ✓ | 1 | Membrane/Tanking ITK | To check the application of the membrane prior to completing decoration, floor coverings and roof claddings |
| ✓ | 1 | Brick veneer ICL | To check cavity construction; fixings; lintels bars; shelf angles; etc at half height (ground floor) ... |
| ✓ | 0 | Roof cladding ICL | To check roof framing, fixings and the installation of flashings |
| ✓ | 1 | Building P/L IPB | To check the building is weathertight, proprietary connections for bracing elements installed and moisture content below 18%; prior to fixing any internal linings |

A.2 The authority's inspections records (as submitted to the first determination).

| Date of inspection | Inspection type | Result | Comments (where relevant to this determination) |
|--------------------|-----------------|--------|--|
| 28/01/2015 | Floor slab | Pass | |
| 28/01/2015 | Plumbing | Pass | |
| 02/02/2015 | Drainage | Pass | |
| 24/03/2015 | Framing | Pass | <u>Roof</u> Pitch type noted as 29° (Pass) Plane braces (Pass) Truss spacing/tie down (Pass) <u>Comments: specify items inspected</u> 'all frame & fixings' |

| Date of inspection | Inspection type | Result | Comments (where relevant to this determination) |
|--------------------|-------------------------|--------|--|
| 14/04/2015 | Cavity wrap (ICA) | Pass | |
| 17/04/2015 | Cladding (ICL) | Pass | |
| 28/04/2015 | Preline building | Pass | |
| 04/05/2015 | Postline (IPL) | Pass | |
| 29/05/2015 | Membrane Tanking (ITK) | Pass | |
| 14/07/2015 | Residential final (IF1) | Fail | <p><u>Roof cladding</u> Cladding (Pass) 'Other' 'slate' Flashings and penetrations (Fail) Spouting clearance (Pass) Downpipe size and fixings (Pass) Spreaders (N/A) <u>Results: comments</u> RCLAD – Roof flashings and penetrations: Gable fascia to be compleyed (<i>sic</i>) at front entry</p> |
| 15/07/2015 | Residential final (IF1) | Pass | <p><u>Roof cladding</u> Cladding (Pass) 'corrugated iron, other' 'slate' Flashings and penetrations (Pass) Spouting clearance (Pass) Downpipe size and fixings (Pass) Spreaders (Pass)</p> |