Determination 2023/021

The refusal to issue a code compliance certificate for a 21-year-old dwelling

23 Chatsfield Place, Kamo, Whangarei

Summary

This determination considers the authority's decision to refuse to issue a code compliance certificate for a building consent for a dwelling with monolithic cladding. The authority raised concerns including in regards to Building Code clauses E2 *External Moisture* and B2 *Durability.*

Figure 1: Photograph of the dwelling

The legislation discussed in this determination is contained in Appendix A. In this determination, unless otherwise stated, references to "sections" are to sections of the Building Act 2004 ("the Act") and the Building Act 1991 ("the former Act"), and references to "clauses" are to clauses in Schedule 1 ("the Building Code") of the Building Regulations 1992.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (e.g., acceptable solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

1.1. This is a determination made under due authorisation by me, Andrew Eames, Principal Advisor, Building Resolution, Ministry of Business, Innovation and Employment ("the Ministry"), for and on behalf of the Chief Executive of the Ministry.[1]

1.2. The parties to the determination are:

1.2.1. the owner of the house, Niblock Poppe Trust ("the owner")

1.2.2. Whangarei District Council ("the authority"), carrying out its duties as a territorial authority or building consent authority.

1.3. This determination arises from the authority's decision to refuse to issue a code compliance certificate for a 22-year-old dwelling. The refusal arose because the authority is not satisfied that the building work carried out under building consent BC0147761 complies with certain clauses of the Building Code, particularly the weathertightness of the external cladding.

1.4. The matter to be determined, under sections 177(1)(b) and 177(2)(d) of the Act, is the authority's decision to refuse to issue a code compliance certificate for building consent BC0147761.

2. Matters outside this determination

2. The authority carried out its final inspection of the dwelling on 29 November 2018. The inspection highlighted several issues regarding compliance with the building code. This determination is limited to only consider the compliance of those issues identified by the authority with respect to these items as listed in paragraphs 4.6 and 6.21.

2.1. I continue to hold the view expressed in previous determinations that an owner can apply to the authority for a modification of the durability provisions to allow the durability periods specified in clause B2.3.1 of the Building Code to commence from

[1] The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

the date of substantial completion of the works in May 2001. While I have taken the age of the building work into account in this determination, I leave the administrative matter of amending the consent with the parties to resolve.

3. The building work

3.1. The dwelling is a single storey, timber framed building on a concrete slab foundation. The dwelling is clad in-part with direct fixed fibre cement cladding, with a sprayed plaster and paint system and then a brick veneer cladding on certain feature walls, including brick veneer installed to the lower part of walls below windowsill level. The brick veneer incorporates a cavity.

3.2. The dwelling sits on a generally flat site, with a slightly sloped driveway and concrete tiled patio areas.

3.3. The joinery is aluminium. The windows in the fibre cement cladding have head flashings sealed with a paint plaster system to the reveals. The windows in the brick walls have a strip of fibre cement installed at the window heads.

3.4. The roof is a hip and gable roof with eaves projecting to all elevations. The roof is clad in metal profile tiles. The fascia and external gutters are metal and the soffits are fibre cement.

3.5. The authority has noted that the timber framing was untreated kiln-dried timber. The use of untreated kiln-dried timber became common in the latter half of the 1990s. Given this background and the other evidence, I therefore consider that the framing of this house is unlikely to be treated to a level that will provide significant resistance to fungal decay.

4. Background

4.1. The owner signed with a construction firm sometime in July 2000 for the construction of the dwelling. Building consent BC0147761 was issued on 16 January 2001 by a building certifier[2] and the dwelling was subsequently constructed.

4.2. The building work had been undertaken under the supervision of the building certifier, which was duly registered as a building certifier under the Building Act 1991, but has ceased operating as a certifier before it had issued a code compliance certificate for the dwelling.

4.3. On 31 May 2001, the building certifier carried out a final inspection for the dwelling. The inspection was titled “Interim final” and notes that “all work completed on dwelling and complies with [Building Code]”. The inspection notes also record that the swimming pool and fencing were not yet installed. For the purpose of this

[2] Building Certifiers were authorised under the Building Act 1991 to process certain approvals. They do not exist under the current Act.

determination, I take the date of 31 May 2001 as the date that the construction of the dwelling was effectively complete.

4.4. Correspondence from the owner's lawyer to the authority (dated 20 December 2018) suggests the code compliance certificate was not applied for because the swimming pool (that was part of the building consent) had not been installed.

4.5. The owner listed the property for sale in October 2018, and the absence of a code compliance certificate for the dwelling was identified. The authority advised the owner that a final inspection was required before they could issue a code compliance certificate.

4.6. The authority carried out a final inspection on 29 November 2018. In the inspection record, the authority identified the following items relating to the external envelope:

1. Monolithic cladding noted on plans as [an EIFS wall cladding system[3]] – noted on site as [a fibre cement cladding system] direct fixed and over [untreated timber framing]
2. Numerous hair cracks in above cladding causes concern re weathertightness plus some details around windows where glued on façade in particular [around] window head, ends of flashing.
3. Various areas of [fibre cement]/brick junctions showing untreated [fibre cement] backing sheet exposed to moisture penetration. Requires remedial work.
4. Timber post enclosed by [EIFS] with [EIFS] in ground contact. [Requires] at least 50mm separation from patio.
5. Flashing requires to meter box.
6. All holes in base of meter box to be sealed.

4.7. In the inspection record, the authority also identified other issues[4] which have already been resolved and do not form part of this determination.

4.8. The authority also identified the following documentation that it required:

4.8.1. A report from a registered building surveyor about the weathertightness of the dwelling that includes the results of invasive testing.

4.8.2. A producer statement from the fibre cement cladding installer and a maintenance schedule.

4.8.3. A producer statement for the wet area sealing.

4.8.4. A copy of the gas safety certificate.

4.8.5. A copy of the certificate of compliance for the electrical works.

[3] Exterior Insulation and Finishing System

[4] The overflow relief gully was not connected and needed to be 25mm above the patio and 150mm below the lowest outlet, and the bathroom fan does not adequately vent.

4.9. The inspection record also notes that “pool deleted from consent” and that it was “marked on the site plan as deleted”.

4.10. The owner submits that the dwelling complied with the Building Code at the time of the building certifier’s final inspection on 31 May 2001. On 20 December 2018, the owner’s lawyer wrote to the authority stating that the "best way” to establish compliance with the standards of 2001 would be the inspection undertaken in 2001, which confirmed the dwelling was then compliant. The owner’s lawyer stated that their clients “should be able to rely on that 2001 inspection, which clearly states that it was final in so far as it related to the dwelling… Our clients should also be entitled to have a CCC issued on the strength of the 2001 inspection, as they would have been entitled to a CCC in 2001”.

4.11. On 21 January 2019, the authority wrote to the owner stating that areas of non-compliance with the Building Code, including weathertightness issues, had been identified.

4.12. On 24 January 2019, the owner’s lawyer, in reliance of section 436 of the Act, wrote to the authority reiterating that a code compliance certificate should be issued based on the inspection and sign-off of the building by the building certifier.

4.13. On 7 March 2019, the authority’s lawyer wrote to the owner’s lawyer confirming the authority’s decision to refuse to issue a code compliance certificate.

4.14. On 19 August 2019, the owner obtained a building inspection report from a building surveyor who is a licensed building practitioner. With respect to the external cladding, the building inspection report noted (in summary):

4.14.1. The property is of “above average condition for the period construction”, and has maintenance including exterior painting recently carried out.

4.14.2. The sealing of the joinery and cladding with the plaster paint system “is correct” with no visible gaps or cracking to the textured paint system.

4.14.3. Results of invasive moisture testing at window heads and sills, and bottom plate areas indicated are “within the expected range”, with the exception of the front lounge curved window.

4.14.4. “High moisture readings were recorded for the sill level of the front lounge curved window”, and further investigation and invasive testing is required.

4.14.5. Finished ground levels and clearance to the claddings are adequate.

4.15. The Ministry received an application for a determination on 2 May 2021.

5. Submissions

The owner

5.1. The owner is of the view that:

5.1.1. The authority should issue a code compliance certificate for the dwelling, as it was compliant with the building code when it was built in 2001 and was signed off by the building certifier.

5.1.2. The results of the authority's final inspection carried out on 29 November 2018 were incorrect, as the building was assessed using the current Building Code rather than the requirements at the time of construction in 2001 (refer to paragraph 4.6).

5.1.3. Compliance requirements have changed in the 18-year period since the dwelling was constructed and the timeframe was outside the 15-year durability period.

5.1.4. Some of the items raised by the authority in the 29 November 2018 inspection were "impossible to resolve 18 years after the dwelling was completed".

5.1.5. The issues regarding the cladding raised by the authority were incorrect as there had never been any issues with watertightness of the cladding.

The authority

5.2. The authority acknowledged the application for a code compliance certificate and provided copies of correspondence to the owner regarding its position that it was unable to issue a code compliance certificate for the dwelling for reasons stated in paragraphs 4.6 to 4.8 above.

Submissions in response to the draft determination

5.3. A draft of this determination was issued to the parties for comment on 29 May 2023.

5.4. The authority accepted the draft determination on 13 June 2023.

5.5. The owner did not accept the draft and provided additional written submissions on 12 June 2023. The owner's response reiterated some of the points previously raised but also noted the following comments (in summary):

5.5.1. The owner acknowledged that the items raised by the authority had been addressed except for 2 items, namely:

(1) the windowsill area of the front curve window and

(2) the post in ground contact on the rear patio.

5.5.2. Regarding the risk of water ingress into the front curved window, the owner was unable to decide if they are fully confident that the point of water ingress has been repaired, and therefore agree with the draft Determination on this issue.

5.5.3. Regarding the post at the rear of the property (see Figure 2), the owner submit that the cladding is a PVC pipe fitted around the post and is "sealed top and bottom" with the bottom of the post estimated to be about "30cm below the patio". The concrete was laid post-construction, and the two mouldings are "polystyrene foam that was glued around the pipe prior to it being painted".

5.5.4. The owner submit that the post is "currently enclosed in a plastic sleeve the bottom of which is buried in approximately 30cm in concrete" and therefore, "adequately protects it from moisture ingress".

5.5.5. The owner also submit that the additional information they have provided is to be considered when assessing weathertightness of the rear post column.

Figure 2: The post in the rear patio

6. Discussion

6.1. The building consent for the construction of the dwelling was issued under the former Act, and accordingly, the transitional provisions of the Act apply when considering the issue of a code compliance certificate. Section 436(3)(b)(i) of the transitional provisions of the Act requires the authority to issue a code compliance certificate only if it is satisfied that the "building work concerned complies with the Building Code that applied at the time the building consent was granted."

6.2. In assessing if the building work concerned complies with the Building Code that applied at the time the building consent was granted, I have taken into account the

age of the building elements in the dwelling. An application for an amendment to the building consent can be made by the owner to the authority for a modification of durability requirements under section 67 of the Act to allow the durability periods for the dwelling to commence from the date of the final inspection by the building certifier of 31 May 2001 (see paragraph 4.3).

6.3. The matter in dispute is regarding the authority's refusal to issue a code compliance certificate. In deciding this matter, I have considered whether the items identified by the authority in its final inspection dated 29 November 2018 (refer to paragraphs 4.6 to 4.8) and subsequent correspondence comply with the relevant performance clauses of the Building Code that applied at the time the building consent was granted, specifically to clauses E2 External Moisture and B2 Durability.

Weathertightness performance

6.4. The functional requirement for clause E2 External Moisture (at the time of the original building consent) stated:

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

6.5. In respect of the building's external envelope, the performance requirements (at the time the building consent was granted) were set out in clauses E2.3.2 and E2.3.3 as follows:

> E2.3.2 Roofs and exterior walls shall prevent the penetration of water that could cause undue dampness, or damage to building elements.
>
> E2.3.3 Walls, floors and structural elements in contact with the ground shall not absorb or transmit moisture in quantities that could cause undue dampness, or damage to building elements.

6.6. The terms "undue dampness" and "damage" are not defined in the Building Act or Building Code. Previous Determination 2014/062[5] considered the term "undue dampness" 'to be a level of moisture that has, or will, result in detrimental effects on building elements, or the building occupants, or both". It also found that "damage" such as decay in framing, did not need to have occurred in order to satisfy the test of "undue dampness".

6.7. Similarly, the terms "undue dampness" and "damage" as it relates to clause E2, were also considered by the High Court in *Minister of Education v H Construction North Island Limited (formerly Hawkins Construction North Island Limited)* (2018)[6] as follows:

[5] Determination 2014/062 Regarding the refusal to issue a code compliance certificate and the issue of a notice to fix for an 11-year-old house with mixed claddings at 20 Ian Sage Avenue, Torbay, Auckland, 17 December 2012.

[6] CIV-2013-404-001504 [2018] NZHC 871, paragraphs 61 to 63, and 113 to 121.

> [62] "…Defect" is not defined by either the Building Act or Building Code… Defective buildings, however, often suffer many defects, some inter-related. Sometimes identification of a single operative cause is impossible…"
>
> [116] "… cl E2.3.2 provides roofs and exterior walls must prevent the penetration of water that "could" cause damage to building elements. Anticipation and prohibition of potential damage makes clear actual damage is not required for a breach of the Code…"
>
> [118] It follows the Code does not contemplate "reasonable" damage in consequence of water ingress. Rather, it seeks to prevent damage.
>
> [120] The Building Code is clearly concerned with undue dampness and potential undue dampness. That much is evident from its language. Consequently, not every instance of water ingress will breach the Code. Some water may be able to harmlessly escape. Or evaporate. However, the Code does not envisage dampness arising from leakage. Rather, and as with damage, it seeks to prevent just that.
>
> [121] Clause E2.2 provides buildings must be constructed to provide "adequate resistance to penetration by, and the accumulation of, moisture from the outside". Adequate is defined in cl A2 as "adequate to achieve the objectives of the Building Code". The relevant objective of the Building Code is to "safeguard people from illness or injury that could result from external moisture entering the building"[7].

6.8. The functional requirement for clause B2 Durability (at the time the building consent was granted was:

> B2.2 Building materials, components and construction methods shall be sufficiently durable to ensure that the building, without reconstruction or major renovation, satisfies the other functional requirements of this code throughout the life of the building.

6.9. Clause B2.3.1 sets out the periods for which building elements must, with only normal maintenance, continue to satisfy the performance requirements of the Building Code (see Appendix A). The durability requirements of clause B2 for the external envelope (including wall claddings) is generally a minimum of 15 years[8], and for timber framing to provide structural stability for the life of the building being not less than 50 years[9].

6.10. The external envelope of the dwelling was completed in 2001 and the materials and components are therefore now about 22 years old.

[7] Building Code clause E2.1
[8] Building Code clause B2.3(c)
[9] Building Code clause B2.3(a)

6.11. Taking account of these Building Code requirements, I have considered the areas of building work that relate to weathertightness performances as indicated by the authority in paragraph 4.6.

6.12. I have not received evidence from the owner or their building surveyor directly addressing points 3, 4 and 5 of the council's final inspection outlined in paragraph 4.6. However, some assumptions can be drawn from the building surveyor's report. The junctions and flashing items appear to have been sealed and addressed. Moisture content readings were taken by the surveyor throughout the dwelling internally at well-known areas for moisture ingress to occur, so I cannot identify any undue moisture or damage related to failures at the meter box flashing or junctions other than the windowsill area. The authority did not contest this in their response to the draft determination.

6.13. With respect to the items relating to the external envelope identified by the authority in its final inspection dated 29 November 2018 (refer to paragraph 4.6), the building surveyor found the sealing of the joinery and cladding with the plaster paint system is correct with no visible gaps or cracking to the textured paint system.

6.14. So, this leaves the curved windowsill area (see Figure 3) and the post in ground-contact to be addressed.

Figure 3: Curved lounge window

6.15. The building surveyor engaged by the owner found evidence of moisture in the sill area of the front lounge curved window. This is suggestive of the penetration of moisture through the external envelope.

6.16. Although the seal to the front lounge curved window has been repaired, I consider there is insufficient information to establish whether the performance of the external envelope complied with clause E2.3.2 due to the presence of elevated moisture levels in the timber in the area inside that part of the wall.

6.17. I note that when the owner advised that the seal to the front lounge curved window was repaired, the extent of any damage to the underlying framing was not fully investigated as recommended by the building surveyor.

6.18. On the evidence presented to me the failure of the seal to the front lounge curved window (prior to it being repaired), in my opinion led to water entering the building causing undue dampness. This may have caused damage to other building elements such as the timber framing.

6.19. Clause B2 Durability requires the cladding to remain sufficiently durable for a minimum period of 15 years. However, the performance of the underlying framing, as a structural element has a minimum specified intended life of 50 years in accordance with clause B2.3 (a). The information provided suggests moisture ingress has occurred and without clear information on any treatment of the framing I do not consider the framing timber will perform for the 50-year period.

6.20. Based on the information above, I do not consider that the framing in this area complies with clause B2.3(a).

6.21. Although the roof and wall claddings are now 21 years old, the evidence of moisture penetration at the front curved lounge window shows that the external building envelope did not comply with Clause E2.3. 2.

6.22. Neither the owner nor building surveyor have provided specific information on the weathertightness of the post where there is direct contact between the post cladding with the patio area. This could have been a source of moisture ingress which could impact the post. Without further evidence on the bottom of the post or any moisture reading information on the post itself, there is insufficient evidence of compliance with clauses E2.3.3 and B2.3.1.

6.23. The building surveyor also noted the issue of the bathroom extractor fan venting to the soffit has been resolved to the satisfaction of the authority. I consider this arrangement to be satisfactory and does not form part of this determination.

Provision of producer statements

6.24. The authority has required producer statements (construction) for the wet area sealing and fibre cement cladding.

6.25. I do not find any basis in the Act for an authority to require a producer statement for establishing Building Code compliance, and for issuing a code compliance certificate. While producer statements were defined in the former Act as a means of helping to provide evidence of compliance, they are not the only means of establishing compliance. Therefore, the mere fact of not providing producer statements is not a reason to refuse to issue the code compliance certificate.

6.26. I also note the authority have not identified any concerns with the Building Code compliance of the wet area sealing so the requirement for a producer statement for this work is also not a reason to refuse a code compliance certificate.

6.27. The reasons given for refusal of a code compliance certificate for building consents issued under the previous Act should identify specific items where the authority believes the building work does not comply with the building code.

Provision of energy works certificates

6.28. The authority has also stated that electrical and gas certificates must be provided before a code compliance certificate can be issued.

6.29. The building consent was issued under the former Act, and accordingly the transitional provisions of the current Act apply when considering the issue of a code compliance certificate for work completed under this consent.

6.30. The former Act provision that considers energy work is section 32A (see Appendix A), energy work is defined in section 2 of the former Act[10] as:

> (a) gasfitting; or
> (b) prescribed electrical work

6.31. Section 32A of the former Act considers when a building consent was required for energy work. Subsections 32A(2) and (3) state a building consent is not required for energy work unless:

6.31.1. The energy work relates to a specified system contained in a building and which is covered by a compliance schedule, or

6.31.2. The energy work would require a waiver or modification of the Building Code.

6.32. Section 436(2) of the transitional provisions of the Act states an application for a code compliance certificate in respect of building work to which this section applies must be considered and determined as if this Act had not been passed. The effects of section 436 require an authority to consider section 32A of the former Act when deciding to issue a code compliance certificate.

6.33. Section 43 of the former Act (see Appendix A) considers energy work in relation to a code compliance certificate as follows:

> (2A) In any case where the building work comprises or includes energy work in respect of which a building consent has been issued, the owner shall include with that advice any energy work certificate that relates to the energy work.

[10] The energy work provisions of the former Act as essentially the same as the current Act; the definition of energy work is identical to that in the current Act.

> (3A) Failure to provide to a territorial authority an energy work certificate in respect of any energy work in respect of which a building consent has been issued shall be sufficient grounds for the territorial authority to refuse to issue a code compliance certificate in respect of that energy work.

6.34. In the owner's case, the energy work does not relate to a specified system in the building which is covered by a compliance schedule, nor was energy work subject to a waiver or modification of the Building Code.

6.35. Where an energy work certificate is required under subsections 32A(2) or (3) of the former Act, or where an owner has elected to obtain a building consent for energy work under subsection 32A(4) of the former Act, subsection 43(2A) of the former Act requires the owner to provide the authority with an energy work certificate.

6.36. I am of the view that under subsection 32A(4) of the former Act, an owner must expressly seek a building consent for energy work that otherwise does not require a building consent. Based on the information provided to me, I am of the view that the owner did not expressly seek to have the energy work included in the building consent. The owner could assist further by confirming this to the Authority.

Next steps

6.37. The authority may deal with this matter by issuing a written notification under section 95A of the Act which addresses the findings of this determination. However, this remains an issue for the owner and the authority to discuss, agree to, and address all outstanding issues before a code compliance certificate may be issued.

7. Decision

7.1. In accordance with section 188 of the Building Act 2004, I determine that the building work does not comply with the Building Code that was in force at the time building consent BC0147761 was granted on 16 January 2001. I confirm the authority's decision to refuse to issue the code compliance certificate.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 18 September 2023.

Andrew Eames

Principal Advisor, Building Resolution

Appendix A: The legislation

A.1 Relevant provisions of the Building Act 2004

A1.1 The relevant sections of the Act discussed in this determination include:

436 Transitional provision for code compliance certificates in respect of building work carried out under building consent granted under former Act

(1) This section applies to building work carried out under a building consent granted under section 34 of the former Act.

(2) An application for code compliance certificate in respect of building work to which this section applies must be considered and determined as if this Act had not been passed.

(3) For the purposes of subsection (2), section 43 of the former Act–

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

(b) must be read as if—

(i) a code compliance certificate may be issued only if the territorial authority is satisfied that the building work concerned complies with the building code that applied at the time the building consent was granted; and

(ii) section 43(4) were omitted.

A.2 Relevant provisions of the Building Act 1991

A2.2 The relevant sections of the Act discussed in this determination include:

32A Exemption for energy work

(1) Subject to subsections (2) to (4) of this section, energy work does not require a building consent.

(2) Subsection (1) of this section does not apply in respect of any energy work that relates to any system or feature—

(a) That is contained in, or proposed to be contained in, any building (whether existing or proposed); and

(b) That—

(i) In the case of any such existing system or existing feature, is covered by a compliance schedule, or would be so covered if a compliance schedule were issued in respect of the building:

(ii) In the case of any proposed system or proposed feature, will be required to be covered by a compliance schedule.

(3) Subsection (1) of this section does not apply in respect of any energy work in any case where, if that work required a building consent, such a consent could not be granted unless it were granted subject to a waiver or modification of the building code or any document for use in establishing compliance with the building code.

(4) Where any owner wishes to obtain a building consent in respect of any energy work that does not require a building consent, the owner may apply for a building consent in respect of that work (whether or not the application also relates to any other building work), and in any such case this Act shall apply in all respects as if the energy work to which the application relates required a building consent.

43 Code Compliance Certificate

(1) An owner shall as soon as practicable advise the territorial authority, in the prescribed form, that the building work has been completed to the extent required by the building consent issued in respect of that building work.

(2) Where applicable, the owner shall include with that advice either—

(a) Any building certificates issued by building certifiers under section 56 of this Act to the effect that any items of the building work comply with specified provisions of the building code; or

(b) A code compliance certificate issued by a building certifier under this section and section 56(3) of this Act to the effect that all of the building work complies with each of the relevant provisions of the building code.

(2A) In any case where the building work comprises or includes energy work in respect of which a building consent has been issued, the owner shall include with that advice any energy work certificate that relates to that energy work.

(3) Except where a code compliance certificate has already been provided pursuant to subsection (2) of this section, the territorial authority shall issue to the applicant in the prescribed form, on payment of any charge fixed by the territorial authority, a code compliance certificate, if it is satisfied on reasonable grounds that—

(a) The building work to which the certificate relates complies with the building code; or

(b) The building work to which the certificate relates complies with the building code to the extent authorised in terms of any previously approved waiver or modification of the building code contained in the building consent which relates to that work.

(3A) Failure to provide to a territorial authority an energy work certificate in respect of any energy work in respect of which a building consent has been issued shall be sufficient grounds for the territorial authority to refuse to issue a code compliance certificate in respect of that energy work.

(4) The provisions of this section shall be deemed to enable interim code compliance certificates to be issued, subject to specified conditions, in respect of any part of any building work for which a building consent had previously been issued, whether or not it was previously intended that different parts of that building work were to have been completed in stages, but those interim certificates shall be replaced by the issue of a single code compliance certificate for the whole of the building work at the time the work is completed, to the extent required by the building consent.

(5) Where a building certifier or a territorial authority refuses to issue a code compliance certificate, the applicant shall be notified in writing specifying the reasons.

(6) Where a territorial authority considers on reasonable grounds that it is unable to issue a code compliance certificate in respect of particular building work because the building work does not comply with the building code, or with any waiver or modification of the code, as previously authorised in terms of the building consent to which that work relates, the territorial authority shall issue a notice to rectify in accordance with section 42 of this Act.

(7) Where a territorial authority is notified by a building certifier pursuant to section 56(4) of this Act that the certifier considers that particular building work does not comply with the building code, the territorial authority shall issue a notice to rectify in accordance with section 42 of this Act.

(8) Subject to subsection (3) of this section, a territorial authority may, at its discretion, accept a producer statement establishing compliance with all or any of the provisions of the building code.

A3 Building Regulations 1992 – The Building Code

Clause B2 - Durability

Objective

B2.1 The objective of this provision is to ensure that a *building* will throughout its life continue to satisfy the other objectives of this code.

Functional requirement

B2.2 *Building* materials, components and *construction* methods shall be sufficiently durable to ensure that the *building*, without reconstruction or major renovation, satisfies the other functional requirements of this code throughout the life of the *building*.

Performance

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

(ii) those *building elements* are difficult to access or replace, or

(iii) failure of those *building elements* to comply with the *building code* would go undetected during both normal use and maintenance of the *building*.

(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

(ii) failure of those *building elements* to comply with the *building code* would go undetected during normal use of the *building*, but would be easily detected during normal maintenance.

(c) 5 years if:

(i) the *building elements* (including services, linings, renewable protective coatings, and *fixtures*) are easy to access and replace, and

(ii) failure of those *building elements* to comply with the *building code* would be easily detected during normal use of the *building*.

Limits on application: Performance B2.3.1 applies from the time of issue of the applicable *code compliance certificate*. *Building elements* are not required to satisfy a durability performance which exceeds the *specified intended life* of the *building.*

Clause E2 – External Moisture

Objective

E2.1 The objective of this provision is to safeguard people from illness or injury that could result from external moisture entering the *building.*

Functional requirement

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

Limit on application: Requirement E2.2 does not apply to *buildings* (for example, certain bus shelters, and certain *buildings* used for horticulture or for equipment for washing motor vehicles automatically) if moisture from the outside penetrating them, or

accumulating within them, or both, is unlikely to impair significantly all or any of their *amenity*, durability, and stability.

Performance

E2.3.1 Roofs must shed precipitated moisture. In locations subject to snowfalls, roofs must also shed melted snow.

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

E2.3.3 Walls, floors, and structural elements in contact with, or in close proximity to, the ground must not absorb or transmit moisture in quantities that could cause undue dampness, damage to *building elements*, or both.

E2.3.4 *Building elements* susceptible to damage must be protected from the adverse effects of moisture entering the space below suspended floors.

E2.3.5 *Concealed spaces* and cavities in *buildings* must be constructed in a way that prevents external moisture being accumulated or transferred and causing condensation, fungal growth, or the degradation of *building elements*.

E2.3.6 Excess moisture present at the completion of *construction* must be capable of being dissipated without permanent damage to *building elements.*

E2.3.7 *Building elements* must be constructed in a way that makes due allowance for the following:

(a) the consequences of failure:

(b) the effects of uncertainties resulting from *construction* or from the sequence in which different aspects of *construction* occur:

(c) variation in the properties of materials and in the characteristics of the site.