Applying for a Code Compliance Certificate for a Historic Building Consent

Purpose

The purpose of this guide is to provide the building owner with a clear process and pathway when applying for a Code Compliance Certificate (CCC) for a historic building consent.

This guide does not cover building work or buildings that were constructed as part of a building permit (ie, a building permit that was issued prior to the implementation of the Building Act 1991). Building permits were issued by Hutt City Council (Council) under the Bylaw regime when there was no requirement to carry out a Final inspection or issue a CCC.

Background

A CCC is a formal statement issued by Council certifying that:

- For building consents issued under the Building Act 1991 - the building work complies with the Building Code that applied at the time the building consent was granted.
- For building consents issued under the Building Act 2004 - the building work complies with the issued building consent.

In any case, before Council can issue the CCC, we must be "satisfied on reasonable grounds" that the building work complies with the Building Code and/or the issued building consent. If Council cannot be satisfied, we will refuse to issue the CCC and set out the reasons as required under section 95 of the Building Act 2004. In some instances, if there is significant non-compliance, Council is also required to issue a Notice to Fix.

Regardless of the reasons why the owner could not obtain the CCC earlier, the critical consideration in the current circumstance is that the work must comply with the requirements of the issued building consent (Building Acts 1991 and 2004) at the time when the CCC will be issued; not at the time when Council last inspected the building.

When assessing older building consents for a CCC, the Building Code requirements of clause B2 Durability and clause E2 External Moisture are particularly relevant and critical to the decision to issue or refuse to issue a CCC.

Clause B2 Durability

Clause B2.3.1 of the Building Code requires that the building element (as installed) complies not only on the day of issuing the CCC but will also continue to comply for at least another 5, 15, or 50 years. In most cases, the expected durability of the building element starts from the day it was installed. If the work is already more than five years old, Council needs to assess and be satisfied that the building element will comply with clause B2.3.1. The building element may have already exceeded or partially exceeded its expected durability and the manufacturer's warranty for the product.

This issue has been considered in many Determinations (refer to section 177, Building Act 2004) by the Ministry of Business Innovation & Employment (MBIE). The accepted procedure is for the owner to seek an amendment of the building consent to modify the durability requirement of clause B2.3.1. The durability periods commence when the work was substantially completed (not at the time of issuing the CCC).

An owner who wishes to apply for a CCC for an old building consent is required to apply for a change to the building consent with:

- A request to modify the Building Code clause B2.3.1, and
- Agreement of the date when the durability period commences.

Clause E2 External Moisture

Clause E2 External Moisture requires the building and its overall weathertightness performance to comply with the Building Code. Where the work has been completed for some time, Council will have to carry out a full review and re-inspection to enable Council to be satisfied, on reasonable grounds, that the work still complies at the time of re-inspection.

On application and payment of the required fees, a Council Building Control Officer will review the file of the issued building consent and relevant documentation. The following factors will be considered:

- The age of the building/building work.
- The complexity of the design.
- The type of cladding material used and method of installation (cavity or no cavity).
- The E2 External Moisture risk matrix score assessment.

The E2 External Moisture risk matrix score assessment will consider the following factors:

- Number of storeys
- Wind zone
- Roof/wall junction (number of junctions, interfaces, and level of complexity)
- Eave width
- Decks and balconies
- Cladding type/material; junctions, complexity, junction of multiple claddings.

The Process

Initial Request from Owner

Where a B2 durability modification is required, the owner must apply for a CCC using Form 6 – Application for Code Compliance Certificate and accompanied by BCON-FORM-E-001 – Supplementary Information for B2 Durability Modification.

BCON-FORM-E-001 - Supplementary Information for B2 Durability Modification is submitted in addition to the Form 6 – Application for Code Compliance Certificate. It provides specific information required by the Council to identify, assess and support the request for a B2 durability modification.

Fees

There is an application fee when lodging a B2 Durability Modification application.

Additional Council time will be charged to the applicant at the current residential or commercial hourly rate.

There is also an application fee when lodging an application for a CCC.

For details of Council's fees and charges regarding these applications, please see here.

Processing the CCC and B2 Durability Modification

The statutory clock will start on the day after receipt of a completed CCC application.

The statutory clock will be suspended if the building inspector requests further information, a weathertightness report or any other investigation.

CCC Final Inspection

A Building Inspector will undertake a CCC Final inspection to assess whether the building work complies with the requirements of the issued building consent (Building Act 1991 and Building Act 2004) using Council's Final inspection checklist.

If the Final inspection passes, you will need to apply for an amendment to the Building Consent, with associated fee. Once granted and all fees paid, the CCC can be issued.

If the Final inspection fails, you will need to remediate the identified issues for the CCC process to progress.

If the issues resulting in the failure of the Final inspection are minor in nature and do not relate to issues to do with B2 Durability and E2 External Moisture of the Building Code, you can discuss the best way forward with the building inspector.

If the issues resulting in the failure of the Final inspection are significant and Council is not satisfied on reasonable grounds, then a decision will be made to refuse to issue a CCC. The reasons for not issuing the CCC will then be given in writing to the owner.

If the building work has previously completed a successful CCC Final inspection, the building inspector must still conduct an inspection to determine if there ongoing compliance with the Building Code, despite the passage of time.

To progress toward a successful CCC application the owner may be required to undertake an extensive investigation including weathertightness. These investigations are normally carried out independently by a Registered Building Surveyor (specialising in weathertightness).

Please note that all inspections and associated research investigations and reviews performed by the council inspector will be recorded and invoiced to the building owner.

Weathertightness Investigation/Report

Council may request and accept a report from a suitably qualified person (ie, Registered Building Surveyor, Registered Architect, and Chartered Professional Engineer) with specialist area or practice area in weathertightness.

The person chosen to undertake the building survey should investigate the performance of the building thoroughly through the adoption of appropriate methodologies chosen to identify accurately all damage sustained, with

particular emphasis on damage to structural building elements such as framing. The methodologies selected must yield results capable of being relied upon by Council in the performance of its statutory functions, which means the spectrum of assessment methods used should avoid ambiguity of outcome.

Information and sufficient evidence will be required to demonstrate the suitability and competence of the author of the weathertightness investigation report. The information should include, but is not limited to, the following:

- Demonstrated competence in the type and scale of the project subject to the investigation.
- Formal qualifications
- Relevant work experience
- Membership of appropriate professional organisation.
- Appropriate level of professional indemnity insurance based on the value of the work.
- Declaration of any potential conflict of interest.

Acceptance of the report will also be subject to the following, in particular but not limited to:

- The report must be a full assessment of all of the building envelope that was completed as part of the building work concerned (ie, wall cladding, roof cladding, external joineries, penetrations, junctions/interfaces, flashings, etc).
- The report and investigation must be thorough and extensive to the extent that is deemed appropriate by the author to provide a conclusive statement on the level of compliance and performance of the building work. (The report is expected to be the same type and quality of report required to be provided to MBIE for determination purposes).
- Evidence of invasive testing (or any other necessary testing) and analysis carried out by the author of the report to confirm weathertightness performance of the building work.
- Conclusion as to whether or not the building work complies with the Building Code clauses B1 Structure, B2 Durability and E2 External Moisture.
- Supporting documents, photographs, testing results and analysis carried out as part of the investigation.
- Detail of any failures or concerns regarding weathertightness performance.
- Detail of any remedial works or recommendations on how to fix any of the weathertightness non- compliances or failures.
- Detail of any proposal by the author how the work can be remediated with a plan for monitoring and supervision of the remedial work.

- Indication as to whether or not a new building consent will be required for the proposed remedial works.
- Any other recommendation/comment by the author.
- Declaration of any potential conflict of interest.

Once this report has been completed you will need to book a site meeting so that a building inspector can validate the report findings and discuss and approve, in principle, any actions to address the proposed works or remedial measures.

Do not commence any remedial work until approved by Council, as this work may require an application for a new building consent.

Unable to issue CCC

In some cases, after reviewing the file and carrying out the inspection, the outcome is that Council is unable to confirm or certify compliance and will refuse to issue the CCC. Council will provide the owner with the reason/s for the refusal (section 95(a) Building Act 2004).

The following options are available to the owner:

- Take no further action. If so, Council may not take other action either but will reserve the right to inspect if it becomes aware that the building/building work is potentially dangerous or unsanitary.
- Discuss with Council providing additional evidence or supporting documentation to verify how the building work complies. If remedial works are required or necessary, a new building consent application may be required for the remedial work.
- Apply for a Determination from MBIE.

For commercial or non-residential buildings where the building is open for public use (whether for free or payment of charge), it is an offence under sections 362-363 of the Building Act 2024 to allow public use of the building without a CCC. A Certificate of Public Use (CPU) that allows a building to be used before issuing a CCC can be applied for from Council. Owners must be aware that a CPU is not a substitution for a CCC and will last only for a finite period.

If the resolution of issues cannot be agreed, the CPU might not be extended, resulting in the building being closed to the public.

Council has the right to issue a Notice to Fix (NTF) for serious non-compliance with the building consent.

Issue CCC

If Council is satisfied that the building work complies with the Building Code and the building consent, then it can decide to issue the CCC. A CCC may be issued with a Durability Modification which will be recorded on the property file held by Council.

Frequently Asked Questions

Why is there a need to involve independent "suitably qualified" Building Consultants?

Older building consents often involve work that was completed long ago with little evidence as to whether it was completed correctly. If adequate records are not available to verify the quality of construction, then an invasive level of inspection may be required. It could, for example, involve the removal of wall panels or external wall cladding.

Council cannot undertake this level of inspection therefore the homeowner will be required to procure the services of an independent suitably qualified consultant to perform the inspection and document the results. Council does not endorse or recommend any specific Building Consultants. However, the qualifications of any selected consultant will be assessed when they submit their technical assessment report. As an owner you should investigate before acquiring the services of a consultant to ensure they are suitably qualified.

Key considerations should include:

- They must have significant knowledge of the Building Act and Building Code.
- They must be experienced in key areas of building design, construction, or inspection specifically around weathertightness and structure.
- They must also be able to undertake invasive testing.
- They should have a suitable qualification, professional registration or industry association for example:
    - RICS (Royal Institute of Chartered Surveyors)
    - NZIBS (New Zealand Institute of Building Surveyors)
    - CPENG (Chartered Professional Engineer)
    - BOINZ (Building Official Institute of New Zealand).

What is a B2 Durability Modification Application?

It is a formal agreement that is signed by the owner to acknowledge that the durability requirements for specific building elements will be measured from an

agreed date rather than from the date the CCC is issued. Typically, this will be the date when a building inspection was completed that provided clear evidence of the workmanship quality, eg, Pre-line.

Can I withdraw my CCC Application if the process gets too complicated or costly?

The owner can choose not to pursue a CCC at any time. If so, Council will not take further action unless it becomes aware that the building work is potentially dangerous or insanitary as defined in the Building Act 2004. Fees must be paid to Council for work already carried out.

What if I don't agree with a refusal to issue a CCC?

If you do not agree with our decision not to issue a CCC then you can apply for a 'determination' from MBIE. A determination considers information provided by the owner and Council. It will need to cover how the building work complies with the Building Code clauses.

In most cases MBIE will engage its own expert to provide an independent assessment of the work. The result of the determination is binding on all parties and will become part of the record for the property. If you decide to request a determination through MBIE, no remedial work, other than temporary repairs, should be undertaken until after a final determination is made and the appropriate course of action is then followed.

What if my building work was completed under a different version of the Building Act?

For building consents that were issued under the Building Act 1991 (prior to 31 March 2005), the test which must be applied when considering whether to issue a CCC is whether the building work concerned complies with the Building Code that applied at the time the building consent was granted.

This means if the Building Code has been amended since the building consent was granted, it is not mandatory to have upgraded to that new requirement to obtain a CCC. For building consents issued under the Building Act 2004 (after 31 March 2005) the substantial test is that the building work complies with the issued building and consent documentation.

This test therefore means that it also applies to the Building Code at the time the work was consented. The exception to this rule is with smoke detectors which must be installed in accordance with today's standards for the CCC to be approved.