

NO CODE COMPLIANCE CERTIFICATE?

Normally, a Code Compliance Certificate is issued when work is completed, but sometimes this doesn't happen. What can you do years later?

Problems can occur when a Building Consent Authority (BCA) is asked to issue a Code Compliance Certificate after a building has been in use for a significant time.

These applications are often declined because of concerns that the durability periods in Building Code Clause B2 *Durability* will have been partly or fully expended. This can leave a building owner with a fully Code-compliant building but no Code Compliance Certificate.

Durability clock starts with Code Compliance Certificate

Clause B2 states that durability periods start when the Code Compliance Certificate is issued by the Building Consent Authority. The Code requires building elements to be durable, assuming normal maintenance, for periods ranging from not less than 5 to 50 years. The durability periods for individual building elements are determined by their use in the building, ease of detection if the element fails and ease of access for replacement.

Determinations set durability from completion

The Department of Building and Housing has now considered this issue in many determinations since late 2005. It has taken a pragmatic position in the determinations, modifying the requirements of Clause B2.3.1 so the durability periods commence when compliance with Clause B2 would, to all practical purposes, have been achieved if the Code Compliance Certificate has been issued at the time the building work was substantially completed.

This means the building is still expected to comply with all the normal durability periods,

but these periods start earlier than the issue of the Code Compliance Certificate.

The date when compliance with Clause B2 is achieved is agreed between the owner and the BCA. Essentially it is when the building was substantially complete.

This is when, for example, a house is first occupied, or when the final inspection has

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been completed (albeit with minor items still outstanding).

Decisions should be recorded on the property file and any Land Information Memorandum issued for the property.

May change the original building consent

In practical terms, this means a determination may require the BCA to amend the original building consent, modifying Clause B2.3.1 so that the durability periods commence from the agreed date.

Using this approach, the Department considers building work consented under the Building Act 1991 is still 'live' and able to be amended under the transitional provisions of the Building Act 2004.

Many BCAs now modifying durability periods

The first determination with a durability modification was issued in October 2005, and since then, a significant number of similar determinations have been issued. Of the 124 determinations issued in 2008, 38% contained a durability modification.

Many BCAs are now making durability modifications themselves, so the numbers of these determinations has declined.

Apply for amendment to building consent

The Department of Building and Housing now recommends owners apply to the Building Consent Authority for an amendment to the building consent to modify durability provisions.

The modified periods typically range from 6 to 14 years and are not usually considered for buildings less than 5 years old as, at this time, even the shortest period in B2.3.1 has not yet expired.

Remedial work complicates things

Buildings to which modified durability periods are applied may also require some remedial work in order to comply with the remaining Building Code clauses. In such cases, the modified periods apply to all the building elements, except those requiring remedial work.

A durability modification may not be considered appropriate where a building exhibits widespread failure. In these cases, it is often unclear which work is Code-compliant (and the Clause B2 modification would apply) and which requires remedial work. ◀