

## 1. Background

With the advent of the leaky building crisis, the definition of repairs and maintenance has become an area of some conjecture and debate. Concerns have been highlighted that some dwellings/buildings are being reconstructed without the appropriate checks and balances being in place. Potentially reconstruction without correct design and quality processes could lead to further failure occurring and non-compliance with the Building Code. This will mean result in problems for owners and subsequently these buildings could become the focus of more reconstruction and recurring litigation.

A question we are often asked is 'do I need a building consent for repairing or maintaining my dwelling'? The short answer is if the work is normal repairs or maintenance than a building consent is not required.

## 2. Purpose

The purpose of this guidance document is to define the term normal maintenance in terms of Schedule 1.

## 3. What causes this work to be undertaken without building consent?

In many instances what starts out as a repair ends up in work that will require a building consent as more and more defects or the extent of the problems are discovered. To complicate the issue further, the wording within the Schedule 1 of the Building Act 2004 has led to confusion for individuals involved in the reconstruction of these buildings.

The Schedule stated:

*'Any lawful repair and maintenance using comparable materials, or replacement with any comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, including all lawful repair and maintenance of that nature that is carried out in accordance with the Plumbers, Gasfitters, and Drain layers Act 2006'*

This confusion and lack of clarity was drawn to the attention of the Department of Building and Housing / Weathertight Homes Resolution Service; this subsequently led to a review of Schedule 1.

Note: Change number 91 Amendment to Schedule 1, dated 14 March 2008

- I. Schedule 1 is amended by repealing paragraph (a) and substituting the following paragraph, in particular
- II. Repair or replacement (other than maintenance) of any component or assembly that has failed to satisfy the provisions of the building code for durability, for example, through a failure to comply with the external moisture requirements of the building code.

## 4. Legislative requirements

Building Act 2004; Schedule 1 Exempt Building Work

The wording of the First Schedule (prior to the 2008 amendment) would appear to indicate that the replacement of comparable materials or comparable components regardless of scale or dimension could be undertaken without building consent.

The question is:

When are repairs and maintenance more than normal routine maintenance?

However, consider this in simple terms, if the replacement was with comparable materials or comparable components and the initial damage to the building was caused by the previous construction not meeting the Building Code requirements, replacing with comparable materials or components potentially would lead to

the building failing i.e. the building would not comply with the Building Code. Thus, the majority of reconstruction will not be the replacement of like with like.

Instead, the replacement will be with a 'new system or assembly', which is different from what was initially constructed. The definition of normal maintenance as defined in acceptable solution B2/AS1 (Timber durability) is:

- a) Where applicable following the manufacturers maintenance recommendations
- b) Washing down surfaces, particularly exterior building elements subject to wind driven salt spray
- c) Re-coating interior and exterior protective finishes
- d) Replacing sealants and gaskets in joints
- e) Replacing valves, washers and similar high wear components in easily accessed service equipment and other building elements
- f) Cleaning and replacing filters in building services systems
- g) The regular servicing of boilers, cooling towers, lifts, escalators, emergency lighting and fire protection equipment, and
- h) The maintenance of signs for access, escape routes, emergency equipment and hazardous areas.

## 5. Examples of normal maintenance and repairs

- The replacement of a rotten or cracked weatherboard
- The repair of a crack in the cladding
- The repair or replacement of an aluminium window frame because the window frame has been damaged or where seals or mitres are causing leakage
- A timber window frame where decay, delaminating, warping and twisting has occurred
- The replacement of glass or putty due to failure or breakage
- The replacement of roofing material due to movement and age
- The additional capping over cracked cladding on a balcony or replacement of capping due to durability
- The repair of cracks in stucco plaster as described under NZS 4251.1:2007 or BRANZ Good Practice Guide: Stucco
- The repair of damage to cladding
- The replacement of a flashing or part of a flashing due to deterioration caused by movement or durability

## 6. Examples of work, which is not considered normal maintenance and repairs

- The existing low-pressure hot water cylinder has aged and is being replaced with a mains pressure cylinder
- Replacing the cladding because of failure of the flashing system not because the flashing has corroded as this would still be maintenance
- Taking out the windows because these are leaking and replacing these with a new window and flashing system or changing from timber to aluminium or visa versa
- The replacement of a deck membrane which is causing leakage which requires the removal; of the associated claddings
- Removing cladding because it does not comply with clause E2 (External moisture) and replacing it with another cladding system

## 7. Summary

We need to ensure that buildings when reconstructed, comply with the New Zealand Building Code. In the case of buildings that are, being reconstructed because of failure to comply with E2AS1 a building consent will need to be obtained in all instances. Alternatively, where we identify that work has already commenced a certificate of acceptance will be required. The reason we require this work to be undertaken under a building consent or certificate of acceptance is to ensure that these buildings will comply with the Building Code if reconstructed using comparable materials and systems.

Any remedial work in relation to weathertightness other than maintenance will therefore will require a building consent.

- We are aware of a skill shortage in the industry, which will potentially affect the weathertight design and reconstruction of such buildings there is a need to ensure that these buildings are reconstructed correctly
- There have been recent significant changes to the cladding design requirements
- We need to ensure that buildings which have been through the WHRS claims process and settlement of the claim has ensued are reconstructed to comply with the Building Code
- We need to ensure that buildings, which are being reconstructed and are to be subject to a claim, are reconstructed to meet the requirements of the Building Code; and
- We need to ensure that buildings that are being upgraded and the cladding system is being replaced will meet the requirements of the Building Code

## 8. References:

BRANZ Good Practice Guide: Stucco

Building Act 2004 Schedule 1

New Zealand Building Code:

- Clause E2 External Moisture
- Acceptable solution B2/AS1 (Timber durability)

NZS 4251.1:2007 Solid plastering (cement plasters for walls, ceilings and soffits)

Plumbers, Gasfitters, and Drainlayers Act 2006

Building Act 2004 Schedule 1 Amendment dated 14 March 2008 (Change number 91 Amendment to Schedule 1)