

## Determination 2006/62

### Dispute about a Notice to Fix issued in respect of a house at 19 McArthur Avenue, St Heliers, Auckland (to be read in conjunction with determination 2005/107)

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<b>Applicant:</b>	Mr S Kennard (“the applicant”)
<b>Territorial authority:</b>	Auckland City Council (“the territorial authority”)
<b>Site Address:</b>	19 McArthur Avenue, St Heliers, Auckland

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#### 1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004 (“the Act”) made under due authorisation by me, John Gardiner, Determinations Manager, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The application for determination arises because the territorial authority requires the provision of drainage and ventilation of the external wall framing of the house, as part of remedial work to the house.
- 1.2 Certain building matters were described in an earlier determination concerning the same house, Determination 2005/107 (“the first determination”). That determination did not stipulate the inclusion of drainage and ventilation of the external wall framing as part of the remedial work to be done on the house. The applicant has subsequently arranged to carry out the work recommended in that Determination. I must determine whether the proposed work will lead to the house complying with clauses E2 and B2 of the New Zealand building code, without the territorial authority’s added requirement.

#### 2. Sequence of events

- 2.1 On 26 July 2005 the Department issued the first determination, which confirmed the territorial authority’s refusal to issue a code compliance certificate after identifying certain faults in the building. Paragraph 8.2 of the first determination found that rectification of these faults:

... to the approval of the territorial authority, along with any other faults that may become apparent in the course of that work, will consequently result in the house

being weathertight and in compliance with clauses B2 and E2, notwithstanding the lack of a ventilated cavity.

2.2 The territorial authority subsequently issued a notice to fix dated 17 August 2005, which provided a list of defects to be remedied. The notice to fix included the defects identified in the first determination, together with an additional requirement to provide either:

- A method for ensuring that external water can drain away and the timber dry out, or
- Install an early warning device that will alert the building owner that external water has entered into the wall cavity and the timber framing is wet and that it may rot as a result if no maintenance is undertaken.

2.3 It appears that the applicant subsequently engaged a contractor (“the contractor”) to manage the remedial work. The contractor dealt directly with the territorial authority with regard to the detailed requirements, supplying information on the existing Insulclad cladding system.

2.4 In a letter to the contractor dated 2 February 2006, the territorial authority responded to various queries, requested certain information and noted (with regard to the existing Insulclad cladding) that:

To enable Council to accept this system as providing satisfactory drainage and ventilation capacity, documentation and test results from a recognised third party test laboratory will need to be forwarded to Council for further consideration.

2.5 In response, the contractor wrote to the territorial authority on 23 February 2006, enclosing plans and further information. I have not seen that information.

2.6 It not clear whether a building consent for the proposed remedial work has yet been issued, although the drawings have been stamped and initialled by the territorial authority as “Processed 30 March 2006”. (These drawings do not include the provision of a drained cavity or a moisture-monitoring system).

2.7 On 10 May 2005 the applicant applied for this determination. Attached to the applicant’s submission were copies of the consent application drawings and correspondence with the territorial authority. The applicant included a statement titled “Matter of Dispute”, which noted that:

The work required to address all items identified in the NTF (apart from absence of a ventilated drainage capacity) has been agreed.

Therefore the matter in dispute is whether or not the cladding will comply with the building code once all items, other than the ventilation drainage capacity, are addressed.

### **3. Discussion**

- 3.1 I note that the applicant has stated that he has reached agreement with the territorial authority on all items in the notice to fix, with the exception of a requirement to either provide a drained cavity or a moisture monitoring system.
- 3.2 The first determination found that rectification of the faults identified in that determination will result in the building being in compliance with clauses B2 and E2, notwithstanding the lack of a ventilated cavity. I consider that I am entitled to determine whether building work will comply with the code. I did so in the first determination, and I therefore consider it unreasonable for the territorial authority to demand the provision of a ventilated cavity for the external walls of this particular house.
- 3.3 The first determination also found that the house had certain compensating factors that assist the performance of the cladding in this particular case. One of the factors listed in paragraph 6.4 of the first determination was that the house “has external wall framing that is likely to be treated to a level that would help prevent decay if it absorbs and retains moisture”.
- 3.4 While I consider that monitoring moisture levels in untreated timber framing may be advisable, the first determination did not find that moisture monitoring was necessary for the treated timber framing of this house. I am still of that view, and I therefore consider it unreasonable for the territorial authority to demand the provision of an “early warning device” for this particular house. I observe that, in any event, the installation of a moisture monitoring system does not, by itself, assist a building to comply with the building code.

### **4. The decision**

- 4.1 In accordance with section 188 of the Act, I hereby determine that the remedial work as agreed between the applicant and the territorial authority will result in the building complying with clause E2 and clause B2 of the building code.
- 4.2 I therefore instruct the territorial authority to withdraw the notice to fix dated 17 August 2005, and issue a new notice to fix that does not include a requirement to provide a drained ventilated cavity or a moisture monitoring system.

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Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 30 June 2006.

John Gardiner  
**Determinations Manager**