

## **Determination 2006/63**

### **Dispute about conditions imposed on Code Compliance Certificate in respect of a house at 86 Island View Drive, Gulf Harbour (to be read in conjunction with determination 2005/161)**

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<b>Applicant:</b>	Mr R Massingham (“the applicant”)
<b>Territorial authority:</b>	Rodney District Council (“the territorial authority”)
<b>Site Address:</b>	86 Island View Drive, Gulf Harbour

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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 refused to issue a code compliance certificate unless it could impose conditions on that certificate.
- 1.2 Certain building matters were described in an earlier determination concerning the same house, Determination 2005/161 (“the first determination”). That determination determined that the house was not code compliant as it did not meet the requirements for durability (B2).
- 1.3 Following remedial work the territorial authority decided that the house was code compliant but wished to impose conditions on the issue of a code compliance certificate. The owner disputes the power of the territorial authority to impose conditions.

#### **2. Sequence of events**

- 2.1 On 6 December 2005 the Department issued the first determination, which confirmed the territorial authority’s refusal to issue a code compliance certificate.
- 2.2 In January 2006 the owner appealed the determination in the District Court in accordance with section 208 of the Act.

- 2.3 Subsequent to the appeal being lodged, there were a number of legal submissions relating to the appeal and the administering of that appeal. In parallel to this process the owner undertook remedial work as well as commissioning a building expert to produce a report relating to certain design features of the house.
- 2.4 As a result of this work, the territorial authority formed the view that the house was now code compliant but wanted to impose conditions on the issuing of the code compliance certificate. Discussions between the owner and the territorial authority also involving legal representatives of the Crown (acting for the Department), came to an agreement that the appeal would be withdrawn subject to there being a determination relating to the conditions that the territorial authority wishes to impose.

### **3. The submissions**

- 3.1 The owner, through his legal advisor provided a submission, which I have taken as the application for the determination which was received by me on the 31st May 2006.
- 3.2 On the 9th June 2006 I wrote to the territorial authority attaching the submission and asking that it confirmed that there is a dispute with the owner and to indicate its view as to the nature of that dispute.

- 3.3 The territorial authority responded by e-mail on the 13 June 2006 stating that

“...there remains a dispute, in that we believe that it is reasonable to impose a maintenance condition as part of the Code Compliance Certificate. The maintenance condition would in effect refer to the BRANZ maintenance guidelines and specific manufacturers product maintenance requirement and the need for the owner to monitor the moisture measuring devices.

Given this situation we consider that the Department should proceed as indicated in the above determination if there was an outstanding dispute...”

It stated that this e-mail would form the totality of their submission.

- 3.4 In a fax to the Department received on the 15 June 2006, the owner said

“I confirm that Code Compliance not being in dispute a determination should now direct a CCC to issue. Council says it should incorporate conditions and I disagree—that is now the only dispute and it requires your determining the Code requires durability to involve normal maintenance and I consider anything further to be ultra vires, unnecessary and potentially devaluing the house.”

- 3.5 The draft determination was issued to the parties on 22 June 2006. The territorial authority made no comment on the draft. In a fax to the Department, dated 26 June 2006, the owner submitted that the determination should, in paragraph 2.3, refer to the adequacy of two specific design features rather than make a general reference. I have not amended the determination as the matters in question are only peripheral to the matter I have been asked to determine.

## 4. Discussion

4.1 As the building work in dispute was consented under the 1991 Act, the transitional provisions of the Act apply, in particular section 436 which states:

(2) 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.

(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 . . .

Subsection (3) Section 43 of the 1991 Act states: . . . the territorial authority shall issue to the applicant . . . if it is satisfied on reasonable grounds that:

(a) the building work to which the certificate relates complies with the building code.

4.2 This section makes no provision for the territorial authority to add conditions to a code compliance certificate once it has reasonable grounds that the building work is code compliant.

4.3 I also note that the Clause B 2.3.1 of the Building Code requires that the cladding be subject to “normal maintenance”.

4.4 While the territorial authority has no power to impose a condition on its issuing of a code compliance certificate, I endorse its action in drawing to the attention of the owner the importance of on-going maintenance. This point is made in all determinations involving compliance of claddings with the Building Code, including Determination 2005/161.

## 5. The decision

5.1 In accordance with section 188 of the Act, I hereby determine that the territorial authority has no power to impose a condition on the issuing of a code compliance certificate.

5.2 I therefore instruct the territorial authority to issue the Code Compliance Certificate without conditions.

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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**