

Determination 2007/124

Refusal of a code compliance certificate for a 10-year-old house at 8 Burnside Court, Albany, North Shore City



1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The applicants are the owners of the building, Mr and Mrs Robertson (“the applicants”) and the other party is the North Shore City Council (“the territorial authority”).
- 1.2 The matter for determination is the territorial authority’s decision to refuse to issue a code compliance certificate for a 10-year-old house because of the age of the building consent.
- 1.3 In making my decision, I have considered the submissions of the parties and the other evidence in this matter
- 1.4 In this determination, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

2. The building

- 2.1 The building work relates to a two-storey detached house that was built between 1996 and 1997 and, because of faults with the cladding, was refused a code compliance certificate in 2004.

¹ The Building Act 2004 is available from the Department’s website at www.dbh.govt.nz.

3. Background

- 3.1 I have previously determined certain building matters regarding this house. Those matters are described in Determination 2005/15 (“the first determination”) issued on 14 February 2005.
- 3.2 A building consent for the original house (No A11235, “the first consent”) was issued by the territorial authority in 22 August 1996. The “Post Line Inspection” was carried out on 16 December 1996 and a “Final Building Inspection” of plumbing and drainage was carried out on 15 December 1997. A final inspection was not carried out until November 2003.
- 3.3 Following the issue of the first determination the territorial authority issued a second building consent (No BA-1224615, “the second consent”) for the remedial recladding work arising from the first determination.
- 3.4 The territorial authority issued a code compliance certificate for the second consent, dated 29 May 2007, which noted that the territorial authority was satisfied, on reasonable grounds, that:
- The building work complies with the building consent;
- Defective weather tightness issues relating to consent A11235, and identified in Determination 2005/15 . . . have been remedied under this consent.
- 3.5 In an undated letter to the applicants regarding the first consent, the territorial authority stated that:
- Final building and plumbing & drainage inspections have been completed in respect of building work under the above building consent.
- [The territorial authority is] now satisfied on reasonable grounds that the building work has been completed to the approved building consent and to the performance requirements of the New Zealand Building Code, except clause B2 Durability.
- The Building Regulations 1992 state that material durability times commence on the issue of a Code of Compliance Certificate. Due to the age of completed building work, much of the durability time of materials and systems has now expired. Therefore the Council is unable to issue a Code Compliance Certificate.
- 3.6 The Department received the application for a determination on 13 June 2007.

4. The submissions

- 4.1 The applicants noted that the territorial authority was refusing to issue a code compliance certificate for the first consent due to the age of the construction. A code compliance certificate had been issued for the re-cladding, which had been carried out under the second consent.
- 4.2 The applicants forwarded copies of:
- the plans
 - the code compliance certificate dated 29 May 2007
 - the undated letter from the territorial authority.
- 4.3 The territorial authority did not make a submission.
- 4.4 A copy of the applicants’ documentation was provided to the territorial authority.

- 4.5 The draft determination was sent to the parties on 22 August 2007. The draft was issued for comment and for the parties to agree when the work contained in the first consent complied with clause B2 “Durability” of the building code.
- 4.6 In response to the draft determination, the applicants submitted that compliance with B2 was achieved on 15 December 1997, being the date of the final inspection; a copy of which was provided with the submission. The territorial submitted that compliance with B2 was achieved on 1 January 1998.
- 4.7 There is very little difference between the two proposed dates. However, I have accepted the more conservative of the two dates (being 1 January 1998) for inclusion in the final determination.

5 Discussion

- 5.1 The territorial authority has concerns about the durability, and hence the compliance with the building code, of the building elements contained in the first consent, taking into consideration the completion of the building work carried out under that consent in late 1997.
- 5.2 The relevant provision of clause B2 of the Building Code requires that building elements must, with only normal maintenance, continue to satisfy the performance requirements of the Building Code for certain periods (“durability periods”) “from the time of issue of the applicable code compliance certificate” (clause B2.3.1).
- 5.3 These durability periods are:
- 5 years if the building elements are easy to access and replace, and failure of those elements would be easily detected during the normal use of the building
 - 15 years if building elements are moderately difficult to access or replace, or failure of those elements would go undetected during normal use of the building, but would be easily detected during normal maintenance
 - the life of the building, being not less than 50 years, if the building elements provide structural stability to the building, or are difficult to access or replace, or failure of those elements would go undetected during both normal use and maintenance.
- 5.4 The territorial authority has confirmed that durability is now its only concern. From the information provided for Determination 2005/15, and by the applicants, it appears that all building elements were code compliant around the time of the final inspection in December 1997. The parties have confirmed this view as discussed in paragraphs 4.6 and 4.7.
- 5.5 In order to address these durability issues when they were raised in previous determinations, I sought and received clarification of general legal advice about waivers and modifications. That clarification, and the legal framework and procedures based on the clarification, is described in previous determinations (for example, Determination 2006/85). I have used that advice to evaluate the durability issues raised in this determination.

- 5.6 I continue to hold the views expressed in the previous relevant determinations, and therefore conclude that:
- (a) The territorial authority has the power to grant an appropriate modification of clause B2 in respect of all of the elements of the building constructed under the first consent.
 - (b) It is reasonable to grant such a modification, with appropriate notification, because in practical terms the building is no different from what it would have been if a code compliance certificate had been issued about December 1997.
- 5.7 I strongly recommend that the territorial authority record this determination, and any modification resulting from it, on the property file and also on any LIM issued concerning this property.

6 The decision

- 6.1 In accordance with section 188 of the Building Act 2004, I determine that:
- (a) all the building elements installed in the building, with the exception of the work carried out under building consent BA 1224615, complied with clause B2 on 1 January 1998.
 - (b) building consent No. A11235 is hereby modified as follows:
 - The building consent is subject to a modification to the Building Code to the effect that, clause B2.3.1 applies from 1 January 1998 instead of from the time of issue of the code compliance certificate for all of the building elements, with the exception of the work carried out under building consent No. BA-1224615, as described in Determination 2007/124.
 - (c) following the modification set out in (b) above, the territorial authority is to issue a code compliance certificate in respect of the building consent as amended.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 1 November 2007.

John Gardiner
Manager Determinations