

Determination 2007/33

Determination regarding a code compliance certificate for an altered building at 8 West Street, Waihi Beach



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, Determinations Manager, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The applicant is the owner Mr Quinlan (“the applicant”) and the other party is the Western Bay of Plenty District Council (“the territorial authority”).
- 1.2 The matter for determination is the territorial authority’s decision to refuse to issue a final code compliance certificate for an 8-year-old house because of the age of the consent.

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

1.3 In making my decision, I have considered the documentation received from 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 Code² (First Schedule, Building Regulations 1992).

2. The building

2.1 The building work consists of a three-storey detached house situated on an excavated sloping site. The resultant building is relatively complex in plan and form.

3. Sequence of events

3.1 The territorial authority issued a building consent in May 1998.

3.2 The building work took some time to complete and the territorial authority carried out a final inspection on 24 November 2005. Following this inspection, the territorial authority listed items that required attention.

3.3 The territorial authority did not issue a notice to fix as required by section 435.

3.4 Following correspondence between the parties, where various issues were raised, the territorial authority has concluded that the building work is compliant apart from clause B2.

3.5 An application for a determination was received by the Department on 10 November 2006.

4. The submissions

4.1 The applicant set out the background to the matter at issue and concluded that a “durability period” commencing from 1999/2000 would be appropriate.

4.2 The applicant forwarded copies of:

- the plans
- some building consent details
- correspondence with the architect and the territorial authority.

4.3 In an email dated 16 November 2006, the territorial authority noted that it was waiting for an as-built drainage plan to be provided but apart from that, the territorial

² The Building Code is available from the Department’s website at www.dbh.govt.nz.

authority understood “the house to be currently compliant except for compliance with clause B2”.

- 4.4 Copies of the evidence were provided to each of the parties. Neither party made any further submissions in response to the submission of the other party.
- 4.5 The draft determination was issued to the parties on 17 January 2007. The draft was issued for comment, and for the parties to agree a date when all the building elements installed in the house complied with the Clause B2 Durability.
- 4.6 In correspondence to the Department, dated 9 March 2007, both parties agreed that compliance with B2 had been achieved in March 1999.

The durability considerations

5 Discussion

- 5.1 The territorial authority has concerns about the durability, and hence the compliance with the building code, of the elements of the building, taking into consideration the completion of the building in approximately 2000. I also note that the final inspection did not take place until 24 November 2005.
- 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 It is not disputed, and I am therefore satisfied that all the building elements installed in the house, apart from items that have to be rectified, complied with clause B2 in March 1999. This date has been agreed between the parties, refer paragraph 4.6.
- 5.5 In order to address these durability issues, I sought some clarification of general legal advice about waivers and modifications I have now received that clarification and the legal framework and procedures based on this clarification are described in previous

determinations (for example, Determination 2006/85) and are used to evaluate the durability issues raised in this determination.

6. Conclusion

- 6.1 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.
 - (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 between 1999 and 2000.
- 6.2 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.

7 The decision

- 7.1 In accordance with section 188 of the Building Act 2004, I determine that:
- (a) all the building elements installed in the building complied with clause B2 on 1 March 1999
 - (b) the building consent 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 March 1999 instead of from the time of issue of the code compliance certificate for all building elements.
 - (c) 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 22 March 2007.

John Gardiner
Determinations Manager