

Determination 2007/69

Refusal of a code compliance certificate for a house at 39B Rowe Road, RD3, Ohauti, Tauranga



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 Bieleski (“the applicants”) and the other party is the Western Bay of Plenty District Council (“the territorial authority”).
- 1.2 This determination arises from the decision of the territorial authority to refuse to issue a code compliance certificate for a 3-year-old house because it was not satisfied that it complied with the Building Code² (First Schedule, Building Regulations 1992). The refusal arose because the building work had been undertaken under the supervision of Bay Building Certifiers (“the building certifier”), which was duly registered as a building certifier under the former Building Act 1991, but which lost its approval as a building certifier before it issued the code compliance certificate.

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

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

- 1.3 In order to determine that matter, I must answer the following questions:
- a) Is there sufficient evidence to establish whether the house as a whole complies with the Building Code?
 - b) Is the territorial authority correct in refusing to issue a code compliance certificate?
- 1.4 In making my decision, I have considered the submissions of the parties, the report of the independent expert commissioned by the Department to advise on this dispute (“the expert”), and the other evidence in this matter.
- 1.5 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 consists of a single-storey detached house with a large basement, situated on an excavated sloping site, which is in a high wind zone for the purposes of NZS 3604³. The house is relatively simple in plan and form but with some complex features. The basement is generally formed with blockwork walls and part of the lower and the entire upper storey is of a conventional light timber frame constructed on timber-framed or concrete floors. The metal-tiled pitched roofs have hip, valley, and wall-to-roof junctions, and 600mm wide eaves and 150mm wide verge projections.
- 2.2 The roof is extended over the main entrance and is supported on timber-framed columns and beams. An extensive timber-framed and boarded deck supported on blockwork pillars is constructed at one elevation and this has a balustrade formed from timber balusters and handrails. A matching set of steps is attached to the deck.
- 2.3 The expert has obtained invoices for some of the external wall framing used in the house, which show that timber to be H3.1 treated. I am prepared to accept this information as indicating that all the external wall framing is H3.1 treated.
- 2.4 With the exception of the closed-in sub floor, the timber-framed external walls of the house are clad with bevel-back PVC weatherboards fixed through the building wrap to the framing. The sub floor area has a painted fibre-cement cladding.

3. Background

- 3.1 The territorial authority issued a building consent on 26 February 2004, based on a building certificate issued by the building certifier on 2 February 2004.
- 3.2 The building certifier carried out inspections of the building. Following a final inspection carried out on 21 October 2004, the building certifier did not pass the building. The reasons for failure included the lack of handrails, the lack of

³New Zealand Standard NZS 3604:1999 Timber Framed Buildings

impervious finishes to some wet areas, the omission of a smoke detector and the unsealed driveway.

- 3.3 The building certifier lost its approval as a building certifier on 30 June 2005.
- 3.4 The territorial authority has not issued a notice to fix as set out in section 164(2) of the Act.
- 3.5 An application for a determination was received by the Department on 24 May 2007.

4. The submissions

- 4.1 The applicant forwarded copies of:
 - the plans and specifications
 - the consent documentation
 - the building certifier's inspection record.
- 4.2 In a letter to the applicants, dated 31 May 2007, the territorial authority noted that it declined to issue a code compliance certificate as it could not be satisfied on reasonable grounds that the building complied with the Building Code. The territorial authority had not had the opportunity to inspect the building work as it progressed because the work was subject to inspections by the building certifier.
- 4.3 Copies of the evidence were forwarded to each of the parties.
- 4.4 A copy of the draft determination was sent to the parties on 19 June 2007. Both parties accepted the draft without comment.

5. Grounds for the establishment of code compliance

- 5.1 In order for me to form a view as to code compliance, I need to establish what evidence has been submitted and what can be obtained considering that the building is completed and some of the building elements are not able to be cost-effectively inspected.
- 5.2 In this case the evidence consists of the building certifier's inspection reports and the report of the expert I commissioned to provide additional evidence.
- 5.3 In this case, the territorial authority does not believe it can rely on the building certifier's reports. I therefore need to decide whether I can rely on the building certifier's reports, particularly with regard to inaccessible building components.
- 5.4 In the absence of any evidence to the contrary, I take the view that I am entitled to rely on the inspections undertaken by the building certifier. However, before deciding whether or not to rely on the building certifier's inspection reports, I consider it important to look for evidence that corroborates them.

- 5.5 In this particular case, corroboration comes from the visual inspection of the accessible components by the expert, which can be used to verify whether the building certifier's inspections were properly conducted.
- 5.6 The inspection record indicates that the building certifier carried out 7 of the required 8 "building" inspections. All of the inspections passed, with the exception of the final inspections. It appears that the final building inspections (which would have included the visible components and the building's exterior) only failed because of minor omissions.
- 5.7 Four "plumbing/drainage" inspections were required to be undertaken. Six were eventually completed, five of which passed. The final drainage inspection was not completed as the inspector could not locate the site, however, the expert has confirmed the satisfactory completion of the outstanding items.
- 5.8 I conclude that the following documentation allows me to form a view as to the code compliance of the building work as a whole:
- The expert's inspection of the visible components of the house.
 - The building certifier's records of the inspections of the inaccessible components where those were undertaken.
 - The high standard of the plans together with the quality of the construction.

6. The expert's report

- 6.1 As mentioned in paragraph 1.4, I engaged an independent expert, who is a member of the New Zealand Institute of Building Surveyors, to provide an assessment of the condition of those building elements subject to the determination.
- 6.2 The expert inspected the house on 8, 11 and 18 June 2007 and furnished a report, complete with an addendum, which was completed in June 2007. The initial report was concerned with the external cladding only and the expert noted that the wall cladding has been well finished to line and level with no missing or poorly fitted components. The expert was of the opinion that there is a high standard of compliance with the manufacturer's details, and also that the roof cladding and flashings have been well fitted. The expert also reported a number of minor defects should be corrected in order that the house should become code compliant.
- 6.3 The expert took extensive non-invasive moisture readings internally around the house and no elevated readings were found. Visual examination of the floors under some areas of the carpet did not reveal any evidence of moisture ingress.
- 6.4 The expert noted that the defects found during the first site visit on 8 June 2007 had been satisfactorily fixed before the second visit on 11 June 2007. Taking the remedial work into account, the expert was of the opinion that the exterior cladding, including the roof, complied with clauses B2 and E2.

- 6.5 The addendum to the expert's report considered the compliance of the house with other clauses of the Building Code. In the expert's opinion, based on visual observations, the following clauses had been complied with:
 - B1 - Structure
 - C3 - Spread of fire
 - E1 - Surface water
 - E3 - Internal moisture
 - G1 - Personal hygiene
 - G2 - Laundering
 - G3 - Food preparation and prevention of contamination
 - G4 - Ventilation
 - G7 - Natural light
 - G8 - Artificial light
 - G12 - Water supplies
 - G13 - Foul water
 - H1 - Energy efficiency

The expert finally noted that the house had been "subject to both comprehensive professionally drawn plans, involving the use of a structural engineer". In addition, the builder had "a high reputation in the area as a builder of quality homes".

- 6.6 Copies of the expert's report and addendum were provided to each of the parties on 18 June 2007.

7 Discussion

- 7.1 Based on the expert's assessment of visible components of the building as set out in paragraph 6, together with the inspection records and other documentation, I consider that the house complies with all the relevant clauses of the building code.
- 7.2 I decline to incorporate any waiver or modification of the Building Code in this determination.

8 The Decision

- 8.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:
- the building work complies with all the relevant clauses of the Building Code
 - the territorial authority's decision to refuse to issue a code compliance certificate is reversed.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 27 June 2007.

John Gardiner
Manager Determinations