

Determination 2007/93

Determination regarding a code compliance certificate for house alterations and additions at 344 Joyce Road, Tauranga



1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the current 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 applicant is D Roper (“the applicant”) acting on behalf of the current owners, T and S Roper, and the other party is the Western Bay of Plenty District Council (“the territorial authority”). The applicant has identified the builder of the house, Moyle Construction Ltd (“the builder”) as an interested party to the matter.
- 1.2 The matter for determination is whether the territorial authority’s decision to decline to issue a code compliance certificate for 4-year-old alterations and additions to a house is correct. 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 (“the

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

former Act”) but which lost its approval as a building certifier before it had issued a code compliance certificate for the building work. The territorial authority considers that the appropriate certificate to be issued is a certificate of acceptance, as it cannot be satisfied that the building work as a whole complies with the Building Code² (First Schedule, Building Regulations 1992).

- 1.3 In order to determine that matter, I must address the following questions:
- a) Is there sufficient evidence to establish whether the building work as a whole complies with the Building Code?
 - i) If yes, a code compliance certificate can be issued.
 - b) If not, are there sufficient grounds to conclude that, once any outstanding items are repaired and inspected, a code compliance certificate can be issued?
 - i) If yes, a code compliance certificate can be issued in due course.
 - ii) If no, are there sufficient grounds for a certificate of acceptance to be issued?

I address question a) in paragraph 5.1 and paragraph 8.

- 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 alterations and additions to a large detached house situated on a flat rural site, which is in a high wind zone for the purposes of NZS 3604³. The original house was built in the 1980s. The recent building work includes the addition of a conservatory, alterations to the main entry, various interior alterations and exterior landscaping work. The house construction is conventional light timber frame (with some specifically engineered elements), concrete slabs and foundations, monolithic and brick veneer cladding, and aluminium windows. The alterations have had little effect on the existing exterior walls and no effect on the existing double-pitch shingle roofs. Minor alterations have been made to the south entry, to extend the existing brick veneer pillars and add small wing walls, all within the existing entrance canopy.
- 2.2 The new conservatory addition butts against the north gable wall of the family room, with the roof pitches matching those of the existing roof. Construction includes specifically engineered steel portal frames and end timber trusses, with copper roof cladding to the gable ends and ridge, and a glazed roof elsewhere. Timber-framed brick veneer “pillars” are constructed at the four corners of the extension, with the folding glazed doors occupying the remaining exterior walls between the pillars.

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

³ New Zealand Standard NZS 3604:1999 Timber Framed Buildings

Alterations to the adjacent family room included the installation of new steel ceiling beams and a new timber-framed floor above the original concrete slab to provide level access.

- 2.3 The expert has noted no evidence as to timber treatment of the original external wall framing. I have received no information as to the treatment if any of the small amount of new external framing; and the date of construction of the building work would permit the use of untreated timber. Given the age of the original house, I consider that the original timber framing is likely to be boracic treated. However, given the lack of evidence, I consider that the external wall framing of the alterations and extensions is unlikely to be treated to a level that will provide resistance to fungal decay.
- 2.4 The only new wall cladding involves the brick veneer to the pillars and a very small quantity of monolithic cladding to the infill walls at the main entry. The latter is a “Harditex” system with 7.5 mm thick fibre-cement sheets fixed through the building wrap to the framing, and finished with an applied textured coating system to match the existing.

3. Background

- 3.1 The territorial authority issued a building consent (No. 67343) on 21 June 2002. I have not seen a copy of the building consent. The building work took place between July 2002 and April 2003.
- 3.2 The building certifier carried out a total of 14 inspections during construction; and the inspection summary records a pre-line inspection of the first floor alterations on 6 August 2002 and a partial pre-line inspection on 23 September 2002, with the inspection summary noting “conservatory, lounge and front entry to do”.
- 3.3 With regard to pre-line inspections of the 3 areas noted in paragraph 3.2, the builder attests, in a statement dated 14 December 2006, that “we had these items re-inspected 2nd October 2002”. The builder also states:
- Moyle Construction Ltd will guarantee that all work in preline conservatory, lounge, front entry of the Roper Job, 344 Joyce Road, was completed as per plan and up to the New Zealand Building Code as at 2002.
- 3.4 A further 5 inspections took place before the final inspection on 15 April 2003, when no defects were identified although producer statements were noted as outstanding. The inspection summary also noted a requirement for “confirmation re prelines for conservatory, lounge and front entry”. According to the applicant, the owners were informed that the code compliance certificate would be issued as soon as the producer statements were received.
- 3.5 A further note dated 22 May 2003 in the inspection summary indicated that the outstanding documentation was received, and stated “Sent to WBDC”. At this stage, the owners assumed that the code compliance certificate had been issued, and were unaware of any outstanding matters.

- 3.6 I note that Bay Building Certifiers is no longer approved as a building certifier but operates as Bay Inspections (“the contractor”), providing building regulatory services to the Tauranga City Council. When the building certifier ceased operating, an agreement had been made with the contractor to complete outstanding inspections on the building certifier’s projects and to make recommendations to the territorial authority regarding the issuing of code compliance certificates.
- 3.7 In 2006, the territorial authority informed the owners that the building certifier had ceased operating without finalising the project, and that further inspections were therefore required to determine the code compliance of the building work in order to determine future options. The territorial authority carried out an assessment of the project on 12 December 2006.
- 3.8 In a letter to the owners dated 13 December 2006, the territorial authority did not identify any non-complying items. The only matter it raised was the lack of documentation of a completed pre-line inspection (refer paragraph 3.2):
- The Code Compliance Certificate was issued by Bay Building Certifiers on 15 April 2003, but was cancelled when they found that there was no record of a preline inspection for the conservatories, lounge and front entry. You will need to provide satisfactory evidence that the structural work in these areas complies with the Building Code.
- 3.9 The territorial authority also stated that, on receipt of the information:
- ...Council will not issue a Code Compliance Certificate for the building. That being the case, Section 91 of the [Act] requires that you apply for a Certificate of Acceptance...
- If Council then decides it is able to issue a Certificate of Acceptance it will only cover those elements of the building that can be readily inspected and compliance with the Building Code determined.
- 3.10 I am not aware of further correspondence between the parties, and the Department received an application for a determination on 7 May 2007.

4. The submissions

- 4.1 In a statement accompanying the application, the applicant outlined the history of the project, noting that (at the final inspection on 15 April 2003) the owners had been told that the code compliance certificate would be issued as soon as the outstanding producer statements had been received. The applicant explained that, following the supply of the required documentation, no further correspondence had been received; and the owners had been unaware of the lack of a code compliance certificate until advised by the territorial authority in 2006. The applicant considered that:

The reason the Code Compliance Certificate was revoked was because Bay Building Certifiers failed to clearly document a preline inspection.

The applicant noted that the builder is a very well respected local builder, who has confirmed that the undocumented preline inspection was carried out. The applicant also stated that the owners are not satisfied with the territorial authority’s offer of a Certificate of Acceptance, concluding:

I can understand the Western Bay of Plenty District Council not wanting to take on the responsibility for work that they have had no control over, but this is not the case here. Bay Building Certifiers were one of their recommended Building Inspection Companies, because of this and the fact that there is a good documentation trail relating to the inspections procedure they should stand by the entire works, and issue a Code Compliance Certificate not a Certificate of Acceptance.

4.2 The applicant forwarded copies of:

- the consent drawings
- the building certifier's inspection summary
- the letter from the territorial authority dated 13 December 2006
- the statement from the builder dated 14 December 2006.

4.3 The territorial authority made no submission.

4.4 Copies of the submissions and other 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 sent to the parties for comment on 11 July 2007. The applicant accepted the draft without comment.

4.6 The territorial authority responded in an email to the Department sent on 16 August 2007. The territorial authority accepted the determination subject to the following comments:

- The territorial authority believed the determination should modify the date at which compliance with Building Code Clause B2 "Durability" was achieved. The territorial authority suggested 21 December 2003 as a suitable date.
- It would be of benefit if the determination contained additional comment on the applicant's statement contained in the notation at the end of paragraph 4.1.
- The territorial authority has never recommended any building inspection company.

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 is available and what can be obtained, considering that the alterations and additions are 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 summary, the final inspection by the territorial authority, the statement by the builder, as well as the report of the expert I commissioned to provide additional evidence.

5.3 The territorial authority does not believe that a pre-line inspection of 3 areas was completed, and any decision it makes with respect to compliance of those areas is

therefore limited by what items it is able to inspect. I first need to decide if I can rely on those inspections that were undertaken by the building certifier, particularly in regard to inaccessible building components. (I address the additional matter of the possibly omitted pre-line inspection in paragraph 5.7.)

- 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 report, I consider it important to look for evidence that corroborates it. 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.
- 5.5 I note that the building certifier's inspection summary indicates that 13 inspections were required for the project, and 14 inspections were carried out, including an additional final inspection (which passed the building work).
- 5.6 I also note that, following the partial pre-line inspection on 23 September 2002, a further 5 inspections took place before the final inspection on 15 April 2003. The builder maintains that one of these inspections included completion of pre-line inspections of the conservatory, lounge and front entry (refer paragraph 3.3). Between September 2002 and April 2003, I note that while the contested pre-line was not specifically noted as complete, no comment was made in the inspection summary related to any omission.
- 5.7 I therefore also need to decide if I can rely on the builder's statement that a pre-line inspection of the conservatory, lounge and front entry was passed by the building certifier, although it was not documented in the inspection summary. In addition to the corroboration described in paragraph 5.4, I consider that reasonable assurance on this matter can also come from the expert's visual inspection of the building work and an assessment of the quality of work produced by the builder
- 5.8 In conclusion I find 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 building work.
 - The building certifier's inspection summary, which indicates satisfactory inspections of the inaccessible components (apart from the disputed pre-line inspection) and a satisfactory final inspection.
 - The builder's statement regarding the pre-line inspection.
 - The territorial authority's additional final inspection.

6. The expert's report

- 6.1 As mentioned in paragraph 1.4, I engaged an independent expert to provide an assessment of the condition of those building elements subject to the determination. The expert is a member of the New Zealand Institute of Building Surveyors.

- 6.2 The expert visited the house on 15 June 2007, and furnished a report that was completed on 18 June 2007. The expert noted that the house was very well maintained and that the overall construction quality was “excellent”.
- 6.3 The expert noted that the alterations and additions showed “no visual signs that any one requirement has not been carried out”, with the building work having “good quality finish” and flashings “all well detailed and executed”. The expert inspected the interior of the house and noted that there was no evidence of movement in the linings or of any other problems relating to the underlying construction.
- 6.4 Commenting on the three areas in contention, the expert commented that:
- Conservatory**
- there are very few areas that are hidden behind linings
 - the conservatory is an engineered structure with glazed doors to all walls and a glazed roof.
- Lounge (family room)**
- the framing is original and was existing at the start of the alterations
 - a new steel beam has replaced an original timber beam and post
 - new windows and a fireplace have been added
 - it appears that no new wall linings have been installed.
- Front entry**
- the only new work is two small wing walls and minor extensions of two existing walls.
- 6.5 The expert concluded that the quality of workmanship of the building work (together with the building certifier’s summary) demonstrated a “consistency of attention to detail by all parties”, which indicated the builder was likely to have been conscientious about matters such as ensuring that required inspections were carried out at appropriate times.

7. Discussion

7.1 The establishment of code compliance

- 7.1.1 I consider that the expert’s report establishes there is no evidence of any lack of compliance with any of the code clauses that are applicable to the alterations and additions to this house.
- 7.1.2 I note that the territorial authority was unable to identify any defects in the building work during its additional final inspection on 12 December 2006 (refer paragraph 3.8), and the only concern raised was the lack of documentation of a pre-line inspection of the conservatory, family room and main entry. However, I consider that the expert’s comments in paragraph 6.4 demonstrate that these 3 areas have very little new construction that is hidden by linings and not able to be viewed.

7.1.3 I also note the expert's comments on the quality of workmanship exhibited in this house, and I concur with his conclusion in paragraph 6.5 that this high quality demonstrates a general conscientiousness with regard to the overall building project, including ensuring that all required inspections were carried out at appropriate times.

7.1.4 I am therefore prepared to accept the builder's assurances that the required pre-line inspection was carried out, although it was not recorded at the time.

7.1.5 I accordingly consider that the building work complies with the Building Code.

7.2 The durability considerations

7.2.1 As set out in paragraph 4.6, the territorial authority has concerns about the durability, and hence the compliance with the building code, of certain elements of the building, taking into consideration the completion date of the building in 2003.

7.2.2 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).

7.2.3 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

7.2.4 There appears to have been a 4-year delay between the completion of the house and the applicant seeking a code compliance certificate. The territorial authority has sought a waiver of Clause B2, however, none of the durability periods described in paragraph 8.3, and which could reasonably be expected to commence after the building was effectively completed, have yet expired. I have received no evidence to suggest that normal maintenance, as required by Clause B2.3.1 of the Building Code and which might otherwise affect the durability of the elements, has not been carried out.

7.2.5 Consequently I do not believe sufficient time has passed, since the completion of the house, in about May 2003, to initiate the need for a modification of the durability period as sought by the territorial authority.

7.3 Background to the building certifier regime

- 7.3.1 The territorial authority has suggested that I give some background in regard to the building certifier regime set out in the former Act.
- 7.3.2 Building certifiers were approved by the Building Industry Authority (the antecedent of the Department), under the former Act, subject to specific limitations, to check plans and specifications, and inspect building work during and after construction, in order to determine compliance with the Building Code. The building certifier regime was intended to give building owners a choice whether to use the territorial authority, or a building certifier as the private sector equivalent in the area of building control's.
- 7.3.3 In this instance the building certifier was engaged (by either the builder or the owner) to carry out the initial site inspections. The building certifier was liable for this work, not the territorial authority.

8. The appropriate certificate to be issued

- 8.1 Having found that the building complies with the Building Code, I must now determine whether the territorial authority should issue either a code compliance certificate or a certificate of acceptance.
- 8.2 Section 437 of the Act provides for the issue of a certificate of acceptance where a building certifier is unable or refuses to issue either a building certificate under section 56 of the former Act, or a code compliance certificate under section 95 of the current Act. In such a situation, a territorial authority may, on application, issue a certificate of acceptance or a code compliance certificate. (In this instance, I note that the applicant does not wish to accept a certificate of acceptance.)
- 8.3 I have reasonable grounds to conclude that the building work complies with the Building Code, I am of the view that a code compliance certificate is the appropriate certificate to be issued.

9. The Decision

- 9.1 In accordance with section 188 of the Building Act 2004, I determine that the building work complies with the relevant clauses of the Building Code. Accordingly, I instruct the territorial authority to issue a code compliance certificate.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 24 August 2007.

John Gardiner
Manager Determinations