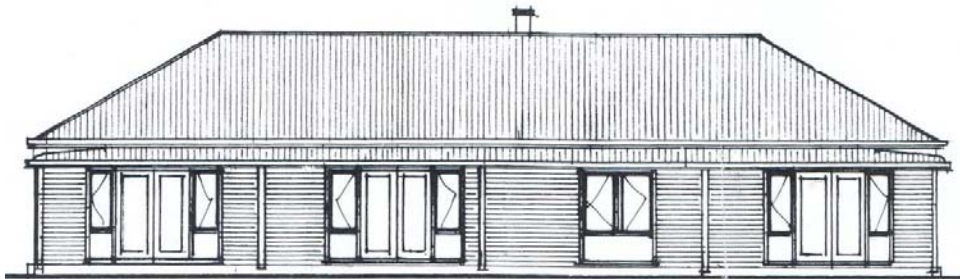




Determination 2009/4

Refusal to issue a code compliance certificate for an 8-year-old house at 568 Weedons Road, Christchurch



1. The matters 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 applicant is the owner, C Jones (“the applicant”) and the other party is the Selwyn District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.

1.2 The determination arises from the authority’s decision to refuse to issue a code compliance certificate for a house because it is not satisfied that the building work complies with certain clauses of the Building Code² (First Schedule, Building Regulations 1992).

1.3 I consider the matters to be determined are:

Matter 1: The missed plumbing and insulation inspections

Whether the plumbing pipes and insulation installed within the walls of the house, which the authority considers has not been satisfactorily inspected, comply with the relevant clauses of the Building Code. I address this matter in paragraph 5.

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.

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.

Matter 2: The durability considerations

Whether the elements that make up the building comply with Building Code Clause B2 Durability, taking into account the age of the 8-year-old building. I address this matter in paragraph 6.

- 1.4 In making my decision, I have considered the documentation received from the parties, and other evidence in this matter.

2. The building

- 2.1 The building work consists of a simple single-storey detached building situated on a flat site. The house has concrete foundations and floor slab, light timber frame construction, brick veneer cladding, aluminium windows and a profiled metal hipped roof with a verandah attached along the north west elevation.
- 2.2 The original building consent included a garage building linked to the south east elevation. This part of the building work did not proceed (refer paragraph 3.6), and is currently being constructed under a new building consent.

3. Background

- 3.1 The authority issued a building consent (No. 001274) for the house and garage on 13 June 2000, under the Building Act 1991. Construction of the house commenced in July 2000, with the linked garage intended to follow as a later stage.

- 3.2 The authority carried out a total of eight site inspections, including a pre-line and sanitary drainage inspection on 20 December 2000, with the inspection record noting:

No plumbing – reinspection req.
Batts to be fitted ext walls & ceiling.

- 3.3 The authority carried out an inspection on 14 August 2001, with the inspection record noting that the inspection purpose was “Sanitary Plumbing” and “Post Lining Bracing”. The inspection record notes that “All work complies” excepting the completion of some nailing to sheet bracing.

- 3.4 The applicant submits that the plumbing inspection was signed off on the inspection referred to in paragraph 3.3 saying:

All plumbing was in walls where [plasterboard] was not a bracing element on both sides of the wall. Some wall batts would have been visible on the post line inspection.

The applicant also said wall batts could be seen at various points, such as behind the electrical switch covers. The applicant also noted that the insulation was higher than required, pointing out that the windows were double-glazed, there were R3.6 batts in the ceiling and R2.6 batts in the walls.

- 3.5 It appears that construction slowed, and the authority visited the site on 4 December 2002 to check on progress, noting:

Work yet to complete throughout, and garage also verandah yet to start. Will advise council early next year 2003 when to come out for final inspection.

Note more inspections will be required prior to final.

- 3.6 It appears that personal circumstances meant that the garage could not be constructed as early as planned. The applicant contacted the authority in 2005 to explain the situation, and was informed that this should not be a problem and the code compliance certificate could be issued at any time.
- 3.7 In 2007, the applicant submitted as-built plans for the building work, and the consent was amended to exclude the garage. The authority carried out a final inspection on 3 August 2007, which noted the amended consent and listed 6 outstanding items being:
- 1 Potable water test to complete
 - 2 Verandah flashing
 - 3 Seal metal lintels
 - 4 Seal vanity to wall
 - 5 Seismic restraint HWC
 - 6 Ceiling insulation to tidy
- 3.8 The authority reinspected the house on 5 June 2008 and the record noted that all the items identified in the final inspection were “now complete” and noted that three water test reports were attached. The report also noted “CCC application to come”.
- 3.9 In a letter to the applicant dated 24 September 2008, the authority outlined the durability periods required in the building code and noted that it was unable to issue a code compliance certificate because:
- ...as a result of the time lapsed, the Council cannot now be satisfied on reasonable grounds that the building work and elements will continue to satisfy the durability provisions of the Building Code for the prescribed period after the Code Compliance Certificate has been issued.
- 3.10 The letter also noted that a producer statement was required for the onsite waste water system and a third bacteriological potable water test would be required. The authority also stated:
- It is also that the reinspection for the plumbing and insulation requested on the inspection notice dated 20/2/00 [sic] has not been carried out.
- (I note that the date of the inspection should read 20 December 2000.)
- 3.11 Under cover of a letter received by the authority on 16 October 2008, the applicant provided a producer statement for onsite waste water system, and the three water test results, together with a construction photograph showing insulation installed within the exterior walls. The applicant also noted that the plumbing had been inspected and passed during the authority’s inspection on 14 August 2001.
- 3.12 The Department received an application for a determination on 17 October 2008.

4. The submissions

4.1 In a statement accompanying the application, the applicant outlined the background to the situation, noting that some of the wall insulation was currently visible where bricks had been removed during construction of the garage. The applicant stated that inspections had been satisfactorily carried out, required documentation supplied and there were no other issues to address. The applicant also stated that the house was substantially completed by 14 August 2001.

4.2 The applicant forwarded copies of:

- some of the consent drawings
- the as-built drawings
- the inspection records
- the letter from the authority to the applicant dated 24 September 2008
- a construction photograph of an insulated wall
- various other statements and information.

4.3 The authority made a submission dated 20 October 2008. The letter stated that it accepted both the producer statement for onsite waste water system, and the three water test results. However, it disputed the applicant's position that the inspection carried out on 14 August 2001 could be taken as evidence that the plumbing and insulation had been inspected, as the:

. . . inspection was for post lining and does not have any bearing [on] the inspection in the re-inspection requested by the [authority's] inspector on 20.12.2000.

Council's opinion remains as it was expressed on the letter 24 September 2008, [with] respect to the durability issues, and the missed re-inspection for plumbing and insulation.

4.4 The authority also forwarded copies of:

- the building consent
- the inspection records
- the correspondence with the applicant
- various other statements and information.

4.5 The draft determination was issued to the parties on 19 December 2008. The draft was issued for comment and for the parties to agree a date when the building elements complied with Building Code Clause B2 Durability.

4.6 Both parties accepted the draft without comment, and proposed 31 December 2001 as the date when the building elements complied with Clause B2 Durability.

Matter 1: The missed plumbing and insulation inspections

5. Discussion

5.1 General

- 5.1.1 The authority has concerns that the plumbing pipework and wall insulation have not been inspected, and are now enclosed within the walls of the building and therefore cannot be fully inspected.
- 5.1.2 I note the authority has not made a 'reasonable grounds' assessment based on what it can now see, or have the applicant verify by, for example, pressure testing the plumbing system, and exposing work that is now enclosed. In my view the authority was capable of advising the applicant of what it required in order to be satisfied that compliance has been achieved without referring the matter to the Department for determination.
- 5.1.3 The applicant has stated that, at the time of the bracing inspection on 14 August 2001, the installation of the linings had not been completed and plumbing pipes and wall insulation was exposed for inspection in walls that did not require sheet bracing.
- 5.1.4 The records of inspections completed before 14 August 2001 should have served to make the authority aware that the plumbing and insulation inspection was outstanding and a partial inspection of this work could have carried out as part of the inspection conducted on 14 August 2001.

5.2 The missed plumbing inspection

- 5.2.1 I note the house plans show the location of the bracing elements. Only two bracing elements (which are also in internal walls) are located behind plumbing fittings (a wash hand basin and the laundry tub). Given the applicant's submission (refer paragraph 5.1.3), all other walls were unlined allowing the plumbing to be inspected.
- 5.2.2 Some aspects of the plumbing services are able to be inspected now, such as the supply of tempered water to sanitary facilities, the plumbing of the wetback, and the safety devices to the hot water cylinder. It is unclear from the records whether this inspection work has been completed. It is also not known whether a pressure test was conducted by the plumber and if this was witnessed.
- 5.2.3 As noted in paragraph 5.1.2 the authority has not advised the applicant of what it requires to be satisfied that the plumbing complies with Clause G12. I also note the plumbing system to the house appears to have performed satisfactorily for over 8 years.
- 5.2.4 In my view it is not necessary for all the plumbing pipework to be exposed for inspection in order to confirm compliance. It would seem appropriate for a pressure test to be completed (if this has not already been done), along with the inspection of what exposed pipework there is, which can be seen as being representative of the remaining work.

5.3 The missing inspection of the wall insulation

- 5.3.1 The building consent was issued in June 2000 under the Building Act 1991. The inspection with respect to the insulation was to verify that the insulation had been installed and that it complied with Building Code Clause H1. The applicant has advised that the house has been insulated to a higher level than required by the Building Code at the time of construction. I have no reason to doubt this statement which has not been disputed by the authority.
- 5.3.2 The R-value of the insulation to the ceiling and the use of double-glazing should compensate for any minor shortcomings that may exist in the wall insulation. I accept the applicant's assertion that the wall insulation has been verified at some locations (such as behind electrical switches, the construction photograph, and where bricks were removed for the garage link). I consider there are sufficient grounds to determine that the house complies with Clause H1.

Matter 2: The durability considerations

6. Discussion

- 6.1 The authority has concerns about the durability, and hence the compliance with the Building Code, of certain elements of the building taking into consideration the age of the building work completed in 2001.
- 6.2 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 code compliance certificate" (Clause B2.3.1).
- 6.3 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.
- 6.4 In this case the delay between the completion of the building work in 2001 and the applicant's request for a code compliance certificate in 2008 has raised concerns with the authority that various elements of the building are now well through their required durability periods and would consequently no longer comply with Clause B2 if a code compliance certificate were to be issued effective from today's date.
- 6.5 The 7-year delay between the substantial completion of the house and the applicant's request for a code compliance certificate raises the issue of when all the elements of the house complied with Clause B2. I have not been provided with any evidence that

the authority did not accept that those elements complied with Clause B2 when the house was completed in 2001.

- 6.6 It is not disputed, and I am therefore satisfied, that all the building elements complied with Clause B2 on 31 December 2001, refer paragraph 4.6.
- 6.7 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 matters raised in this determination.
- 6.8 I continue to hold the views expressed in the previous relevant determinations, and therefore conclude that:
- (a) the authority has the power to grant an appropriate modification of Clause B2 in respect of all of the building elements in the building that were constructed under the building consent.
 - (b) it is reasonable to grant such a modification, with appropriate notification, because in practical terms the construction is no different from what it would have been if a code compliance certificate had been issued when the building had been substantially completed in 2001.
- 6.9 I strongly recommend that the authority record this determination, and any modification resulting from it, on the property file and also on any LIM issued concerning this property.

7. What is to be done now?

- 7.1 The authority should reach agreement with the applicant about what steps it considers necessary for it to be satisfied that compliance with Clause G12 has been achieved. I refer to paragraph 5.2.4 as a suggested approach.
- 7.2 The authority should be able to issue a code compliance certificate in respect of the building consent as amended, following the modification set out in paragraph 8.2(b), and once it is satisfied on reasonable grounds that compliance with Clause G12 has been achieved. Any outstanding items of disagreement can be referred to the Chief Executive for a further binding determination.

8. The decision

- 8.1 In accordance with section 188 of the Building Act 2004, I determine that the house complies with Building Code Clause H1 Energy efficiency. I have insufficient grounds on which to be satisfied that the house complies with Clause G12 Water supplies.
- 8.2 I also determine that:
- (a) all the building elements installed in the building complied with clause B2 on 31 December 2001.

(b) the building consent is to be 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 31 December 2001 instead of from the time of issue of the code compliance certificate for all the building elements as described in Determination 2009/4.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 9 February 2009.

John Gardiner
Manager Determinations