



Determination 2010/093

Refusal to issue a code compliance certificate for a small addition to a house at 48 Russleigh Drive, Hamilton



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 applicants are the owners, N and R McKelvie acting through their solicitor (“the applicants”), the other party is the Hamilton City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.2 This determination arises from a decision by the authority to refuse to grant a code compliance certificate for a small addition to an existing house due to the time that has lapsed since the work was carried out.
- 1.3 The matter for determination² is whether the authority’s decision to decline to issue a code compliance certificate was correct.

¹ The Building Act, Building Code, Compliance documents, past determinations and guidance documents issued by the Department are all available at www.dbh.govt.nz or by contacting the Department on 0800 242 243.

² Under section 177(b)(i) of the Act (prior to 7 July 2010)

- 1.4 To make a determination on that matter I must consider whether the addition complies with those Building Code Clauses³ that are relevant to the work. In this case, given that the work has been subject to a previous inspection by the authority and only three items were identified as requiring attention (refer paragraph 3.3), I therefore consider the clauses to be in this determination are B2 Durability, E2 External moisture, and H1 Energy efficiency.
- 1.5 In making my decision, I have considered the applicant's submission, the report of the expert commissioned by the Department to advise on this dispute ("the expert"), and other evidence in this matter.

2. The building work

- 2.1 The building work consists of a 1.2 x 3.0 metre addition to a bedroom with a small veranda. The addition was built over an existing concrete terrace and under the existing roof overhang.
- 2.2 The single storied addition is timber framed and clad in profiled fibre-cement sheets nail fixed to the framing with an acrylic paint finish, and has face fixed aluminium joinery.
- 2.3 There is a new lean-to verandah which provides some protection to the eastern exterior wall and its associated aluminium-framed sliding glass door. There are no eaves to the south wall or the north end of the east wall.

3. Background

- 3.1 On 20 December 1996 the authority issued a building consent (No.1996/2459) for the addition under the Building Act 1991.
- 3.2 On 13 June 2000 the authority wrote to the then owners of the house and advised they had not received advice of completion.
- 3.3 The applicants purchased the house in 2002. The authority carried out an inspection in March 2002 and the following work was requested to be completed before a code compliance certificate could be issued:
- ground levels to be lowered
 - walls to be insulated
 - final inspection to be carried out.
- 3.4 Further lining and insulation work was then carried out by the applicants. The applicants advise that a final inspection was then requested but this was not carried out. It appears the matter was forgotten until 2010 when a code compliance certificate was sought from the authority.

³ Schedule 1, Building Regulations 1992

3.5 The authority declined to issue a code compliance certificate because of the age of the consent.

3.6 An application for a determination was received on 12 May 2010.

4. The submissions

4.1 The applicant presented a summary of the issues and background to the dispute. The applicant forwarded copies of correspondence between the authority and the applicants, inspection records from the authority and documents from the property file.

4.2 The authority acknowledged the application on 27 May 2010.

4.3 A draft determination was issued to the parties for comment on 10 August 2010. The authority accepted the draft without comment. The applicant accepted the draft, commenting that when declining the code compliance certificate the authority had not provided specific details of any remedial work that was required.

5. The expert's observations

5.1 As mentioned in paragraph 1.5, I engaged an independent expert ("the expert") to assist me. The expert is a member of the New Zealand Institute of Building Surveyors. The expert visited the house on 22 June and 25 June 2010 and provided a report that was completed on 30 June 2010.

5.1 Insulation (Clause H1)

5.1.1 The expert confirmed the presence of insulation in the external walls and the ceiling of the addition.

5.2 External envelope (Clauses E2, B2)

5.2.1 The expert noted that in general the fibre-cement cladding appeared to be well fixed and aligned, and although the joinery has been fitted with head flashings only, the cladding appears to be weathertight.

5.2.2 The expert inspected the interior of the building and noted no visual evidence of moisture penetration. The expert took non-invasive and invasive moisture readings on the inside of interior walls, and no elevated readings were recorded.

5.2.3 The expert also took invasive moisture readings on the north and east elevations at areas considered at risk and recorded the following elevated readings:

- more than 40% in the bottom plate at both the north wall (east end) and east wall (north end)
- 21% in the bottom plate at the east wall (south end)
- 20% in the bottom plate at the east wall (middle)
- 19% in the bottom plate at the north wall (west end)

I note that moisture levels above 18% generally indicate that external moisture is entering the structure and further investigation is required and that readings over 40% indicate that the timber is saturated and decay will be inevitable over time.

- 5.2.4 The expert found that cladding to ground clearances on all three elevations were less than the minimum required by E2/AS1. The expert noted that moisture is being wicked up from pavers below the east wall, and that ponding on the terrace and inadequate cover by the cladding is allowing water ingress to the bottom plate of the north wall.
- 5.2.5 The expert also noted a butt-jointed window on the north wall with minimal protection from eaves.

6. Discussion

6.1 Weathertightness

- 6.1.1 Taking account of the expert's report and his comments on the notices to fix, I conclude that remedial work is necessary in respect of:
- inadequate clearance of the cladding to the finished ground level on all three elevations
 - moisture ingress from the concrete terrace into the bottom plate of the north wall.
 - moisture ingress associated with the corner window to the north wall
- 6.1.2 I consider the expert's report establishes that the current performance of the cladding to the addition is not adequate because it is allowing water penetration at present. Consequently, I am satisfied that the addition does not comply with Clause E2 of the Building Code.
- 6.1.3 In addition, the cladding is also required to comply with the durability requirements of Clause B2. Clause B2 requires that a building continues to satisfy all the objectives of the Building Code throughout its effective life, and that includes the requirement for the building to remain weathertight. Because the faults on the addition are likely to allow the ingress of moisture in the future, the cladding does not comply with the durability requirements of Clause B2.
- 6.1.4 Given the age of the addition, and therefore the time that the framing may have been exposed to moisture egress, I consider further investigation is necessary to determine the condition of the timber framing.

6.2 The age of the building consent

- 6.2.1 The authority has informed the applicants that it is unable to issue a code compliance certificate due to the age of the building consent and that the requirements of the Building Code had changed.
- 6.2.2 The age of the consent does not of itself provide sufficient grounds on which to decline the issue of a code compliance certificate. In this instance the transition provisions of the Act apply (section 436) which requires the authority to assess code compliance against the requirements of the Building Code that were in force at the time the building consent was issued in 1996.

- 6.2.3 In addition I note that no substantial changes have been made to Clauses B2 and E2 since the building consent was issued.
- 6.2.4 Once the matters set out in the notice to fix have been rectified to its satisfaction (refer paragraph 7.1), the authority may issue a code compliance certificate. Consideration of a code compliance certificate will raise the matter of when all the elements of the building complied with Clause B2, given the age of the building work.
- 6.2.5 The authority has the power to grant, on application, an appropriate modification to the Building Code to the effect that, apart from the items that are to be rectified as described in this determination, Clause B2.3.1 applies from the date when the addition was complete.

7. What is to be done now?

- 7.1 I note that the authority has not issued a notice to fix. A notice to fix should be issued that requires the owner to bring the building work into compliance with the Building Code, identifying the items listed in paragraphs 6.1.1 and 6.1.4, and referring to any further defects that might be discovered in the course of rectification, but not specifying how those defects are to be fixed. It is not for the notice to fix to stipulate directly how the defects are to be remedied and the house brought to compliance with the Building Code. That is a matter for the owner to propose and for the authority to accept or reject.
- 7.2 I would suggest that the parties adopt the following process to meet the requirements of paragraph 7.1. Initially, the authority should issue the notice to fix. The owner should then produce a response to this in the form of a detailed proposal, produced in conjunction with a competent and suitably qualified person, as to the rectification or otherwise of the specified items. Any outstanding items of disagreement can then 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 hereby determine that the addition does not comply with Clauses E2 and B2 (insofar as it applies to E2) of the Building Code, and accordingly I confirm the authority's decision to refuse to issue a code compliance certificate.
- 8.2 I also determine that the addition complies with Clause H1 of the Building Code.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 4 October 2010.

John Gardiner
Manager Determinations