



Determination 2011/021

Refusal to issue code compliance certificate for 6-year-old alterations to a house completed under supervision of a building certifier at 712 Esdaile 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 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 parties to the determination are:

- the owner of the house, Mr G Hind (“the applicant”), and
- the Western Bay of Plenty District Council (“the authority”), carrying out its duties and functions as a territorial authority or building consent authority.

¹ The Building Act 2004, the Building Code the Compliance Documents, past determinations, and guidance documents issued by the Department are available from the Department’s website at www.dbh.govt.nz or by contacting the Department on 0888 242 243.

1.2 This determination arises from the authority's decision to refuse to issue a code compliance certificate for 6-year-old alterations to a house because it was of the view that too much time had elapsed since the work was completed and it was not satisfied that the house complied with the Building Code (First Schedule, Building Regulations 1992). 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 ceased operating as a certifier before it had issued a code compliance certificate for the work.

1.3 The matter for determination² is whether the authority was correct in its decision to refuse to issue a code compliance certificate. In deciding this I must consider:

1.3.1 Matter 1: The external envelope

Whether the external envelope of the alteration ("the external envelope") complies with Clause B2 Durability and Clause E2 External Moisture of the Building Code³. The external envelope includes the components of the systems (such as the plaster and fibre-cement claddings, the windows, the roof tiles and the flashings), as well as the way the components have been installed and work together. I consider this matter in paragraph 7.

1.3.2 Matter 2: Other relevant code requirements

Whether the building work complies with the other relevant clauses of the Building Code. I consider this matter in paragraph 8.

1.3.3 Matter 3: The durability considerations

Whether the elements that make up the building work comply with Clause B2 Durability of the Building Code, taking into account the age of the house. I consider this matter in paragraph 10.

1.4 The available evidence

1.4.1 Based on the information available and records supplied, I consider there is sufficient evidence available to allow me to reach a conclusion on the code compliance of the building work. This determination therefore considers whether it is reasonable to issue a code compliance certificate for the building work. In order to determine that, I have addressed the following questions:

- (a) Is there sufficient evidence to establish that the building work complies with the Building Code? I consider this in paragraph 5.
- (b) If not, are there sufficient grounds to conclude that, once any outstanding items are repaired and inspected, the building work will comply with the Building Code and a code compliance certificate is the appropriate certificate to be issued? I address these questions in paragraph 9.

1.5 In making my decision, I have considered the submissions of the parties, the report of the expert commissioned by the Department to advise on this dispute ("the expert"), and other evidence in this matter.

² In terms of section 177(1)(b) and 177(2)(d) of the Act.

³ 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 work

- 2.1 The house is sited on an elevated, generally level building site, which is in a high wind zone in terms of NZS 3604⁴. Originally the house was a single storey dwelling built in the early 1900's, founded on timber pile foundations and constructed of timber framing and lightweight iron roof and with weatherboard cladding. At some stage the original windows were replaced with aluminium joinery.
- 2.2 The alterations consisted of the removal of the existing roof to allow for the construction of an attic roof space, which now accommodates the master bedroom, ensuite, a further two bedrooms and bathroom. The roof was also reconstructed as part of the alterations and is now a 40° rafter constructed gable roof covered with corrugated iron long run coloured steel with four dormer windows.
- 2.3 New aluminium joinery was installed, including french doors as well as three roof skylights to the southeast and northwest elevations. The timber weatherboard cladding to the alterations has been installed to match the original cladding to the ground floor.
- 2.4 The alterations included the addition of a bull-nosed verandah that extends along the northeast and northwest elevations, and changes to the ground floor namely the installation of a new kitchen and changes to the lay-out of the dining room.
- 2.5 The expert noted that he was unable to establish whether or not the timber framing in the walls, roof and flooring of the dwelling had been treated. Given the date of construction of the alterations between 1999 and 2005, I consider that the wall framing is most likely to be untreated.

3. The background

- 3.1 A building consent for the alterations (No 61984) was issued on 21 July 1999 under the Building Act 1991 by the authority based on a building certificate issued by a building certifier dated 8 July 1999.
- 3.2 The building work commenced and the building certifier undertook all necessary inspections culminating with a passed final inspection on 22 November 2005. The inspection records show the following inspections were undertaken:

Footing – 8 October 1999, passed (Okay to pour piles. Sub floor connections fail)

Preline/building – 25 September 2001, passed (Top floor okay to line. Batts in walls and ceilings.)

Preline/plumbing – 25 September 2001, passed (29/09/2003 received drainage asbuilt plan.)

Plybracing – 6 October 2003, passed

Footing – 29 December 2004, passed (Pile footing okay. Require revised plan for deck. Now slightly smaller.)

Final/building – 22 November 2005, failed (Electrical certificate to come.)

Final/plumbing – 22 November 2005, passed

Final/building – 22 November 2005, failed (22/11/2005 received electrical compliance certificate. 29/11/2005 statement of compliance issued and sent to the authority.)

⁴ New Zealand Standard NZS 3604:1999 Timber Framed Buildings

- 3.3 On 30 June 2006, the authority wrote to the owner explaining that the building certifier had now ceased operations and recognising that it, the authority, had a role to play in assisting building projects to reach a point where either a code compliance certificate or a certificate of acceptance could be issued.
- 3.4 It appears that the owner did not follow up with the authority until 2010, at which point the authority informed the owner that it would not be issuing a code compliance certificate. I have not seen any correspondence from the authority relating to this decision.
- 3.5 The owner applied for a determination and this application was received by the Department on 22 November 2010.

4. The submissions

- 4.1 The applicant forwarded copies of:
- a covering letter providing background information to the dispute
 - correspondence from the authority dated 30 June 2006
 - building inspection related documents including plans, an electrical certificate of compliance, and the building certificate, records of inspections, and the statement of compliance.
- 4.2 The authority provided a copy of the building consent.
- 4.3 A draft determination was issued to the parties on 14 February 2011. The draft was issued for comment and for the parties to agree a date when the house complied with Building Code Clause B2 Durability.
- 4.4 Both parties accepted the draft without comment and agreed the date of compliance with Clause B2 was 14 October 2003, being the date that the work was substantially completed.

5. Grounds for the establishment of code compliance

- 5.1 In order for me to form a view as to the code compliance of the building work, I have established what evidence was available and what could be obtained, considering that the building work is completed and some of the elements were not able to be cost-effectively inspected.
- 5.2 In the absence of any evidence to the contrary, I take the view that I am entitled to rely on the building certifier's inspection records, but I consider it important to look for evidence that corroborates or contradicts these records. I consider that the level of that reliance is influenced by the information available to me and also by my evaluation of the building work.
- 5.3 In summary, I find that the following evidence will allow me to form a view as to the code compliance of the building work:
- the record of inspections carried out by the building certifier, which indicates satisfactory inspections of parts of the building work (refer paragraph 3.2)
 - the drawings and specifications in the consent documentation
 - the expert's report (refer to paragraph 6).

6. The expert's report

6.1 As mentioned in paragraph 1.5, I contracted an independent expert to assist me and assess the Building Code compliance of the house.

6.2 The expert is a member of the New Zealand Institute of Building Surveyors. He visited the building on 2 December 2010 and furnished a report on 7 January 2011. A copy of this report was provided to the parties on 13 January 2011.

6.3 General

6.3.1 The expert noted that the alterations were undertaken in accordance with the approved plans with the exception of:

- the kitchen location and lay-out
- the stairway lay-out.

6.3.2 The expert observed that the construction of the alterations reflected the product manufacturers' literature and/or industry standards that were applicable at the time of construction, and found the quality of workmanship to be of a good standard, to both the interior and exterior of the alteration.

6.4 Weathertightness

6.4.1 The expert assessed undertook external and internal inspection as well as internal invasive and non-invasive moisture readings. Due to the nature of the construction and cladding system the expert assessed the moisture content of the exterior walls by undertaking invasive and non-invasive moisture content readings internally at locations considered prone to leaking. Areas included the skylights, doors in the gable ends and the dormer windows. The expert found no evidence of water ingress.

6.4.2 The expert noted that the weatherboard cladding had been well maintained and kept in good condition. The 250mm x 25mm timber weatherboards were well fixed and aligned. The method of fixing complied with the Acceptable Solution applicable in 2000.

6.5 Other Building Code clauses

6.5.1 From his investigations the expert concluded the following:

Building Code clause	Assessment
B1 Structure	Complies <ul style="list-style-type: none"> • The dwelling showed no evidence of structural stress or excessive movement
E2 External Moisture and B2 Durability	Complies <ul style="list-style-type: none"> • Condition of weatherboard cladding – good • Joinery/weatherboard junctions filled with timber surrounds and scribes in a tradesman like manner • Head flashing fitted on top of windows and doors and covered by the head board with sheet metal flashing • Most doors and windows protected by soffit overhang and verandahs • Roof flashings (hip, barge, valley, apron) all are well formed and sealed

	<ul style="list-style-type: none"> Interior linings and general finish. All painted plaster lined walls and ceilings use good quality materials and the general finish is of a good standard
C fire safety	<p>Complies</p> <ul style="list-style-type: none"> Smoke alarms are installed within 3 metres of the bedroom entrance doors
E1 surface moisture	<p>Complies</p> <ul style="list-style-type: none"> The dwelling is sufficiently elevated to allow natural run-off of surface water and the roof water is collected in externally fitted gutters and via down pipes is disposed into a 25,000L holding tank
E3 internal moisture	<p>Complies</p> <ul style="list-style-type: none"> Large opening doors and windows provide ample ventilation, the bathroom and ensuite are also adequately ventilated to prevent accumulation of internal moisture The wall surfaces and spaces with sanitary fixtures and appliances are impervious and easily cleaned. The expert was uncertain the extent to which the bathroom and ensuite floors had been waterproofed but he noted that the showers were in enclosed cubicles which would limit the amount of splashing and was unlikely to threaten the durability of the underlying timber floor.
F1 Hazardous Building Materials	Complies
F4 safety from falling	Complies
G1 personal hygiene	Complies
G3 food preparation	Complies
G4 ventilation	Complies
G7 & G8 lighting	Complies
G12 water supply	Complies
G13 foul water	Complies

6.6 Summary

- 6.6.1 In the expert's view the alterations comply with the Building Code, product manufacturers' literature and/or industry trade standards that were applicable at the time of construction.
- 6.6.2 The expert did not identify any building work that was required for Building Code compliance other than to note that adequate maintenance would be required to ensure that the building work would continue to meet the relevant Clauses of the Building Code.

Matter 1: The external envelope

7. Discussion

7.1 The external envelope

7.1.1 The evaluation of building work for compliance with the Building Code and the risk factors considered in regards to weathertightness have been described in numerous previous determinations (for example, Determination 2004/1).

7.2 Weathertightness risk

7.2.1 The house has the following environmental and design features which influence its weathertightness risk profile:

Increasing risk

- the house is sited in a high wind zone
- the house is two storey
- the roof to wall intersections are party exposed

Decreasing risk

- there are 600mm soffits and verandahs
- the envelope is of simple shape and form
- the timber deck is at ground floor level.

7.2.2 When evaluated using the E2/AS1 risk matrix, the weathertightness features outlined in paragraph 7.2.1 show the house has a medium weathertightness risk rating.

7.3 Weathertightness conclusion

7.3.1 I consider the expert's report establishes that the current performance of the external envelope is adequate. Consequently, I am satisfied that the external envelope complies with Clause E2 of the Building Code.

7.3.2 The external envelope 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 house to remain weathertight. There is no evidence of moisture ingress and no faults to the external envelope that are likely to allow the ingress of moisture in the future, therefore the external envelope complies with Clause B2.

7.3.3 Effective maintenance of claddings is important to ensure ongoing compliance with Clauses B2 and E2 of the Building Code and is the responsibility of the building owner. The Department has previously described these maintenance requirements, including examples where the external wall framing of the building may not be treated to a level that will resist the onset of decay if it gets wet (for example, Determination 2007/60)

Matter 2: Other relevant code requirements

8. Discussion

- 8.1 Taking into account the comments of the expert outlined in paragraph 6.5.1, and the other evidence, I am satisfied that the alterations comply with the remaining relevant Clauses of the Building Code.
- 8.2 While the expert was not able to include an assessment of H1 Energy Efficiency the inspection records show the building certifier observed 'batts in walls and ceilings' on 25 September 2001. I consider this indicates satisfactory inspections of this part of the building work, and I therefore conclude the alterations comply with Clause H1.

9. The appropriate certificate to be issued

- 9.1 Having found that the alterations comply with the Building Code, I must now determine whether the authority can issue either a certificate of acceptance or a code compliance certificate.
- 9.2 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 building consent authority may, on application issue a certificate of acceptance. In the case of these alterations, the owner is seeking a code compliance certificate.
- 9.3 In this situation, where I have reasonable grounds to conclude that the building work complies with the Building Code, I take the view that a code compliance certificate is the appropriate certificates to be issued in due course.

Matter 3: The durability considerations

10. Discussion

- 10.1 There are concerns about the durability, and hence the compliance with the Building Code, of certain elements of the building taking into consideration the completion of the building work in 2005.
- 10.2 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).
- 10.3 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.

- 10.4 In this case the delay between the completion of the building work in 2005 and the applicants' request for a code compliance certificate has raised concerns that various elements of the building are now well through or beyond 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.
- 10.5 It is not disputed, and I am therefore satisfied, that all the building elements complied with Clause B2 on 14 October 2003. This date has been agreed between the parties, refer paragraph 4.4.
- 10.6 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 issues raised in this determination.
- 10.7 I continue to hold the view, and therefore conclude that:
- The authority has the power to grant an appropriate modification of Clause B2, on request of the owner, in respect of the building elements.
 - It is reasonable to grant such a modification because in practical terms, the building is no different from what it would have been if a code compliance certificate had been issued when the building work was completed in 2005.
- 10.8 I strongly suggest 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.

11. The decision

- 11.1 In accordance with section 188 of the Building Act 2004, I determine that the alterations comply with the Building Code, and accordingly I reverse the authority's decision to refuse to issue a code compliance certificate.
- 11.2 I also determine that:
- a) all the building elements installed in the house, complied with Clause B2 on 14 October 2003
 - 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 14 October 2003 instead of from the time of issue of the code compliance certificate.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 21 March 2011.

John Gardiner
Manager Determinations