Department of Building and Housing
Te Tari Kaupapa Whare

Determination 2011/025

Refusal of a code compliance certificate for 14-year old house completed under the supervision of a building certifier at 62 Taranaki Lane, Te Puke

1. The matters to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004[1] ("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, L Rangihuna ("the applicant"), and the other party is the Tauranga City Council ("the authority"), carrying out its duties as a territorial authority or building consent authority.

1.2 This determination arises from the authority's decision to refuse to issue a code compliance certificate for a 14-year-old house because it was not satisfied that the house complied with the Building Code (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 ceased operating as a certifier before it had issued a code compliance certificate for the work.

[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.

1.3 The matter to be determined[2] is therefore whether the authority was correct to refuse to issue a code compliance certificate for the building work. In deciding this, I must consider:

1.3.1 Matter 1: The external envelope

Whether the external envelope of the building ("the external envelope") complies with Clauses[3] B2 Durability and E2 External Moisture of the Building Code. The external envelope includes the components of the systems (such as the PVC weatherboard and concrete brick veneer claddings, the windows, the corrugated steel roof and the flashings), as well as the way the components have been installed and work together. I consider this 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 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 in paragraph 9.

1.4 The evidence

1.4.1 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. The building work

2.1 The building work consists of a detached single storey house situated on an excavated west-to-east sloping site in a rural location. The site is considered an exposed site, and is in a high wind zone for the purposes of NZS 3604[4]. A garage/workshop built under a separate consent in 2003 is not included in this determination.

2.2 The dwelling is relatively simple in shape and form, is of light timber frame construction and sits on a concrete slab foundation.

2.3 The cladding is face-fixed PVC weatherboard on the east and south elevations, and concrete brick veneer on the west and north elevations. The exterior joinery is aluminium throughout, and includes face-fixed windows on the weatherboard-clad elevations, french doors, and two greenhouse or conservatory-type windows which have been recessed into the roof of the dwelling.

2.4 The roof is a simple, truss-and-rafter style gable roof with a 25° pitch, and is clad in pre-formed metal roofing material with guttering fitted along the roof's outer edge. A 600mm soffit has been provided on all elevations.

[2] Under sections 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.
[4] New Zealand Standard NZS 3604:1999 Timber Framed Buildings

2.5 The expert noted that he was unable to establish whether or not the timber framing in the walls and roof of the dwelling had been treated. Given the date of construction in 1996, I consider that the wall framing is most likely to be untreated.

3. Background

3.1 On 24 May 1996 the authority issued a building consent (No. 96/1218) for the house under the Building Act 1991.

3.2 The authority's records show that the building certifier carried out the following progress inspections for the building work:

- footing on 24 May 1996 (which passed)
- bond beam on 29 May 1996 (which passed)
- underfloor and slab on 31 May 1996 (both of which passed)
- pre-line/building on 5 August 1996 (which failed, although noting that insulation had been installed), repeated on 7 August 1996 (which passed)
- drainage on 25 September 1996 (which passed)
- final/building on 10 December 1997 (which failed, noting that 'Bath, shower and kitchen sink to reseal. Flashings above windows, pop rivets have popped.').

3.3 It appears that the building certifier did not carry out a follow up to the final building inspection or issue a code compliance certificate. In a letter to the applicant dated 16 March 2000, the building certifier did, however, strongly advise the applicant to 'call for a final inspection' of the dwelling so that a code compliance certificate could be issued. The building certifier ceased to operate as a building certifier on 30 June 2005 and became 'processing and inspections consultants' operating on the authority's behalf ("the contractor").

3.4 The issue of a code compliance certificate for the dwelling was not raised again until the applicant sought to sell the house in 2010 at which time the authority declined to issue a code compliance certificate (refer paragraph 4.2) because of the time that had passed since construction and concerns that the building may not comply with Clauses E2 and B2 the Building Code

3.5 The Department received an application for a determination on 22 November 2010.

4. The submissions

4.1 The applicant provided copies of:

- the consent documentation
- the inspection history for the building work
- some correspondence between the parties.

4.2 The authority acknowledged the application for a determination on 3 December 2010, but did not make a submission. I take from the content of the determination application and the authority's acknowledgement of that application, that the applicant did at some time apply for a code compliance certificate and that this has been refused by the authority.

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. The Department sought clarification regarding the agreed the date of compliance with Clause B2 and received an agreement on 24 March 2011 from the parties that 1 December 1997 was the appropriate date.

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 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 house.

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 1.4.1, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors. The expert inspected the house on 7 January 2011 and provided a report that was completed on 20 January 2011.

6.2 The expert noted that generally the cladding 'is well fixed and aligned', and that the dwelling is 'generally in sound condition'. The expert also commented that '[t]here is no evidence of failure or pre-mature deterioration', and that the overall standard of finish is 'good'.

6.3 The expert provided with his report copies of the following documents from the authority's records:

- correspondence from the building certifier to the applicant about the issuing of a code compliance certificate for the dwelling
- the consented plans
- the construction inspection record.

6.4 The external envelope

6.4.1 The expert inspected the interior of the house and noted that there was 'no visual evidence that exterior moisture ingress is/has taken place'.

6.4.2 Commenting specifically on the weathertightness of the external envelope, the expert noted:

- there are no overflows installed to the fascia and gutter system and such gutter systems with no overflow provision may allow water to enter the dwelling if the downpipes become blocked
- the aluminium joinery has been installed 'without the benefit of jamb and sill flashings', although this would have been a common installation method at the time of construction.

6.4.3 The expert took at least seventeen invasive moisture readings in the exterior walls at areas considered at risk, and noted there were no elevated readings or signs of moisture. The expert concluded that

> Based on my moisture content readings taken in numerous locations throughout the interior, there is no evidence to suggest that the cladding is failing. I am satisfied that the cladding has been performing for 15 years now, and with normal routine maintenance [will] likely continue to do so.

6.5 Compliance with the other relevant code clauses

6.5.1 The expert assessed the building work for compliance with the other relevant clauses of the Building Code. In the expert's opinion, based on visual observations, the following clauses have been complied with:

- B1 Structure
- C1 Fire safety
- E1 Surface water
- E3 Internal Moisture
- F2 Hazardous building materials
- F4 Safety from falling
- G1 Personal hygiene
- G2 Laundering
- G3 Food preparation and prevention of contamination
- G12 Water supply

- G13 Foul water
- H1 Energy efficiency

6.5.2 In respect of Clause G4, the expert noted that although the bathroom and ensuite are adequately ventilated by opening windows, the air extractors that have been installed currently vent into the roof space rather than to the outside.

6.5.3 In addition, the expert assessed the building work for compliance with Clause F7 Warning systems of the Building Code, and noted that although smoke alarms have been installed, they have not been installed within 3 metres of the bedroom entrance doors as required.

6.5.4 A copy of the expert's report was provided to the parties on 25 January 2011.

Matter 1: The external envelope

7. Weathertightness

7.1 The evaluation of building work for compliance with the Building Code and the risk factors considered in regard 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:

Decreasing risk

- single storey building
- fully protected roof/wall intersections
- eaves generally 600mm in width
- relatively simple envelope complexity
- one open timber deck at ground level.

Increasing risk

- high wind zone
- more than one cladding type.

7.2.2 When evaluated using the E2/AS1 risk matrix, these features show that the house has a low risk rating.

7.3 Weathertightness performance

7.3.1 Taking into account the expert's report, although the claddings generally appear to have been installed in accordance with good trade practice, I conclude that remedial work is necessary in respect of the lack of overflows to the fascia and gutter system.

7.3.2 I note the expert's comments regarding the lack of jamb and sill flashings to the aluminium joinery (refer paragraph 6.4.2). However the joinery installation has performed adequately to date given there is no reason to consider it will not continue to do so in future.

7.4 Weathertightness conclusion

7.4.1 I consider the expert's report establishes that the current performance of the external envelope is satisfactory, consequently I am satisfied that the house complies with Clause E2 of the Building Code.

7.4.2 In addition, the building is 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. Because the lack of an overflow to the fascia and gutter system is likely to allow the ingress of moisture in the future, the building work does not comply with the durability requirements of Clause B2 insofar as it relates to Clause E2.

7.4.3 However I am able to conclude that satisfactory provision of overflows to the fascia and gutter system as outlined in paragraph 7.3.1 will result in the building work being brought into compliance with Clause B2 of the Building Code.

Matter 2: Other relevant Code requirements

8. Discussion

8.1 Although the bathroom and ensuite are ventilated by opening windows and air extraction units, the air extraction units currently vent to the roof cavity rather than to the outside of the dwelling. I concur with the expert's view that these units must ventilate to the outside of the dwelling to meet the requirements of Clause G4 Ventilation of the Building Code.

8.2 I note the expert's reference to the smoke alarms. Although they were not a requirement at the time of construction I do however recommend these be relocated to within 3 metres of the bedroom entrance doors of the dwelling as now required to comply with Clause F7 Warning systems of the Building Code.

8.3 The expert's report and the other evidence does provide me with reasonable grounds to conclude that the building work complies with the remaining relevant clauses of the Building Code.

Matter 3: The durability considerations

9. Discussion

9.1 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 1997.

9.2 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).

9.3 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.

9.4 In this case the 14-year delay between the completion of the building work in 1997 and the applicant's request for a code compliance certificate in 2010 has raised concerns 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.

9.5 It is not disputed, and I am therefore satisfied, that all the building elements complied with Clause B2 on 1 December 1997. This date has been agreed between the parties, refer paragraph 4.4.

9.6 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.

9.7 I continue to hold that view, and therefore conclude that:

(a) the authority has the power to grant an appropriate modification of Clause B2, if requested by the owner, in respect of all of the elements of the building

(b) it is reasonable to grant such a modification, with appropriate notification, because in practical terms the building is no different from what it would have been if a code compliance certificate had been issued in 1996.

9.8 I strongly recommend that the authority record this determination, and any modification(s) resulting from it, on the property file and also on any LIM issued concerning this property.

10. The appropriate certificate to be issued

10.1 Having found that the building work can be brought into compliance with the Building Code, I must now determine whether a code compliance certificate is the appropriate certificate to be issued.

10.2 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.

10.3 I note that in this case the applicant has indicated that he is seeking a code compliance certificate for the completed building work.

10.4 In this situation, where I have reasonable grounds to conclude that the building work can be brought into compliance with the Building Code, I take the view that a code compliance certificate is the appropriate certificate to be issued in due course.

11. What is to be done now?

11.1 The applicant should make good the ventilation and gutter drainage to the satisfaction of the authority. Should there be any disagreement this can be referred to the Chief Executive for a further binding determination.

11.2 Once the matters set out in paragraphs 7.3.1 and 8.1, plus any other matters that are identified during the repair work, have been rectified to its satisfaction, the authority may issue a code compliance certificate in respect of the building consent, amended as outlined in paragraph 12.2.

12. The decision

12.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:

- the external envelope of the house does not comply with Clause B2 of the Building Code insofar as it relates to Clause E2
- the building work does not comply with Clauses G4 of the Building Code

and accordingly I confirm the authority's decision to refuse to issue a code compliance certificate.

12.2 I also determine that:

(a) all the building elements installed in the building, apart from the items that are to be rectified as described in this determination, complied with Clause B2 on 1 December 1997.

(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 1 December 1997 instead of from the time of issue of the code compliance certificate for all the building elements, except the

items to be rectified as set out in paragraphs 7.3.1 and 8.1 of Determination 2011/025

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 28 March 2011.

John Gardiner
Manager Determinations