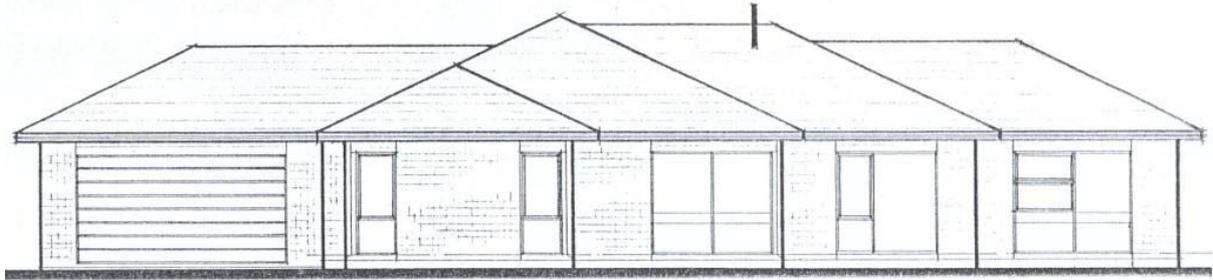


Determination 2006/127

Determination regarding a code compliance certificate for a house at 540B Springs Road, Prebbleton, Canterbury



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, Determinations Manager, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The applicants are the owners Mr and Mrs Pattison (“the applicants”) and the other party is the Selwyn District Council (“the territorial authority”).
- 1.2 The matter for determination is the territorial authority’s decision to refuse to issue a final code compliance certificate for a 13-year-old house because of the age of the consent and the territorial authority’s concerns that the house may not comply with clause B2 of the Building Code (First Schedule, Building Regulations 1992).
- 1.3 In order to determine that matter, I must first decide whether the building complies with the Building Code² (First Schedule, Building Regulations 1992).
- 1.4 In making my decision, I have considered the documentation received from the parties, and the other evidence in this matter.

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.

- 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 a single-storey detached house situated on a level site, which is in a high wind zone for the purposes of NZS 3604³. The house is simple in plan and form. Construction is conventional light timber frame constructed on concrete slabs. The pitched roof has hip and valley junctions, and 500mm wide eaves and verge projections.
- 2.2 The external walls of the house are clad with an Oamaru stone veneer which is separated by a 40mm wide drained cavity from the inner timber-framed wall.

3. Sequence of events

- 3.1 The territorial authority issued a building consent for a dwelling and garage on 20 July 1993.
- 3.2 The territorial authority carried out various inspections from 22 July 1993 until 7 October 1993. The applicants did not take up the territorial authority's suggestion in November 1998, November 1999 and August 2000 that a final inspection be undertaken.
- 3.3 The territorial authority issued an interim code compliance certificate on 9 September 2000. This certificate did not include the rectification work listed in the territorial authority's inspection notices provided after the final inspection.
- 3.4 Another building consent was issued in January 2001 in respect of a sewer connection to the house together with miscellaneous building items, and a code compliance certificate was issued by the territorial authority for all that work on 17 September 2004.
- 3.5 The applicants eventually requested a final inspection of the dwelling and garage on 17 August 2006, and the territorial authority carried out such an inspection on 24 August 2006.
- 3.6 Following a further inspection of the property on 15 September 2006, the territorial authority noted that the majority of the items requiring rectification had been attended to.
- 3.7 An application for a determination was received by the Department on 11 September 2006.

^{3 3} New Zealand Standard NZS 3604:1999 Timber Framed Buildings

4. The submissions

4.1 The applicants, in a cover note, stated that all the matters arising from the inspections undertaken by the territorial authority on 24 August 2006 had been rectified. The territorial authority was to re-inspect the building work on 15 September 2006.

4.2 The applicants forwarded copies of:

- the plans and specifications
- some building consent and inspection records
- the correspondence with the territorial authority
- the interim code compliance certificate relating to the dwelling and garage, and the final code compliance certificate relating to the drainage connection.

4.3 In a letter to the Department dated 30 October 2006, the territorial authority described the background leading up to this determination. The territorial authority's main concerns were:

- the effect on the structure of the covered weep holes to the stone veneer, stormwater risers, and gulley traps
- the age of the butynol or similar proprietary flashings.

The territorial authority also stated that it might be able to consider a waiver in respect of non-complying clauses of the Building Code, in particular B1 and B2.

4.4 The territorial authority forwarded copies of:

- some inspection notices
- the interim code compliance certificate.

4.5 Copies of the evidence were provided to each of the parties. Neither party made any further submissions in response to the submission of the other party.

4.6 A copy of the draft determination was sent to the parties on 12 December 2006. 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. Both parties accepted the draft citing 1 November 1993 as the time when compliance with B2 was achieved.

4.7 In a letter to the Department dated 20 December 2006, the territorial authority advised that the all defects have been fixed to its satisfaction and that a notice to fix did not need to be issued. I have emended the determination accordingly.

The durability considerations

5 Discussion and conclusion

- 5.1 The territorial authority has concerns about the durability, and hence the compliance with the building code, of the elements of the building, taking into consideration the issue of the building consent in July 1993.
- 5.2 The relevant provision of clause B2 of the Building Code recognises 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).
- 5.3 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.
- 5.4 It is not disputed, and I am therefore satisfied that all the building elements installed in the house, apart from items that have been rectified, complied with clause B2 on 1 November 1993. This date has been confirmed by both the applicant and the territorial authority since the publication of the draft determination.
- 5.5 In order to address these durability issues, I sought some clarification of general legal advice about waivers and modifications. I have now received that clarification and the legal framework and procedures based on this clarification are described in previous determinations (for example, Determination 2006/85) and are used to evaluate the durability issues raised in this determination.
- 5.6 I continue to hold the views expressed in the previous relevant determinations, and therefore conclude that:
- (a) The territorial authority has the power to grant an appropriate modification of clause B2 in respect of all of the elements of the building if the applicant applies for such a modification.
 - (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 1993.

- 5.7 I strongly recommend that the territorial authority record this determination and any modification resulting therefrom, on the property file and also on any LIM issued concerning this property.

The structural considerations

6 Discussion

- 6.1 The territorial authority originally had concerns that, as the weep holes in the stone veneer have been obstructed for some time and some of the butyl flashings may be deteriorating, the structural integrity of the external wall framing may have been affected. The territorial authority has since confirmed that all defects have been fixed to its satisfaction.

7 The decision

- 7.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:
- (a) the building elements of the house, apart from the items that are to be rectified, comply with all the clauses of the Building Code, including B2 as amended (see 7.1(d) below).
 - (b) all the building elements installed in the building complied with clause B2 on 1 November 1993.
 - (c) should the applicant so request, the territorial authority must modify its decision to issue the building consent to the effect that the building consent is amended 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 November 1993 instead of from the time of issue of the code compliance certificate for all of the building elements, except those elements that have been rectified.
 - (d) once any defects identified by the territorial authority have been fixed to its satisfaction, the territorial authority is to issue a code compliance certificate in respect of the building consent as amended.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 22 December 2006.

John Gardiner
Determinations Manager