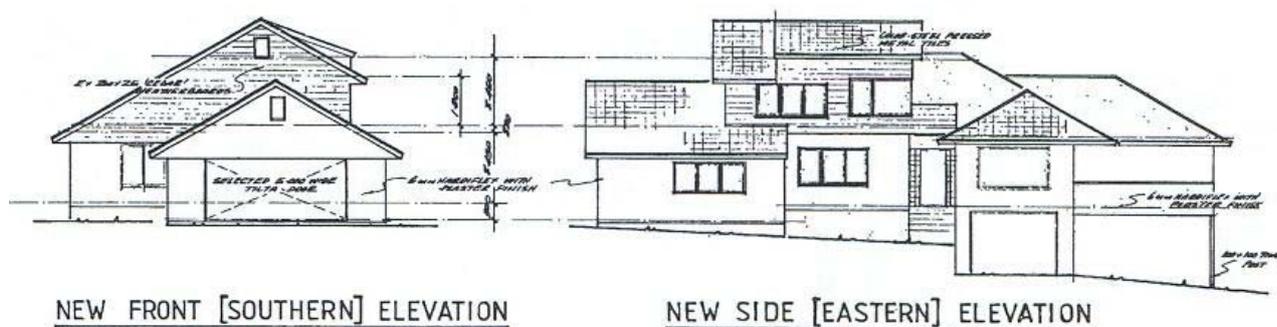


## Determination 2006/69

### Refusal of a code compliance certificate for a building with plywood and monolithic cladding systems at 151 Kowhai Road, Mairangi Bay



#### 1. The dispute to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“the Act”) made under due authorisation by me, John Gardiner, Determinations Manager, Department of Building and Housing, for and on behalf of the Chief Executive of that Department. The applicants are the owners, Mr and Mrs Adams (“the applicants”), and the other party is the North Shore City Council (“the territorial authority”).
- 1.2 The dispute for determination is whether the territorial authority’s decision to decline to issue a code compliance certificate for 3 to 7-year-old alterations and additions to an existing house because it was not satisfied that the building work complied with clause B2 “Durability” of the Building Code<sup>2</sup> (First Schedule, Building Regulations 1992) is correct.
- 1.3 The question to be determined is whether certain building elements, which have 5 and 15-year durability requirements, comply with clause B2 of the Building Code considering the time that has elapsed since the elements were constructed.

<sup>1</sup> The Building Act 2004 is available from the Department’s website at [www.dbh.govt.nz](http://www.dbh.govt.nz).

<sup>2</sup> The Building Code is available from the Department’s website at [www.dbh.govt.nz](http://www.dbh.govt.nz).

- 1.4 In making my decision, I have considered the submissions of the parties and the other evidence in this matter. I have not considered any other aspects of the Act or the Building Code.

## 2. The building

- 2.1 The building work consists of alterations and additions to a two-storey house situated on a sloping site, which is in a high wind zone for the purposes of NZS 3604<sup>3</sup>. The additions consist of a new upper level over part of the existing house, a new double garage to the south elevation and an extension with a new deck to the north elevation. The north addition includes a new family room with a basement games area below and a new deck. Construction of the new additions is conventional light timber frame, with concrete slabs and foundations, aluminium windows, plywood wall cladding to the top level and monolithic wall cladding to the lower levels. The house shape is moderately complex in plan and form, with 30° pressed metal tile hip and gable roofs at varying levels. Eaves and verge projections vary between 400mm and 500mm, with deeper roof overhangs above the new deck and the relocated entry. A small enclosed deck, located above living areas, extends from the new upper level bedroom. The larger north deck has a spaced timber deck floor. Both decks have monolithic clad balustrades with timber cappings.
- 2.2 The cladding system on the upper level walls of the building is plywood with vertical battens over joints, with further decorative battens between joints to simulate “board and batten” cladding. The cladding system to the exterior walls of the ground floor and basement levels is what is described as monolithic cladding, and is a “Harditex” system with 7.5 mm thick fibre cement sheets fixed through the building wrap to the framing, and finished with an applied textured coating system.
- 2.3 I have received no evidence as to the treatment of the wall framing timbers. I note that the building consent was issued on 19 February 1999, the specification makes no mention of treatment to the wall framing and the use of untreated framing timber was common practice at the time. I therefore consider that the external wall framing is unlikely to be treated.
- 2.4 I have seen no evidence of producer statements or warranties for the cladding.

## 3. Sequence of events

- 3.1 The territorial authority issued a building consent on 19 December 1999 to Mr Caisley, who was also the builder (“the first owner”), and carried out various inspections during the course of construction, including prior to lining installation and following lining installation. It appears that construction took place over a number of years, as the inspection summary indicates that the “Post Line” inspection was not completed until 17 March 2003.
- 3.2 It appears that the first owner sold the house to the applicants on 21 January 2005, while continuing to communicate with the territorial authority with regard to

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<sup>3</sup> New Zealand Standard NZS 3604:1999 Timber Framed Buildings

completion of the work covered in the building consent. The final inspection was undertaken on 21 January 2005; and identified two outstanding items to be completed. The inspection summary notes that the first owner was given a pro-forma “Weathertightness Letter”, which explained the need for the territorial authority to carry out a “weathertightness inspection” of the building.

- 3.3 The territorial authority carried out a visual inspection on 11 April 2005. In a letter to the first owner dated 18 April 2005, the territorial authority stated that the Building Code required the durability of the cladding to be 15 years and that of the timber framing to be 50 years from the date of issue of the code compliance certificate. The territorial authority also noted that the inspection process for monolithic claddings had changed since the time that the building consent for the house was processed. The territorial authority listed certain weathertightness risk factors identified with the building, together with a list of identified defects. The territorial authority also required the first owner to provide a report from a “qualified building consultant” to investigate the weathertightness of the cladding, confirm the moisture levels in the exterior framing and propose remedial work if necessary. The territorial authority noted that:

On completion of all required remedial work and any outstanding work to Council satisfaction, and on fulfilling all other consent requirements, Council will issue a letter stating full compliance of the dwelling except durability clause (B2) of the New Zealand Building Code.

- 3.4 In a letter to the territorial authority dated 11 May 2005, the lawyer acting on behalf of the first owner noted that most of the identified defects would be attended to, but queried the necessity of remedial work with regard to several items. The lawyer noted that clarification was needed before the first owner obtained a “moisture content report” as required by the territorial authority. A handwritten note on the letter notes that the territorial authority phoned the lawyer on 25 May 2005 to explain each remedial item noted in the letter to the first owner dated 18 April 2005 and to note that the requirements of the letter remained unchanged.
- 3.5 The first owner forwarded the required consultant’s report to the territorial authority on 27 July 2005. The report was prepared by House Assessments Ltd (“the consultant”), and identified moisture tests undertaken, listed areas of non-compliance with the building code and outlined remedial work that the consultant considered necessary.
- 3.6 Following a meeting on site with the territorial authority and the consultant, the first owner submitted details of the proposed remedial work to the territorial authority. These were subsequently approved and the work was carried out. The territorial authority inspected the remedial work on 23 January 2006, and the “Inspectors Field Inspection Sheet” notes “Site visit – items completed as required for W/T issues”.
- 3.7 In a letter to the applicants dated 21 February 2006, the territorial authority noted that all final inspections had been completed, and that:

Building officials are now satisfied on reasonable grounds that the building work has been completed to the approved building consent and to the performance requirements of the New Zealand Building Code, except clause B2 Durability.

The territorial explained that the durability provisions of the building code commence from the date of issue of the code compliance certificate, and that:

Due to the age of completed building work, much of the durability time of materials and systems has now expired. Therefore Council is unable to issue a Code Compliance Certificate.

- 3.8 The territorial authority did not issue a Notice to Rectify as required under section 43(6) of the Building Act 1991.
- 3.9 An application for a determination was received by the Department on 6 March 2006.

#### **4. The submissions**

- 4.1 In a statement in the application, the applicant noted that the “Matter of doubt or dispute” is:

Compliance of the installed cladding system with the relevant clauses of the New Zealand Building Code considering the age of the construction.

- 4.2 The applicant forwarded a copy of the letter from the territorial authority dated 21 February 2006.

- 4.3 The territorial authority made a submission in the form of a letter to the Department dated 15 March 2006, which summarised the consent and inspection processes related to the building work, and noted that:

In regards to this application for a determination, the matters of doubt are:

- Whether all building elements incorporated in the works comply with clause B2 of the Building Code, considering the age of construction.

- 4.4 The territorial authority forwarded copies of:

- the building plans
- some of the consent documentation
- the inspection records
- the correspondence with the first owner
- the consultant’s report
- the letter to the applicant.

- 4.5 Copies of the submission and other 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 In an email to the territorial authority dated 13 March 2006, the Department requested confirmation that the matter to be considered in this determination is limited to the issue of compliance with clause B2. The territorial authority confirmed in an email response dated 13 March 2006 that this was the case.

- 4.7 The determination was sent in draft form to the parties on 6 April 2006. The applicant accepted the draft.

- 4.8 The territorial authority also accepted the draft determination. However, it noted the draft determination said normal maintenance was not a defined term but submitted

that the definition of normal maintenance described in paragraph 2.0 of B2/AS1 could be used.

- 4.9 Although normal maintenance is defined in B2/AS1, it is not defined in the Act. I have amended paragraph 5.5 and 5.6 to acknowledge this and to use wording consistent with B2/AS1.

## 5. Discussion

- 5.1 I note that the territorial authority is satisfied on reasonable grounds that the additions and alterations to this building comply with the provisions of the building code, with the exception of clause B2 Durability (refer paragraph 3.7).
- 5.2 I note that the relevant provision of clause B2 of the building code is that building elements must, with only normal maintenance, continue to satisfy the performance requirements of the code for certain periods “from the time of issue of the applicable code compliance certificate”.
- 5.3 As set out in paragraph 4.3, the territorial authority has concerns about the durability, and hence the compliance with the building code, of certain elements of the new additions, taking into consideration that most of the building work was completed between 1999 and 2004.
- 5.4 I am of the opinion that the territorial authority should amend the original building consent for the building by making it subject to a modification of the Building Code in accordance with section 67 of the Act to the effect that the durability of the elements is to be measured from the date of the substantial completion of the alterations and additions, instead of from the time of the issue of the code compliance certificate.
- 5.5 Effective maintenance of monolithic claddings is important to ensure ongoing compliance with clauses B2 and E2 of the Building Code and is the responsibility of the building owner. Clause B2.3.1 of the Building Code requires that the cladding be subject to “normal maintenance”, however, that term is not defined in the Act.
- 5.6 I take the view that normal maintenance is that work generally recognised as necessary to achieve the expected durability for a given building element. With respect to the cladding, the extent and nature of the maintenance will depend on the material, or system, its geographical location and level of exposure. Following regular inspection, normal maintenance tasks shall include but not be limited to:
- Where applicable, following manufacturers’ maintenance recommendations
  - Washing down surfaces, particularly those subject to wind-driven salt spray
  - Re-coating protective finishes
  - Replacing sealant, seals and gaskets in joints.
- 5.7 As the external wall framing of this building is unlikely to be treated, periodic checking of its moisture content should also be carried out as part of normal maintenance.

## **6. The decision**

- 6.1 I accept that the establishment of code compliance, with respect to all code clauses, has been correctly established by the territorial authority. The territorial authority's assessment of the current condition, taking into account age and environmental exposure and maintenance carried out to date, indicates that the building elements would have met the required durability provisions as at the time of substantial completion.
- 6.2 In accordance with section 188 of the Act, I determine that the territorial authority is to amend the consent for the alterations and additions to this building to incorporate a modification of clause B2 of the Building Code to the effect that the required durability periods for the elements are to be measured from the date of the substantial completion of the building work, and not from the time of the issue of the code compliance certificate.
- 6.3 Following this amendment, any code compliance certification subsequently issued by the territorial authority should be issued in line with the amended building consent.
- 6.4 The modification of the durability period shall be documented in the appropriate territorial authority records for the property to ensure that subsequent owners and purchasers are aware of the modification. It is recommended that the modification of the durability be placed on the land information memorandum. A copy of this decision shall also be placed on the property file.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 28 July 2006.

John Gardiner  
**Determinations Manager**