

Determination 2007/44

Refusal of a code compliance certificate for a building with a monolithic cladding system at 79 Kowhai Road, Mairangi Bay, North Shore City (to be read in conjunction with determination 2006/64)

Applicant:	North Shore City Council (“the territorial authority”)
Territorial authority:	Mr M Olesen (“the owner”)
Site Address:	79 Kowhai Road, Mairangi Bay, North Shore City

1 The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004 (“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.
- 1.2 The matter for determination is whether I am satisfied on reasonable grounds that the building elements comply with clause B2, taking into account the age of the building.
- 1.3 Certain building matters were described in an earlier determination concerning the same house, Determination 2006/64 (“the first determination”).

2 Sequence of events

- 2.1 The first determination was issued on 30 June 2006. It found that the cladding system did not comply with Clause E2 of the Building Code. In addition there were a number of items to be remedied to ensure that it remained weathertight, hence the external walls of the building did not comply with Clause B2. Consequently, I confirmed the territorial authority's decision to refuse to issue a code compliance certificate.
- 2.2 I did not make a decision on the durability matter in the first determination, as matters associated with this issue needed to be clarified. That clarification has been received (refer paragraph 3.5), and accordingly, I can now make a decision.

2.3 A draft determination was issued to the parties on 3 November 2006. The draft was issued for comment and for the parties to agree a date when compliance with Clause B2 was achieved.

2.4 The territorial authority responded to the draft in a fax to the Department dated 15 January 2007. The territorial authority submitted compliance was achieved on 1 March 2002 and that this date had been discussed and agreed with the applicant.

3 Discussion

3.1 As set out in the first determination, 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 completion of the building sometime between late 2001 and early 2002.

3.2 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).

3.3 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.

3.4 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 in accordance with Determination 2006/64, complied with clause B2 on 1 March 2002. This date has been agreed between the parties, refer paragraph 2.4.

3.5 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 the clarification are described in previous determinations (for example, Determination 2006/85) and are used to evaluate the durability issues raised in this determination.

4. Conclusion

4.1 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

- (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 March 2002.

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

5 The decision

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

- (a) all the building elements installed in the building, apart from the items that have been rectified, complied with clause B2 on 1 March 2002

- (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 March 2002 instead of from the time of issue of the code compliance certificate for all building elements provided that this modification does not apply to the elements that have been altered or modified as set out in Determination 2006/64.

- (c) 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 1 May 2007.

John Gardiner
Manager Determinations