

Determination 2007/55

Issue of a notice to fix by a territorial authority regarding a house with a monolithic cladding system at 45 Halsey Drive, Lynfield, Auckland (to be read in conjunction with Determination 2005/115)

Applicant: Mr Grant Keymer representing the Keymer Family Trust (a joint-owner)

Territorial authority: Auckland City Council

Site Address: 45 Halsey Drive, Lynfield, Auckland

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 application for determination arises because the territorial authority has issued a notice to fix to which the owner objects on the grounds of its content.
- 1.2 I have previously determined certain building matters regarding this house. Those matters are described in Determination 2005/115 (“the first determination”) issued on 1 August 2005.
- 1.3 The matter to be determined is whether I am satisfied that the content of the territorial authority’s notice to fix (dated 30 September 2005), is correct, given my decision regarding the issuing of a notice to fix in paragraph 8.3 of the first determination.

¹ The Building Act 2004 is available from the Department’s website at www.dbh.govt.nz.

- 1.4 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. Sequence of events

- 2.1 The first determination was issued on 1 August 2005. The decision required the territorial authority to withdraw the Notice to Rectify and issue a notice to fix which was to take into account the defects described in the first determination.
- 2.2 On 5 September 2005 the territorial authority carried out a final inspection of the building.
- 2.3 On 30 September 2005 the territorial authority issued the notice to fix (No. 2313). This notice contained most of the items listed in the withdrawn Notice to Rectify, plus some additional requirements.
- 2.4 Paragraph 1.0 of the notice to fix contained a general statement that the building work had not been undertaken in accordance with clauses B1, B2, D1, E2, E3, F7, and H1 of the Building Code. However, the notice contained no specific contraventions relating to clauses B1, E3, or H1.
- 2.5 On 11 August 2006 the applicant wrote to the territorial authority identifying the five items the first determination identified as requiring to be fixed. The correspondence included details showing how it was proposed to fix the 5 items. In addition the applicant agreed to fix two additional items outlined in the territorial authority's final inspection: these being the provision of smoke detectors and a stair handrail.
- 2.6 On 28 August 2006 the territorial authority wrote to the applicant listing the items in the notice to fix that the territorial authority believed had not been addressed in the proposed work and contesting some items that had.
- 2.7 On 31 August 2006 the applicant wrote to the territorial authority about matters related to the cracking and the location of control joints. The territorial authority accepted the applicant's response to these matters in a letter dated 11 September 2006.
- 2.8 The applicant applied for a determination on 19 February 2007.

3. The submissions

- 3.1 The applicant supplied copies of all correspondence that had passed between the applicant and the territorial authority since the issue of the first determination.
- 3.2 The applicant submitted that the notice to fix contained 16 items to be rectified. The applicant agreed to fix the five items identified in the first determination and also agreed to complete two additional items (refer paragraph 2.5). As indicated in the table at paragraph 4.2, the applicant has also agreed to carry out one other item of work that the first determination did not specify as work that must be done.

3.3 In its submission to the Department dated 27 February 2007, the territorial authority listed the Building Code clauses that it considered did not comply with the requirements of the Building Code. These were:

- Clause B1 Structure
- Clause B2 Durability
- Clause E2 External Moisture

However, I note that the notice to fix also refers to clauses D1, E3, F7 and H1.

3.4 There is nothing in the submissions that leads me to conclude that the house has changed significantly since the first determination was issued. Consequently I have used, as part of the evidence for this second determination, the expert's report I commissioned for that first determination.

3.5 A copy of the draft determination was sent to the parties for comment on 22 March 2007.

3.6 The applicant responded in a fax to the Department dated 3 April 2007. The applicant said there was some confusion about matters the draft said the applicant was willing to fix which was in addition to that required by the first determination. I have amended the determination accordingly.

3.7 The territorial authority responded in a letter to the Department dated 5 April 2007 but which was received on 4 May 2007. The territorial authority said it accepted the findings of the draft determination in that:

the department determined that the cladding system as installed does not comply with clause . . . E2 External moisture of the building code and accordingly confirmed the decision of Council to refuse to issue a code compliance certificate

The territorial authority made other statements in the letter that did not appear to be applicable to this determination. The letter referred to the need for clarity and certainty with respect to the matter in dispute. I believe the determination is a true reflection of this, but it is also reasonable to expect the same clarity with respect to the notice to fix itself and associated correspondence.

4. Discussion

4.1 All 12 items in paragraphs 1, 2, and 3 of the Notice to Rectify, dated 13 February 2004, are repeated verbatim in paragraphs 2.1, 2.2 and 2.3 of the notice to fix.

4.2 I have not considered the additional two items under paragraph 5.0 of the notice to fix as the applicant has agreed to provide these (smoke detectors and a stair handrail). However, I note that the installation of smoke detectors was not a requirement of the Building Code at the time of construction, and following s(436) of the Act, should therefore be removed from the notice to fix.

4.3 The notice to fix lists 15 items. In summary, and based on my understanding of the descriptions in the notice to fix, the 15 items are:

Notice to fix –paragraph reference	Outline description of item	Discussion
2.1 a)	Cladding clearances above paved or unprotected ground.	Considered in 2005/115 but not determined as being required. (see also 2.2 a) below)
2.1 b)	Provision of control joints at 5.4m centres.	Considered in 2005/115 and determined as being required. Agreed to by the applicant.
2.1 c)	A 6mm gap required between the back of the cladding and the foundation wall.	Not determined as required by 2005/115.
2.1 d)	Cladding clearances above paved ground.	(repeat of item 2.1 a)
2.1 e)	The deck barriers have flat horizontal surfaces.	Determined as required by 2005/115. Agreed to by the applicant
2.1 f)	The bottom edge of fibre-cement sheet to be sealed.	Not determined as required by 2005/115.
2.2 a)	Cladding clearances above paved ground.	(repeat of item 2.1 a)
2.2 b)	Cracking to the cladding system to the deck balustrade and to the south elevation.	Determined as required by 2005/115. Agreed to by the applicant.
2.3 a)	The bottom edge of aluminium joinery has been sealed to the cladding.	Not determined as required by 2005/115.
2.3 b)	Deck barrier & house junction has no flashing installed.	Not determined as required by Det.2005/115. However, included in applicant's proposal.
2.3 c)	All flashings are to be installed in such a way as to direct water away from the building.	Not determined as required by 2005/115
2.3 d)	50mm clearance (min) is required between the cladding and adjacent surfaces (first floor deck).	Considered in 2005/115 but not determined as being required.
2.3 e)	Penetrations through the cladding system shall be as waterproof as the cladding itself.	Considered in 2005/115 and determined as required in respect of the deck light which the applicant has agreed to fix.
3.0	Provision of drainage and ventilation to the cladding or a means of monitoring moisture ingress.	Considered in 2005/115 but not determined as required.
4.0	Document changes to the building consent, for example recladding.	Not determined as required by 2005/115.

4.4 I consider items in paragraphs 2.1a), 2.1c), 2.1d), 2.1f), 2.2a), 2.3a), 2.3c), 2.3d), 3.0, and 4.0 are not required in order to comply with the decision of the first determination, and should therefore be removed from the notice to fix.

5. The decision

5.1 In accordance with section 188 of the Act, I hereby modify the territorial authority's notice to fix issued, on 30 September 2005, by removing the items described in paragraph 4.2 and 4.4 of this determination.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 29 May 2007.

John Gardiner
Manager Determinations