

## Determination 2007/59

### Determination regarding a code compliance certificate for an altered building at 103 Heberden Avenue, Sumner, Christchurch



#### 1. The matter 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, 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, Ms A Carter, (“the applicant”) and the other party is the Christchurch City Council (“the territorial authority”).
- 1.2 The matter for determination is the territorial authority’s decision to refuse to issue a code compliance certificate for 6-year-old alterations to a house because of the age of the consent.
- 1.3 In making my decision, I have considered the documentation received from the applicant, which was the only information provided to me.

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<sup>1</sup> The Building Act 2004 is available from the Department’s website at [www.dbh.govt.nz](http://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<sup>2</sup> (First Schedule, Building Regulations 1992).

## **2. The building**

- 2.1 The building work consists of alterations and additions to a three-storey detached house situated on an excavated sloping site. The resultant building is relatively complex in plan and form.

## **3. Sequence of events**

- 3.1 The territorial authority issued a building consent on 17 October 1997.
- 3.2 The territorial authority carried out inspections during the construction of the building and passed various inspections during construction, including pre-line inspections on November 1997 and April 1998. What appears to have been the last inspection, (a pre-line inspection for the garage) was conducted on 6 March 2001.
- 3.3 The territorial authority undertook final inspections on 6 March 2007 and 5 April 2007, both identifying items that required attention.
- 3.4 The applicant engaged an inspection company to carry out moisture checks on the building. The inspection company carried out moisture checks on 2 April 2007 and issued a report of the same date. The report noted that there were three locations where high moisture levels were recorded. It recommended that the rear walkway timbers attached to the building be removed and a continuous flashing be inserted. Cracks in the textured coats should also be filled and the capping of the balcony walls was also recommended.
- 3.5 I note that the inspection company undertook non-invasive moisture measurements. Experience shows that non-invasive measurements are only indicative of actual moisture levels and should not be relied upon without some means of verification, such as invasive testing.
- 3.6 The inspection company also inspected the three balcony areas of the building on 11 and 12 April 2007 and produced a report dated 13 April 2007. The report noted that there were 2 areas where higher moisture readings had been obtained and recommended that additional maintenance be carried out to the balconies.
- 3.7 The territorial authority wrote to the applicant on 17 April 2007, noting that it had carried out a site inspection. The territorial authority was not assured that the building envelope complied with clause B2. Accordingly, the territorial authority had decided not to issue a code compliance certificate.
- 3.8 An application for a determination was received by the Department on 23 April 2007.

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

## **4. The submissions**

- 4.1 The applicant stated that the territorial authority would not issue a code compliance certificate as it could not guarantee the durability of the cladding for the next 15 years.
- 4.2 The applicant forwarded copies of:
- the plans
  - the building consent
  - some of the territorial authority's inspection details
  - the two reports from the inspection company
  - the letter from the territorial authority to the applicant dated 17 April 2007
  - a set of photographs showing aspects of the building.
- 4.3 The territorial authority did not make a submission in response to the application.
- 4.4 Copies of the documentation supplied by the applicant were forwarded to the territorial authority.
- 4.5 On 9 May 2007 the applicant copied to the Department, an email from the territorial authority that agreed a date when the building complied with Clause B2 Durability; the agreed date being 1 June 1999. I have discussed this date in paragraph 5.5.
- 4.6 On 9 May 2007 the applicant copied to the Department an email that confirmed her conversation with the territorial authority about the matters to be rectified before a code compliance certificate could be issued. The email listed 7 defects plus the requirement that the applicant commission an "invasive weathertightness report on the current state of the cladding".
- 4.7 A copy of the draft determination was issued to the parties for comment on 10 May 2007. Both parties accepted the draft with the applicant noting one typographical error.

## **5 Discussion**

- 5.1 The territorial authority has concerns about the durability, and hence the compliance with the building code, of the cladding of the building, taking into consideration the completion of the building in 2000. I note that the final inspection did not take place until 6 March 2007.
- 5.2 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).

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 The 6-year delay between the completion of the building and the applicant’s request for a code compliance certificate raises the issue of when the building elements complied with clause B2. I have not been provided with any evidence that, with the exception of the cladding, the territorial authority did not accept that the building elements complied with clause B2 when the building was completed.

5.5 The applicant and the territorial authority have agreed a B2 compliance date of 1 June 1999 (refer paragraph 4.5). However, this date is prior to the completion of the solid plaster, that, according to an annotation on the quote for the exterior plastering, dated 18 April 2000, was completed in “approx July 2000”. The completion of the plaster cladding is significant in terms of the building’s expected durability and I consider that 1 July 2000 is a more appropriate date. I have amended the determination accordingly.

5.6 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.

5.7 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 2000.

5.8 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.

5.9 I note that the report from the inspection company (using non-invasive testing)

recorded several high moisture readings indicating that the cladding did not comply with E2 at the completion of the building in 2000. I also note that the territorial authority has required the applicant to complete “an invasive weathertightness report on the current state of the cladding” (refer paragraph 4.6).

- 5.10 Once the results of the weathertightness report are received, the territorial authority should issue a notice to fix identifying all the matters of non-compliance that are to be rectified prior to a code compliance certificate being issued.

## **6 The decision**

6.1 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 are to be rectified, complied with clause B2 on 1 July 2000
- (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 July 2000 instead of from the time of issue of the code compliance certificate for all the buildings elements, provided that this modification does not apply to those building elements that are modified or altered resulting from the notice to fix issued by Christchurch City Council.

- (c) following the modification set out in (b) above, 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 June 2007.

John Gardiner  
**Manager Determinations**