

## Determination 2008/5

### The issuing of notices to fix in respect of recent alterations to a 50-year-old carport/deck at 30 Te Atatu Road, Te Atatu South, Auckland



#### 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 of the house D Graham (“the applicant”), and the other party is the Waitakere City Council (“the territorial authority”).
- 1.2 The determination arises because the territorial authority issued a notice to fix in respect of unconsented alterations to the house and carport (“the building work”). The notice to fix required the applicant to:

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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).

- apply for a certificate of acceptance for the completed unconsented work and a building consent for uncompleted work, or
- apply for a building consent to upgrade and reinstate the unconsented work.

The applicant sought a certificate of acceptance for the completed work, which was declined because the work did not comply with the Building Code. The territorial authority then issued a second notice to fix.

1.3 The matters to be determined are the issuing of the notices to fix and the refusal to issue the certificate of acceptance. In order to determine these matters, I must consider:

- how the legislation applies to the building work and the procedures that must therefore be followed
- whether the building work is code compliant to the extent required by the Act.

### 1.3.1 The application of the legislation to the building work

In order to form a view about the application of the legislation to the building work I need to consider the following questions:

- a) Was any of the building work completed before the Building Act 1991 or the Building Act 2004 came into effect?
  - i) If yes, the territorial authority has no power to take any action unless:
    - the owner decides to alter the building, or change its use, or change its intended life, or subdivide the allotment in a way that affects the building, or
    - the building is dangerous, or is earthquake-prone, or is insanitary
  - ii) If no, then I must consider whether the building work is exempt from the need for a building consent, either under the Third Schedule of the 1991 Act (“the Third Schedule”), or under Schedule 1 of the 2004 Act (“Schedule 1”).
- b) Is any of the building work exempt from the need for a building consent as provided for by either the Third Schedule or Schedule 1?
  - i) If yes, a building consent is not required and the territorial authority has no power to take any action, unless certain circumstances apply (refer paragraph 1.3.1 a) i)) or it becomes aware of significant non-compliance with the building code
  - ii) If no, then a building consent is required.
- c) Does the completed building work, for which a building consent should have been issued, comply with the relevant clauses of the Building Code?

- i) If yes, then a certificate of acceptance can be issued in respect of the completed work.
  - ii) If no, then the territorial authority should issue a notice to fix setting out those items that it considers non-compliant.
- d) If any of the building work has not commenced, and is not exempt under Schedule 1, then a building consent should be sought in respect of that work.

### **1.3.2 The code compliance of the building work**

In order to form a view as to the code compliance of the building work I must consider whether the building work complies with the relevant clauses of the building code to the extent required by the Act. I address this in paragraph 5.

- 1.4 In making my decision, I have considered the submissions of the parties, the expert's report and the other evidence in this matter.
- 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 work**

- 2.1 The building work is associated with a carport attached to the street face of an existing single storey house that appears to have been constructed in the 1930's. The building work entails alterations to the carport and the associated roof deck, the installation of a new balustrade to the deck and the replacement of a ranchslider to the house that opens into the deck.

### **2.2 The carport and ranchslider**

- 2.2.1 The carport appears to comprise a concrete slab and foundations, timber support posts, concrete and concrete block retaining walls with timber-framed infill walls above, weatherboard cladding, and timber windows. The carport is 6.4 m long x 3.9 m wide and 2.1 m high, with the carport roof attached to the house below the interior floor level. The concrete slab to the carport is about 600mm below ground level with a ramped driveway to the street.
- 2.2.2 The side and rear walls of the carport consist of 1.3m high timber-framed walls sitting on 800mm high concrete foundation walls. The timber framing is clad in bevel-backed timber weatherboards fixed through the building wrap to the framing. The roof to the carport is clad with 1.5 mm butyl rubber membrane laid over 17mm plywood, which forms the deck above.
- 2.2.3 The carport was altered during the late 1960's to convert the roof into a deck, with an open timber balustrade and an asbestos-cement sheet deck floor. An original window opening to the house was cut down to floor level to allow the installation of an aluminium ranchslider opening onto the deck. No other alterations to the carport structure appear to have been made at that time.

- 2.2.4 Further work was carried out to the carport early in 2007, which involved replacing the timber windows with aluminium and repairing the infill timber wall framing, replacing the deck framing and deck floor and installing a new membrane roof. Metal uprights for a new balustrade were installed, which are intended to support glass panels. The glass panels have not yet been installed. No alterations have been made to the concrete slab and foundation walls. The existing aluminium ranchslider to the house was replaced with a new aluminium ranchslider.
- 2.3 The applicant has submitted copies of invoices from the timber supplier indicating that the timber framing supplied was “Rad No1 H3.2 PG” and the plywood was 17mm H3 treated. This is supported by the expert, who also notes that the timber weatherboards are H3.1 treated. Based on this evidence, I consider that the timber used on the carport is treated to a level that will provide good resistance to fungal decay. I also note that the carport is unlined and the framing timber is therefore exposed on the inside.
- 2.4 The roofing installer supplied a producer statement dated 14 July 2007 for the installation of the deck membrane, which notes that the installer is an “Approved Rubber Membrane applicator” and that the membrane meets the requirements of the Building Code.

### **3. Background**

- 3.1 There is some doubt whether the original carport structure had a building permit at the time of construction. Although a permit for a lean-to carport was issued on 10 June 1957, this appears to have been for a structure to be erected at the rear of the property rather than at the front (refer paragraph 3.15). As the oldest building elements in the original carport appear to be about 50 years old, I consider it likely that the carport is the result of an unrecorded amendment to the 1957 building permit with respect to its as-built location on the site.
- 3.2 The previous owners of the house were the applicant’s parents, who purchased the property in 1965. According to the applicant, her late father carried out the deck alterations to the carport in the late 1960’s to convert the carport roof into a deck and to install ranchslider doors in the east wall of the living room to provide access to this deck. Photographs show the deck in use during the 1970’s. (There is no record of any building permit issued for this work.)
- 3.3 In December 2005, the applicant purchased the house from her mother. The house was apparently in need of repair, including to the carport which had decayed framing, broken windows and degrading decking.
- 3.4 The applicant engaged a builder who advised her that a building consent was not needed as the work involved only repairs, with no alteration to the design or dimensions of the house or carport. The builder commenced the work, and seems to have completed most of the work when the territorial authority visited the site on 25 January 2007.

- 3.5 In a letter to the applicant dated 25 January 2007, the territorial authority stated that unauthorised building work had been carried out and required a written explanation, stating:

This building work is unauthorised because no building consent has been obtained for it. Building work at this property must cease immediately.

Council cannot issue a retrospective building consent for work already undertaken and consequently a requisition noting the unauthorised work will be placed on the building file.

- 3.6 The applicant responded in a letter to the territorial authority dated 30 January 2007, explaining the background to the building work and describing the poor condition and the need for repairs to the deck to ensure safety. The applicant noted:

I instructed my builder to replace the deck, the sides and the ranchslider. This is the work that is being undertaken. The deck is exactly the same size and dimension. I understand the existing wooden posts were used and the top and sides merely replaced and will be clad in a waterproofing material. The ranchslider is being replaced as the other one had deteriorated.

- 3.7 In a letter to the applicant dated 31 January 2007, the territorial authority acknowledged the applicant's explanation of the circumstances but reiterated that the work required a building consent, stating:

...all building work must cease until compliance is achieved. To achieve compliance you are required to

1. Apply for Certificate (COA) for the building work that has already been undertaken, while also applying for a building consent to complete the balance of the work. OR
2. Apply for a building consent to remove the unauthorised building work and/or reinstate the works.

- 3.8 According to the applicant, when the above letter was received the builder had removed the original ranchslider and the front of the house was open. The applicant therefore instructed the builder to complete installation of the new ranchslider.

- 3.9 The territorial authority issued a notice to fix (the first notice to fix") dated 8 March 2007, which set out the unauthorised building work and repeated the two options provided in the letter outlined in paragraph 3.7 and stated:

Council must receive a COA and Building Consent application by 10 April 2007.

- 3.10 On 18 March 2007 the applicant lodged an application with the territorial authority for a certificate of acceptance for "repair and partial replacement to existing deck", explaining that the certificate was needed as:

I did not consider the work required a building consent. I am only replacing rotten decking and side panels of existing deck. No change to existing dimensions. Work done is for maintenance purposes, using comparable material and assembly in the same position, as defined in Schedule 1(a) of the Building Act 2004. New ranchslider installed – same size/dimensions as previous and replacement of broken glass panels below deck by aluminium fixed windows.

The applicant attached sketches of the original and new carport/deck and notes listing the new and retained materials.

- 3.11 The territorial authority acknowledged the application in a letter to the applicant dated 12 April 2007, noting that this complied in part with the notice to fix but:  
...however councils notice also requires a building consent be obtained to construct the safety barrier located on the deck that exceeds one [metre] in height.
- 3.12 On 16 April 2007 the applicant lodged an application with the territorial authority for a building consent for the “installation of glass panelled barrier to deck”, attaching a sketch of the balustrade and a specification that noted the steel posts at 1.2 m centres with 10 mm safety glass to a height of 1.01 m.
- 3.13 In a letter to the applicant dated 31 May 2007, the territorial authority declined the application for a certificate of acceptance, noting that some elements were not visible so could not be assessed, and other elements were defective. A second notice to fix of the same date was attached, which required the following items to be addressed by 31 July 2007:
- The existing 100x100 mm posts to be replaced with 125x125 mm timber piles.
  - The bearer on the side wall to comply with table 7.4 in NZS 3604.
  - The deck joists to comply with table 7.4 in NZS 3604.
  - The connections of the bottom plate to the concrete foundation walls to comply with NZS 3604 6.12.1.
  - The submission of information supporting the proposed balustrade design as it was considered an alternative solution.
  - The sealing of the carport cladding to the house brick wall.
  - The sealing of the new ranchslider at the junction between the wall and the frame.
- 3.14 The letter dated 31 May 2007 also listed three items that were not visible or could not be assessed being:
1. The standard of the existing concrete and block foundation walls are questionable and can not be assessed.
  2. The plywood decking and the water proof deck covering is unknown and could not be assessed.
  3. The damp proof separation between the timber structure and the concrete walls is not visible and can not be assessed.

Items 1 and 3 are in respect of work carried out well before the Building Act 1991 came into effect, refer paragraph 3.2. Item 2 was carried out as part of the repairs and replacements carried out in 2007.

- 3.15 The territorial authority attached a “Certificate of Acceptance Report” dated 22 May 2007, which noted that the building work was “of a substandard nature and deficient in items required by the Building Code”, the 1957 building permit was for a lean-to garage to be built at the rear of the property and a later building permit in 1978 for a tool shed showed an outline of the front carport. The report concluded:

No permit or details of this carport exist, therefore it can be assumed that the carport was built between 1957 and 1978 and without the approval of the Council at the time.

The deck addition over the carport and the new ranchslider leading onto the deck appear to be recent additions and also the existing carport did not have Council approval.

Therefore Schedule 1 of the Building Act 2004 does not apply.

3.16 The Department received an application for a determination on 6 August 2007.

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

4.1 The applicant made a submission in the form of a statement dated 2 August 2007, which summarised the history of the carport structure and the background to the dispute. The applicant outlined where she considered the territorial authority had made incorrect assumptions with regard to the deck being a recent addition, which had resulted in the requirements in the notice to fix. The applicant submitted that:

...the Notice to Fix has been based on an erroneous conclusion by the Council that the "deck addition over the carport and new ranchslider leading onto the deck appears to be a recent addition". As stated, the deck and garage was constructed in the late 1960's and there has always been access to the deck from the dining room via ranchsliders.

I therefore submit that the building work I have undertaken be re-assessed in light of the fact that the structure was an existing structure with the builder undertaking repairs to it, with no alteration in design or dimension. Council have however based their decision on an incorrect premise that I was constructing or adding a structure.

Following the reassessment of the Council's decision, I submit that I also be allowed to apply for consent to install the glass safety barrier.

4.2 The applicant forwarded copies of:

- correspondence with the territorial authority
- the notice to fix dated 8 March 2007
- the notice to fix dated 31 May 2007
- 20 to 30-year-old photographs of the original deck
- various photographs, producer statements, invoices and other information.

4.3 Copies of the submissions 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.

4.4 The draft determination was sent to the parties for comment on 11 October 2007. Both parties accepted the draft without comment. However, the response from the territorial authority was not received until 13 December 2007.

## **5. The expert's report**

5.1 As discussed in paragraph 1.4, I engaged an independent expert to provide an assessment of the condition of those building elements subject to the determination. The expert is a member of the New Zealand Institute of Building Surveyors. The expert inspected the building work on 9 September 2007, and furnished a report that was completed on 18 September 2007.

### **5.2 Deck membrane**

5.2.1 The expert inspected the deck membrane and included the following comments:

- the membrane is carefully fitted and well adhered, with lapped joints
- the membrane turns up against the brick wall and under the door, meaning that additional flashings or damp proofing are unnecessary at the junction
- the membrane turns down at the edges of the deck, with no drip edge or gutter
- the deck is almost flat, so some ponding is likely at the lap edges.

### **5.3 New ranchslider**

5.3.1 The expert inspected the new ranchslider installation within the existing brick wall, took non-invasive moisture readings internally around the opening and commented that:

- there are no significant variations or evidence of moisture penetration into the double skin brick
- the large concrete lintel above the door opening is original, indicating that a timber window would have occupied the opening when the house was built
- wide architraves have been fitted to the inside, creating an effective air seal that works with the cavity in the brick wall to equalise pressures and prevent moisture penetration through the wall.

### **5.4 Carport posts and foundation walls**

5.4.1 The expert inspected the original posts and concrete walls, and commented that:

- there is no evidence of movement or other problems in the concrete and concrete block foundation walls
- the walls are likely to continue to perform for another 50 years without significant deterioration
- parts of the existing 100x100 mm posts are below ground so cannot be inspected
- while there are currently no visible signs of decay, the posts may deteriorate and require replacement within the next 50 years
- the above-ground timber of the posts is visible for inspection and maintenance as necessary.

## **5.5 New timber framing to the carport**

5.5.1 The expert inspected the new timber framing and commented that:

- the new framing and plywood is treated and exposed, allowing any moisture that may penetrate the claddings to dry out
- all framing is clearly visible for inspection and maintenance as necessary
- the deck joists are hung from the house using a bolted ribbon plate and a boundary joist satisfactorily supported by the old posts and infill framing at the other end
- the 17 mm plywood deck substrate is fixed to the joists
- the 250x50 mm joists at 600 mm centres span 3.78 metres, which would have complied with the requirements of NZS 3604 up until May 2006
- the span tables were amended in May 2006, and the span for this size and type of timber is now restricted to less than 3.5 m.

5.6 The expert concluded that the new building work complies with Clauses E2 and B2, and the old elements were in good condition and likely to remain durable.

5.7 A copy of the expert's report was provided to each of the parties on 19 September 2007.

## **6. The application of the legislation to the building work**

### **6.1 When was the building work completed?**

6.1.1 The evidence provided by the parties outlined in paragraphs 3.1 and 3.2 leads me to conclude that the original carport and deck was completed well before the Building Act 1991 or the Building Act 2004 came into force

6.1.2 From the evidence produced by the parties, I conclude that the building work was begun after the relevant provisions of the Act came into effect.

6.1.3 For the reasons set out in paragraph 1.3.1 a) i), I take the view that the territorial authority has no power to issue a notice to fix under section 164 unless a builder or a building owner is contravening or failing to comply with the Act or the regulations made under it. In this case, there may well have been a contravention of the local building bylaws in force in 1987, but there does not appear to have been any contravention of, or failure to comply with, the Act.

### **6.2 Was the building work carried out exempt from the need for a building consent?**

6.2.1 Section 41(1)(b) of the Act states that a building consent is not required for any building work described in Schedule 1. This matter revolves around the interpretation of paragraph (a) of Schedule 1, which states:

### **Exempt building work**

A building consent is not required for the following building work:

- (a) any lawful repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, including all lawful repair and maintenance of that nature that is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1996:

6.2.2 I note the reference to *lawful* repair and maintenance which I take to mean repair and maintenance that will lead to on-going compliance with the Building Code. In relation to the building work, the applicant's interpretation of this clause is that a building consent is not required for this work. The territorial authority takes a contrary view.

6.2.3 I have therefore, to interpret the meaning of the words "using comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building..." In Determination 2000/1 *Notice to rectify work done without building consent*, the antecedent to the Department, the Building Industry Authority, said:

- (a) It would not be natural to refer to the replacement components or assemblies as being 'comparable' unless they were akin to or like the originals, in the sense of being made of similar materials and similar configuration; and
- (b) It would not be natural to refer to replacements as 'comparable' unless their performance in terms of the Building Code was equivalent to or as good as that of the originals.

6.2.4 As I take the view that these statements are relevant to this determination, I must now decide whether the new elements in the building work are made of "similar materials and similar configuration" to the original building work, and whether their performance in terms of the Building Code is "equivalent to or as good as that of the original". I note that all these requirements must be met for the new cladding to meet the criteria set out in Determination 2000/1.

### **6.3 Building work not considered exempt**

6.3.1 With regard to the replacement of the original open timber balustrade with a metal and glass balustrade, I observe that the materials and configuration proposed are not similar to the original timber balustrade shown in the photographs submitted by the applicant.

6.3.2 The damaged timber windows and the degraded asbestos-cement sheet decking to the carport have also been replaced with materials that are not comparable with the original materials, being the new aluminium windows, and the new deck structure and roof membrane.

6.3.3 I consider that the new balustrade, the replacement windows, and the new deck are not comparable when tested against criterion (a) set out in Determination 2000/1 regarding the interpretation of "comparable".

6.3.4 I therefore conclude that the proposed barrier, the replacement windows and the replacement decking do not fall within paragraph (a) of Schedule 1 of the Act, and thus a building consent is required for that building work.

6.3.5 I make no comment as to whether the proposed barrier meets criterion (b) described in paragraph 6.2.3.

#### **6.4 Building work considered exempt**

6.4.1 As regards the first criterion of paragraph 6.2.3, “similar materials and similar configuration” I note that the deck dimensions are unchanged, and the following aspects of the repairs demonstrate the use of similar materials and similar configuration as the original carport/deck:

- The decayed timber framing has been replaced with new framing.
- The decayed weatherboards have been replaced with new weatherboards.
- The existing aluminium ranchslider have been replaced with a new aluminium ranchslider installed into the same opening.

6.4.2 As regards the second criterion, I consider that the performance of the building elements is “equivalent to or as good as that of the original”. Accordingly I consider the items of rectification work outlined in paragraph 6.4.1 to be “comparable” as described in paragraph 6.2.3.

6.4.3 I therefore conclude that a building consent was not required for replacement of defective framing, cladding and the ranchslider with new and equivalent, or better, materials. I recognise that that gives the applicant, not the territorial authority, the responsibility for deciding whether the new materials are equivalent to, or better, than the old materials, but that is inherent in my reading of paragraph (a) of Schedule 1.

#### **6.5 The certificate of acceptance**

6.5.1 The circumstances under which a territorial authority may issue a certificate of acceptance are set out in section 96 of the Act which says:

- (1) A territorial authority may, on application, issue a certificate of acceptance for building work already done—
  - (a) if—
    - (ii) a building consent was required for the work but not obtained; . . .
- (2) A territorial authority may issue a certificate of acceptance only if it is satisfied, to the best of its knowledge and belief and on reasonable grounds, that, insofar as it could ascertain, the building work complies with the building code.

6.5.2 Paragraphs 6.3.1 to 6.3.4 describe work that I consider is not exempt under Schedule 1 and therefore required a building consent. In the case of the completed work (the deck and the replacement windows to the carport), a building consent was not obtained.

- 6.5.3 Section 96 applies only to those items for which a building consent was required but was not obtained. Therefore, in my view, a certificate of acceptance can only be issued in respect of the deck and the replacement windows to the carport.
- 6.5.4 A building consent has been sought for the proposed barrier, and I leave the establishment of the code compliance for that element to the applicant and the territorial authority to resolve.

## **7. The extent to which the building work is required to comply with the Act**

- 7.1 Section 112(1)(b) of the Act describes the level of compliance required for alterations to existing buildings, by stating that an altered building, with two exceptions that do not apply in this instance, is to:

continue to comply with the other provisions of the building code to at least the same extent as before the alteration.

This means that the extent of code compliance for alterations to an existing building may be less than would be required for a new building.

- 7.2 However, the territorial authority has inspected the building work and stated that the repairs and replacements do not comply with the Building Code, as described in the second notice to fix dated 31 May 2007 (refer paragraph 3.13).
- 7.3 I must therefore consider whether the building work, with the exception of the proposed barrier, is code compliant to the extent required by the Act.

## **The code compliance of the building work**

### **8. Discussion**

#### **8.1 The current requirements of the Building Code and the Compliance Documents**

- 8.1.1 Generally the repairs and replacement work appears to have been carried out in accordance with good trade practice and comply with the provisions of the Building Code. Taking account of the expert's report, I conclude that the only areas where the building work may not fully comply with current provisions of the code are the:

- size of the deck joists
- durability of the original carport posts.

- 8.1.2 However, I have also noted certain compensating factors that assist the performance of these building elements in this particular case:

- the deck floor is increased in strength by the 17 mm plywood deck substrate
- the new deck joists would have complied with the former requirements of NZS 3604

- the span of the deck joists is less than 10% greater than the current maximum permitted span
- the new deck joists are larger than the original 150x50 mm joists
- the deck is approximately 2 metres above the carport floor, so is not considered to be high risk
- the deck joists, wall framing and the above ground timber of the original posts are all clearly visible and able to be regularly inspected and easily repaired or replaced if necessary.

8.1.3 I consider that these factors assist the building elements in their ability to comply with the structural and durability provisions of the Building Code.

## **8.2 The level of code compliance required by the Act**

8.2.1 As outlined in paragraphs 7.1 and 7.3, in order to determine the compliance of the building work, I need to assess the performance of the repair and replacement work with respect to the compliance of the altered building.

8.2.2 I must decide whether I am satisfied on reasonable grounds that the repairs and replacements will, under section 112(1)(b) of the Act, “continue to comply with the other provisions of the building code to at least the same extent as before the alteration”.

8.2.3 In the case of this building work, I am satisfied that the repair and replacement work has significantly improved the code compliance of the building when compared with its original structure, weathertightness and durability performance.

## **8.3 Conclusion**

8.3.1 I consider the expert’s report establishes that the repairs and replacements have resulted in significant improvements to the code compliance of the building. Consequently, I am satisfied that the building work will continue to comply with the provisions of the Building Code to at least the same extent as before the alteration.

8.3.2 In reaching the decision below I conclude that:

- (a) the replacement windows and decking to the carport, and the proposed barrier, are not exempt building work as defined in Schedule 1, and should therefore have been subject to a building consent. Accordingly, a certificate of acceptance can be applied for in respect of this work.
- (b) the remaining building work, being the replacement timber framing and weatherboards to the carport and the new ranchslider, is exempt building work as defined in Schedule 1 and does not require a building consent. Accordingly this work cannot be subject to a certificate of acceptance.
- (c) the building works, as set out in (a) and (b) above, which are alterations to an existing building, comply with the Building Code to the extent required by the Act.

- 8.3.3 With regard to the proposed barrier, I leave the matter of code compliance to the territorial authority and the applicant to resolve as part of the building consent process for this unfinished element of the building work.

I note that a building consent has now been sought for the proposed barrier. The second notice to fix included an item in respect of this work. In my view it is more appropriate for matters related to the application to be dealt with through the normal consent process and not via a notice to fix.

- 8.3.4 I emphasise that each determination is conducted on a case-by-case basis. Accordingly, the fact that particular building work has been established as being code compliant in this situation does not necessarily mean that the building work will be code compliant in another situation.

## **9 The decision**

- 9.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:

- (a) the decision to issue the notice to fix dated 8 March 2007 is modified to remove the alternative requirement for the owner to:
  - Apply for a building consent to remove the unauthorised building work and/or reinstate the works
- (b) the decision to issue the notice to fix dated 31 May 2007 is reversed
- (c) the decision by the territorial authority to decline to issue the certificate of acceptance in respect of the replacement works, being the windows and decking to the carport, is reversed.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 24 January 2008.

John Gardiner  
**Manager Determinations**