



## Determination 2010-100

### Refusal to issue code compliance certificates for 15-year-old additions and 12-year-old alterations to a house at 74 Inglis Street, Seatoun



#### 1. The matters 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 L Ord (“the applicant”), represented by an agent (who was the builder), and the other party is the Wellington City Council (“the authority”), carrying out its duties and functions as a territorial authority or building consent authority.
- 1.2 This determination arises from the decision of the authority to refuse to issue code compliance certificates for 15-year-old additions (“the additions”) and 12-year-old alterations (“the alterations”) to an existing house because it was not satisfied that this building work complied with the Building Code (First Schedule, Building Regulations 1992).

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<sup>1</sup> The Building Act, Building Code, Compliance documents, past determinations and guidance documents issued by the Department are all available at [www.dbh.govt.nz](http://www.dbh.govt.nz) or by contacting the Department on 0800 242 243

1.3 The matter to be determined<sup>2</sup> is therefore whether the authority was correct to refuse to issue the code compliance certificates. In deciding this, I must consider:

1.3.1 **Matter 1: The external envelope**

Whether the external envelope of the additions and the alterations complies with the Clauses<sup>3</sup> E2 External Moisture and B2 Durability. The “external envelope” includes the cladding, its configuration and components, junctions with other building elements, formed openings and penetrations.

1.3.2 **Matter 2: The remaining code clauses**

Whether the additions and the alterations comply with the other relevant Building Code Clauses.

1.3.3 **Matter 3: the durability considerations**

Whether the elements that make up the building work comply with Clause B2 Durability of the Building Code, taking into account the age of the building work.

1.4 In making my decision, I have considered the submissions of the parties, the report of the expert commissioned by the Department to advise on this dispute (“the expert”), and the other evidence in this matter.

## 2. The building

2.1 The dwelling is an original 1920’s bungalow that has been subject to additions and alterations. The building is sited on a gently rising, exposed residential section. It has been classified as a medium-wind sea spray zone, for the purposes of NZS 3604<sup>4</sup>.

2.2 The original dwelling is a single storey house, founded on concrete ring foundations with piles, with traditional timber weatherboard cladding, traditional wooden joinery, and a painted corrugated iron roof.

2.3 The additions, which were consented in late 1994, consist of the addition of a bedroom to the western elevation, with double doors onto a small deck, and a small addition to the master bedroom that included pushing out the existing wall to extend the bedroom. The addition is clad in a combination of the existing timber weatherboards and a small area of painted fibre-cement. The roof line was stepped down to accommodate this extension.

2.4 The alterations, which were consented in 1998, consist of the modification of the garage into a sleepout, including a toilet, shower, and separate utility room, and a kitchen and bathroom upgrade in the main house. The garage was constructed later than the original house, although is of a similar construction to the original dwelling, but includes some walls constructed of concrete block.

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<sup>2</sup> Under sections 177(b)(i) of the Act (prior to 7 July 2010)

<sup>3</sup> 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>4</sup> New Zealand Standard NZS 3604:1999 Timber Framed Buildings

### **3. Background**

- 3.1 On 14 September 1994 the authority issued a building consent (SR6523) for the additions (refer to paragraph 2.3).
- 3.2 On 4 September 1998 the authority issued a building consent (SR45388) for the alterations (refer to paragraph 2.4).
- 3.3 The authority's documents show that inspections were undertaken in respect of the additions. In June 2000, the authority advised the applicant that the final inspection and code compliance certificate were outstanding for the additions. The applicant and the authority exchanged a number of letters in June and July 2000, and the applicant noted that final inspections could be carried out for both the alterations and the additions, however, it appears that final inspections were not undertaken.
- 3.4 On 29 March 2010, the authority wrote to the applicant in response to their request for a code compliance certificate. The authority reviewed the building consent file and the inspection records and on the basis of this review advised the applicant that it would not undertake a final inspection and that it would not issue code compliance certificates in respect of the additions as it could not be satisfied that the building work complied with the Building Code.
- 3.5 The applicant applied for a determination which was received by the Department on 21 April 2010.

### **4. The submissions**

- 4.1 The applicant forwarded copies of the plans and specifications for the additions and the alterations, the inspection records, copies of the correspondence from 2000 (refer paragraph 3.3) and the letter from the authority to the applicant explaining the reasons for refusing to issue a code compliance certificate (refer to paragraph 3.4).
- 4.2 The authority acknowledged the application for determination in an email dated 20 May 2010 and outlined the process it had undertaken in assessing the application for a code compliance certificate. The authority, in a letter to the Department dated 17 June 2010, gave its reasons for refusing to inspect the work and refusing to issue code compliance certificates. The authority noted it 'could not be satisfied that the work would comply with the requirements of the [Building Code]. The [authority] believe that the Determination should be on all [code clauses] with particular focus on B2 and E2.'
- 4.3 The draft determination was issued to the parties on 15 September 2010. The draft was issued for comment and for the parties to agree dates when the work undertaken in the alterations and additions, apart from the matters that are to be rectified, complied with Clause B2 Durability.
- 4.4 The parties accepted the draft without comment. In respect of consent SR6523, the authority proposed a Clause B2 completion date of January 1995, whereas the applicants proposed a date of 31 March 1995. In respect of consent SR45388, the

authority proposed a Clause B2 completion date of October 1998, whereas the applicants proposed a date of 1 January 1999.

- 4.5 The differences in the dates proposed are not significant given the elapsed time periods in respect of either consent and I have accepted the more conservative of the dates for inclusion in the final determination.

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

- 5.1 As mentioned 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 house on 2 July 2010, and furnished a report that was completed on 5 July 2010.

### **General**

- 5.2 The expert assessed the building work relating to both the additions in 1994 and the alterations in 1998; no inspection records were available for the alterations.
- 5.3 The expert noted some differences between the construction and the consented drawings, including:

### **The additions**

- the trellis fence was not constructed
- a small bedroom step/deck shown on the plans had been replaced by a larger landscaped paved patio area
- a skylight noted on the plans in the western bedroom addition had not been included

### **The alterations**

- two sleepout skylights were replaced by one large single glazed skylight
- the lounge addition and carport had not been constructed
- the kitchen had a skylight installed.

- 5.4 In general the expert was of the view that the quality of the claddings, interior and exterior and all other building work was excellent.

### **Observations about the building work**

- 5.5 The expert made the following observations about the compliance of the additions and the alterations with the Building Code:

**Clause B1 Structure**

- 5.5.1 The expert noted that all new subfloor structures that were able to be observed were in good order. The subfloor is low and so a full inspection was not possible. The sleepout has a concrete floor.
- 5.5.2 The expert noted the floor of the original dwelling was sagging but it was not part of the consented building work for the additions or the alterations.

**Clause B2 Durability**

- 5.5.3 The expert noted that all the construction details were of a traditional and well proven system. No faults that could cause concern were detected. The traditional wooden joinery all had well fitted head flashings and fascia.
- 5.5.4 Aside of some flaking paint, no other issues were identified.

**Clause E1 Surface Water**

- 5.5.5 No evidence of any failure could be found.

**Clause E2 External Moisture**

- 5.5.6 Non-invasive and invasive moisture readings were taken and no evidence of elevated moisture levels or indications of any leaks were found.

**Clause E3 Internal Moisture**

- 5.5.7 The expert concluded that the alterations in the bathrooms in the sleepout and dwelling had been completed to a high and well finished standard.

**Clause H1 Energy Efficiency**

- 5.5.8 The expert was able to find evidence of insulation in the walls of the additions but due to lack of crawl space was unable to observe insulation in the roof additions. The builder who was present during the expert's inspection provided assurance that insulation was in place and the expert did observe insulation in the older roof space above the kitchen area and the bedroom.
- 5.6 A copy of the expert's report was provided to the parties on 6 July 2010.

**Matter 1: the external envelope****6. Weathertightness**

- 6.1 The evaluation of building work for compliance with the Building Code and the risk factors considered in regards to weathertightness have been described in numerous previous determinations (for example, Determination 2004/1).

## **Weathertightness risk**

6.2 The house has the following environmental and design features which influence its weathertightness risk profile:

### **Increasing risk**

- the envelope complexity is moderately complex with multiple cladding types

### **Decreasing risk**

- the building is sited in a medium wind zone
- there are eaves of over 600mm providing shelter to the cladding
- the building is single storey
- the deck is free standing and at ground floor level
- the roof to wall junctions are fully protected and of traditional design.

6.3 When evaluated using the E2/AS1 risk matrix, the weathertightness features outlined in paragraph 6.4 show the house has a low weathertightness risk rating.

## **Weathertightness conclusion**

6.4 I consider the expert's report establishes that the current performance of the external envelope of the additions and the alterations is adequate because it is preventing water penetration through the cladding. Consequently I am satisfied that the external envelope complies with Clause E2 of the Building Code.

6.5 In addition, the external envelope of the additions and the alterations is required to comply with the durability requirements of Clause B2. I consider the expert's report establishes that the external envelope to the additions and alterations will not be likely to allow the ingress of moisture in the future. Consequently I am satisfied that the house complies with Clause B2 of the Building Code.

## **Matter 2: the remaining code clauses**

### **7. Discussion**

7.1 I consider the evidence provided by the expert establishes that the additions and the alterations comply with the remaining relevant Building Code clauses (refer to paragraph 5.5).

## **Matter 3: the durability considerations**

### **8. Discussion**

8.1 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).

- 8.2 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.
- 8.3 The additions to the house are now 15 years old and the additions are now 12 years old. This means some elements of the house are now partly through, or at the end of their required durability periods and would consequently no longer comply with Clause B2, if a code compliance certificate was issued effective from today's date.
- 8.4 I am satisfied, that all the building elements complied with Clause B2 on 1 January 1995 in respect of SR6523, and 1 October 1998 in respect of SR453883 (refer paragraph 4.5).
- 8.5 In order to address these durability issues when they were raised in previous determinations, I sought and received clarification of general legal advice about waivers and modifications. That clarification, and the legal framework and procedures based on the clarification, is described in previous determinations (for example, Determination 2006/85). I have used that advice to evaluate the durability issues raised in this determination.
- 8.6 I have noted the recent correspondence with the authority and agree that an authority has the power to grant an appropriate modification or waiver of the Building Code, on application from an owner.
- 8.7 I continue to hold the view, and therefore conclude that:
- The authority has the power to grant an appropriate modification of Clause B2 in respect of the building elements, if this is requested by the owner.
  - It is reasonable to grant such a modification because in practical terms, the building is no different from what it would have been if a code compliance certificate had been issued when the building work was completed in 1995 and 1998.
- 8.8 I strongly suggest that the authority record this determination, and any modification resulting from it, on the property file and also on any LIM issued concerning this property.

## 9. The decision

9.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the additions and alterations comply with the Building Code, and accordingly I reverse the authority's decision to refuse to issue the code compliance certificates.

9.2 I also determine that:

- a) all the building elements installed in the additions complied with Clause B2 on 1 January 1995
- b) all the building elements installed in the alterations complied with Clause B2 on 1 October 1998
- c) Building consent SR6523 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 January 1995 instead of from the time of issue of the code compliance certificates for all of the building elements installed in the additions as described in Determination 2010/100.

- d) Building consent SR45388 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 October 1998 instead of from the time of issue of the code compliance certificates for all of the building elements installed in the alterations as described in Determination 2010/100.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 26 October 2010.

John Gardiner  
**Manager Determinations**