

## **Determination 2006/68**

### **Dispute about a Notice to Fix issued in respect of a house at 87 Allum Street, Kohimarama, Auckland (to be read in conjunction with determination 2004/80)**

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**Applicant:** Mr and Mrs McKenzie (the owners)  
**Territorial authority:** Auckland City Council  
**Site Address:** 87 Allum Street, Kohimarama, Auckland

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#### **1. The matter to be determined**

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. The application for determination arises because the territorial authority requires the provision of particular features, as part of remedial work to the house addition.

Certain building matters were described in an earlier determination concerning the same house addition, Determination 2004/80 (“the first determination”). That determination did not stipulate the inclusion of some particular features (now required by the territorial authority) as part of the remedial work to be done on the house addition. The owner has subsequently proposed the work intended to be carried out to meet the recommendations in that Determination. I must determine whether the proposed work will lead to the house addition complying with clause B2 of the New Zealand building code, without the territorial authority’s added requirements.

#### **2. Sequence of events**

- 2.1 The first determination, dated 29 November 2004, found that the building addition did not comply with clause B2 and therefore confirmed the territorial authority’s

refusal to issue a code compliance certificate after identifying certain faults in the building. These faults were set out in paragraph 6.8 of the first determination as being:

- The lack of a gap where the base of the cladding adjoins the blockwork foundation wall
- Insufficient clearance to the base of the cladding at the vehicle or garage doors; and
- The unsealed penetration through the cladding.

2.2 With respect to other matters the first determination also noted:

- in paragraph 5.4 (the expert's reference to E2/AS1 at the time of construction)

*... there was no requirement in E2/AS1 for 6 mm gap between the back of the cladding and the foundation wall but there was a requirement "to leave open to drain".*

- in paragraph 6.11

*... the vertical control joints that have been installed in the plaster are adequate and that a horizontal control joint is not required for this cladding.*

- in paragraph 6.12

*... the flashings to the exterior joinery units as installed adequately cope with any water ingress around the units.*

- in paragraph 6.14

*... a flashing need not be installed at the junction of the block wall and the narrow height timber-framed monolithic clad wall constructed above it, adjacent to the front steps.*

2.3 Paragraph 8.2 of the first determination found that after rectification of the identified faults (refer paragraph 2.1 of this determination)

*... to the approval of the territorial authority, together with any other instances of non-compliance that become apparent in the course of rectification, the cladding as installed on the extension will comply with the building code, notwithstanding the lack of a drainage cavity.*

2.4 In a letter to the territorial authority dated 14 January 2005, the applicants briefly outlined the remedial work proposed to be carried out to address the faults identified in the first determination.

2.5 The territorial authority subsequently issued a Notice to Rectify dated 7 February 2005, which provided a list of defects to be remedied. The notice to fix included the defects identified in the first determination, together with a number of additional requirements.

- 2.6 In a letter to the territorial authority dated 14 October 2005, the applicants noted that the Notice to Rectify was inconsistent with the findings of the first determination and described in detail the intended remedial work in relation to the Notice to Rectify and to the first determination, asking the territorial authority to reconsider its position.
- 2.7 In a letter to the applicants dated 27 October 2005, the territorial authority accepted the applicants' proposals with regard to some items in the Notice to Rectify, but maintained its position with regard to the provision of:
- horizontal and vertical control joints
  - drip edges (with the provision of a 6mm gap) at the cladding base
  - flashing to the horizontal junction with the concrete
  - a gap at the window head flashing
  - drainage and ventilation of the monolithic cladding.
- 2.8 An application for this determination was received by the Department on 24 April 2006. Attached to the applicants' submission were copies of the correspondence with the territorial authority.
- 2.9 The territorial authority supplied a copy of a letter to the owner and a Notice to Rectify both dated 23 June 2004, but made no further submission. I note that the Notice to Rectify supplied is the notice dated 23 June 2004 referred to in the first determination, and is not the notice dated 7 February 2005 that is the subject of this determination.
- 2.10 The draft determination was forwarded to the parties for comment on 28 June 2006. Both the applicant and the territorial authority accepted the draft.

### **3. Discussion**

- 3.1 I maintain the views, expressed within the first determination, that the following items in the building addition are adequate and in compliance with the building code:
- the vertical control joints that have been installed in the plaster (including that no horizontal control joint is required for the cladding to this building addition)
  - the junction of the block wall and the narrow height timber-framed monolithic clad wall constructed above it, adjacent to the front steps
  - the flashings to the exterior joinery units as installed.
- 3.2 With regard to the territorial authority's requirement to provide a drip edge (with the provision of a 6mm gap) at the cladding base, I have considered the applicant's proposal to replicate the cladding base detail that was the acceptable solution for this particular type of direct-fixed stucco cladding at the time the addition was

constructed. I consider that the applicant's proposal will provide adequate capillary separation and protection to the bottom of the cladding and will remedy the fault identified in the first determination (the lack of a gap where the base of the cladding adjoins the blockwork foundation wall) as well as providing the drip edge required by the territorial authority.

- 3.3 I also note that the proposed detail for the cladding base was the acceptable solution for this type of direct-fixed stucco cladding at the time the addition was constructed, and I therefore consider that carrying out remedial work in accordance with that detail will comply with the building code under Section 436 of the Building Act 2004.
- 3.4 With regard to the territorial authority's requirement to provide drainage and ventilation of the monolithic cladding, the first determination found that rectification of the faults identified in that determination will result in the building being in compliance with clause B2, notwithstanding the lack of a ventilated cavity.
- 3.5 I consider that I am entitled to determine whether building work will comply with the code. I did so in the first determination, and I therefore consider it unreasonable for the territorial authority to impose additional requirements for areas of this particular house addition that have already been considered and decided upon in the first determination.

#### **4. The decision**

- 4.1 In accordance with section 188 of the Act, I hereby determine that the remedial work as proposed by the applicant will result in the building complying with clause B2 of the building code.
- 4.2 I therefore instruct the territorial authority to withdraw the Notice to Rectify dated 7 February 2005, and to issue a notice to fix limited in scope to the faults set out in paragraph 6.8 of the first determination.

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Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 21 July 2006.

John Gardiner  
**Determinations Manager**