

Determination 2007/118

Second refusal of a code compliance certificate for a house with monolithic cladding at 43 Waverton Terrace, Churton Park, Wellington (to be read in conjunction with determination 2006/23)

1 The matter to be determined

- 1.1 This is a determination under Part 3, Subpart 1 of the Building Act 2004 (“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 one of the joint-owners Mr R McKenna (“the applicant”) and the other party is the Wellington City Council (“the territorial authority”)
- 1.2 The application for Determination arises because the territorial authority has refused to issue a code compliance certificate for this house, which has been the subject of an earlier Determination 2006/23 (“the first determination”). Subsequently, the owner has carried out work recommended in that Determination. After considering the work that has been carried out, I must determine whether the house now complies with the New Zealand Building Code¹ (First Schedule, Building Regulations 1992).
- 1.3 In making my decision, I have considered the submissions of the parties, the report from a consultant (a member of the New Zealand Institute of Building Surveyors) engaged by the applicant (“the consultant”), the expert’s report provided for the first determination, and the other evidence in this matter.
- 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 This determination relates to the first determination dated 23 March 2006 concerning the same house. The first determination identified faults in the building, and confirmed the territorial authority’s refusal to issue a code compliance certificate.

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

- 2.2 The territorial authority wrote to the applicant on 2 May 2006 listing items of non-compliance that required rectifying. Apart from concerns about the entrance door, the listed items all related to the cladding. The territorial authority also requested that a warranty be provided for the high-build acrylic paint system applied to the external cladding.
- 2.3 A notice to fix, also dated 2 May 2006, was attached to the above letter that said that to remedy the contravention or non-compliance the owner must “address the items [noted] in Council’s letter dated 1 May 2006” (I believe the reference to 1 May 2007 is an error.) The notice to fix said:
- The external wall cladding system does not comply with Clauses B2 Durability and E2 External Moisture of the Building Code.
- 2.4 In response to the notice to fix, a “Scope of Work for Remedial Work” was prepared by the consultant and forwarded to the applicant on 5 July 2006. This document listed the work to be carried out on the cladding in order to rectify the items listed in the first determination.
- 2.5 I note that in paragraph 8.4 of the first determination I said that how the defects described in paragraph 6.3.1 of that determination were to be remedied was “for the owner to propose and the territorial authority to accept or reject”.
- 2.6 The owner briefed the consultant to prepare a report and schedule of work to be done and to supervise the work. The consultant met with officers of the territorial authority to discuss remediation options prior to preparing the schedule. Unfortunately a copy of the schedule was not forwarded to the territorial authority before work commenced although officers were invited to inspect the exposed window sill flashings during the course of the work. Had the schedule been provided, a regime of inspections could have been agreed and the problem of the territorial authority not having seen the remedial work (see paragraph 2.9) could have been avoided. The report set out the background to the matters in question and the schedule referred to the following specific matters:
- The tops of the horizontal mouldings above the windows and at the mid-floor level have been cut to provide 10 degree slopes and the cut surfaces are re-coated with a high-build acrylic paint system.
 - All the exposed sealants and the cracks are protected with a high-build acrylic paint system.
 - The gaps at the metal flashings are sealed with ms sealant and new flashings are installed to protect the sealant between the porch gutters and the cladding. A high-build acrylic paint system has also been applied to these locations.
 - The front door has been replaced with a more appropriate one.
 - The pergola framing is now packed off the cladding.
- In the consultant’s opinion, all the remedial work as described in the “Scope of Work” and as carried out, meets the requirements of the Building Code as required in the first determination. A copy of the report was provided to the territorial authority during the course of the work.
- 2.7 The territorial authority carried out a further inspection of the property on 11 July 2007.

2.8 On 16 July 2007, following that inspection, the territorial authority wrote to the applicant. The territorial authority commented on the decorative mouldings and the cracking and acknowledged receipt of copies of the consultant's report and the texture applicator's statement and invoice in relation to the remedial work. The territorial authority stated that the following items, neither of which appeared in the notice to fix issued on 2 May 2006, required addressing before it could consider the issue of a code compliance certificate:

Additional weatherproofing is required above the recently fitted gas ventilation flue.

During inspections, it cannot be determined if the wall cladding/ joinery detail has been installed in accordance with the approved building consent details or the cladding manufacturer's installation requirements.

The territorial authority also considered that, in the current situation, it could not issue a certificate of acceptance.

2.9 I observe that the territorial authority's letter dated 16 July 2007 made no reference to the notice to fix issued on 2 May 2006 or to whether any of the requirements of that notice had been satisfied.

2.10 On the following day, 17 July 2007, the territorial authority again wrote to the applicant. The territorial authority stated that its inspection of 11 July 2007 verified that the requirements set out in the notice to fix had been complied with. I believe the owner was entitled to assume that the territorial authority was then satisfied that every item listed in its letter of 2 May 2006 had been remedied to its satisfaction.

2.11 Once the requirements of the notice to fix dated 2 May 2006 had been satisfied, and in the absence of any new notice to fix, I consider the territorial authority, informed by the consultant's report and the expert's report from the first determination, should have proceeded to issue a code compliance certificate.

2.12 The Department received the application for a determination on 23 July 2007.

3 The submissions

3.1 In a covering letter dated 19 July 2007, the applicant described what had transpired from the time that the first determination was issued. The applicant noted that the two items described by the territorial authority in its letter of 16 July 2007 as requiring rectification were additional to those set out in the first determination. The applicant stated that he would immediately undertake work to provide additional weather-proofing for the gas ventilation flue and would confirm its completion with the territorial authority.

3.2 The applicant forwarded copies of:

- the consultant's report
- the notice to fix
- the Scope of Work for Remedial Work
- the correspondence from the territorial authority.

3.3 The territorial authority did not make a formal submission.

- 3.4 Copies of the applicant's submission were provided to the territorial authority. Neither party made any further submissions in response to the information that was provided.

The draft determination

- 4.1 I forwarded copies of a draft determination to the parties on 15 August 2007.
- 4.2 The applicant accepted the determination subject to comments provided in a letter to the Department dated 2 September 2007. The applicant stated that he had engaged the services of consultant who had prepared a specification to meet the territorial authority's requirements. It was noted that the consultant had discussed with the territorial authority the matters arising from Determination 2006/23 and that the consultant did not agree with the territorial authority's concerns regarding the window installation. Following a site visit by an officer from the territorial authority in early November, the applicant contacted the officer who informed him that the territorial authority had not received the consultant's "Scope of Work". The applicant forwarded this document to the territorial authority on 10 November 2006 but had not received a response from the territorial authority.
- 4.3 The applicant also attached a copy of a site report issued by the territorial authority on 29 August 2007 noting that additional weathertightness protection had been installed around the gas flue penetration.
- 4.4 In a letter to the Department dated 20 September 2007, the territorial authority set out its concerns regarding the junctions between the windows and the cladding. The territorial authority noted that no assessment had been made by either the Department's expert or the applicant's consultant as to the existence and verification of the sealing of these junctions. Nor were the junctions specifically identified as complying with the Building Code. The territorial authority went on to say:
- In order to issue a code compliance certificate the Building Act requires the issuer to be satisfied on reasonable grounds the associated work complies with the code. After considering the above matters, I do not consider that this condition has been achieved
- The territorial authority also noted that it would not issue a code compliance certificate in any event until it had received the fees expended in "responding to the original building consent and associated determinations. Subsequently the expert visited the site and verified which items had been made good. He also noted three minor items not then repaired. The owner has since confirmed these have since been attended to.
- 4.5 In response to the territorial authority's letter the applicant e-mailed the Department on 20 September 2007. The applicant stated that he had promptly paid all fees that the territorial authority had advised as being owed. The applicant also commented on the moisture readings taken by either the expert or the territorial authority.
- 4.6 The determination reflects comments received on the draft.

5 Discussion

- 5.1 As described in paragraph 2.8, the territorial authority now has only two concerns

regarding compliance with the building code. These relate to:

- the waterproofing of the gas ventilation flue
- the manner of the sealing of junctions between the exterior joinery units and the cladding.

- 5.2 The applicant has stated that the flue waterproofing will be rectified. Once the remedial work has been carried out, the applicant should request a further inspection from the territorial authority to ensure that the flue does then comply with the Building Code.
- 5.3 The expert who provided the report for the first determination had noted the fact that there were matters relating to sealing of the exterior joinery units/cladding junctions and to the protection of the sealant from the affects of UV light. I have previously considered the matter of verification of the joinery sealant. The only means of verifying those details would have been to completely remove the windows, a process that could do more harm than good to the house which had not shown widespread or serious leaks. While noting the concerns of the territorial authority officers raised in response to the draft I have considered the totality of the information available to me and the demonstrated in-service performance of the joinery installation to date.
- 5.4 The consultant's report verifies that the sealants at these locations are now protected by a high-build acrylic finish. In addition, in the opinion of the consultant, this particular detail now meets the requirements of the Building Code. Based on both the expert's and the consultant's reports, and considerations relating to the first determination, I am prepared to accept that the exterior joinery units/cladding junctions are code-compliant.
- 5.5 Had the process outlined in paragraph 8.4 of the first determination occurred, and the territorial authority been kept more engaged with the proposal and execution stages of the remedial work, there might have been no need for this second application for a determination.

6 The decision

- 6.1 In accordance with section 188 of the Building Act 2004, I determine that:
- (a) the exterior joinery units/cladding junctions are code-compliant
 - (b) once the gas flue ventilation has been rectified to the satisfaction of the territorial authority, the territorial authority should reverse its decision not to issue a code compliance certificate.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 17 October 2007.

John Gardiner
Manager Determinations