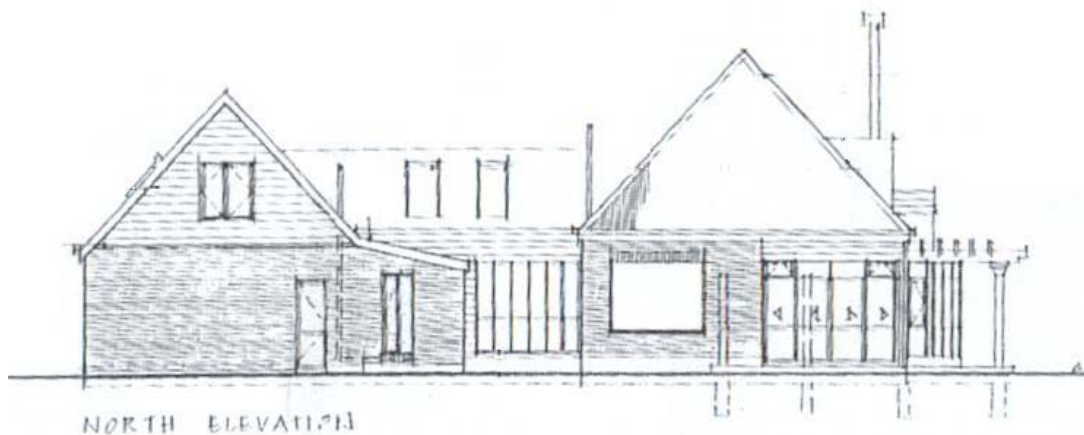


Determination 2007/131

The durability of the building elements installed in an 11-year-old house at 754 Miles Road, Kirwee, Christchurch



1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“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 applicants are the owners, K and V Prusas (“the applicants”) and the other party is the Selwyn District Council (“the territorial authority”).
- 1.2 The matter for determination is whether the territorial authority is correct in its decision to refuse to issue a code compliance certificate for an 11-year-old house because it was not satisfied that the building work complied with clause B2 “Durability” of the Building Code² (First Schedule, Building Regulations 1992).
- 1.3 In making my decision, I have considered the documentation received from the applicants and the territorial authority, and 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.

¹ The Building Act 2004 is available from the Department’s website at www.dbh.govt.nz.

² The Building Code is available from the Department’s website at www.dbh.govt.nz.

2. The building

- 2.1 The building is a two-storey timber-framed house on a concrete floor slab. It is clad with a combination of weatherboards and brick over a cavity to the ground floor, and weatherboards to the upper level gable ends. It has a corrugated steel roof with skylights, butyl rubber membrane roofs to projecting windows, and aluminium joinery throughout. The building is moderately complex in plan and form.

3. Background

- 3.1 The territorial authority issued a building consent for the construction of the house in March 1996. The territorial authority carried out various inspections of the work between February and August 1996.

- 3.2 A final inspection took place on 15 April 1997. On the final notice of inspection the territorial authority stated that some work was not satisfactory and rectification was required. This related to:

- the handrail to stairwell
- veranda handrail
- resetting the tempering valve
- a hot water cylinder seismic restraint.

The notice stated that re-inspection would be required once the non-complying work was rectified.

- 3.3 As a result of the owners applying to the territorial authority for a code compliance certificate on or about August 2007 a final re-inspection took place on 21 August 2007. The inspection record noted that the four items, listed in paragraph 3.2, had been completed.

- 3.4 However, the territorial authority also noted that a timber barrier rail to the 1st floor deck had decayed and needed to be replaced. It requested that the timber framing be checked and that a metal cap flashing be put in place to prevent water ingress. The inspection notice also noted some decay in the cladding and that maintenance had not been carried out over the years.

- 3.5 A further inspection took place on 29 August 2007. The decayed timber barrier rail on the deck had been replaced and a capping installed. The inspection notice noted that no further inspection was required.

- 3.6 There is a discrepancy between the copy of the inspection notice, dated 29 August 2007, held by the territorial authority and that held by the applicant. The copy provided by the territorial authority notes the delay between the issue of the consent and the application for the code compliance certificate, and also states “*shiplap weatherboards an issue*”.

- 3.7 A further inspection of the weatherboards undertaken by the territorial authority on 11 September 2007 said:

In regards to the shiplap weatherboards it appears that for the age of this dwelling I would expect that the condition would be as inspected.

I conclude from this, and from an email from the territorial authority (see paragraph 3.10), that the condition of the weatherboards is acceptable and not an issue this determination needs to address.

- 3.8 In a letter to the building owners dated 7 September 2007, the territorial authority noted that it could not issue a code compliance certificate because of the length of time that had passed since the building consent was granted. The territorial authority could not therefore be satisfied on reasonable grounds that the building work and elements will continue to satisfy the durability requirements of the Building Code.
- 3.9 The Department received an application for a determination on 12 September 2007.
- 3.10 In an email to the Department dated, 19 September 2007, the territorial authority confirmed that the only outstanding matter was the house's compliance with clause B2 "Durability".

4. The submissions

- 4.1 In their application, the applicants set out the background to the dispute.
- 4.2 The applicants forwarded copies of the:
- plans for the building
 - consent and inspection documentation
 - documentation relating to the title of the property
 - territorial authority's letter to the applicants dated 7 September 2007.
- 4.3 The draft determination was sent to the parties on 23 October 2007. The draft was issued for comment and for the parties to agree when the work contained in the first consent complied with clause B2 "Durability" of the building code.
- 4.4 In an email dated 2 November 2007 the territorial authority proposed that the date when the building work complied with the durability provisions of clause B2 was 15 April 1997. The applicants accepted the draft determination in an email dated 5 November and agreed with the proposed date of 15 April 1997.

5. Discussion

- 5.1 The territorial authority has concerns about the durability, and hence the compliance with the building code, of the building elements, taking into consideration the completion of the building work in 1997. I note that the final re-inspection did not take place until 29 August 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 In this case the 11-year delay between the commencement of the building work and the applicant's request for a code compliance certificate has raised concerns with the territorial authority that various elements of the building are now well through their required durability periods and would consequently no longer comply with clause B2 if a code compliance certificate were to be issued effective from today's date.
- 5.5 The territorial authority has confirmed that durability is now its only concern. I have not been provided with any evidence that the territorial authority did not accept that the building elements complied with clause B2 at a date in 1997. Given the sequence of events described in paragraphs 3.1 and 3.2, it appears appropriate that the durability periods should commence on or about the date of the first final inspection on 15 April 1997.
- 5.6 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.
- 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 building elements in the building.
 - (b) It is reasonable to grant such a modification, with appropriate notification, because in practical terms the construction is no different from what it would have been if a code compliance certificate had been issued in 1997.
- 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.

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 complied with clause B2 on 15 April 1997.
 - (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 15 April 1997 instead of from the time of issue of the code compliance certificate for all of the building elements.

- (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 17 November 2007.

John Gardiner
Manager Determinations