

## Determination 2008/18

### The refusal to issue a code compliance certificate for a ten-year-old house at 4 Pukeuri Lane, Hillsborough, Christchurch



#### 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, Mr D van Vuuren (“the applicant”), and the other party is the Christchurch City Council (“the territorial authority”).
- 1.2 The matter for determination is whether the territorial authority was correct in its decision to refuse to issue a code compliance certificate for an approximately 10-year-old house because it was not satisfied that the building work complied with Clause B2 “Durability” of the Building Code<sup>2</sup> (First Schedule, Building Regulations 1992) considering the age of the house.
- 1.3 In making my decision, I have considered the documentation received from the applicant, 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.

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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).

<sup>2</sup> The Building Code is available from the Department’s website at [www.dbh.govt.nz](http://www.dbh.govt.nz).

## 2. The building

- 2.1 The building work consists of a single-storey detached house with a basement garage and workshop, which is situated on an excavated sloping site. The house is of a simple shape in plan and form, and is generally of light timber frame construction with blockwork and brick-veneered external walls. A balcony is constructed at two elevations of the house at the main floor level.

## 3. Background

- 3.1 The territorial authority issued a building consent for the house on 13 January 1994. It appears the construction took place during 1994. It appears a pre-line inspection was completed on 3 May 1994.

- 3.2 The territorial authority carried out a final inspection of the building work on 4 September 1998, and noted six items of defective work that were required to be remedied. An engineer's statement was also requested.

- 3.3 The applicant applied for a code compliance certificate for the building work in January 2007.

- 3.4 The territorial authority wrote to the applicant on 15 January 2007, setting out the history of the building work and stating that, due to the age of the house, it was unable to issue a final code compliance certificate. The territorial authority said it was:

. . . unable to be assured that the building envelope will comply with the building code clause B2 durability requirements. The materials have been in service for over twelve years and the code requires that at time of signing the code compliance certificate the roofing and cladding will be durable for a further fifteen years.

There was no other matter of non-compliance raised by the territorial authority.

- 3.5 On 15 March 2007 the firm of consulting engineers who had observed the construction work wrote to the territorial authority stating that, since its observations of construction were carried out in 1994, it was now unable to issue a producer statement. However, the consulting engineers advised that the applicant had provided sufficient evidence to confirm that they observed the construction of various structural elements.
- 3.6 On 22 June 2007, the applicant sent an email to the territorial authority noting that the six items of defective work found during the final inspection in 1998 had been rectified. The applicant said he had not called for a re-inspection of the six items after they had been completed in 1998. The applicant asked the territorial authority to reconsider his request for a code compliance certificate.
- 3.7 It appears the territorial authority now accepts that the six items of defective work have been fixed to its satisfaction although I have seen no evidence of this. The only matter that the territorial authority believes is non-compliant is the durability of the cladding.
- 3.8 The application for determination was received by the Department on 30 January 2008.

## **4. The submissions**

- 4.1 In a note to the Department the applicant stated that after the final house inspection made by the territorial authority only minor points were noted as requiring attention. These had been attended to and the house was structurally sound.
- 4.2 The applicant forwarded copies of the:
- plans
  - engineer's letter to the territorial authority dated 15 March 2007
  - territorial authority's final inspection record
  - correspondence with the territorial authority.
- 4.3 The territorial authority indicated that it did not wish to make a submission.
- 4.4 The draft determination was issued to the parties on 4 March 2008. The draft was issued for comment and for the parties to agree a date when the house complied with Building Code Clause B2 Durability.
- 4.5 Both parties accepted the draft. With respect to the date when compliance with B2 was achieved, the parties have agreed that this was achieved when the applicant moved into the house on 1 June 1994.

## **5. Discussion**

- 5.1 The territorial authority has stated that concern about compliance with Building Code Clause B2 Durability is the sole reason that the code compliance certificate cannot be issued. Therefore, I am satisfied that the outstanding items listed on the final inspection report have been remedied to the territorial authority's satisfaction.
- 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 code compliance certificate" (Clause B2.3.1).
- 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.
- 5.3 In this case the delay between the completion of the building work in late 1994 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.

- 5.4 It is not disputed, and I am therefore satisfied, that all the building elements complied with Clause B2 on 1 July 1994. This date has been agreed between the parties, refer paragraph 4.5.
- 5.5 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 matters raised in this determination.
- 5.6 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 that were constructed under the building consent.
  - (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 when the building had been substantially completed in 1994.
- 5.7 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 1 June 1994.
  - (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 1 June 1994 instead of from the time of issue of the code compliance certificate for all of the building elements as described in Determination 2008/18.
  - (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 26 March 2008.

John Gardiner  
**Manager Determinations**