

**UNDER** the Weathertight Homes Resolution Services Act 2006

**IN THE MATTER** of a reconsideration of the Chief Executive's decision under section 49

**CLAIM NO. 6324: VICKI SUSAN BUCK  
AND LINDSAY WILLIAM  
LLOYD – 14 JANE DEANS  
CLOSE, RICCARTON,  
CHRISTCHURCH**

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**ELIGIBILITY DECISION OF THE CHAIR OF THE  
WEATHERTIGHT HOMES TRIBUNAL**

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**The Claim**

[1] Vicki Buck and Lindsay Lloyd are the owners of a house at 14 Jane Deans Close, Riccarton. Despite accepting that the house is a leaky home, both the assessor and the chief executive of the Department of Building and Housing have concluded that the claim is not an eligible claim because the house was built more than ten years before the claim was filed. The claimants have applied for reconsideration of the chief executive's decision under section 49 of the Weathertight Homes Resolution Services Act 2006 (the Act).

**The Issues**

[2] The key issues to be determined in this case are:

- What is meant by built?

- Was the dwelling at 14 Jane Deans Close built within ten years before the day on which the claim was filed?

## **Background**

[3] Section 49 of the Act provides that a claimant may apply to the Chair seeking a review of a decision that their claim does not comply with the eligibility criteria within 20 working days of receiving notice of the decision. On receiving such an application I must decide whether or not the claim meets the eligibility criteria.

[4] I have considered the following documents in conducting my review:

- The application for review and attached information.
- The assessor's report dated 10 August 2010.
- The letter from John Bangrove of the Department of Building and Housing to the claimants dated 6 October 2010 advising that the chief executive had decided that the claim did not meet the eligibility criteria under the Act.
- The eligibility decision and High Court case forwarded by counsel for the claimants.

## **Chief Executive's Decision**

[5] The assessor concluded that the claim did not meet the eligibility criteria as in his opinion the claim was filed more than ten years after the home was built. Section 48 of the Act provides that the chief executive must evaluate every assessor's report and decide whether the claim to which it relates meets the eligibility criteria. In evaluating the assessor's report the chief executive also concluded that the claim was not eligible. She concluded that any construction work that was undertaken after 27 March 1997 was minor and that the house was substantially complete and occupied by 28 October 1997 and was therefore built by that time.

## Claimants' Case

[6] The claimants submit that the assessor and chief executive were wrong in deciding that the dwelling was built by 28 October 1997. They further submit that the chief executive's decision is inconsistent with the decision of the High Court in *Auckland City Council & Ors v Attorney-General & Ors*<sup>1</sup> (*Garlick*) and also to the eligibility decision of *Litchfield & Wells*.<sup>2</sup> They note there were omissions or deviations from the dwelling's building consent that were sufficient to result in the house failing its final inspection by the Council. The house therefore could not at that stage be considered to be physically complete. In other words it was not built until it complied with its building consent and Building Code to the extent that the Code Compliance Certificate could be issued.

[7] The claimants further note that the outstanding requirements on the failed Code Compliance Certificate report relate to the balustrade to the stair and the bridge not complying. Further letters and notes on the Council file dated 24 March 2000 and August 2000 suggest issues to do with the handrail and barriers were still outstanding in August 2000 which was within ten years of the claim being filed. The claimants therefore submit that the dwelling was not compliant and therefore not built until sometime between 17 August 2000 and 28 September 2000 when the final CCC inspection took place.

## Discussion

[8] In reaching a decision it is helpful to set out a chronology of events:

Date Building consent issued	6 May 1996
Dates of final inspection (failed) by territorial authority	27 March 1997 22 March 2000
Date of final inspection (passed) by territorial authority	28 September 2000
Date claimants settled purchase and shifted into home	July 1999
Date Code Compliance Certificate issued	2 October 2000

<sup>1</sup> HC Auckland CIV-2009-404-1761, 19 November 2009, Lang J.

<sup>2</sup> DBH 6324, 18 March 2010.

Date claim filed	5 July 2010
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[9] The Act provides that for a claim to be eligible, the dwelling house must be:

- Built within the period of 10 years (or alterations giving rise to the claim being made within 10 years) immediately before the day on which the claim was filed;
- A leaky building, i.e. water must have penetrated it;
- Damaged as a result of the penetration of water.

[10] There is no dispute that the claim meets the second and third criteria above. What is in dispute is whether the dwelling was built within the ten year period before the claim was filed. In particular the question that needs to be asked is whether in the circumstances of this case the date of the passed final inspection should be the date on which it could be considered the house was built or whether it should be some earlier date.

[11] It is relevant to note that the Act does not provide for a ten year period from when the Code Compliance Certificate was issued. It refers to a period from when the house was built. "Built" is not defined in the Act nor does the Act define the point at which a house is to be regarded as having been built for the purposes of s14. That issue however was considered by the High Court in *Auckland City Council & Ors v Attorney General & Ors*, HC Auckland, CIV-2009-404-1761, 19 November 2009, Lang J (*Garlick*). In that case, Lang J concluded that the word "built" needs to be given its natural and ordinary meaning which he took to be the point at which the house was physically constructed.

[12] He accepted that in cases where a house passes its final inspection at the first attempt, the date upon which the owner sought the final inspection may validly be regarded as the appropriate date upon which the house could be regarded as "built". However that conclusion could only be reached where there is nothing to suggest that further construction work had been carried out between when the inspection was sought and the date on which it occurred.

[13] Lang J also considered the effect of s43(1) of the Building Act 1991 which provides:

**43 Code compliance certificate**

- (1) An owner shall as soon as practicable advise the territorial authority, in the prescribed form, that the building work has been completed to the extent required by the building consent issued in respect of that building work.

He concluded that if this reasoning is applied to the consideration of the built-by date under the Weathertight Homes Resolution Services Act, then it means that a dwelling house can be regarded as being built when the construction process has been completed to the extent required by the building consent for that work. Accordingly where there are omissions or deviations from the plans and specifications or the Building Code which result in a house failing its final inspection by the Council, it is likely not to be considered as having been built.

[14] Lang J further noted that the date upon which the Council issued the Code Compliance Certificate often provides little assistance. That was particularly the case where the Council did not issue the certificate until some months after the date of the final inspection. In such cases the reasons for the delay in issuing the Code Compliance Certificate is relevant. Ultimately however the Court concluded that a decision as to when a house was built was a matter of judgment based on all the information that is available to the decision maker.

[15] The decision I need to make as to when the house at 14 Jane Deans Close was built is therefore ultimately an issue of judgment based on all the information that is available to me. I accept the claimants' submission that this application has some marked similarities with the *Litchfield & Wells* decision in that the failed final inspections were due to issues with internal stairs or balustrades. There are however key differences between the two claims. In the *Litchfield & Wells* there was only the matter of a few days between the first failed building inspection and the built by date. In this case there are over three years. The built by date in *Litchfield & Wells* was also concluded to be prior to the claimant settling

the purchase and shifting into the property. In the current case the claimants purchased the property and moved into it in July 1999 and it is likely the previous owner that lived in the property for up to two years prior to selling it. While a Code Compliance Certificate had not been issued it can be assumed that claimants considered the house built at the time they brought it.

[16] The information before me clearly suggests that the vast majority of the construction work had been completed by 1997. The only outstanding issues relates to the balustrade and handrail on the internal bridge and stairways. I am satisfied that these outstanding compliance issues were not addressed until late August or September 2000 which would have been within ten years of when the claim was filed. The assessor's report however suggests that PVC installation work done to make the dwelling Code Compliant appears to have been subsequently removed. The assessor suggests this may have been because the non-compliant handrail was more aesthetically attractive. Therefore the construction work that was done in order to get a Code Compliance Certificate effectively ended out being temporary.

[17] Based on the information before me I conclude that all the construction work in relation to this dwelling was completed by 1997 other than the installation of the PVC sheeting to the internal steel balustrade. This PVC sheeting has subsequently been removed. By the time the assessor did his report the bridge and internal staircase appear to be reinstated to the condition they were in 1999. In the circumstances of this case I do not consider it appropriate to conclude that the house was not built until the internal stairs and bridge were Code compliant. All other construction work had been completed some three years earlier. In addition the claimants purchased the property in July 1999 as an existing property and have been living in it since that time.

## **Conclusion**

[18] I have reconsidered the Chief Executive's decision pursuant to section 49 of the Act and, for the reasons set out above, conclude that the house was not built within the ten years prior to the claim being filed under the Act. The dwelling was most likely built by late 1997 and was clearly built by July 1999. I accordingly

conclude that claim 6324 does not meet the eligibility criteria as set out in the Weathertight Homes Resolution Services Act 2006.

**DATED** this 1<sup>st</sup> day of November 2010

**P A McConnell**  
Chair