

**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.      05928: DAVID AND  
REBECCA SPEIRS AS  
TRUSTEES OF THE  
SPEIRS FAMILY TRUST**

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

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**Background**

[1] Rebecca Speirs on behalf of the Speirs Family Trust has filed an application for reconsideration of the Chief Executive's decision made under section 48 of the Weathertight Homes Resolution Services Act 2006 (the Act).

[2] Section 49 of the Act provides that claimants 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.

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

- The application filed by Rebecca Speirs.
- Letters from Rebecca Speirs to the Department of Building and Housing dated 2 June 2009 and 27 April 2009.

- Letter from Bruce Corkill QC to Mr and Mrs Speirs dated 2 June 2009.
- Letter from the Department of Building and Housing to Mr and Mrs Speirs dated 22 June 2009.
- Assessor's eligibility report completed on 4 May 2009.

### **Chief Executive Decision**

[4] The assessor's report concluded that the claim did not meet the eligibility criteria on the basis that the dwelling was not built within the ten year period immediately prior to the claim being filed. 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 concluded that the claim was not eligible. The reason for this is that it was held that the dwelling had not been built within the ten years immediately before the day on which the claim was brought.

### **Claimants' Case**

[5] The claimants submit that the decision on the "built by" date is incorrect as their home has never been satisfactorily completed. They further submit that the house has masked the leaks for years and that the previous owner/builder was aware of the short falls as was the Council.

[6] The claimants further submit that a hand written addendum on a Council letter dated 16 July 1999 appears to be incorrect as all outstanding work had not been completed at that stage. They submit it is inappropriate to conclude that the dwelling had been built, as it had not been completed in a material respect as it had been constructed without crucial weathertight components such as window head flashings.

## Decision

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

Date Building Consent applied for	1 April 1992
Date the Building Consent issued	22 June 1992
Telephone connected	December 1992
Date dwelling house first inhabited	Likely before 4 September 1997
Date of Final Inspection by Certifier – failed	22 December 1997
Last note on Council file	16 July 1999
Date Code Compliance Certificate issued	Not issued
Claim filed	30 March 2009

[8] The Act provides that in order for the claim to be eligible the dwellinghouse or complex to which the claim relates 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 complex, i.e. water must have penetrated it;
- Damaged as a result of the penetration of water.

[9] There is no dispute that the claim meets the second and third criteria bullet pointed above. What is in dispute is whether the dwelling was built within the ten-year period before the date that the claim was filed. In particular the question the claimants raised is whether in the circumstances of this case the dwelling can be considered to be completed or “built”.

[10] In general the definition of “built” that is applied to claims under the Act is when the dwelling was completed and first occupied or fit for occupation. In determining when a dwelling is completed and first occupied or fit for occupation the date of issuing a code compliance certificate is relevant but not necessarily

definitive, particularly with claims such as this one where no code compliance certificate has ever been issued. Whilst issuing a code compliance certificate is frequently the last formal step that needs to be taken to determine that a dwelling has been completed it would be unreasonable to conclude that houses (reportedly thousands) throughout New Zealand with no code compliance certificates are not yet built.

[11] The claimants argue that the house should not be considered as having being built as it has been constructed without crucial weathertight components such as window head flashings. If this submission or test were to be accepted it would result in a situation where most, if not all, leaky homes could not be considered to have been built because they all lack crucial weathertightness components, and quite frequently this relates to inadequate or lack of appropriate flashings.

[12] When the Weathertight Homes Resolution Services Act 2006 was passed, the intention was that there would be general consistency between the ten-year long-stop provision in s393 of the Building Act 2004, and the ten-year “built-by” date. This does not necessarily mean that it was intended that these two provisions be synonymous as if this had been intended the same provision or wording from the Building Act would have been adopted.

[13] One of the reasons for the built by date criteria is to ensure that claims are not found to be eligible if they will be ultimately unsuccessful because of the limitation provisions within either the Building Act 2004 or 1991 or the Limitation Act 1950. If this particular claim were found to be eligible, the claims against most, if not all, potential respondents would be likely to be limitation barred under section 393 of the Building Act 2004 or section 91 of the Building Act 1991. This section provides that in civil proceedings relating to building work no claim may be brought against a person ten years or more from the date of the act or omission upon which these proceedings are based.

[14] The only evidence of any act or omission which may have occurred within the ten year period before the claim was filed is the note made dated 16

July 1999 by the building inspector on the letter to Mr and Mrs Gough dated 23 October 1997. It is likely therefore that all those involved in the construction completed the work more than ten years before the claim was filed and therefore any claim against them would be limitation barred.

[15] This claim was filed in March 2009 and the information before me suggests that the majority of the construction work was completed by the end of 1993. A Palmerston North City Council inspection field note from November 1993 states that there was only small areas of lining left to do and window flashings had not yet been done.

[16] A further field visit on 20 October 1997 notes there were still outstanding issues in relation to head flashings and the requirement for a sealant in the steeple type window. Tiles in the bathroom area also need to be grouted and a sealant applied to the laundry sink bench. No further inspections are recorded on the field memorandum but it does record that telephone advice was received on 18 December 1997 that the steeple window had been sealed. In addition, there was a letter to Mr and Mrs Gough in the Council file, the previous owners, dated 23 October 1997 and on the bottom of that letter is a note from the building inspector which says "All above outstanding work now completed –Final" then a signature and the date of 16 July 1999. I am unable to tell from that note whether that was made after an inspection of the dwelling or as a result of information received or a telephone conversation with the owners. As there is no record of an inspection on the sheet detailing inspections, it is less likely it was as a result of a formal inspection.

[17] It is unclear when the additional work was done and also when the house was first occupied. The telephone was connected in December 1992 and it may have been occupied as early as that. I however accept the assessor's conclusion that the house was occupied at least by 4 September 1997 when a building inspector visited and noted that the owners were not at home so he left a letter at the property. I further accept that the construction of the house was completed by September 1997 at the latest.

[18] I am accordingly satisfied from the information before me that the house was built before 30 March 1999. The time limits for filing a claim in eligibility are finite. They cannot have the degree of flexibility suggested by the applicants. If lack of watertight components resulted in concluding a dwelling was not built, no leaky homes could be considered built and this would mean the first eligibility criteria would be redundant.

### **Conclusion**

[19] I have reconsidered the Chief Executive's decision pursuant to section 49 of the Act and conclude that claim 05928 does not meet the eligibility criteria as set out in the Weathertight Homes Resolution Services Act 2006. The reason for this conclusion is that the house was not built within the ten years prior to the claim being filed under the Act.

**DATED** the 8<sup>th</sup> day of July 2009

**P A McConnell**  
Chair