

Determination 2007/3

Refusal of a Code Compliance Certificate for building work including installation of glazed shower units at 113 Belk Road South, Tauranga

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, Determinations Manager, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The applicant is the owner, Mr Tony Hope (“the applicant”), and the other party is the Western Bay of Plenty District Council (“the territorial authority”).
- 1.2 The matter to be determined is whether the glazing in two shower cubicles complies with the Building Code Clause F2 ‘Hazardous building materials’.
- 1.3 In making my decision, I have considered the submissions of the parties, the report of the independent expert commissioned by the Department to advise on this dispute (“the expert”), and the other evidence in this matter.

2 The building work

- 2.1 The building work in question is two shower cubicle corner units installed in a new dwelling at the above address. The units have folding glass door panels approximately 350mm wide x 1800mm high.

3 Submissions

- 3.1 The applicant made a written submission setting out his view of the matter in dispute and enclosed copies of:
 - A council letter dated 1 May 2006

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

- The notice to fix dated 1 May 2006
- The letter to the council dated 15 May 2006
- The fax from the manufacturer accompanying a letter to the council dated 18 April 2006.

3.2 The territorial authority did not make any submission.

3.3 Copies of the draft determination were sent to the parties on 20 December 2006. Both parties accepted the draft determination.

4 Discussion

4.1 The dwelling is being built under Building Consent No. 71385. The territorial authority made a final inspection in April 2006 and consequently wrote to the applicant on 1 May 2006 advising:

It has not been proven to the satisfaction of Council that the shower glazing complies with the Building Code.

4.2 Clause F2.3.3 of the Building Code requires that:

Glass or other brittle materials with which people are likely to come into contact with shall:

- (a) If broken on impact, break in a way which is unlikely to cause injury, or
- (b) Resist a reasonably foreseeable impact without breaking or
- (c) Be protected from impact.

One way to achieve these requirements is for the glazing to comply with NZS 4223: Part 3² which is referred to in the Acceptable Document F2/AS1³. This standard requires safety glass to have permanent markings that include the name of the manufacturer or supplier, the type of material and the Standard to which it has been tested. The standard AS/NZ 2208⁴ is referred to in NZS 4223: Part 3.

4.3 The expert inspected the shower glazing on 20 November 2006, and furnished a report dated 22 November 2006.

4.4 The expert confirmed that these glass panels carry the appropriate markings. The applicant also supplied a faxed certificate from Chong Qing Swell Ceramics Industry Co Ltd (the manufacturer). This purports to certify that all glass in its shower cubicles is toughened safety glass and has been tested in accordance with AS/NZS 2208.

4.5 Normally, I would expect that any supplier purporting to be testing a building material to a Standard would have its test procedures verified by an independent

² NZS 4223: Part 3: 1999: Glazing in buildings, Human impact safety requirements

³ An Acceptable Solution is a prescriptive design solution approved by the Department that provides one way, but not the only way of complying with the Building Code. The Acceptable Solutions are available from The Department's Website at www.dbh.govt.nz

⁴ AS/NZ 2208: Safety Glazing Materials in Building

testing authority. Any regular supplier of safety glass in New Zealand would be required by the territorial authority to provide such verification before it could claim that the product was Code compliant. However, the applicant, who is also the supplier, was unable to obtain such verification from the manufacturer.

Consequently it is important to note my decision does not rely on the markings as defined on the certificate; I draw no conclusions as to the veracity of them. My decision is primarily based on the testing observed of these particular units.

- 4.6 In this case, where only two units are concerned, the applicant has to provide verification by breaking a glass panel from a third uninstalled shower unit. (The applicant advises that no more of these units will be imported.)
- 4.7 The test procedure outlined in AS/NZ 2208 was not strictly followed but the test was carried out in the presence of the expert. The force required to break the glass and the size and nature of the shattered glass particles were noted by the expert. The weight of the ten largest particles appears to be well within the allowable limit set by AS/NZ 2208.
- 4.8 The observed thickness of the glass at 4.5mm complies with the requirements of NZS 4223: Part 3 for a framed panel.
- 4.9 I consider that in this case, the evidence supplied to me is sufficient, having regard to procedure I am required to follow as set out in section 186 of the Act, to give me reasonable grounds to form the view that the two shower units in this house are Code compliant.
- 4.10 I do not take the view on any other shower units apart from this consignment from this manufacturer.

5 The decision

In accordance with section 188 of the Building Act 2004, I hereby determine that:

- a) the shower units as installed in this house comply with the building code
- b) the territorial authority is to withdraw the notice to fix
- c) when any other outstanding compliance matters are resolved the territorial authority is to issue a code compliance certificate for the building work.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 15 January 2007

John Gardiner
Determinations Manager