

Determination 2016/056 – Summary

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Determination 2016/056 discusses the information provided to establish compliance with clause B1 Structure for a solid timber house and whether the variation between the 'as-built work' and the approved building consent is a minor variation or amendment in accordance with the Building (Minor Variations) Regulations 2009.



The determination considered whether the building consent authority (BCA) correctly exercised its power of decision in refusing to issue a Code Compliance Certificate for the 'as-built' building work. If the Ministry of Business, Innovation and Employment (MBIE) concluded that the BCA incorrectly exercised its decision powers, the question then became whether the BCA could issue a code compliance certificate in respect of the 'as-built' work. This in turn depended on whether the variation between the as-built work and the consented work could be considered a minor variation or amendment.

The building work and background

The house is essentially a simple rectangular design constructed on timber pile foundations with a solid timber superstructure. The timber walls consist of interlocking tongue and groove boards that span horizontally between supports. The house has a timber ceiling supported on timber beams. Vertical 10mm diameter tie rods, installed within the wall boards, tie the structure to the foundation.

The applicant applied for and received building consent to construct the house described above. 'Technical documentation' which formed part of the consent application, including bracing values and a PS1 issued by a chartered professional engineer, belonged to a construction company that used its own proprietary solid timber construction system to create kit sets. The applicant used the technical documentation to support the consent application, despite the fact that he did not use the proprietary componentry and the specifications differed from the other company's design in respect of the width of the exterior boards used and the tie rods used to fasten the roof to the foundation. When the BCA discovered that the as-built building work did not use the proprietary components and differed from the other company's design, they refused to issue a Code Compliance Certificate for the as-built building work on the grounds that building work did not comply with the building consent.

Discussion

The applicant provided a design manual and calculations for the profiled timber board system used to construct the house. The manual and calculations were reviewed by an expert engaged on behalf of MBIE, and were subsequently revised by the applicant. The applicant also provided the results of bracing tests and a PS1 from a consulting engineer. Based on all of the information received, MBIE was satisfied on reasonable grounds that the as-built work complied with clause B1 of the Building Code. MBIE noted, however, that this information was not available to the BCA at the time it assessed the application for a Code Compliance Certificate and without this information the BCA's decision not to issue code compliance was correct.

Having decided that the as-built building work complied with clause B1, the question then became whether the BCA could issue a Code Compliance Certificate in respect of the as-built work. This in turn depended on whether the variations between the as-built work and the consented work could be considered a minor variation. The variations in question were aspects of the applicant's construction system that differed from those specified in the constructing company's technical documentation which formed part of the consent.

A minor variation is a minor modification, addition, or variation to a building consent that does not deviate significantly from the plans and specifications to which the building consent relates. If a variation is minor then an applicant can apply to amend the building consent and the amendment does not need to be in a prescribed form, and does not require the authority to issue an amended consent; the minor variation needs

only to be recorded in writing.

MBIE concluded both variations could be viewed as minor as they did not deviate significantly from the plans and specifications to which the building consent related. Accordingly, MBIE concluded that the building consent did not require amendment and the applicant could apply for a minor variation to the building consent in respect of the two variations.

The decision

The determination confirmed the BCA was correct to refuse to issue the Code Compliance Certificate based on the information before it at the time it made its decision.

[Determination 2016/056 \(https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2016-056/\)](https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2016-056/) in full.

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