

Refusal to exempt seismic strengthening work from needing building consent

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Determination 2018/037 considered a council's decision to refuse to exempt seismic strengthening work from needing a building consent.



Background

The owners of a building applied for an exemption under Schedule 1(2)(a) to carry out seismic strengthening work without needing a building consent. The proposed building work was to improve the building's seismic capacity from 62% NBS to 75% NBS by installing bracing to the steel portal frames. The council, in its capacity as the territorial authority, refused the exemption because it had a policy requiring all seismic strengthening work to have a building consent.

Discussion

Schedule 1 of the Building Act 2004 lists building work that does not need a building consent.

Under Schedule 1(2) a territorial authority can decide whether to exempt building work from needing a building consent. Schedule 1(2) states:

Any building work in respect of which the territorial authority or regional authority considers that a building consent is not necessary for the purposes of this Act because the authority considers that:

- (a) The completed building work is likely to comply with the Building code or
- (b) If the completed building work does not comply with the Building Code, it is unlikely to endanger people or any building ...

In this case, the territorial authority has a policy requiring all seismic strengthening work to have a building consent, and relied on this policy when refusing to grant the exemption.

The determination noted a territorial authority needs to consider relevant legislation and take into account the facts of each application when making decisions under Schedule 1(2), rather than taking a blanket position about the type of building work that requires a building consent. For example, factors that could be considered in the decision include the:

- nature of the proposed work
- personnel who will be undertaking it
- likelihood of the work being completed in a way that does not comply with the Building Code.

In this case, the territorial authority did not consider the facts of the specific application and relied on a general policy position to make its decision. The determination noted a territorial authority can refuse an exemption, provided the reasons for refusing relate to the specific facts of each application and meet the requirements set out in Schedule 1(2). Any policy for making decisions under Schedule 1(2) should include these considerations.

Decision

The determination concluded the territorial authority was incorrect to refuse to grant an exemption under Schedule 1(2)(a) for the reasons it gave, and needed to reconsider the exemption, taking the determination into account.

Determination 2018/037 (<https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/determination-2018-037/>) in full.

Previous determinations (<https://www.building.govt.nz/resolving-problems/resolution-options/determinations/determinations-issued/>) is a register of all previous determinations.



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