

Determination 2007/45

Determination regarding a code compliance certificate for a building at 60 Tauranga Direct Road, Kaharoa, Rotorua



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, Manager Determinations, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The applicants are the owners, N & L McFadden, (“the applicants”) and the other party is the Rotorua District Council (“the territorial authority”).
- 1.2 The matter for determination is the territorial authority’s decision to refuse to issue a code compliance certificate for a building constructed under a 7-year-old building consent because of the territorial authority’s concerns that the building does not comply with the durability provisions of the Building Code² (First Schedule, Building Regulations 1992), having regard to the time that has elapsed since the building consent was issued.

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

² The Building Code is available from the Department’s website at www.dbh.govt.nz.

- 1.3 In making my decision I have considered the documentation received from the parties, and the other evidence in this matter.
- 1.4 In this determination, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

2. The building

- 2.1 The building is a garage workshop with sanitary facilities. The building is single storey with a mezzanine floor, situated on a near-level site. The building has a concrete floor-slab, a timber framed structure clad with battened-plywood and corrugated steel, with aluminium window and door joinery. The building is relatively simple in plan and form with a double-pitched gable roof.

3. Sequence of events

- 3.1 The territorial authority issued a building consent (No. 5643) on 28 August 2000 for the construction of a garage workshop. The consent was issued under the Building Act 1991. Construction appears to have started later in 2000 and extended over about 6 years until completion in late 2006.
- 3.2 I have not seen all the records of the inspections carried out by the territorial authority, but it appears the territorial authority carried out all necessary inspections of the building. It is understood a final inspection was completed around September 2006.
- 3.3 The applicants say they were verbally advised by the territorial authority to request a code compliance certificate in December 2006 and made an application at that time. There appears to have been no formal correspondence from the territorial authority to the applicant explaining why it is unable to issue the code compliance certificate.
- 3.4 An application for determination was received by the Department on 2 March 2007.

4. The submissions

- 4.1 The applicant forwarded copies of:
- photographs of the building and the site
 - the plans
 - some building consent information.
- 4.2 Copies of the evidence were provided to each of the parties. Neither party made any further submissions in response to the submission of the other party.

- 4.3 The territorial authority made no submission in response to the application. However, in an email to the Department, dated 13 March 2007, the territorial authority said:

[the building] . . . built under . . . consent number 5643 and started in 2000 has reached Code Compliance Standard, however because the completion did not occur till Nov 2006, [Council has] a concern with the durability of the structure and hence this councils liability.

After discussion with the owners [Council has] agreed that a reasonable time for the building to be completed would have been Jan 2004. Therefore a starting time for the Code Compliance from that date i.e. January 2004 is acceptable to both parties.

- 4.4 A copy of the draft determination was sent to the parties on 21 March 2007. Both parties accepted the draft without comment.

5 Discussion

- 5.1 The territorial authority has concerns about the durability, and hence the compliance with the building code, of the elements of the building, taking into consideration the length of time since the issue of the building consent in August 2000 and the completion of the building in late 2006.

- 5.2 The relevant provision of clause B2 of the Building Code requires that building elements must, with only normal maintenance, continue to satisfy the performance requirements of the Building Code for certain periods (“durability periods”) “from the time of issue of the applicable code compliance certificate” (clause B2.3.1).

- 5.3 These durability periods are:

- 5 years if the building elements are easy to access and replace, and failure of those elements would be easily detected during the normal use of the building
- 15 years if building elements are moderately difficult to access or replace, or failure of those elements would go undetected during normal use of the building, but would be easily detected during normal maintenance
- the life of the building, being not less than 50 years, if the building elements provide structural stability to the building, or are difficult to access or replace, or failure of those elements would go undetected during both normal use and maintenance.

- 5.4 In order to address these durability issues, I sought some clarification of general legal advice about waivers and modifications. I have now received that clarification and the legal framework and procedures based on the clarification are described in previous determinations (for example, Determination 2006/85) and are used to evaluate the durability issues raised in this determination.

- 5.5 I have considered the matter of a waiver or modification of the durability provisions of the building code with regard to this particular building. I note that, although construction started in 2000, the building was not substantially complete until 2006.

If a modification of the commencement of the durability provisions was to be considered, the durability period would commence when compliance with B2 Durability was achieved, which in this instance appears to have taken place in 2006. Modifying the commencement of the durability period to 2006, or 2004 as proposed by the territorial authority, would therefore have little effect.

- 5.6 I acknowledge that the territorial authority's concerns relate to the extended period of time between the issuing of the building consent and the completion of the work. However, as discussed above, a waiver of the durability provisions cannot deal with this circumstance. A waiver can only be used, if appropriate, to deal with excessive time gaps between completion of the work and the application for a code compliance certificate. Had the consent been issued under the Building Act 2004 (rather than the Building Act 1991) the territorial authority would have been able to invoke section 93 to assist in these circumstances.
- 5.7 I therefore take the view that a waiver or modification of the durability provisions of the building code is not appropriate in this case.

6 The decision

- 6.1 In accordance with section 188 of the Building Act 2004, I determine that the building work complies with all the relevant clauses of the Building Code, and reverse the territorial authority's decision not to issue a code compliance certificate.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 1 May 2007.

John Gardiner
Manager Determinations