



Determination 2011/007

Refusal of a code compliance certificate for work completed under the supervision of a building certifier at 288 Te Puna Station Road, Tauranga



1. The matters 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.

1.2 The parties to this determination are:

- Mr V J Boothby, the owner of the property, acting through a construction company as his agent (“the applicant”)
- the Western Bay of Plenty District Council (“the authority”) carrying out its duties and functions as a territorial authority and a building consent authority.

1.3 This determination arises from the authority’s decision to refuse to issue a code compliance certificate for an office extension to an existing building, because it was not satisfied that the building work complied with certain clauses² of the Building Code (First Schedule, Building Regulations 1992). The refusal arose because the

¹ The Building Act 2004, Building Code, compliance documents, past determinations and guidance documents issued by the Department are all available at www.dbh.govt.nz or by contacting the Department on 0800 242 243.

² 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.

building work had been undertaken under the supervision of Bay Building Certifiers (“the building certifier”), which was duly registered as a building certifier under the Building Act 1991, but which ceased operating before it had issued a code compliance certificate for the work.

- 1.4 I consider the matter to be determined³ is whether the authority was correct to refuse to issue a code compliance certificate for the building work. In making this decision I must consider whether the building work complies with the relevant clauses of the Building Code
- 1.5 In making my decision, I have considered the submissions of the parties, the report of the 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 is a simple single-story “L-shaped” office building attached around a corner of an existing shed on the applicant’s property. The site is generally level and is in a medium wind zone for the purposes of NZS 3604⁴.
- 2.2 The building is a light timber frame construction, with a perimeter masonry foundation, and a poured concrete floor. It is clad with face-fixed vertically installed ribbed colour steel sheeting and has aluminium joinery.
- 2.3 The roof is a simple 10° pitched lean-to, attached to the existing building, and is clad with long-run colour steel. The roof extends 600mm over the building line to form a soffit overhang with an externally fixed colour steel gutter.

3. Background

- 3.1 The building work was carried out under a building consent (No. 71610) issued by the authority on 30 August 2004 under the Building Act 1991, based on plans approved by the building certifier.
- 3.2 The site was prepared for building, and a note on the building certifier’s inspection records states that a structural engineer ‘monitored fill & pre-site loading & reports site now OK to develop report to be received before [code compliance certificate] issued’.
- 3.3 The building certifier ceased to operate as a building certifier on 30 June 2005 and became ‘processing and inspections consultants’ operating on the authority’s behalf (“the contractor”).
- 3.4 Most of the building work was completed between February and June 2006. Inspections on the building work were all carried out by the building certifier/contractor. However, no final inspection was carried out.

³ Under sections 177(1)(b) and 177(2)(d) of the Act.

⁴ New Zealand Standard NZS 3604:1999 Timber Framed Buildings

3.5 On 16 April 2010, the authority declined to issue a code compliance certificate for the building. The reason given for this decision was that:

The building consent for this project was approved as a result of receiving a Building Certificate under Section 56 of the Building Act 1991, and was under the control of a private building certifier.

As a result, [the authority] has had no opportunity to inspect the building work and cannot be satisfied on reasonable grounds that the work complied with the building code.

3.6 The applicant applied for a determination on 28 May 2010.

4. The submissions

4.1 In a letter accompanying the application for a determination, the applicant explained that:

The [authority] has refused to complete the final building inspection on my client's property...We have been informed this is because the private certifier who carried out the building inspections no longer exists.

The [authority] gave everyone two years to complete any required inspections. My client wasn't aware that the final inspection hadn't been completed or undertaken by his building contractor, or aware that the [authority] had issued any such time frame on completion inspections.

4.2 The applicant also provided copies of:

- the application for a building consent and the building consent
- a project information memorandum dated 30 August 2004
- various inspection records completed by the building certifier
- correspondence from the authority
- plans for the building work.

4.3 The authority acknowledged the application but has made no submission in response.

4.4 A draft determination was issued to the parties for comment on 22 December 2010. The applicant accepted the draft without comment. In a letter dated 31 December 2010 the authority accepted the draft subject to amendment that the building consent is subject to a modification to the Building Code to the effect that Clause B2.3.1 applies from 31 December 2004. (I note here that most of the building work was completed between February and June 2006.)

4.5 In response to the authority's concerns about the durability, while I note that the authority is essentially seeking a waiver of Clause B2, none of the durability periods described in the Building Code Clause B2.3.1, and which could reasonably be expected to commence after the building was effectively completed, have yet been reached and therefore expired. I have received no evidence to suggest that the authority did not accept that the building work complied with Clause B2 at the time the work was substantially completed. I have also received no evidence to suggest that normal maintenance, also required by Clause B2.3.1 and which might otherwise affect the durability of the building elements, has not been carried out.

4.6 Consequently I do not believe sufficient time has passed, since the substantial completion of the building work in 2006, to initiate the need for a modification of the commencement date of the durability periods as sought by the authority.

5. Grounds for the establishment of code compliance

5.1 In order for me to form a view as to the code compliance of the building work, I established what evidence was available and what could be obtained, considering that the building work is completed and some of the elements were not able to be cost-effectively inspected.

5.2 In the absence of any evidence to the contrary, I take the view that I am entitled to rely on the inspection records, but I consider it important to look for evidence that corroborates or contradicts these records and can be used to verify that the building certifier's inspections were properly conducted.

5.3 In summary, I find that the following evidence allows me to form a view as to the code compliance of the building work as a whole:

- the inspections carried out by the building certifier, indicating satisfactory inspections of the inaccessible components (see paragraphs 3.2 and 3.4)
- drawings and photos
- the expert's report (below).

6. The expert's report

6.1 As mentioned in paragraph 1.5, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors. The expert inspected the building work on 10 September 2010 and carried out invasive and non-invasive moisture-level testing. He provided a report on 30 September 2010.

6.2 In preparing his report, the expert viewed the authority's records and confirmed that all of the progress inspections for the building work had been carried out by the building certifier and, with the exception of the final inspection (which was not completed), had all passed.

6.3 The expert noted that in the inspection records the building certifier had indicated that the engineer was to provide 'a fill and pre-site loading report' before the code compliance certificate for the building work was issued. A site inspection report, dated 4 May 2006, shows that this was received, although there is no copy of it on the authority's files. The expert also noted that an "as built" sewer and drainage plan was still to be provided.

6.4 The expert also confirmed that, apart from an internal wall between the existing building and the east wall of the office, the building work had all been completed in accordance with the approved plans.

6.5 Compliance with the relevant code clauses

The expert assessed the building work for compliance with the relevant clauses of the Building Code, and commented on them as follows.

B1 Structure

- Proper inspections appear to have been made of the floor and footings, and these were passed.
- There is no evidence of structural stress or excessive movement.

B2 Durability

- The colour steel cladding has been appropriately fixed and is in good condition.
- The fibre-cement soffit is well fixed, but requires painting.
- All wall and cladding penetrations need to be appropriately sealed and flashed.
- Doors and window joinery is of good quality, with satisfactory jamb and sill flashings installed.
- All roof flashings, junctions and penetrations are well formed and appropriately sealed and flashed.
- Interior linings and finishing are of an acceptable standard.
- It appears that all manufacturers' recommendations and installation instructions have been followed.

E1 Surface water

- Surface water is appropriately collected and disposed of, and there is no sign of excessive ponding.
- Roof water is appropriately collected and disposed of.
- As built sewer and drainage plans are still to come.

E2 External moisture

- The cladding is well fixed, with good ground clearances, appropriate flashings around all joinery, and good weather protection provided by the soffit overhang.
- Invasive and non-invasive testing at internal and external locations showed no evidence of water ingress.

E3 internal moisture

- Wall 'surfaces and spaces' containing sanitary fixtures and appliances are not yet finished.
- The ventilation system for the shower and toilets is disconnected.

F2 Hazardous building materials

- The shower door glazing complies with NZS 4223: Part 3: 1999⁵.

G1 Personal hygiene

- Toilet and bathroom facilities and water pressure are satisfactory.

G3 Food preparation and prevention of contamination

- Kitchen and staff room areas are satisfactory.

G4 Ventilation

- Ventilation is satisfactory.

G12 Water supply

- Water supply and pressure is good.
- Testable (high Hazard) backflow valve to be fitted.

G13 Foul water

- The top of the foul water gully trap is sufficiently elevated above ground level, but the drainage pipes require silicon sealing onto the inside of the gully.
- The sewage system is satisfactory.

H1 Energy efficiency

- The ceiling is fully insulated.
- A pre-line inspection appears to have been made, which would have included the installation of the wall insulation, and this was passed.

6.6 Copies of the expert's report were provided to the parties on 8 November 2010.

6.7 On 19 November 2010, the applicant's agent sent an email to the Department advising and providing photographic evidence that the following matters have been attended to.

The fibre-cement soffit and timber fascia have been painted.

The missing shower fixtures have been fitted.

The shower and toilet areas have been painted.

The vanities in both the men's and women's bathrooms have been silicon sealed to the wall.

A backflow valve has been fitted to the outside tap.

The wastepipe and gulley trap have been sealed.

The ventilation system has been connected.

⁵ New Zealand Standard NZS 4223:Part 3:1999 - Code of practice for glazing in buildings - Human impact safety requirements.

- 6.8 The applicant also stated that it would provide ‘a copy of the drainage as-built and the electrical certificate of compliance’ to the authority.
- 6.9 The expert’s report and the other evidence give me reasonable grounds to conclude that, other than the matters identified by the expert as requiring rectification (as set out in paragraphs 6.3 and 6.5 of this determination), the building work complies with the relevant clauses of the Building Code.

7. Discussion

- 7.1 The applicant has provided some evidence that matters noted in the expert’s report as requiring attention have been made code compliant and that the authority will receive copies of the drainage plan and electrical certificate.
- 7.2 The only outstanding matter therefore is the engineer’s fill and pre-site loading report, which the building certifier stated was required before a code compliance certificate could be issued. The certifier subsequently noted that this report had been received, although there is no copy of it on the authority’s files. In my opinion, there is sufficient evidence available that the report was provided and that the building certifier was satisfied that this aspect of the building work complied.

8. What is to be done now

- 8.1 The authority will need to satisfy itself as to the code compliance of any remedial work that has been undertaken prior to the issue of a code compliance certificate for the building work.
- 8.2 The applicant is to provide ‘a copy of the drainage as-built and the electrical certificate of compliance’ to the authority.
- 8.3 The applicant should then apply for a Code Compliance Certificate

9. The decision

- 9.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the building work, at the time of the application for a code compliance certificate, did not comply with the relevant clauses of the Building Code, and accordingly I confirm the authority’s decision to refuse to issue a code compliance certificate.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 7 February 2011.

John Gardiner
Manager Determinations