



Determination 2015/035

Regarding the refusal to issue a code compliance certificate for additions and alterations to a school at 968 Pyes Pa Road, Pyes Pa, 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, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to the determination are:

- the owner of the building, the Ministry of Education and Pyes Pa School Board of Trustees, (“the applicants”), acting through the project architect (“the architect”)
- Western Bay of Plenty District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.

1.3 This determination arises from the decision of the authority to refuse to issue a code compliance certificate for additions and alterations to an administration building at Pyes Pa School. The refusal arose because the building work was not inspected by the authority during construction and the authority considers it is therefore not able to be satisfied that the building work complies with the relevant clauses² of the Building Code (First Schedule, Building Regulations 1992), in particular in regard to building elements that are no longer visible.

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

² In this determination, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

- 1.4 The matter to be determined³ is therefore whether the authority was correct in its decision to refuse to issue a code compliance certificate. In deciding this matter I must also consider whether there is reasonable grounds to be satisfied that the completed building work complies with the building consent.
- 1.5 In making my decision, I have considered the submissions of the parties and the report of the expert commissioned by the Ministry to advise on this dispute (“the expert”), and the other evidence in this matter.

2. The building work

- 2.1 The building work consists of minor alterations and additions to the administration block of the school, and the addition of a mobile storage system in an existing resource room. Alterations included creating a more prominent entrance, with new access ramps, steps and entrance pathway, and the provision of a small meeting room and repositioning of the reprographic room.
- 2.2 The area in the existing resource room in which the new mobile storage system was created was strengthened and modified to take the additional floor load.
- 2.3 The additions were constructed on timber pile foundations with timber framed walls and a suspended timber floor. The exterior wall cladding is weatherboards, with boxed corners and scribes, to match existing, fixed over a ventilated cavity. Windows are powder coated aluminium face-fixed to the cladding. The new roof is corrugated steel to match existing.

3. Background

- 3.1 On 22 February 2012 the authority issued building consent No. 83349 for the alterations and additions.
- 3.2 During construction, the builder did not call for any inspections by the authority. In place of those inspections the builder arranged for a footing inspection to be carried out by a Chartered Professional Engineer, who later provided a Produced Statement – PS4 – Construction Review dated 28 February 2012 in respect of Clause B1.
- 3.3 The architect also carried out an inspection at the builder’s request, on 3 April 2012; the architect was given to understand the builder would be delayed by an unreasonable period until the authority could make a site visit. The architect’s record of the inspection notes a number of ‘failed’ items (refer paragraph 6.1.1), stating that once they had been remediated the work to lining and cladding could continue. The architect provided an unsigned Producer Statement – PS4 – Construction Review dated 3 April 2012. In a letter dated 3 April 2012 the architect provided the authority with a copy of the inspection notes, photographs taken on site, and the unsigned PS4.
- 3.4 On 26 April 2012 the authority wrote to the architect, noting that it hadn’t been requested to carry out an inspection and there were no unusual delays in the inspection process around that time. The authority set out some of the items it considered would require clarification or attention (as follows), and advised the architect that a pre-cladding inspection would be required.

From the photographs provided with the report it appears there may be other matters needing attention. While some of these can be checked at the actual preline ... there are other matters needing clarification, such as the appropriateness of some fixings and their structural adequacy. Other issues are, for example, where cavity

³ Under sections 177(2)(d) and 177(2)(f) of the current Act

battens are at 600 centres, there needs to be intermediate battening or strapping to prevent insulation from pushing the building wrap out to the back of the cladding; and the PEF rods and foam seals are not in place.

Unrelated to the preline, the stair treads appear unlikely to be 360mm as set out [in the drawings]

3.5 On 2 August 2012 the authority carried out a final inspection, which failed. The site notice records items requiring attention (as follows) as well as documentation to be provided.

- 1) Alternative solution domes needed to all accessible handrails and hand rails must be installed to both sides of ramp
- 2) Accessible steps must be 310mm min goings with contrasting installed to steps
- 3) Final exits must be 25mm max to landings
- 4) Final exit signage needed as per F8 requirements ecoglow or illuminated
- 5) Handrail needed to interior steps
- 6) Amended drawing needed for drainage sump and channels locations changes
- 7) PS 4 from engineer must have correct consent number
- 8) Response required for [authority] letter dated 26 April 2012 in regards to missed inspections and items needing attention.

3.6 Various items were attended to and in a letter on 17 September 2012 the architect advised the authority that the following had been checked and the architect was satisfied they had been completed:

- items identified on 3 April 2012
- items raised by the authority regarding air-seals to windows and ensuring bracing brackets and the required number of fixings had been installed
- air-seals and PEF rod were in place
- due to the low weathertightness risk, the use of weatherboards and a cavity, that the possibility of building wrap being pushed out was not a concern, and that the wrap was taut at the time of installation.

3.7 The architect advised that another builder had been engaged and the issue of the stair depth, leading edge of stair treads, extension of the handrail, and nobbles to indicate the end of the handrail were all addressed. The architect noted that a certificate from the first builder for the cladding was unlikely to be obtained in the circumstances and stated that

Having seen the flashings, cavity battens, flashing tape and observed general construction I am confident of the cladding meeting NZBC requirements particularly in light of the low risk of the application and the robustness of the cladding system chosen and have completed a PS4 accordingly.

3.8 The architect enclosed various documentation required, and an application for a code compliance certificate also dated 17 September 2012.

3.9 In a site notice dated 11 October 2012 the authority indicates that all site work appeared to be completed in accordance with the approved plans, but that some documentation was required.

3.10 On 16 November 2012 the authority wrote to the architect to advise that it would not issue a code compliance certificate. The authority held the view that the architect's PS4 did not cover all of the matters raised in the authority's letter of 26 April 2012.

- The authority requested as-built records for the sump relocation, channel changes and revised step details, and was of the view that certification was required for the relocated fire panel and extension of the type 2 alarm system.
- 3.11 Further correspondence ensued between the architect and the authority, with the architect providing the requested documentation.
- 3.12 On 20 February 2013 the authority wrote to the architect, stating that
- ...assurances would be needed that the defects noted in your pre-line inspection report (03/04/2012...) had been rectified, plus comment as to the satisfactory clarification of the issues of potential non-compliance visible in photographs you provided from the same inspection. [The authority is] not prepared to presume that all is well and complies with the approved consent (and the Building Code) and need such an undertaking from you in order to progress toward issuing the Code Compliance Certificate. If it is the case that your producer statement (21/11/12) certifies that the defects in question have been remedied written confirmation to that effect will be assist (sic).
- 3.13 By letter on 22 February 2013, the architect confirmed that ‘in addition to the inspection undertaking on 3 April 2012, a follow up inspections (sic) was undertaken and ... I confirmed all issues raised in my report had been addressed and the missing elements structural elements were installed correctly and with the correct number of nails/fixings as per the drawings.’ The architect also confirmed he had observed air seals installed over PEF rods in place prior to lining, the building wrap was not a concern, and the stair tread, nosings and visibility had been addressed and subsequently ‘signed off’ by the authority.
- 3.14 On 5 March 2013 the authority responded to the architect by email, referring to:
- the load capacities of the fixings of roof members to ridge beams, etc
 - confirmation that insulation was fitted correctly
 - changes to the design for the timber section of the ramp
 - attachments of the deck and ramp joists to the support posts using single bolts.
- 3.15 Correspondence continued between the parties until on 10 April 2013 the authority advised the architect that it was declining to issue the code compliance certificate, stating that
- If [the authority] wasn’t called for inspections and you attended the site only weekly or 2-weekly (and probably weren’t looking at compliance issues), without some form of certification, perhaps in the form of producer statement(s), we don’t have the reasonable grounds the Act calls for to issue the [code compliance certificate], and since you weren’t really inspecting for compliance you would be happy to provide the certification needed.
- 3.16 On 19 April 2013 the architect requested from the authority ‘what specific areas you still have concerns over and whether a PS4 from an engineer would satisfy these queries’, noting that there was already a producer statement from an engineer and from the architect.
- 3.17 The authority’s refusal was confirmed in a further email to the architect on 31 May 2013.
- 3.18 The Ministry received an application for a determination on 19 February 2015.

4. The submissions

- 4.1 The architect provided a covering letter setting out the background to the events and noted that the delay in seeking a determination had allowed time for any ‘non-complying issues to be exacerbated and thereby “prove” themselves’. The architect enclosed copies of the following:
- Consent drawings and specifications
 - The building consent
 - Site records, site meetings and contract instructions
 - Correspondence between the parties
 - Photographs and summary document on CD-ROM
 - The architect’s inspection records and PS4
 - The engineer’s PS4
 - Various producer statements, as-built drawings, and certificates
 - Final inspection records
- 4.2 The authority acknowledged the application but provided no submission in response.
- 4.3 A draft determination was issued to the parties for comment on 1 May 2015.
- 4.4 In a response received on 14 May 2015, the applicants accepted the draft determination subject to correction of minor errors.
- 4.5 In a response received on 15 May 2015, the authority accepted the draft determination and made no further comment.

5. The expert’s report

- 5.1 As described in paragraph 1.5, I engaged the services of an expert who is a registered architect⁴ and a member of the New Zealand Institute of Architects, to assist me. The expert examined the building work on 17 March 2015 and produced a report that was completed on 17 April 2015. Copies of this report were forwarded to the parties on 20 April 2015.
- 5.2 The report described the building work in general terms and gave some of the background to the dispute. The expert stated that the construction quality of both the interior and exterior was of a relatively high standard. The expert noted that the amount of new exterior wall is very limited and is well protected from weather by a large entrance canopy, and although the rear wall is less protected it is in a sheltered courtyard.
- 5.3 The alteration work has a low weathertightness risk score⁵ (0 to 7). It was Ministry of Education policy that required the cladding to be constructed on a cavity. (E2/AS1 requires bevel-backed timber weatherboards to be installed over a 20mm cavity for building with a risk score of between 13 - 20.)

⁴ Registered Architects are treated under the Registered Architects Act 2005 as if they were licensed in the building work licensing class Design 3 under the Building (Designation of Building Work Licensing Classes) Order 2010.

⁵ When applying the methodology described in paragraph ‘3.0 Weathertightness Risk Factors’ in E2/AS1

5.4 The expert confirmed some construction details and noted that the modifications to the ramp that were part of the failed elements referred to in the authority's 2 August final inspection were completed. The expert considered building work was:

...quite minor with only a small amount of foundation work (already inspected by the engineer), quite limited external wall area and minimal roof reconstruction.

The expert went on to state that:

... all the important compliant aspects of the accessible stairs and ramp can be inspected in their completed form

[and] ... any risk that may be associated with any defective hidden element has been mitigated to a large extent by the Architect's actions in inspecting the work himself and taking a comprehensive photographic record of the construction at the pre-cladding stage'.

5.5 The expert noted that he found the work to be of a relatively high standard, with good quality materials installed in a compliant fashion, well detailed and finished, and that he had no reason to suspect that hidden elements were of any less quality.

6. Discussion

6.1 Compliance of the building work

6.1.1 At various times both the architect and the authority have referred to items of non-compliance or where there is doubt as to compliance. In the following table I have listed those issues specifically identified by the architect and by the authority, and the responses provided by the architect in regards to those concerns.

Table 1:

Items identified as 'failed' by the architect 3 April 2012	Responses from architect	Dates of correspondence
Bracing	Completed and checked Covered by Architect's PS4	17/9/2012 and 22/2/2013
Verandah beam connection to post		
Valley beam connection to wall		
Ridge beam connection		
Stringer to wall connection		
Entry steps/ramp (non-compliant 190mm riser)	Issue addressed by new builder	17/9/2012
Items identified in the authority's letter of 26 April 2012		
Appropriateness of some fixings and their structural adequacy	Covered by Architect's PS4	19/4/2013
Where cavity battens are at 600 centres, there needs to be intermediate battening or strapping to prevent insulation from pushing the building wrap out to the back of the cladding	Adequate in circumstances.	17/9/2012 and 19/4/2013
PEF rods and foam seals are not in place.	Completed and checked	17/9/2012 and 22/2/2013
Stair treads appear unlikely to be 360mm as set out [in the drawings]	Issue addressed by new builder	17/9/2012 and 22/2/2013
Items identified in failed final inspection 2 August 2012		
Alternative solution domes needed to all accessible handrails and hand rails must be installed to both sides of ramp	Issue addressed by new builder	17/9/2012
Accessible steps must be 310mm min goings with contrasting installed to steps	Issue addressed by new builder	17/9/2012 and 22/2/2013

Final exits must be 25mm max to landings	Issue addressed by new builder	17/9/2012
Final exit signage needed as per F8 requirements ...	Confirmed as installed	9/8/2012
Handrail needed to interior steps	Issue addressed by new builder	17/9/2012
Items identified in authority's email 5 March 2013		
Load capacities of the fixings of roof members to ridge beams etc	Confirmed	5/3/2013
Confirmation that insulation was fitted correctly	Confirmed	19/4/2013 and 5/3/2013
Changes to the design for the timber section of the ramp	Amended drawings provided	5/3/2013
Attachments of the deck and ramp joists to the support posts using single bolts	Remedied	5/3/2013

6.1.2 I note here that the architect's revised PS4, dated 21 November 2012, was in respect of Clauses B1, B2, D1, E2, E3 and H1 of the Building Code and covers the majority of the items listed in the table above. The authority's records indicate that those items that were visible on inspection were compliant.

6.1.3 In addition to the PS4's, the authority's inspection, and the assurances from the architect, the expert's assessment has raised no concerns regarding the quality of the building work or items that did not comply.

6.2 The lack of inspection by the authority

6.2.1 Inspections are undertaken to verify that completed building work has been carried out in accordance with the plans and specifications and the Building Code. If the authority did not carry out particular inspections itself, it is entitled to rely on inspections by others, or verification by another means.

6.2.2 To overcome the lack of inspections it is for the applicant to provide appropriate evidence as to the compliance of the completed building work for the authority to be satisfied on reasonable grounds, and for the authority to carry out such inspections as it considers necessary. The Building Code is performance-based and assessment for a code compliance certificate where an inspection has been missed can also take into account the actual performance of the building work.

6.2.3 The building work is very limited in size, it uses conventional construction techniques and materials, and has a low weathertightness risk. The expert described the work as 'quite minor'.

6.2.4 In this case, evidence as to compliance was able to be gathered from the inspections of the engineer and the architect, the PS4's and certification documents, and the authority's final inspections which consisted of an assessment of visible building elements.

6.2.5 I do not believe it was reasonable for the authority to have an ongoing dialogue with the architect on individual matters of compliance, only for the authority to say at the end of the process that it would not issue the code compliance certificate because it had not inspected the work itself.

6.3 The code compliance certificate

- 6.3.1 Under section 94(1), the authority must issue a code compliance certificate if it is satisfied on reasonable grounds that the building work complies with the building consent. In previous determinations⁶ I have also discussed circumstances in which an authority would need to take the additional step of considering compliance with the Building Code when deciding whether to issue a code compliance certificate; for example where the consent documentation lacks adequate details, or where building work was not completed in accordance with the building consent.
- 6.3.2 In this case, where the construction was undertaken without inspections being carried out by the authority, I hold the view that where the authority is unsure whether the building work complies with the building consent the question becomes whether the building work complies with the Building Code.
- 6.3.3 Given the inspections undertaken and the Producer Statements of both the engineer and the architect, the authority's final inspections of visible elements, and the expert's report, I consider there is reasonable grounds to be satisfied that the building work complies with the Building Code and a code compliance certificate should now be issued.

7. The decision

- 7.1 In accordance with section 188 of the Building Act 2004, I hereby determine that there are reasonable grounds to be satisfied that the completed building work complies with the Building Code, and accordingly the authority's decision to refuse to issue a code compliance certificate is hereby reversed.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 12 June 2015.

John Gardiner
Manager Determinations and Assurance

⁶ See Determination 2008/030 and 2013/075