



## Determination 2017/074

# Regarding the requirement for fire resistance of a timber structure at 2 Ada Street, Remuera, Auckland



### Summary

This determination considers whether the structure without fire resistance complies with Clause C3 of the Building Code. The determination discusses whether the structure as constructed satisfies C/AS1 and whether it complies as an alternative solution.

### 1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“the Act”) made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties are:

- the owner of the adjacent property at 2A Ada Street who applied for the determination, S Scott (“the applicant”), acting through an agent
- N & S de Villiers and L Farrugia, the owners of the subject property at 2 Ada Street (“the owners”)
- Auckland Council carrying out its duties and functions as a territorial authority or building consent authority (“the authority”).

1.3 I have provided Fire and Emergency New Zealand<sup>2</sup> (“the FENZ”) with the determination documentation for comment by way of consultation under section<sup>3</sup> 170 of the Act.

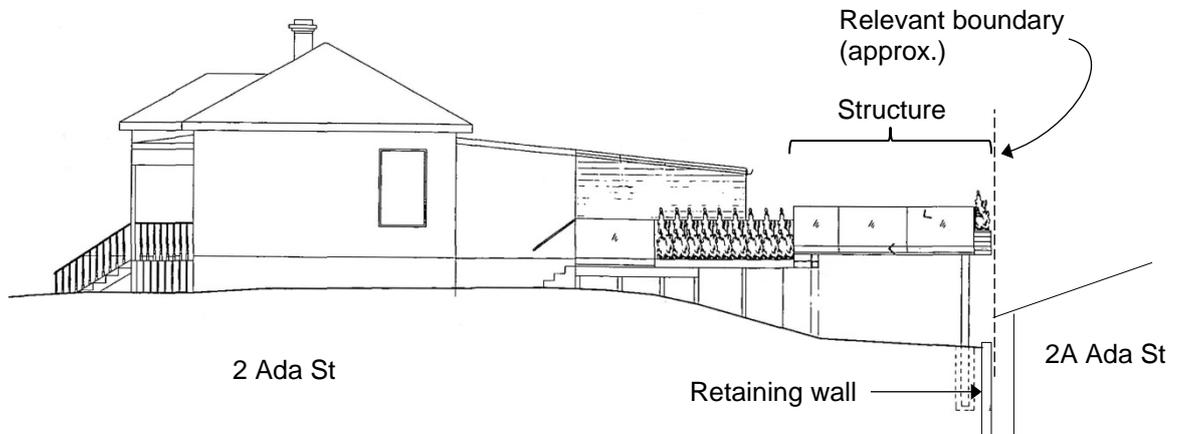
<sup>1</sup> The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at [www.building.govt.nz](http://www.building.govt.nz) or by contacting the Ministry on 0800 242 243.

<sup>2</sup> Previously the New Zealand Fire Service.

- 1.4 This determination arises from the applicant's concern that the recently constructed timber structure on the owners' property does not comply with Clause C3 of the Building Code (First Schedule, Building Regulations 1992) given its proximity to the applicant's property.
- 1.5 The matter to be determined<sup>4</sup> is whether the timber structure complies with Clause C3.6 of the Building Code.
- 1.6 In making my decision, I have considered the submissions of the parties and the report of the independent expert commissioned by the Ministry to advise on this dispute ("the expert"). I have not considered any other aspects of the Act or of the Building Code, nor have I considered any other building elements other than in relation to resistance to external spread of fire with respect to the structure.

## 2. The building work and background

- 2.1 The authority issued building consent no. B/2015/514 on 2 April 2015 for alterations to an existing house at 2 Ada Street, including the replacement of an existing deck ("the original deck") on side of the house adjacent to 2A Ada Street. The new structure was described in the plans both as a deck over an existing car parking area and as an existing carport that was being re-built. The question has been raised about whether the new structure is a deck or a carport; for simplicity in this determination I refer to it as "the structure". This issue is further addressed in paragraph 5.1.7.
- 2.2 The structure consists of timber joists supported on steel beams and braced timber posts, with glass balustrades along the side nearest the adjacent property. (Refer Figure 1 below).



**Figure 1: Elevation indicating approx. siting to relevant boundary and adjacent dwelling (not to scale)**

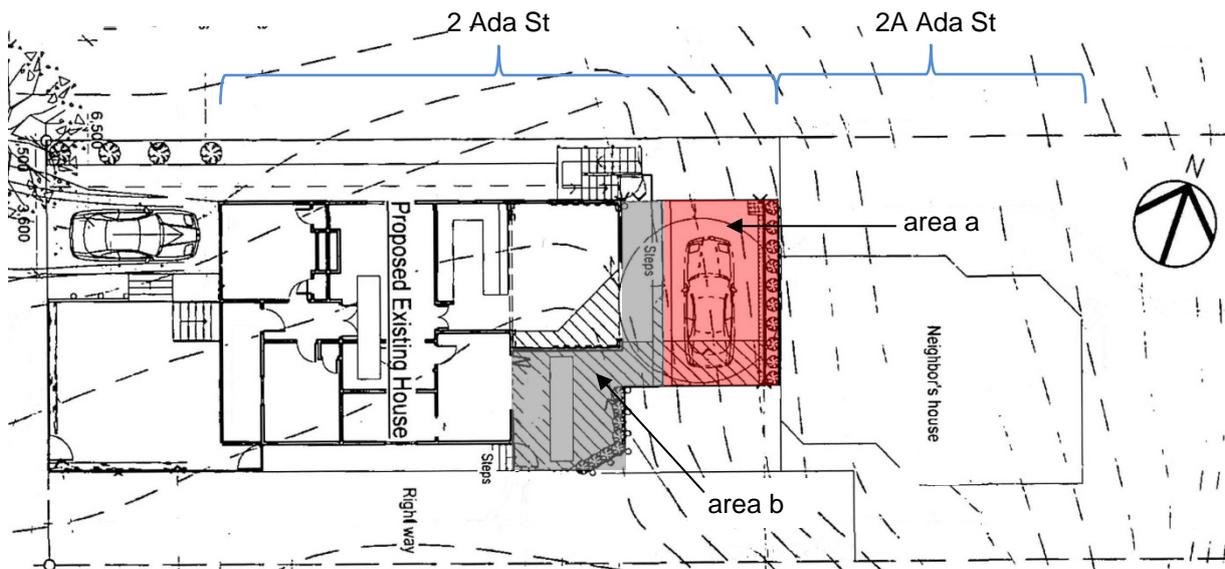
- 2.3 The site at 2 Ada Street slopes gently down from the road, from south to north, and more steeply as it nears the boundary with 2A.
- 2.4 Based on the correspondence and plans provided to date, the boundary between the two properties (which are cross-leased) runs along the line of the eaves to the applicant's garage. In making this determination I have not sought to confirm where the boundary lies in relation to the structure. I leave this to the parties to resolve.

<sup>3</sup> 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.

<sup>4</sup> Under section 177(1)(a) of the Act.

2.5 Of the drawings provided to the authority to support the building consent<sup>5</sup>, only the site plan shows the location of the boundary and the adjacent dwelling (see Figure 2). I note also:

- the completed building consent application form did not state the means of compliance with Clause C3
- the lodgement checklist was marked as “n/a” for the requirement described as ‘Fire design report / construction details if building within 1m of boundary, >3m stories, or household units’
- the authority’s processing checklist recorded “relative boundary distance” as more than 1000mm.



**Figure 2: Site plan (not to scale)**

- 2.6 The authority’s inspection records indicate that construction began in April 2015, and photographs dated 29 October 2015 provided with the application for determination show the structure under construction at that time. No final inspection has been called for and no application has been made for a code compliance certificate.
- 2.7 On 28 October 2015 a legal adviser acting on behalf of the applicant wrote to the authority to raise a number of concerns regarding compliance of the alterations, including fire rating. The legal adviser noted that the structure is within 100mm of the applicant’s garage eaves and it was the applicant’s view that the structure did not comply with respect to spread of fire to other property. The legal adviser requested the authority issue a stop work notice until this issue and matters relating to stability of the site and retaining wall were resolved.
- 2.8 On 21 April 2016 the authority wrote to the applicant, clarifying various types of boundaries and that the ‘notional boundary’ appeared to be against the applicant’s garage. The authority advised the applicant that:

... because this is a cross lease situation that the plans submitted for a building consent for the [structure] do not breach the fire rating requirements of the building code. ... There can be requirements for consultation and permissions, however that is a civil matter between the relevant parties.

<sup>5</sup> I note that the building consent drawings do not appear to have adequately identified the existing land and building features.

- 2.9 On 19 May 2016 the applicant met with the authority to discuss a number of concerns in relation to the structure's construction. The applicant put to the authority that the Building Code defines "allotments" and "other property" and that 'cross-lease titles have the same status as any other property title'. The applicant was of the view the authority had failed to ensure the structure would comply.
- 2.10 On 8 July 2016 the authority emailed the applicant's agent, setting out the authority's rationale on the fire issue as follows:
- If we consider the structure as simply a deck then I don't believe that this is a 'building' as such and as it does not constitute a fire cell, fire spread from a deck to the boundary does not need to be considered.
- The email included paragraph 5.5 of the Acceptable Solution C/AS1 (refer Appendix B).
- 2.11 The agent responded to the authority on 17 July 2016, disagreeing with the rationale the authority had presented. The agent considered that removing the carport designation did not alter the structure itself, and noted that the extract from the Acceptable Solution is for 'carports and similar construction', and that the structure as-built is within 300mm of the relevant boundary.
- 2.12 An application for determination was received by the Ministry on 27 March 2017.

### 3. The submissions

- 3.1 The applicant provided copies of the following documents with the application for determination:
- two aerial views of the site showing the two dwellings and including the structure
  - four photographs dated 29 October 2015 of the structure under construction, and one undated photograph of the completed building work
  - a set of approved plans for the alterations
  - one inspection record, dated 10 August 2015, noting passive fire protection as 'not applicable'
  - correspondence between the agent and the authority
  - copies of determinations 2010/011 and 2011/060<sup>6</sup>.
- 3.2 The applicant made a submission in support of the application (in summary):
- The original structure was more than 1m from the applicant's house.
  - The new structure is 59m<sup>2</sup> and within 100mm horizontal distance to the applicant's house; the boundary between the properties is at the end of the eaves of the applicant's garage.
  - There is potential for fire to spread from the structure to the applicant's house because the structure is cantilevered over and sits beside the garage.

---

<sup>6</sup> *Determination 2010/011 Construction of a hot pool building built without boundary fire protection* (15 February 2010), and *Determination 2011/060 The compliance of a garage near a common boundary, in terms of protection from the effects of fire provided to an adjacent property* (20 June 2011).

- The structure does not comply with C/AS1 5.5 because it has an area greater than 40m<sup>2</sup>; nor would it comply with C/AS2 5.6.6 because it is adjacent to a building under different ownership (the applicant's) and because of the area.
- Because the structure doesn't comply with the Acceptable Solution, it should be fire rated.

3.3 The authority made no submission in response to the application, but provided a copy of the property file on 11 April 2017.

3.4 On 4 April 2017 the owners emailed the Ministry and advised that the area referred to as a carport/garage 'has never been used as one and is inaccessible to cars because of the gradient of the drive'. The owners made a submission to the Ministry on 13 April 2017 (in summary):

- The structure has been built as per the consented documentation.
- While new piles have been constructed, the new structure does not "overhang his exclusive use area".
- The area beneath the structure has not been used as a carport and it cannot be used as one because of the gradient and lack of visibility of traffic on the right of way.
- The owners were informed by the authority that fire rating the structure was not necessary.

3.5 The owners provided copies of the following documents:

- Undated photographs showing the position of the original structure with respect to the applicant's roof, and the structure as built.
- Written approval of affected persons signed by the applicant dated 22 December 2014 (Although the description of the proposed activity is illegible to me, it is not relevant to the matter in dispute).
- A set of approved plans for the alterations.

### **3.6 The first draft determination and responses**

3.6.1 A first draft of this determination was issued to the parties and FENZ for comment on 1 May 2017. In the first draft I concluded that the structure does not satisfy C/AS1, but considered it unlikely that the structure required fire rating in order to comply with Clause C3.6 of the Building Code, with a caveat that this conclusion required calculation to verify.

3.6.2 On 9 May 2017, the authority responded that it did not accept the draft determination and provided additional comment:

- There is confusion in advice generally from the Ministry relating to how to treat fires that can occur in the open and external to the building/firecell.
- The authority has previously received advice regarding fire separations to protect against external fire spread from decks and balconies to the effect that 'unprotected areas are only required to be addressed within external walls of firecells'.
- The authority compared the structure to a balcony and noted there is no requirement within the C/AS1 to protect one outside space from another

- A fire occurring on the structure is different from a fire occurring in a building. In this case the closest firecell and “enclosure” is over 1m away from the boundary, and in regard to the performance requirement stated in C3.6 a fire involving the structure is not a “fire in the building”.
- The authority disagrees that the structure is a similar construction to a carport because there is not car parking, storage and a fuel load located underneath the structure. The structure does not form a “weather barrier” and so acts differently from a typical roof. Fire loads on top of the structure or occurring on the structure would not normally be considered because the structure does not have any walls or roof. (I note that the consented plans identified the structure as an existing carport to be re-built.)
- The 40m<sup>2</sup> requirement in the Acceptable Solution does not impact Building Code compliance. The location of the fire source relative to the boundary and fire size considered become the determining factor when considering the fire risk, rather than the size of the structure.
- The authority disagrees that a fire occurring on the deck of the structure should be considered with regard to fire spread when the fire would be external. A fire involving a deck is very limited and is “no different to a garden space near a property boundary”.
- The authority is of the view that fire rating should not be required, but questioned the conclusion in the first draft that calculation was required to support this reasoning. The inputs and fire size being considered would be “unreasonably small” and such a calculation would support the justification that the risk and consequence of “such a small fire” occurring outside are low and “outside the scope of the compliance documents”.

3.6.3 On 14 May 2017, the applicant responded that they did not accept the draft determination and provided additional photos along with the following comments:

- The plans submitted for the building consent refer to the proposed structure as a deck with a carport, with a vehicle shown parked underneath it on the site plan.
- There is access to the carport and while the current owners state it won't be used as one because it is inaccessible, the previous owners used the space as a carport.
- The determination should consider the deck as a carport, and take into account that it could be used as storage of combustible materials such as firewood.
- There is no comment whether the practices of the authority's consent processing was “acceptable or appropriate”; it would be inappropriate for information that was incorrect to not be identified.
- The determination is incomplete without assessment using a verification method.

3.6.4 In a letter dated 14 May 2017, the owners responded to the draft determination and the submission of the applicant as follows:

- The deck was consented by the authority, “signed off” by the applicant, built according to the plans submitted, and complies with the consent.

- The deck is the same distance from the applicant's property as the previous deck.
- It will cause financial hardship to deconstruct and rebuild the deck to be "fire-rated".
- In the four years of living at the property the owners have not used the area under the deck as a carport, and fire wood is not stored there because there is no protection from the weather.

3.6.5 FENZ responded on 18 May 2017, noting that they agreed that the structure does not satisfy C/AS1 but making no further comment.

### **3.7 The second draft determination and responses**

3.7.1 After consideration of the responses to the first draft determination I engaged an independent expert to assist me (refer paragraph 1.6). The second draft takes into account the expert's report and was issued to the parties and FENZ for comment on 15 August 2017. In the second draft I concluded that the structure did not comply with Clause C3.6 based upon the calculations provided by the expert.

3.7.2 The owners responded to the draft determination on 15 August 2017 querying whether the cost to retrospectively fire rate the structure will be covered by the authority. The owners are of the view it is the responsibility of the authority to ensure the consented building work is compliant with the Building Code.

3.7.3 The FENZ responded on 6 September 2017 stating it had no additional comments on the second draft determination.

3.7.4 On 7 September 2017 the applicant's agent responded to the draft determination and did not accept the decision. The agent provided a survey plan dated July 1987, and made the following comments (in summary):

- Reiterated the view that the structure is a carport and restated that cars have been parked there in the past.
- Noted the planter box sits on the deck and is not a separate structure.
- The applicant disagrees with several aspects of the authority's submission noting the authority signed off the consented plans with the structure labelled as a carport, fire calculations were necessary, and a fire on or under a deck is not the same as a fire in a garden space.
- The deck is part of the structure and the applicant disagrees with how the area of the structure was calculated in the determination.
- 1m separation is required for the structure to satisfy C/AS1 and comply with Clause C3.6.

3.7.5 On the same day the authority responded, stating that the draft determination assumed the structure was built in accordance with the building consent, which was not the case; the barrier and planter box were not as per the drawings. The authority referred to photographs and information supplied by the agent in support of that assertion.

3.7.6 On the same day the owners, in response to the authority's statement queried how the as-built work is not compliant with the consent, noting the builder had stated all dimensions were as per the consented drawings, and the angle of the photos could be

distorting the distance. The owners stated the authority should provide a surveyor's plan to support its statement.

3.7.7 The authority submitted its response to the draft determination on 8 September 2017, noting it disagreed with the decision and provided comments as follows (in summary):

- Agreed with the decision that the as-built structure does not comply with the Building Code if it is considered a carport or similar structure.
- The as-built structure does not appear to have been built in accordance with the consent, and an amendment to the consent is required.
- The owners could enclose the underside of the structure preventing a vehicle or storage underneath it, thus removing the fire load under the structure and satisfying C/AS1, however the issue of fire spread would not be resolved.
- The authority requested guidance from the Ministry regarding fires on or involving decks.

3.7.8 On 18 September 2017, the owners responded saying they did not accept the draft determination decision, and sought further clarification regarding the non-compliance of the structure.

3.7.9 I have taken the parties' submissions into account and amended the determination as appropriate.

## **4. The expert's report**

4.1 As mentioned in paragraph 1.6, I engaged an independent expert to assist me. The expert is a Chartered Professional Engineer with specific expertise in fire matters. The expert's report was received on 28 July 2017 and sent to the parties on 31 July 2017.

### **4.2 The fire calculations**

4.2.1 The expert was engaged to provide fire calculations for the received radiation at the relevant boundary and 1m beyond the relevant boundary to establish whether the structure complies with Clause C3.6.

4.2.2 Two separate scenarios were considered due to the disagreement between the parties as to whether the structure was a carport or a deck; these were based on:

- Scenario 1 - the structure as a carport, with a car and/or storage located underneath
- Scenario 2 - the structure as a deck that is on fire, without additional fire loads underneath.

4.2.3 The calculation treating the structure as a carport established the maximum radiation received at the boundary as 91.4 kW/m<sup>2</sup> and the radiation received 1m over the relevant boundary as 24.2 kW/m<sup>2</sup>.

4.2.4 Considering the structure as a deck that is on fire, the expert identified that because it was located immediately adjacent to the relevant boundary, the flames are likely to cross the boundary and automatically exceed the maximum radiation levels.

- 4.2.5 The expert concluded that the first scenario (the structure as a carport with a car and/or storage) did not comply, and the second scenario (the structure as a deck on fire without additional fire loads underneath) would not comply with Clause C3.6

## 5. Discussion

### 5.1 The legislation

- 5.1.1 The relevant clauses of the Building Code are Functional Requirement C3.3 and Performance Requirement C3.6. Clause C3.3 requires:

Buildings must be designed and constructed so that there is a low probability of fire spread to other property vertically or horizontally across a relevant boundary.

- 5.1.2 Clause A2 Interpretation defines the term “relevant boundary” as follows:

the *boundary* of an *allotment* that is *other property* in relation to the *building* in question and from which is measured the separation between the *building* and that *other property*;

The term “allotment” is defined in section 10 as:

(1) In this Act, unless the context otherwise requires, allotment means a parcel of land—

(a) that is a continuous area of land; and

(b) whose boundaries are shown on a survey plan, whether or not as a subdivision—

(i) approved by way of a subdivision consent granted under the Resource Management Act 1991; or

(ii) allowed or granted under any other Act; and

(c) that is—

(i) subject to the Land Transfer Act 1952 and comprised in 1 certificate of title or for which 1 certificate of title could be issued under that Act; or

(ii) not subject to that Act and was acquired by its owner under 1 instrument of conveyance.

- 5.1.3 For the purpose of compliance with Clause C3, it is the boundary between the properties 2 and 2A Ada Street that is the relevant boundary<sup>7</sup>.

- 5.1.4 The Performance Requirement C3.6:

Buildings must be designed and constructed so that in the event of fire in the building the received radiation at the relevant boundary of the property does not exceed 30 kW/m<sup>2</sup> and at a distance of 1 m beyond the relevant boundary of the property does not exceed 16 kW/m<sup>2</sup>.

- 5.1.5 In general terms the requirement is that other property, in this case the dwelling at 2A Ada Street, is to be protected from fire spread.

- 5.1.6 The structure forms part of the building on 2 Ada Street, and the building including the structure must comply with Clause C3.6. Clause C3.6 is not limited to only fully enclosed buildings with four walls and a roof, it also applies in respect of structures that are not fully enclosed, and that includes carports.

- 5.1.7 The parties are in dispute as to whether the structure is a carport or a deck. Regardless of whether or not a vehicle or items for storage will be placed underneath the structure, its construction is that of an open sided building as it is not fully

<sup>7</sup> The fact that the property is cross-leased does not affect the location of the relevant boundary for the purpose of compliance with Clause C3 of the Building Code.

enclosed, and has a ‘roof’. In a previous determination<sup>8</sup> I considered an open-slatted timber deck constituted a roof, and in this case I maintain this view.

- 5.1.8 Carports and other open sided buildings need to be considered in terms of compliance with Clause C3.6 because they represent a fire hazard.

## 5.2 Acceptable Solution C/AS1

- 5.2.1 Section 19 of the Act provides various means to establish compliance with the Building Code, including but not limited to compliance with the relevant Acceptable Solution. In this case the risk group<sup>9</sup> of the building and structure is within the scope of C/AS1, which is the relevant Acceptable Solution.

- 5.2.2 While the building consent application did not cite that the Acceptable Solution as the means of establishing compliance, I have first considered whether the structure would comply if C/AS1 was used.

- 5.2.3 The requirements for buildings where all or part of the building is open sided is covered within C/AS1. I note the fire requirements for decks are not explicitly stated within the Acceptable Solutions. The relevant paragraph of C/AS1 to consider in this case is paragraph 5.5 which refers to ‘Carports and similar construction’ (my emphasis).

- 5.2.4 Paragraph 5.5 states:

### 5.5 Carports and similar construction

A carport is permitted to have walls and roof with 100% unprotected area provided that all the following conditions are met:

- a) At least two sides are completely open to the environment, and
- b) The carport and adjacent building are under the same ownership, and
- c) For a roof plan area of no more than 40 m<sup>2</sup>, no part of the roof is closer than 0.3 m to a relevant boundary.

- 5.2.5 The Acceptable Solution allows for lower fire-rating requirements where a building or part of a building is open-sided. These lower requirements acknowledge that in an open-sided structure there is considerable area for any fire to vent, and so the fire presents a lesser hazard to neighbouring buildings. C/AS1 allows for open sided buildings, including carports<sup>10</sup> to be closer than 1m to the relevant boundary, without the requirement to protect other property through fire-rating, provided it meets the criteria listed for size and separation distance. However, if the open sided building does not fully satisfy any of the criteria, the design will not comply by way of C/AS1.

- 5.2.6 The structure must meet all of the criteria listed in paragraph 5.5 of C/AS1 in order to conclude that the structure complies by way of the Acceptable Solution. In this case the area under the structure is open on three sides and so satisfies the first criterion. I note that should the structure be enclosed in future, preventing any storage or vehicle parking, it would no longer satisfy this first criterion.

<sup>8</sup> *Determination 2017/002 Regarding the requirement for fire resistance of a slatted timber deck over a car parking area to new townhouses Christchurch* (17 January 2017)

<sup>9</sup> The scope of this Acceptable Solution is risk group SH (Buildings with sleeping (residential) and outbuildings). The risk groups are used to assign the relevant Acceptable Solutions for Building Code Clauses C1 – C6 Protection from Fire.

<sup>10</sup> In *Commentary for Acceptable Solutions C/AS1 to C/AS7* it states where a carport is part of a residential building it is acceptable for cars to be deemed an “insignificant fire load”.

- 5.2.7 The applicant has submitted that the structure does not satisfy the second criterion because the applicant's property is an adjacent building that is not under the same ownership.
- 5.2.8 The terms "adjacent" or an "adjacent building" are not defined in the Acceptable Solution C/AS1; accordingly in considering the interpretation of 5.5 b) in this case, I have considered the natural and ordinary meaning of "adjacent" and how the terms are used within C/AS1.
- 5.2.9 The ordinary meaning<sup>11</sup> of the term "adjacent" is:
1. Next to or very near something else; neighbouring; bordering, contiguous; adjoining.
- 5.2.10 C/AS1 specifies the fire requirements for housing on a single allotment irrespective of the location of other structures on neighbouring allotments. Considering the term as it is used in C/AS1, I am of the opinion that "adjacent building" is limited to building(s) within the allotment.
- 5.2.11 The second criterion of C/AS1 is that the "carport [or similar structure] and adjacent building" must be under the same ownership. If, for example, the carport was a shared space for cars belonging to occupants of more than one household unit to park, it must be separated from the rest of the building with fire rated construction so that the requirements to protect other property are satisfied.
- 5.2.12 In this case the structure and the existing house at 2 Ada Street are under the same ownership and paragraph 5.5 b) is satisfied.
- 5.2.13 I have also considered the third criterion in paragraph 5.5: that the area can be no more than 40m<sup>2</sup> and no part of the structure can be closer than 0.3m to the relevant boundary.
- 5.2.14 The applicant is of the view that the structure's area is 59m<sup>2</sup>. However, Area B (see Figure 2) should not be included in the calculation of the area for the purpose of C/AS1 5.5(c); it is only the area where the fire load, such as a vehicle or storage, could be present and forms the hazard that is calculated (in this case Area A). Based on the plans I calculate this area to be less than 40m<sup>2</sup> and this satisfies the first part of the third criterion.
- 5.2.15 The applicant has stated that the structure is 'within 100mm horizontal distance to [the applicant's] house'. As noted earlier in this determination, I have not received a current survey plan that would provide accurate information on the relative locations of the as-built structure, the boundary, and the applicant's garage. However, it appears from the consented site plan and the images provided that the edge of the structure is closer than 0.3m to the relevant boundary.
- 5.2.16 The first two criteria are satisfied but the third is not fully satisfied because the structure's separation distance from the relevant boundary is less than 0.3m. However, failing to satisfy the Acceptable Solution does not necessarily equate to a failure to comply with the Building Code.
- 5.2.17 I note that should adequate separation distance be provided from the structure to the relevant boundary, this would satisfy the third criterion of paragraph 5.5. C/AS1 would then be satisfied and fire rating would not be required. Although, any proposed amendment to the building consent should be presented to the authority for its approval.

---

<sup>11</sup> "adjacent, adj. and n." *OED Online* Oxford University Press, March 2017, Web. 15 April 2017

### **5.3 Compliance as an alternative solution**

- 5.3.1 An Acceptable Solution is one way, but not the only way, of establishing compliance with the Building Code. I must therefore consider whether the structure as-built complies as an alternative solution.
- 5.3.2 The structure is fully open on three sides. Any fire area below the structure would be vented to the outside via the open sides and up through the unrated open-slatted structure.
- 5.3.3 The fire calculation establishes the received radiation at the boundary and 1m over the boundary from the open sided building exceeds the limit stated in Clause C3.6 (refer paragraph 4.2.5).

### **5.4 Conclusion**

- 5.4.1 Taking into account the evidence outlined above, I conclude that:
- the structure as consented and as-built does not satisfy C/AS1;
  - the structure as-built requires fire rating in order to comply with Clause C3.6 of the Building Code.
- 5.4.2 As the structure does not satisfy the Acceptable Solution and does not comply with Clause C3.6 as an alternative solution, either fire rating is required to the structure or alterations made to enable it comply as an Acceptable Solution.
- 5.4.3 As previously discussed, if the structure is altered to achieve the 0.3m separation distance from the relevant boundary then paragraph 5.5 of C/AS1 is met (provided the other criteria are still satisfied after any alteration), and the structure would satisfy C/AS1 and would be deemed to comply with Clause C3.6.

## **6. The decision**

- 6.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the structure does not comply with Clause C3.6 of the Building Code.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 10 October 2017.

Katie Gordon  
**Manager Determinations**

## Appendix A: The legislation

A.1 The relevant clauses of the Building Code include:

### Clause A2 – Interpretation

**relevant boundary** means the *boundary* of an *allotment* that is *other property* in relation to the *building* in question and from which is measured the separation between the *building* and that *other property*; and for the external wall of any *building*, the *relevant boundary* is the nearest of—

...

(b) a *boundary* of a cross-lease or a company lease or a licence, except that if the *other property* is *open space* to which the lessee or licensee of the *building* in question has an exclusive right of access and occupation or to which 2 or more occupiers of the *building* in question have rights of access and occupation, the *relevant boundary* is the *boundary* on the far side of that *other property*; or...

### Clause C3 - Fire affecting areas beyond the fire source

**C3.3** Buildings must be designed and constructed so that there is a low probability of fire spread to other property vertically or horizontally across a relevant boundary.

**C3.6** Buildings must be designed and constructed so that in the event of fire in the building the received radiation at the relevant boundary of the property does not exceed 30 kW/m<sup>2</sup> and at a distance of 1 m beyond the relevant boundary of the property does not exceed 16 kW/m<sup>2</sup>.

## Appendix B: The Acceptable Solution

B.1 The relevant paragraphs of the Acceptable Solution, C/AS1, include:

### 5.1 Fire resistance ratings

5.1.1 ...

Where the building is not protected with a sprinkler system, external walls shall have an FRR of no less than 30/30/30 in the following circumstances:

a) Outbuildings, single household units and attached side by side multi-unit dwellings where part of the external wall is less than 1.0 m and less than 90° from the relevant boundary. See Figure 5.1 [over page]. The wall shall be fire rated to protect from both directions, ...

### 5.5 Carports and similar construction

A carport is permitted to have walls and roof with 100% unprotected area provided that all the following conditions are met:

- a) At least two sides are completely open to the environment, and
- b) The carport and adjacent building are under the same ownership, and
- c) For a roof plan area of no more than 40 m<sup>2</sup>, no part of the roof is closer than 0.3 m to a relevant boundary.

B.2 The relevant figure from C/AS1:

