



## Determination 2021/017

### Regarding the issue of a code compliance certificate for the installation of a solid fuel burning appliance at 4 Newton Street, Watlington, Timaru



**Figure 1: Photograph of the as-built woodburner**

#### **Summary**

This determination considers the authority's decision to issue a code compliance certificate for a woodburner.

### **1. The matter to be determined**

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

<sup>1</sup> The Building Act and Building Code (Schedule 1 of the Building Regulations 1992) are available at [www.legislation.govt.nz](http://www.legislation.govt.nz). Information about the legislation, as well as past determinations, compliance documents and guidance issued by the Ministry, is available at [www.building.govt.nz](http://www.building.govt.nz).

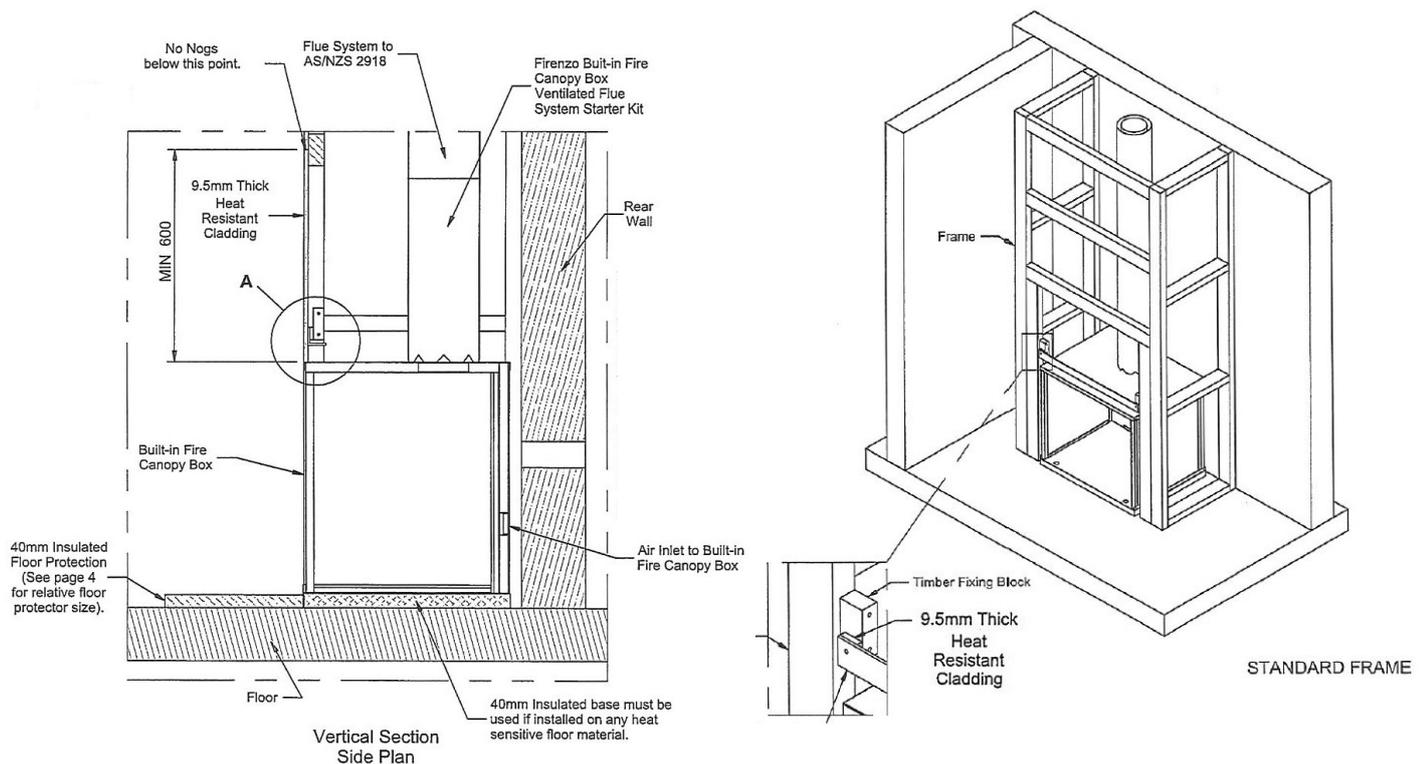
- 1.2 The parties to the determination are:
- the owners of the property, S and D Newman (“the owners”) who applied for the determination, represented by an agent.
  - Timaru District Council (“the authority”) carrying out its duties as a territorial authority or building consent authority.
- 1.3 I have provided Fire and Emergency New Zealand (“FENZ”) with the determination documentation for comment by way of consultation under section 170 of the Act.
- 1.4 Persons with an interest in this determination are:
- The building company, Rickie Shore Building (“the building company”)
  - The plumbing company, Breen Plumbing (“the installer”)
  - The manufacturer of the woodburner, Hewitsons Ltd (“the manufacturer”).
- 1.5 This determination arises from the owner’s view that the construction of an in-built solid fuel burning fixed appliance (“the woodburner”) does not comply with the Building Code. In the owner’s view, the building work is not in accordance with the building consent and the authority was incorrect to issue a code compliance certificate.
- 1.6 The matter to be determined<sup>2</sup> is therefore whether the authority was correct in its decision to issue a code compliance certificate for the woodburner.
- 1.7 I have not considered the remedial work undertaken in 2019, which included the installation of a new flue.
- 1.8 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 work and background**

- 2.1 The building work consists of the installation of the woodburner into an existing brick recess on the ground floor of an existing two storey dwelling.
- 2.2 The manufacturer’s specification shows the woodburner was to be installed into a metal “Built-in Fire Canopy Box” (“the firebox”), which included an insulated base (refer to Figure 2). The woodburner and firebox was shown as surrounded by timber framing to support a false chimney around the flue. The false chimney was to be clad with a heat-resistant plasterboard. A metal angle was required to be installed above the top of woodburner (refer to Figure 2).

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<sup>2</sup> Under sections 177(1)(b) and 177(2)(d) of the Act.



**Figure 2: Woodburner diagrams from the manufacturer's specification (not to scale)**

- 2.3 The woodburner as installed was not constructed with an insulated base and sits directly on a stone and metal hearth<sup>3</sup> (refer to Figure 1). The stone part of the hearth extends 360mm from the face of the woodburner. A 70mm metal edge surrounds the stone making the total depth of the hearth 430mm.

### The building consent and code compliance certificate

- 2.4 On 25 May 2011 the installer applied for a building consent on behalf of the former owners to install a woodburner. The application included, the manufacturer's installation and operator's handbook ("the manufacturer's specification"), which contained details of the construction.
- 2.5 On 26 May 2011 the authority issued building consent (#70868) to "Install [product name] inbuilt woodburner".
- 2.6 On 20 June 2011 an officer of the authority inspected the building work. The inspection was noted as "failed" with the site instruction notice stating:
- Producer statement for timber work around new fire inside wall.
- 2.7 On the same day a producer statement was provided to the authority from the building company. The producer statement stated:
- All framing timber in wall is 150mm away from firebox on sides. [Product named] metal [batten] on face of fire so no timber internal.
- 13mm [plaster board] on walls.
- 2.8 On 23 June 2011, a second producer statement was provided to the authority from the building company. The producer statement noted:

<sup>3</sup> Hearth: The insulating floor under the fire and in front and at the sides of the fireplace.

The filling in of the brick recess for the inbuilt log burner has been done to [manufacturer's specifications] so it [complies] with the building code.

- 2.9 The authority noted on its site instruction notice it received a producer statement on 27 June 2011. The next day the authority issued a code compliance certificate for the woodburner.

### **After the code compliance certificate**

- 2.10 The current owners were advised by the former owners the walls behind the chimney in the hallway and on the first floor became warm when the woodburner was in use.
- 2.11 On 21 June 2019 the owners contacted the manufacturer regarding the issue. A technician advised the owners to have the firebox inspected to determine the cause of the heat build-up in the wall.
- 2.12 On 24 June 2019 a representative of the installer inspected the woodburner and observed it was not installed in accordance with the manufacturer's specification. The representative advised remedial work would be required to "bring the firebox into line with the manufacturer's specifications".
- 2.13 During remedial work on 15 July 2019, it was discovered that timber framing was situated approximately 100mm from the top of the firebox and scorch marks were visible.



**Figure 3: Photograph of a scorch mark on the timber framing**

- 2.14 The Ministry received an application for determination on 18 August 2020, which was accepted on 3 September 2020.

## **3. The submissions**

- 3.1 The owner submitted the following (in summary):
- The installation of the woodburner was not in accordance with the manufacturer's specification as follows:
    - single flue above firebox on ground floor, so the flue was not ventilated
    - no insulated pad under the firebox
    - timber framing was used above the firebox instead of a metal angle

- hearth depth is 370mm instead of 500mm.
  - The authority appears to have relied on the producer statements from the building company without completing a further inspection when deciding to issue the code compliance certificate.
- 3.1.1 The authority submitted that when deciding whether to issue the code compliance certificate it relied on a producer statement<sup>4</sup>. The authority noted:
- Producer statements are a source of information that [authorities] may rely upon to determine whether there are reasonable grounds to conclude that building work complies with the New Zealand Building Code.
- [The producer statement] was issued by a suitably qualified person who confirmed that the building work had been carried out in accordance with the manufacturer’s specifications and the Code.
- It now appears that the producer statement misrepresented the quality of the work carried out and... the [authority] maintains it was entitled to rely on the producer statement.
- 3.2 A draft determination was issued to the parties for comment on 8 March 2021. The draft was issued to the persons with an interest listed in paragraph 1.4 and FENZ on 10 March 2021.
- 3.3 On 22 March 2021, the applicant responded accepting the decision of the draft determination without further comment.
- 3.4 On 23 March 2021, the authority also responded accepting the decision of the draft determination.
- 3.5 On 7 April 2021, FENZ responded stating it agreed with the decision of the draft determination.
- 3.6 No response was received from any of the persons with an interest in the determination.

## 4. Discussion

### Decision to issue the code compliance certificate

- 4.1 Section 94 of the Act requires an authority to issue a code compliance certificate only if it is satisfied on reasonable grounds that the building work complies with the building consent.
- 4.2 The manufacturer’s specification was approved as part of the building consent. The specification included construction details for the woodburner. From the information supplied it is clear the woodburner has not been installed in accordance with the specification, for example:
- timber framing is used within 100mm of the top of the firebox instead of a metal angle
  - the insulated floor base has not been installed
  - the hearth does not extend 500mm from the face of the firebox.
- 4.3 While the authority carried out an inspection of the building work, it required a producer statement for the “timber work around new fire inside wall”. It is unclear whether the timber framing was installed at the time the authority carried out its inspection.

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<sup>4</sup> I note here that two producer statements were provided to the authority.

- 4.4 The building company provided two separate producer statements to the authority. The first producer statement noted the timber framing was 150mm away from the firebox on all sides. The second producer statement noted the filling in of the brick recess for the woodburner was in accordance with the manufacturer's specification.
- 4.5 It is evident the building work was not carried out as per the producer statements and was not in accordance with the consent. In light of this, it is now clear that the code compliance certificate should not have been issued.

### **The code compliance certificate**

- 4.6 Now that I have concluded the decision to issue the code compliance certificate was incorrect, I must consider whether to confirm, reverse or modify that decision<sup>5</sup>. While the building work was not completed in accordance with the consent, it is also appropriate to consider the compliance of the building work with the Building Code when considering whether the authority's decision to issue the code compliance certificate should be reversed.
- 4.7 Clause C2 *Prevention of fire occurring* includes the following performance requirement (in Clause C2.2):
- The maximum surface temperature of combustible building materials close to fixed appliances using controlled combustion and other fixed equipment when operating at their design level must not exceed 90°C.
- 4.8 It is clear the installation of the woodburner did not comply with Clause C2.2 at the time the code compliance certificate was issued. The scorched timber framing is evidence of this fact.
- 4.9 Therefore, in light of the identified non-compliances, and the remedial work that has occurred, I have reached the view that the authority's decision to issue the code compliance certificate should be reversed.
- 4.10 I have also taken into consideration that the relevant durability periods for the non-compliant elements have not yet passed, and that the non-compliances are of a significant nature that creates a fire risk for the building users.

## **5. The decision**

- 5.1 In accordance with section 188 of the Building Act 2004, I hereby determine the code compliance certificate for building consent #70868 should not have been issued, and I reverse that decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 1 September 2021.

Katie Gordon  
**National Manager, Determinations**

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<sup>5</sup> In accordance with section 188(1)(a) of the Act.