

Determination 2023/003

Date: 24 January 2023

Regarding the authority's refusal to grant a building consent for the construction of a relocatable building

90 Lightband Road, Brightwater

Summary

This determination considers whether the authority was correct to refuse to grant a building consent for the construction of a relocatable building. This determination considers the documentation requirements for a building consent application and reasons given by the authority when refusing the building consent.



The legislation discussed in this determination is contained in Appendix A. In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (e.g., Acceptable Solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

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, Rebecca Mackie, Principal Advisor Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.¹
- 1.2. The parties to the determination are:
 - 1.2.1. Tasman District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority. The authority is the applicant to the determination.
 - 1.2.2. The licensed building practitioner (“the designer”) responsible for the design work, D Curl.
- 1.3. Persons with an interest in the determination are:
 - 1.3.1. The owner of the construction company who leases land from the owner of the land, K Mattock (“the construction company”).
- 1.4. This determination arises from the decision of the authority to refuse to grant a building consent under section 50 of the Act for the construction of a relocatable building. The authority is of the view that the information provided with the building consent application is incomplete and insufficient.
- 1.5. The matter to be determined² is therefore the authority’s exercise of power of decision to refuse to grant a building consent (BC200247). In deciding this matter, I will consider the reasons for refusal outlined in the authority’s letter dated 6 April 2020.

¹ The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

² Under section 177(1)(b) and 177(2)(a) of the Act.

Matters outside this determination

- 1.6. A building consent application has also been submitted to the Building Consent Authority responsible for the district where the building is proposed to be relocated to after construction. This determination only considers building consent application BC200247.
- 1.7. In its submission accompanying the application for determination, the authority has identified additional issues with the building consent application that it believes reinforces its decision to refuse the building consent. However, this determination only considers the reasons for refusal outlined in the authority's letter dated 6 April 2020.

2. The building work

- 2.1. The proposed building is a single storey structure containing two bedrooms, a bathroom, a living area and kitchen. Upon completion, the building is proposed to be relocated to another site for use as a dwelling on a farm.
- 2.2. The building is proposed to have a timber pile foundation and steel subfloor framing and plywood flooring. The wall structure is 100mm steel structurally insulated wall panel.
- 2.3. The roof will be constructed from 100mm steel structurally insulated panels at a 5-degree roof slope, with coated aluminium fascia, and aluminium window and door joinery.
- 2.4. The building is proposed to have connections to gas and a water tank for its potable water supply.

3. Background

- 3.1. A building consent application (BC200247) was submitted to the authority on 10 March 2020 for the construction of a relocatable dwelling.
- 3.2. On 13 March 2020, the authority sent a request for further information in respect of the building consent application. The authority requested the following information:
 - 3.2.1. Information about the timeframe for relocation.
 - 3.2.2. Payment of application fee.
 - 3.2.3. Evidence of ownership as per the Record of Title.
 - 3.2.4. Clarification regarding who will be undertaking the construction of the building.

- 3.2.5. Waterproofing specifications for the shower (as details for an acrylic wall to base shower and tiled waterproof membrane shower are included).
- 3.2.6. Product specifications for flashing tape and plasterboard.
- 3.3. In an undated response to the authority's 13 March 2020 request, the designer responded:
 - 3.3.1. There was a buyer for the building and the information is now included in the plans. However, this has no relevance to Building Code compliance.
 - 3.3.2. the construction company/builder leases the land from the landowner, these are listed on the application form.
 - 3.3.3. The work will be undertaken by a Licenced Building Practitioner (LBP) and the LBP's details who will be undertaking the building work will be provided at the first inspection.
 - 3.3.4. The shower detail has been removed.
 - 3.3.5. No plasterboard was to be used in the building.
- 3.4. On 31 March 2020, the authority sent a second request for further information in respect of the building consent application. The authority requested the following information:
 - 3.4.1. Confirmation of the classified use of the building, given the plans were changed to state the building is to be used as workers' accommodation.
 - 3.4.2. Payment of application fee.
 - 3.4.3. Evidence of ownership of the land.
 - 3.4.4. Basic site and land information for the location where the building will be built and remove reference to site where the building is to be relocated.
 - 3.4.5. Waterproofing details for the tiled membrane shower shown on sheet 500.
 - 3.4.6. Product specifications for flashing tape and plasterboard as they are noted on the plans.
 - 3.4.7. A fire safety analysis that includes the means of escape and fire safety features.
 - 3.4.8. A report setting out how access and facilities for persons with disabilities has been addressed.
- 3.5. In the 31 March 2020 request, the authority also identified that drainage and foundation information was not required as the building was to be relocated after

construction is complete. The information about the site the building was to be relocated to also needed to be removed.

- 3.6. In an undated response to the authority's 31 March 2020 request, the designer responded that the classified use is the same as it will be occupied by a single household. The designer did not provide a response to the other requests outlined in the 31 March 2020 request.
- 3.7. On 2 April 2020, the authority sent a third request for further information. The authority requested the following information:
 - 3.7.1. Payment of application fee.
 - 3.7.2. Basic site and land information for the location where the building will be built.
 - 3.7.3. Waterproofing details for the tiled membrane shower shown on sheet 500.
 - 3.7.4. Product specifications for flashing tape and plasterboard as they are noted on the plans.
- 3.8. In the 2 April 2020 request, the authority also restated its request for the removal of the drainage and foundation information and information about the relocation site.
- 3.9. In an undated response to the authority's 2 April 2020 request, the designer stated:
 - 3.9.1. The construction of the building was a factory build and does not alter the existing use of the site, and the authority's questions do not relate to Building Code compliance requirements.
 - 3.9.2. There was no tiled shower detail on the plans.
 - 3.9.3. No plasterboard was to be used in the building.
- 3.10. On 6 April 2020, the authority wrote to the owner of the land refusing to grant the building consent under section 50 of the Act. The authority stated that information had not been provided by the designer as follows:
 - 3.10.1. No site plan has been provided to show the location of the construction within the authority's district. The site plan provided identifies a site outside the authority's district.
 - 3.10.2. The plans include proposed works that are not included within the scope of work, including water storage, drainage, wastewater system, foundation details). The consent documentation should not show work that is out of scope of the application.

3.10.3. Manufacturer's specifications have not been provided for products shown on the plans (waterproofing membrane for the tiled shower and flashing tape).

3.11. The Ministry received an application for a determination on 16 April 2020.

4. Submissions

The authority

- 4.1. The authority made a submission accompanying the application for determination, and a further submission dated 9 June 2020, in response to the 8 June 2020 submission of the designer (refer to paragraph 4.2). The authority set out the background to the application for determination and commented:
- 4.1.1. The building consent application was incomplete and incorrect and therefore was refused under section 50 of the Act.
 - 4.1.2. The authority attempted on three occasions to obtain the information that it required from the designer, but the information was not supplied.
 - 4.1.3. The application was refused at the initial vetting stage, rather than as a result of a full assessment of Building Code compliance under section 49 of the Act.
 - 4.1.4. The reasons for the refusal were the lack of site plan, the inclusion of information that was not relevant to the scope of work to be consented, and the lack of specifications for products shown on the plans.

The designer

- 4.2. The designer made submissions on 15 May 2020, 29 May 2020, 2 June 2020 and 8 June 2020 and submitted:
- 4.2.1. The plans meet the standard required of designers so they can be followed by a competent builder.
 - 4.2.2. The Ministry's advice at the time for relocatable buildings states building consent is best granted by the authority where the final building site is located but does not preclude the lodging of an application for building consent in the district where the building is being constructed.
 - 4.2.3. It is useful to include all the details of the site and building in whatever consent is applied for as it demonstrates the building is being designed for the end location.

- 4.2.4. The submitted building consent plans clearly state the building is being constructed in a factory in the authority's district and the timber subfloor and wastewater system in another district where the building will be relocated to.
- 4.2.5. The location of the factory where the building is to be constructed is clear.

The draft determination

- 4.3. A draft determination was issued to the authority, the designer and the construction company for comment on 29 September 2020.
- 4.4. The authority accepted the draft determination on 29 September 2020.
- 4.5. The designer did not accept the draft determination and commented on 29 September 2020 that:
 - 4.5.1. The building consent application only needs to show compliance with the Building Code and does not need to fully detail elements that are "over and above the provisions of the building code." This includes the water proofing elements which are intended to achieve compliance beyond the requirements of Clause E3 (Internal Moisture).
 - 4.5.2. Given the building is to be relocated after construction consideration regarding site conditions and protection of other property, for the property where the building is being fabricated, are not relevant to this building consent.
 - 4.5.3. The layout of the building foundations is relevant to assessing the compliance of other parts of the structure, such as the sub-floor layout. Therefore, they need to be included on the plans. The designer included a screenshot of the foundation plan including a note that they were "not a part of this consent." I note however that this version of the foundation plan did not appear to be part of the plans submitted to the authority during the original building consent application process.

5. Discussion

- 5.1. In order to consider the authority's decision to refuse to grant a building consent for the proposed building work, I must consider the authority's reasons for refusing to grant the building consent. In doing so, I must consider the level of documentation provided in order for the authority to be satisfied that the building work would comply with the Building Code if completed in accordance with the plans and specifications, as required by section 49 of the Act.

Documentation requirements for building consent applications

5.2. Section 49 of the Act states that:

5.2.1. A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

5.3. Section 45 of the Act states:

45 How to apply for a building consent

(1) An application for a building consent must–

(a) be in the prescribed form; and

(b) be accompanied by plans and specifications that are–

(i) required by regulations made under section 401; or

(ii) if the regulations do not so require, required by a building consent authority; and

...

(c) contain or be accompanied by any other information that the building consent authority reasonably requires; and

...

5.4. Section 45 therefore requires there to be enough information within the building consent application to enable an authority to make a decision under section 49. Section 45 also permits an authority to set reasonable requirements for the documentation that accompanies building consent applications.

5.5. The Guide to applying for a building consent (residential buildings) (“the Ministry’s guidance”) was issued by the Ministry in accordance with section 175 of the Act. This guidance describes the minimum documentation that should be supplied with an application to demonstrate compliance with relevant clauses of the Building Code. The guidance states that a building consent application must:

5.5.1. be in the prescribed form,

5.5.2. include plans and specifications,

5.5.3. include any other information the building consent authority reasonably requires, and

5.5.4. include the applicable building consent lodgement fee.

5.6. The Ministry’s guidance also provides details on what is required to provide quality drawings. The guidance describes that:

- 5.6.1. the building consent application drawings should be 'clear, correct and completed, and include a suitable level of detail'
 - 5.6.2. all drawings should contain a drawing number and title, the designer's and owner's name and the job address, scale, and version control dating
 - 5.6.3. drawings should meet normal drawing conventions and generally conform to NZS/AS 1100 Technical Drawing, including conventions for line types and widths, lettering type and size, symbols for building features and elements, designation of spaces, representation of materials, and cross-referencing conventions, and drawing sheet sizing should generally be consistent
 - 5.6.4. hand-drawn or computer-aided drawings are acceptable.
- 5.7. Further, Determination 2011/096³ considered what can be reasonably required in terms of the standard of documentation. It stated:
- In my view, plans and specifications submitted in support of a consent or alterations to a consent, must:
- (a) provide a compliant solution,
 - (b) must also be sufficiently clear to describe how that solution is to be achieved through the construction process, and
 - (c) detail critical features.
- 5.8. An authority is therefore entitled to set reasonable requirements for the documentation that accompanies a building consent application to ensure a comprehensive building consent application is provided. These requirements are to ensure the building consent application clearly demonstrates and documents how Building Code compliance is to be achieved.
- 5.9. Where there is inadequate documentation to enable the authority to make a decision under section 49, the authority is entitled to refuse to grant the building consent under section 50 of the Act. This is on the basis that without adequate documentation, the authority cannot be satisfied on reasonable grounds that the provisions of the Building Code will be met if the proposed building work is completed in accordance with the plans and specifications that accompanied the application for the consent, as per section 49 of the Act.
- 5.10. I previously noted in Determination 2021/027⁴ that where an authority refuses to grant a building consent their reasons should be sufficiently clear so that the applicant can submit specific information on specific matters of doubt. The reasons

³ The refusal to grant an amendment to a building consent for proposed remedial work, and the issuing of a notice to fix for a 13-year-old house with monolithic cladding. Issued 16 November 2011.

⁴ Regarding the authority's refusal to grant building consents for the construction of new residential dwellings. Issued 16 December 2021.

should also be clear on what matters of compliance with the Act or its regulations the applicant has failed to meet.

The refusal to grant the building consent application

5.11. I have considered the building consent application and documentation accompanying the application, and the reasons giving by the authority for refusing to grant the building consent in its letter dated 6 April 2020 (refer paragraph 3.10). I must consider the level of documentation provided in order for the authority to be satisfied that the building work would comply with the Building Code if completed in accordance with the plans and specifications, as required by section 49 of the Act.

Site plan

5.12. I am of the view that it was reasonable for the authority to request where the building is to be constructed. I acknowledge the LBP's comments that the location of the factory where the building is to be constructed may be clear to them (refer paragraph 4.2.5), however this is a large site that contains multiple buildings so may not be clear to others.

5.13. This information is necessary for the authority to locate and access the building work to carry out inspections under section 90 of the Act. However, I agree with the designer's comments that the authority was not clear in its requests for this information. The authority requested a plan to "show where the location of the construction will take place in the Tasman District". This implies that they were requesting the site address, which had already been provided. The authority could have been clear that they wanted a specific site plan showing where on the landowner's allotment the building was to be constructed.

Foundation and services

5.14. The plans submitted to the authority included details and information relating to building work that is not within the scope of the application for building consent. The refusal letter notes construction of foundations and installation of services such as "water storage, drainage, [and a] wastewater system" is building work to be carried out on another site subject to a separate building consent.

5.15. Documentation, including plans and specifications that accompany an application for building consent must be clear about what building work is within the scope of the building consent, and what work is not. Building work that is not within the scope of the building consent should either be removed or appropriately communicated to the authority.

5.16. For example, the applicant could clearly annotate on the documentation that specified building work is not intended or expected to be part of the building

consent. I note that while the designer included a submission containing foundation plans including an annotation excluding foundation works from the scope of the building consent, no such annotation was included in the plans submitted as part of the building consent application.

- 5.17. Without appropriate communication and clear annotations, demarcations, and descriptions on the documentation, including plans and specifications, it would be reasonable to assume that the building work was in fact within the scope of the building consent.
- 5.18. I am of the view that the plans do not clearly identify either by way of clear annotations, demarcations and descriptions or otherwise, the work that is to be carried out on a separate site subject to a separate building consent.
- 5.19. While the authority has worded its requirement as the removal of information, I am of the view that the requirement can be taken as a request for plans that only show the work to be consented or plans that clearly identify and annotate the work to be carried out on a separate site subject to a separate building consent.

Lack of product information

- 5.20. I consider information from the product manufacturers about products proposed to be used in the building work is reasonable information for the authority to require to ensure a comprehensive building consent application. The flashing tape noted by the authority is indicated on the plans.
- 5.21. I agree with the designer's submission that use of a wet area membrane for a tiled bathroom floor and vanity splashback would be additional to the requirements for compliance with Clause E3 *Internal Moisture* by way of acceptable solution E3/AS1. While including information from the product manufacturer may be helpful during the construction process, it is not necessary in order to ensure that the work, once completed, complies with the Building Code.

Conclusion

- 5.22. For the above reasons I am of the view that the building consent application does not meet the requirements of section 49. While aspects of the authority's refusal letter regarding the site plan and lack of product information are not clear, having reviewed the application the building consent application does not contain an adequate level of documentation showing that the provisions of the Building Code would be met if the building work was completed in accordance with those plans and specifications, in accordance with section 49. Therefore, the authority was correct to refuse to grant the building consent under section 50 of the Act.

6. The decision

6.1. In accordance with section 188 of the Building Act 2004, I hereby determine that the authority was correct to refuse to grant building consent (BC200247) under section 50 of the Act. Accordingly, I confirm the authority's decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 24 January 2023.

Rebecca Mackie

Principal Advisor, Determinations

APPENDIX A

A1 The relevant provisions of the act are:

45 How to apply for a building consent

- (1) An application for a building consent must—
- (a) be in the prescribed form; and
 - (b) be accompanied by plans and specifications that are—
 - (i) required by regulations made under section 401; or
 - (ii) if the regulations do not so require, required by a building consent authority; and
- ...
- (c) contain or be accompanied by any other information that the building consent authority reasonably requires; and

...

49 Grant of building consent

A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

50 Refusal of application for building consent

- If a building consent authority refuses to grant an application for a building consent, the building consent authority must give the applicant written notice of—
- (a) the refusal; and
 - (b) the reasons for the refusal.