

Disposal of surface water from a church property

1 THE MATTER TO BE DETERMINED

- 1.1 The matter before the Authority is a dispute as to whether the system of disposing of surface water (“the system”) from a church property protects other property to the required extent.
- 1.2 The Authority takes the view that it is being asked in effect to determine whether the system complies with clause E1.3.1 of the building code (the First Schedule to the Building Regulations 1992).
- 1.3 In making its determination the Authority has not considered compliance with any other provisions of the building code or of the Building Act 1991 (“the Act”).

2 BACKGROUND

- 2.1 The church property includes a church, a church hall, and a carparking area.
- 2.2 The Authority has been given conflicting information about the system. As far as the Authority can tell, the carpark was formed in 1989 and drained into a catchpit connected by a drain to a soakpit (“the hall soakpit”). The soakpit is an underground chamber constructed of ungrouted concrete blocks with a concrete cover and cast iron lid over the chamber. It also has several lined deep vertical bores. Water discharged into the chamber is disposed of by soakage into the surrounding soil. At least one downpipe from the hall roof appears to discharge into the drain to the hall soakpit. It is not clear whether another downpipe and a subsoil drain also discharge into the drain between the catchpit and the hall soakpit. It is not clear whether there is another soakpit adjacent to the carpark.
- 2.3 In about 1994, the carpark was sealed with hot-mix and alterations were made to the system. A building consent for those alterations was apparently issued in November 1994. That building consent apparently also covered certain alterations to the church building. The Authority requested copies of any documents on the territorial authority’s files in respect of the system associated with that building consent. The Authority expected to receive copies of the building consent, of the plans and specifications, including calculations, for the alterations to the system, and of the code compliance certificate. However, the territorial authority supplied only a copy of the application for the building consent and no other documentation except for a plan showing the system before it was altered but not showing the alterations. The Authority has not been informed as to whether a code compliance certificate has been issued.

- 2.4 The alterations appear to have consisted of the construction of a new soakpit (“the church soakpit”) downhill of the existing hall soakpit, and the installation of a drain from the hall soakpit to the church soakpit. In other words, the church soakpit was installed so as to effectively increase the capacity of the hall soakpit by accepting its overflow. The church soakpit is similar to the hall soakpit but without the vertical bores.
- 2.5 Some time after the work had been completed, the applicant complained to the church about flooding of the applicant’s property, attributing it to inadequacies in the system. The flooding apparently occurred in storms less severe than the storm having 10% probability of occurring annually (“the 10 year storm”) mentioned in clause E1.3.1 of the building code.
- 2.6 The church responded to the complaint by asking two engineers to investigate the system.
- 2.7 One of the engineers made field investigations and reported that:
- The soakpits would appear to be adequate for light runoff but would quickly fill and overflow in heavy rainfall. Tests show that the overflow from the soakpits would fall to the street and not affect the adjacent properties. . . .
- It is recommended that the drainage system is regularly maintained. It is also recommended that the ground between the church and carpark is reshaped to contain potential overflow (from blocked drains or extreme rainfall) within the driveway on this property.
- There was no explanation of the apparent contradiction between the statement that “overflow from the soakpits would fall to the street” and the recommendation “that the ground . . . is reshaped to contain potential overflow . . . within the driveway”.
- 2.8 The other engineer calculated that the pipe from the catchpit to the hall soakpit was of adequate size when operating under a surcharge.
- 2.9 The church also engaged a drainlayer to inspect and clean out the drains from the carpark catchpit to the soakpits and to carry out regular and ongoing maintenance to prevent blockages. The drainlayer reported having laid an overflow pipe from the hall soakpit to the church soakpit, but appears to have replaced only a section of the existing pipe.
- 2.10 After further communications from the applicant, in November 1998 the church reshaped its grounds. The intention was to ensure that any overflow from the system would discharge into the street and not into the applicant’s property. That reshaping was achieved by using soil and excavated material from other building work to form a mound or bund along the boundary between the church property and the applicant’s property. The church submitted that it “was under no obligation to do this work but it was considered to be an additional safeguard and opportune”.
- 2.11 The applicant was not satisfied with the placement of soil to form the bund, and in November 1998 complained to the territorial authority about soil being placed against the base of the boundary fence. The applicant also contends that the bund will not divert overflow from the catchpit. The territorial authority discussed the matter with the church,

which advised that excess soil would be removed and the remaining soil would be “placed away from the fenceline”.

- 2.12 The territorial authority did not express any concern about overflows discharging onto the road. The territorial authority apparently believed that would be a short-term problem because it understood that the church was to apply for a building consent to do further work which would solve any problems. However, in the course of the determination a church official said:

The Church has no immediate intention to install additional drainage at its site. . . .
The estimated cost is beyond the Church’s capacity at the present time

- 2.13 In January 1999, the applicant submitted the matter to the Authority for determination.

- 2.14 The other parties to the determination are the church and the territorial authority.

3 SUBMISSIONS

- 3.1 The background set out in 2 above is based on documentation submitted by the parties.

- 3.2 The applicant asked the Authority to answer a series of questions. Most of those questions related to whether one of the other parties had committed an identified offence against the Building Act. The Authority cannot answer such questions. Whether or not someone has committed an offence is a matter for the Courts. In this determination, the Authority’s jurisdiction is limited by section 18 of the Building Act to:

. . . whether or not . . . particular building work . . . complies with all of the provisions, or with any particular provision, of the building code.

- 3.3 Thus the only question the Authority has the jurisdiction to answer is whether or not the church’s system for the disposal of surface water complies with clause E1.3.1 of the building code, which provides:

Except as otherwise required under the Resource Management Act 1991 for the protection of other property, surface water, resulting from a storm having a 10% probability of occurring annually and which is collected or concentrated by buildings or sitework, shall be disposed of in a way that avoids the likelihood of damage or nuisance to other property.

- 3.4 The applicant also expressed concern about the bund, particularly as to its durability and the fact that it was imposing a load on the fence which the fence had not been designed to withstand. The Authority does not have any information on which it can form an opinion on those matters.

4 DISCUSSION

- 4.1 The question arises as to whether the Authority is to consider the church’s system for disposing of surface water before or after the bund was installed. The answer is that it makes no difference. The bund cannot be considered as part of the system for the disposal

of surface water because all the bund can do, if it performs correctly, is to divert overflowing water from the soakpits so that it goes onto the road rather than on to adjacent properties. However, for the purposes of the building code both the road and the adjacent properties are “other property” with respect to the church property. Thus if the system failed to comply with clause E1.3.1 before the bund was installed then it also failed to comply after the bund was installed.

- 4.2 Calculations made by the applicant and by the church’s engineers show that the drain between the soakpits is at best marginal for the flow resulting from the 10 year storm.
- 4.3 More importantly, the Authority takes the applicant’s submissions and the engineer’s report quoted in 2.7 above to indicate that the soakpits are not adequate for the comparatively heavy rainfall of the 10 year storm. If the soakpits are inadequate in the 10 year storm then the system will overflow and surface water will flow onto other property with a likelihood of damage or nuisance contrary to clause E1.3.1.

5 CONCLUSION

- 5.1 The Authority concludes that the church’s system for disposing of surface water does not comply with clause E1.3.1 of the building code.
- 5.2 The applicant requested the Authority, if it decided the system did not comply, to “order” the other parties to make certain specific changes to the system. The Authority cannot make such orders. Section 20 provides that:

A determination by the Authority may incorporate waivers or modifications and conditions that a territorial authority is empowered to grant or impose and shall—

- (a) Confirm, reverse, or modify the disputed decision to which it relates or determine the matter which is in doubt . . .

- 5.3 It is now too late to reverse the territorial authority’s decision to issue the building consent in 1994.
- 5.4 The Authority has not been advised as to whether the territorial authority issued a code compliance certificate in respect of the work covered by that building consent. If it has, then the Authority recognises, as it said in Determination 97/004, that it “seems undesirable that a code compliance certificate should be subject to reconsideration a long time after it was issued”.
- 5.5 If a code compliance certificate was in fact issued that would presumably have been in 1994 or 1995, four years ago or more. The applicant does not seem to have complained to the territorial authority until 1998 and the Authority has seen no correspondence earlier than 1998. However, it is apparent from both the applicant’s and the church’s submissions that from 1994 there were continuing discussions between the applicant and the church. Thus the Authority considers that there has not been unreasonable delay in applying for this determination. The Authority therefore takes the view that it is entitled to make a

determination in respect of the territorial authority's decision to issue the code compliance certificate.

- 5.6 If a code compliance certificate was issued in respect of the alterations to the system, then the Authority considers that it should be withdrawn and replaced by a notice to rectify. That is not, of course, to affect the validity of the code compliance certificate in respect of the other building work covered by the same building consent.
- 5.7 The Authority considers that it has no power to direct that any of the parties shall take any particular action as a consequence of the withdrawal of the code compliance certificate and the issuing of a notice to rectify. That is a matter for the church in the first instance and for the territorial authority if necessary. The Authority understands that if the applicant considers that the church is committing an offence by, for example, failing to comply with the notice to rectify, then the applicant has the right to apply for an injunction under section 81 of the Building Act in addition to any other rights the applicant might have under the general law.

6 THE AUTHORITY'S DECISION

- 6.1 In accordance with section 20(a) of the Building Act the Authority hereby determines that:
- (a) The church's system for disposing of surface water does not comply with clause E1.3.1 of the building code; and
 - (b) If the territorial authority has issued a code compliance certificate in respect of the alterations to the system then the decision to issue that code compliance certificate is hereby reversed (but without prejudice to the validity of the code compliance certificate in respect of other building work covered by the same building consent) with the consequence that the territorial authority is required by section 43(6) of the Building Act to issue a notice to rectify in accordance with section 42.

Signed for and on behalf of the Building Industry Authority on this 6th day of December 1999

W A Porteous
Chief Executive