

Determination 2008/10

The durability of the building elements installed in a six year old farm shed at 394 Leeston-Taumutu Road, Leeston

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, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The applicants are the owners, Mr and Mrs Skinner (“the applicants”), and the other party is the Selwyn District Council (“the territorial authority”)
- 1.2 The matter for determination is whether the territorial authority was correct in its decision to refuse to issue a code compliance certificate for an approximately 6-year-old farm shed (“the shed”) because it was not satisfied that the building work complied with Clause B2 “Durability” of the Building Code² (First Schedule, Building Regulations 1992).
- 1.3 In making my decision, I have considered the documentation received from the applicants, and other evidence in this matter.
- 1.4 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

- 2.1 The building is a 3-bay farm shed of simple proprietary design, It is 18 metres wide, 15 metres deep with a mono-pitch roof ranging from 4.5 to 5.5 metres in height. It is supported by timber poles set in concrete and has timber girts, rafters, and purlins. The shed is clad on three walls and on the roof with what is described in the specifications as “iron” (which I assume is profiled steel, or similar material).

¹ The Building Act 2004 is available from the Department’s website at www.dbh.govt.nz.

² The Building Code is available from the Department’s website at www.dbh.govt.nz.

3. Background

- 3.1 It appears that the territorial authority issued a building consent for the shed in 2002. The applicant has supplied information showing that the territorial authority carried out inspections during the building process. One inspection carried out on 26 February 2002 was concerned with siting and concrete placement in the pole holes, all of which was apparently in order.
- 3.2 The next inspection, according to the information supplied by the applicant, was on 23 August 2007 when it was noted that the consent drawings were not on site and the inspector should bring the territorial authority file on the next inspection.
- 3.3 A further inspection was made on 4 September 2007 when the inspector noted that all was in order and that it was “okay to process CCC.” I take it that this inspection was a “final” inspection requested by the applicants as part of the process for obtaining a code compliance certificate for the building.
- 3.4 In a letter to the applicants dated 13 November 2007, the territorial authority advised that it could not issue a code compliance certificate because of the length of time that had elapsed since the building consent was granted. The territorial authority could not now be satisfied on reasonable grounds that the building work and elements will continue to satisfy the durability requirements of the Building Code. The letter informed the applicants that if they wished to “contest” the territorial authority’s decision they would need to apply to the Department for a determination.
- 3.5 The application for determination was received by the Department on 8 January 2008.

4. The submissions

- 4.1 In the application, the applicants forwarded copies of the:
- plans and specification for the shed
 - some territorial authority inspection documentation
 - the letter dated 13 November 2007 from the territorial authority to the applicants.
- 4.2 The draft determination was sent to the parties on 28 January 2008. The draft was issued for comment and for the parties to agree a date when all the building elements in the additions complied with Building Code Clause B2 Durability.
- 4.3 Both applicants accepted the draft and nominated 1 March 2002 as a date when the shed complied with Clause B2. The applicants submitted the final invoice for the work, dated March 2002, and an invoice for materials, dated 25 February 2002.

5. Discussion

- 5.1 The territorial authority has concerns about the durability, and hence the compliance with the building code, of the building elements, taking into consideration the completion of the building work in about 2002. I note that the final inspection did not, apparently, take place until 4 September 2007. It appears that durability is the

territorial authority's only concern with respect to the code compliance of the building.

- 5.2 The relevant provision of Cause B2 of the Building Code requires that building elements must, with only normal maintenance, continue to satisfy the performance requirements of the Building Code for certain periods ("durability periods") "from the time of issue of the code compliance certificate" (Clause B2.3.1).
- 5.3 These durability periods are:
- 5 years if the building elements are easy to access and replace, and failure of those elements would be easily detected during the normal use of the building
 - 15 years if building elements are moderately difficult to access or replace, or failure of those elements would go undetected during normal use of the building, but would be easily detected during normal maintenance
 - the life of the building, being not less than 50 years, if the building elements provide structural stability to the building, or are difficult to access or replace, or failure of those elements would go undetected during both normal use and maintenance.
- 5.4 In this case the delay between the commencement of the building work and the applicant's request for a code compliance certificate has raised concerns with the territorial authority that various elements of the shed are now well through their required durability periods and would consequently no longer comply with Clause B2 if a code compliance certificate were to be issued effective from today's date.
- 5.5 It is not disputed, and I am therefore satisfied, that all the building elements complied with Clause B2 on 1 March 2002. This date has been agreed between the parties, refer paragraph 4.3.
- 5.6 In order to address these durability issues when they were raised in previous determinations, I sought and received clarification of general legal advice about waivers and modifications. That clarification, and the legal framework and procedures based on the clarification, is described in previous determinations (for example, Determination 2006/85). I have used that advice to evaluate the durability issues raised in this determination.
- 5.7 I continue to hold the views expressed in the previous relevant determinations, and therefore conclude that:
- (a) the territorial authority has the power to grant an appropriate modification of Clause B2 in respect of all of the building elements in the addition to the building.
 - (b) it is reasonable to grant such a modification, with appropriate notification, because in practical terms the construction is no different from what it would have been if a code compliance certificate had been issued some time in 2002 when the building was substantially complete.
- 5.8 I strongly recommend that the territorial authority record this determination, and any modification resulting from it, on the property file and also on any LIM issued concerning this property.

6. The decision

6.1 In accordance with section 188 of the Building Act 2004, I determine that:

(a) all the building elements installed in the shed complied with Clause B2 on 1 March 2002.

(b) the building consent is hereby modified as follows:

The building consent is subject to a modification to the Building Code to the effect that Clause B2.3.1 applies from 1 March 2002 instead of from the time of issue of the code compliance certificate for all of the building elements as described in [this determination].

(c) following the modification set out in (b) above, the territorial authority is to issue a code compliance certificate in respect of the building consent as amended.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 21 February 2008.

John Gardiner

Manager Determinations