

Determination 2008/85

The refusal to issue a code compliance certificate for a 7-year-old garage at 182 North Rakaia Road, Southbridge



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 applicant is G Falloon, of Cameron & Co solicitors (“the applicant”) on behalf of the owners, B & T Scott and T Keenan, and the other party is Selwyn District Council (“the authority”) carrying out its duties as a territorial authority or building consent authority.
- 1.2 The matter for determination is whether the authority was correct in its decision to refuse to issue a code compliance certificate for an approximately 7-year old garage because it was not satisfied the garage complied with Clause B2 “Durability” of the Building Code (Schedule 1, Building Regulations 1992).
- 1.3 In making my decision, I have considered the submissions of the parties and the 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.

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

2 The building

- 2.1 The garage is a 3-bay building of simple proprietary design. It is 9.0 x 10.0 metres (nominally) in plan. The structure is light timber framing incorporating timber gang nail trusses and with a concrete floor slab and foundations. The walls have no internal linings.
- 2.2 The roof and cladding is of profiled steel. The garage has 3 tilting doors in the front wall with an access door and windows in one end wall.

3. Background

- 3.1 A building consent was applied for on 17 September 2001 and Consent No. 011187 was issued on 25 September 2001.
- 3.2 Four inspections were carried out between October 2001 and November 2007.
- 3.3 An application for a code compliance certificate was made on 29 May 2008. In a letter dated 30 May 2008 the authority declined to issue a code compliance certificate because of the time that had passed between the issue of the consent and request for a final inspection. The letter said:
- Due to the time which has elapsed since the building consent was granted and the final inspection requested (being over 6 years) the [authority] will not be able to issue a Code Compliance Certificate for this project. This is because, as a result of the time lapsed, the [authority] cannot now be satisfied on reasonable grounds that the building work and elements will continue to satisfy the durability provisions of the Building Code for the prescribed period after the Code Compliance Certificate has been issued.
- 3.4 The Department received the application for a determination on 14 July 2008.

4. The submissions

- 4.1 In the application, the applicant forwarded copies of the;
- building consent and associated documentation
 - plans and manufacturers details for the Garage
 - authority inspection documentation
 - letter from the authority dated 30 May 2008.
- 4.2 In the letter to the Department, dated 17 July 2008 the authority confirmed its view had not changed, that is, the liability period should not be extended for a building that is 7 years old.
- 4.3 A draft determination was sent to the parties for comment on 13 August 2008. The draft was issued for comment and to agree a date when the building complied with Building Code Clause B2 Durability. Both parties agreed that compliance with Clause B2 was achieved in October 2001. I have therefore used 1 October 2001 as the agreed date.

5 Discussion

- 5.1 The relevant provision of Clause B2 “Durability” of the Building Code requires that, unless otherwise specified, 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 applicable code compliance certificate” (Clause B2.3.1).
- 5.2 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.
- 5.3 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 authority that various elements of the garage 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.
- 5.4 The 7-year delay between the substantial completion of the garage and the applicant’s request for a code compliance certificate raises the issue of when all the elements of the garage complied with Clause B2. I have not been provided with any evidence that the authority did not accept that those elements complied with Clause B2 when the garage was completed in 2001.
- 5.5 It is not disputed, and I am therefore satisfied, that all the building elements complied with Clause B2 on 1 October 2001, 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 authority has the power to grant an appropriate modification of Clause B2 in respect of all of the building elements in 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 2001 when the building was substantially complete.

5.8 I strongly recommend that the 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 building complied with Clause B2 on 1 October 2001.

(b) the building consent is 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 October 2001 instead of from the time of issue of the code compliance certificate for all the building elements as described in Determination 2008/85.

(c) following the modification set out in (b) above, the 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 11 September 2008.

John Gardiner
Manager Determinations