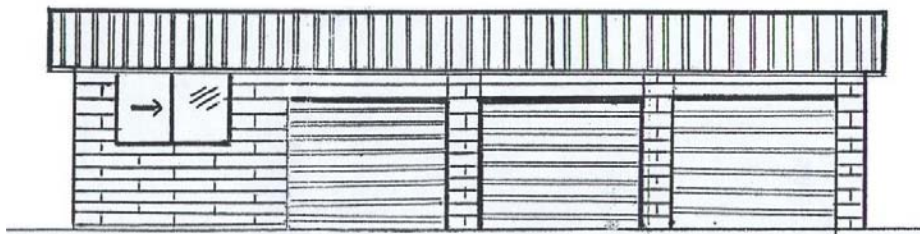


Determination 2008/92

The issuing of a code compliance certificate for an 8-year-old garage at Hoskyns Road, Kirwee



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 the owner, Mr A Docherty (“the applicant”), and the other party is the Selwyn District Council (“the authority”) carrying out its duties and functions as a territorial authority or a building consent 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 8-year-old garage because it was not satisfied that the building work complied with Clause B2 “Durability” of the Building Code² (Schedule 1, Building Regulations 1992) considering the age of the garage.
- 1.3 I note that the territorial authority has raised no matters relating to other clauses of the Building Code, and this determination is therefore restricted to considering the durability requirements related to this building.
- 1.4 In making my decision, I have considered the documentation received from the applicant, and other evidence in this matter.
- 1.5 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 Code is available from the Department’s website at www.dbh.govt.nz.

2. The building

- 2.1 The building work consists of a single-storey freestanding garage containing three car bays and an office (“the garage”). The building consent described the building as “garage/sleepout”, but the habitable space in the garage is being used as an office.
- 2.2 The garage is constructed with a concrete slab, concrete foundations, timber frame construction and timber roof trusses. The cladding is brick veneer and the roof is clad with long-run profiled steel. The office is lined, but the garage area is unlined. There are no sanitary services provided to the building.

3. Background

- 3.1 The authority issued a building consent (No. 990720) for the garage on 19 October 1999.
- 3.2 The authority carried out inspections during the construction process and completed a “partial” inspection on 23 November 2000. The result of the partial inspection was recorded as:

Result OK

Consent reviewed, OK to issue interim CCC.

It appears all the work was satisfactorily completed at that time and it is unclear why a code compliance certificate was not able to be issued.

- 3.3 The authority carried out a final inspection on 26 June 2008. The work inspected was satisfactory, the inspection noted:

Exterior: Roofing completed, nailing, flashings, spouting to downpipes to stormwater. Ground heights OK. Cladding - brick veneer, weep and vent holes in place. Rusticated weatherboard to gables. Flashing to gable / soffit. Framing and fixings completed bracing. Interior: Linings complete, insulation installed to ceilings (room used as office)

- 3.4 The authority wrote to the applicant on 19 August 2008 noting it could not issue a code compliance certificate, due to the 8 years that had elapsed between the time that the consent was granted and the time that a request for a code compliance certificate was made. The authority could not be satisfied on reasonable grounds that the prescribed durability provisions for the building elements of the garage could now be met.
- 3.5 The application for determination was received by the Department on 25 August 2008.

4. The submissions

- 4.1 In an email to the Department dated 30 August 2008, the applicant stated that the building company had not applied for a final code compliance certificate at the time that the garage was built. As a consequence, the authority was refusing to issue a code compliance certificate.
- 4.2 The applicant forwarded copies of the:
- plans
 - consent

- authority's inspection notices
 - correspondence from the authority.
- 4.3 In a letter to the Department dated 25 August 2008, the authority noted that it had carried out all the inspections that were required under the building consent and the only reason for refusing to issue a code compliance certificate was related to the durability provisions of the Building Code.
- 4.4 A draft determination was issued to the parties on 4 September 2008. The draft was issued for comment and for the parties to agree a date when the garage complied with Clause B2.
- 4.5 Both parties accepted the draft and agreed that compliance with Clause B2 was achieved in 23 November 2000.

5. Discussion

- 5.1 The authority has stated that concern about compliance with Building Code Clause B2 Durability is the sole reason that the code compliance certificate cannot be issued. Therefore, I accept that the authority is satisfied that all the building elements used in the construction of the garage comply with all the other clauses of the Building Code.
- 5.2 The relevant provision of Clause 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).
- 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 issuing of the building consent in October 1999 and the applicant's apparent request for a code compliance certificate in 2008 has raised concerns with the authority that various elements of the building 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 It is not disputed, and I am therefore satisfied, that all the building elements complied with Clause B2 on 23 November 2000, refer paragraph 4.5.
- 5.5 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 matters raised in this determination.

- 5.6 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 that were constructed under the building consent.
 - (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 when the building was substantially completed in 2000.
- 5.7 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 23 November 2000.
 - (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 23 November 2000 instead of from the time of issue of the code compliance certificate for all of the building elements as described in Determination 2008/92.
 - (c) following the modification set out in (b) above, the authority shall issue the 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 30 September 2008.

John Gardiner
Manager Determinations