



Determination 2013/070

The refusal to grant a building consent for a prefabricated building (to be read in conjunction with Determination 2013/032)

Applicant:	The owner of the prefabricated building, THISWAYUP Southern NZ, acting through A Clark as the agent
The authority:	Clutha District Council

1. The matters 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 and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 I have previously described certain building matters regarding this building in Determination 2013/032 (“the first determination”). This second determination arises because the authority has again refused to issue a building consent for the building because it considers the supporting documentation to be inadequate.
- 1.3 The authority is not satisfied that the documentation provides reasonable grounds for it to be satisfied that the proposed building work will comply with the Building Code when constructed in accordance with the plans and specifications
- 1.4 The matter to be determined² is therefore whether the authority was correct to refuse to grant the building consent. In considering this I must decide whether or not sufficient information was provided to the authority for it to be satisfied on reasonable grounds that the proposed building work would comply with the Building Code when completed in accordance with the plans and specifications.

2. The building work

- 2.1 The proposed building work consists of a single-storey detached dwelling that is simple in plan and form and is designed to be constructed off-site and then relocated onto an undetermined site assumed to be in a high wind zone maximum for the purposes of NZS 3604³.
- 2.2 Construction consists of a specifically engineered post and beam structure with conventional light timber frame internal partitions and floor, three different types of wall claddings, profiled metal roofing, and double-glazed aluminium windows.

¹ The Building Act, Building Code, Compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.dbh.govt.nz or by contacting the Ministry on 0800 242 243.

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

³ New Zealand Standard NZS 3604:2011 Timber Framed Buildings

- 2.3 Bracing and insulation is provided by 'structural insulation panels' ("SIPs"), which are prefabricated panels formed from a core of polyurethane foam insulation sandwiched between 12mm thick magnesium oxide board, which is adhered to both sides that also form the interior linings and the rigid air barrier beneath the building wrap.
- 2.4 Exterior wall claddings are horizontal bevel-backed cedar weatherboards, interlocking aluminium weatherboards, and flat aluminium panels; which are all fixed over cavity battens and the building wrap into the SIP panels.

3. Background

3.1 The first determination

- 3.1.1 The applicant lodged an application for a building consent for the building work (No. BLD/2012/14795) on 15 November 2012. The parties failed to resolve questions on the proposal and the applicant applied for the first determination.
- 3.1.2 The first determination confirmed the authority's decision to refuse to grant a building consent because
- the consent application information was insufficient to show that compliance would be achieved, and
 - insufficient information was provided in the building consent application to show compliance with Clauses E2, G4, G12, and G13.
- 3.1.3 In paragraph 4.5 of the first determination, I noted that a determination cannot be expected to provide a 'defined list of things required' as requested by the applicant; the detailed examination of construction details is the responsibility of the authority and not the Ministry.
- 3.1.4 Paragraph 6.1 of the first determination discussed the level of documentation that an authority is entitled to require under the Act for it to be satisfied, on reasonable grounds, that the completed building work will comply with the Building Code when constructed in accordance with the plans and specifications. In paragraph 6.1.1, I noted that an authority 'is entitled to set minimum requirements to ensure that the proposed building work is clearly documented'; Paragraph 6.1.2 stated:
- Plans and specifications submitted in support of a consent, or alterations to a consent, must show a compliant solution and also be sufficiently clear to describe how that solution is to be achieved through the construction process.
- 3.1.5 Paragraph 6.2 of the first determination included examples of some of the shortcomings in the drawings and specification and paragraph 6.3.1 concluded:
- Until shortcomings in the drawings and specification are satisfactorily resolved, the authority is entitled to refuse to issue a building consent on the basis that, without adequate documentation, it 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.
- 3.1.6 In regard to the information provided for the first determination, in paragraph 7.10.2 of the first determination I concluded that
- ... the plans and specification for the proposed building work as presented to the authority in support of the application for building consent were not adequate for the purposes of section 49 of the Act.

3.1.7 Paragraph 8 of the first determination also recommended that

...the applicant should now modify the building consent application with the assistance of an appropriately experienced person [my emphasis], taking into account the findings of this determination, together with any other items noted during that process or raised by the authority as part of its checking process.

3.2 Subsequent correspondence

3.2.1 Following the issue of the first determination on 12 June 2013, the applicant amended the documentation and resubmitted this to the authority for approval on 17 June 2013. The authority responded on 20 June 2013, noting that items were still not clearly specified, and there were discrepancies between the plans and specification. The authority referred to paragraph 8 of the first determination and suggested that the applicant 'should enlist the help of your designer and provide correct specification and product literature'.

3.2.2 The applicant has stated he then used 'an approved consent as a guide' and 'brought together all of the important information of the application into one document'. In a letter to the authority dated 28 June 2013, the applicant stated he had included 'an accumulation of important information, product literature and building specifications as one document as recommended in the determination'.

3.2.3 In a reply dated 26 July 2013, the authority stated that the applicant's subsequent information had still not addressed the findings of the first determination that the 'assistance of an appropriately experienced person' was needed to modify the 'piecemeal and inadequate' documentation. The authority therefore considered that 'the conclusions in the [first] determination still apply' and refused to issue a building consent because it was:

...not able to be satisfied that the plans and specifications for the proposed building work as presented in support for building consent are adequate for the purposes of section 49 of the Building Act to grant consent.

3.2.4 The applicant wrote to the Ministry on 31 July 2013, stating that although the findings of the first determination had been complied with the authority appeared to be 'ill prepared and unwilling to work with new ideas' and had taken one month to again refuse to issue a building consent without giving 'any detailed reason'.

3.2.5 The Ministry responded on 23 August 2013, suggesting that a second determination be applied for. The application for this determination was received on 6 September 2013.

4. The submissions

4.1 The applicant referred to the matters raised in the first determination, stating that he had 'sought advice and assistance and review from various people as to what was required here – and how it should be presented.'

4.2 The applicant contended that appropriate advice had been sought, the recommended information provided, and the necessary changes made. He considered the requirements of the first determination had been met, but the authority 'seem fixed on the conclusions' of the first determination; giving 'no indication they had looked at the information and plan changes provided to them', and that the authority provided no detailed reasons for the refusal to issue the building consent. The applicant therefore considered that the authority had made its decision without 'a clear picture of the facts and information provided'.

- 4.3 In regard to the lack of information on compliance referred to in the first determination, the applicant included the following comments (in summary):
- In regard to Clause E2:
 - information on claddings in the drawings aligned with specification
 - typical barge and panel joint detail for aluminium panel added
 - service pipe penetrations through floor specified
 - In regard to Clause G4:
 - cook top ventilation added to specification
 - mechanical ventilation system specified
 - In regard to Clause G12:
 - internal plumbing pipe work specified
 - onsite water supply not in this building work
 - In regard to Clause G13:
 - internal drainage/waste pipe work specified
 - connection to disposal system not in this building work.
- 4.4 The applicant provided copies of:
- updated drawings and specifications
 - correspondence with the authority
 - technical information on the ventilation system.
- 4.5 The authority did not make a written submission in response to the application.
- 4.6 A draft determination was issued to the parties for comment on 11 October 2013. The authority accepted the draft without comment in a response received on 23 October 2013.
- 4.7 The applicant did not accept the draft. In a submission received on 5 November 2013, the applicant submitted that (in summary):
- The authority should have detailed what information it required for the consent application. The applicant said: ‘At no time has the authority detailed what they consider needs doing other than getting someone else to put the application together.’ The second determination was required because of the authority’s response to the application for consent.
 - Appropriate consent information had been provided, but the officer of the authority making the decision did not have all the information supplied by the applicant in order to make an informed decision.
 - There was no drainage installed under house and the onsite drainage would be done under a separate consent; this was addressed in the specification.
 - Information on piles was included ‘for the builder and the purchaser of the building’.
 - The ventilation system ‘was designed to the code by the installer’ and a representative of the ventilation system had ‘provided the size of the unit and instillation (*sic*) requirements to the Electrician’.

- Some matters would be reviewed by the designer with additional details submitted.

4.8 I have taken account of the applicant's submission and amended the draft as I consider appropriate. I have seen all the information that was submitted to the authority to support the application for consent in the first determination and for the amended consent application and have considered that information in making this determination.

5. The amended drawings and specification

5.1 General

5.1.1 The applicant maintains that he has met all of the requirements outlined in the first determination. However, I note that the items outlined in paragraph 6.4.3 of the first determination were provided as examples only, and were not intended to provide an exhaustive list of deficiencies in the information provided in the original consent application.

5.2 The drawings

5.2.1 Although not an exhaustive list, an initial cursory check of the drawings is sufficient to allow me to make some comments on the amended documents:

- The drawings are of a reasonable quality, with details that are generally clear and easy to follow. I note that some amendments have been made to reflect comments made in the first determination but, as noted above, those comments were not exhaustive.
- Some minor inconsistencies and errors in the drawings are evident such as:
 - Note on sheet W02b describes the roofing as both 0.55mm and 0.4mm BMT
 - Sheet W04b - missing detail numbers in the cross references to Sections 4 and 5
 - Sheet W04b – the reference 9/W05 on under internal walls to Section 5 does not match the corresponding detail on sheet W05b.
- The drawings include work that is specifically excluded from the proposed consent such as:
 - gas water heating
 - piles and pile connections
 - roof gutters
 - matters related to onsite drainage such as the overflow relief gulley and its clearance above ground
- Some details are not shown that were referred to in the first determination, such as details for services penetrations.
- The windows shown in the drawings are different, in size and configuration, to that shown in the window schedule accompanying the specification.
- Some notes on the drawings are inconsistent with the information stated in the specification.

5.3 The specification

- 5.3.1 Although the original 3-page specification has been expanded, the updated version remains unclear. It includes sections specific to this building and generic sections. The information provided is not consistent within and between the specific sections, the generic sections, and the notes on the drawings. Some matters are described in all three places but are not consistent between the plans and the specification.
- 5.3.2 A specification should include a list of contents that refers to all significant trades and elements in the building work in order to allow easy reference to each. The content list in the specification is limited to four very general sections, with the last being a 'preliminaries and general' that would normally be expected at the start of a specification. For some trades there is little or no description of the proposed work; for example, the section on roofing simply says 'installed under the supervision of an LBP builder'.
- 5.3.3 The specification is to provide sufficient detail to allow the authority to understand what is to be built so that compliance will be achieved, and to provide the relevant information to the builder, and other trades. In my view the specification, in its present form, does adequately not perform this function.

5.4 Matters related to compliance

- 5.4.1 I note the following with respect to specific code clauses:

Clause E2 External moisture

- 5.4.2 The plans do not detail services penetrations, and similar, to the building fabric as noted in the first determination.

Clause G4 Ventilation

- 5.4.3 The specification describes the use of a proprietary ventilation system. The specification also says 'An extract fan for the bathroom, laundry and toilet will be connected to the [ventilation system] for Removal of moisture'.
- 5.4.4 Clause G4.3.3(c) requires odours to be removed from 'sanitary and waste storage spaces'.
- 5.4.5 The documents contain no installation details for the proprietary ventilation system, including and the location of supply and return ducting and vents. The connection of extract fan(s) from the bathroom and toilet to the ventilation system supply air to other parts of the building would not satisfy the requirements of Clause G4.
- 5.4.6 Given the building has no opening window, the provision of such details is necessary to show how compliance with G4 is to be achieved. The information provided is insufficient.
- 5.4.7 The kitchen is to be vented to the exterior. As noted above, no details are provided for any penetrations to the external envelope.

Clause G9 Electricity

- 5.4.8 The power and lighting plans are provided at a small scale and are indistinctly reproduced; consequently they are difficult to read. (The applicant has submitted that originals were provided to the authority with the application for consent.)

Clause G13 Foul water

- 5.4.9 'General Notes' on drawing W01a say 'The 'sanitary plumbing design standard AS/NZS 3500.2 3.10 Unvented branch drains'. Elsewhere the documents refer to connection to an 'onsite disposal' system.
- 5.4.10 Clause G13.3.2(e) requires all drainage systems to be vented. It is not clear how this is to be achieved given the drain to the building is to be treated as an 'unvented branch drain'. The drains could be installed under the floor once the building was on a site and connected to individual fixtures, or the drains could be installed now and slung under the building – in which case a drainage schematic should be provided as part of the proposed consent.
- 5.4.11 The plans should clarify what drains, if any, are to be installed and how compliance is to be achieved in respect of the drainage work to be completed under this consent.

5.5 Conclusions

- 5.5.1 The authority maintains that the amended drawings and specifications are still not adequate, although it did not provide to the applicant details or advice of the inadequacies. I would generally not consider such a lack of advice to be acceptable; without knowing which areas the authority considers to be deficient an owner is unable to address those matters.
- 5.5.2 Although an authority is expected to carry out routine checking of applications for building consents, I am of the view that the authority's duty is reliant on a reasonable expectation that information presented for consent will achieve an acceptable minimum. Documentation must be of a quality that allows an authority to fulfil its responsibilities; I consider that is not the case in this situation.
- 5.5.3 The information provided for the amended application for consent does not provide reasonable grounds to be satisfied that the proposal will comply with the clauses identified in the first determination; namely Clauses E2, G4, and G13 of the Building Code.
- 5.5.4 Although the plans are of a reasonable quality, the specification is lacking in clarity and detail to be considered acceptable for the purposes of section 49 of the Act. I repeat the advice given in the first determination that appropriate assistance be sought from a qualified person who is experienced in building design and specification-writing. The Ministry has published guidance information for building practitioners on consent applications for residential buildings⁴.

⁴ Guide to applying for a building consent (residential buildings), Second edition October 2010, Department of Building and Housing

6. The decision

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

- the plans and specification as re-submitted to the authority in support of the application for building consent were not adequate for the purposes of section 49 of the Act, and
- there is insufficient information in the consent documentation to show how compliance is to be achieved with respect to Clauses E2, G4, and G13;

accordingly I confirm the authority's decision to refuse to grant a building consent for the proposed building work.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 14 November 2013.

John Gardiner

Manager Determinations and Assurance