

Determination 2022/010

Date: 29 June 2022

Regarding the authority's refusal to grant a building consent for foundations, a deck, a roof structure, and the installation of a solid fuel heater

198 Brooklyn Road, Motueka

Summary

This determination considers whether the authority was correct to refuse to grant a building consent. The determination considers the authority's reasons for the refusal and whether sufficient information was included in the building consent application for the authority to be satisfied that the provisions of the Building Code would be met if the building work were properly completed in accordance with the plans and specifications under section 49 of the Building Act.



Figure 1: Image showing proposed foundation, deck, and roof structure

The legislation discussed in this determination is contained in Appendix A. In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building Code are available at www.legislation.govt.nz. Information about the legislation, as well as past determinations, compliance documents (e.g., acceptable solutions) and guidance issued by the Ministry, is available at www.building.govt.nz.

1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Rebecca Mackie, Principal Advisor Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.¹
- 1.2. The parties to the determination are:
 - 1.2.1. the owner of the house,
 - 1.2.2. the licensed building practitioner responsible for the design work, D Curl (“the designer”)
 - 1.2.3. Tasman District Council, carrying out its duties as a territorial authority or building consent authority (“the authority”). The authority is the applicant in the determination.
- 1.3. This determination arises from the decision of the authority under section 50 of the Act to refuse to grant a building consent. The owner has an existing container; and has proposed to construct a foundation to support the container, deck, roof structure (refer to Figure 1), as well as install a solid fuel heater. The authority is of the view that the building consent application is incomplete, and that insufficient information has been provided. The building consent application also identifies that the ‘deck and veranda’ (referred to in this determination as the “roof structure”) is to be constructed under Schedule 1 of the Act, and therefore does not require building consent.² However, the authority considers that Schedule 1 does not apply to the roof structure.
- 1.4. The matter to be determined³ therefore is whether the authority was correct to refuse to grant a building consent (BC200367) for the work. In deciding this matter, I will consider the reasons for refusal outlined in the authority’s letter dated 16 April 2020, including whether Schedule 1 applies to all or part of the roof structure.

¹ The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

² Schedule 1 of the Act: Building work for which building consent not required.

³ Under sections 177(1)(b) and 177(2)(a) of the Act.

- 1.5. The owner has applied for three previous building consents in respect of this work, all of which have been refused by the authority. This determination only concerns the authority's decision to refuse to grant the fourth application (BC200367). In its submission accompanying the application for determination and after its decision to refuse to grant the building consent, the authority has identified additional issues with the building consent application that it considers relevant (including a change of use). However, this determination only considers the reasons for refusal made in writing to the owner, being the authority's letter dated 16 April 2020.

2. The proposed building work

- 2.1. The proposed foundations which are to be used to support a 13m² shipping container (refer to Figure 1) comprise a mixture of: concrete 'levelling' pads sitting on ground with galvanised wire to attach the container to the pads, and timber pile foundations set in concrete footings with timber bearers. The drawings with the building consent application contain conflicting details showing bearers both resting on top of the piles and connected to the side of the pile. The drawings do not contain information regarding the connection of the container to the timber bearers/piles.
- 2.2. The proposed deck structure is 17m² and comprises timber piles (which are also used as the roof structure posts) in concrete footings, timber bearers and timber decking. Although not dimensioned, the deck appears to be less than 1.0m above ground. A timber framed roof structure, clad in coated steel long run rib roofing, is proposed to be constructed over the container and deck (refer to Figure 1). It appears the roof structure over the container portion rests on top of the container, with no further fixing details. The plans submitted as part of the building consent application note the 'deck and veranda [are] to be constructed under Schedule 1...'
- 2.3. It is also proposed to install a solid fuel heater in the container, including the installation of a heat shield to the fire area.

3. Background

- 3.1. The owner applied for a building consent (BC200367) on 7 April 2020. The application stated it was to 'Construct a piled foundation and install a wood burner'.
- 3.2. On 16 April 2020, the authority wrote to the owner advising that the application for building consent has been refused under section 50. The authority considered the application and accompanying information was 'insufficient' and 'inadequate'. The authority's refusal letter stated:

Reasons for the refusal include but not limited to the following:

- (1) The application is incomplete. Not all the relevant [Building Code] clauses have been identified (e.g. C2 and F7).⁴
- (2) No plan dimensions have been provided to confirm the setting of the timber piles.
- (3) Insufficient information has been provided to confirm the fixing of the bearers to the timber piles (specifically where the bearers, that in the same plane, connect to the same pile at 90 degrees to each other).
- (4) The fixing of the [container] to the piles is building work that requires a building consent. Insufficient information has been provided to confirm how this is to be done.
- (5) [The authority] does not consider that the construction of the roof over the top of the [container], including that which is in combination of the '[roof structure]' roof over the deck, is exempt under Schedule 1(17) of the [Act], and therefore it requires a building consent. The area of the roof, in total, is >20m².
- (6) Insufficient information has been provided to demonstrate compliance with [Building Code] Clause B1⁵ for the construction of the roof (to be read in conjunction with the item above).
- (7) Insufficient dimensions have been shown on the plans, and one has been left blank (drawing number 400, S-03 [version 5]).
- (8) It's unclear what the single plan dimension shown on drawings 203 and 204 actually relates to.
- (9) The application confirms that compliance with [Building Code] Clause B1 is to [Acceptable Solution⁶ B1/AS1]. Detail D-04 on drawing 500 [version 5] is an 'alternative solution' [i.e. not included in Acceptable Solution B1/AS1]. Insufficient information has been provided to demonstrate compliance with [Building Code] Clause B1.
- (10) Drawings 200 or 500 [version 5] don't confirm the minimum strength of the concrete pads required.
- (11) Insufficient information has been provided to confirm how the 500 x 500 x 150mm thick concrete 'levelling' pads are to be joined together (if at all).

3.3. The Ministry received an application for a determination on 22 April 2020.

⁴ C2 - *Prevention of fire occurring* & F7 - *Warning systems*.

⁵ B1 - *Structure*.

⁶ An Acceptance Solution is one way, but not the only way to comply to establish compliance with the Building Code. Section 19 of the Act sets out various ways to establish compliance with the Building Code that must be accepted by the authority. I note B1/AS1 is an Acceptable Solution for Building Code Clause B1.

4. Submissions

- 4.1. The authority set out the background to the application and commented:
 - 4.1.1. The building consent application was incomplete and incorrect, and therefore was refused under section 50 of the Act.
 - 4.1.2. The building consent application was the fourth application it received for the proposed building work, although the plans and specifications in each application were different.
 - 4.1.3. The application was refused at the initial vetting stage, rather than as a result of a full assessment of Building Code compliance under section 49 of the Act. (I note here, once the building consent application satisfies section 45, the authority has an obligation to process the application under section 48, and either made a decision under section 49 or 50, which would require a complete assessment of the application)
- 4.2. The designer made submissions regarding the scope of the determination.
- 4.3. The owner made submissions regarding the determinations process.
- 4.4. A draft determination was issued to the parties for comment on 29 September 2020.
- 4.5. The authority accepted the draft determination on 29 September 2020.
- 4.6. The owner accepted the draft determination with minor comments on 3 October 2020.
- 4.7. The designer did not accept the draft determination and commented on 05 October 2020:
 - 4.7.1. The building consent application was “of a standard a reasonably competent builder [could] follow”,
 - 4.7.2. that the Ministry’s guidance is additional to what the Act requires, is not mandatory to comply with, and references outdated standards.
 - 4.7.3. Regarding dimensions, the container is of a consistent dimension worldwide and will be on site, therefore the builder will know the dimensions of the container, accordingly it will be ‘impossible for a reasonably competent builder to get it wrong’
 - 4.7.4. The proposed concrete pads, that form part of the foundation for the container are not building work.
 - 4.7.5. The bearer to pile connection is detailed in the drawing, and the connection of the container to the foundations were detailed in a previous application for building consent.
 - 4.7.6. The roof structure is a verandah that falls within scope of Schedule 1(17) of the Act.

5. Discussion

Legislation

- 5.1. To determine whether the authority was correct under section 50 of the Act to refuse to grant a building consent (BC200367) for the proposed building work, I must consider the authority's reasons for its refusal given in its 16 April 2020 letter. In doing so, I must consider the level of documentation provided in order for the authority to be satisfied that the building work would comply with the Building Code if completed in accordance with the plans and specifications as required by section 49 of the Act.

Documentation requirements for building consent applications

- 5.2. Section 49 of the Act states that:

A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

- 5.3. Section 45, 'How to apply for a building consent', states:

- (1) An application for a building consent must—
- (a) be in the prescribed form; and
 - (b) be accompanied by plans and specifications that are—
 - (i) required by regulations made under section 401; or
 - (ii) if the regulations do not so require, required by a building consent authority; and

...

- (c) contain or be accompanied by any other information that the building consent authority reasonably requires; and

...

- 5.4. Section 45 therefore requires there to be enough information within the building consent application to enable an authority to make a decision under section 49. Section 45 also permits an authority to set reasonable requirements for the documentation that accompanies building consent applications.

- 5.5. The *Guide to applying for a building consent (residential buildings)* ("the Ministry's guidance") was issued by the Ministry in accordance with section 175 of the Act. This guidance describes the minimum documentation that should be supplied with an application to demonstrate compliance with relevant clauses of the Building Code. The guidance states that a building consent application must:

- 5.5.1. be in the prescribed form
 - 5.5.2. include plans and specifications
 - 5.5.3. include any other information the building consent authority reasonably requires
 - 5.5.4. include the applicable building consent lodgement fee.
- 5.6. An authority is therefore entitled to set reasonable requirements for the documentation that accompanies a building consent application to ensure a comprehensive application is provided. These requirements are to ensure the building consent application clearly demonstrates how Building Code compliance is to be achieved.
- 5.7. The Ministry's guidance also provides details on what is required to provide quality drawings. The guidance describes that:
- 5.7.1. building consent application drawings should be 'clear, correct and complete, and include a suitable level of detail'
 - 5.7.2. all drawings should contain a drawing number and title, the designer's and owner's name and the job address, scale, and version control dating
 - 5.7.3. drawings should meet normal drawing conventions and generally conform to NZS/AS 1100 Technical Drawing, including conventions for line types and widths, lettering type and size, symbols for building features and elements, designation of spaces, representation of materials, and cross-referencing conventions, and drawing sheet sizing should generally be consistent
 - 5.7.4. hand-drawn or computer-aided drawings are acceptable.
- 5.8. Further, Determination *2011/096*⁷ set out what can be reasonably required in terms of the standard of documentation. It stated:
- In my view, plans and specifications submitted in support of a consent or alterations to a consent, must:
- (a) provide a compliant solution, and
 - (b) must also be sufficiently clear to describe how that solution is to be achieved through the construction process
 - (c) detail critical features.
- 5.9. Where the building consent application contains inadequate documentation, the authority is entitled to refuse to grant the building consent under section 50 of the Act. This is on the basis that without adequate documentation, the authority cannot

⁷ The refusal to grant an amendment to a building consent for proposed remedial work, and the issuing of a notice to fix for a 13-year-old house with monolithic cladding. Issued 16 November 2011, at [8.1.2].

be satisfied on reasonable grounds that the building work will be properly completed in accordance with the plans and specifications, such that it will meet the provisions of the Building Code, as per section 49 of the Act.

The building consent application

5.10. I have considered the building consent application (BC200367) and documentation accompanying the application. I have also considered the reasons given by the authority for refusing to grant the building consent in its letter dated 16 April 2020.

5.11. Regarding the authority's reasons for refusing to grant the building consent:

5.11.1. I agree that not all relevant Building Code clauses were identified in the building consent application, as Clause C2 (*Prevention of fire occurring*) and F7 (*Warning systems*) apply to the proposed building work.

5.11.2. I agree that the dimensions shown on the plans are incomplete (including spacing and span of structural members), and in some places, it is unclear what the dimensions refer to. This information is necessary for the drawings to contain sufficient information for the work to be constructed and to establish whether the work complies with the Building Code.

5.11.3. I agree the connection of the container to the concrete pads and piles, and the concrete pads themselves are outside the scope of Acceptable Solution B1/AS1. Therefore, it is inconsistent with the means of compliance listed in the building consent application. The detail does not clearly identify how it will achieve compliance with the Building Code by way of another compliance pathway⁸, and no supporting information has been provided. As such, there is insufficient information as would be required for a decision to grant a building consent under section 49.

5.11.4. I agree that there is missing information regarding the foundations, as details for fixing the container to the piles have not been provided, there is conflicting information about the bearer to pile details, and the concrete pads and subfloor fixings are not fully detailed. In my view these are examples of areas in which the documents submitted are deficient. They are not sufficiently clear to either provide a code compliant solution or to describe how the design is to be constructed.

⁸ Refer section 19 of the Act

The roof structure

- 5.12. The roof structure is proposed to be constructed over the container and deck. Some of the plans include the notation 'deck and [veranda] to be constructed under Schedule 1...'. It is unclear whether the notation applies to the whole roof structure, including the part of the roof over the container, or only the part of the roof over the deck.
- 5.13. Clause 17 of Schedule 1 of the Act provides for building work in connection with a porch or veranda to be exempt from the requirement to obtain a building consent, if the porch or veranda:
- (a) is on or attached to an existing building; and
 - (b) is on the ground or first-storey level of the building; and
 - (c) does not exceed 20 square metres in floor area; and
 - (d) does not overhang any area accessible by the public, including private areas with limited public access, for example, restaurants and bars.
- 5.14. The Ministry has published *Building work that does not require a building consent (Fourth Edition 2014)* in accordance with section 175 of the Act. It defines the term 'porch' as "roofed structures which projects from the face of a building". A 'veranda' is defined as "a long porch"⁹.
- 5.15. The part of the roof structure over the deck is 17m². However the overall roof structure extends over the container too, combining for a total floor area of 32.9m², exceeding the 20m² allowed for under Schedule 1(17) of the Act.
- 5.16. Furthermore, as the roof structure continues over the container, I am of the opinion that the roof structure is not "building work in connection with a porch or veranda" – rather it is building work associated with a container that happens to extend over the deck. The container and deck together cannot be considered "a roofed structure projecting from the face of a building".
- 5.17. I am of the view that the roof structure is not building work that is exempt from requiring a building consent. Incomplete information was provided to the authority to demonstrate how the roof structure was to be constructed over the deck. I also consider that information is missing from the building consent application regarding the compliance of the roof structure over the container (for example specifying the rafters, beams, and support structure for this portion of the roof).

Conclusion

- 5.18. For the above reasons, taking account of the requirements of the Act, the guidance issued by the Ministry, and the information provided in the building consent

⁹ The Act and the Ministry's guidance to Schedule 1 have been amended since the authority's decision was made, introducing new exemptions regarding porches and verandas. However, the definitions are unchanged.

application, I am of the view that the building consent application does not meet the requirements of section 49. The building consent application does not contain an adequate level of documentation showing that the provisions of the Building Code would be met if the building work was completed in accordance with those plans and specifications. Therefore, the authority was correct to refuse to grant the building consent under section 50 of the Act.

6. The decision

- 6.1. In accordance with section 188 of the Building Act 2004, I hereby determine that the authority was correct to refuse to issue building consent BC200367 under section 50. Accordingly, I confirm the authority's decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 29 June 2022.

Rebecca Mackie

Principal Advisor Determinations

Appendix A

A1 The relevant provisions of the Act are:

45 How to apply for a building consent

- (1) An application for a building consent must—
- (a) be in the prescribed form; and
 - (b) be accompanied by plans and specifications that are—
 - (i) required by regulations made under section 401; or
 - (ii) if the regulations do not so require, required by a building consent authority; and
 - ...
 - (c) contain or be accompanied by any other information that the building consent authority reasonably requires; and
 - ...

49 Grant of building consent

A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

50 Refusal of application for building consent

If a building consent authority refuses to grant an application for a building consent, the building consent authority must give the applicant written notice of—

- (a) the refusal; and
- (b) the reasons for the refusal.

Schedule 1 Building work for which building consent not required

Part 1 Exempted building work

17 Porches and verandas

Building work in connection with a porch or a veranda that—

- (a) is on or attached to an existing building; and
- (b) is on the ground or first-storey level of the building; and
- (c) does not exceed 20 square metres in floor area; and
- (d) does not overhang any area accessible by the public, including private areas with limited public access, for example, restaurants and bars.