

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

**CIV-2023-085-000082
[2023] NZDC 15205**

IN THE MATTER OF	THE BUILDING ACT 2004
BETWEEN	TIMOTHY GEORGE O'BRIEN Appellant
AND	WELLINGTON CITY COUNSEL Respondent
AND	THE CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Interested Party

Hearing: 19 July 2023

Appearances: A Knowsley for the Appellant
B Sanders and Mathers for the Wellington City Council
I Murray and N Smith for MBIE

Judgment: 25 July 2023

DECISION OF JUDGE N R DAWSON

[1] The appellant has made a claim against the Wellington City Council on matters relating to a claimed failure of the respondent to issue an appropriate building consent in a timely manner and the costs charged for that building consent. The appellant is claiming damages in relation to those issues and a substantive trial will be set down to deal with the appellant's claim.

[2] MBIE have made a determination titled "Determination 2022/028 dated 16 December 2022" ("Determination") with respect to issues between the parties. It is claimed by the appellant that there several errors in that Determination and its

subsequent Report Under Rule 18.16 of the District Court Rules 2014 by the Chief Executive of the Ministry of Business, Innovation and Employment dated 21 June 2023 (Report”) that need to be clarified prior to the substantive hearing to simplify the substantive hearing.

[3] The first matter of concern to the appellant is that his wife is named in the Determination as an applicant. He says that this has caused her distress and says that her name should be removed. Mrs O’Brien is in fact a joint owner of the property, which is the subject of the building consent, so it is understandable that the Determination has referred to her as an owner of the property, which she is. Nevertheless, it is accepted by the Wellington City Council and MBIE that the application for the building consent was made by Mr O’Brien in his name only and neither the Wellington City Council or MBIE have any objection to the removal of Mrs O’Brien’s name from the Determination or from these proceedings. Her name can therefore be deleted accordingly.

[4] In paragraph 2.5 of the Determination, it refers to two lintels measuring 50mm thick x 300mm deep. It is submission of the appellant that the word “ex” should be included because prior to lintels being installed they would have been planed down and would have measured 45mm x 295mm in size. He says that is important because it changes the structural integrity and calculations as to what weight it can carry, and whether there would be any deflection. The Wellington City Council and MBIE have no objection to the inclusion of “ex”. Therefore, the beginning of paragraph 2.5 should read “the previous lintels that spanned the garage door opening was formed using ex 50mm thick x 300mm deep timber building elements.

[5] In the Determination at paragraph 5.16 it states, “the Authority confirmed it had processed and granted the building consent on 3 August 2020”. That statement is strictly speaking incorrect. The Wellington City Council did prepare a letter to that effect dated 3 August 2020 to the appellant, signed it, but never sent it to the appellant. It was kept as a draft as it was decided not to send it until the issues of fees payable by the appellant was resolved. The accountant did not become aware of this letter until he received an email from the Wellington City Council to him dated 28 August 2020.

[6] In paragraph 5.1 of the Determination, it says the Wellington City Council refused to grant a building consent on 28 September 2020. The letter to that effect was not sent to the appellant at that time. The appellant did not receive that letter until it was attached to another letter to the appellant from the Wellington City Council dated 9 October 2020. Paragraph 5.1 should therefore be amended to include after the words “granted a building consent on 28 September 2020,” the words “but not sent to the applicant until it was attached to a letter from the Wellington City Council to the applicant dated 9 October 2020”.

[7] In paragraph 11 of the Report, it begins by stating “Between 30 March 2020”. It is accepted by all parties that the reference to 2020 should in fact be 2022. The report should be amended accordingly.

[8] Paragraph 11 of the Report now notes that between 30 March 2022 and 8 November 2022 the appellant provided information and submissions to the Ministry. The appellant says that the bulk of the information and submissions made by him to the Ministry were provided on 30 March 2022 and the last information was provided on 26 May 2022. It therefore is not correct to infer that MBIE received the last of the submissions on 8 November 2022. The appellant submits the relevance of this is that MBIE had a statutory time limit of 60 working days to issue its Determination. It was substantially in breach of that statutory time limit. The applicant does not seek any redress for this delay other than a statement by this Court that the delay was in breach of the statutory time limit and that it was not acceptable for the interested party to take so long to issue its Determination.

[9] MBIE acknowledged that they did not meet the statutory timeframe and there is no argument about that. The reason for the delay was because they were busy.

[10] Statutory timeframes are not targets. They are an obligation. MBIE clearly failed in this obligation to issue its Determination within the statutory period. In this respect MBIE have failed in its statutory responsibility to the appellant.

[11] Other issues relating to the legality of the Wellington City Council charging fees at the building consent phase for the future inspections and the issuing of code

compliance certificates and the issue as to what constitutes urgency with respect to the work carried out by the appellant without a building consent are central issues to the substantive hearing and the appellant has agreed not to advance those issues until the substantive hearing.

[12] Costs are reserved until the substantive hearing.

Judge NR Dawson
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 25/07/2023