

Determination 2005/140

Refusal of a code compliance certificate for building work consented in 1996 at 69 Wastney Terrace, Nelson

1. The dispute to be determined

- 1.1 This is a Determination under Part 3 Subpart 1 of the Building Act 2004 (“the Act”) made under due authorisation by me, John Gardiner, Determinations Manager, Department of Building and Housing, for and on behalf of the Chief Executive of that Department. The applicant is the owner Mr R Hill, (“the owner”), and the other party is the Nelson City Council (“the territorial authority”). The application arises from the refusal by the territorial authority to issue a code compliance certificate for building work consented in 1994 and 1996.
- 1.2 The matter to be determined is whether certain building elements, which have 5 and 15-year durability requirements, comply with the durability requirements (clause B2) of the Building Code, considering the time that has lapsed since the elements were constructed.
- 1.3 In making my decision, I have not considered any other aspects of the Act or the Building Code.

2. Procedure

2.1 The building

- 2.1.1 The building work is alterations incorporating the installation of fire rating linings and a fire detection system. The building is a two-storey detached house incorporating a self-contained flat, which the owners wish to be able to let.
- 2.1.2 The cladding to the walls requiring fire rating is 10mm Fyreline.

2.2 Sequence of events

- 2.2.1 Building consent No. 941270 was issued on 22 November 1994 to undertake building work on the house. The house was completed in 2000. On the basis of a building certificate issued by a building certifier on 16 September 1996, the territorial authority issued a second building consent, No. 961109, to undertake fire-rating work to the self-contained flat included in the lower level of the house.
- 2.2.2 A building certifier (“the certifier”) carried out inspections during the course of construction. He noted in correspondence that the owner had made a choice not to complete the fire-rating work. An interim code compliance certificate was issued on 6 April 2000 to cover work completed under the second building consent, No. 961109.
- 2.2.3 The territorial authority wrote to the owner on 10 March 2005 advising that the interim code compliance certificate would no longer have legal status under the Building Act 2004 and suggested the owners contact the territorial authority to arrange a final inspection.
- 2.2.4 The applicant employed a consulting fire engineer (“the consultant”) to verify the required work to achieve a fire rating and subsequently inspect the work. On May 13 2005 the consultant advised the territorial authority that the fire rating had been achieved. On 3 June 2005 the territorial authority confirmed its acceptance that the matters the consultant had required to be attended to had been addressed but advised that because of the age of the consent it would be difficult for the territorial authority to be satisfied that the work still complied with the durability requirements of the Building Code.
- 2.2.5 The territorial authority did not issue a Notice to Rectify as required under section 43(6) of the Act.
- 2.2.6 The owner applied for a Determination on 27 June 2005.

3. The submissions

- 3.1 The owner provided a submission with the application providing correspondence from the certifier, the consultant and a fire alarm inspector in support of the above events. In a covering letter to the Department dated 27 June 2005, the owner described some of the background to the dispute.
- 3.2 The territorial authority made a submission by letter dated 20 July 2005. The territorial authority noted that the matters of doubt were:
- Whether building elements, which have 5 and 15-year durability requirements comply with clause B2 of the Building Code, considering the age of construction.

4 Discussion

4.1 General

4.1.1 I have considered the submissions received and other evidence in this matter. My approach in determining whether the building work complies with clause B2 is to:

1. Consider whether the design and construction is sound.
2. Examine any design features that are intended to ensure building elements will meet the durability requirements.
3. Consider any risks that may compromise the expected durability of building elements.

4.2 Durability

4.2.1 In relation to the durability of the fire-rating, I find that:

- the house has been inspected during and subsequent to construction confirming that wall linings have been properly installed.
- the fire-rating work has been inspected by a competent engineer and found to be properly installed and compliant with the Building Code.
- the house has wall claddings made of a material that has demonstrated by length or service in other installations that it will last for significantly longer than the Building Code requires, and possibly for the life of the building.

4.2.2 I find it is reasonable to expect that in New Zealand's conditions, that paper faced plasterboards for interior use (as used on this house) will last considerably longer than the minimum time stipulated in Clause B2 of the Building Code.

5 Conclusion

5.1 The building is required to comply with the durability requirements of clause B2. Clause B2 requires that the building must continue to satisfy all the objectives of the Building Code throughout its effective life. I am of the view that the building currently meets these requirements.

5.2 I note that maintenance of any building element is important to ensure ongoing compliance with clause B2 of the Building Code. That maintenance is the responsibility of the building owner. The Building Code assumes that the normal maintenance necessary to ensure the durability of the cladding is carried out. For that reason, clause B2.3.1 of the Building Code requires that the cladding be subject to "normal maintenance". That term is not defined, and I take the view that it must be given its ordinary and natural meaning in context. In other words, normal maintenance of the cladding means inspections and activities such as regular cleaning, repainting, repairing damaged areas as they occur, and so on.

6 The decision

- 6.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the fire-rating cladding system as installed in the building complies with clause B2 of the Building Code.
- 6.2 I note that the relevant provision of clause B2 of the Building Code is that building elements must, with only normal maintenance, continue to satisfy the performance requirements of the Building Code for certain periods “from the time of issue of the applicable code compliance certificate”.
- 6.3 As set out in paragraph 3.2, the territorial authority has concerns about the durability of certain elements of the building and its compliance with the Building Code, considering the building work was completed in 2000. I am of the opinion that the territorial authority should amend the original building consent by making it subject to a waiver of the Building Code, in accordance with section 34(4) of the Act, to the effect that the durability of the elements described in paragraph 3.2 are measured from the date of substantial completion of the building, instead of from the time of the issue of the code compliance certificate. The land information memorandum relating to this house should also be amended in line with the above.
- 6.4 Therefore, I determine that the territorial authority is to amend the original consent to incorporate a waiver of clause B2 of the Building Code. This must be to the effect that the required durability periods for all relevant building elements are to be measured from the date of substantial completion of the building, and not from the date of the issue of a code compliance certificate.
- 6.5 I note that as elements specific to the 5-year durability period would have expired under the above criteria, consideration should be given to waiving the B2 requirement for these items.
- 6.6 Following this amendment, any code compliance certificate subsequently issued by the territorial authority should be issued in line with the amended building consent.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 11 October 2005.

John Gardiner
Determinations Manager