

## Determination 2007/141

### Requirement for a fire protection barrier to a coolstore in Apata, Tauranga

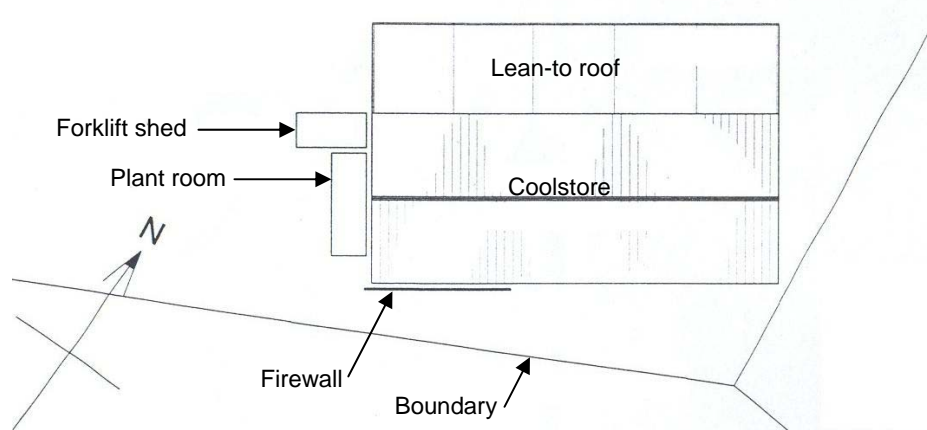


Figure 1: The site layout

#### 1 The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“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 Apata Limited acting through a firm of consulting engineers (“the applicant”). The other parties are the Western Bay of Plenty District Council (“the territorial authority”) and Mr M Goddard, owner of the adjacent property (“the neighbour”).

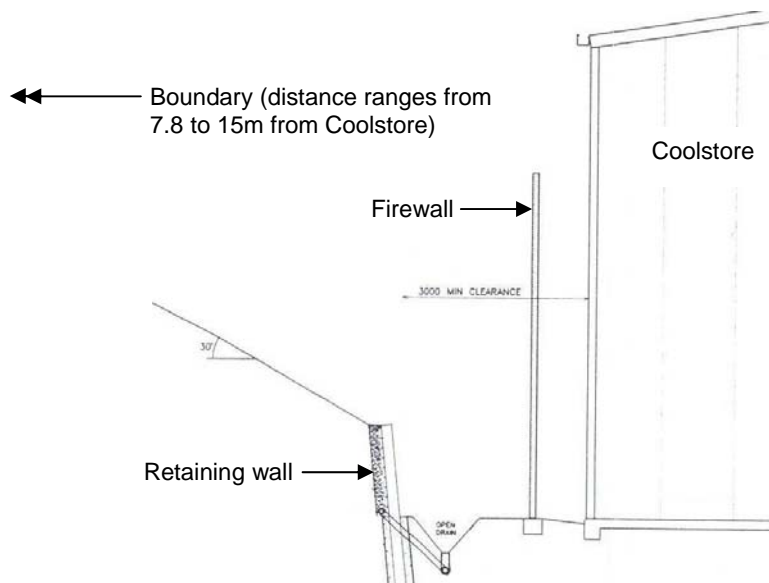
1.2 The building consent drawings for the coolstore included a freestanding firewall located between the coolstore and the neighbour’s boundary designed to protect the neighbour’s property from spread of fire from the coolstore. The firewall would also protect the neighbour’s property from heat radiation resulting from a fire in the coolstore. The applicant applied to the territorial authority to waive the requirement to build the wall which the territorial authority declined.

<sup>1</sup> The Building Act 2004 is available from the Department’s website at [www.dbh.govt.nz](http://www.dbh.govt.nz).

- 1.3 The matter to be determined is the territorial authority's decision to refuse to issue the waiver. Consideration of this matter turns on whether such a waiver would be reasonable having regard to the requirements of the Building Code and any practicable options that may be available to the applicants to achieve compliance.
- 1.4 In making my decision I have not considered any other aspects of the Act or the Building Code.
- 1.5 Unless otherwise stated, references below to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

## 2 The building

- 2.1 Building consent No 75733 was issued for the coolstore on 26 January 2007. The coolstore is 59 metres long by 25 metres wide by 9.5 metres high at the roof apex. There is a 13 metre wide lean-to roof attached to the North East of the coolstore. The coolstore is constructed of steel clad polystyrene foam insulation panels on a structural steel frame.
- 2.2 The coolstore is located 7.8 metres from the neighbour's boundary at the closest point. The ground rises up at an angle of about 30° to the neighbour's boundary to the South East (refer figure 2). There is a timber retaining wall at the bottom of the slope located 3.0 metres away from the coolstore.



**Figure 2: Section showing coolstore, retaining wall, firewall and slope to boundary**

- 2.3 The consent drawings show a free-standing firewall located 800mm away from the coolstore to the South East. The proposed firewall is a purpose made structure measuring 21 metres long and 4.8 metres high at the highest point.
- 2.4 The coolstore, including the retaining wall, is now substantially complete except for the construction of the firewall.

### 3 The legislation and the Building Code

3.1 Relevant provisions of the Act are:

**67 Territorial authority may grant building consent subject to waivers or modifications of building code**

- (1) A building consent authority that is a territorial authority may grant an application for a building consent subject to a waiver or modification of the building code.
- (2) A waiver or modification of the building code under subsection (1) may be subject to any conditions that the territorial authority considers appropriate.
- (3) The territorial authority cannot grant an application for a building consent subject to a waiver or modification of the building code relating to access and facilities for people with disabilities.

**188 Determination by chief executive**

- (1) A determination by the chief executive must—
  - (a) confirm, reverse, or modify the decision or exercise of a power to which it relates; or
  - (b) determine the matter to which it relates.
- (3) A determination may incorporate—
  - (a) waivers or modifications of the building code; and
  - (b) conditions that a territorial authority or regional authority, as the case may be, is able to grant or impose.

3.2 Spread of Fire Clause C3.5.5 of the Building Code states:

**C3.3.5** External walls and roofs shall have resistance to the spread of fire, appropriate to the fire load within the building and to the proximity of other household units, other residential units, and other property.

### 4 The submissions

4.1 The application for a determination was accompanied by a letter dated 7 September 2007. The application was supported by reports from a civil engineer and a radiation modelling report provided by a fire engineer.

4.2 The civil engineer's report provides an analysis of the subsoil conditions of the ground in the area of the boundary which would be affected by the fire radiation zone in the event of a fire in the cool store. The civil engineer's report indicates the ground contains unconsolidated fill material and could not safely support any imposed load from a building.

- 4.3 The fire engineer's report confirms the dimensions of the firewall located 800mm away from the coolstore. The report also offers options if the firewall is located at a greater distance from the coolstore.
- 4.4 The report outlines the criteria for establishing the height of the firewall which should be of a height such that no more than 2 metres of the coolstore from the eaves down can be seen from the ground level at the boundary. This means that the closer the firewall is constructed to the neighbour's boundary, the lower the firewall needs to be and still provide adequate protection from heat radiation.
- 4.5 The application has submitted that because of the soil conditions described in paragraph 4.2 the neighbour is unable to build on his land immediately adjacent the coolstore, and therefore with no buildings to protect there is no need for a firewall. The applicant has sought to amend the building consent by deleting the firewall, on the basis that it would be highly unlikely a building could ever be established in the fire radiation zone.
- 4.6 The territorial authority has not made a submission other than to confirm it has declined to amend the consent, on the basis that it is possible that a future owner may wish to develop the neighbouring property.
- 4.7 A copy of a draft determination was sent to the parties for comment on 5 November 2007.
- 4.8 The applicant requested some additional time to consider the draft and subsequently accepted the draft subject to some non-contentious amendments. I have amended the determination as appropriate. The submission from the applicant included proposals that it wished to make to the neighbour including the purchase of part of the area of the neighbour's property adjacent the coolstore.
- 4.9 The neighbour rejected the draft determination but did not dispute the determination's decision. The neighbour's submission included information about the history of the development of the coolstore, discussions that had been held between the parties, the surveyed dimensions of the site, and the uses to which the neighbour put his land. I have amended the determination as appropriate. However, I note that some of the information submitted by the applicant is outside the scope of the matter to be determined.

## **5 Discussion**

### **5.1 General**

- 5.1.1 The applicant's submission is that, as there can be no building built in the fire radiation zone, a firewall is not required, and the territorial authority should grant a waiver and amend the building consent.
- 5.1.2 The territorial authority has the power, on application, to amend a building consent so as to incorporate a waiver or modification. However, the fact that the territorial

authority has the power to grant a waiver does not mean it is under any obligation to do so.

- 5.1.3 As outlined in paragraph 3.2 the Building Code Clause C3 “Spread of fire” requires that other property be protected. “Other property” is defined in terms of legal boundaries not in terms of buildings, and this includes all or any assets on the property. Omitting the firewall would mean that the neighbouring property was not protected against a fire in the coolstore to the extent required by the Building Code.
- 5.1.4 It is for the neighbour to decide whether a level of protection to his property less than that required by the Building Code is acceptable. The applicant is not entitled to make that decision based on his opinion that it would be prohibitively expensive for the neighbour to erect any buildings on his property, or for any other reason. Accordingly, I do not consider that it would be reasonable for the territorial authority to effectively deprive the neighbour’s property of the protection required by the Building Code without the consent of the neighbour.

## **5.2 Conclusions**

- 5.2.1 The notion of “other property” is wider than has been the basis of this application for a determination and therefore the extent of protection required is wider. In particular I note that “other property” is not limited to the protection of buildings.
- 5.2.2 The coolstore is located in a rural area where there is a mix of industrial and rural land use. In this situation there is, potentially, a mix of an industrial fire with a substantial fire radiation zone, with typical rural activities. I am of the view that, despite the submission made by the applicant, the requirement for protection is not reduced to the extent that justifies removal of that protection.
- 5.2.3 I regard it as relevant to this matter that there are practical options available to the applicant, with respect to the location and configuration of the firewall, that will achieve code compliance.

## **6 Decision**

- 6.1 In accordance with section 188 of the Building Act 2004, I confirm the decision of the territorial authority to decline to waive the requirements of the Building Code to provide protection to other property, and consequently I confirm the territorial authority’s decision to decline to amend building consent No. 75733.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 19 December 2007.

John Gardiner  
**Manager Determinations**