

## Determination 2007/24

### Refusal of a code compliance certificate for a garage at 117 Breaker Bay, Seatoun, Wellington



#### 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, Determinations Manager, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The applicant is the owner Mr Nik King Turner (“the applicant”), and the other party is the Wellington City Council (“the territorial authority”).
- 1.2 The application arises because the territorial authority declines to issue a code compliance certificate, as it did not:
- carry out any inspections of the building work undertaken under the building consent
  - receive adequate notification from Nationwide Building Certifiers Ltd (“the building certifier”) as required under the Building Act 1991 (“the 1991 Act”).
- 1.3 The matter to be determined is whether the territorial authority’s decision to decline to issue a Code Compliance Certificate was correct. The refusal arose because the building had been erected under the supervision of Nationwide Building Certifiers Ltd (“the building certifier”), which was duly registered as a building certifier under

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

the former Building Act 1991 but went out of business before it had issued a code compliance certificate for the garage.

- 1.4 In order to determine that matter, I must first decide whether the building complies with the Building Code.
- 1.5 In making my decision, I have considered the submissions of the parties, the report of the independent expert commissioned by the Department to advise on this dispute (“the expert”), and the other evidence in this matter.
- 1.6 In this determination, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

## **2 The building**

- 2.1 The building work consists of a double garage situated on a level site, which is in a very high wind zone for the purposes of NZS 3604<sup>2</sup>. The garage is 6m x 6m with a double door and low pitch gable end roof. The garage is located within 200 mm of the boundary with the result that this wall serves as a firewall.
- 2.2 The garage is a light timber framed structure with the roof and walls clad with corrugated profile Colorsteel. The wall cladding is directly fixed vertically to the frame without building wrap or paper except for the boundary wall which is lined with Winston Wallboards “Fyreline” lining.
- 2.3 The roof incorporates a section with clear acrylic sheet to provide natural light. This is on the same side of the building as the boundary wall. The framing timber was identified as being H1 treated that may be effective in helping resist decay if it absorbs and retains moisture.

## **3 Sequence of events**

- 3.1 The building certifier applied to the territorial authority with a building certificate for a building consent on 16 March 2000. Consent SR 63132 was issued on 20 March 2000. The building certifier carried out inspections of the foundation slab and the storm water and general drainage in March and June 2000.
- 3.2 Following a conversation between the applicant and territorial authority on 18 October 2006 the territorial authority emailed the applicant to explain the territorial authority’s situation and outline the options available to the applicant. The territorial authority noted that, as it had not received a building certificate from the certifier certifying that the work complies with the Building Code, it had insufficient grounds on which to be satisfied that the building work was Code compliant. The territorial authority was not prepared to take any further action or make inspections under the building consent. There were four options open to the applicant. The applicant could either:
  - supply a code compliance certificate from Nationwide, or
  - apply to the Department of Building and Housing for a determination, or
  - apply for a certificate of acceptance or,

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<sup>2</sup> *New Zealand Standard NZS 3604:1999 Timber Framed Buildings*

- take no further action.

3.3 The Department received the applicant's application for a determination on 20 October 2006.

## **4 The submissions**

4.1 The applicant forwarded copies of drawings for construction of the garage

4.2 The territorial authority wrote to the Department on 17 November 2006, setting out the background to the dispute and provided copies of the inspection records it had received from the building certifier. The territorial authority stated that it had not carried out any inspections of the building work, nor had the building certifier notified the territorial authority that it was unable to inspect or certify the building work, as required by section 57 (3) of the 1991 Act. As the building certifier had not supplied a building certificate under section 56 of the 1991 Act for the work, or a code compliance certificate, the territorial authority had insufficient grounds to be satisfied that the work was Code compliant. In addition, the territorial authority considered that the issuing of a certificate of acceptance under section 437 of the Act was the appropriate method for dealing with the matter.

4.3 The territorial authority forwarded copies of:

- the inspection documentation forwarded by the building certifier
- the territorial authority's email to the applicants of 18 October 2006.

4.4 Copies of the submissions and other evidence were provided to the applicants and the territorial authority.

4.5 A copy of the draft determination was sent to the parties for comment on 24 January 2007. The applicant accepted the draft without comment. The territorial authority accepted the draft but noted a typographical error. The determination has been amended accordingly.

## **5 The code compliance of the building**

5.1 In the absence of any evidence to the contrary, I take the view that the Department is entitled to rely on the inspections reported by the building certifier in regard to building components that are now inaccessible. The balance of the building could be inspected and accordingly I employed an expert, in this case a member of the Institute of Building Surveyors, to carry out such an inspection and provide a report to the Department.

5.2 The expert inspected the building on 8 and 12 December 2006 and furnished a report that was completed on 16 December 2006. The expert was of the view that the cladding was neatly finished but had not been installed, in some respects, in accordance with the manufacturer's instructions and therefore may not comply with requirements of E2 although there were no indications of elevated moisture in the exposed framing at the time of inspection.

5.3 The expert took invasive moisture readings of the framing, and no raised readings were obtained.

5.4 The expert made the following comments regarding aspects of the garage:

- The ground clearance to the cladding had become less than acceptable along the garage frontage.
- The wall cladding did not extend down past the bottom plate 50mm. A maximum of 5mm was observed.
- There was no wall bracing as detailed in the consent documents nor were there any 12kn fastenings to secure the studs to the bottom plate.
- The roof cladding was installed in accord with the manufacturer's instructions but the acrylic roof light runs down to the boundary wall and as a consequence the fire rating of the wall is compromised.
- The fire rating of the boundary wall is compromised as the detail is not in accord with the wall board supplier's detail and the inside skin of the plasterboard has not been completed above the roof trusses nor has the gap been stopped at the roof cladding/interior lining junction.
- The fire wall has not been returned along the east and west walls at least 500mm from the boundary.

5.5 Copies of the expert's report were provided to each of the parties on 2 October 2006. Neither party responded to the report.

## **6 Evaluation For code compliance**

6.1 The following are the relevant clauses of the Building Code for an unlined garage with electrical fittings and a boundary wall: B1 Structure, B2 Durability, C3 Spread of fire, E1 Surface water, E2 External moisture and G9 Electricity. The functional requirements of these may be summarised as:

- B1 – Buildings shall withstand the combination of the loads they are likely to experience throughout their lives.
- B2 – Building materials components and construction methods shall be sufficiently durable to ensure the building satisfies the other functional requirements of the Code throughout the life of the building.
- C3 – Buildings shall be provided with safeguards against the spread of fire so that adjacent household units and other property are protected from damage.
- E1 – Buildings shall be constructed in a way that protects other property from the adverse effects of surface water.
- E2 – Buildings shall be constructed to provide adequate resistance to penetration by, and the accumulation of, moisture from the outside.
- G9 – Where provided in a building electrical installations shall be safe for their intended use.

## **7 Discussion**

7.1 This garage is a detached unoccupied out-building, consequently aspects of the Building Code have limited application. However there are a number of features of this building which, in my view, do not meet some of the functional requirements of

the clauses listed above. Having regard to the expert's report, I consider the following matters are non-compliant:

- B1 – I accept the building certifier's inspection of the slab and foundations and that these are code compliant. However there is no wall bracing as detailed in the consent documents and the required 12KN fixings have not been fitted to the stud/bottom plate junction.
- B2 – As there is an indication of non compliance with E2 the durability of the garage is likely to be effected and will not meet the requirements of clause B2.
- C3 – A 30/30/30 fire rating to the boundary wall would be code compliant but the fire-rated construction has not been completed as per the building consent documents, including the required returns around the front and rear walls, and there appears to be a PVC down pipe to the boundary wall. In addition the top of the fire rated wall is not in accord with the wallboard manufacturer's detail and lacks the blocking along the top plate shown in the consent drawings. The view of the expert is that to compensate for this the inside Fyreline cladding should be taken up to the roof linings and finished in such a way as to compensate for the omitted blocking.
- E1 –The garage complies with clause E1 of the code.
- E2 – The exterior wall cladding has not been lapped correctly over the foundation by the required 50mm. The junctions between the head flashings and the window heads have not been sealed.
- G9 – An electrical certificate should be supplied to verify code compliance.

7.2 I emphasise that each determination is conducted on a case-by-case basis and reflects the specific details of that case.

## **8 Conclusion**

8.1 I find the available documentation, which includes the building certifier's inspection reports and the expert's report, allows me to form a view that once the construction defects have been fixed to the satisfaction of the territorial authority, the building work for the garage will comply with the Building Code. Accordingly I am of the opinion that a code compliance certificate should be issued for this garage once these matters have been fixed.

## **9 The Decision**

9.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the building work does not comply with clauses B1, B1, C3 and E2. With respect to G4, compliance will be established when the territorial authority is provided with an Energy Work Certificate. Accordingly I confirm the territorial authority's decision to refuse to issue a code compliance certificate.

9.2 I note that the territorial authority has not issued a notice to fix. A notice to fix should be issued that requires the owners to bring the garage into compliance with the building code, identifying the defects listed in paragraph 7.1. It is not for me to decide directly how the defects are to be remedied and the garage brought to compliance with the Building Code. That is a matter for the applicant to propose and

for the territorial authority to accept or reject, with any disputes being submitted to the Chief Executive for a further determination.

- 9.3 I would suggest that the parties adopt the following process to meet the requirements of paragraph 9.2. Initially, the territorial authority should issue the notice to fix, listing all the items from paragraph 7.1 that need to be fixed. The owner should then produce a response to this in the form of a detailed proposal, produced in conjunction with a competent and suitably qualified person, as to the rectification or otherwise of the specified issues. Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 28 February 2007.

John Gardiner  
**Determinations Manager**