

Determination 2008/23

Decision of a territorial authority to refuse to issue a code compliance certificate for the installation of an oil-fired appliance at 86 Welsh Road, West Winton

1 The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“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 the Department. The applicant is the owner, Mr J Halford, (“the owner”) acting through the installer of the appliance. The other party is the Southland District Council (“the territorial authority”).
- 1.2 The matter for determination is the territorial authority’s refusal to issue a code compliance certificate for the installation of an oil-fired water boiler (“the appliance”) because the territorial authority had not been provided with certain test certificates to show that the appliance complied with Australian Standard AS 1690², as referred to in Australian Standard AS 1691³.
- 1.3 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 Code⁴ (the First Schedule to the Building Regulations 1992).

2 The building work

- 2.1 The building work is the installation of an appliance that provides warm water to centrally heat a house through a radiant floor heating system.

¹ The Building Act 2004 is available from the Department’s website at www.dbh.govt.nz

² AS 1960: SAA Domestic Oil-fired Appliances Safe Design Code

³ AS 1691: 1985 Domestic oil-fired appliances – installation

⁴ The Building Code is available from the Department’s website at www.dbh.govt.nz.

3 The legislation and the compliance documents

3.1 Relevant provisions of the Act include:

17 All building work must comply with building code

All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

19 How compliance with building code is established

(1) A building consent authority... must accept any or all of the following as establishing compliance with the building code:

(b) compliance with the provisions of a compliance document . .

3.2 Relevant provisions of the Building Code Clause C1 “Outbreak of Fire” include:

OBJECTIVE

C1.1 The objective of this provision is to safeguard people from injury or illness caused by fire.

FUNCTIONAL REQUIREMENT

C1.2 In buildings fixed appliances using the controlled combustion of solid, liquid, or gaseous fuel, shall be installed in a way which reduces the likelihood of fire.

PERFORMANCE

C1.3.1 Fixed appliances

C1.3.2 Fixed appliances shall be installed in a manner that does not raise the temperature of any building element by heat transfer or concentration to a level that would adversely affect its physical or mechanical properties or function.

3.3 Relevant provisions of compliance document C/AS1 Part 9: Outbreak of Fire include:

9.3 Oil Fired Appliances

9.3.1 AS 1691, as modified by Paragraph 9.3.2, is an Acceptable Solution for the installation of domestic oil-fired appliances.

9.3.2 Modifications to AS 1691

AS 1691 is modified as follows:

Delete paragraph 5.1.1 (being the sentence - “Before commencing to install the appliance the installer shall ensure it complies with AS 1690.”)

9.3.3 Sections 2 and 4 of AS/NZS 2918⁵ are also Acceptable Solutions for the installation of flues for domestic oil-fired appliances.

⁵ AS/NZS 2918: 2001 Domestic solid fuel burning appliances – installation

4 The submissions and the draft determination

4.1 The application for a determination was received on 25 January 2008. Accompanying the application was a submission from the owner dated 21 January 2008. The owner also supplied:

- copies of the email correspondence that had gone on between the owner, the territorial authority, Departmental staff, the installer's engineer and the Environmental Risk Management Authority ("ERMA")
- a copy of a certificate showing that the appliance was certified under British Standard EN267⁶
- copies of test reports related to the appliance
- a copy of the installation instructions for the appliance
- a letter dated June 2007, from the manufacturer of the appliance to the installer, specifying the safe distances to be maintained between the surfaces of the appliance and adjacent combustible materials.

4.2 In an email to the owner dated 16 October 2007, relating to the installation of the appliance, the territorial authority said:

It is council's position that we will not accept the installation of any product that cannot be proven to meet or exceed the [relevant] standard relating to its performance and installation. In this case it is AS 1691/1985.

4.3 In his submission dated 21 January 2008 the owner said:

We have been advised by [territorial authority official] that the building will not be issued with a code compliance certificate unless we can provide test certificates from an independent authority that our oil fired appliance complies with the test requirements for clearances from combustible materials listed in AS 1691. [The territorial authority official] states that this is the requirement for an acceptable solution under C/AS1, Fire safety part 9.3.

Firstly we believe AS 1691:1985 is an installation standard not an appliance design standard. Regarding appliance suitability there is a paragraph under AS 1691 (5.1.1) which relates to appliance testing and is listed as AS 1690. However this paragraph has been deleted under C/AS1 9.3.2. Therefore as far as we can see there is no other requirement under AS 1691 regarding adjacent [combustible] construction that would facilitate the need for this costly and time consuming independent testing.

Regarding installation clearances paragraph 5.2.4 simply states the appliance shall be installed in accordance with the manufacturer's installation instructions.

Finally when we introduced this appliance into New Zealand we were informed that we must obtain ERMA approval before it could be sold here. As part of this approval application we had to provide proof that this unit met at least one of five listed international standards we provided this proof and as such now have this approval . . . One of the five standards was in fact AS 1690:1975.

⁶ British Standard EN267: 1999: Forced draught oil burners. Definitions, requirements, testing, marking

4.4 In an email to ERMA dated 24 October 2007 the owner said:

When we applied for the Erma approval we were given the choice of meeting any one of five international standards, AS 1690 was one of those standards. But as European companies are hardly likely to have applied for AS certification we instead submitted the BS EN267 certification. Because we could submit any one of five standards one would suppose they must all be considered equal in nature. Therefore rather than going to the considerable cost of having our ranges of appliances tested to AS 1690 we should be able to submit BS EN267 as an alternative perhaps with a letter from ERMA clarifying this.

4.5 The draft determination was sent to the parties for comment on 4 March 2008. Both parties accepted the draft without comment.

5 Discussion

5.1 It is not completely clear whether the territorial authority's concerns are about the code compliance of the appliance itself, or whether it is also concerned about its installation. The territorial authority has made no specific submission to the Department about this. However, the content of the emails from the territorial authority to the owner suggests that the territorial authority is principally concerned about whether the appliance itself has been tested to the appropriate standard. The installation of the appliance follows on from this.

The code compliance of the applicant itself

5.2 From my reading of the submissions, the Building Code, and C/AS1 that:

- Building Code Clause C1 is concerned with the installation of the appliance, not with the code compliance of the appliance itself. The latter is the responsibility of another agency, which in this instance is ERMA.
- The owner has produced evidence that the appliance is certified under EN267.
- ERMA has recognised that certification under EN267 is equivalent to certification under AS 1690.
- The appliance is one that is approved by ERMA for its intended use in the owner's house.
- One way, but not the only way, of complying with the Building Code is to meet the requirements set out in the compliance document C/AS1 Part 9, which in turn cites AS 1691, subject to some specified modifications, as an Acceptable Solution.
- Clause 9.3.2 of C/AS1 amends AS 1691 by deleting paragraph 5.1.1 of that standard. This removes the requirement that, before installation, the installer ensure that the appliance complies with AS 1690.

The installation of the appliance

- 5.3 In a letter to installer, dated June 2007, the appliance manufacturer specified the safe distances to be provided between the appliance and adjacent combustible materials.
- 5.4 It is understood the appliance has been installed and the territorial authority has raised no specific objections about the installation with respect to clearance distances and the like. I therefore assume that the territorial authority has satisfied itself as to the code compliance of the appliance with respect to its installation and the decision below is made on this basis.

Conclusion

- 5.5 I conclude that the decision by the territorial authority to refuse to issue a code compliance certificate because the appliance has not been tested to AS 1690 is incorrect. The appliance has been tested and certified using a recognised testing standard and has been approved for use by the appropriate authority.
- 5.6 In the absence of any advice, or submission, to the contrary, I also conclude that the appliance has been installed in accordance with the manufacturer's instructions.

6 The decision

- 6.1 In accordance with section 188 I hereby reverse the territorial authority's decision to refuse to issue a code compliance certificate.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 17 April 2008.

John Gardiner
Manager Determinations