

Determination 2010/063

Refusal to issue a code compliance certificate for a 9-year-old garage/sleepout at 768 Christchurch-Akaroa Road, Tai Tapu



1. The matters 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 that Department. The applicant is the former owner J Chambers (“the applicant”) and the other party is the Selwyn District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority. I consider the new owner to be a person with an interest in this determination.
- 1.2 This determination arises from the decision of the authority to refuse to issue a code compliance certificate for an 8-year-old outbuilding (“the garage/sleepout”) because it was not satisfied that it complied with certain clauses² of the Building Code (First Schedule, Building Regulations 1992).
- 1.3 The matter to be determined³ is therefore whether the authority was correct to refuse to issue a code compliance certificate. In deciding this, I must consider:

¹ The Building Act, Building Code, Compliance documents, past determinations and guidance documents issued by the Department are all available at www.dbh.govt.nz or by contacting the Department on 0800 242 243.

² 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.

³ Under section 177(b)(i) of the Act

1.3.1 Matter 1: The external envelope

Whether the external cladding to the garage/sleepout comply with Building Code Clauses B2 Durability and E2 External Moisture (refer paragraph 6).

1.3.2 Matter 2: Internal moisture

Whether the sleepout bathroom complies with Building Code Clause E3 Internal Moisture (refer paragraph 7).

1.3.3 Matter 3: The durability considerations

Whether the elements that make up the building work comply with Building Code Clause B2 Durability, taking into account the age of the building (refer paragraph 8).

1.4 In making my decision, I have considered the submissions of the parties, the report of the expert commissioned by the Department to advise on this dispute (“the expert”) and the other evidence in this matter.

2. The building work

2.1 The building work consists of a single-storey detached outbuilding situated on a flat rural site in a high wind zone for the purposes of NZS 3604⁴. The proprietary building accommodates a three-car garage area and an adjoining bedroom (“the sleepout”) with a bathroom. The building is very simple in plan and form and has a low weathertightness risk.

2.2 The building is rectangular in plan with a gable roof that has gutters only as eaves, and verge projections of about 150 mm. The roof is extended to form a veranda above the east wall of the sleepout. Construction is conventional light timber frame, with concrete foundations and floor slab, profiled galvanised steel cladding to the walls and roof, and aluminium windows. The wall framing is untreated.

3. Background

3.1 The authority issued a building consent (No. 011128) for the garage/sleepout on 28 September 2001, under the Building Act 1991.

3.2 The authority carried out two inspections during construction; a pre-pour foundation and slab inspection on 21 November 2001 and a pre-line building inspection on 19 December 2001 and it appears that the building was completed by the end of 2001.

3.3 It appears that the applicant was not aware that no code compliance certificate had been issued until arranging to sell the property in 2009. The applicant sought a code compliance certificate and the authority carried out final inspections on 14 January 2010 and 17 February 2010. The new owner took possession of the property, with final settlement conditional on resolving the matter.

3.4 In a letter to the applicant dated 23 March 2010, the authority outlined the durability periods required in the building code and refused to issue a code compliance certificate because records indicated:

⁴ New Zealand Standard NZS 3604:1999 Timber Framed Buildings

...that the building was practically completed in December 2001. As a result of the time lapsed, the Council cannot now be satisfied on reasonable grounds that the building work and elements will continue to satisfy the durability provisions of the Building Code for the prescribed period after the Code Compliance Certificate has been issued.

3.5 The authority also noted that the final inspection had:

...identified the following 'issues that have a direct impact on durability and may have compromised other hidden elements due to the time that these items have been non-compliant.

- Penetrations to the exterior cladding were not flashed and sealed.
- The basin and shower were not sealed to the wall linings and the grouting to the tiles surrounding the vanity was incomplete.
- The [fibre-cement] soffit was not painted.
- The H3.1 treated veranda posts were primed but not painted. These posts were required to be painted to achieve the required 50 year durability.

The H3.1 treated veranda posts are buried in concrete. These posts have not been treated to a high enough level to be in contact with the ground.

3.6 The applicant contacted the garage/sleepout manufacturer ("the manufacturer") regarding the veranda posts. On 26 April 2010 the manufacturer provided its standard detail (dated February 2007) for connecting posts to footings, stating it:

...will temporarily prop the veranda, cut out and remove the current concrete, veranda posts and footings. We will replace the posts, [proprietary fixing] brackets and concrete footings as shown on the attached document.

3.7 The Department received an application on 30 April 2010 and sought further information from the authority, which was received on 11 May 2010.

4. The submissions

4.1 In a letter to the Department dated 26 April 2010, the applicant outlined the background to the situation, noting that the garage/sleepout had been built prior to the main house. The applicant explained that although the property had been sold and the purchaser had 'taken over the property', final settlement was prevented by 'the matter of the outstanding Code of Compliance Certificate'.

4.2 The applicant forwarded copies of:

- the consent drawings
- photographs before and after remedial work
- the authority's letter dated 23 March 2010
- the garage manufacturer's proposal dated 26 April 2010
- various producer statements, statements and other information.

4.3 In a letter to the Department dated 7 May 2010, the authority stated that its concerns remained as expressed in its letter to the applicant dated 23 March 2010.

- 4.4 The authority forwarded copies of:
- the consent documentation
 - the inspection records and various photographs
 - a file note dated 3 March 2010.
- 4.5 A draft determination was issued to the parties on 23 June 2010. The draft was issued for comment and for the parties to agree a date when the garage/sleepout complied with Building Code Clause B2 Durability.
- 4.6 The applicant accepted the draft without comment. In a submission to the Department dated 5 July 2010 the authority reiterated some of the comments made in respect of the expert's report (refer paragraph 5.8), but in addition said that the lack of sealing to the basin would have led to possible damage of the timber framing. In my view this is unlikely, and I refer the authority to the comments made in paragraph 5.9.
- 4.7 Both the applicant and the authority agreed that compliance with Clause B2 was achieved on 31 December 2001.

5. The expert's report

- 5.1 As mentioned in paragraph 1.4, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors. The expert inspected the garage/sleepout on 24 May 2010 and provided a report that was completed on 26 May 2010.
- 5.2 The expert noted that the garage/sleepout had been generally 'carried out to acceptable standard', apart from the veranda which was of a 'poor standard'. The building generally appeared to be in accordance with the consent drawings.
- 5.3 The expert inspected the interior, taking non-invasive moisture readings of the sleep-out area and no elevated readings were recorded. The expert noted some water staining of the exposed bottom plate beside the side door into the garage, although there were no signs of timber damage. The expert considered that the staining could either be historical or related to a cladding defect.
- 5.4 Commenting specifically on the external envelope, the expert noted that:
- water staining beside the side door to the garage needs investigation, as it could relate to a leaking joint in the door frame or blocked drain holes
 - pipe penetrations are either unsealed or inadequately sealed
 - the veranda soffit is unpainted fibre-cement (painting is recommended by the manufacturer)
 - the timber veranda posts are unpainted and embedded into the concrete, with the end posts in contact with the ground and at the time of inspection, remedial work was incomplete.

5.5 The expert made the following additional comments:

- Clearances below the cladding at the garage doors are reduced where ground levels are raised for vehicle access. I note that the driveway is free-draining gravel falling away from the doors, the weatherboards are metal and the garage is unlined with framing exposed to the interior.
- Although clearance between the veranda concrete and the internal floor level of the sleepout is reduced to about 45 mm, the junction is protected by the 1.5m wide veranda roof.

5.6 The expert commented on the issues raised by the authority in its letter dated 23 March 2010, which I summarise as follows:

Defects identified by authority	Expert's comments
Penetrations to the exterior cladding not flashed and sealed	Agreed – refer paragraph 5.4
Basin and shower not sealed to wall linings	The basin and shower linings are sealed at the junctions with the wall.
Grouting to the tiles surrounding vanity incomplete	Tile grouting is now complete.
'Hardiflex' soffit not painted	Agreed – refer paragraph 5.4

5.7 A copy of the expert's report was provided to the parties on 28 May 2010. The applicant responded to the experts report in letter dated 10 June and advised:

- a smoke alarm has been fitted
- the builder of the shed is addressing the matter of the veranda posts
- protective collars are being fitted to the penetrations.

5.8 The authority responded in a letter to the Department dated 17 June 2010. The submission said:

- the plans and specification show the cladding used as a bracing element
- the report suggests that not all ground clearances 'comply with NZS 3604'
- the expert did not conduct invasive testing of the timber framing.

5.9 In response I note that the plans show diagonal bracing to the timber framing. In my opinion adequate ground clearances are maintained around the sleepout, and the entry to the sleepout is well protected by the 1.5m deep verandah. I am also of the opinion that the expert's investigation of the building was fully consistent with the nature of the building, its simple construction, its predominant use as a garage, and its consequent level of risk.

Matter 1: The external envelope

6. Weathertightness

6.1 Weathertightness performance

- 6.1.1 Taking account of the expert's report, I conclude that remedial work to the garage/sleepout is necessary in respect of:
- investigation of the cause of water staining beside the side door to the garage
 - the unsealed or inadequately sealed pipe penetrations
 - the completion of painting of the timber veranda posts and the unfinished remedial work to the veranda posts embedded into the concrete and in contact with the ground.
- 6.1.2 In regard to the last item above, I note the manufacturer's proposal for altering the veranda posts (see paragraph 3.6). I consider that satisfactory completion of this work will resolve that area of the building.
- 6.1.3 I also note the expert's comments in paragraph 5.5, and I am satisfied that these areas are adequate in the circumstances.

6.2 Weathertightness conclusion

- 6.2.1 I consider the expert's report establishes that the current performance of the building envelope is adequate because it is preventing water penetration through the claddings at present. Consequently, I am satisfied that the garage/sleepout complies with Clause E2 of the Building Code.
- 6.2.2 However, the building envelope is also required to comply with the durability requirements of Clause B2. Clause B2 requires that a building continues to satisfy all the objectives of the Building Code throughout its effective life, and that includes the requirement for the garage/sleepout to remain weathertight. Because the cladding faults on the garage/sleepout are likely to allow the ingress of moisture in the future, the building work does not comply with the durability requirements of Clause B2.
- 6.2.3 Because the faults identified with the claddings occur in discrete areas, I am able to conclude that satisfactory rectification of the items outlined in paragraph 6.1.1 will result in the building envelope being brought into compliance with Clauses B2 and E2 of the Building Code.
- 6.2.4 Effective maintenance of claddings is important to ensure ongoing compliance with Clauses B2 and E2 of the Building Code and is the responsibility of the building owner. The Department has previously described these maintenance requirements (for example, Determination 2007/60).

7. Internal moisture

- 7.1 Taking account of the expert's report, I am satisfied that the remaining items

identified by the authority have been satisfactorily completed and the bathroom complies with Clause E3 of the Building Code.

- 7.2 I also note that the expert raised the lack of smoke alarms. While these were not a requirement of the Building Code at the time the garage/sleepout was constructed, I strongly recommend that the owner to install these.

Matter 2: The durability considerations

8. Discussion

- 8.1 The authority has concerns regarding the durability, and hence the compliance with the building code, of certain elements of the garage/sleepout taking into consideration the age of the building work completed in 2001.
- 8.2 The relevant provision of Clause B2 of the Building Code requires that building elements must, with only normal maintenance, continue to satisfy the performance requirements of the Building Code for certain periods (“durability periods”) “from the time of issue of the applicable code compliance certificate” (Clause B2.3.1).
- 8.3 These durability periods are:
- 5 years if the building elements are easy to access and replace, and failure of those elements would be easily detected during the normal use of the building
 - 15 years if building elements are moderately difficult to access or replace, or failure of those elements would go undetected during normal use of the building, but would be easily detected during normal maintenance
 - the life of the building, being not less than 50 years, if the building elements provide structural stability to the building, or are difficult to access or replace, or failure of those elements would go undetected during both normal use and maintenance.
- 8.4 In this case the delay between the completion of the building work in 2001 and the applicant’s request for a code compliance certificate has raised concerns that various elements of the building are now well through or beyond their required durability periods, and would consequently no longer comply with Clause B2 if a code compliance certificate were to be issued effective from today’s date. I have not been provided with any evidence that the authority did not accept that those elements complied with Clause B2 at a date in 2001.
- 8.5 It is not disputed, and I am therefore satisfied, that all the building elements complied, apart from the matters that are to be rectified, with Clause B2 on 31 December 2001. This date has been agreed between the parties, refer paragraph 4.7.
- 8.6 In order to address these durability issues when they were raised in previous determinations, I sought and received clarification of general legal advice about waivers and modifications. That clarification, and the legal framework and procedures based on the clarification, is described in previous determinations (for example, Determination 2006/85). I have used that advice to evaluate the durability issues raised in this determination.

8.7 I continue to hold that view, and therefore conclude that:

- (a) the authority has the power to grant an appropriate modification of Clause B2 in respect of all the building elements.
- (b) it is reasonable to grant such a modification, with appropriate notification, as in practical terms the building is no different from what it would have been if a code compliance certificate for the building work had been issued in 2001.

8.8 I strongly suggest that the authority record this determination and any modifications resulting from it, on the property file and also on any LIM issued concerning this property.

9. What is to be done now?

9.1 The owner should address the areas outlined in paragraph 6.1.1 and the authority should verify that these items have been satisfactorily remedied. If any of the identified items are not satisfactory, then a notice to fix should be issued that requires the owner to bring the garage/sleepout into compliance with the Building Code, identifying those items.

9.2 Once the matters set out in in paragraph 6.1.1 have been rectified to its satisfaction, the authority shall issue a code compliance certificate in respect of the building consent amended as outlined in paragraph 8.

10. The decision

10.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:

- the external envelope does not comply with Clause B2 of the Building Code, insofar as it relates to Clause E2 and accordingly, I confirm the authority's decision to refuse to issue a code compliance certificate
- the bathroom interior complies with Clause E3 of the Building Code.

10.2 I also determine that:

- (a) all the building elements installed in the garage/sleepout, apart from the items that are to be rectified, complied with Clause B2 on 31 December 2001.
- (b) the building consent is hereby modified as follows:

The building consent is subject to a modification to the Building Code to the effect that, Clause B2.3.1 applies from 31 December 2001 instead of from the time of issue of the code compliance certificate for all the building elements, except the items to be rectified as set out in paragraph 6.1.1 of Determination 2010/063.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 16 July 2010.

John Gardiner
Manager Determinations