

From: Barry Brown <bbrown@ftl.co.nz>
Sent: Monday, 3 September 2018 4:02 p.m.
To: Ginny Carter
Cc: Katie Gordon; Determinations
Subject: Det 3023/49 Stoneleigh Drive, Rolleston - Referee comment on draft [UNCLASSIFIED]
Attachments: Draft Stoneleigh.docx

Ginny

I refer to your e-mail received 30/8 plus the associated referee pack containing draft determination #3023/Stoneleigh, and offer review comments as below.

1. General

1.1 I presume the site address on the front sheet is 49 Stoneleigh Drive rather than 49 Rolleston Drive, so I have revised accordingly.

NB : If this is incorrect, please advise the relevance of the descriptor "Stoneleigh" in the draft.

1.2 As noted, the subject of this decision reflects several previous determinations where applicants have sought to gain "relief" in "staged construction" through use of BA112(1)(a).

1.3 I support the decision reached at DD7.1 and trust the applicant can ultimately find a way through the regulatory compliance issues involved.

2. Comments on particular DD clauses

2.1 I attach a copy of the draft marked up with suggested text changes.

2.2 My comments regarding Fig 1 and Fig 2 arise in part because I found the figures reproduced in the Beca report virtually illegible, and it might be difficult to obtain graphics which are clear enough to convey the message to readers at large.

3. Summary/Conclusion

3.1 Subject to the adoption of my suggested changes, I confirm my agreement for the draft determination to proceed to final.

Any queries in relation to the above, please advise.

Barry Brown
Determination Referee

From: Ginny Carter [<mailto:Ginny.Carter@mbie.govt.nz>] On Behalf Of Determinations
Sent: Thursday, August 30, 2018 9:07 AM
To: Barry Brown <bbrown@ftl.co.nz>
Cc: Determinations <determinations@mbie.govt.nz>; Katie Gordon <Katie.Gordon@mbie.govt.nz>
Subject: Agreement to issue final determination for 49 Stoneleigh Drive Izone Rolleston (Ref 3023) [UNCLASSIFIED]

Dear Barry

Apologies it looks like this step was missed. Please find attached the final draft determination (Ref 3023) for 49 Stoneleigh Drive Izone Rolleston being the word document called "Regarding the compliance of a warehouse fitout, comprising storage racking and a mezzanine floor, with the fire safety requirements of the Building Code at 49 Rolleston Drive, Rolleston", dated 23 August 2018. (Note: the draft was not forwarded to you prior to being issued to the parties for comment). A copy of the original application, submissions, expert's report and draft have been couriered to you.

The determination is being sent to you concurrently with being issued as a draft to the parties for comment. Any substantive submissions will be forwarded to you for comment.

Can you please, by reply email, confirm your agreement for the Manager Determinations to sign and issue the document as the final determination on this matter for and on behalf of the Chief Executive.

If you believe minor changes of an editorial nature are necessary can you please grant conditional agreement subject to those changes being completed prior to issue. Please return the final draft determination, either by email or fax, with the required changes annotated. Responsibility for making the changes sought will rest with the Manager Determinations. Significant changes will require a new final draft to be issued for which agreement will then be sought.

Kind regards
Ginny

Ginny Carter

ADMINISTRATOR, DETERMINATIONS

Housing & Tenancy Services, Market Services
Ministry of Business, Innovation & Employment
Hikina Whakatutuki - Lifting to Make Successful

ginny.carter@mbie.govt.nz | s 9(2)(a) [REDACTED]
15 Stout Street, Wellington 6011

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Draft Determination 3023

23 August 2018

Regarding the compliance of a warehouse fitout, comprising storage racking and a mezzanine floor, with the fire safety requirements of the Building Code at 49 Rolleston **Stoneleigh Drive, Rolleston**



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, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to this determination are:

- Mr M Gray of Forbes and Davies Ltd, the warehouse owner who applied for the determination (“the applicant”)
- Selwyn District Council, carrying out its duties as a territorial authority or building consent authority (“the authority”)
- Fire and Emergency New Zealand (FENZ) as a party under Section 176(g)² of the Act.

1.3 The determination arises from the applicant’s installation of racking in a new warehouse before appreciating this was building work requiring a building consent. In

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

² Unless otherwise identified in this determination, references to sections are to sections of the Building Act and references to clauses are to clauses of the Building Code.

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his view the racking and mezzanine floor, which came from his previous warehouse, only needed minor modifications for installation in this building. However, the authority considered the warehouse with the racking system and mezzanine floor installed did not comply with various Building Code³ requirements and issued a notice to fix requiring him to seek building consent for remedial work.

- 1.4 While the applicant does not dispute the notice to fix he does dispute the extent of remedial work needed, especially with respect to fire safety. He has proposed a fire design to achieve compliance but FENZ, which was asked to comment by the authority, still has outstanding concerns about this proposal.
- 1.5 Accordingly, I consider the matter to be determined⁴ is whether the proposed building work complies with the Building Code with respect to Clause C Fire Safety.
- 1.6 In making this determination I have confined it to the matter described in paragraph 1.5 and have not have not considered any other aspects of compliance with the Building Code. The compliance of the racking system with respect to B1 Structure, and stairs to the mezzanine level with respect to F4 Safety from falling, has been addressed by the applicant and is not considered herein.
- 1.7 In making my decision, I have considered the submissions of the parties, the report of the independent experts engaged by the Ministry (“the experts”) who are Chartered Professional Engineers (CPEng) with specialist qualifications and expertise in fire engineering, and the other evidence in this matter.

2. The building

- 2.1 The applicant’s warehouse was built in 2015 at 49 Stoneleigh Drive, Rolleston. It is used for the wholesale importing and distribution of automotive parts and is not open to the public. The warehouse is usually staffed by three warehouse workers, while a sales representative is onsite one day a week.
- 2.2 The floor area for the warehouse storage area is 928 m². Associated office space adds a further 110 m² and includes a self-contained sleeping area. There are a number of direct escape points to the outside, including from the sleeping area. The floor plan as consented is shown in Figure 1.

[Insert consented floor plan]

BJB comment :
Need to select Fig 1 graphic carefully so that it is legible

Figure 1: The consented floor plan

- 2.3 The base-build fire safety design for the warehouse included a Type 3 automatic heat detection system⁵ throughout all areas with manual call points complying with New Zealand Standard NZS 4512:2010⁶, a Type 1 smoke alarm within the sleeping area, and shutdown of the air handling system on smoke detection (Type 9).
- 2.4 The building itself is mostly constructed from steel portal frames ~~lined~~ **supporting with** precast concrete tilt panels **on the building partition**. These are topped with profiled steel sheet cladding up to the level of the roof, which has an apex **height** of 7.9 m.

³ Schedule 1 to the Building Regulations 1992

⁴ Under section 177(1)(a) of the Act

⁵ Refer www.building.govt.nz/building-code-compliance for descriptions of system types

⁶ NZS 4512:2010 Fire Detection and Alarm Systems in Buildings

- 2.5 The warehouse racking system includes a platform, or mezzanine, about 2.2 m above the ground floor. This mezzanine is made from 100 x 50 mm one-way span timber joists topped with particleboard flooring and is structurally supported to by the modular racking system below. It has a floor area of 452 m² (i.e. just over half the warehouse's floor area) and is accessed via stairs at each end. The racking system and mezzanine is shown in Figure 2.

[Insert drawing of racking and mezzanine level]

BJB comment :

Need to select Fig 2 graphic carefully so that it is legible

Figure 2: The storage racking and mezzanine level

3. Background

- 3.1 After the Canterbury earthquake sequence⁷ damaged his Hornby warehouse the applicant decided to build a new facility in the Izone Rolleston business precinct. The authority issued a building consent for this on 1 May 2015 (BC150389), conducted its final site inspection on 20 August 2015, and issued a code compliance certificate on 20 November 2015: I have not seen a copy of the code compliance certificate.
- 3.2 The applicant installed relocated the existing racking system and mezzanine from the Hornby warehouse as it had not been damaged. After installing this in August 2015 the applicant sought a building warrant of fitness but was advised that the racking and mezzanine installation was building work that should have had a building consent. He then approached the authority to seek a certificate of acceptance to cover the code-compliant aspects of the installation (knowing that a building consent would be required for any remedial work).
- 3.3 On 8 August 2016 a representative of FENZ visited the warehouse. In an email to the authority and the applicant on 15 August 2016 the representative:
- recommended the fire alarm system be upgraded to include smoke detectors under the mezzanine floor
 - said the doors linking the warehouse to the office/sleeping area could be upgraded to provide self-closing mechanisms to provide greater escape time from the sleeping area, and
 - said that providing the housekeeping was kept to a high standard i.e. good separation of oils, aerosols, paints etc, together with combustible waste was kept tidy and to a minimum and staff are were made aware of the evacuation procedures “the [FENZ] would be happy that the life risk has been looked after”.
- 3.4 On 5 September 2016 the applicant applied for a certificate of acceptance. The authority subsequently issued a certificate (CA 161864) on 8 November 2016 but for compliance with Clause G8 Artificial light only. It listed a number of other clauses it was unable to verify compliance with and issued a notice to fix (No. NF0481) in respect of these.
- 3.5 To help demonstrate the racking system's compliance with the Code's fire safety requirements, the applicant had commissioned a fire engineering consultancy (“the applicant's fire engineer”) to assess the installation. On 10 October 2016 the applicant's fire engineer presented a Fire Engineering Brief (FEB) to the authority that proposed a performance-based design

⁷The Canterbury Earthquake Sequence includes the 'Darfield Earthquake' of 4 September 2010 with a moment magnitude of 7.1, followed by a series of aftershocks that included a 6.3 magnitude event on 22 February 2011.

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approach as an alternative solution proposal⁸ for code compliance. This FEB was based on the premise that the installation was a building alteration so **that** section 112 applied; i.e. code compliance for means of escape from fire was only required to be **provided** “as nearly as is reasonably practicable” **standard** under section 112.

3.6 The authority ~~provided~~ **submitted** this proposal FENZ for comment. FENZ responded on 31 October 2016, and again in 29 November 2016 and 19 May 2017 following an onsite meeting and further details from the applicant’s fire engineer.

3.7 In its initial response to the FEB, FENZ said the application for a certificate of acceptance did not allow for compliance as near as is reasonably practicable with the requirements of the Building Code under section 112, and, while the authority might grant consent nevertheless, ~~it~~ **FENZ** was obliged to offer its comments on the proposal “regardless of any pre-determined agreement or limitations”.

3.8 In its 29 November 2016 letter, FENZ identified issues with the proposed fire design relating to:

- what it considered a selective ~~approach~~ **use** of the verification method for fire safety, C/VM2
- assumptions in the FEB relating to ventilation of the fire and smoke production
- **the sufficiency of** some of the fire modelling calculations
- the fire rating of the mezzanine floor, which the applicant’s fire engineer argued could be assessed on an “as near as is reasonably practicable” basis under section 112, but which FENZ said it had to consider as new work
- the “disapplication” of some Building Code clauses **by the applicant** under section 112, which FENZ considered inappropriate.

3.9 In its 19 May 2017 letter, FENZ said a number of these issues had been addressed at the onsite meeting but ~~detailed~~ **re-stated** outstanding concerns **it had** relating to:

- the calculations of period of structural adequacy for the mezzanine’s unprotected steel supports, and
- the fire rating of the intermediate floor in relation to the operational response time. Although the FEB suggested no applied fire protection was required as the structure inherently provided 20 minutes’ fire resistance, FENZ’s said the total time **required** was likely to be “significantly greater” than this, and noted that the Acceptable Solutions and Verification Method C/VM2 required a fire rating of intermediate floors of at least 30 minutes.

3.10 On 12 January 2018 the authority issued the applicant with a further notice to fix for non-compliant building work (No. NTF0570, to replace No. NTF0481). A cover letter identifying areas of non-compliance included:

Contrary to clauses C4-C6, the FEB process demonstrating compliance in regard to movement to a place of safety, access and safety for firefighting operations, and structural stability, has not yet been agreed to.

3.11 The applicant applied to the Ministry for a determination on 26 February 2018.

⁸ A means of compliance with the relevant requirements of the Building Code. For information about alternative solutions, Acceptable Solutions and Verification methods go to www.building.govt.nz

4. Submissions

4.1 The applicant

4.1.1 With his application for determination the applicant included a submission, summary of events and copies of:

- the fire design report for the warehouse dated 26 January 2015 (and included in the building consent application for the warehouse) and PS1 producer statement (design) dated 13 February 2015
- the FEB regarding the racking system and mezzanine prepared dated 10 October 2016 as prepared by the applicant's fire engineer
- correspondence August 2016 - May 2017 with FENZ and between the applicant's fire engineer and the authority.

4.1.2 In response to my request for additional information, on 7-8 March 2018 he the applicant sent me copies of:

- further building consent documentation for the warehouse
- A chartered professional engineer's PS4 (Producer Statement – construction review) and associated inspection report for the racking system as installed at the Rolleston warehouse dated 15 August 2016 regarding compliance with clause B1 Structure
- an application for a certificate of acceptance for the racking system and an associated compliance schedule
- drawings for the racking and mezzanine
- correspondence between the applicant's fire engineer, FENZ and the authority October 2016 – January 2018.

4.1.3 In his submission the applicant said he hoped there was some room for “practical suggestions, logic and common sense to prevail (as has been demonstrated by [FENZ] Canterbury) to enable this business to continue economically trading with its existing, proven, safe warehouse fit out/racking system”.

4.1.4 He said he was seeking a determination to allow the existing racking to continue in its current configuration and for the authority to issue a certificate of acceptance (for the compliant work) and building consent to carry out the additional safety upgrades that had been identified as being required, which he said included:

- installation of a Type 4 smoke alarm throughout the warehouse and underneath the mezzanine, with direct connection to FENZ (plus associated signage)
- self-closing doors to the office/sleeping area
- various structural and safety improvements including handrails on both stairways to the mezzanine, support stays around the mezzanine railing, and additional hold-down bolts
- the warehouse to continue to be closed to the public and to have the current occupancy (i.e. three staff plus a travelling sales representative).

4.1.5 The applicant also said (in summary):

- The raised storage platform (mezzanine) meant there was no potential for products to fall from any shelves over 2 m high and he did not believe portable picking trolleys were as safe, especially in an active seismic area.
- The FEB was prepared as an alternative solution proposal as agreed with the authority at the time. This process did not transpire and it was sent to FENZ in Wellington for review. However, the conclusion of this review effectively discounted the summary of FENZ's Canterbury safety officer, who had actually inspected the building.
- Regarding occupancy, he said this warehouse working model had operated for the last 17 years with three warehouse staff and one sales representative who was out of the warehouse four days a week. The sleeping room was only ever occupied at night and in that case would only be one person on site.
- The FEB had demonstrated that the potential egress on a compliant 35m² mezzanine floor could be 39 m, but as installed the mezzanine had two means of escape the egress provided in this case was 37.3 m.

4.2 The authority

4.2.1 On 14 March 2018 the authority supplied a summary of key events and copies of:

- warehouse floor plans and elevations from building consent BC150389
- photos of the racking system and a layout and shelving plan
- the certificate of acceptance application for the racking and mezzanine (work carried out in August 2015), and a PS1 design and associated specifications (re compliance with B1 structure) dated 11 August 2016
- correspondence relating to the racking system including an email of 3 August 2016 regarding a search for relevant consents relating to its previous use at two warehouse facilities (none were found)
- the authority's inspection notice 13 October 2016 for the certificate of acceptance, the certificate of acceptance issued 8 November 2016 (for compliance with clause G8 only), and a project information memorandum issued 21 September 2016
- correspondence from FENZ re the FEB on 19 May 2017
- notices to fix NTF0572 and NTF057 issued 12 January 2018 regarding the applicant's failure to supply a compliant building warrant of fitness and the non-compliant building work, plus a covering letter.

4.3 The draft determination and submissions received in response

4.3.1 The draft determination was issued to the parties for comment on DD MM 2018.

5. The experts' report

5.1 On 11 May 2018 I engaged the experts (refer paragraph 1.7) to provide their opinion on the fire safety design proposed by the applicant's fire engineer, taking into account any relevant technical comment made by FENZ.

5.2 I also advised the experts that it appeared the racking installation was a first use fit-out in the building rather than an alteration to an existing building to which section

112 applied. Accordingly, I advised that their expert opinion should be in relation to the fire safety of the building as a whole **treated as for a new installation**.

5.3 The experts received copies of the material supplied by parties and made a site visit on 18 May 2018. On 28 May 2018 they requested any further analysis or details available to show how compliance would be achieved, given the FEB ~~contained~~ **indicated that modelling was proposed** to demonstrate compliance, but **did not provide** the results of this modelling. On 29 June 2018, as I received no further information from the applicant, I asked the experts to finalise their report. I received this **report** on 19 July 2018 and sent copies to the parties for comment.

5.4 In the experts' opinion:

- the building as currently constructed with the internal racking fit-out **installed** does not comply with Code clauses C1-C6 Fire safety
- the alternative solution approach based on the FEB will not result in compliance with these clauses, and
- additional quantitative fire engineering analysis will be required to support the demonstration of compliance.

5.5 The experts note that the FEB's proposal for an alternative solution only outlines ~~this~~ **the intended** approach and does not provide all documentation and assessments necessary to determine Code compliance. However, in their view (in summary):

- The proposed use of an equivalency method with Acceptable Solution C/AS5⁹ for the mezzanine (regarding means of escape) is not sufficient to show compliance with Clauses C4.3 and C5.6.
- The inherent fire resistance of the mezzanine flooring and supporting system using AS 1720.4¹⁰ is not considered adequate to comply with Clauses C4.3 and C5.6 (the experts said this standard **was** applicable to timber, and a number of timber products, but not to particle board).
- There is a lack of information demonstrating compliance for smoke control within the warehouse ~~caused by~~ **as a consequence of** the extended mezzanine floor.
- There is a lack of information demonstrating compliance with the requirements for firefighting access and operations.

5.6 The experts also reviewed the alternative solution proposal against the relevant Acceptable Solutions C/AS5 and C/AS2¹¹. They considered there were the following departures:

- the mezzanine floor area, at 452 m², is well above the maximum for intermediate floors of 35m² (considering the building as a warehouse with storage higher than 3 m)
- the mezzanine's construction and supports (i.e. particle board flooring on a light steel frame system) do not achieve the minimum required fire resistance rating of 30/30/30 and 30/-/- respectively, and
- more exit signs are needed throughout the building to indicate escape routes through the racking system.

⁹ C/AS5 (buildings used for business, commercial and low level storage) dated November 2017

¹⁰ AS 1720.4-2006 Timber structures Fire resistance for structural adequacy of timber members

¹¹ C/AS2 (buildings used for sleeping) dated November 2017

6. Discussion

6.1 The matter to be determined is whether the proposed building work relating to fire safety complies with the Building Code.

6.2 As noted earlier (paragraph 5.2), I consider the installation of the racking and mezzanine floor to be the first use fit-out for the warehouse rather than an alteration to an existing building. In doing so, I appreciate that a code compliance certificate was issued **for the warehouse** in 2015. However, the building consent documentation I have seen does not include any racking fitout or similar; yet the installation of this – which is building work– would clearly **be have been** required in a subsequent construction stage given the building’s intended use as a warehouse.

6.3 I refer here to a previous determination (No 2004/5) in which the Building Industry Authority (an antecedent to the Ministry) considered the argument that a first use fit-out **within a new building could be treated as** was an alteration to a **that** building. In its determination the Building Industry Authority said:

... In the view of the [Building Industry Authority], the fit-out of a particular area in the shell of a building to suit the needs of the first tenant is part of the construction of the building and cannot be treated as an alteration of an existing building. The various building consents were all for stages of construction, not for alterations. In other words, the Authority takes the view that a building is to be treated as a new building under construction until all of it is actually completed and ready for use.

6.4 Therefore, it is my view that the proposed building work should comply fully with the Building Code under section 17, and not comply “as near as is reasonably practicable” with the Building Code with regard to means of escape from fire under section 112(1)(a)(i) as outlined in the FEB: I asked the experts to consider the compliance of the building on this basis.

6.5 As outlined in section 5 of this determination, the experts consider that the building as currently constructed with the racking and mezzanine fit-out does not comply with the Building Code’s fire safety requirements. They also consider that the alternative solution proposal presented by the applicant’s fire safety engineer would not lead to compliance, and additional quantitative fire engineering analysis is required **to demonstrate this**.

6.6 I acknowledge the applicant’s frustrations in endeavouring to demonstrate compliance for fire safety, especially given the initial visit from a FENZ representative (paragraph 3.3). However, I have considered the experts’ report and agree with its key findings; namely that:

- the warehouse with the racking and mezzanine installed does not currently comply with Code clause C, and
- the proposed fire design requires additional analysis – or indeed other changes – before it will lead to this compliance.

6.7 I also note that there appear some valid concerns given the large size of the mezzanine and the fire rating of its flooring (particle board) and support frame. These are highlighted by the experts’ consideration of the proposed fire design against the relevant Acceptable Solutions (paragraph 5.6). However, I acknowledge that Acceptable Solutions only provide one way to demonstrate compliance.

6.8 I also note, the travel distance measurement that is provided **by the applicant** to determine the total open path **available** commences at the mid-point of the mezzanine-. **In my view, this** ~~which~~ does not provide a worst case travel distance

that would occur for an occupant at one end of the mezzanine yet unable to use the closest exit.

- 6.9 Accordingly, having considered the experts' report, submissions from parties and other evidence in this matter, I conclude that the proposed building work with respect to fire safety does not comply with the fire safety clauses of the Building Code.
- 6.10 While the experts have raised a number of matters that are considered to be non-compliant, FENZ and the applicant's fire engineer had narrowed the outstanding matters to two key areas of concern, refer paragraph 3.9. The parties may wish to use this as a basis **start point** for identifying remedial work **required to make the installation compliant**.
- 6.11 The application has been made in respect of the issue of a certificate of acceptance for the racking system and mezzanine floor. However, a certificate of acceptance can only be issued in respect of work consider to be code compliant. Once the parties have agreed on the work required to bring the racking system and mezzanine floor into compliance with the C Clauses, a certificate of acceptance can be issued for the existing components of these elements consider to be compliant, with a building consent sought for the remedial work required to achieve compliance.

7. The decision

- 7.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the building work proposed to the racking system and mezzanine floor will not comply with the Building Code with respect to Clause C Fire Safety

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on DD MM 2018.

Katie Gordon
Manager Determinations

Disclaimer: This document is a draft only and is based on the evidence that I have received so far. As such, it is likely to contain items that may be subject to alteration, addition or deletion. The draft is confidential to the parties.

Appendix A

A.1 The relevant sections 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.

112 Alterations to existing buildings

- (1) A building consent authority must not grant a building consent for the alteration of an existing building, or part of an existing building, unless the building consent authority is satisfied that, after the alteration,—
- (a) the building will comply, as nearly as is reasonably practicable, with the provisions of the building code that relate to—
 - (i) means of escape from fire; and
 - (ii) access and facilities for persons with disabilities (if this is a requirement in terms of section 118); and
 - (b) the building will,—
 - (i) if it complied with the other provisions of the building code immediately before the building work began, continue to comply with those provisions; or
 - (ii) if it did not comply with the other provisions of the building code immediately before the building work began, continue to comply at least to the same extent as it did then comply.