



WHEN A BUILDING CONSENT IS NOT REQUIRED

How should work that doesn't require a building consent be dealt with in consent applications to a Building Consent Authority?

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A recent building consent application for alterations to an existing 1920s building included a reference to replacing the roof. The new roof was to use the same material as the existing roof – corrugated galvanised mild steel – and was therefore not considered part of the building consent application.

The roof replacement was, however, included in the application in order to provide as much information as possible to the Building Control Authority (BCA) and to ensure there was a comprehensive record of the building on file.

In response, the BCA requested evidence to show that the existing roof structure complied with current Building Code requirements and referred the applicant to sections 112 and 17 of the Building Act.

Was the BCA's request for additional information justified, and are those sections of the Building Act relevant?

A closer look at the Building Act

Section 112 of the Building Act covers alterations to existing buildings and describes the conditions that must be met and exemptions that may apply for a building consent to be granted. Section 17 states that all building work must comply with the Building Code whether consent is required or not. While these sections have some relevance to a building consent application, neither details the situation where a building consent is not required.

Section 41 of the Building Act, entitled 'Building consent not required in certain cases', describes situations that are exempt from building consents. It states that 'any building work described in Schedule 1' does not require building consent. Schedule 1 lists exempt building work and states 'a building consent is not required for ... any lawful repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position'.

This paragraph clearly says that, when replacing existing materials with similar materials, no building consent is required. However, the additional section 17 proviso – that all building work must comply with the Building Code – means that the work still requires a building consent if the materials being replaced did not meet the Code's minimum durability requirements

or, for roofing, had not been weathertight. In this case, the roof durability had exceeded the minimum requirement of not less than 15 years.

Consent exemptions recently extended

Changes to Schedule 1 of the Building Act came into effect on 23 December 2010 to extend these exemptions. A Department of Building Housing (DBH) publication entitled *A guide to building work that does not require a building consent – Building Act 2004: 2nd Edition* provides detailed explanations and examples.

In one roofing example, the guide states that 'an exemption could apply [when] replacing 30-year-old corrugated iron roof cladding, where that cladding has achieved its Building Code durability requirement (lasted more than 15 years) and the replacement cladding is a comparable material'.

Determinations provide precedents

The DBH's determination process also provides several precedents for building consent exemptions.

REPLACING PART OF A ROOF

Determination 2008/62 involved a dispute over a building consent to replace part of a roof. The 35-year-old trough-section galvanised steel roof had never leaked despite being laid to a 1° slope. The replacement roof was to be laid to the same slope and was to include a 600 mm extension to the roof edge to match the eaves of the rest of the roof. The BCA refused to issue a building consent because the replacement roof did not meet the minimum 3° pitch for trough-section roofing given in Acceptable Solution E2/AS1.

However, E2/AS1 is only one way to comply with the Building Code – following it is not mandatory. Despite the lower roof pitch, the new roof replaced an existing roof that had lasted well in excess of the minimum 15-year durability requirement of the Building Code without leaking. Therefore, the determination found that no consent was required.

In addition, the new roof section was only a very small part of the total area to be reroofed, there was no ridge flashing and junctions occurred only over an open deck, so the new section was likely to perform at least as well as the original roof. The determination, therefore, found that the

new roof section complied with Building Code clause E2, and the BCA's refusal to issue a building consent was reversed with regard to the pitch of the roof.

EXTENDING A ROOF

A similar issue occurred in 2009 for consent to extend a former dental clinic. The extension was to use the same roof cladding (corrugated, galvanised mild steel) laid at the same 6° pitch as the existing roof.

Under E2/AS1, however, this pitch is too low for corrugated-profile roofing, and the BCA refused to issue a consent.

Determination 2009/81 found that, while the roof did not comply with E2/AS1 and could therefore not be assessed as an Acceptable Solution, its performance could be assessed as an Alternative Solution.

As the existing roof had performed satisfactorily for over 40 years (meeting both clauses E2 *External moisture* and E3 *Internal moisture*) and the extension would use the same continuous, long-run, corrugated, galvanised mild steel extending to the ridge flashing, with additional purlin support included, it was determined that the new roofing was likely to comply with Building Code clause E2 as an alternative method.

In these situations, determinations found that a replacement material that meets the minimum performance requirements does not require a consent.

Information in consent applications

Where work that doesn't require a building consent is included in documentation, a consent could be applied for using the alternative method compliance path.

BCAs use nine compliance paths to assess the information in consent applications against the Building Code's requirements. In the situation above, comparing with in-service history (compliance path 3) and expert opinion (compliance path 4) are two methods to prove the durability and weathertight performance of the roof.

Evidence to support in-service history could include photographs of the roof and the roof space to show there has been no water ingress, while evidence to support expert opinion might be a report prepared by a building surveyor. ◀