

Blog,

Determination 2025/061, Concerning: -

The BCA's refusal to issue a Code Compliance Certificate (CCC) or a Certificate of Acceptance (COA) in relation to the construction of a "Lean-to" type addition to a house in Nelson.

The case was about the Building Consent Authorities (BCA) decision to refuse a CCC and/or a COA in 2024, under the Building Act 2004, section 177(1) (b) and 2 (d) and (3) (B).

The Building Consent (BC) concerning two small extensions to expand and alter living areas and a lean-to workshop on the side of the garage. The walls were clad with a proprietary polystyrene extruded plaster system. A minor variation was required when the cladding works was extended to include the eastern and southern elevations. Additional timber framing work was noted in the BCA's inspection report as well as the Polystyrene cladding being substituted for aerated concrete panels known as an ACC cladding system.

An amendment was lodged for the changes; however, this was refused by the BCA on the basis that the works had already been completed.

The addition to the garage was 8 square meters, and replaced a similar "lean-to" shed in much the same position. This matter was in dispute.

The change from EPS to an ACC cladding system was approved as a minor variation and at a later inspection, the additional areas clad on, appear to have been accepted, however, the BCA called for a COA application in respect of the lean-to shed. It appears the position the BCA took was, that the construction of the garage lean-to had implications for the weathertightness of the garage and therefore they would not be able to issue a CCC until the COA for the "lean to" had been approved.

A COA Application was lodged to which the BCA response was to refuse the application under section 99A which requires that, when refusing an application, the reasons for refusing the application were provided. Something I see frequently, is that when refusing a COA, BCA's provide broad generic reasons, which lack sufficient detail for the applicant to identify the specific non-compliance issue(s) or the remedies required with reference limited to the New Zealand Building Code clauses.

The BCA stated a COA cannot be issued if the building work within that scope does not comply with the Building Code. They believed that evidence of compliance had not been established, hence the COA was refused.

Building Act - Section 95A

Section 95A applies where a BCA refuses to issue a CCC. It provides: -

If a BCA refuses to issue a CCC, the BCA must give the applicant written notice of –

- (a) The refusal: and
- (b) the reasons for the refusal.

A generalised refusal, or a refusal which does not adequately indicate the specific non-compliance is not sufficient for the authority to meet its obligations under section 95A. The areas of building work that the authority does not believe comply, must be identified. Reasons must be sufficiently explicit, specific, and clear, and be valid reasons why compliance has not been achieved. The letter must leave the applicant with a clear understanding of what is required for a COA to be obtained.

In this case, the determination author considered the BCA had not met the threshold required by section 95A (b)

The refusal to issue a Certificate of Acceptance (COA).

Section 96(1) and (2) provides that an authority may issue a certificate of acceptance for building work where a Building Consent was required, but was not obtained.

A COA can be approved “only if the BCA is satisfied, to the best of its knowledge and belief, and on reasonable grounds, that insofar as it could ascertain, the building work complies with the Building Code”.

The applicant must therefore provide with the application, sufficient documentation to allow the BCA to be able to ascertain, on reasonable grounds, how and why the building work complies with the New Zealand Building Code. This may include inspections, judgement, plans, supporting documents and specific other information.

Parts of the works that the BCA’s inspector cannot ascertain complies can be excluded on the COA. I.e., hidden elements such as insulation in the wall, may be grounds to state the BCA is not satisfied the work complies with NZBC Clause H1. On the other hand, if there is an invoice and H1 calculation in the documents, that may be sufficient to ascertain and be satisfied on reasonable ground, there is compliance.

In the event a BCA refuses to issue a COA, subsequently provides its reasons, an applicant, armed with the reasons may choose to provide further evidence with a view to resolving the status of that building work and to be able to obtain a COA.

Decision.

The determination author found that in refusing the CCC and the COA, the BCA did not meet the requirements of section 95A(b) of the Act. The BCA decision was reversed and it is for the authority to make a new decision considering the findings in the determinations.

The determination author also found the BCA's reasons for refusing to issue the COA did not meet the requirements of section 99A(b). Again, the BCA's decision was reversed and it is for the authority to make a new decision considering the findings in the determinations.

Conclusion.

My experience with CCC and COA applications has been that, to get them approved takes persistence. It is not uncommon for initial applications to be refused. Refusal letters I have seen and had to address, often lack clarity. The decision issued in respect of the case read to prompt this blog shows that when refusing a CCC and or/a COA, BCA's have an obligation under the Building Act to provide sufficiently clear reasons for the refusal, so that the applicant can understand what additional information needs to be provided and what matters need to be addressed, before relodging the application.