



THIS IS A GOOD REMINDER NOT TO FORGET ABOUT THE DURABILITY REQUIREMENTS EXCEPTION TO BUILDING WORK.

Those tricky building consents

Exemptions, exceptions and alphabet soup.

The decision of *Plastertech Systems Limited & Simple Construction Limited v Auckland Council* [2018] NZHC 3400 is a good reminder about how Schedule 1 of the Building Act 2004 operates when it comes to what building work is exempt from requiring a building consent and what is not.

The case was an appeal from a District Court decision which found the council was right to have prosecuted the defendants, Plastertech and Simple Construction for replacing, without obtaining a building consent, a large window which had been leaking.

Pursuant to section 1 of the Building Act 2004, building work does not require a building consent if it is repair and maintenance using comparable materials in the same position. However, if the repair and maintenance is of an item that has failed to satisfy the durability provisions of the building code, then a building consent is required.

Plastertech and Simple Construction maintained the replacement of the window was repair and maintenance and was, accordingly, an exemption to the requirement to obtain a building consent.

The critical issue in the case was whether replacement of the window involved any structural elements. As most readers will be aware, structural elements in a residential building must have a durability requirement of 50 years pursuant to the building code.

The council submitted the window assembly included double studs which were a component of

the wall that provided structural stability for the window, the external cladding and the internal wall lining.

Plastertech and Simple Construction argued the studs were not walls and did not provide structural stability to the building.

Amusingly, the Court commented with reference to the relevant legislation: “Understanding building consent requirements involves navigating a legal thicket of provisions, exemptions and exceptions to exemptions, all strewn with alphabet soup”.

The Court found the double studs were an integral part of the structural stability of the building and therefore were required to fulfil the 50-year durability requirement. Accordingly, a building consent was required and the appeal was dismissed.

Often the focus is on the fact that the building work is repair and maintenance using comparable products when considering whether an exemption under Schedule 1 of the Building Act 2004 applies.

This case is a good reminder not to forget about the durability requirements exception to building work which one might think is exempt under Schedule 1.

Also of significance is the extent to which Plastertech and Simple Construction were convicted and fined.

Plastertech was fined \$25,000 and Simple Construction \$10,000 with 90 percent of the fines ordered to be paid to the council. **LG**

