



The devil is in the detail

Consent condition trips up council.

COUNCILS SHOULD ENSURE THEY CLOSELY CHECK THAT THE ACTUAL SCOPE AND INTENTION OF THE CONDITIONS OF THE BUILDING CONSENT HAVE BEEN SATISFIED.

The decision of *Southland Indoor Leisure Centre Charitable Trust v Invercargill City Council and A S Major* [2015] NZHC 1983 was a claim against the council for losses sustained as a result of the Southland Stadium collapsing following a heavy snow storm in September 2010.

The plaintiff Trust alleged that the council was negligent when it issued the code compliance certificate for the stadium.

The high court found negligence had been established as the council could not demonstrate that at the time it issued the code compliance certificate, it had reasonable grounds to conclude that the construction complied with the building code.

The construction of the stadium occurred in 2000. Unusually, it became clear during construction that something had gone wrong in the design or building work. The roof trusses had sagged and something needed to be done.

An independent engineer was engaged to investigate. The cause of the sagging was that the trusses had been under-designed and were not able to take the load.

A redesign occurred and a remedial building consent was applied for and issued.

The council imposed conditions in the building consent. One was for the engineer to confirm in writing that the truss precamber measurements were in line with the peer review engineer's recommendations. The second was for the engineer to provide a PS4 producer statement – construction review.

The court noted the council had elected not

to inspect the structural work itself during construction as it did not have the inhouse expertise. Instead, the council imposed conditions in the consent for the engineer to inspect and provide a PS4 – construction review.

It is of note that the court made no criticism of the council for electing not to inspect and relying upon the engineer's expertise.

In due course, after construction was complete, the engineer provided a PS4 producer statement – construction review, which satisfied one of the building consent conditions.

In respect of the other building consent condition, instead of obtaining the truss precamber measurements, the council received measurements of the heights of the trusses.

Had the truss precamber measurements been provided, they would have shown that the remediated trusses had sagged below the peer review engineer's requirements. There was evidence that had these truss precamber measurements been supplied to the council, as was required by the building consent condition, this would have prompted the council to make further enquiries.

The evidence established these further enquiries would have resulted in the defects which led to the collapse in 2010 being revealed.

While this decision is being appealed to the court of appeal, it is a very good reminder about the importance of checking. When coming to issue a code compliance certificate, councils should also ensure they closely check that the actual scope and intention of the conditions of the building consent have been satisfied. **LG**




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