



Determination 2011/023

The issuing of a code compliance certificate for a relocated residential garage at 44 Miro Street, Inglewood

1. The matters 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, John Gardiner, Manager Determinations, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department.
- 1.2 The parties to the determination are:
- the applicant, the New Plymouth District Council carrying out its duties and functions as a territorial authority and a building consent authority (“the authority”)
 - the building owner, Ms N Waters (“the owner”).
- 1.3 I take the view that the matter to be determined² is whether the decision of the authority to issue a code compliance certificate was correct.
- 1.4 In making my decision, I have considered the submissions of the authority and the other evidence in this matter. I also note that the relevant provision of the Act is set out in Appendix A.

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

² In terms of sections 177(1)(b) and 177(2)(d) of the Act. In this determination, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

2. The building work

- 2.1 The building work in question relates to the relocation of a residential garage with an overall size on plan of 6m x 6.2m. The consented plan was for the garage to be bolted onto a new concrete slab having perimeter thicknessings. The slab and thicknessings were to be poured over a polythene damp-proofing course laid on compacted hardfilling. The thicknessings and slab were reinforced with three longitudinal D12 bars with D12 starters at 600mm centres.
- 2.2 In addition, there was to be provision for stormwater disposal.

3. Background

- 3.1 On 3 October 2005 the authority issued a building consent (B05/75405) for the relocation of the garage.
- 3.2 On 12 November 2009 an authority building inspector inspected and passed the pre-poured foundation work, including the reinforcing. No concrete had been poured at this stage.
- 3.3 The owner applied for a code compliance certificate for the garage, noting that the building work had been completed by October 2009 and dating the application as 12 November 2009.
- 3.4 According to the authority, at some time after this date, a dispute arose between the builder and the owner. As a result of this dispute the builder removed all the reinforcing and other sub-floor elements and reinstated the area back to lawn.
- 3.5 The authority's building inspector who had inspected the work on 12 November 2009 issued a final building inspection checklist that passed the work required for the relocation. The list, which was dated 8 June 2010, also recommended that a code compliance certificate be issued. The inspector also completed a "Project File Checklist" dated 24 June 2010 relating to the garage.
- 3.6 Based on the inspector's recommendations, the authority issue a code compliance certificate for a completed garage on 29 June 2010.
- 3.7 However, according to the authority, the building work had never been completed and the building inspector in question had not carried out a final inspection, despite issuing both the final check and the project file lists.
- 3.8 The application for a determination was received by the Department on 5 January 2011.

4. The submissions

- 4.1 The authority forwarded a submission to the Department dated 23 December 2010. The submission set out the background to the matter in question and requested that the code compliance certificate be revoked on the grounds that:
- the building work carried out on the garage was not completed and did not comply with the requirements of the Building Code.
 - the decision of the authority to issue the code compliance certificate was an error as the work was not completed but was based on the inspector's confirmation that he had completed a final inspection.
- 4.2 In a letter to the Department dated 24 January 2011, the authority described the dispute between the owner and the builder and its consequences, and confirmed that a final inspection had not been undertaken.
- 4.3 The authority provided copies of:
- the building and site plans
 - the building consent and code compliance certificate documentation
 - the inspection reports.
- 4.4 The owner did not acknowledge the application or make a submission in response.
- 4.5 A draft determination was issued to the parties for comment on 9 February 2011. The authority accepted the draft without comment in a response received by the Department on 24 February 2011. The Department repeatedly sought a response from the owner and a final request for submissions was made on 17 March 2011; however the owner elected to make no submission.

5. Discussion

- 5.1 There is no dispute that the majority of the garage relocation work was not completed. In addition, any building work that had been carried out was almost entirely removed by the builder. Therefore, there was no compliance with section 94(1)(a), which requires completed building work to comply with the building consent. Neither was there any compliance in terms of the Building Code.
- 5.2 Accordingly, I agree with the authority that the code compliance certificate should be withdrawn.
- 5.3 The outcome of events, as set out in this determination, was the issuing of a code compliance certificate for building work that practically did not exist. Accordingly, I urge the authority to fully brief its building inspection officers as to their responsibilities in carrying out building inspections and in recommending that code compliance certificates be issued.

6. The decision

- 6.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the decision of the authority to issue a code compliance certificate for building consent BC05/75405 is reversed.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 28 March 2011.

John Gardiner
Manager Determinations

Appendix A: The relevant legislation

A.1 The relevant section of the Building Act is:

94 Matters for consideration by building consent authority in deciding issue of code compliance certificate

(1) A building consent authority must issue a code compliance certificate if it is satisfied on reasonable grounds, —

(a) that the building work complies with the building consent...