



Determination 2016/054

The decision to issue a code compliance certificate in respect of earthquake repairs to a house at 316 Papanui Road, Christchurch

Summary

This determination reverses the issue of a code compliance certificate that has been issued in error by the authority. The consented work was earthquake repairs to a house, and there is agreement between all parties that the code compliance certificate has been issued in respect of work that is not considered compliant. The determination discusses the authority's ability to reverse the code compliance certificate.

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 and Assurance, Ministry of Business, Innovation and Employment ("the Ministry"), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to the determination are:

- the owners of the house, C and R Jeffs ("the owners")
- the licensed building practitioner concerned with the building work, R Lawrence ("the LBP")
- the Christchurch City Council ("the authority"), carrying out its duties as a territorial authority or building consent authority. The authority applied for the determination.

1.3 This determination arises from the authority's decision to issue a code compliance certificate, which it now wishes to withdraw, in respect of building work carried out on the owners' house (refer paragraph 2.1). After issuing the code compliance certificate, the authority was made aware that some of the completed building work did not comply with the building consent nor the Building Code.

1.4 The matter to be determined² is whether the authority was correct to issue a code compliance certificate for the building work carried out on the owners' house (refer paragraph 2.1).

1.5 In making my decisions, I have considered the submissions of the authority and the other evidence in this matter.

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

² Under sections 177(1)(b) and 177(2)(d) of the Act

2. The building work

- 2.1 The house is a substantial two-storeyed timber-framed house. The foundations comprise a perimeter concrete foundation with suspended timber floor on piles. The house is clad with timber weatherboards and a cedar shingle roof, and a brick chimney.
- 2.2 The house was damaged during the 2010/2011 Canterbury earthquake sequence³ and a building consent was issued on for repairs to the house. The consented work included:
- foundation repairs (relevel and rebuild)
 - a minor addition to the ground floor
 - wall bracing repairs
 - install timber-framed ‘chimney’ enclosure and wood-burning fires.

3. Background

- 3.1 The authority issued a building consent for the building work outlined in paragraph 2.2 on 3 December 2014.
- 3.2 On the 11 February 2016 the authority issued code compliance certificate No. BCN/2014/10964. The authority had inspected the owners’ house and confirmed that the building work was complete.
- 3.3 Following the issue of the code compliance certificate, the engineer involved with the work identified that some of the building work had not been completed in accordance with the building consent and was not compliant. Remedial work was required on the building’s foundations and chimney structure. The owners’ have since rectified this work so that the completed work now complies with the building consent and Building Code. The engineer has subsequently completed a PS4⁴ and filed it with the authority.
- 3.4 On the 27 September 2016 the Ministry received an application for a determination from the authority requesting that the code compliance certificate No. BCN/2014/10964 be rescinded, so that the building work can be considered for the issue of a new code compliance certificate.

4. The submissions

- 4.1 The supporting documentation provided by the applicant included:
- a cover letter from the authority and the authority’s application for determination
 - a summary of the events/background to the dispute
 - a DVD containing building consent and code compliance certificate application(s); building consent amendments; building consent; email correspondence between the authority
 - a copy of the code compliance certificate dated 11 February 2016

³ The Canterbury Earthquake Sequence includes the ‘Darfield Earthquake’ of 4 September 2010 with a moment magnitude of 7.1, followed by a series of aftershocks that included a 6.3 magnitude shake on 22 February 2011.

⁴ PS4 Construction Review Producer Statement

- email correspondence between the owners and the engineer
 - a submission from the owners setting out their view of the matter.
- 4.2 In the application for determination the authority submit that the original building work was not carried out in accordance with the building consent. While the authority originally accepted that the building work was code-complaint and issued the code compliance certificate, the authority is now aware, based on further investigation, the building work did not comply with the building consent nor the Building Code.
- 4.3 The building work has since been rectified. The authority has applied for a determination to allow it to withdraw the code compliance certificate. Withdrawal of the code compliance certificate will allow the authority to issue a new code compliance certificate in respect of the now completed building work.
- 4.4 The draft determination was issued to the parties for comment on 25 October 2016.
- 4.5 The authority and the LBP both accepted the draft without further comment in responses received on 25 October 2016.
- 4.6 The applicant accepted the draft without further comment in a response received on 2 November 2016.

5. Discussion

5.1 The building work

- 5.1.1 The engineer identified that some of the building work had not been carried out in accordance with the building consent and was not considered compliant. The parties do not dispute that the original code compliance certificate was issued in error. The owners have submitted that remedial work was required to the building's foundations and the timber-framed chimney structure.
- 5.1.2 The authority has requested that the code compliance certificate No. BCN/2014/10964 is withdrawn to allow a new compliance decision to be made, and a new code compliance certificate to be issued.

5.2 The withdrawal of the code compliance certificate

- 5.2.1 As stated in the High Court decision of *Suanuu v Hi-Qual Builders Ltd*⁵, the only way an authority can seek to withdraw a code compliance certificate is by way of an application for a determination of the authority's decision to issue the certificate under section 177 of the Act⁶.
- 5.2.2 This approach has been applied in Determination 2009/06⁷ regarding the issue of a code compliance certificate for a house. As there have been no changes to the Act or the common law regarding this issue, I am of this opinion the decision reached in that determination also applies equally to the present case. I consider that once a final administrative decision in the exercise of a statutory power has been made and communicated to the persons to whom it relates, it is irrevocable and there is no provision in the Act permitting the authority to rescind the code compliance certificate.

⁵ Obiter dicta in *Suanuu v Hi-Qual Builders Ltd* HC Auckland CIV-2008-404-1576, 26 June 2008.

⁶ In this determination, references to sections are to sections of the Act.

⁷ Determination 2009/006: *Determination regarding the issuing of a code compliance certificate for a house constructed of precast concrete panels*, Department of Building and Housing, 13 February 2009.

5.2.3 Section 94(1) of the Act states that ‘a building consent authority must issue a code compliance certificate if it is satisfied, on reasonable grounds, that the building work complies with the building consent’. As there have been changes to the original building work, the authority must ensure that its amended building consent reflects the new building work on which the code compliance certificate will be based.

5.3 What is to be done now?

5.3.1 Once the authority has withdrawn the code compliance certificate in accordance with this determination, it can issue a new code compliance certificate, provided it is satisfied that the relevant building work now complies with the building consent and Building Code. If there are any outstanding items of disagreement these can be referred to the Chief Executive for a further binding determination.

6. The decision

6.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the authority’s decision to issue a code compliance certificate No. BCN/2014/10964 for the consented building work is reversed.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 7 November 2016.

John Gardiner
Manager Determinations and Assurance