

**IN THE DISTRICT COURT
AT WHANGAREI**

CIV - 2008/088/498

UNDER

The Building Act 2008

IN THE MATTER

of an appeal against decisions
reached under Determination
2008/38

BY

Ian Beattie
Licensed Building Practitioner
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Old Russell Road
RD 4, HIKURANGI 0184

Appellant

NOTICE OF APPEAL TO THE DISTRICT COURT
(Section 208, The Building Act 2004)

Party Acting – Ian Beattie
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TAKE NOTICE that the Appellant appeals against the decisions reached under Section 188 of the Building Act 2004.

Part 1 – Decision appealed against

- The Determination No. 2008/38
- Signed for and on behalf of the Chief Executive of the Department of Building & Housing by John Gardiner, Manager of Determinations
- On the 20th May 2008
- Determined that –

“In accordance with Section 188 of the Building Act 2004, I hereby determine that –

- the restaurant complies with Clauses C3 and G11 of the Building Code
- the restaurant does not comply with Clause G4 of the Building Code and accordingly, I reverse the Territorial Authority’s decision to issue a Code Compliance Certificate in respect of Consent No. 76880
- the ‘protection of other property’ provisions in Clauses B1, C4 and E1 are not relevant in the context of this Determination
- the Territorial Authority was correct in issuing a Certificate of Acceptance and accordingly I confirm its decision to do so

Part 2 – Grounds

The Appellant bases this Appeal on the following grounds –

1. That the Determination includes the following errors of fact –
 - (a) The establishment of the licensed restaurant was not a component of either previous Building Consent No.’s 61284 or 76880.
 - (b) In contravention of Section 45, no documented evidence was submitted with the establishment of the licensed restaurant to demonstrate the development would comply with the New Zealand Building Code either as an amendment to the existing Building Consent No. 76880 or as a new building consent.
 - (c) In contravention of Sections 92 and 94, no documentary evidence was submitted to demonstrate that the construction of the first level accommodation under Building Consent No. 76880 meets the requirements of the New Zealand Building Code and that a Code Compliance Certificate should have been issued.
 - (d) In contravention of Sections 96, 97, 98 and 99, no documentary evidence was submitted with the application for a Certificate of Acceptance to demonstrate that the existing licensed restaurant did meet the requirements of the New Zealand Building Code.

- (e) In contravention of Sections 100, 101, 102 and 103, no compliance schedule was obtained for a building requiring 'specified systems' to operate as a licensed restaurant.
- (f) The licensed restaurant has continued to operate without a Compliance Schedule and is not subject to the annual scrutiny of a Warrant of Fitness as required under Sections 108, 109, 110 and 111 of the Building Act 2004.
- (g) In contravention of Sections 114 and 115, no documentary evidence was submitted to the Whangarei District Council for the 'change of use' of the original store and café to a licensed restaurant.
- (h) The establishment of the licensed restaurant contravened Section 115 (b) of the Building Act 2008 in that there is no evidence to substantiate that the development complies with;

“sub-section (i)

comply, as nearly as is reasonably practicable and to the same extent as if it were a new building, with the provisions of the building code that relate to –

- (A) means of escape from fire, protection of other property, sanitary facilities, structural performance and fire-rating performance; and
- (B) access and facilities for persons with disabilities (if this is a requirement under Section 118); and

or sub-section (ii)

continue to comply with the other provisions of the building code to at least the same extent as before the change of use.”

2. That the Determination includes the following errors of Law –

- (a) There is insufficient evidence made available to the Department of Building & Housing for the Determinations Manager to conclude that the 'restaurant' complies with Clauses C3 and G11 of the New Zealand Building Code.
- (b) There is insufficient evidence to determine that the Code Compliance Certificate for Building Consent No. 76880 was incorrectly issued as it pertains to the construction of the first level accommodation and has no bearing on whether the restaurant established on the ground level complies with Clause G4 of the New Zealand Building Code.
- (c) There is insufficient evidence to determine that the provision of Clauses B2, C4 and E1 are not relevant.
- (d) There is insufficient evidence to determine that the Territorial Authority was correct in issuing a Certificate of Acceptance for the establishment of the ground level restaurant.

Part 3 – Relief Sought

The Appellant requests that the decision reached in Determination 2008/38 on 21st May 2008 should be modified to reflect the actual situation that exists within the property of the Parua Bay Store, -

- (a) That the Territorial Authority be directed to obtain sufficient evidence to demonstrate that all aspects of the licensed restaurant meet the requirements of the New Zealand Building Code for the issue of a Certificate of Acceptance.
- (b) That the Territorial Authority be directed to require the removal of all structures that impinge on the public thoroughfare that have been constructed without the authority of a building consent.
- (c) That the Territorial Authority be directed to obtain amendments to the existing Building Consent No. 76880 to verify compliance of all aspects of the development of the first level accommodation for the issue of a Code Compliance Certificate.
- (d) That the Territorial Authority be directed to issue a Compliance Schedule and receive an annual Warrant of Fitness before the operation of the licensed restaurant should continue.

This Appeal is made in reliance upon;

- (1) Section 208 of the Building Act 2004
- (2) The matters raised in the annexed Affidavit of Ian Beattie.

DATED at Whangarei this 10th day of July 2008 
Ian Beattie
Licensed Building Practitioner

TO - * The Registrar of the District Court at Whangarei
AND TO - The First Respondent, Department of Building and Housing
AND TO - Parties to the Determination –
The Chief Executive, Whangarei District Council as the Territorial Authority
M & E Owles as owners of 1035 Whangarei Heads Road, Whangarei as Applicants
and neighbours of the Parua Bay Store
J & L Iersel as owners of 1037 Whangarei Heads Road, Whangarei as the owners of
the Parua Bay Store

** Take notice that a ten minute first call for this appeal will be on Tuesday 22 July 2008 at 10am in the District Court at Whangarei*