

13 JUN 2008

**IN THE DISTRICT COURT  
AT WELLINGTON**

Under the                    **Building Act 2004** ("the Act")

In the matter of         An appeal from a decision of The Department of Building  
and Housing, Determination No. 2008/40.

Between                    **SELWYN DISTRICT COUNCIL**, a local authority duly  
constituted under the provisions of the Local Government  
Act 2002, having its administration office at 2 Norman Kirk  
Drive, Rolleston.

   Appellant

And                            **DEPARTMENT OF BUILDING AND HOUSING** a  
Department of State

   Respondent

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**NOTICE OF APPEAL**

**Dated the 12th day of June 2008**

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**BUDDLE FINDLAY**  
Barristers and Solicitors  
Christchurch

Solicitor Acting: **Rachel Dunningham**  
Tel 64-3-379 1747 Fax 64-3-379 5659 PO Box 322 DX WP20307 Christchurch

**TAKE NOTICE** that the appellant **SELWYN DISTRICT COUNCIL** appeals to the District Court against the decision of the Department of Building and Housing in Determination 2008/40, dated 22 May 2008. That decision required the appellant to issue a code compliance certificate for building work located at 58 Levi Road, RD 5, Christchurch, once it is satisfied on reasonable grounds that the building complies with the building consent in accordance with section 94 of the Building Act 2004.

The appellant appeals against the whole of that decision.

**UPON THE GROUNDS** that the determination is erroneous in law in that:

1. The respondent applied a wrong legal test in concluding there is no restriction on a territorial authority issuing a code compliance certificate after the two year anniversary of granting consent. (See paragraph 6.17).

Specifically the respondent did not apply the requirements of section 94 in light of the time frames specified in section 93 for making a decision on whether to issue a CCC. If no application for a CCC has been made within the two year period specified in section 93, a decision by a building consent authority to issue a CCC can only be made more than 20 days after the end of the two year period by agreement of both the building consent authority and the applicant. The applicant does not have an independent and unlimited timeframe in which it can make an application for a CCC, and oblige the building consent authority to assess it as if the application were made within two years of the grant of consent.

2. The respondent applied a wrong legal test when it concluded that the territorial authority needed to do more to inform its decision on whether or not the CCC should be issued, within the time period specified in section 93(1)(a), than rely on the fact that an energy work certificate was not supplied as required by section 94(3). (See paragraph 6.10).

Specifically the territorial authority was entitled, and did, within the 20 day period, decide not to issue a code compliance certificate in reliance on the failure to provide an energy certificate, because section 94(3) expressly provides that the absence of an energy work certificate is a sufficient reason to refuse to issue a CCC.

### **Relief sought**

3. The appellant seeks the following relief;

- (a) The reversal of the respondent's decision requiring the appellant to issue the CCC on the terms stated in paragraph 7.1 of the determination.



**Rachel Marie Dunningham**

Solicitor for Selwyn District Council

**DATED** this 12<sup>th</sup> day of June 2008

The applicant's address for service is at the offices of Buddle Findlay (attention Rachel Dunningham), 13th Floor, Clarendon Tower, 78 Worcester Street, PO Box 322, DX WP20307, fax 64-3-379 5659, telephone 64-3-379 1747 Christchurch.

TO: Registrar  
District Court  
43 - 49 Ballance Street,  
Lambton Quay  
Wellington

AND TO: Chief Executive  
Department of Building & Housing  
Level 6  
86 Customhouse Quay  
Wellington

AND TO: J M & H L Lamers  
Levi Road  
R D 5  
Christchurch