

**IN THE DISTRICT COURT  
HELD AT ROTORUA**

**CIV**

**BETWEEN**

**ROTORUA DISTRICT COUNCIL**

Appellant

**A N D**

**GRANT COLLINS, JOHN AND EILEEN GRUNDY,  
AND RICHARD AND KATY DAVIS**

Respondents

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**NOTICE OF APPEAL**

**DATED: 1 FEBRUARY 2012**

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Judicial Officer: TBA  
Next event: TBA

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**HEANEY & CO  
SOLICITORS  
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## NOTICE OF APPEAL

**TAKE NOTICE** that the appellant, the Rotorua District Council (**the council**), appeals the determination of John Gardiner of the Department of Building & Housing delivered on 23 December 2011 in determination 2011/119.

### **Determination**

1. By the determination, the Department of Building and Housing:
  - a) Revoked building consents 40165, 61264 and 60088.
  - b) Reversed the council's decision to issue the code compliance certificates for building consents 40165, 61264 and 60088.

### **Grounds of appeal**

The determination was erroneous in fact and law for the following reasons:

2. The determination manager erred in revoking building consents 40165, 61264, and 60088.
  - (a) Council relied on an earthworks completion report dated 27 November 2006 which stated that the land was suitable for construction of residential building in requirements of clause B1 of the Building Regulations 1992.
  - (b) Council received an earthworks completion certificate and a 1B statement of professional opinion as to suitability of land for building development on 12 December 2006 which stated: *"The filled grounds were suitable for erection thereon of residential buildings not requiring specific design in terms of the Building Act 2004"* when processing the building consents
3. The determination manager erred in finding that the council was aware of the condition of the land on which the buildings had been constructed and it should have taken this into account when processing the applications for code compliance certificates.

4. The determination manager erred in determining that the council was incorrect in its decision to issue code compliance certificates for lots 18, 19 and 21.
5. The determination manager erred by reversing the council's decision to issue the code compliance certificates for building consents 40165, 61264 and 60088, therefore withdrawing the code compliance certificates.
6. If the houses were built in accordance with the building consent, the council was obliged to issue the code compliance certificate in accordance with section 94 of the Building Act 2004.

**RELIEF SOUGHT:**

7. The appellant seeks:
  - (a) Judgment from the court reinstating the building consents and code compliance certificates numbered 40165, 61264 and 60088;
  - (b) Costs in favour of the appellant.

This notice is filed in reliance on sections 188, 208 and 209 of the Building Act 2004.

A copy of the determination is filed herein

Date: 1 February 2012

Signature:



Solicitor for appellant

This notice of appeal is filed by **SUSAN ANNE THODEY** solicitor for the appellant of the firm Heaney & Co. The address for service of the appellant is Level 17, ANZ Tower, 23-29 Albert Street, Auckland

Documents for service on the appellant may be left at that address for service or may be:

- (a) Posted to the solicitor at PO Box 105391, Auckland or
- (b) Left for the solicitor at a document exchange for direction to DX CP18503, Auckland; or

(c) Transmitted to the solicitor by fax to 09 367 7009

To: The Registrar,  
Rotorua District Court

And to: The respondents

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