



Determination 2009/2

Refusal by an authority to issue a code compliance certificate for a house arising from the lack of a reinspection at 545 Maddisons Road, Templeton, Christchurch

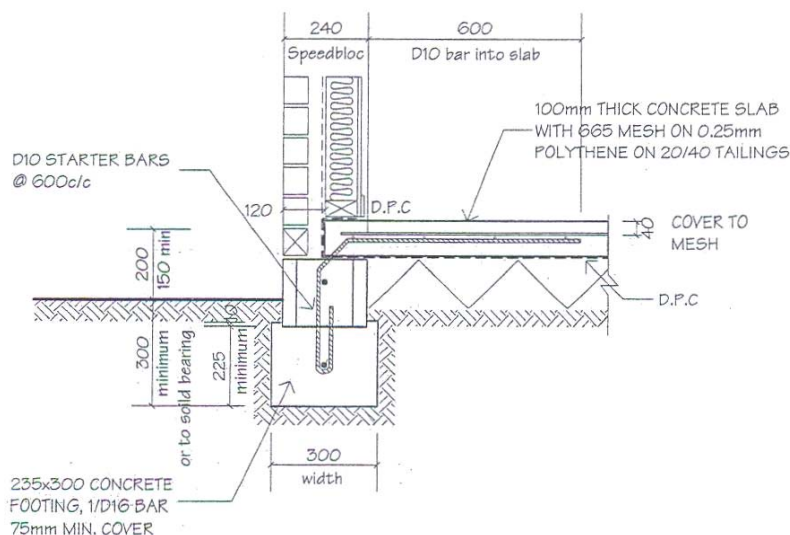


Figure 1: The perimeter foundation detail as consented

1. The matter 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. The applicants are the owners, M and S Kim (“the applicants”) acting through an agent, and the other party is the Selwyn District Council (“the authority”) carrying out its duties and functions as a territorial authority or building consent authority.
- 1.2 The matter for determination is whether the authority was correct in its decision to refuse to issue a code compliance certificate for a house because it is not satisfied

¹ The Building Act 2004 is available from the Department’s website at www.dbh.govt.nz.

that the building work complies with Clause B1 Structure of the Building Code² (First Schedule, Building Regulations 1992), due to the lack of a re-inspection of the foundations, under section 177(a)³ of the Act.

- 1.3 I note that the parties have raised no matters relating to other clauses of the Building Code, and this determination is therefore restricted to the foundations of this house.
- 1.4 In making my decision on this matter, I have considered the documentation received from the building company, and additional evidence gained from a site inspection described in paragraph 5.2.

2. The building

- 2.1 The building work consists of a simple single-storey detached building situated on a flat site. The house has concrete foundations and floor slab, light timber frame construction, brick veneer cladding, aluminium windows and a profiled metal hipped roof.

3. Background

- 3.1 The authority issued a building consent (No. 071186) for the house in August 2007, (based on the stamp to the consent drawings). I have not seen a copy of the consent. Construction was carried by a contract builder (“the onsite builder”), with a building company (“the building company”) acting as the project manager.
- 3.2 The perimeter foundation detail included in the approved consent documentation was as shown in Figure 1.
- 3.3 The authority carried out various inspections during construction, including a siting and foundations inspection on 17 December 2007, which recorded that re-inspection was required and noted:
- Work carried out not as per plans.
Council consented plans were for speedbloc foundation.
An authorized amendment is required.
- 3.4 The building company provided the authority with an amended foundation drawing (refer Figure 2) showing the footing as constructed. I note that the authority’s stamp on the drawing indicates this drawing was approved on 19 December 2007.
- 3.5 When the amended drawing was submitted, it appears that the building company was verbally advised that work could proceed, so the onsite builder assumed a specific re-inspection was not required.
- 3.6 The record of a subsequent slab inspection on 20 December 2007 noted that work may proceed and re-inspection was not required. However the record also included a reference to the earlier inspection, noting:

² The Building Code is available from the Department’s website at www.dbh.govt.nz.

³ 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

Foundation inspection was failed and reinspection was required. It appears that these were (sic) not carried out. [The building company] will be required to satisfy S.D.C that this foundation was compliant.

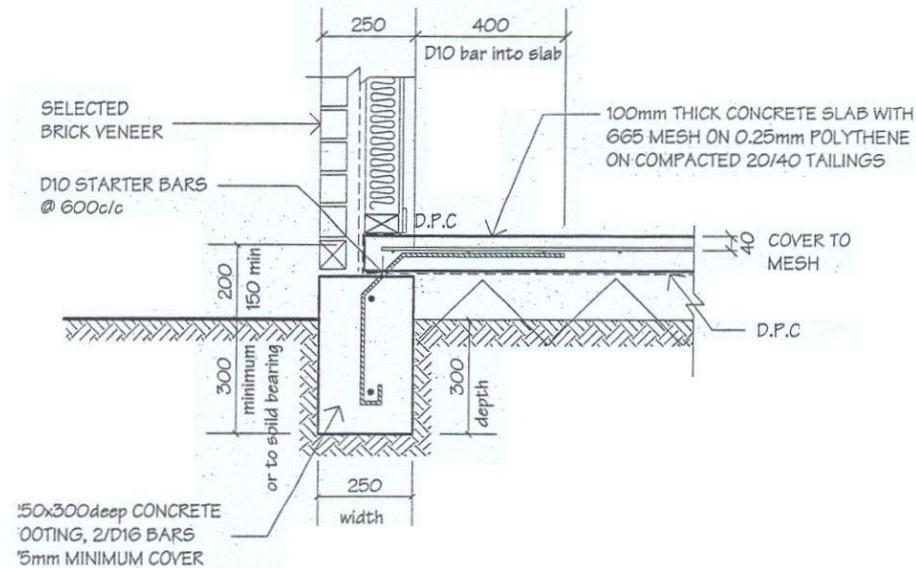


Figure 2: The perimeter foundation detail as amended

- 3.7 In a facsimile to the authority dated 19 May 2008, the building company provided the authority with a producer statement which stated that:
- ...the steel in the foundation D10 starter bars were all in place with D16 bars running horizontally in accordance with NZS 3604:1999.
- 3.8 On 15 May 2008 the authority carried out a final inspection, which recorded outstanding items and documentation. The list of the required documentation included a producer statement for:
- ...standard foundation, were inspected by Council but steelwork in foundation was not recorded. A reinspection requested by officer.
- 3.9 On 27 May 2008 the authority carried out a “final reinspection”, with the record noting that all the items identified in a previous final inspection “have been attended to” and also that no further reinspection of the building would be required.
- 3.10 In a letter to the owners dated 25 August 2008, the authority stated that it was unable to issue a code compliance certificate as it could not be satisfied that the building work complied with the building consent, noting:
- The reason for this is that the foundation re-inspection requested on ‘inspection notice’ dated 17 December 2007 was not carried out. In addition the producer statement from [the building company] dated 19 May 2008 does not provide grounds to confirm compliance. A re-inspection was required as the completed work was not in accordance with the approved building consent.

The authority raised no other matters of non-compliance.

- 3.11 The Department received an application for a determination on 31 October 2008.

4. The submissions

- 4.1 In a statement accompanying the application, the onsite builder explained the change made to the foundation and described the background to the situation, noting the verbal advice given by the authority to the building company had been understood to mean that a foundation reinspection was not required.
- 4.2 The applicants forwarded copies of:
- some of the consent drawings
 - the approved amended foundation drawing
 - 2 inspection records
 - the letter from the authority dated 25 August 2008.
- 4.3 The authority made its submission as part of its response to the draft determination (refer paragraph 4.6).
- 4.4 The authority forwarded copies of:
- the consent conditions
 - the original and amended foundation drawings
 - some of the inspection records.
- 4.5 The draft determination was issued to the parties for comment on 12 December 2008.
- 4.6 The authority did not accept the draft determination. In a letter to the Department dated 5 January 2009, the authority supplied further information about inspections and noted that the building company's producer statement was not acceptable evidence of the compliance of the foundation. The authority considered the onsite builder's statement contained "subjective assumptions", and stated that its position remained unchanged from that expressed in its letter dated 25 August 2008. I have considered the additional information supplied by the authority, and have amended the determination as I consider appropriate. The authority also stated that it would not have given verbal advice to proceed if a reinspection was pending.
- 4.7 While the authority's submission and comments have provided me with further background to this dispute, this additional information has not changed the essential points outlined in paragraph 6.3 that have allowed me to reach a conclusion about this matter. Despite some disagreement with the builder, I consider that the authority should have been able (with sample exposure of the foundations) to reach a similar conclusion.

5. The site inspection

- 5.1 Following consideration of the application evidence, the Department contacted the building company on 24 November 2008 to request the exposure of some foundation reinforcing. It was agreed that a small area of concrete would be broken away on a side wall of the garage.

- 5.2 An independent expert (“the expert”) subsequently inspected the exposed reinforcing on the Department’s behalf. The expert is a member of the New Zealand Institute of Building Surveyors.
- 5.3 In an email to the Department dated 1 December 2008, the expert attached photographs of the exposed reinforcing, which show 2 horizontal bars with a smaller vertical bar.
- 5.4 The expert noted that vertical and horizontal reinforcing was visible and appeared to have been installed with adequate cover. I accept that the area exposed and photographed is typical of similar areas elsewhere in the foundations.

6. Discussion

- 6.1 The authority has concerns that the foundations have not been adequately inspected, as the footings that were inspected varied from those shown in the original building consent. Although the amended foundation drawing was subsequently received and approved, the reinforcing was not reinspected against that drawing.
- 6.2 A discussion between the building company and the authority may have lead to the onsite builder incorrectly assuming that work could proceed without re-inspection of the foundations. As the authority has stated that it would not have given verbal advice to proceed if a reinspection was pending, I am unable to verify this. The onsite builder accepts that a misunderstanding at the time resulted in the re-inspection not being called for.
- 6.3 In regard to this situation, I make the following observations:
- Although the original consent drawings indicated a block footing “to be used as an alternative to standard footings in NZS 3604:1999”, standard footings were constructed.
 - The building company has provided a producer statement confirming that the footings have D10 vertical starter bars with D16 horizontal bars in accordance with NZS 3604 and this has now been corroborated by the area exposed for inspection.
 - The foundations are simple in design and the change is not major, with the reinforcing remaining similar and the footing depth unchanged.
- 6.4 A reinspection of the footings would have verified that the footings complied with the approved amended drawing.
- 6.5 I therefore consider there are sufficient grounds to conclude that the house foundations are likely to have been constructed in accordance with NZS 3604, and will therefore comply with Clause B1.

7. The decision

- 7.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the foundations to this house comply with Clause B1 of the Building Code, and accordingly reverse the territorial authority's decision to refuse to issue a code compliance certificate.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 23 January 2009.

John Gardiner
Manager Determinations