



Determination 2016/017

Regarding the issuing of a code compliance certificate for a house at 106 Awa Awa Road, Ruby Bay, Tasman District

Summary

This determination was sought by the building consent authority to reverse a code compliance certificate in order to address an error. The authority had incorrectly issued the code compliance certificate specifically excluding an element of building work that had been approved in the building consent.

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 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 applicant, Tasman District Council, carrying out its duties as a territorial authority or building consent authority (“the authority”)
 - the building owners, C and G Nicholson (“the owners”).
- 1.3 This determination arises from the authority identifying it made an error when it issued a code compliance certificate. The description of the building work in the code compliance certificate was not an accurate description of what was constructed as the certificate excluded an onsite wastewater treatment system. I take the view that the matter to be determined² is the authority’s power of decision to issue a code compliance certificate with the exclusion of the wastewater treatment system.
- 1.4 In making my decision, I have considered the submissions of the parties and the other evidence in this matter. The relevant section of the Act is set out in Appendix A.

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 section 177(2)(a) of the Act

2. The building work and background

- 2.1 On 17 September 2014, the authority received an application for a building consent. The application described the building work as:
- 4 bedroom residence with attached garage & solid fuel & gas fires.
- 2.2 On 10 November 2014 the authority issued building consent No. BC145622. The consent described the building work as:
- New 4 bedroom dwelling with wood burner, gas fire and [internal access] garage, excluding onsite wastewater: Intended use: housing - detached
- 2.3 After the issue of the building consent, the authority agreed to a minor variation to include an onsite wastewater treatment system; the authority's records show the variation was accepted on 1 May 2015. The wastewater treatment system was inspected and passed as compliant on that date.
- 2.4 A final inspection on 26 May 2015 recommended the code compliance certificate be issued (I note the code compliance certificate has two dates on it, being 25 and 27 May 2015). The certificate described the work exactly as noted in the building consent as 'excluding onsite wastewater'.
- 2.5 The owner contacted the authority on 18 April 2016, advising that he was selling his property and had been made aware by the purchaser that the wording on the code compliance certificate was incorrect.
- 2.6 The authority contacted the Ministry on 18 April 2016 to seek advice on whether the authority had the power to withdraw or cancel the current code compliance certificate due to an administrative error. In an email dated 20 April 2016, the Ministry advised the authority that the authority did not have the power to withdraw a code compliance certificate and to apply for a determination.
- 2.7 The Ministry received an application for a determination on 22 April 2016.

3. The submissions

- 3.1 In a letter to the Ministry dated 21 April 2016, the authority described the background to the application saying it had issued the code compliance certificate in error and that 'the description of the building work [in the certificate] did not accurately reflect what was constructed'. The authority provided copies of:
- application for Building Consent and/or Project Information Memorandum
 - the issued building consent
 - inspection reports
 - the code compliance certificate.
- 3.2 A draft determination was issued to the parties for comment on 3 May 2016.
- 3.3 Both parties accepted the draft without further comment in responses received on 3 May 2016.

4. Discussion

- 4.1 There is no dispute between the parties that an error was made in issuing the code compliance certificate to exclude the onsite wastewater treatment system. I also note that the code compliance of the building work, including the wastewater treatment system, is also not in dispute. As issued, the code compliance certificate specifically excludes work that was in fact part of the approved consent as amended.
- 4.2 The authority queried whether it has the power to withdraw the code compliance certificate itself when an administrative error has been made, or whether that power can only be exercised by way of a determination decision made under section 188 of the Act.
- 4.3 There are circumstances in which a certificate issued with an error can be reissued with the error simply corrected³. Given the error was in relation to the scope of work to which the certificate applied, it is arguable whether it is one that can be addressed by simply reissuing the certificate.
- 4.4 In accordance with section 188(1)(a), the Chief Executive clearly has within his remit the power to “confirm, reverse or modify the decision or exercise of a power to which [the determination] relates”. Under this power, a decision to issue a code compliance certificate can be reversed by the Chief Executive, which effectively means the code compliance certificate will be withdrawn.
- 4.5 I agree with the authority that the current code compliance certificate should be withdrawn and a new certificate issued. Once the authority has withdrawn the code compliance certificate in compliance with this determination, it will be able to issue a new code compliance certificate.

5. The decision

- 5.1 In accordance with section 188 of the current Act, I hereby determine that the decision of the authority to issue a code compliance certificate for building consent No. BC145622 is reversed.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 6 May 2016.

John Gardiner
Manager Determinations and Assurance

³ *Interpretation Act 1999* Section 13 Power to correct errors “The power to make an appointment or do any other act or thing may be exercised to correct an error or omission in a previous exercise of the power even though the power is not generally capable of being exercised more than once.”

Appendix A: The relevant legislation

A.1 The relevant section of the Building Act is:

94 Matters for consideration by building consent authority in deciding issue of code compliance certificate

(1) A building consent authority must issue a code compliance certificate if it is satisfied on reasonable grounds, —

(a) that the building work complies with the building consent...