



## **Determination 2018/049**

# **Regarding the issue of a code compliance certificate for three buildings at 442 Lower Queen Street, Richmond**

### **Summary**

This determination considers the decision of the authority to issue a code compliance certificate for three buildings when one building had not been constructed. The determination discusses the authority's ability to reverse the code compliance certificate.

### **1. The matter to be determined**

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> ("the Act") made under due authorisation by me, Katie Gordon, Manager Determinations, Ministry of Business, Innovation and Employment ("the Ministry"), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to this determination are:

- the owners of the holiday park, R Yarrall and L Manera ("the owners")
- Tasman District Council, carrying out its duties as a territorial authority or building consent authority ("the authority"), and who applied for the determination.

1.3 The determination arises from the authority's decision to issue a code compliance certificate for building work carried out at the owners' holiday park. The authority now wishes to withdraw this certificate as it subsequently became aware that only two of the three new buildings covered by the building consent had been constructed.

1.4 The matter to be determined<sup>2</sup> is whether the authority correctly exercised its powers of decision by issuing a code compliance certificate for the building work carried out under building consent BC145505.

1.5 In making my decision, I have considered the submission of the authority and the other evidence in this matter.

### **2. The building work**

2.1 The owners have a holiday park in Richmond, on the shores of the Waimea Inlet. They sought building consent to add some additional facilities for their customers – cooking, laundry and sanitary blocks – to the existing buildings on site.

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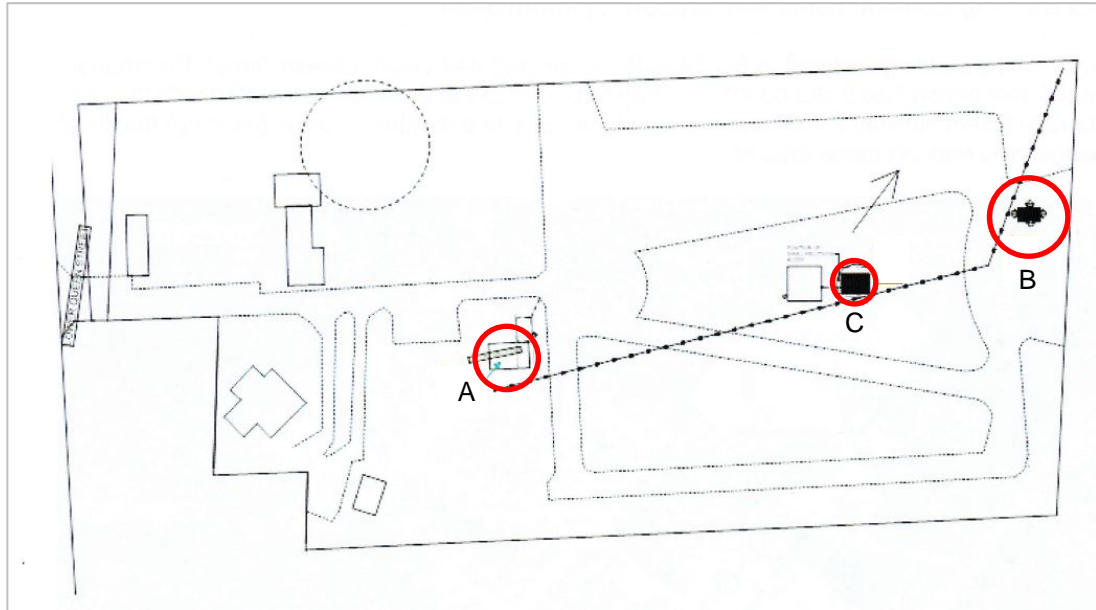
<sup>1</sup> The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at [www.building.govt.nz](http://www.building.govt.nz) or by contacting the Ministry on 0800 242 243.

<sup>2</sup> Under section 177(1)(b) and 177(2)(d) of the Act.

2.2 The building consent covered three single storey, timber framed buildings. For convenience, I have adopted the building identifiers (A, B and C) and approximate dimensions used in the authority's application for determination:

- Building A (45.6m<sup>2</sup>): kitchen, laundry, showers, toilets, urinals, hand basins.
- Building B (10.3m<sup>2</sup>): laundry, shower, toilet, urinals, basins.
- Building C (15.3m<sup>2</sup>): laundry, showers, toilets, basins.

2.3 Figure 1 illustrates the approximate location of these buildings on the site plan. The location of Building B is indicative only.



**Figure 1: Building locations (approximate and not to scale)**

### 3. Background

- 3.1 In August 2014 the owners applied for building consent to construct two buildings, Buildings A and C as described above.
- 3.2 Two years later, they were granted an amendment to the consent to enlarge Building C and construct an additional building, Building B.
- 3.3 On 3 July 2018 the authority issued a code compliance certificate for the building work. However, it later realised it had done so in error as Building B had not been constructed.
- 3.4 A description of the key events follows, based on information supplied by the authority.

Date	Event
15 Aug 2014	<p>Owners apply for building consent to:</p> <p style="padding-left: 40px;">Build a small ablutions block and a small ablutions/kitchen and laundry block. Install sewer drain.</p> <p>(The authority identifies these in its submission as:</p> <ul style="list-style-type: none"> <li>• Building A: the "small ablutions/kitchen and laundry block"</li> <li>• Building C: the "small ablutions block".)</li> </ul>

Date	Event
8 Oct 2014	Authority issues building consent BC145505 for this work.
24 Nov 2015	Authority receives application for a code compliance certificate; asks for more information as a result of a subsequent (final) inspection.
11 Dec 2015	Authority receives another code compliance certificate application; asks for more information regarding development contributions.
15 Jul 2016	<p>Owners apply for amendment to the original building consent to:</p> <p style="padding-left: 40px;">Lengthen the Small Block and add a 10 square metre ablution building.</p> <p>(The authority identifies these in its submission as:</p> <ul style="list-style-type: none"> <li>• Building B: the “10 square metre ablution building”</li> <li>• Building C: the “small block”, to be lengthened.)</li> </ul>
20 Sep 2016	Authority issues amended building consent BC145505A.
6 Oct 2017	<p>Authority carries out a code compliance certificate re-inspection following owners’ request on 2 October 2017. The last inspection record says:</p> <p style="padding-left: 40px;">...The amendment is now approved so please issue [code compliance certificate] ...</p> <p>Authority then asks for an outstanding payment which it receives on 20 June 2018.</p>
3 Jul 2018	<p>Authority issues a code compliance certificate for BC145505, which describes the building work as:</p> <p style="padding-left: 40px;">Construct ablution, ablution/kitchen &amp; laundry blocks.</p>
27 Jul 2018	<p>Owners request another building inspection. This prompts authority to revisit the site (on 30 July and 3 August 2018) and to establish that only two of the three buildings associated with the building consent (Buildings A and C) have been constructed.</p>

3.5 An application for determination from the authority was received on 3 August 2018.

## 4. Submissions

4.1 Supporting documentation provided by the authority included copies of:

- building consent application forms (for the original consent and the amendment), building consent BC145505 issued 8 October 2014 and the amended consent BC145505A issued 20 September 2016
- consented plans (original and amended) and the certificate of title
- the owners’ first application for a code compliance certificate dated 23 November 2015 (I note that the authority was unable to locate the second application) and inspection reports dated 11 December 2015, 14 September 2016 and 6 October 2017
- the code compliance certificate for BC145505 issued 3 July 2018.

4.2 In its submission the authority described the events leading to the issue of the code compliance certificate and possible next steps. In the authority’s view, it had incorrectly exercised its powers in issuing this code compliance certificate as the building work was incomplete. Accordingly, it could not have been satisfied on

reasonable grounds that the building work complied with the building consent at the time the code compliance certificate was issued.

- 4.3 In relation to the discrepancy between what was consented and what was built, the authority commented on “the confusion over which building consent application (i.e. the original one, and the amendment) relates to which building”.
- 4.4 The authority said it had made the owners aware of the reasons for seeking a determination and was committed to working with them to resolve the problem. This included:
- working with them to ensure an appropriate certificate for public use<sup>3</sup> was issued for Buildings A and C, and
  - allowing the construction of Building B. It said the owners’ preference was to do this under the existing building consent, subject to the outcome of the determination, rather than amend the consent to remove Building B and then build this under a separate consent.
- 4.5 The draft determination was issued to the parties for comment on 3 September 2018.
- 4.6 On 3 September 2018 the authority accepted the draft determination and clarified the size of Building A.
- 4.7 On 20 September 2018 the owners accepted the draft determination and made no further submission.

## 5. Discussion

### 5.1 The withdrawal of the code compliance certificate

- 5.1.1 As stated in the High Court decision of *Suanuu v Hi-Qual Builders Ltd*<sup>4</sup>, the only way an authority can seek to withdraw a code compliance certificate is by applying for a determination regarding its decision to issue the certificate under section<sup>5</sup> 177 of the Act.
- 5.1.2 This approach has been applied in previous determinations<sup>6</sup>. Since there have been no changes to the Act or the common law regarding this issue, it is my view that the decisions reached in these determinations apply equally to the present case. I consider that once a final administrative decision in the exercise of a statutory power has been made and communicated to the people to whom it relates, it is irrevocable and there is no provision in the Act permitting the authority to rescind the code compliance certificate.
- 5.1.3 With respect to the building work covered by the owners’ building consent, the parties agree that this is incomplete as Building B has not been constructed. Accordingly, and by its own admission, the authority was incorrect in deciding to issue a code compliance certificate under section 94(1) of the Act as it could not have been satisfied on reasonable grounds that the building work complied with the building consent.

<sup>3</sup> Under section 363A of the Act.

<sup>4</sup> Obiter dicta in *Suanuu v Hi-Qual Buildings Ltd*, HC Auckland CIV-2008-404-1576, 26 June 2008.

<sup>5</sup> In this determination, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

<sup>6</sup> Determination 2016/054 The decision to issue a code compliance certificate in respect of earthquake repairs to a house (7 November 2016) and Determination 2009/006 Determination regarding the issuing of a code compliance certificate for a house constructed of precast concrete panels (13 February 2009).

## **5.2 What is to be done now?**

- 5.2.1 The authority should withdraw the code compliance certificate in accordance with this determination. The owners may then proceed to construct Building B in accordance with the consented plans, unless BC145505 is amended to remove this building. I note that the authority has already discussed the way forward with the owners and their preferences for resolving this issue. Once the authority is satisfied the relevant building work complies with the building consent it can issue a new code compliance certificate.

## **6. The decision**

- 6.1 In accordance with section 188 of the Building Act 2004 I hereby determine the authority incorrectly exercised its powers of decision by issuing the code compliance certificate for the building work carried out under building consent BC145505. Accordingly, I reverse that decision.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 3 October 2018.

Katie Gordon  
**Manager Determinations**