

# Determination 2006/25

## Issue of a notice to fix requiring conservatory spouting connection to an approved outlet at 35 Andrew Street, Feilding

### 1 The dispute 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, John Gardiner, Determinations Manager, Department of Building and Housing, for and on behalf of the Chief Executive of that Department. The applicant is the owner, Mr Worboys (“the applicant”), and the other party is the Manawatu District Council (“the territorial authority”).
- 1.2 The dispute to be determined is whether the down-pipe from the conservatory spouting should be connected to an approved storm water disposal system as required in the notice to fix.

### 2 The building

- 2.1 The building work is a conservatory constructed over the front entrance of an existing house. The roof area is approximately 3.7 square metres, disregarding that portion of the roof that is sheltered by the existing eaves and gutter on the house. The roof runoff discharges onto adjacent ground.

### 3 Submissions

- 3.1 The applicant made a written submission setting out his view of the matter in dispute and enclosed copies of:
- The application for the building consent
  - The Project Information Memorandum (PIM) issued by the territorial authority

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<sup>1</sup> The Building Act 2004 and the Building Code are available from the Department’s website at [www.dbh.govt.nz](http://www.dbh.govt.nz).

- Photographs of the completed building work
  - An invoice from a plumber relating to the repair of a burst water pipe under the house, and
  - The notice to fix issued by the territorial authority.
- 3.2 The parties were sent copy of the determination in draft form for comment on 17 February 2006.
- 3.3 The territorial authority did not make any submission.
- 3.4 In a letter to the Department dated 25 March, the applicant advised that he had received a Code Compliance Certificate from the territorial authority. The Code Compliance Certificate was dated 27 February 2006 but the applicant advised that it not been received by him until 18 March 2006.

## 4 Discussion

- 4.1 The building consent for this addition to the house was sought by Burne Aluminium (2003) Ltd (on the owner's behalf) in July 2005, in accordance with section 45 of the Act. The drainage plan submitted with the application for building consent shows no provision for a storm water disposal system.
- 4.2 Section 40(1) of the Act requires that a person must not carry out any building work except in accordance with the building consent.
- 4.3 Section 49 of the Act makes it clear that a building consent is issued on the building consent authority's assumption that the building work carried out in accordance with the consent will be code compliant.
- 4.4 Section 94 of the Act states that the building consent authority must issue a code compliance certificate for the work if it has been carried out in accordance with the building consent.
- 4.5 I have seen no evidence that, in this case, the building work has not been carried out other than in accordance with the drawings and specifications that accompanied the application for building consent, and on the basis of which the territorial authority duly issued a building consent.
- 4.6 Although the foregoing argument settles the matter in dispute in this case, I consider it helpful to comment on the question of whether the building work in this case complies with the Building Code.
- 4.7 I note that clause E1.3.1 of the Building Code requires that "surface water... shall be disposed of in a way that avoids the likelihood of damage or nuisance to other property". I do not consider that the storm water from the catchment area of this 3.7 square metre roof, located in the centre of the site, will pose a risk to neighbours'

property. Consequently, I consider that the extension work complies with clause E1 of the Building Code.

- 4.8 I also note the territorial authority's concern with respect to the possible effect of the water from the down-pipe affecting the foundation of the extension, leading to non-compliance with clauses B1 and B2 of the Building Code. The likelihood of this occurrence seems remote given the relatively substantial foundation and the small rain catchment area of the roof being drained by the down-pipe. I do not consider there are reasonable grounds to consider that the extension does not comply with clauses B1 or B2 of the Building Code.

## **5 The decision**

- a) The building work in the extension to the house complies with the building consent.
- b) I instruct the territorial authority to withdraw the notice to fix.
- c) I confirm the territorial authority's decision to issue a code compliance certificate for the building work.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 3 April 2006.

John Gardiner  
**Determinations Manager**