

Determination2024/009

The issue of a code compliance certificate for a detached dwelling and outbuilding

6 Bel Posto Lane, Lincoln, Christchurch

Summary

This determination was sought by the building consent authority to reverse a code compliance certificate that was issued in error. The code compliance certificate includes building work that had not been constructed.

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

1. Matter for determination

- 1.1. This is a determination made under due authorisation by me, Andrew Eames, Manager Advisory Determinations, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.¹
- 1.2. The parties to the determination are:
 - 1.2.1. Selwyn District Council (“the authority”), who applied for the determination
 - 1.2.2. M Hains and I Haines, the owners of the property (“the owners”)
- 1.3. This determination arises from the authority identifying that it had issued a code compliance certificate in error. The certificate had been issued against building consent no. BC220874. However, one of the buildings approved in the building consent had not been constructed.
- 1.4. The matter to be determined, in terms of section 177(1)(b) and (2)(d) of the Act, is the authority’s decision to issue a code compliance certificate under section 95 of the Act in relation to building consent BC220874.
- 1.5. In deciding this matter, I have not considered compliance of any elements of the building work with the Building Code.
- 1.6. The following building work was authorised under the building consent:
 - Construction of a detached dwelling – single storey with 4 bedrooms and attached garage
 - Amendment 1: Change to engineer designed foundation to allow for in-slab heating
 - Amendment 2: Outbuilding
 - Amendment 3: Minor sanitary changes, changes to cladding.
- 1.7. The authority issued a code compliance certificate for the building consent BC220874 on 9 June 2023.
- 1.8. Subsequently the authority discovered that the outbuilding, which was the subject

¹ The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

of Amendment 2, had not yet been constructed and that they had issued the code compliance certificate in error.

1.9. There is no dispute that the outbuilding has not been constructed.

1.10. Section 94 of the Act concerns the issuing of a code compliance certificate:

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...

1.11. The building work does not comply with the building consent because the outbuilding was not constructed.

1.12. There are circumstances in which a certificate issued with an error may be reissued with the error corrected, under section 46 of the Legislation Act 2019.² Given the error was in relation to the scope of work to which the certificate applied, particularly relating to building work that has not yet been carried out, it would not be appropriate to simply update the detail of the certificate.

1.13. Section 188(1)(a) provides for the exercise of a power of decision to be confirmed, reversed or modified by determination. I am of the opinion the appropriate remedy is to reverse the authority's decision to issue the code compliance certificate. This means that either the building consent can be amended to exclude the outbuilding from the scope of works or all of the work can be completed in accordance with the building consent, before a new code compliance certificate issued.

2. Decision

2.1. In accordance with section 188 of the Building Act 2004, I determine that the decision of the authority to issue a code compliance certificate under section 95 of the Act for building consent BC220874 is reversed.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 8 March 2024.

Andrew Eames
Manager Advisory, Determinations

² Section 46 Power to do things may be exercised to correct errors. (1) The power to do anything may be exercised to correct an error or omission in a previous exercise of the power. (2) Subsection (1) applies even though the power is not generally capable of being exercised more than once