Determination 2006/88

Refusal of a code compliance certificate for a building with a monolithic cladding system at 30 Belle Vue Avenue, Northcote Point

1. The dispute to be determined

1.1 This is a determination of a dispute referred to the Chief Executive of the Department of Building and Housing ("the Chief Executive") under section 17 of the Building Act 1991 ("the Act") as amended by section 424 of the Building Act 2004. The applicants are the owners Mr and Mrs Barber ("the applicants") and the other party is the North Shore City Council ("the territorial authority").

1.2 The dispute for determination is whether the territorial authority's decision is correct with regard to declining to issue a code compliance certificate for a 6-year-old house because it was not satisfied that:

- the monolithic and stone claddings complied with clauses B2 "Durability" and E2 "External Moisture" of the Building Code[1] (First Schedule, Building Regulations 1992), and
- other elements of the building comply with clause B2.

[1] The Building Code is available from the Department's website at www.dbh.govt.nz.

1.3 The questions to be determined are:

Issue 1: The cladding

Whether I am satisfied on reasonable grounds that the wall cladding as installed to the external walls of the building ("the cladding"), complies with the Building Code (see sections 18 and 20 of the Act). By "the wall cladding as installed" I mean the components of the system (such as the backing materials, the flashings, the joints and the coatings) as well as the way the components have been installed and work together.

Issue 2: The additional durability considerations

Whether certain building elements, which have 5 or 15 year, or the life of the building, being not less than 50 years, durability requirements, comply with clause B2 of the building code considering the time that has elapsed since the elements were constructed.

1.4 This determination is made under the Building Act 1991, subject to section 424 of the Building Act 2004. That section came into force ("commenced") on 30 November 2004, and its relevant provisions are:

> ". . .on and after the commencement of this section,—
>
> "(a) a reference to the Authority in the Building Act 1991 must be read as a reference to the chief executive; and
>
> "(b) the Building Act 1991 must be read with all necessary modifications to enable the chief executive to perform the functions and duties, and exercise the powers, of the Authority . . "

1.5 It should be noted that the new legislation does not amend the determination process set out under the 1991 Act, other than to transfer the power to make a determination from the Building Industry Authority ("the Authority") to the Chief Executive.

1.6 This determination refers to the former Authority:

(a) When quoting from documents received in the course of the determination, and

(b) When referring to determinations made by the Authority before section 424 came into force.

1.7 In making my decision, I have considered the submissions of the parties, the report of the independent expert commissioned by the Authority to inspect the house ("the expert"), and the other evidence in this matter. With regard to issue 1, I have evaluated this information using a framework that I describe more fully in paragraph 6.1. I have not considered any other aspects of the Act or the Building Code.

2. The building

2.1 The building is a two-storey split-level detached house, situated on a sloping and partly excavated site, which is in a high wind zone in terms of NZS 3604[2]. The house is of conventional light timber frame construction, with a concrete slab to the lower level and concrete block foundations and retaining walls. The northern upper level is single-storey, with a timber-framed floor and concrete block perimeter foundation wall. The house has monolithic wall cladding, aluminium windows and a 20^{o} concrete tile hipped roof with 550mm wide eaves projections (including the gutter width). The house is of a relatively complex shape, with the roofs set at varying levels with numerous hip and valley junctions. Two upper floor bay windows are project out from the face of the building. Two other windows on the east elevation are angled at 45^{o} across the corners, with the cladding below the sills sloping out in a triangular section to meet the line of the walls below.

2.2 The house has two upper level timber-framed decks, one of which is partially built over the garage ("the garage deck") with the end cantilevered out from the wall by 300mm. The other deck projects above the entrance ("the entry deck") and is supported by a monolithic-clad timber post. The deck floors have tiles over membrane on plywood, and the outer deck edges are monolithic-clad with metal cappings over the edge upstands. Glazed stainless steel framed balustrades are fixed through the cappings to the upstands.

2.3 The drawings note the entry deck post as tanalised, and the owner has stated (refer paragraph 5.8) that the deck framing is H3 treated. The specification calls for wall framing to comply with NZS 3602[3], which at the time of construction permitted untreated timber provided it could, throughout its life, remain at a moisture content of less than 18%. I have not received any other evidence that the timber used in the construction of the external walls is treated and I therefore consider that the external wall framing is unlikely to be treated.

2.4 The cladding system is what is described as monolithic cladding, and is a 40mm "Insulclad" polystyrene system fixed directly to the framing over the building wrap, to which a "Ezytex" sponge finish plaster system has been applied. The system includes purpose-made flashings to windows, edges and other junctions.

2.5 Plaster Systems Ltd issued a "Materials Components Guarantee", dated 10 May 2004 relating to the "Insulclad" and "Ezytex" systems, which carried an exclusion clause, whereby Plaster Systems Ltd did not accept responsibility for consequential damage of any kind to any building component that has occurred as a result of the use of untreated timber.

[2] New Zealand Standard NZS 3604:1999 Timber Framed Buildings
[3] New Zealand Standard NZS 3602: Timber and wood-based products for use in buildings

3. Sequence of events

3.1 The territorial authority issued a building consent on 23 April 1997.

3.2 The territorial authority made various inspections during the course of construction, and on 4 November 1999, approved the "Preline Building Inspection". On 22 November 1999, the territorial authority passed as "OK" the post-line inspection. It was not until December 2003 that the owners sought the issue of a code compliance certificate.

3.3 The territorial authority wrote to the applicant on 16 December 2003, explaining that existing properties using any type of monolithic cladding would be reviewed on a case-by-case basis before determining whether a code compliance certificate could be issued.

3.4 The territorial authority issued two "Development Building Officers Field Memoranda", dated 13 January 2004 and 10 March 2004, following final building inspections, which listed items that were in contravention of the building code. The Memorandum of 13 January 2004 stated that "cladding may be subject to technical team inspection". The Memorandum of 10 March 2004 did not contain any references to the cladding.

3.5 A site meeting between the applicants and the territorial authority was held on 26 April 2004, and according to the territorial authority's memo the following cladding issues were discussed:

- the cladding was in ground contact at some areas
- there was no flashing to the garage door or front entry
- the weatherproofing to deck over front porch needed checking, as did the sloping clad section of wall below the front bay window
- pipe penetrations needed to be properly sealed
- the electrical and gas meters were not well sealed.

3.6 The territorial authority carried out a visual "weathertightness" inspection and in a letter to the owner dated 6 May 2004, the territorial authority stated that the Building Code required the durability of the cladding to be 15 years and that of the timber framing to be 50 years. The territorial authority noted its concerns with regard to monolithic claddings, identified defects in the cladding and stated that it could not be satisfied on reasonable grounds that the cladding system complied with clauses E2 and B2 of the Building Code. The areas of concern identified were:

1) cladding in ground contact at kitchen/dining area.

2) no flashings to garage door or front entry.

3) deck area at front, weatherproofing needs to be verified.

4) front bay window – sloping clad sections of framed wall area below window, possibly no protection for kickouts at spouting – to seal and pipe penetrations through cladding.

5) electrical meter and gas meter not very well sealed.

6) check provision for access to sub-floor.

7) no wrap inspections.

8) exterior timber framing treatment unknown.

9) no confirmation of control joints.

3.7 The territorial authority wrote again to the applicant on 10 May 2004 and noted that the outstanding cladding issues were those numbered 1 to 5 in the letter of 6 May 2004.

3.8 The applicant sent an email to the territorial authority on 11 May 2004, raising some issues, which can be summarised in general terms as:

- the applicants did not state any "desire to undertake remedial works"
- the inspection must meet the plans issued and codes in place at the time
- a final inspection should not be retrospective
- at plan approval time cavities were not required.

The applicant also commented on the specific points raised in the territorial authority's letter of 10 May 2004.

3.9 The applicant also wrote a letter to the territorial authority on 11 May 2004, attaching a copy of a letter from Plaster Systems Ltd, dated 28 April 2004, which stated that the company was happy to warrant the detail where the bark garden was placed against the cladding.

3.10 There was correspondence between the parties, additional to that described above, which generally sought clarification of the various requests and responses.

3.11 The territorial authority did not issue a Notice to Rectify as required under section 43(6) of the Act.

3.12 The applicants applied for a determination on 17 June 2004.

4. The submissions

4.1 In a letter dated 17 June 2004, which accompanied the application, the applicants set out the background leading up to this determination.

4.2 The applicants forwarded copies of:

- the drawings and specifications
- the 28 April 2004 letter from the cladding supplier
- an inspections record from the territorial authority
- the cladding guarantee and a waterproofing installation certificate.

4.3 The territorial authority did not make a submission, but under a covering letter dated 5 August 2004, provided copies of:

- the consent documentation
- the territorial authority's inspection records and memoranda
- the correspondence between the parties.

4.4 Copies of the submission and other evidence were provided to each of the parties. Neither party made any further submissions in response to the submission of the other party.

4.5 A copy of the draft determination, dated 19 October 2004, was provided to each of the parties. In a facsimile to the Department dated 26 October 2004, the territorial authority accepted the draft determination.

4.6 In a letter to the applicants and the territorial authority dated 22 December 2004, the Department noted the applicants' wish for a hearing, set a hearing date for 10 February 2005, and asked for written submissions to be submitted prior to the hearing. In a facsimile dated 26 January 2005, the territorial authority noted that it did not intend to attend the hearing.

4.7 In a letter to the applicants dated 26 January 2006, the Department noted that no response to the letter of 22 December 2004 had been received and asked whether they wished to proceed with the determination. This was followed up with an email from the Department dated 9 March 2006.

4.8 In the course of further email correspondence and telephone discussions with the Department, the applicants agreed to proceed with the determination and noted that they had never received the letter of 22 December 2004 from the Department.

4.9 A copy of a further draft determination, dated 19 June 2006, was provided to each of the parties.

4.10 The territorial authority accepted the draft determination, subject to the correction of a minor item and requested:

> In view of the age of construction of this dwelling we seek determination on the compliance of all materials and building elements used with clause B2 Durability of the New Zealand Building Code.

I have considered the territorial authority's request and, as the house is now more than 6 years old, I have amended the draft to address durability.

4.11 In a letter to the Department dated 30 June 2006, the applicants stated that they did not accept the draft determination as there were a number of items they did not agree with as they had noted in their previous correspondence, noting:

> We would like the Council to issue a draft notice to rectify for our consideration. This should be based on the plans approved by Council and the regulations in effect at the time of consent. We can then accept these requirements or challenge them through the Department.

I have considered the applicants' comments and responded to them in paragraph 7.2.

Issue 1: The Cladding

5. The expert's report

5.1 The expert inspected the building on 22 September 2004 and furnished a report dated 24 September 2004. Given the time that has elapsed since the expert's report was completed I have reviewed the report, and the defects identified, and after consideration, have decided not to re-inspect the property.

5.2 The expert noted that the "final coat of the plaster is a 'sponge' finish done to a high standard", and his general impression was that the cladding was installed in accordance with reasonably good trade practice. The expert also noted that, in accordance with the appraisal carried out on the cladding system, no vertical or horizontal control joints were required for the walls of the dimensions found in the house.

5.3 The expert removed small sections of coating at two positions to expose the jamb to sill intersections of the windows. I accept that the locations are typical of similar locations around the building.

5.4 The expert made the following specific comments on the cladding:

- cracks were visible in many places – generally either in the face of the cladding or in the corners of the window reveals
- there are gaps between the sill and jamb flashings and sill flashings do not extend sufficiently past the frames. There are also cracks in the cladding present at these reveal junctions
- the cladding over the curved head of the garage door, which is not flashed, lacks a drip edge and a capillary break, and is entirely reliant on sealant to prevent moisture penetration
- some ground clearances to the base of the cladding are inadequate and the base of the cladding at the deck post and near the kitchen is buried

- there are no "kick outs" to three apron flashings and the fascias and gutters at these positions have been fitted prior to the application of plaster or paint
- both of the decks:
    - have poorly weatherproofed metal cappings to the deck upstands
    - have balustrade fixings that penetrate the cappings and the flat surface membranes beneath them and which also allow water to pond around them
    - do not have drip edges to the edge cladding or to the overflow scuppers
    - have wall cladding too close to the deck tiles.
- the garage deck has chipped cladding, a flashing cap to the end of the metal capping that stops short of the wall cladding, and an overflow scupper that has lost its protective coating exposing the underlying plywood
- the electrical and gas meter boxes, some pipework penetrations and the downpipe fixings are not properly sealed
- the downpipe fixings are not set into fixing blocks.

5.5 The expert also noted that he could not determine whether the concrete front steps were hard against the wall framing and cladding, or whether the steps had been poured against a 500mm concrete block wall as shown in the drawings.

5.6 The expert took non-invasive moisture readings through the inner walls of the house, and apart from two locations, all readings were an acceptable level. The expert also took similar readings externally to determine if the cladding was wet. The expert subsequently took further invasive readings at various locations and recorded seven readings over 18 %. These higher readings were:

- 20% under the gas meter
- 21% under the bedroom 2 window
- 20% under the corbelled kitchen garden window
- 20%, 22%, 38% and 40%+ in the deck and wall framing at the master bedroom deck. The expert was of the opinion that these high readings indicate that the framing may have suffered some loss of structural strength.

Moisture readings exceeding 18% recorded after cladding is in place generally indicate that external moisture is entering the structure.

5.7 A copy of the expert's report was provided to each of the parties on 28 September 2004. The territorial authority did not comment on the report.

5.8 The applicants responded by a facsimile dated 12 October 2004, which clarified the deck membrane used, commented on the expert's notes with regard to variations to the consent plans, and noted that:

- a concrete block wall is in place beside the front steps
- the deck membrane is Wet-seal as noted in the installation certificate, applied over tanalised plywood
- the deck framing was purchased by the applicants, and was H3 treated timber
- the method of weatherproofing the garage door head was common at the time and was approved at consent stage by the territorial authority.

I have reconsidered the applicants' comments and have amended the draft determination as I consider appropriate.

5.9 As noted in paragraph 5.1 the expert's report was completed in September 2004. I have reviewed the expert's report and the defects identified and have decided not to re-inspect the property.

6. Evaluation for code compliance

6.1 Evaluation framework

6.1.1 In evaluating the design of a building and its construction, it is useful to make some comparisons with the relevant Acceptable Solution[4], in this case E2/AS1, which will assist in determining whether the features of this house are code compliant. However, in making this comparison, the following general observations are valid:

- Some Acceptable Solutions cover the worst case, so that they may be modified in less extreme cases and the resulting alternative solution will still comply with the Building Code.
- Usually, when there is non-compliance with one provision of an Acceptable Solution, it will be necessary to add some other provision to compensate for that in order to comply with the Building Code.

6.1.2 The approach in determining whether building work is weathertight and durable and is likely to remain so, is to apply the principles of weathertightness. This involves the examination of the design of the building, the surrounding environment, the design features that are intended to prevent the penetration of water, the cladding system, its installation, and the moisture tolerance of the external framing. The Department and its antecedent, the Building Industry Authority, have also described weathertightness risk factors in previous determinations (refer to Determination 2004/1 *et al*) relating to cladding and these factors are also used in the evaluation process.

[4] An Acceptable Solution is a prescriptive design solution approved by the Department that provides one way, but not the only way, of complying with the Building Code. The Acceptable Solutions are available from the Department's website at www.dbh.govt.nz.

6.1.3 The consequences of a building demonstrating a high weathertightness risk is that building solutions that comply with the Building Code will need to be more robust. Conversely, where there is a low weathertightness risk, the solutions may be less robust. In any event, there is a need for both the design of the cladding system and its installation to be carefully carried out.

6.2 Weathertightness risk

6.2.1 In relation to these characteristics I find that the building:

- is in a high wind zone
- is a maximum of two stories high
- has an overall envelope that is relatively complex on plan, with roofs at various levels that have numerous roof and wall/roof intersections
- the house has eaves projections that provide some protection to the monolithic cladding areas below them
- has two upper level balconies, one of which is partly built above the garage
- has external wall framing that is unlikely to be treated, so providing no resistance to the onset of decay if the framing absorbs and retains moisture.

6.2.2 When evaluated using the E2/AS1 risk matrix, these factors show that one elevation of the building demonstrates a low weathertightness risk, two elevations a moderate weathertightness risk and one a high weathertightness risk. The matrix is an assessment tool that is intended to be used at the time of application for consent, before the building work has begun and, consequently, before any assessment of the quality of the building work can be made. Poorly executed building work introduces a risk that cannot be taken into account in the consent stage but must be taken into account when the building as actually built is assessed for the purposes of issuing a code compliance certificate.

6.3 Weathertightness performance

6.3.1 Generally the cladding appears to have been installed in accordance with reasonable trade practice. However, some junctions, penetrations and edges are not well constructed, and these areas are as described in paragraph 5.4 and in the expert's report as being the:

- inadequate ground or paving clearances to the bottom of the cladding
- cracks in the cladding
- inadequate sealing of the sill to jamb junctions of at least some of the windows
- lack of flashing, capillary gap or drip edge to the garage door head

- lack of kickouts and poor weatherproofing of the bottom of apron flashings, with gaps and exposed polystyrene showing in some locations
- lack of coating behind fascias and gutters
- inadequate sealing of some fixings and pipe penetrations through the cladding
- inadequate weatherproofing of the electricity and gas meter boxes
- inadequate clearance from the bottom of the wall cladding to the deck tiles
- inadequate weatherproofing of the ends of the deck upstand cappings, and the penetrations of the balustrade fixings through the cappings
- lack of drip edges to the lower edges of the deck perimeter bands and to the deck overflows
- poor weatherproofing of the garage deck overflow.

6.3.2 I note the expert's comment that he was unable to confirm the presence of the concrete block wall (refer paragraph 5.5), but I note that the drawings indicate a 500mm nib wall to the corner of the garage and I am therefore prepared to accept the applicant's statement (refer paragraph 5.8) that a concrete block wall is in place against the front steps.

6.3.3 I note the extensive cracking apparent in many areas the cladding. The expert was unable to determine the cause of this cracking, and I consider that further investigation of these cracks and the reasons for their occurrence are necessary before any remediation is proposed or attempted.

6.3.4 I also note the evidence of inadequate flashings to at least some of the windows, and consider that the jamb to sill junctions of all windows should be exposed, inspected and rectified as required to ensure that the junctions are adequately sealed.

6.3.5 I draw to the attention of the territorial authority the evidence of significant water penetration into the perimeter of the deck above the garage, and the likelihood that further investigation may reveal decay of the deck framing (despite the probable treatment of the timber) which could compromise the structural integrity of the deck.

6.3.6 Notwithstanding the fact that the cladding is fixed directly to the timber framing, thus limiting drainage and ventilation behind the cladding, I have noted certain compensating factors that assist the performance of the cladding in this particular case:

- most of the monolithic cladding has been installed in accordance with reasonable trade practice and to the manufacturer's instructions
- the house has eaves projections that provide some protection to the monolithic cladding areas below them.

6.3.7 I consider that these factors help compensate for the lack of a ventilated cavity and can assist the additions to comply with the weathertightness and durability provisions of the Building Code.

7. Response to the applicants' comments

7.1 I have considered the applicants' comments (refer paragraph 4.11) on the draft determination dated 19 June 2006 and note that they wish the house to be assessed on the "regulations in effect at the time of consent".

7.2 I note that the underlying requirements of clauses E2 and B2 have not changed since the building consent was issued. These requirements were, and still are, that building work is to be weathertight and durable and likely to remain so. The investigations into this house have clearly shown that the cladding is not weathertight and durable, and I therefore make no change to my conclusions.

8. Conclusion

8.1 I am satisfied that the current performance of the cladding (including the decks) is not adequate because it is allowing significant water penetration into the building at present. Consequently, I am satisfied that the building does not comply with clause E2 of the Building Code.

8.2 In addition, the building is also required to comply with the durability requirements of clause B2. Clause B2 requires that a building continues to satisfy all the objectives of the building code throughout its effective life, and that includes the requirement for the house to remain weathertight. Because the cladding faults in this building are allowing the ingress of moisture at present, the house does not comply with the durability requirements of clause B2.

8.3 Subject to further investigations that may identify other faults, I consider that, because the faults that have been identified with the building occur in discrete areas, I am able to conclude that satisfactory rectification of the items outlined in paragraph 6.3.1 should be expected to result in the dwelling becoming and remaining weathertight and in compliance with clauses B2 and E2.

8.4 Effective maintenance of claddings (in particular of monolithic cladding) is important to ensure ongoing compliance with clauses B2 and E2 of the Building Code and is the responsibility of the building owner. Clause B2.3.1 of the Building Code requires that the cladding be subject to "normal maintenance", however, that term is not defined in the Act.

8.5 I take the view that normal maintenance is that work generally recognised as necessary to achieve the expected durability for a given building element. With respect to the cladding, the extent and nature of the maintenance will depend on the material, or system, its geographical location and level of exposure. Following regular inspection, normal maintenance tasks shall include but not be limited to:

- where applicable, following manufacturers' maintenance recommendations
- washing down surfaces, particularly those subject to wind-driven salt spray
- re-coating protective finishes
- replacing sealant, seals and gaskets in joints.

8.6 As the external wall framing of this building is likely to be untreated, periodic checking of its moisture content should also be carried out as part of normal maintenance.

9. The decision

9.1 In accordance with section 20 of the Building Act 1991, I hereby determine that the cladding systems and the decks as installed do not comply with clause E2 of the Building Code. There are a number of items to be remedied to ensure that the building becomes and remains weathertight and thus meets the durability requirements of the code. Consequently, I find that the building does not comply with clause B2. Accordingly, I confirm the territorial authority's decision to refuse to issue a code compliance certificate.

9.2 I note that the territorial authority has not issued a notice to rectify or a notice to fix. A notice to fix should be issued requiring the owners to bring the house into compliance with the Building Code. The notice to fix may list the items to be rectified but it should not specify how compliance is to be achieved as this is for the owner to propose and for the territorial authority to accept or reject. It is important to note that the Building Act allows for more than one method of achieving compliance.

9.3 I would suggest that the parties adopt the following process to meet the requirements of paragraph 9.2. Initially, the territorial authority should issue a notice to fix, listing all the items that the territorial authority considers to be non-compliant. The owner should then produce a response to this in the form of a detailed proposal, produced in conjunction with a competent and suitably qualified person, as to the rectification or otherwise of the specified issues. Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination.

Issue 2: The additional durability considerations

10. Discussion

10.1 As previously described, the territorial authority has concerns about the compliance with clause B2 of certain elements of the building. These building elements included all items other than those relating to the cladding. These elements have 5 or 15 year, or the life of the building, being not less than 50 years, durability requirements under clause B2.

10.2 The territorial authority's concerns are due to the fact that the building was substantially completed in 1999, some years before the territorial authority undertook a visual "weathertightness" inspection in May 2004.

10.3 The relevant provision of clause B2 of the Building Code recognises that building elements must, with only normal maintenance, continue to satisfy the performance requirements of the Building Code for certain periods "from the time of issue of the applicable code compliance certificate" (clause B2.3.1 and 'limits on application' marginal note).

10.4 Under clause B2.3.1, the periods for which building work must remain durable are:

- 5 years if the building elements are easy to access and replace, and failure of those elements would be easily detected during the normal use of the building;
- 15 years if building elements are moderately difficult to access or replace, or failure of those elements would go undetected during normal use of the building, but would be easily detected during normal maintenance; and
- the life of the building, being not less than 50 years, if the building elements provide structural stability to the building, or are difficult to access or replace, or failure of those elements would go undetected during both normal use and maintenance.

10.5 From the evidence provided by the territorial authority about the building, I am satisfied that:

- the building elements concerned would have met the required durability provisions of clause B2 at the time of substantial completion of the building (i.e. when the building was ready for occupation in early 2000); and
- the territorial authority has correctly established compliance with all other Building Code clauses that are not in dispute.

10.6 On this basis, the territorial authority (under section 34(4) of the Building Act 1991) should amend the original building consent to incorporate a modification to clause B2. The modification should be to the 'limits on application' marginal note to clause B2.3.1, to the effect that the required durability periods for the building elements concerned apply from the date of substantial completion of the building, not from the date of issue of the code compliance certificate. For the purposes of this determination, "substantial completion" of the house is achieved when the house was completed and ready for occupation as determined by the territorial authority.

10.7 The modification of clause B2 should be documented in the territorial authority's records of the property to ensure that potential purchasers and subsequent owners are aware of the modification. It would be appropriate for the territorial authority to note the modification on the Land Information Memorandum, and to place a copy of the determinations on the property file for the building.

11 The decision

11.1 Despite the evidence referred to in paragraph 10.5, I have not received sufficient subsequent evidence that the building elements meet the current requirements of clause B2 at this time. Therefore, I find that I am unable to be satisfied on reasonable grounds, due to the absence of evidence, whether the particular building elements, which have 5 or 15 year durability requirements, comply with clause B2 of the Building Code. Accordingly, I confirm the territorial authority's decision to refuse to issue a code compliance certificate for the building.

11.2 The owner should now exercise the option of applying to the territorial authority for a waiver or a modification to the original building consent as set out in paragraph 10.6, which should address the B2 issues raised by the territorial authority (the appropriate documentation for such an application may be available from the territorial authority).

11.3 The territorial authority shall, on receiving such a request from the owner, consider any waivers or modifications it has granted when deciding whether to issue a code compliance certificate for building work consented under the Act.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 12 September 2006.

John Gardiner
Determinations Manager