Determination 2007/57

Determination regarding a refusal to issue a code compliance certificate for a house due to the territorial authority's decision not to rely on a building certifier's inspection reports at 21 Lowe Road, Pahoia, Tauranga

1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004[1] ("the Act") made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing ("the Department"), for and on behalf of the Chief Executive of that Department. The applicant is the first owner, the Hundley Family Trust ("the applicant"), and the other party is the Western Bay of Plenty District Council ("the territorial authority"). The applicant has identified the builder of the house, Mr O'Neill of SNS Construction Ltd ("the builder") as an interested party to the matter.

1.2 The applicant originally stated that the determinable matter was the decision to decline a certificate of acceptance. It was subsequently clarified that the matter for determination was the decision to decline to issue a code compliance certificate for a 3 year old house. The refusal arose because the building work had been undertaken

[1] The Building Act 2004 is available from the Department's website at www.dbh.govt.nz.

under the supervision of Bay Building Certifiers ("the building certifier"), which was duly registered as a building certifier under the former Building Act 1991, but which lost its approval as a building certifier before it had issued a code compliance certificate for the building work. The territorial authority considers that the appropriate certificate to be issued is a certificate of acceptance, as it cannot be satisfied that the building as a whole complies with the Building Code[2] (First Schedule, Building Regulations 1992).

1.3 In order to determine that matter, I must answer the following questions in sequence:

a) Is there sufficient evidence to establish whether the house as a whole complies with the Building Code?

b) Can a code compliance certificate be issued forthwith?

c) If a code compliance certificate cannot be issued forthwith, are there sufficient grounds to conclude that, once any outstanding items are fixed and inspected, a code compliance certificate could be issued?

d) If there are insufficient grounds to issue a code compliance certificate even after outstanding items are fixed and inspected, are there parts of the building work that can be confirmed, on reasonable grounds, as complying with the building code in order that a certificate of acceptance can be issued in respect of these parts?

I answer these questions in paragraph 9.3.

1.4 In making my decision, I have considered the submissions of the parties, the two reports of the independent expert commissioned by the Department to advise on this dispute ("the expert"), and the other evidence in this matter. I have evaluated this information using a framework that I describe more fully in paragraph 7.1.

1.5 In this determination, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

2. The building

2.1 The building work consists of a one-storey detached house, situated on a flat rural site, which is in a high wind zone for the purposes of NZS 3604[3]. The house construction is a mix of proprietary cold rolled steel portal frames at 6 metre centres supporting infill external timber framed walls, with a concrete slab and foundations, aluminium windows, and plywood sheet and profiled metal wall claddings. The house is a simple T-shape, with a 22^{o} pitch profiled metal gabled roof. Except for the recessed entry, the only eaves projections are provided by the gutters and there are no verge projections. Timber pergolas are attached to the walls beneath the gutters on the north elevation and part of the west elevation.

2.2 The expert has noted no evidence as to timber treatment. I have received no information as to the treatment if any of the external infill framing and the date of

[2] The Building Code is available from the Department's website at www.dbh.govt.nz.
[3] New Zealand Standard NZS 3604:1999 Timber Framed Buildings

construction would suggest the use of untreated timber. The specification calls for wall framing to be "LOSP H1 with H3 bottom plate." However, given the date of construction and the lack of other evidence, I am unable to determine whether the timber is treated to a level that will provide resistance to fungal decay and must therefore assume that it is not treated.

2.3 The cladding system to the gable ends of the house consists of stain-finished 12mm thick treated plywood sheets fixed through the building wrap to the framing, with vertical 50mm x 20mm rough sawn battens spaced at 400mm centres over the joints and within the sheet span. The expert notes that the battens have double weathergrooves in the backs. The remaining walls have horizontal corrugated "Zincalume" metal wall cladding fixed through the building wrap to the framing.

3. Background

3.1 The territorial authority issued a building consent (No. 70153) on 6 January 2004. It appears that building inspections were undertaken by Bay Building Certifiers ("the building certifier"). The building certifier carried out various inspections during construction, including pre-line inspections on 2 April 2004 and 14 April 2004. It appears that construction was completed during 2004, although I have received no records of a final building inspection.

3.2 Bay Building Certifiers lost its approval as a building certifier on 30 June 2005. I note that Bay Building Certifiers subsequently operates as Bay Inspections, a contractor providing building regulatory services to the Tauranga City Council.

3.3 In a letter to the applicant dated 20 June 2006, the territorial authority explained that when the building certifier ceased operating, an agreement had been made with the contractor to complete outstanding inspections on the building certifier's projects and make recommendations regarding the issuing of code compliance certificates. The territorial authority went on to explain that the liability for building work imposed by the Act meant that:

> ...before Council accepts such liability by issuing Code Compliance Certificates it must be satisfied inspections carried out by Bay Building Certifiers and Bay Inspections were satisfactory to confirm projects have been completed to the standards required by the Building Acts 1991 and 2004. Unfortunately our experience to date is that these inspections, supporting documentation and evidence are not satisfactory to support Council issuing Code Compliance Certificates. Regrettably, this lack of satisfactory inspection detail puts Council in the position where it is unable at this time to accept liability for these deficient projects or issue Code Compliance Certificates.

The territorial authority explained that further inspections were therefore required in order to determine:

- If a Code Compliance Certificate could be issued or whether more building work and inspections are necessary, or
- If a Certificate of Acceptance could be issued or whether more building work and inspections are required, or
- If a Certificate of Acceptance is not appropriate or a Code Compliance Certificate cannot be issued to advise owners of their right to seek a Determination from [the Department].

3.4 On 22 August 2006 the territorial authority carried out an inspection of the house and, in a letter to the applicant dated 6 September 2006, provided a list of 10 non-complying matters, most of which related to the external wall cladding. The territorial authority also stated:

> It should also be noted that on completion of the remedial work Council will not issue a Code Compliance Certificate for the building. ...Section 91 of the [Act] requires that you apply for a Certificate of Acceptance.
>
> If Council then decides it is able to issue a Certificate of Acceptance it will only cover those elements of the building that can be readily inspected and compliance with the Building Code determined.

3.5 In a letter to the territorial authority dated 25 September 2006, the builder questioned the need for some of the items and provided proposals to remedy the other cladding-related matters. The builder noted that the lack of a final building inspection had been due to an oversight on his part, but there were no signs of water penetration into the building.

3.6 In a response to the builder dated 16 October 2006, the territorial authority noted that the work proposed appeared to remedy the identified defects with the cladding, but added that:

> …when this work is completed and inspected Council will not issue a Code Compliance Certificate as there are many other features in the building which Council staff have been unable to inspect.

3.7 The builder responded in a letter to the territorial authority dated 30 October 2006, asking that more certainty regarding the issuing of a certificate of acceptance be provided before proceeding with remedial work.

3.8 In a letter to the territorial authority dated 16 November 2006, the applicant noted that remedial work had been completed on two of the listed defects (the gully trap, and a hole in the cladding where a pipe entered the garage) and provided documentation regarding the third (a producer statement for the oil burning heater). The applicant also noted that the house had been sold, with a settlement date in February 2007.

3.9 In a letter to the applicant dated 29 November 2006, the builder noted that no firm response to his proposals had been received from the territorial authority and suggested that if all the work originally required was carried out then the house should qualify for a full code compliance certificate.

3.10 The territorial authority did not issue a notice to fix as required under section 164 of the Building Act 2004.

3.11 The Department received an application for a determination on 15 December 2006.

4. The submissions

4.1 The applicant forwarded copies of:

- the drawings and specification

- the building consent documentation
- the correspondence with the territorial authority
- various producer statements and other statements.

4.2 The territorial authority made no submission.

4.3 Copies of the submissions 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.

4.4 A copy of the draft determination was sent to the parties for comment on 7 March 2007. The applicant accepted the draft.

4.5 In an email to the Department dated 12 April 2007, the territorial authority accepted the expert's report and the draft determination, but considered that the following matters needed to be addressed:

- Apart from the items identified in the expert's report, there were several other outstanding items (as identified in the inspection on 22 August 2006 and outlined in paragraph 3.3 of the draft) that had not been covered.
- If a code compliance certificate is issued, it would need to cover all of the building work – including items that cannot now be inspected (such as the foundations, plumbing, drainage, concealed framing, bracing and insulation).
- The building certifier did not issue an interim code compliance certificate for the house, so the Council is reluctant to take responsibility for items that cannot now be inspected. This is addressed in the Act by certificates of acceptance.
- Complying with a notice to fix will only remedy those items now able to be inspected.

4.6 In response to the first bullet point above, I observe that the letter to the applicants, dated 6 September 2006, contained 10 items. Eight of these related to the cladding which the expert has addressed in his report. The applicant has stated that the remaining two items have been completed (raising the gully trap and providing a producer statement for the oil heater) as noted in paragraph 3.8. I do not therefore consider these latter two items to be in dispute.

4.7 I have addressed the remaining comments within paragraph 5 and paragraph 9.

5. Grounds for the establishment of code compliance

5.1 In order for me to form a view as to code compliance, I need to establish what evidence has been submitted and what can be obtained considering that the building is completed and some of the building elements are not able to be cost effectively inspected.

5.2 In this case the evidence consists of the building certifier's inspection reports, the inspection report of the territorial authority, and a producer statement, as well as the two reports of the expert I commissioned to provide additional evidence.

5.3 In this case, the territorial authority does not believe it can reply on the building certifier's reports and any decision it makes with respect to compliance is limited by what items it is able to inspect. I therefore need to decide if I can rely on certifier's reports, particularly regarding inaccessible building components.

5.4 In the absence of any evidence to the contrary, I take the view that I am entitled to rely on the inspections undertaken by the building certifier. However, before deciding whether or not to rely on the building certifier's inspection report, I consider it important to look for evidence that corroborates it.

5.5 In this particular case, corroboration comes from the visual inspection of the accessible components by the expert, which can be used to verify whether the building certifier's inspections were properly conducted.

5.6 I also note that the inspection record indicates that the building certifier carried out 8 of the required 10 required inspections (all of which were passed). It appears that the two final building inspections (which would have included the visible components and the building's exterior) were not completed. I therefore consider it likely that the omitted inspections would have identified the non-compliant matters addressed in the territorial authority's final inspection (refer paragraph 3.4).

5.7 I note that a producer statement (Design) for the portal frame has also been provided.

5.8 In conclusion I find that the following documentation allows me to form a view as to the code compliance of the building work as a whole:

- The expert's two inspections of the visible components of the house.
- The building certifier's records of 8 inspections of the inaccessible components; all of which passed.
- The territorial authority's final inspection.
- The Producer Statement - Design for the portal frame.

6. The expert's reports

6.1 As mentioned in paragraph 1.4, I engaged an independent expert to provide an assessment of the condition of those building elements subject to the determination. The expert is a member of the New Zealand Institute of Building Surveyors.

6.2 The cladding report

6.2.1 The expert visited the house on 1 February 2007, and furnished a report ("the cladding report") that was completed on 15 February 2007. The expert noted that the building work conformed to the consent drawings, the cladding installation is generally satisfactory and the "overall standard of workmanship/finish is good". The

expert also noted that clearances from the bottom of claddings to paved areas were generally acceptable as the site is well elevated and drained, although lacking an anti-capillary gap at the base. The expert noted that the pergola ribbon plates were fixed directly below the gutters, which he considered provided reasonable protection against water penetration through the fixings.

6.2.2 The expert inspected the window installation, and noted that the windows were face-fixed with metal head flashings and no sill or jamb flashings. The expert noted that:

- the windows in the plywood cladding were installed against battens that formed facings around the openings, with Inseal foam between the batten and the window jamb flanges and the top batten fixed above the head flashing.
- The expert noted that the windows in the corrugated metal cladding were installed against the cladding, with plywood facings butted against the window jamb and sill flanges and compressible foam installed at the jamb facings. The top plywood facing is fixed above the head flashing (which extends across the jamb facings).

6.2.3 The expert removed a section of vertical batten at the horizontal flashing in the plywood cladding to inspect the underlying construction, and noted that the battens have double weathergrooves in the back. I accept that the area exposed is typical of similar locations around the building.

6.2.4 The expert inspected and took non-invasive moisture readings throughout the interior of the house and no evidence of moisture was noted. The expert noted that it was not possible to take invasive moisture readings through the metal cladding (due to the damage that would be caused), so invasive moisture tests were limited to 4 readings taken through the plywood cladding at high risk areas. The highest recorded reading was 13%.

6.2.5 Commenting specifically on the claddings, the expert noted that:

- clearances from the internal floor level and the bottom of wall claddings to garden soil areas are inadequate in some areas
- the window head flashings have inadequate slopes away from the cladding (with some flashings sloping towards walls), lack stopends and are reliant on sealant for weatherproofing the ends of the flashings
- the windows in the metal cladding have inadequate head and sill flashings, with battens butting against window flanges and relying on sealant for weatherproofing. In the event of any moisture running down the jamb flashing it will not be directed outside the building by the sill flashing
- there is insufficient upstand of the horizontal joint flashing in the plywood cladding, the upstand is not overlapped by flashing tape or wrap, and the bottom edges of the upper sheets have inadequate clearance above the flashing slope
- the battens over the plywood joints are only 50mm wide, providing inadequate cover to the sheet edges. (I note that the battens within the sheet span are decorative only, so this comment applies to only one batten in three)

- pipe penetrations through the plywood lack flanges and rely on sealant for weatherproofing.

6.2.6 A copy of the expert's cladding report was provided to each of the parties on 20 February 2007.

6.3 Addendum report: other relevant code clauses

6.3.1 Following the preparation of the first draft determination, the expert reviewed inspection records held by the territorial authority, revisited the house to assess compliance with other relevant building code clauses, and commented on these matters in an addendum report to the Department dated 11 May 2007.

6.3.2 The expert made the following comments:

- **B1 Structure**

Inspection records indicate that footings, the concrete slab and pre-line inspections were satisfactory. An internal and external visual inspection also indicated no evidence of excessive movement or structural distress.

- **E1 Surface Water**

Drainage and stormwater inspections were satisfactorily undertaken and the as-built plan provided to the territorial authority. The house is also elevated, and unlikely to suffer adverse effects from surface water.

- **F2 Hazardous Building Materials**

Shower screens and bathroom windows were marked as required by NZS 4223: Part 3, as having been tested in accordance with AS/NZS 2208.

- **G1 Personal Hygiene**

Spaces and facilities are appropriate, with adequate provision for cleaning and protection against food contamination.

- **G4 Ventilation**

Mechanical ventilation is adequate, and opening windows and doors provide adequate natural ventilation.

- **G7 Natural Light**

The house has adequate provision of natural light to all habitable rooms.

- **G12 and G13 Water Supplies and Foul Water**

The building certifier's records indicate that satisfactory plumbing and drainage inspections were undertaken, and the as-built plan provided to the territorial authority. The gulley traps appear satisfactory.

- **H1 Energy Efficiency**

The inspection records indicate that insulation was inspected and passed.

7. Evaluation for code compliance

7.1 Evaluation framework

7.1.1 I have evaluated the code compliance of this house by considering the following two broad categories of the building work:

- The weathertightness (and durability) of the external building envelope, that is Code Clauses E2 and B2 (in so far as B2 relates to E2).
- The remaining relevant code requirements.

In the case of this house, the weathertightness considerations merit particular attention and are therefore considered first.

7.1.2 In evaluating the design of a building and its construction, it is useful to make some comparisons with the relevant Acceptable Solution, 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.

7.2 Evaluation of external building envelope for E2 and B2 Compliance

7.2.1 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[4] (for example, Determination 2004/1) relating to cladding and these factors are also used in the evaluation process.

7.2.2 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.

7.3 Weathertightness risk

7.3.1 In relation to these characteristics I find that this house:

- is built in a high wind zone

[4] Copies of all determinations issued by the Department can be obtained from the Department's website.

- is a maximum of one storey high
- is simple in plan and form
- has plywood sheet and horizontal profiled metal claddings that are fixed directly to the framing, and inter-cladding junctions that are limited to corners
- has eaves projections limited to gutter width only, and no verge projections
- has timber pergolas fixed to some walls below the gutters
- has external wall framing (as infills to steel portal frames) that may not be treated to a level that is effective in helping resist decay if it absorbs and retains moisture.

7.3.2 The house has been evaluated using the E2/AS1 risk matrix. The risk matrix allows the summing of a range of design and location factors applying to a specific building design. The resulting level of risk can range from 'low' to 'very high'. The risk level is applied to determine what claddings can be used on a building in order to comply with E2/AS1. Higher levels of risk will require more rigorous weatherproof detailing; for example, a high risk level is likely to require a particular type of cladding to be installed over a drained cavity.

7.3.3 When evaluated using the E2/AS1 risk matrix, the weathertightness features outlined in paragraph 7.3.1 show that all elevations of this house demonstrate a low weathertightness risk rating.

7.4 Weathertightness performance: exterior cladding

7.4.1 Generally the claddings appear to have been installed in accordance with good trade practice. Taking account of the expert's report, I conclude that remedial work is necessary in respect of the following:

- inadequate clearances from the internal floor level and the bottom of wall claddings to garden areas
- inadequate slopes and ends of window head flashings
- inadequate head and sill flashings to windows in the metal cladding
- inadequate horizontal joint flashings in the plywood cladding
- inadequate battens over the plywood vertical joints
- inadequate weatherproofing of pipe penetrations through the plywood.

7.4.2 It is possible that, in the course of rectifying the defects observed by the expert, other associated defects will be discovered. These too will need to be fixed.

7.4.3 Notwithstanding the fact that the horizontal corrugated metal cladding is fixed directly to the timber framing, thus limiting drainage and ventilation behind the cladding, I have noted certain compensating factors that assist or confirm the performance of the metal cladding in this particular case. These factors are that:

- apart from the noted exceptions, the cladding is installed to good trade practice

- the corrugated profile provides some limited ventilation and drainage paths behind the cladding
- there is no indication of moisture penetration into the building at present.

7.4.4 I consider that these factors help compensate for the lack of a drained cavity to the walls clad in horizontal corrugated metal, and can assist the building to comply with the weathertightness and durability provisions of the Building Code.

7.4.5 I note that the plywood claddings of this building would not require a drained cavity in order to comply with Acceptable Solution E2/AS1.

7.5 Evaluation of other code requirements

7.5.1 Based on the expert's addendum report and the comments as outlined in paragraph 6.3.2, there appears to be no evidence of any lack of compliance with other relevant clauses of the Building Code.

7.5.2 Based on the expert's assessment of visible components of the building together with the inspection records and other documentation, I consider that the building is likely to comply with the provisions of the remaining relevant code clauses.

8. Discussion

8.1 Weathertightness

8.1.1 I consider that the expert's report establishes there is no evidence of external moisture entering the building, and accordingly, that its cladding does comply with clause E2 at this time.

8.1.2 However, 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 building to remain weathertight. Because the cladding faults on the building are likely to allow the ingress of moisture in the future, the house does not comply with the durability requirements of clause B2.

8.1.3 Because the faults identified with the cladding system occur in discrete areas, I am able to conclude that satisfactory rectification of the items outlined in paragraph 7.4.1 will result in the building remaining weathertight and in compliance with clause B2.

8.1.4 As I state in paragraph 7.4.2, other faults may become evident during the course of rectifying the faults outlined in paragraph 7.4.1. If the process described in paragraph 10.3 is followed, the territorial authority will be able to satisfy itself, by appropriate inspection, that faults identified in the course of rectification are themselves rectified. The territorial authority may of course decline to issue a code compliance certificate if any of the faults described in paragraph 7.4.1, or associated faults that are discovered in the course of rectification, are not rectified to its satisfaction.

8.1.5 I emphasise that each determination is conducted on a case-by-case basis. Accordingly, the fact that a particular cladding system has been established as being code compliant in relation to a particular building does not necessarily mean that the same cladding system will be code compliant in another situation.

8.1.6 Effective maintenance of claddings 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.

8.1.7 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 should 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.

8.1.8 As the external infill wall framing of the building may not be treated to a level that will resist the onset of decay if it gets wet, periodic checking of its moisture content should also be carried out as part of normal maintenance.

8.2 Other code clauses

8.2.1 I consider that the expert's additional inspection and comments as outlined in paragraph 6.3.2 have established that the house complies with all other relevant clauses of the building code. Based on the expert's assessment of visible components of the building together with the inspection records and other documentation, I therefore consider that the building is likely to comply with the provisions of the remaining relevant code clauses.

8.2.2 I note that there were several other outstanding items identified in the territorial authority's final inspection on 22 August 2006 that the applicant has stated have been fixed. This has been confirmed by the expert in his addendum report.

8.2.3 I consider that the expert's addendum report establishes there is no evidence of any lack of compliance with the other code clauses applicable to this house. I accordingly consider that the house complies with clauses B1, E1, F2, G1, G4, G7, G12 and H1 of the Building Code.

9. The appropriate certificate to be issued

9.1 Having found that the building can be brought into compliance with the Building Code, I must now determine whether the territorial authority should issue either a code compliance certificate or a certificate of acceptance.

9.2 Section 437 of the Act provides for the issue of a certificate of acceptance where a building certifier is unable or refuses to issue either a building certificate under section 56 of the former Act, or a code compliance certificate under section 95 of the current Act. In such a situation, a territorial authority may, on application, issue a certificate of acceptance or a code compliance certificate. In this instance, I note that the applicant has not formally applied to the territorial authority for a certificate of acceptance (refer paragraph 1.2).

9.3 In paragraph 1.3 I posed a number of questions that I needed to answer. My answers to those questions are as follows:

a) Is there sufficient evidence to establish whether the house as a whole complies with the Building Code? No, as concluded in paragraph 8.1.2, there is evidence that the house as a whole does not comply with the Building Code.

b) Can a code compliance certificate be issued forthwith? No, because the building does not comply with the Building Code.

c) If a code compliance certificate cannot be issued forthwith, are there sufficient grounds to conclude that, once any outstanding items are fixed and inspected, a code compliance certificate could be issued? Yes, see paragraphs 8.1.3, 8.1.4 and 8.2.3.

d) If there are insufficient grounds to issue a code compliance certificate even after outstanding items are fixed and inspected, are there parts of the building work that can be confirmed, on reasonable grounds, as complying with the building code in order that a certificate of acceptance can be issued in respect of these parts? This question is not relevant in the light of the answer to (c).

10. The Decision

10.1 In accordance with section 188 of the Building Act 2004, I determine that the building work does not comply with clause B2 of the Building Code but complies with the other code clauses. Accordingly I confirm the territorial authority's decision to refuse to issue a code compliance certificate.

10.2 I note that the territorial authority has not issued a notice to fix as required by section 164. A notice to fix should be issued that requires the applicant to bring the building work into compliance with the Building Code, identifying the defects listed in paragraph 7.4.1 and 7.4.2, but not specifying how those defects are to be fixed. That is a matter for the applicant to propose and for the territorial authority to accept or reject. It is important to note that the Building Code allows for more than one method of achieving compliance.

10.3 I would suggest that the parties adopt the following process to meet the requirements of paragraph 10.2. Initially, the territorial authority should issue the 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 technically robust 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.

10.4 The territorial authority shall issue a code compliance certificate once the items listed in the notice to fix have been fixed its satisfaction.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 31 May 2007.

John Gardiner
Manager Determinations