



Determination 2008/115

10 December 2008

Determination regarding a notice to fix for a 6-year-old house at 7B Exler Place, Avondale, Auckland



1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“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 applicants are the owners of the property, Y Lin and Y Chen (“the owners”), acting through the builder, J Clifford (“the builder”), and the other party is the Auckland City Council (“the authority”) carrying out its duties and functions as a territorial authority or building consent authority.
- 1.2 This determination arises from the decision of the authority to issue a notice to fix for a 6-year-old building because it is not satisfied that the building work complies with certain clauses of the Building Code² (Schedule 1, Building Regulations 1992).

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

² The Building Code is available from the Department’s website at www.dbh.govt.nz.

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.

1.3 I consider that the matters for determination are:

1.3.1 Matter 1: The claddings

Whether the claddings as installed on the building (“the cladding”) complies with Clause E2 External Moisture of the Building Code. By “the cladding as installed” I mean the components of the system (such as the backing materials, the flashings, the joints and the plaster and/or the coatings) as well as the way the components have been installed and work together.

1.3.2 Matter 2: The remaining Building Code matters

Whether certain building elements in the house, other than the claddings, comply with the relevant clauses of the Building Code.

1.3.3 Matter 3: The durability considerations

Whether the building elements in the house comply with Clause B2 “Durability” of the Building Code, taking into account the age of the building work.

1.4 I note that the “particulars of contravention or non-compliance” attached to the notice to fix dated 11 October 2007 indicate that some aspects of the building work contravene Clauses B1, E1, G1, G2, G3, G9, G12 and G13 of the Building Code. I note that there are no specific items within the notice to fix that relate directly to these clauses, and I have received no evidence relating to a dispute about them. I have therefore not considered these clauses further within this determination.

1.5 In making my decision, I have considered the submissions of the parties, the report 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 6.1.

2. The building

2.1 The building work consists of a 2-storey detached house on a flat site, which is in a low wind zone for the purposes of NZS 3604³. The house is fairly simple in plan and form, with concrete foundations and floor slab, light timber frame construction, brick veneer cladding to the lower walls, monolithic cladding to the upper walls, aluminium windows and a pressed metal tile roof.

2.2 The 25° hipped roof to the upper level has eaves projections of about 300mm overall, except for a 3.6m length of wall that projects from the kitchen on the upper north wall, within which an aluminium “box bay window” is installed. A lower level lean-to roof extends over part of the garage to the west, and this is continued around the building as a small canopy attached above the lower brick veneer walls.

2.3 The expert took a timber sample from the exterior wall framing and forwarded it to a testing laboratory for analysis (refer paragraph 5.5), and the biodeterioration consultant’s analysis indicated that the sample was untreated apart from some surface

³ New Zealand Standard NZS 3604:1999 Timber Framed Buildings

treatment with boron on one face. Given the date of construction in 2002, I consider that the external wall framing is unlikely to be treated.

- 2.4 The monolithic cladding system is what is described as EIFS⁴, and is a 40mm “Insulclad” polystyrene system fixed directly to the framing over the building wrap. A sponge finish plaster system has been applied over the polystyrene system. The system includes purpose-made flashings to windows, edges and other junctions.

3. Background

- 3.1 The authority issued a building consent (No BLD36020304201) on 17 May 2002. I note that the consent was issued to the builder under the Building Act 1991 (“the former Act”).

- 3.2 During 2002, the authority carried out various inspections of the construction, including a pre-line inspection on 7 August 2002 and post-line inspections on 14 and 23 August 2002.

- 3.3 The authority carried out a final inspection on 17 October 2002, and identified the following outstanding items:

- completion of exterior ground levels
- seal toilet to floor in first floor ensuite
- approval of amendment required for the variations to the floor plan.

(I note that amended floor plans dated in 2002 include a note “gave to inspector”.)

- 3.4 The owners subsequently purchased the house from the builder, with the sales agreement apparently stating that a code compliance certificate would be obtained. After 5 years of living in the house, the owners discovered that no code compliance certificate had been issued.

- 3.5 Responding to a request for a code compliance certificate, the authority undertook an inspection of the house on 23 July 2007. In a letter to the owners dated 21 September 2007, the authority noted that, as a number of outstanding issues had been identified, the work did not comply with the building code and a notice to fix would be issued.

- 3.6 On 11 October 2007, the authority issued a notice to fix and stated that it was not satisfied that the building work complied with the consent, or with the Building Code, or with the Building Act. The “particulars of contravention or non-compliance” attached to the notice listed requirements under the following headings:

- items not installed per the manufacturer's specifications
- items not installed per the approved acceptable/alternative solutions
- items not installed per accepted trade practice
- drainage and ventilation of the cladding
- durability issues

⁴ external insulation and finish system

- changes to the building consent
- other building related issues
- durability issues.

I summarise the items within the above headings in paragraph 9.1. The authority required the owners to prepare a proposed scope of work to address the areas of non-compliance, and attached a set of photographs illustrating items of non-compliance.

- 3.7 In a memorandum to the authority dated 24 November 2007, the builder advised that a determination would be sought from the Department. However, no application was received and, in a letter to the owners dated 23 June 2008, the authority asked for information as to their intentions regarding the rectification of the issues identified in the notice to fix.
- 3.8 In a letter to the authority dated 28 June 2008, the owners explained that, after checking several times with the builder, they had contacted the Department and found that the application had not been received. They noted that they had informed the builder, who had then forwarded the application.
- 3.9 The Department received an application for a determination from the builder on 2 July 2008.

4. The submissions

- 4.1 The builder made a submission dated 27 June 2008, which explained that the building had been caught up in new rules established in 2003 and noted:
- We have never had a “leaky building” over all our building career. As the [authority] established the new rules approx 2003, we were among the 1st builders to apply the new building rules. As we continue to construct new homes we apply the new building rules.
- 4.2 The builder forwarded copies of:
- the drawings and specification
 - the “as-built” floor plans
 - some correspondence with the owners and the authority
 - the notice to fix dated 16 June 2008
 - various other calculations and statements.
- 4.3 The authority forwarded a CD-Rom that was entitled “Property File” that contained documents pertinent to this determination, including:
- the consent documentation
 - the inspection records
 - correspondence with the owners.

- 4.4 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.
- 4.5 The draft determination was issued to the parties on 4 September 2008. The draft was issued for comment and for the parties to agree a date when the house complied with Building Code Clause B2 Durability.
- 4.6 The parties agreed that the building elements complied with Clause B2 Durability on 1 November 2002.
- 4.7 The builder agreed that specialist assistance was required as suggested in paragraph 11.3. The builder suggested that installation of moisture detection probes into the bottom plates of the framing would monitor the moisture content of the timber and provide an “early warning detection system”. I make no comment as to the efficacy or otherwise of such probes. While these probes may assist monitoring of moisture ingress into the cladding, I do not accept that their installation in any way affects the code compliance of a building. While they may indicate whether compliance with Clause E2 is being achieved, they do not in any way contribute to a building’s ability to comply with Clause E2 and hence in this instance make the house code compliant.

5. The expert’s report

- 5.1 As discussed in paragraph 1.5, 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. The expert inspected the house on 1 August 2008 and furnished a report that was completed on 14 August 2008.
- 5.2 The expert noted that “visually the cladding is in reasonable condition”, with minor staining indicating that little or no maintenance has been carried out.
- 5.3 The expert noted that the house generally accorded with the consent drawings, except for:
- the projecting kitchen wall to the north elevation
 - the bay window to the projecting kitchen wall
 - sloping soffits shown in the consent elevations were not built
 - various minor changes to layouts and fixtures.
- 5.4 The expert noted that the windows and doors in the EIFS cladding are recessed with metal head flashings. The expert removed 2 small sections of plaster at the jamb to head and jamb to sill junctions of a window, and noted uPVC jamb and sill flashings. I accept that the exposed junctions are typical of similar locations in the building.
- 5.5 The expert also removed a section of cladding at the apron flashing above the lean-to garage roof, in order to inspect the underlying flashing up-stand. Samples of timber framing and of the polystyrene backing sheet were forwarded to a biodeterioration

consultant for analysis. In a letter to the expert dated 11 August 2008, the consultant noted that the timber contained profuse fungal growths and the polystyrene contained remnants of fungi and insects, indicating that the samples had been exposed to moisture over several years, although decay had not yet developed. Although the timber sample showed traces of boron at one face, the level detected was unlikely to confer significant durability on the timber.

- 5.6 The expert inspected the interior of the house, taking non-invasive moisture readings internally, and no evidence of moisture was noted. The expert took 19 invasive moisture readings through the EIFS cladding at high risk positions, and 1 slightly elevated reading of 19% was noted under the jamb to sill junction of a west window.

Most readings ranged from 11% to 16%, indicating the likely equilibrium moisture levels in the framing. Moisture levels that vary significantly after cladding is in place generally indicate that external moisture is entering the structure.

- 5.7 Commenting specifically on the EIFS wall cladding, the expert noted that:

- there is no sealant where the jamb flashing butts under the head flashing, and a large gap will allow moisture to penetrate
- the head flashing is sealed against the cladding and the building paper does not overlap the flashing up-stand, which prevents any moisture penetrating the cladding above from draining to the outside
- there is no sealant or corner soaker at the junction of the sill flashing with the jamb flashing, (and I note that, in some areas, the sill flange is sealed against the cladding which prevents moisture from escaping to the outside)
- the removal of cladding showed that the building paper did not overlap the up-stand of the apron flashing over the lean-to garage roof, which will allow any moisture that penetrates the cladding to drain into the ceiling space below
- the top of the cladding is likely to be unsealed as the coating was applied after gutters were in place, and the top of the cladding to the projecting kitchen wall sits directly under the gutter, which means that any future gutter leak (from overflow or corrosion) will allow moisture to penetrate the wall below
- the penetrations through the EIFS cladding are sealed with the plaster coating and cracks are evident which may allow moisture penetration.

- 5.8 Commenting specifically on the brick wall cladding, the expert noted that:

- the pipe penetrations through the brick veneer have been sealed with mortar rather than flexible sealant, and cracks are evident which may allow moisture into the cavity.

- 5.9 The expert made the following additional comments:

- Although the clearance of the bricks above the paving is reduced to about 25mm near the garage, the paving is well drained and unlikely to pond.
- Although testing with a probe showed that there are no fixing blocks behind the EIFS cladding to support the down-pipe brackets, the down-pipes are

against upper walls where they are unlikely to be pulled away and there is no sign of associated problems.

- Although the base moulding at the bottom of the EIFS lacks drainage holes and the cladding is not chamfered at the back, there is no sign of any associated problems.

5.10 Other Building Code matters

5.10.1 The expert noted that the laundry tub lacks a splash-back and is not sealed against the wall lining.

5.10.2 The expert noted that some items in the notice to fix relate to technical non-compliance with acceptable solutions, standards and/or manufacturer's recommendations, which does not necessarily mean non-compliance with the provisions of the building code. In addition to the comments outlined in paragraphs 5.7 and 5.8, the expert made the additional comments in response to the notice to fix:

- Only one area of roof (of about 34m²) on the south elevation exceeds 25m², and the down-pipe from this is kicked out at the bottom to discharge away from the wall junction onto the projecting eave below. As the lower roof is not above any enclosed space, the discharge should not pose any danger to wall framing.
- While spreaders are a good practice the rate of discharge is limited by there being four down-pipes from the upper roof.
- While overflow channels are a good practice for gutters behind attached fascias, these were not required at the time of construction, the bottom of the gutters are generally exposed, and the number of down-pipes provided to the upper roof reduce risks arising from a down-pipe becoming blocked.
- While they are recommended, smoke detectors were not a requirement at the time of construction.
- Adequate natural ventilation is provided to bathrooms, and no mould was visible on the linings at the time of inspection.

5.11 A copy of the expert's report was provided to each of the parties on 18 August 2008.

5.12 The authority responded to the expert's report in a letter to the Department dated 23 August 2008. The authority disagreed with the expert's conclusion that the house complied with Clause E2, as the expert and the biodeterioration consultant had both noted evidence of moisture penetration. The authority also noted that some moisture readings recorded by the expert were elevated and the biodeterioration consultant's report noted that timber framing sample was not treated to the equivalent of H1.2. I have addressed the matter of moisture penetration in paragraphs 5.6, 7.5.1 and 12.1.

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 Solutions⁵, 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 are written conservatively to 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 one or more other provisions to compensate for that in order to comply with the Building Code.

Matter 1: The claddings

7. Weathertightness

7.1 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 determinations⁶ (for example, Determination 2004/1) relating to cladding and these factors are also used in the evaluation process.

7.2 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 building:

- is built in a high wind zone
- is a fairly simple, 2-storey building
- has brick veneer cladding installed over a drained cavity to lower walls
- has monolithic cladding fixed directly to the framing on upper walls

⁵ 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 Copies of all determinations issued by the Department can be obtained from the Department's website.

- has eaves projections above most walls, with one section of wall directly under a gutter
- has external wall framing that is not treated to a level that provides resistance to the onset of decay if the framing 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 cladding 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 the house demonstrate a moderate weathertightness risk rating.

7.4 Weathertightness performance: exterior claddings

7.4.1 Generally the roof and wall claddings appear to have been installed in accordance with reasonable trade practice, but some areas have not been satisfactorily completed. Taking account of the expert's report and comments as outlined in paragraph 5.7, I conclude that remedial work is necessary in respect of the following:

EIFS cladding

- the unsealed junctions of head flashings with jamb flashings
- the lack of drainage above the head flashings and the lack of overlap of the building wrap to the flashing up-stand
- the unsealed junctions of sill flashings with jamb flashings and lack of drainage below the sill flanges
- the lack of overlap of the building wrap to the flashing up-stand of the apron flashing over the lean-to garage roof
- the lack of weatherproofing of the projecting kitchen wall beneath the gutter
- the unsealed penetrations through the EIFS veneer

Brick cladding

- the unsealed penetrations through the brick cladding.

7.4.2 I note the expert's comments in paragraph 5.9, and accept that these areas are adequate in the circumstances.

7.4.3 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:

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

- moisture penetration seems limited to areas where defects have been identified.
- the presence of a cavity behind the brick veneer on the lower storey.

7.4.4 I consider that these factors help compensate for the lack of a drained cavity to the EIFS walls, and provide some assurance that the building work will comply with the weathertightness and durability provisions of the Building Code.

7.5 Weathertightness: conclusion

7.5.1 I consider the expert's report establishes that the current performance of the cladding is not adequate because there is evidence of some past and present moisture penetration. Consequently, I am satisfied that the house does not comply with Clause E2 of the Building Code.

7.5.2 In addition, the building work 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 on the house are likely to allow the ingress of moisture in the future, the building does not comply with the durability requirements of Clause B2.

7.5.3 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 house being brought into compliance with Clauses B2 and E2.

7.5.4 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 applicant. The Department has previously described these maintenance requirements, including examples where the external wall framing of the building may not be treated to a level that will resist the onset of decay if it gets wet (for example, Determination 2007/60).

Matter 2: The remaining Building Code matters

8. Discussion

8.1 Taking account of the expert's report and comments as outlined in paragraph 5.10.1, I conclude that remedial work is necessary in respect of the following:

- The lack of sealing and splash-back to the laundry tub.

8.2 I therefore consider the expert's report establishes that the building work does not comply with Clause E3 of the Building Code.

8.3 I note the expert's comments in paragraph 5.10.2, and accept that these matters are adequate in the circumstances. However, while the installation of smoke detectors was not a requirement at the time of construction, I strongly recommend that they be installed.

9. Summary response to the notice to fix

9.1 The following table summarises conclusions on the items listed within the notice to fix dated 11 October 2007, referring to related paragraphs within this determination:

Notice to fix		My conclusion on required rectification work	Paragraph references
Item	Summarised requirement		
2.1	Not to manufacturer's specifications		
a)	No eaves overhang above projecting upper level wall	Remedial work required	5.7
b)	Cannot confirm window flashings	Flashings are present , but remedial work required	5.4 and 5.7
c)	Provision for drainage from cladding above head flashing	Remedial work required due to lack of building wrap overlap and drainage gap above head flashing.	5.4 and 5.7
d)	Back of cladding not chamfered		
e)	Cannot confirm jamb flashings	Flashings are present.	5.4
f)	Cannot confirm sill flashings		
g)	Lack of drainage gap at sills	Remedial work required	5.7
h)	Lack of fixing blocks to downpipes	Confirmed as not present, but adequate in circumstances	5.10.2
i)	Penetrations through claddings	Remedial work required	5.7 and 5.8
2.2	Not to relevant code requirements at the time		
a)	Discharge from roof catchment area over 25m ² onto lower roof.	Adequate in circumstances	5.10.2
b)	No allowance for gutter overflow	Not required at the time and adequate in circumstances	5.10.2
c)	Down-pipes lack spreaders	Not required at the time and adequate in circumstances	5.10.2
d)	No eaves overhang above projecting upper level wall	Remedial work required	5.7
e)	Inadequate ventilation of bathrooms	Adequate ventilation provided, and no mould evident.	5.10.2
f)	Bench to wall junctions unsealed	No problem identified	
g)	Lack of splash-backs to laundry	Remedial work required	5.10.1
h)	Tub to wall junction unsealed	Remedial work required	5.10.1
i)	In some areas, paving levels are too high at brick base	Only applies near garage – where it is adequate in circumstances	5.9
2.3	Not to accepted trade practice		
a)	Penetrations through claddings	Remedial work required	5.7 and 5.8
b)	Down-pipes lack spreaders	Not required at the time and adequate in circumstances	5.10.2
c)	In some areas, paving levels are too high at brick base	Only applies near garage – where it is adequate in circumstances	5.9

2.4	Drainage and ventilation		
	Inadequate drainage and ventilation	Adequate in circumstances	7.4.4
3.0	Changes to building consent		
a)	Bay window added to kitchen	Revised plans submitted to authority, but no approval for amendments issued. TA and applicants to resolve	5.3
b)	Layout changes to upper level		
c)	Changes to garage area		11.4
d)	Window added to garage		
e)	Lower lounge now bedroom		
4.0	Other building related issues		
a)	Smoke detectors	Recommended (but not a requirement of the Building Code at time of construction)	5.10.2
5.0	Durability issues		
	Concerned re times measured from CCC issue	Amend to date from completion	10 and 12.2

Matter 3: The durability considerations

10. Discussion

- 10.1 The authority has concerns about the durability, and hence the compliance with the building code, of certain elements of the building taking into consideration the age of the building work completed in 2002.
- 10.2 The relevant provision of Clause B2 of the Building Code requires that building elements must, with only normal maintenance, continue to satisfy the performance requirements of the Building Code for certain periods (“durability periods”) “from the time of issue of the applicable code compliance certificate” (Clause B2.3.1).
- 10.3 These durability periods 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
 - 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.
- 10.4 It is not disputed, and I am therefore satisfied, that all the building elements complied with Clause B2 on 1 November 2002. This date has been agreed between the parties, refer paragraph 4.6.
- 10.5 In order to address these durability issues when they were raised in previous determinations, I sought and received clarification of general legal advice about

waivers and modifications. That clarification, and the legal framework and procedures based on the clarification, is described in previous determinations (for example, Determination 2006/85). I have used that advice to evaluate the durability issues raised in this determination.

10.6 I continue to hold that view, and therefore conclude that:

- (a) the authority has the power to grant an appropriate modification of Clause B2 in respect of all the building elements.
- (b) it is reasonable to grant such a modification, with appropriate notification, because in practical terms the building is no different from what it would have been if a code compliance certificate for the building work had been issued in 2002.

10.7 I strongly recommend that the authority record this determination and any modifications resulting from it, on the property file and also on any LIM issued concerning this property.

11. What is to be done now?

11.1 I note that the authority has issued a notice to fix that required provision for adequate ventilation, drainage and vapour dissipation. Under the Act, a notice to fix can require the owner to bring the additions into compliance with the Building Code. The Building Industry Authority has found in a previous Determination 2000/1 that a Notice to Rectify (the equivalent to a notice to fix under the Building Act 2004) cannot specify how that compliance can be achieved. I concur with that view.

11.2 The authority shall withdraw the notice to fix. A new notice to fix is to be issued in its place that requires the owners to bring the building up to compliance with the Building Code, identifying the defects listed in paragraphs 7.4.1 and 8.1 and referring to any further defects that might be discovered in the course of rectification, but not specifying how those defects are to be fixed. That is a matter for the owners to propose and for the authority to accept or reject. It is important to note that the Building Code allows for more than one method of achieving compliance.

11.3 I would suggest that the parties adopt the following process to meet the requirements of paragraph 11.2. Initially, the authority should issue the notice to fix. The owners with their builder 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.

11.4 I also note that changes from the consent drawings have been identified and I leave the matter of appropriate documentation of these changes to the authority for resolution with the applicant.

12. The decision

12.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the building does not comply with Clauses B2, E2 and E3 of the Building Code, and accordingly confirm the authority's decision to issue a notice to fix.

12.2 I also determine that:

- (a) all the building elements installed in the building, apart from the items that are to be rectified as described in this determination, complied with Clause B2 on 1 November 2002
- (b) the building consent is modified as follows:

The building consent is subject to a modification to the Building Code to the effect that, Clause B2.3.1 applies from 1 November 2002 instead of from the time of issue of the code compliance certificate for all the building elements, except the items as set out in paragraphs 7.4.1 and 8.1 of [**this determination**].
- (c) once the matters set out in paragraphs 7.4.1 and 8.1 together with any other matters arising from a more extensive investigation, have been rectified to its satisfaction, the authority is to issue a code compliance certificate in respect of the building consent as amended.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 10 December 2008.

John Gardiner
Manager Determinations