



## Determination 2009/61

# Whether a territorial authority was correct to issue building consents and code compliance certificates for four-year-old houses where the cladding is exhibiting signs of failure at 34 Tararua Street and 13 Talbot Grove, Upper Hutt

### 1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“the current 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 D Raja and R Ravji, the owners of 34 Tararua Street, and C Richdale and P Richdale, the owners of 13 Talbot Grove, (“the applicants”) all acting through a legal adviser. The other party is the Upper Hutt City Council (“the authority”) carrying out its duties and functions as a territorial authority and a building consent authority.
- 1.2 The determination arises from the authority’s decisions to issue building consents and code compliance certificates for the four-year old houses at the addresses given in paragraph 1.1. The authority’s decisions are disputed by the applicants, due to concerns about the performance of the timber weatherboards on each of the houses.
- 1.3 I take the view that the matters for determination in terms of sections 177(b)(i) and 188<sup>2</sup> of the current Act are whether:
- the decision of the authority to issue a building consent for each house was correct
  - the decision of the authority to issue a code compliance certificate for each house was also correct

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

<sup>2</sup> 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.

- 1.4 In making my decision, I have considered the submissions of the applicant, the report of the building surveyor commissioned by the applicant to advise on this matter (“the surveyor”), and other evidence in this matter.

## **2. The building work**

- 2.1 This determination is concerned with two houses (“the subject houses”) that are part of two larger urban developments. The subject houses are single story detached buildings situated on flat sections that are subject to high wind exposure, and are therefore likely to be in a high wind zone for the purposes of NZS 3604<sup>3</sup>. The subject houses are simple in plan and form, and have a 23° pitch profile gable roof with pressed metal tiles, 500mm eaves, and verge projections. The houses are clad with a mix of brick veneer and timber weatherboards.
- 2.2 The weatherboards are horizontal rusticated pinus radiata weatherboards fixed directly through the building wrap to the framing with timber facings at the corners. The weatherboards are a mix of those with smoother more dressed faces and others with a rough-sawn surface. Two different colours (and possibly types) of stain have been applied.
- 2.3 When evaluated using the E2/AS1 risk matrix, the weathertightness features show that all elevations of the houses demonstrate a low weathertightness risk rating. I note that, if the details shown in E2/AS1 were adopted to show code compliance, the weatherboard cladding on these houses would not require a drained cavity.

## **3. Background**

- 3.1 The authority issued a building consent for the house at 34 Tararua Street on 30 September 2004 under the Building Act 1991 (“the former Act”). It issued another building consent for the house at 13 Talbot Grove on 29 September 2005 under the current Act.
- 3.2 Inspections for Tararua Street were carried out by the authority from 21 December 2004 to 12 April 2005 and for Talbot Grove from 13 October to November 2005. Code compliance certificates were issued on 12 April 2005 for Tararua Street and on 8 December 2005 for Talbot Grove.
- 3.3 Subsequently, the weatherboards on walls with northerly and western aspects showed signs of cupping, shrinkage and cracking.
- 3.4 Separate applications for a determination from the owners of the two houses were received by the Department on 4 July 2008. As both applications deal with the same matters, they have been combined by mutual consent.

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<sup>3</sup> New Zealand Standard NZS 3604:1999 Timber Framed Buildings

## **4. The submissions**

4.1 The applicants made a submission dated 20 June 2008 in which it was requested that the two properties be treated as sample properties with the determination to be made in respect of 33 properties within two subdivisions.

4.2 I note here that any extension of the decision in this determination (which relates only to the two subject houses) to other houses in the development is for the parties (i.e. the owners) to make if they choose. I can only determine matters relating to the subject houses about which I have received an application for a determination by the owner.

4.3 The applicants forwarded copies of:

- a report from the surveyor
- the building consent application
- the consent drawings
- the specification
- the building consent
- the inspection records
- the code compliance certificates.

4.4 The authority made a submission, dated 6 October 2008, that contained four parts:

1. Summary of the authority's position.
2. Preliminary jurisdictional issue.
3. Code compliance.
4. The authority's decisions to issue building consents and code compliance certificates.

The submission canvassed these matters, but in particular the authority's role and responsibility and the reasonable expectations that could be had of competent tradesmen.

4.5 The first draft determination was issued to the parties for comment on 10 October 2008. Refer to paragraph 6 for submissions in response to the first draft determination.

4.6 The second draft determination was issued on 26 February 2009. Refer to paragraph 7 for submissions in response to the second draft determination.

## **5. The building surveyor's report**

5.1 As noted in paragraph 4.3, the applicants engaged a building surveyor to provide an assessment of the condition of the weatherboards subject to the determination. The surveyor is a member of the New Zealand Institute of Building Surveyors and I

accept the validity of the technical observations that were made regarding the current condition of the weatherboards.

5.2 The surveyor described the weatherboard fixing details and surface finish. The weatherboards were treated to LOSP 3.1 and, in some cases, had a vertical band saw finish to the outer face.

5.3 The surveyor described the following defects:

- Boards to the north and west elevations show signs of cupping.
- There are signs of splitting and shrinkage to some boards.
- Timber components are in close contact with the brickwork.
- Rustic plugs to fascia boards are coming loose.

5.4 The surveyor concluded that the weatherboards have been installed at variance in with the manufacturer's data sheet and the building consent documents with respect to the nailing and staining of the boards.

5.5 The surveyor also provided an explanation of the cause of the dimensional changes and deterioration in some of the boards and referred to the flashings and fixings.

## **6. The first draft determination, the hearing and subsequent submissions**

6.1 Copies of the draft determination were forwarded to the parties on 13 October 2008. The authority accepted the draft. However, the applicants, in a response dated 22 October 2008 advised that the draft was not accepted and requested a hearing. A hearing was subsequently held on 4 December 2008 and included a site inspection of both of the subject houses (refer to paragraph 8, Site Observations).

6.2 The hearing was attended by:

- the applicants, the applicants' legal adviser, the surveyor, and the owners of other houses in the two urban developments
- two representatives of the authority, being its legal adviser and a council officer
- a determinations referee appointed by the Chief Executive under section 187(2) of the current Act.
- two officers of the Department.

All parties spoke at the hearing including several owners of other homes within the two developments.

6.3 The applicants' legal adviser raised three matters at the hearing being:

1. The compliance of the weatherboards with Clause E2 "External moisture".
2. Whether the authority should have issued the consent.

3. Whether the authority should have issued the code compliance certificate.

#### **6.4 Compliance with Clause E2**

- 6.4.1 The applicants' legal adviser considered that if the building wrap was visible it was then a "first" line of defence against moisture entry and would ultimately fail and this was a failure to comply with Clause E2.
- 6.4.2 In response the authority submitted there is no evidence of moisture ingress and hence no failure to comply with Clause E2.

#### **6.5 The authority's decision to issue the building consent**

- 6.5.1 The applicants' legal adviser considered there was too little detail in the consent documents regarding the weatherboards. It was therefore not reasonable to issue the consent.
- 6.5.2 In response the authority submitted that the consent documents referred to a New Zealand Standard and that it was the prime responsibility of the building consent applicant to install the weatherboards properly and in accord with good trade practice.

#### **6.6 The authority's decision to issue the code compliance certificate**

- 6.6.1 The applicants contended that as well as the scheduled inspections, there was more the authority's inspectors could have, and should have, done to verify that the weatherboards were painted or sealed on all four sides.
- 6.6.2 In response, the authority submitted that building inspectors are not clerks of works and can only be expected to carry out scheduled inspections.
- 6.7 Following the hearings, a submission dated 15 December 2008 was received from the applicants. The submission confirmed the applicants' position and reviewed the points made at the hearing, commenting specifically on the compliance with Clause E2, the decision to issue the building consent, and the decision to issue the code compliance certificate. In summary, the submission of the applicants said:

#### **Compliance with Clause E2**

- The cladding does not comply with Clause E2 as the cladding is not adequately preventing the ingress of water, which is demonstrated by the deterioration of the weatherboards and visibility of the building wrap.
- A criterion of a claim under the Weathertight Homes Resolution Services Act is that there is damage to the building as a result of leaks. However, non-compliance of a building with Clause E2 does not require there to be damage to the building.
- The building wrap is being relied on as the primary means of protection, however the purpose of the building wrap is to temporarily absorb condensation and provide back up protection against water ingress.

### **The building consent**

- The documentation contained very few precise references to the weatherboards or the levels of treatment required and critical information was lacking pertaining to how the designs would comply with Clauses B2 and E2.
- The explanation that the relevant test for the standard of documentation in the building consent was the standard of documentation being accepted by other Councils at the time is not satisfactory. The authority needed to be satisfied on reasonable grounds that the provisions of the Building Code would be met.
- The significant issue at the time of consent was building performance with respect to Clauses B2 and E2. The performance of weatherboards was a current issue. There is literature published by the Department at that time pertinent to weatherboard performance and timber treatment.

### **The code compliance certificate**

- No grounds were identified upon which the authority could have reasonably determined that it was appropriate to issue the code compliance certificate. The determination must identify the basis upon which the authority satisfied itself that the building works complied with the Building Code.
- The ‘visual’ inspections undertaken by the authority are ‘wholly inadequate’ to confirm compliance with the Building Code and to establish that the timber weatherboards were appropriately stained and treated. The authority did not gather sufficient information to ensure compliance, both in terms of the inspections process, and the subsequent documentation sought.
- The authority was obliged to ensure that the building work was in compliance with the building consent. The authority should have confirmed that the weatherboards were treated to H3.2 and stained appropriately.

6.8 In response, the authority made a further submission dated 23 December 2008. In summary the authority’s submission said that:

### **The cladding**

- The applicants had presented no evidence to confirm the cladding’s non-compliance with Clause E2. The applicants’ submission relies on what was observed during the site inspection, where gaps between the weatherboards were observed. This evidence is inadequate and falls short of proving non-compliance.
- It was accepted that the weatherboards provided the primary defence and the building paper the secondary defence against water ingress. However, the few instances where the weatherboards were no longer providing the primary defence did not mean that the cladding was failing to comply with Clause E2.
- If a cladding was considered to have failed, the test was whether water ingress was ‘frequently and regularly occurring’. This test had not been met.

### **The building consent**

- The documentation was reasonable at the time of issuing the building consent. The drawings and specifications were of a high standard. There were specific

references to the relevant New Zealand Standards, specific details under 'exterior cladding' and plans.

- The publication by the Department, referred to in the submission (refer to paragraph 6.7) was produced in 2007, well after the consents were issued.

### **The code compliance certificate**

- The authority's inspection regimes are consistent with other local councils. Further, the authority was entitled to rely on the skill and knowledge of the builders to follow manufacturers' instructions to install and stain the cladding correctly.
- The applicants' submission attempts to specify what the authority ought to have done in their inspection process. The suggestions defy reasonable expectations of normal practice.

## **7. The second draft determination and subsequent submissions**

7.1 A second draft determination was issued to the parties for comment on 26 February 2009.

7.2 The authority responded to the second draft determination in a letter to the Department dated 10 March 2009. The authority accepted the draft subject to comment and some suggested amendments.

7.3 The applicants responded to the second draft determination in a submission to the Department dated 20 May 2009. The submission consisted of an affidavit from one of the applicants, who is a joint owner of 13 Talbot Grove, together with a statement from the applicants' surveyor.

7.4 In summary the applicants' submission said:

### **The affidavit**

- The affidavit said that owner had observed the authority's building inspectors making many visits to inspect the property at 13 Talbot Grove and adjacent houses in the development also under construction.
- The owner also said the construction practices used on all the houses in the Development 'were identical' and that '[i]t was very clear to all involved that the weatherboards were being installed without any pre-staining and were only being stained once they were installed'.

### **The surveyor's statement**

- Clause E2.3.2 says that roofs and exterior walls must prevent the penetration of water that could cause undue dampness, damage to building elements or both. Evidence of moisture ingress and damage is not required in order to determine non-compliance with Clause E2.
- The weatherboards have been damaged and cannot be remedied other than by replacement. Moisture will also damage the building wrap and framing.

- Damage to the weatherboards has been caused directly by the inadequate sealing, and not for the other reasons cited in the determination (refer paragraph 8.2).
- The surveyor rejected the notion that any maintenance to the weatherboards would alleviate the problem.
- It was an anomaly that, while the determination appeared to discount the value of sealing the rear face of the weatherboards, it also said that urgent maintenance as required.
- The inadequate staining of the weatherboards is the logical and obvious reason why the weatherboards have distorted so extremely.
- The documentation provided for the purpose of the building consents was insufficient to show how the provisions of the Building Code would be met, no reference was made to the type of weatherboards, treatment, or stain.
- At the time the consents were issued there was a significant amount information available to the industry about the appropriate treatment of weatherboards.
- The determination did not refer to the code compliance certificates being issued under different legislation.
- A 'simple viewing of the weatherboards' by the authority's inspectors was insufficient to determine code compliance. No steps were taken by the inspectors to confirm either the appropriate staining of the timber weatherboards or the level of treatment. Both could have been easily determined.

7.4.1 The affidavit from the owners of the Talbot Grove regarding the authority's inspections is couched in terms of the housing complex in general. As such, there was no specific reference to the installation of the weatherboards in respect of the subject houses. Therefore, I have considered the material in the affidavit subject to the limitation that some of the statements are not specific to the property at 13 Talbot Grove but generally concern the housing complex of which Talbot Grove is a part

## **8. Site observations of the weatherboards**

8.1 As mentioned in paragraph 6.1, a site visit was made in conjunction with the hearing. The site inspection, along with the surveyors report, served to confirm a number of matters including the following:

- A number of weatherboards exposed to the sun, primarily to the lower parts of walls on the north and west faces, were curling out at the lower edges and nails were 'popping out'.
- The weatherboards in sheltered locations (under eaves, in porches and on the south and east walls) appeared to be performing satisfactorily and a good standard of workmanship is evident. It therefore seems reasonable to assume the weatherboards are in the same condition as they would have been when the authority carried out the final inspection.



- The stain finish was severely weathered at exposed locations and was affording little protection to the weatherboards.
- The building wrap could be clearly seen through gaps between the ends of adjacent weatherboards.

8.2 I do not believe there is sufficient evidence to establish a single obvious cause for the distortion of the weatherboards. The distortion of the weatherboards may have arisen as a result of a number of factors, or a combination of those factors, including:

- the inadequate stain finishing of the boards
- the periodic wetting and drying
- the periodic heating and cooling
- the insufficient horizontal gap between adjacent boards to allow for expansion
- the milling of the boards, and whether they were tangentially or cross-cut.

8.3 As I am of the opinion that the flashings associated with the weatherboards are adequate, and they are not considered further in this determination.

## 9. The treatment and finish of the weatherboards

9.1 The weatherboards are treated to H3.1. Weatherboards treated to this level would normally be pre-primed on all faces as described in NZS 3602<sup>4</sup>. NZS 3602 requires weatherboards with either a stained finish, or no finish, to be treated to H3.2. Paragraph 11.3 of E2/AS1 references NZS 3602 as a means of compliance with respect to the treatment and grading of weatherboards. NZS 3602 includes the following provisions:

### 111.2 Weatherboards and exterior finishing timbers

- 111.2.1 Unless covered by 111.2.5, weatherboards and exterior finishing timbers required to have paint protection shall be primed on all faces (including cut ends) prior to fixing.
- 111.2.2 Weatherboards which are protected by a well maintained three coat alkyd or 100% acrylic paint in accordance with AS/NZS 2311 shall, if requiring treatment, be treated to at least H3.1 . . .
- 111.2.5 For “no finish” or “stained finish” condition only the following species are permitted; redwood, heart cypress, western red cedar and sawn H3.2 treated Radiata pine.

9.2 It is not disputed that the weatherboards were ordered and supplied as treated to H3.1. While it was not common practice to supply un-primed boards treated to H3.1 that does not automatically mean un-primed boards could not meet Building Code requirements. As un-primed boards were supplied in this case, I consider that it was the responsibility of the contractor, rather than the authority, to ensure that appropriate priming or sealing was carried out.

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<sup>4</sup> New Zealand Standard NZS 3602:2003 Timber and Wood-based Products for Use in Buildings

- 9.3 In my view the treatment of the weatherboards (either H3.1 or H3.2) would have had little, if any, effect on the performance of the weatherboards to date with respect to their dimensional stability.
- 9.4 The specifications call for painting to be carried out in accordance with specification AS/NZS 2311<sup>5</sup>. The paint system to the weatherboards was to be a “stain”. According to the standard ‘[t]imber stains include various paints, coloured varnishes, pigment dispersions and dye solutions designed to alter the colour of timber and enhance decorative effects’.
- 9.5 “Stain” is a generic term that covers a wide variety of attributes from simply colouring the timber to providing varying degrees sealing and preservation. Stains tend to have a limited in-service life and hence require more frequent maintenance by recoating. I have not been formally advised of the type of stain used in this instance.
- 9.6 The applicants submit that the failure of the weatherboards is due to the boards not being sealed on all faces before installation. The weatherboards received a stain finish to their exposed faces only.
- 9.7 Based on the site observations, I am of the opinion that neither the most appropriate, nor sufficient, stain has been applied to the exposed weatherboards to stop moisture from being absorbed from the exposed surface. The stain finish as applied is allowing water be absorbed into the weatherboards themselves, resulting in their deformation.
- 9.8 In addition, stain finish was not applied to the back surfaces of the weatherboards; however, I do not consider this to be contributing to the lack of dimensional stability of the weatherboards.

## 10. The Performance of the weatherboards

- 10.1 The relevant references in the Building Code are:

### Clause A2--INTERPRETATION

**Adequate** means *Adequate* to achieve the objectives of the building code.

**Building element** Any structural or non-structural component and assembly incorporated into or associated with a building. Included are fixtures, services, drains, permanent installations for access, glazing, partitions, ceilings and temporary supports.

### Clause E2—EXTERNAL MOISTURE

**E2.2** *Buildings* must be constructed to provide *adequate* resistance to penetration by, and the accumulation of, moisture from the outside.

**E2.3.2** Roofs and exterior walls must prevent the penetration of water that could cause undue dampness, damage to *building elements*, or both.

- 10.2 I am of the opinion that the building element in this case is the entire external wall framing, which is protected by the cladding system. Accordingly, the fact that one of

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<sup>5</sup> AS/NZS 2311:2000 Guide to the painting of buildings

the components that make up the cladding system (in this case, the weatherboards) may be absorbing water does not, of itself, amount to a failure of Clause E2 (refer paragraph 10.6).

- 10.3 I have taken account of the surveyor's report, noting the deficiencies it describes in that report. I also note that no elevated moisture levels or indications of moisture ingress that may have passed through the cladding into the framing have been detected. This is possibly because of the low weathertightness risk rating discussed in paragraph 2.3.
- 10.4 The lack of moisture ingress demonstrates that the weatherboards are complying with Clause E2. I therefore consider that the current performance of the weatherboard cladding on the subject houses has performed adequately to date and that the weatherboard system complies with Building Code Clause E2.
- 10.5 While I consider the cladding currently complies with Clause E2, the cladding is likely to fail to comply with Clause E2 in less than the time required by the durability requirements of the Building Code.
- 10.6 The cladding system is also required to comply with Clause B2 Durability, which requires that buildings continue to satisfy all the objectives of the Building Code throughout their effective life with normal maintenance. The cladding system has a durability requirement of 15 years. The weatherboards, as part of the cladding system will not last that long and where some of the more exposed weatherboards have deformed, urgent maintenance is due. Lack of maintenance is likely to result in excess moisture ingress or damage to the building wrap. Failure of the cladding system will occur when the wrap ruptures or fails so that moisture build occurs in the framing or other building materials to the extent it could cause damage. The degree of moisture that might result in damage to treated framing is not a matter to be considered in this determination.
- 10.7 I consider that the cladding system will not comply with the durability requirements of Clause B2 of the Building Code, although that would not have been evident at the time of final inspection.
- 10.8 It is apparent that the weatherboards require maintenance through the re-application of a sealing stain finish and that satisfactory maintenance has not occurred in this instance.

## **The decision to issue the building consents**

### **11. Discussion**

- 11.1 The requirement for a building consent to be issued under the Building Acts 1991 and 2004 is for an application to provide the authority with reasonable grounds to believe that if a building is constructed in accord with the details shown in those consent documents it will comply with the Building Code.
- 11.2 Having regard to the standard of the documents submitted for these two building consents, I make the following observations:

- The standard of these consent documents was generally good.
- Details of all structural details are shown, albeit on separate sheets. The only lack was specific detail cross references on the main sheets to details on the other sheets.
- The specification was generic and incorporated sections for the main building elements.
- There are few precise references within the documents to the weatherboards or the level of treatment or finish required. However, the drawings referenced 'rusticated weatherboards to NZS 3617<sup>6</sup>, the weatherboards are described as pinus radiata with vertical sawn or dressed faces, and the specification referenced painting to 'the manufacturers' recommendations and AS/NZS2311:2007'. There is also a general reference to 'NZBC, NZS 3604, the relevant standard, and subsequent amendments'. I note that the level of specification in the documents in regards to the cladding is not untypical for the time.
- The surveyor noted there were some discrepancies between the specifications and the manufacturer's requirements for nailing.

11.3 While the weatherboard profile is specified there is a lack of detail on the consented documentation regarding the finish to be applied to the weatherboards. I consider that the boards as installed match those that could be contemplated when the building consent was issued.

11.4 Therefore, on considering the documentation provided at the time of the consent applications, I have formed the view that the authority had reasonable grounds to believe that the houses built to those documents would have complied with the Building Code. I therefore consider that the authority's decision to issue the building consents for the subject houses was correct.

## **The decision to issue the code compliance certificates**

### **12. Discussion**

12.1 The applicant maintains that the code compliance certificates should not have been issued on the basis that the weatherboards had not been properly sealed and were therefore bound to deform and fail to meet code requirements. I take that to mean the applicant believed the authority did not have reasonable grounds to issue the code compliance certificates.

12.2 Regarding the code compliance certificates, I must first consider the process followed by the authority in issuing the code compliance certificates, and then secondly, whether the nature of the subsequent performance of the weatherboards was such that it could have been anticipated when the code compliance certificates were issued.

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<sup>6</sup> New Zealand Standard NZS 3617:1979 Profiles of Weatherboards, Fascia Boards, and Flooring

- 12.3 As set out in paragraphs 3.1, the two consents in question were issued under different Acts, and accordingly there are differing criteria for the issue of code compliance certificates. Under section 436, for the house at Tararua Street, the authority had to be satisfied on reasonable grounds that the house complied with the Building Code current at the time that the building consent was issued, before the code compliance certificate could be issued. Conversely, under section 94(1)(a), for the house in Talbot Grove, the authority had to be satisfied on reasonable grounds that the building work complied with the building consent, before the code compliance certificate could be issued.
- 12.4 The rationale as to the adequacy of the documents and the appropriateness of issuing the code compliance certificates was set out in the draft determination issued before the hearing. No argument was presented at the hearing, or subsequently, to cause me to modify this view.
- 12.5 The authority's inspection records show that the subject houses were inspected at appropriate stages in their construction (see paragraph 3.2) in line with the authority's standard operating procedures, and that at each inspection there were no problems identified by the inspector as requiring re-inspection later. Final inspections were carried out on 12 April 2005 for Tararua Street, and 8 November 2005 for Talbot Grove, following which the authority issued the code compliance certificates.
- 12.6 At the times the authority's inspectors carried out inspections and the weatherboards were in place (including the "pre-line" inspection) the building wrap would have concealed the internal face of the weatherboards from the inspector's view. The wall insulation material may also have been in place, concealing the building wrap from view. Whether or not the weatherboards had been pre-primed or pre-stained would not be apparent and is not a matter that would be expected to be confirmed by the inspector.
- 12.7 Based on my observations made during the site visit as to the condition of the weatherboard on the sheltered location of the houses (see paragraph 8.1), I am prepared to accept that, at the time of the authority's final inspection in April 2005, the weatherboards subject to this determination would have been in a similar condition. Accordingly, all the newly installed weatherboards would have appeared satisfactory to the inspector at the time.
- 12.8 With the passage of time, it has become clear that some of the weatherboards were not as inherently serviceable as the designer/builder had intended and expected. It has also become clear that an appropriate finish had not been applied. This contributed to the deterioration of the weatherboards. I have seen no evidence to show that the serviceability failure of the weatherboards could have been anticipated by the authority's inspector.
- 12.9 The surveyor and the applicants have asserted that, as building inspectors frequently visited sites adjacent to the subject building sites in the course of carrying out building inspections; they must have seen that the weatherboards were not being painted on all sides. I note these assertions, however I consider that the problems with the dimensional stability of the weatherboards is not due solely to one cause (refer paragraph 8.2).

- 12.10 The responsibilities of building inspectors are not matters that I can determine under the Building Act. Nonetheless, I observe here that the duties and functions of a building inspector, who visits the site on specific occasions to carry out pre-ordained inspections at certain stages in the construction of the building, are quite different from those of a clerk of works or other professional whose function is to check every stage of the work, including the materials delivered to site.
- 12.11 I am of the opinion that the inspection procedures followed by the authority were reasonable at the time they were carried out. I have also found, as set out in paragraph 12.6, that the appropriate inspections regarding the weatherboards were carried out as part of the site inspection regime.

### **The Tararua Street house**

- 12.12 I consider that the authority had reasonable grounds to be satisfied that the weatherboards in the Tararua Street house complied with the Building Code at the time of the final building inspection. Accordingly, it would not have been apparent that an inappropriate type of stain and/or an insufficient amount of stain had been applied to the weatherboards. Therefore, I am of the opinion that the authority had no reason to decline to issue code compliance certificate for the Tararua Street house.
- 12.13 As it has subsequently transpired some weatherboards as installed have not proved to be as serviceable as anticipated and the requirements for maintenance of the weatherboards have turned out to be more onerous and now more urgent than would have been expected if they had been properly stained. That may be a contractual matter to be resolved between the applicants and the builder and I have no powers under the Building Acts to determine the responsibility for that.

### **The Talbot Grove house**

- 12.13 In respect of the Talbot Grove house I have to consider whether the weatherboards comply with the building consent.
- 12.14 The specification for this house notes that the exterior cladding to be as 'shown on the drawings' and shall be 'fixed in according to the manufacturer's instructions and details ...'. The drawings indicate that the exterior cladding is to be 'rusticated weatherboards to NZS 3617:1979'. One detail notes that 'weatherboard top fixed using 40mm x 2.8mm nails'. There is no indication in the documentation as to what type of timber the weatherboards are to be made from. The consent documentation does not appear to include manufacturer's instructions and details.
- 12.15 Based on the above reasoning, I consider the authority had no reason to decline to issue the code compliance certificate for the Talbot Grove House.

## **13. The decision**

- 13.1 In accordance with section 188 of the Building Act 2004 and with respect to the subject houses, I hereby determine that:
- the decision of the authority to issue building consents for each house is confirmed

- the decision of the authority to issue a code compliance certificate for each house is also confirmed.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 4 August 2009.

John Gardiner  
**Manager Determinations**