



Determination 2009/22

Refusal to use a code compliance certificate for an 8-year-old house completed under the supervision of a building certifier at 200 Ross Road, Tauranga



1. The matters 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 applicant is the owner and builder, J Jurd (“the applicant”), acting through an agent, and the other party is the Western Bay of Plenty District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.2 This determination arises from the decision of the authority to refuse to issue a code compliance certificate for an 8-year-old building. The authority has instead issued a certificate of acceptance that accepts the building’s compliance, in full or in part, with certain clauses of the Building Code (refer paragraph 3.10).

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

1.3 The authority's refusal to issue a code compliance certificate arose because it is not satisfied that the building work complies with certain clauses of the Building Code² (First Schedule, Building Regulations 1992). The refusal arose because the building work had been undertaken 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 ceased operating as a certifier before it had issued a code compliance certificate for the building work.

1.4 Based on the applicant's submission, and in the absence of any submission from the authority, I consider that the matters for determination are:

Matter 1: The monolithic cladding

Whether the monolithic cladding as installed to parts of the walls on the house ("the monolithic cladding") complies with Clause B2 Durability and Clause E2 External Moisture. By "the monolithic cladding as installed" I mean the components of the systems (such as the backing materials, the plaster, the flashings and the coatings), as well as the way the components have been installed and work together. (I consider this matter in paragraph 7.)

Matter 2: Compliance with the remaining clauses

Whether the building complies with the remaining clauses, which are not included in the certificate of acceptance and which are relevant to this house. (I consider this matter in paragraph 8.)

Matter 3: The durability considerations

Whether the elements that make up the building work comply with Building Code Clause B2 Durability, taking into account the age of the house. (I consider this matter in paragraph 11.)

1.5 Based on the information and records supplied, I consider there is sufficient evidence available to allow me to reach a conclusion as to whether this building will comply with the Building Code once remedial work is completed. This determination therefore considers whether it is reasonable to issue a code compliance certificate. In order to determine that, I have addressed the following questions:

- (a) Is there sufficient evidence to establish that the building work as a whole complies with the Building Code? I address this question in paragraph 9.
- (b) If not, are there sufficient grounds to conclude that, once any outstanding items are repaired and inspected, the building work will comply with the Building Code? I address this question in paragraph 10.

1.6 In making my decision, I have considered the submission of the applicant, the report of the property inspection company commissioned by the applicant, the report of the expert commissioned by the Department to advise on this dispute ("the expert"), and other evidence in this matter. With regard to the monolithic cladding, I have evaluated this information using a framework that I describe in paragraph 6.1.

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.

2. The building

- 2.1 The building is a fairly simple single-storey detached house situated on a flat rural site that is in a high wind zone in terms of NZS 3604³. The house is of conventional light-timber frame construction, with a concrete floor slab and foundations, brick veneer and monolithic cladding, profiled metal roofing and aluminium windows. Except for several recessed walls, the 30° pitch gabled roof has no eaves or verge projections.
- 2.2 The gable to the north elevation projects beyond the exterior wall to provide a 1.7m deep overhang supported from brick veneer columns. Timber pergolas are attached beneath the gutters on either side of the north gable.
- 2.3 The expert noted that he was unable to confirm whether the timber framing was treated. Given the date of construction in 2001 and the lack of other evidence, I consider that the wall framing of this house is unlikely to be treated to a level that will provide resistance to fungal decay.

2.4 The wall claddings

- 2.4.1 The main cladding system to the house is plastered brick veneer, which extends up to eaves level on all exterior walls, except above windows and doors. (I note that the brick veneer is included in the certificate of acceptance).
- 2.4.2 The gable end upper walls and the areas above windows and doors are clad in EIFS⁴ monolithic cladding. The system includes 60mm polystyrene backing sheets fixed directly to the framing over the building wrap, which are finished with a mesh reinforced proprietary textured finish, followed by a flexible acrylic paint system.
- 2.4.3 It appears that the backing sheets to the cladding were installed by the applicant. The coating applicator issued a producer statement dated 12 July 2008 for the “plaster over approved mesh on top of a 60mm HD polystyrene” applied in April 2001, which stated that the coating system was applied over a substrate that “had been suitably prepared for the application of that system and that the required flashings had been properly installed”.

3. Background

- 3.1 The authority issued a building consent (No. 64163) on 1 December 2000, under the Building Act 1991, based on a building certificate issued by the building certifier on 22 November 2000. I have not seen a copy of the building consent.
- 3.2 The applicant (as the builder) constructed the house and the building certifier carried out the following inspections:
- foundations on 19 December 2000, which passed
 - concrete slab pre-pour on 20 December 2000, which passed

³ New Zealand Standard NZS 3604:1999 Timber Framed Buildings

⁴ External Insulation and Finish System

- plumbing and building pre-lines on 5 March 2001, which passed
- solid fuel heater installation on 30 April 2001, which passed
- drainage on 23 May 2001, which passed.

3.3 According to the applicant, the building certifier carried out all necessary inspections, although I have seen no indication of a final inspection. The house appears to have been completed and occupied by the middle of 2001.

3.4 The building certifier ceased to operate as a building certifier on 30 June 2005 without having issued a code compliance certificate.

3.5 In a pro-forma letter to the applicant dated 20 June 2006, the authority explained that when the building certifier ceased operating, an agreement had been made with a contractor to complete outstanding inspections on the building certifier's projects and make recommendations regarding the issuing of code compliance certificates. The 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.

3.6 The 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].

The authority also offered assistance with an application for determination, noting that it could make the application on the owner's behalf, and attached a "Transfer Form" to be filled in as required to initiate an assessment of the property.

3.7 It appears that the matter of the code compliance certificate was not followed up until the applicant arranged to sell the property in 2007. On 27 April 2007, the applicant completed a "Transfer Form", which requested the authority to "undertake an assessment of the project" as explained in the above letter.

3.8 According to the applicant, the authority carried out an inspection of the house, but I have seen no record of that inspection.

3.9 The inspection company's report

3.9.1 The applicant engaged a property inspection company (“the inspection company”) to assess the house.

3.9.2 The inspection company inspected the house on 2 July 2008 and 5 August 2008 and provided a report dated 11 August 2008, which noted that some of the cladding was EIFS that had been installed by the applicant. The report notes that:

Both the interior and exterior of this house are generally very well constructed and in accordance with the relevant Building Codes and well finished.

3.9.3 During the initial inspection, the inspection company noted a number of items that required attention and documentation that should be supplied. The report notes that the second inspection confirmed that satisfactory repairs had been carried out where recommended and the documentation had been supplied.

3.10 Despite the applicant continuing to request a code compliance certificate, the authority issued a certificate of acceptance (No. 78965) dated 14 November 2008. The certificate notes that it:

...covers only the following matters;

F2 Hazardous building materials – shower glazing only

G2 Laundering

G4 Ventilation

G7 Natural light

G8 Artificial light

G9 Electrical

G12 Water supplies – relating to water treatment and potable water requirements only

Ventilation and drainage of the plastered brick veneer

Finished ground levels

Plumbing pressure test

Shower tiling

Hot water cylinder seismic restraint

3.11 The applicant made an application for a determination, which was received by the Department on 27 November 2008.

4. The submissions

4.1 In a submission dated 25 November 2008, the applicant explained that he had constructed the house as “a builder of over 20 years experience”, with the building certifier carrying out all the required inspections during construction and the house completed to “high standards”. The background to the current situation was outlined and the applicant noted that the authority’s refusal to approve work that cannot be seen ignores the certifier’s satisfactory inspections and “results in a very limited document”. The applicant made it clear that a code compliance certificate was wanted for the house, and also stated:

With regard to the CCC I would like to make it clear that I am seeking to have it backdated to the point of completion.

- 4.2 The applicant forwarded copies of:
- the consent drawings and specification
 - the building certifier's inspection summary
 - the authority's letter dated 20 June 2006
 - the certificate of acceptance dated 14 November 2008
 - various producer statements, correspondence and other information.
- 4.3 The authority acknowledged the application, but made no submission.
- 4.4 A copy of the applicant's submission was provided to the authority, which made no submission in response.
- 4.5 A draft determination was issued to the parties on 19 February 2009. 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 Both parties accepted the draft without comment and agreed that compliance with Clause B2 was achieved on 1 June 2001.

5. The expert's reports

- 5.1 As mentioned in paragraph 1.6, 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 cladding on 5 January 2009 and furnished a report that was completed on 27 January 2009.
- 5.2 The expert noted that the consent drawings showed a proprietary block veneer system, which had been replaced with clay brick veneer. I also note that the fibre cement cladding to the gable ends appears to have been replaced with EIFS cladding (refer paragraphs 2.4.2 and 3.9.2).
- 5.3 The expert noted that, apart from the items outlined below, the cladding generally appeared to be installed to a "good standard" and the roof flashings appeared generally satisfactory. Control joints are not normally required for this type of EIFS cladding for the wall dimensions in this house.
- 5.4 The expert noted that the windows and doors were recessed below the EIFS by about 55mm, with no metal head flashings and no drip edge. The plastered brick sills had adequate slopes, the window flanges were adequately sealed and the expert noted no signs of moisture penetration.
- 5.5 The expert inspected the interior of the house, taking non-invasive moisture readings, and no evidence of moisture was observed. The expert took invasive readings from the inside at windows and doors, at the pergola penetrations and below apron flashings and noted the following elevated reading:

- 22% in the bottom plate below the below the apron flashing at the gutter to wall junction to the south elevation.

The expert noted that the remaining readings were all below 16%. Moisture levels that vary significantly generally indicate that external moisture is entering the structure and further investigation is required.

5.6 Commenting specifically on the wall cladding, the expert noted that:

- the pergola beams penetrate the EIFS cladding above the windows, and rely on sealant for weatherproofing the junctions
- the bottom of the apron flashings are not weatherproof, with no kickouts, gutters embedded in the plaster, and a heavy reliance on sealants, and moisture entry is apparent below one apron flashing
- above the recessed windows, doors and the garage door, the bottom of the EIFS cladding lacks a drip edge to prevent moisture tracking across the underside to the junction with the window or door head.

5.7 The expert made the following additional comments:

- although lacking head flashings, the windows and doors are protected by the 55mm recess and there is no evidence of moisture penetration
- although lacking a capillary gap at the junction of the timber fascia with the cladding, there is no evidence of associated moisture penetration
- although lacking movement control joints at the horizontal junction of the gable end cladding with the brick veneer, there is no evidence of cracking and any moisture penetration would be drained by the brick veneer cavity as the upper cladding is packed out to line up with the face of the plastered brick.

5.8 A copy of the expert's cladding report was provided to the parties on 29 January 2009.

5.9 The expert's addendum report

5.9.1 At the request of the Department, the expert revisited the house on 13 February 2009 and furnished an addendum report that was completed on 18 February 2009.

5.9.2 The purpose of the expert's additional visit was to assess the compliance of the house with certain other relevant clauses of the Building Code, and I have included his comments within paragraph 8.

Matter 1: The cladding

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 (in this case E2/AS1), which will assist in determining whether the features of the cladding to this house are code compliant.

6.2 Evaluation for E2 and B2 Compliance

6.2.1 The approach in determining whether building work is weathertight and durable and is likely to remain so, is to apply the principles of weathertightness. Assessing the weathertightness and durability of cladding systems involves examining those environmental and design features that will influence the risk profile of the particular building work. If a building demonstrates a high weathertightness risk, building solutions need to be more robust, while lower weathertightness risks can lead to less robust solutions.

6.2.2 The E2/AS1 risk matrix allows the weathertightness assessment of a specific building design, to determine what claddings can be used on a building in order to comply with E2/AS1. Higher risk levels may require some cladding systems to incorporate a drained cavity.

6.3 Weathertightness risk

6.3.1 The house has the following environmental and design features in relation to its weathertightness risk profile:

Increasing risk

- is built in a high wind zone
- has some monolithic cladding fixed directly to the framing
- has no eaves or verge projections above most walls
- has pergola beams penetrating EIFS cladding
- has external wall framing that is unlikely to be treated to a level that is effective in helping resist decay if it absorbs and retains moisture

Decreasing risk

- is a fairly simple single-storey building
- has no decks or balconies.

6.3.2 When evaluated using the E2/AS1 risk matrix, these features show that two elevations of the house demonstrate a moderate weathertightness risk rating and two

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.

a low risk rating. A drained cavity is now required by E2/AS1 for EIFS cladding at moderate risk levels, but this was not a requirement when this house was constructed.

6.4 Weathertightness performance

6.4.1 Generally the monolithic cladding appears to have been installed in accordance with reasonable trade practice, but some areas have not been satisfactorily completed as outlined in paragraph 5.6. Taking account of the expert's report, I conclude that remedial work is necessary in respect of the following:

- the lack of flashings where the pergola beams penetrate the EIFS cladding
- the inadequate weatherproofing of the bottom of the apron flashings
- the lack of drip edges to the EIFS above the windows, doors and garage door.

6.4.2 I also note the expert's comment in paragraph 5.7, and accept that these areas are adequate in the circumstances. However, I also note that the lack of drip edges to the window and door heads requires attention as noted above.

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

- Apart from the noted exceptions the cladding is installed to good trade practice.
- There are no cracks in the cladding
- Moisture penetration is limited to areas where defects have been identified.

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

7. Discussion

7.1 I consider the expert's report establishes that the current performance of the cladding is not adequate because it is allowing water penetration into the building in one location at present. Consequently, I am satisfied that the house does not comply with Clause E2 of the Building Code.

7.2 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.

7.3 Because the faults identified with the cladding occur in discrete areas, I am able to conclude that satisfactory rectification of the items outlined in paragraph 6.4.1 will result in the house being brought into compliance with Clauses B2 and E2.

7.4 It is emphasized 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.

- 7.5 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 clauses

8. Discussion

- 8.1 In considering the compliance of this house with other relevant Building Code clauses, I have taken into account the expert's addendum report, the consent drawings, the inspection records, the inspection company's report, the certificate of acceptance and the other evidence.

- 8.2 As noted in paragraph 3.10, the certificate of acceptance confirms the authority's acceptance that the building complies with Clauses G2, G4, G7, G8 and G9 of the Building Code, and I do not comment further on these clauses.

- 8.3 With respect to the remaining code clauses relevant to this house, I make the following observations:

- **B1 Structure**

The inspection record indicates satisfactory inspections of the footings, floor slab and framing. The expert noted that his internal and external visual inspection revealed no signs of excessive structural movement.

- **C1 Outbreak of fire**

The inspection record indicates satisfactory inspections of the solid fuel heater, and the installer has stated that it was installed in accordance with AS/NZS2918:2001 and the manufacturer's specification.

However I note that the inspection company's report raised a question regarding the possible need for vents to this particular type of heater, which remains unresolved.

- **E1 Surface water**

The inspection record indicates satisfactory inspections of drainage. The inspection company noted that surface water drainage was "fitted correctly", with roof water collected in a water tank (which the expert notes has 20,000 litre capacity). The expert noted that satisfactory drainage channels have been installed at patio to wall junctions and noted no problems regarding ground drainage. The expert also noted that the house is located on a crest and unlikely to ever be subjected to flood waters entering the building.

- **E3 Internal moisture**

The shower tiling is included in the certificate of acceptance and there are no signs of internally-generated moisture within the house, with the expert noting that non-

invasive moisture readings in bathroom areas gave no indication of water proofing problems.

- **F2 Hazardous building materials**

The shower glazing is included in the certificate of acceptance and the supplier has provided a statement confirming the shower glass as “clear toughened safety glass”. The expert has confirmed the compliance of the shower glass, but I note that the glass to the exterior doors has not been verified as safety glass.

- **G1 and G3 Personal hygiene and Food preparation**

Adequate provision appears to have been made to comply with the requirements.

- **G4 Ventilation**

The house has sufficient opening windows, and the expert has noted that the bathrooms and kitchen also have mechanical fans vented to the outside.

- **G12 Water Supplies**

The building certifier’s inspection summary indicates that satisfactory plumbing pre-line inspections were undertaken, and water treatment, plumbing pressure tests and potable water requirements are covered within the certificate of acceptance.

- **G13 Foul Water**

The building certifier’s inspection summary indicates that satisfactory drainage inspections were undertaken and fixtures have been operating satisfactorily for more than 8 years. An as-built drainage plan has been supplied and the expert has noted that gully traps are located as shown on the plan. The expert also noted that the 3300 litre septic tank meets the current Regional Plan requirements for the size of this house.

- **H1 Energy Efficiency**

The building certifier’s inspection summary indicates that satisfactory preline inspections were undertaken and the inspection company noted that the ceiling space was “insulated properly”.

8.4 Based on the above observations, I consider that the following items require attention:

- Investigation of whether vents are required for this type of solid fuel heater.
- Verification that safety glass is installed where required to glazed doors.

8.5 I consider that satisfactory resolution of the above items will result in the building work being brought into compliance with Clauses C1 and F2.

8.6 I also consider that the expert’s assessment of visible components of the building and the inspection company’s report, together with the building certifier’s inspection records, the certificate of acceptance and the other documentation, allow me to conclude that the building work is likely to comply with the remaining relevant clauses of the Building Code.

9. Grounds for the establishment of code compliance

9.1 In order for me to form a view as to the code compliance of the building work, I established what evidence was available and what could be obtained considering that the building work is completed and some of the elements were not able to be cost-effectively inspected.

9.2 In this case the evidence supplied by the applicant included:

- the building certifier's inspection summary (refer paragraph 3.2)
- the inspection company's report (refer paragraph 3.9)
- the certificate of acceptance (refer paragraph 3.10)
- the other certificates, producer statements and documentation.

9.3 The authority believes that any decision it makes with respect to compliance of the house is limited by what items it is able to inspect. I therefore needed to decide if I could rely on the inspections that were undertaken by the building certifier, particularly in regard to inaccessible building components.

9.4 In the absence of any evidence to the contrary, I take the view that I am entitled to rely on the inspection records, but I consider it important to look for evidence that corroborates these records and can be used to verify that the building certifier's inspections were properly conducted.

9.5 In summary, I find that the following evidence allows me to form a view as to the code compliance of the building work as a whole:

- The records of inspections carried out by the building certifier, which indicate satisfactory inspections of the inaccessible components.
- The inspection company's report, producer statements, certificates and other information, which indicate compliance of certain building elements.
- The certificate of acceptance, which indicates compliance with certain code clauses, and the code compliance of certain elements of the building
- The expert's reports as outlined in paragraph 5.

10. The appropriate certificate to be issued

10.1 Having found that the building can be brought into compliance with the Building Code (refer paragraphs 7.3 and 8.5), I must now determine whether the authority can issue either a certificate of acceptance or a code compliance certificate.

10.2 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 building consent authority may, on application [my emphasis] issue a certificate of acceptance. In the case of this house, the owner is seeking a code compliance certificate and has not applied for a certificate of acceptance.

- 10.3 In this situation, where I have reasonable grounds to conclude that the consented building work can be brought into compliance with the Building Code, I take the view that a code compliance certificate is the appropriate certificate to be issued in due course.

Matter 3: The durability considerations

11. Discussion

- 11.1 The applicant has raised concerns that the authority has regarding 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 2001.
- 11.2 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).
- 11.3 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.
- 11.4 The 8-year delay between the substantial completion of the building work in 2001 and the authority’s refusal of a code compliance certificate raises the matter of when all the elements of the building complied with Clause B2. I have not been provided with any evidence that the authority did not accept that those elements complied with Clause B2 at a date in 2001.
- 11.5 In this case the delay between the completion of the building work in 2001 and the applicants’ request for a code compliance certificate has raised concerns that various elements of the building are now well through or beyond their required durability periods, and would consequently no longer comply with Clause B2 if a code compliance certificate were to be issued effective from today’s date.
- 11.6 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.

- 11.7 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, as 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 2001.
- 11.8 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.

12. What is to be done now?

- 12.1 A notice to fix should be issued that requires the owners to bring the house into compliance with the Building Code, identifying the items listed in paragraphs 6.4.1 and 8.4 and referring to any further defects that might be discovered in the course of investigation and rectification, but not specifying how those defects are to be fixed. It is not for the notice to fix to stipulate how the defects are to be remedied and the house brought to compliance with the Building Code. That is a matter for the owner to propose and for the authority to accept or reject.
- 12.2 I suggest that the parties adopt the following process to meet the requirements of paragraph 12.1. Initially, the authority should issue the notice to fix. The owner should then produce a response to this in the form of a detailed proposal, produced in conjunction with a competent and suitably qualified person, as to the rectification or otherwise of the specified issues. Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination.
- 12.3 Once the matters set out in paragraphs 6.4.1 and 8.4 have been rectified or resolved to its satisfaction, the authority may issue a code compliance certificate in respect of the building consent as amended.
- 12.4 The authority shall, on issue of the code compliance certificate, withdraw the certificate of acceptance issued on 14 November 2008.

13. The decision

- 13.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the house does not comply with Clauses B2, C1, E2 and F2 of the Building Code, and accordingly confirm the authority's decision to refuse to issue a code compliance certificate.
- 13.2 I also determine that:
- (a) all the building elements installed in the house, apart from the items that are to be rectified as described in this determination, complied with Clause B2 on 1 June 2001.
 - (b) the building consent is hereby 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 June 2001 instead of from the time of issue of the code compliance certificate for all the building elements, except the items to be rectified as set out in paragraph 6.4.1 of determination 2009/22.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 25 March 2009.

John Gardiner
Manager Determinations