Department of Building and Housing
Te Tari Kaupapa Whare

Determination 2009/3

Refusal of a code compliance certificate for a house with a monolithic cladding system at 31 Waverton Terrace, Churton Park, Wellington

1. The matters to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004[1] ("the Act") made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing ("the Department"), for and on behalf of the Chief Executive of that Department. The applicant is the owner, Sungbok Cho ("the applicant") acting through an agent ("the consultant"), and the other party is the Wellington City 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 a 5-year-old building. The refusal arose because the authority is not satisfied that the building work complies with certain clauses of the Building Code[2] (First Schedule, Building Regulations 1992) and because the building work was completed under the supervision of a building certifier.

[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:

Matter 1: The cladding

Whether the cladding as installed on the building complies with Clause B2 Durability, and Clause E2 External Moisture of the Building Code. By the "cladding as installed" I mean the components of the system (such as the backing sheets, the flashings, the joints and the plaster and/or 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 Building Code clauses

Whether the building complies with the remaining clauses of the Building Code relevant to this house. (I consider this matter in paragraph 9.)

1.4 I note that one of the items identified by the authority was a retaining wall that was not part of the building consent for the building work (refer paragraph 3.9). The authority has stated that the retaining wall would be addressed separately, and the applicant has excluded the wall from the matters to be determined. As the matter of the retaining wall is in the process of being resolved between the authority and the consultant, I do not consider it in this determination.

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 must address the following questions:

(a) Is there sufficient evidence to establish that the building work as a whole complies with the Building Code?

(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 these questions in paragraphs 5 and 9.3 respectively.

1.6 In making my decision, I have considered the submissions of the parties, the reports of the consultant commissioned by the owner to advise on this dispute, and the other evidence in this matter. I have evaluated this information using a framework that I describe more fully in paragraph 7.1.

2. The building

2.1 The building is a two-storey detached house situated on an excavated sloping site that is in a very high wind zone in terms of NZS 3604[3]. The building is fairly complex in plan and form, with lower level roofs extending from upper walls. The house has concrete ground floor slabs and foundations, with conventional light-timber frame construction above. The house has a monolithic cladding with aluminium windows. Except for a small gable roof extending above the garage, the

[3] New Zealand Standard NZS 3604:1999 Timber Framed Buildings

25° pitch profiled metal roofs are hipped with eaves projections of more than 600mm overall above all upper and lower level walls.

2.2 The cladding system to the house is EIFS[4] monolithic cladding. In this instance it is a "Kool-Wall" system that appears to be similar to most EIFS systems in use at the time of construction, with 40mm polystyrene backing sheets fixed directly to the framing over the building wrap. The sheets are finished with a mesh reinforced proprietary textured finish, followed by a final high-build membrane paint system. Planted polystyrene mouldings are sealed and plastered to form decorative bands around windows and doors. The profile of the band provides a 15mm "leg" to cover the edge of the backing sheet, so forming the exterior reveal to the joinery.

2.3 Given the date of construction in 2003 and the lack of other evidence, I consider that the external wall framing is unlikely to be treated.

3. Background

3.1 The authority issued a building consent (No. 94599) on 30 October 2002, under the Building Act 1991, based on building certificates issued by both Bay Building Certifiers Ltd ("the first building certifier") on 24 October 2002, and "Nationwide Building Certifiers Ltd ("the second building certifier") on 30 October 2002. The consent approval noted that the second building certifier would "[undertake] all inspections and they will be issuing the Code Compliance Certificate".

3.2 Construction commenced in November 2002. On 1 January 2003 the scope of the second building certifier was amended to exclude inspections of claddings not covered by the Acceptable Solution E2/AS1.

3.3 The second building certifier carried out various inspections during construction, including a building pre-line on 21 January 2003 and a plumbing pre-line on 31 January 2003.

3.4 The second building certifier issued a Code Compliance Certificate (No. CC/2002-5582), dated 21 May 2003, which was a "final Code Compliance Certificate issued in respect of all the building work under the above Building Consent".

3.5 Appended to the Code Compliance Certificate was a building certificate issued by the first building certifier which appeared to cover the approval of the exterior cladding. The first building certifier's scope of engagement attached to the certificate said it had:

> ...viewed the Producer Statement issued by [the cladding installer] being a Certified Installer/Applicator of [the cladding], and verified by [the cladding supplier].
>
> All on site inspections have been undertaken by [the second building certifier].

3.6 The authority returned the code compliance certificate to the second building certifier on 1 September 2003, stating that it was not acceptable as it had been issued in respect of work that was outside the second building certifier's scope of approval. The authority asked the second building certifier to notify the owner of the status of

[4] External Insulation and Finish System

the certificate, and to advise on progress in resolving the matter. I have no record of any further correspondence following this letter.

3.7 It appears that the second building certifier's Wellington office was closed in May 2004, and its approval as a certifier expired on 30 December 2004.

3.8 On 10 February 2005 the authority wrote to the owner, stating that it made a site visit on 20 January 2005 at the request of the owner. The authority noted that, due to the scope restriction imposed on the second building certifier on 1 January 2003, the second building certifier could no longer approve the cladding system used on the building.

3.9 The authority went on to list remedial work that needed to be carried out and additional documentation required, which are summarised as follows:

- lack of weathertightness of roof ridges
- lack of weathertightness of the end of the garage gable roof ridge
- inadequate flashing of a vent pipe roof penetration
- lack of information about the flashing details of windows and doors
- lack of information about the cladding system
- inadequate clearances from the bottom of the cladding in some areas
- inadequate control of surface water to the driveway
- lack of energy certificates
- the dishwasher waste not being correctly secured.

The authority also identified a retaining wall, which it stated would be addressed separately (refer paragraph 1.4).

3.10 The authority also noted that it could not assess compliance of any work that is covered up, and concluded that it could not be satisfied that the building work complied with the Building Code and was therefore unable to issue a code compliance certificate.

3.11 I have no record of any further correspondence between the owner and the authority until the owner commissioned the consultant to investigate the matters raised by the authority. The consultant investigated the authority's concerns, and arranged for various remedial repairs to be carried out, along with the provision of the required additional documentation.

3.12 The consultant made an application for a determination on behalf of the owner, which was received by the Department on 8 September 2008.

3.13 In a letter to the consultant dated 18 September 2008, the Department sought additional information on the cladding. The consultant provided an additional report dated 21 October 2008 (refer paragraph 6.2).

4. The submissions

4.1 The consultant made a submission in the form of a report to the Department dated 8 September 2008. The report outlined the background of the project, and addressed the issues raised in the authority's letter dated 10 February 2005. I have outlined the consultant's information in paragraph 6.

4.2 The consultant forwarded copies of:

- the drawings and specification
- the consent documentation
- the second building certifier's inspection records
- the second building certifier's code compliance certificate dated 21 May 2003
- the correspondence from the authority
- a series of photographs of the original defects identified by the authority
- various producer statements, technical details and other information.

4.3 The authority acknowledged the application and forwarded a submission in a letter dated 4 November 2008. The authority summarised the background to the dispute and outlined its position. In its view the second certifier did not issue a section 56 building certificate, and the authority therefore could not form a view on whether the building complied with Building Code. The authority also noted that no application had been received for a certificate of acceptance.

4.4 Copies of the submissions and other evidence were provided to each of the parties. Neither the applicants nor the authority made any further submissions in response to the submissions of the other party.

4.5 A draft determination was issued to the parties on 20 November 2008.

4.6 The consultant accepted the draft determination on behalf of the applicant in a letter to the Department dated 1 December 2008. The consultant included comments on some minor matters, which I have incorporated as I consider appropriate.

4.7 The authority accepted the draft determination in a letter to the Department dated 7 January 2009. The authority included comments on several matters, which I have incorporated as I consider appropriate. The authority also noted its "concerns regarding the 15 year durability requirement of the water proof membrane behind the tiled showers from the time the Code Compliance Certificate is issued".

4.8 I acknowledge the authority's concerns, but I note that the evidence available to me, as outlined in paragraph 9.2, provides no specific grounds to conclude that the shower membrane is likely to be inadequate.

5. Grounds for the establishment of code compliance

5.1 In order for me to form a view as to the code compliance of the building work, I need to establish what evidence is available and what can be obtained considering that the

building work is completed and some of the elements are not able to be cost-effectively inspected.

5.2 In this case the evidence includes the second building certifier's:

- inspection records for the construction (refer paragraph 3.3)
- the other certificates and documentation
- the reports by the consultant (refer paragraphs 6.1 and 6.2)

5.3 As the second building certifier was not approved to certify the external cladding of this building at the time the code compliance certificate was issued, the authority believes it cannot rely on the certification of other elements within the second certifier's scope of approval at that time.

5.4 In the absence of any evidence to the contrary, I take the view that I am entitled to rely on the certification of those building elements that were within the building certifier's scope of approval at the time the code compliance certificate was issued. However, I consider it important to look for evidence that corroborates that view.

5.5 With regard to the cladding, corroboration of compliance in this particular case comes from the cladding inspections and reports by the consultant.

5.6 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 second building certifier, which indicate satisfactory inspections of the inaccessible components.
- Various producer statements, compliance certificates and other information, which indicate compliance of certain building elements.
- The consultant's reports as outlined below.

6. The consultant's reports

6.1 The initial report

6.1.1 As outlined in paragraph 3.11, the owner engaged a consultant to assist with the resolution of the dispute. The consultant is a member of the New Zealand Institute of Building Surveyors.

6.1.2 At the time of the application for this determination, the consultant provided detailed information relating to the issues raised by the authority. At my request, the consultant has carried out further investigation of the cladding and provided additional information as outlined in paragraph 6.2, which I accept as reliable evidence about the matter.

6.1.3 The consultant supplied the cladding manufacturer's instructions dated November 2007, as those applying at the time of installation in 2003 were not available.

6.1.4 Within the application, the consultant included the following comments on the matters raised by the authority (refer paragraph 3.9):

Roof ridges

- The ridge flashings do not have soft edges, but the edges are turned down and cut to fit into the troughs of the corrugations. The ridge flashing adequately covers the roofing, which is turned up at the top edge to provide a stop end. The building wrap continues under the ridges, providing a secondary barrier to moisture entry, and there is no sign of water entry within the roof space.

Gable roof ridge over garage

- A satisfactory over-flashing has now been installed to cover the gap at the end of the ridge above the garage.

Vent pipe roof penetration

- A satisfactory flashing has now been installed at the base of the vent pipe.

Flashing of windows and doors

- The windows appear to be installed in accordance with the manufacturer's installation instructions.

Cladding system details

- The cladding was installed by an approved installer, and appears to be in accordance with the manufacturer's installation instructions.

Inadequate cladding clearances

- There are insufficient clearances below the cladding along the north and west elevations.

Surface water control to the driveway

- A sump has been installed at the lower corner of the drive, which is connected to the authority's surface water system, as confirmed by the photographs.

Energy certificates

- These have now been supplied, along with the as-built drainage plan.

Dishwasher waste clip

- The clip is now installed.

6.2 The additional report

6.2.1 At the request of the Department, the consultant carried out further investigation of the cladding and provided additional information in a report dated 21 October 2008.

6.2.2 The consultant confirmed that the cladding is direct-fixed to the framing, with the base overlapping the foundation wall by about 125mm and set out from the concrete.

6.2.3 The consultant also provided photographs of the additional flashing fitted to the end of the gable over the garage, and noted that there are no signs of water penetration at the junction. The consultant considered that the retro-fitted flashing will stop any wind-driven moisture from entering the junction.

6.2.4 The consultant noted that the windows to the front of the house included sloping sills with a decorative border at jambs and heads. At other windows, the borders were continuous, including at the sills. The consultant removed small sections of the band

at the jamb to sill junctions of the garage and kitchen windows on the south elevation, which revealed the L-shaped band profile and the underlying metal sill angle as shown in the manufacturer's details. I note that the photographs indicate signs of moisture behind the sill band.

6.2.5 The consultant took 8 invasive reading through the cladding below window sills and in bottom plates, and noted the following elevated readings:

- 21% in the bottom plate below the north window to the living room (with 15% recorded beneath the sill above)
- 23% in the bottom plate beside the north garage door
- evidence of moisture entry and water damage beside the west dining room doors.

I note that the remaining readings varied between 14% and 17%. Moisture levels that vary significantly from the norm generally indicate that external moisture is entering the structure and further investigation is required. I also note that the inspection was carried out in spring, and I consider that the moisture levels recorded are likely to represent higher levels than might be expected at such a time of year.

6.2.6 Commenting specifically on the wall cladding, the consultant noted that:

- the sill details do not allow moisture that may penetrate behind window flanges to safely drain to the outside, with signs of moisture behind the sill bands
- the clearances from the bottom of the cladding to the ground and paving are insufficient along the east (front) and north (side) elevations.
- the sliding doors to the dining room on the north elevation require modification at the sill to prevent moisture entry (I note that this should include investigation and repair of any damage to the untreated timber framing in this area).

6.2.7 I also note that, while the consultant's photographs indicate there are no visible head flashings, the planted bands to all window and door heads are directly beneath eaves projections of more than 600mm, which shelter these areas from rain.

6.2.8 The consultant also noted that the house is due for repainting, during which resealing is recommended for windows, penetrations and other at-risk junctions.

6.2.9 I note that there are no walls that require the installation of control joints to comply with the manufacturer's recommendations.

6.3 A copy of the consultant's reports were provided to the authority for comment.

Matter 1: The claddings

7. Compliance with Clauses B2 and B2

7.1 Evaluation framework

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

- The weathertightness of the exterior claddings (Clause E2) and durability (Clause B2 insofar as it relates to Clause E2).
- The remaining relevant code requirements.

In the case of this house, weathertightness considerations are addressed first.

7.1.2 In evaluating the design of a building and its construction, it is useful to make some comparisons with the relevant Acceptable Solutions[5], which will assist in determining whether the features of this house are code compliant. However, in making this comparison, the following general observations are valid:

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

7.2 Evaluation for E2 and B2 Compliance

7.2.1 The approach in determining whether building work is weathertight and durable and is likely to remain so, is to apply the principles of weathertightness. This involves the examination of the design of the building, the surrounding environment, the design features that are intended to prevent the penetration of water, the cladding system, its installation, and the moisture tolerance of the external framing. The Department and its antecedent, the Building Industry Authority, have also described weathertightness risk factors in previous determinations[6] (for example, Determination 2004/1) relating to cladding and these factors are also used in the evaluation process.

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

7.3 Weathertightness risk

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

Features tending to increase the risk

- is built in a very high wind zone
- is a fairly complex two storey building
- has monolithic cladding fixed directly to the framing

[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 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

Features tending to decrease the risk

- has eaves and verge projections of more than 600mm to protect the cladding
- has no decks or balconies.

7.3.2 The house has been evaluated using the E2/AS1 risk matrix. The risk matrix allows the summing of a range of design and location factors applying to a specific building design. The resulting level of risk can range from 'low' to 'very high'. The risk level is applied to determine what claddings can be used on a building in order to comply with E2/AS1.

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. I note that, if the details shown in the current E2/AS1 were adopted to show code compliance, the monolithic cladding on this house would require a drained cavity. However, I also note that a drained cavity was not a requirement of E2/AS1 at the time of construction.

7.4 Weathertightness performance

7.4.1 Generally the claddings appear to have been installed in accordance with good trade practice and the manufacturer's recommendations, but some areas have not been satisfactorily completed. Taking account of the consultant's reports, I conclude that remedial work is necessary in respect of the areas outlined in paragraph 6.2.6.

7.4.2 The authority has noted that the consultant identified water damage adjacent to the sliding doors to the dining room. I note that the remedial work to the door sills shall include investigation and repair of any damage to the timber framing in this area.

7.4.3 I also note the consultant's comment in paragraph 6.2.8, regarding the need for future maintenance of the house and I address this matter in paragraphs 8.5 and 8.6.

7.4.4 Notwithstanding the fact that the backing sheets are fixed directly to the timber framing, thus inhibiting drainage and ventilation behind the cladding sheets, I have noted certain compensating factors that assist the performance of the cladding in this particular case:

- the cladding generally appears to have been installed according to good trade practice
- the house has no decks or balconies
- elevated moisture levels appear to be related to areas where defects have been identified.

These factors can assist the house to comply with the weathertightness and durability provisions of the Building Code.

8. Discussion

8.1 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 at present. Consequently, I am satisfied that the house does not comply with Clause E2 of the Building Code.

8.2 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.

8.3 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 6.2.6 will result in the house being brought into compliance with Clauses B2 and E2.

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

8.5 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).

8.6 In this instance I note that the weathertightness performance of the cladding is reliant to a large extent on the use of sealants. The regular inspection and maintenance of the sealant joints therefore requires particular attention.

Matter 2: Compliance with the remaining Building Code clauses

9. Discussion

9.1 I have considered the compliance of this house with other relevant Building Code clauses. In doing so, I have taken into account the consultant's reports, and the authority's visual inspection of the house and the defects identified during that visit.

9.2 I make the following observations on the following Building Code clauses:

B1 Structure

- The inspection record notes adequate inspections of the footings and blockwork, and the consultant's visual inspections revealed no evidence of problems. Bracing plans were approved and pre-line inspections were carried out.

D1 Access routes

- The consent drawings indicate that the staircase complied with the requirements. Following its visit, the authority identified no concerns regarding the staircase.

E1 Surface water

- Roof water is collected and disposed of via the authority's surface water system , and an as-built drainage plan has been provided. The consultant has noted that adequate falls away from the house have been provided, and an additional sump has now been installed to control surface water runoff from the driveway.

E3 Internal moisture

- Tiled splashbacks are shown in the bathroom and laundry areas. The showers are shown as tiled, and the second building certifier carried out a pre-line inspection that is expected to have included the underlying waterproof membrane. The consultant has identified no problems associated with internally generated moisture. Following its visit, the authority identified no issues regarding internal moisture, although it has since noted some concerns regarding the durability of the shower membrane (refer paragraph 4.8).

F2 Hazardous building materials

- The consultant has reported that the shower doors incorporate safety glass. However I am unable to determine whether safety glass has been used in other glazed doors.

F4 Safety from falling

- Following its visit, the authority identified no concerns regarding the staircase and the consultant has noted that the handrail appears satisfactory.

G1 Personal hygiene, G2 Laundering, and G3 Food preparation

- The consent drawings indicate that adequate provision was made to comply with the requirements of the Building Code.

G4 Ventilation

- The consent drawings indicate that adequate provisions for natural and mechanical ventilation were made to comply with the requirements.

G7 Natural light and G8 Artificial light

- The consent drawings indicate that adequate provision was made to comply with the requirements for artificial light. Requirements for natural light are met, with sufficient windows and glazed doors provided to all spaces.

G9 Electricity

- An energy work certificate in the form of an "Electrical Certificate of Compliance" dated 7 March 2003 has been provided.

G10 Piped services (gas)

- An energy work certificate in the form of a "Gasfitting Certification Certificate" dated 14 March 2003 has been provided.

G12 Water Supplies

- The second building certifier carried out a pre-line plumbing inspection, noting "pressure test OK".

G13 Foul Water

- The second building certifier carried out a pre-line plumbing inspection that included wastepipes, and an as-built drainage plan has been provided. The consultant has advised that the incorrect clipping of the dishwasher waste, as identified by the authority, has been remedied.

H1 Energy Efficiency

- The consultant viewed the fibreglass insulation within the ceiling space. Although the wall insulation could not be seen, the second building certifier's inspection summary indicates that satisfactory pre-line inspections were undertaken.

9.3 Conclusion

9.3.1 The consultant's reports, together with the inspection records, certificates and other documentation, have provided sufficient to grounds for me to be satisfied that the building complies with the Building Code with the exception of Clause F2 Hazardous building materials (and Clause B2 and B2 as discussed in paragraph 8.1 and 8.2).

9.3.2 Providing the use of safety glass to the glazed doors is verified the house will also comply with Clause F2, and I leave this matter to the owner to confirm to the satisfaction of the authority.

10. The appropriate certificate to be issued

10.1 Having found that the building can be brought into compliance with the Building Code, 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, issue a certificate of acceptance. In the case of this house, the owner has not sought a certificate of acceptance, and is seeking a code compliance certificate.

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 am of the view that a code compliance certificate is the appropriate certificate to be issued in due course.

10.4 I note the authority's submission that the second certifier's code compliance certificate was issued in respect of work that was outside the certifier's scope of approval, and, because of this, the code compliance certificate is invalid. I acknowledge this, but in my opinion I do not need to determine this matter as the

code compliance certificate should not have been issued, as it was in respect of building work that was not code compliant.

11. What is to be done now?

11.1 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 6.2.6 and 9.3.2 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. However, it is for the notice to fix to provide the owner with a definitive and, ideally, final list of items, the rectification of which can be followed by a final inspection and the issue of a code compliance certificate.

11.2 I would suggest that the parties adopt the following process to meet the requirements of paragraph 11.1. 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. 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 and E2 of the Building Code, and I accordingly confirm the authority's decision to refuse to issue a code compliance certificate
- the decision of the second building certifier to issue the code compliance certificate is reversed.

12.2 I have received insufficient information regarding the building's compliance with Building Code Clause F2 to be able to determine that matter.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 28 January 2009.

John Gardiner
Manager Determinations