



## Determination 2010/048

### Refusal to issue a code compliance certificate for an 11-year old house at 51A Ranui Terrace, Tawa



#### 1. The matters to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The applicants are the new owners of the house, S and K Hodgson (“the applicants”) and the other party is the Wellington City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority. I consider that the former owner of the building (“the former owner”), who was also the builder, is a person with an interest in this determination.
- 1.2 This determination arises from the decision of the authority to refuse to issue a code compliance certificate for an 11-year-old house because it was not satisfied that the house complied with certain clauses<sup>2</sup> of the Building Code (First Schedule, Building Regulations 1992).

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<sup>1</sup> The Building Act, Building Code, Compliance documents, past determinations and guidance documents issued by the Department are all available at [www.dbh.govt.nz](http://www.dbh.govt.nz) or by contacting the Department on 0800 242 243.

<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.

1.3 The matter to be determined<sup>3</sup> is therefore whether the authority's decision to refuse to issue a code compliance certificate was correct.

1.4 In deciding this, I must consider:

**1.4.1 Matter 1: The external envelope**

Whether the external claddings to the house ("the claddings") comply with Clause B2 Durability and Clause E2 External Moisture of the Building Code. The claddings include the components of the systems (such as the plywood cladding, the windows, the roof claddings and the flashings), as well as the way the components have been installed and work together. (I consider this matter in paragraph 7.)

**1.4.2 Matter 2: The remaining Building Code clauses**

Whether the building complies with the remaining clauses relevant to this house. (I consider this matter in paragraph 8.)

**1.4.3 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 9.)

1.5 In making my decision, I have considered the submissions of the parties, the report of the two experts commissioned by the Department to advise on this dispute ("the first expert" and "the second expert") and the other evidence in this matter. With regard to the external envelope, I have evaluated this information using a framework that I describe more fully in paragraph 7.1.

## **2. The building work**

2.1 The building work consists of a large detached house situated on a gently sloping site in a medium wind zone for the purposes of NZS 3604<sup>4</sup>. About two-thirds of the building consists of a relocated and substantially altered older existing house ("the relocated structure").

2.2 A large extension was added to the south of the relocated structure, with a small addition to the north, and a conservatory and timber decks added to the west ("the new additions").

### **The relocated structure**

2.3 The certificate of title for the property was issued in 1992 and included a right-of-way from the street. The original single-storey house was U-shaped in plan, with an attached garage and shed at the south western end (that were demolished). Construction was conventional light timber frame with a suspended timber floor.

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<sup>3</sup> Under section 177(b)(i) of the Act

<sup>4</sup> New Zealand Standard NZS 3604:1999 Timber Framed Buildings

- 2.4 To accommodate the new additions, the house was moved towards the eastern boundary and re-sited on a north-south orientation. The work included new pile foundations, new roof framing and roofing, new wall cladding, new aluminium windows and extensive interior alterations.
- 2.5 The original part of the resulting house is now indistinguishable from the new additions.

### **The additions**

- 2.6 The large south addition provides a living and dining area, with a mezzanine level master bedroom and ensuite above the new garage. A new main entry hall to the east leads to the relocated structure, where it links with a new conservatory along the north. A small extension to the north provides a new laundry and shower area.
- 2.7 The construction of the south addition is specifically engineered, with a concrete slab and foundations to the garage, timber pile foundations to the living areas, steel posts and rafters, and infill timber framing. The roof rises to accommodate the mezzanine level above the garage, with the roof line continuing over the living areas.
- 2.8 The roof projects to the west over a deep oblique verandah from the living and dining area and over a large covered parking and entry area to the east, with the deep overhangs supported by the exposed steel posts and rafters.

### **The resulting house**

- 2.9 The resulting house has a completely new building envelope, with plywood sheet wall cladding, aluminium windows, profiled metal roofs and a small area of membrane roofing to the north laundry. The house is fairly complex in plan and form; and is assessed as having a low to moderate weathertightness risk (refer paragraph 7.4.2).
- 2.10 While most of the house is single-storey, the west elevation of the south addition is two-storeys high with a mezzanine within the roof line. The 8° monopitched roofs are at varying levels, with the roof to the south “leg” of the relocated structure at the same level as the roof of the new addition and a clerestorey at the junction with the lower east roof to the relocated structure. Both north and south legs of the relocated structure have “butterfly” roofs that fall towards internal gutters.
- 2.11 A timber deck to the west extends from the new verandah around the new conservatory to the rumpus room in the north leg of the relocated structure. The deck is bordered with timber planters and wide steps.
- 2.12 The walls are clad in plywood sheets. These are profiled, imported cedar plywood and may not be treated. The plywood sheets are fixed through the building wrap to the framing. The plywood has tongue in groove joints, with a band-sawn surface and a stain finish. The soffits are also clad in sheet plywood that is installed over the exposed steel rafters.

- 2.13 The experts have noted no evidence as to timber treatment, but I consider it likely that the framing of the relocated structure is boric treated. Given the date of construction in 1998 and the lack of other evidence, I consider that the exterior wall framing of the new additions is unlikely to be treated to a level that will provide resistance to fungal decay.

### **3. Background**

- 3.1 The authority issued a building consent (No. SR 26874) to the former owner on 9 January 1997 under the Building Act 1991.

#### **The construction**

- 3.2 Based on the inspection records and other information, construction appears to have taken place as follows:

- Stage 1 (relocated structure) in March 1997: re-location of original house (appears to be limited to re-location and reconnection to services)
- Stage 2 (new additions) from April to July 1998: construction of new additions and completion of alterations to and recladding of relocated structure
- Stage 3: (siteworks) from July to October 1998: completion of new timber retaining walls, tennis court and site drainage.

- 3.3 The authority carried the following inspections during construction:

#### **Stage 1**

- Foundations on 21 February 1997 (assuming that the first inspection is mistakenly recorded as '21/03/97'), with the structural engineer faxing the requested information on 24 March 1997
- Part drainage inspection on 7 March 1997 (which passed)
- Final inspection of the exterior only of relocated house on 10 March 1997, which noted 'external final, owner & plumber to be notified of additional work required'
- Progress inspection on 22 December 1997 with the record noting 'dwelling re-sited no additional drainage or inspection required'

#### **Stage 2**

- Garage slab and portal footings on 7 April 1998 (which passed – see also paragraph 3.4)
- Pre-line plumbing of mezzanine ensuite on 2 June 1998 (which passed)
- Pre-line building of relocated structure on 3 June 1998 (which passed)
- Pre-line plumbing of laundry on 4 June 1998 (which passed)
- Drainage inspection on 4 June 1998, with the record noting that additional work to the stormwater drain, garage sump and channel was required

- Pre-line building inspection of south addition on 22 July 1998 (which passed), with the record noting 'revised stage 3 to be inspected when ready'

### Stage 3

- Site drainage inspections on 25 and 27 August 1998 in response to complaints of runoff to neighbouring property, with records indicating work required
- Site drainage inspections on 23 and 29 October 1998 regarding repeated blockages to tennis court sump, with records indicating that additional work required to edge of tennis court and to sump.

3.4 The structural engineer for the building work also notes that he has a record of:

...a site visit carried out on 23/4/98 during construction. At that visit I inspected the following:

- Garage structure except the end steel post
- South end structural steel was temporarily positioned in place; columns were welded to cast in plates
- Roof beams were bolted in place

The above work was satisfactory.

3.5 It appears that the architect for the building work also visited the site during construction, as he has noted that 'practical completion' was achieved in October 1998 and states:

In my capacity as architect on the above refurbishment I believe on reasonable grounds that the above works have been carried out and completed in accordance with the Building Consent for the above project.

3.6 No inspections were carried out after October 1998, and I have seen no record of correspondence until the former owner wished to sell the house in 2009, and approached the authority seeking a final inspection of the building work (see paragraph 5.4.2).

### The authority's response

3.7 In response, the authority wrote to the former owner on 29 September 2009 explaining that when issuing a code compliance certificate it:

...must be satisfied, on reasonable grounds, that the building work and the materials used in the construction of the building comply with the provisions of the [Building Code].

3.8 The authority also noted that:

To establish [Building Code] compliance, it is the building owner's responsibility to request a [code compliance certificate] immediately after the work is completed. If this request is not sought immediately after completion, as has occurred in this case, the owner must accept a risk that the [code compliance certificate] may not be issued.

3.9 The authority also explained the durability provisions of the Building Code and stated that, after reviewing the situation, it could not ‘provide you with an assurance of building code compliance’ for the house simply because ‘too long a period has elapsed since it was built’. The authority stated that if a code compliance certificate was wanted, then a ‘suitably qualified Architect or Building Surveyor’ should be engaged to assess the:

...current status of compliance for all the work in relation to [the Building Code] but with specific regard to B2 (Durability) and E2 (External moisture). The assessment must also provide a report on any remedial work required, so that the requirements of the Building Act can be clearly seen to be met.

3.10 The Department received an application for a determination from the former owner on 9 October 2009. The house was subsequently sold to the applicants, who elected to continue with the determination.

## **4. The submissions**

4.1 The former owner made no submission and forwarded copies of:

- some of the building consent documentation
- a handwritten inspection summary record
- some drainage inspection records
- the engineer’s letter dated 20 September 2009
- the architect’s letter dated 17 September 2009
- the letter dated 29 September 2009 from the authority
- structural calculations and some other information.

4.2 The authority acknowledged the application but made no submission.

4.3 In a letter dated 27 October, the Department asked the authority to clarify its letter dated 29 September 2009 and the matters to be determined. The Department noted that that no final inspection appeared to have carried out in response to the request for a code compliance certificate and the authority had made ‘no reasonable attempt to specify the reasons’. The Department therefore requested the authority to provide specific reasons for its refusal.

4.4 In a letter to the Department dated 6 November 2009, the authority noted that it was not yet ready to respond as it was unable to provide a ‘full response at this time’. The authority therefore asked that, pending a ‘formal submission’, the determination proceed ‘based on the original request for all NZ Building Code clauses’.

4.5 The evidence as to compliance can be gained from the inspection records, the statements from the structural engineer and the architect, the performance of the building over the past 11 years, and an assessment of the visual elements. I acknowledge that, while further evidence may need to be gathered to determine compliance with Clause E2 and B2 (as described herein); there are many Building Code Clauses where compliance can be readily determined. I therefore consider the authority's refusal to give any specific reasons why it refusing the code compliance certificate to be unreasonable and does not fulfil the requirements of section 95A of the Act.

### **The draft determination**

4.6 A draft determination was issued to the parties for comment on 4 March 2010.

4.7 The authority accepted the draft determination on 27 April 2010 without comment.

4.8 The former owner commented in a letter dated 31 March 2010 as follows:

- The purpose of applying for a determination was to obtain a code compliance certificate with the building consent modified with respect to the durability periods, because the authority refused to carry out a final inspection on the property due to the elapsed period from the completion of the building consent.
- The cladding and penetrations including windows are installed in accordance with the details on the approved building consent and have performed satisfactorily to date.
- Many of the issues identified are of a minor nature or what would be considered normal maintenance for a house that is eleven years old.
- The statements in the draft determination appear to be based on the current Building Code and standards that were not applicable at the time of construction.

4.9 On 1 June 2010, the applicants did not accept the draft determination and agreed with the comments of the former owner.

4.10 In response to the position of the applicants and former owner, I have carefully considered the comments of the parties regarding the draft determination. However, I have not been persuaded by these submissions to change the content of the determination and I note the following:

- The underlying requirements of Clauses E2 and B2 have not changed since the building consent was issued. These requirements were, and still are, that building work is to be weathertight and durable and likely to remain so.
- The experts' investigations of this house have clearly established that the building is not meeting the requirements of Clauses E2 and B2 and this assessment has been made by comparing the performance of the building against the requirements of the Building Code at the time the building consent was issued.

- Under the provisions of the Building Act 1991 under which the consent was issued, the owner is required to apply for a code compliance certificate. While the current Act includes specific provisions for an authority to alert owners that a code compliance certificate is outstanding, it is still the owner's responsibility to apply for a code compliance certificate. In considering whether the authority was correct to refuse to issue a code compliance certificate, I must consider whether the building work complies with the Building Code. Where there are defects that compromise the building's weathertightness and durability, these must be remediated to the satisfaction of the authority before a code compliance certificate can be issued.

## **5. The first expert's report**

5.1 As mentioned in paragraph 1.5, I engaged two independent experts to assist me. The first expert is experienced in the field of building controls and the local government regulatory environment.

5.2 The first expert reviewed the authority's property file and visited the house on 3 December 2009, providing a report that was completed on 7 December 2009. The expert noted that there were some layout changes from the consent drawings, in particular for the kitchen and ensuite layouts.

### **5.3 The authority's inspection records**

5.3.1 The first expert reviewed the authority's inspection records, noting the following:

- A number of inspection records required some form of follow up, but there is no evidence that all outstanding items were satisfactorily addressed.
- Inspections seem not to be requested at appropriate times as the work progressed and some inspection dates and notes are not clear.
- There is no record of a final inspection as a result of the request for a code compliance certificate.

### **5.4 General history**

5.4.1 The first expert described the history of the building work and the background to the situation, noting that the applicant had not formally applied for a code compliance certificate using the specified form.

5.4.2 The former owner advised him that the code compliance certificate could not be applied for earlier, as some work necessary to achieve code compliance had not been completed until recently. The former owner regarded his request for a final inspection as being in effect an application for a code compliance certificate.

5.4.3 The authority's response seems to be a refusal to issue a code compliance certificate, which was not based on any inspection to verify the code compliance of the building work for which the certificate was sought.



## 5.5 The external envelope

5.5.1 Commenting specifically on the claddings, the first expert noted that:

### General

- there is rust showing on some of the exposed steel rafters and posts
- the plywood cladding has water stains in some areas
- an area of plywood under the kitchen window is inadequately nailed
- the higher roof above the dining area discharges onto the lower roof without a spreader

### Clearances

- there is no or insufficient clearance from the bottom of the cladding to the ground or paving in some areas
- the bottom of the cladding extends behind the concrete nib of the south wall of the garage
- the timber decks butts against the cladding, with no drainage gap

### Windows and other penetrations

- the window and door jambs appear to lack seals under the flanges of the face-fixed joinery
- the meter box lacks a head flashing.

5.5.2 The first expert considered that further investigation was also required in regard to the adequacy of weathertightness to:

- the sub-floor ventilation to the timber floors (see paragraph 6.2)
- the flashing around the penetrations of the exposed steel rafters
- the junction of the butterfly roofs with the laundry membrane roof
- the flashing to wall junction above the rumpus room door
- the south end of the internal gutter.

5.5.3 The first expert also noted that the garage door lacked a head flashing. However I note that the door is sheltered beneath a very deep canopy, which I consider provides adequate protection.

## 5.6 Other code compliance matters

5.6.1 The first expert also assessed compliance with other relevant clauses of the Building Code and made the following comments.

### Clause E3: Internal moisture

- The bathroom vanity tops and laundry tub in are not sealed against the walls.

### Clause F2: Hazardous building materials

- The full height conservatory glazed panels are not identified as safety glass.

**Clause F4: Safety from falling**

- The flat edges of the timber planter are more than 1m above ground level.

**Clause G12: Water supplies**

- The temperature of delivered hot water to fixtures is too high.

**Clause G13: Foul water**

- The kitchen sink waste is siphoning, which may adversely affect the water trap.

5.7 A copy of the first expert's report was provided to the parties on 14 December 2009.

**6. The second expert's report**

6.1 In order to investigate and clarify certain matters raised in the first expert's report, I engaged a second independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors and inspected the house on 1 February 2010, providing a brief report dated 8 February 2010.

6.2 The second expert noted that adequate sub-floor ventilation was provided by two continuous 10mm gaps between baseboards and, where the sub-floor is covered by the deck areas, the spaced decking allows ventilation.

6.3 The second expert took non-invasive moisture readings around the house and concluded that the readings, together with the 'visible construction methods and our experience, clearly indicate the presence of moisture'.

6.4 The second expert noted that all windows in the relocated structure had been replaced with new aluminium joinery. He noted that while the windows have head flashings, the majority have no seals behind the jamb flanges and a few had a fillet of sealant applied at the edge of the frame.

**6.5 The external envelope**

6.5.1 The second expert considered other areas raised by the first expert and included in paragraph 5.5.1 and paragraph 5.5.2, focussing particularly on items identified as needing further investigation.

6.5.2 In addition to, or expanding on, comments made by the first expert, the second expert noted that:

**Wall cladding general**

- the plywood in exposed areas is heavily weathered with some surface deterioration
- although a flashing is used at horizontal joints, nail fixings of sheet ends at jointers needs investigation as they may be allowing water entry

**Clearances**

- the decking is against the cladding, and the plywood is visibly deteriorating at the junction where water can be trapped

### Windows and other penetrations

- the majority of windows have no seals behind the jamb flanges, with a few having a fillet of sealant applied at the edge of the frame
- the meter box is unflashed and unsealed, with gaps apparent and water staining on the plywood below, along with high moisture readings within the wall
- there are no visible seals around the steel rafters, with high moisture readings and moisture damage to skirtings below the wall penetrations in bedroom 1

### Roof

- there is a build-up of debris behind the flashings to roof penetrations
- the junction of the internal gutter to butterfly roofs with the laundry membrane roof is not weatherproof, with gaps around the membrane flashing, swelling skirtings and cracks in the ceiling paintwork below the junction
- the south end of the internal gutter at the clerestorey is not weatherproof, with gaps around the membrane flashing to the stonework and high moisture readings and moisture damage to skirtings below
- fascias have been fixed over the membrane to the laundry roof, trapping moisture at the junction, and there is no drip edge to the gutter side.

6.5.3 The second expert concluded that there were 'clear indications after a visual inspection' and non-invasive moisture testing that the house does not meet the requirements of Clauses E2 and further invasive testing and investigation will be required 'discover the extent of the damage and confirm actual water entry points'.

## 6.6 Other code compliance matters

6.6.1 In addition to comments made by the first expert, the second expert also noted that:

### Clause F2: Hazardous building materials

- The glass used in bathroom windows is not identified and labelled as safety glass.

## Matter 1: The external envelope

### 7. Weathertightness

7.1 The approach in determining whether building work is weathertight and durable and is likely to remain so, is to examine 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.

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

7.3 I have evaluated the house using the risk matrix in E2/AS1. The risk matrix allows the summing of a range of design and location factors applying to a specific building design. The resulting risk level can range from "low" to "very high" and is applied to determine what claddings can be used on a building in order to comply with E2/AS1. Higher risk levels will require more rigorous weatherproof detailing.

#### **7.4 Weathertightness risk**

7.4.1 This house has the following environmental and design features which influence its weathertightness risk profile:

##### **Increasing risk**

- the house is complex in plan and form, with roofs at varying levels
- the eaves include exposed rafters that penetrate the cladding, some of the eaves are oblique, and there are limited verges over some walls
- there is exposure of the roof to wall junctions

##### **Decreasing risk**

- the house is in a medium zone
- although two-storeys high in part, most of the house is single-storey high
- there is a timber deck at ground level
- some eaves are deep and there are canopies to shelter some areas.

7.4.2 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 a low risk rating. If the details shown in the current E2/AS1 were adopted to show code compliance, a drained cavity would be required for the moderate risk elevations. However, this was not a requirement at the time this house was built.

#### **7.5 Weathertightness performance**

7.5.1 Generally the claddings appear to have been installed in accordance with good trade practice. However, taking account of the two experts' comments in paragraph 5.5.1 and paragraph 6.5.2, I conclude that remedial work and/or further investigation is necessary in respect of the following:

##### **Walls**

- the deterioration to the plywood surfaces and corrosion to some of the steel rafters and posts in some exposed areas
- investigation into the nail fixings of sheet ends at horizontal jointer
- the inadequate nailing to the plywood under the kitchen window

**Clearances**

- the lack of clearances from the bottom of the claddings to the ground or paving
- the bottom of the cladding at the south wall of the garage, which extends behind the concrete nib
- the lack of clearance from the cladding to the decking, with deterioration visible in the plywood at the junction

**Windows and other penetrations**

- the lack of seals behind most of the window and door jamb flanges
- the lack of flashings and seals to the meter box, with moisture entry apparent
- the unsealed penetrations of the steel rafters, with moisture entry apparent

**Roof**

- the build-up of debris behind flashings to roof penetrations
- inadequate weatherproofing of the junction of the internal gutter to the butterfly roofs with the laundry membrane roof, with moisture entry apparent
- inadequate weatherproofing at the south end of the internal gutter at the clerestorey, with moisture entry apparent
- the lack of a spreader to the downpipe discharging onto the lower roof
- the lack of weathertightness of the edges of the membrane roof to the laundry

**General**

- the need for further investigation, including the systematic survey of all risk locations, to determine the full extent and causes of moisture penetration, possible timber damage and the repairs required.

7.5.2 I note that the plywood cladding is fixed directly to the framing. Pending further investigations into the performance of the cladding, I am unable to be satisfied that there are sufficient compensating factors likely to compensate for the lack of free drainage and ventilation behind all of the cladding to this particular house.

**7.6 Weathertightness conclusion**

7.7 I consider the experts' reports establish that the current performance of the claddings is not adequate because there is evidence of moisture penetration in a number of areas. Consequently, I am satisfied that the house does not comply with Clause E2 of the Building Code.

7.8 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 building are likely to allow the ingress of moisture in the future, the building work does not comply with the durability requirements of Clause B2.

- 7.9 As further invasive investigation into the extent of moisture penetrations and their causes and consequences, further cladding defects requiring remedial work may be revealed. I am currently unable to conclude that satisfactory rectification of the items outlined in paragraph 7.5.1 will result in the building envelope being brought into compliance with Clauses B2 and E2 of the Building Code.
- 7.10 I consider that final decisions on whether code compliance can be achieved by either remediation or re-cladding, or a combination of both, can only be made after a more thorough investigation of the cladding. This will require a careful investigation and analysis by an appropriately qualified expert. Once that decision is made, the chosen remedial option should be submitted to the authority for its approval. The investigation should also involve the systematic survey of all risk locations, in order to determine the full extent of the repairs required to prevent further damage and to establish the extent of the timber damage already sustained.
- 7.11 The two experts have noted various areas that indicate a lack of maintenance to the external envelope. Effective maintenance of claddings is important to ensure ongoing compliance with Clauses B2 and E2 of the Building Code and is the responsibility of the building owner. 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 Taking account of the two experts' reports, I conclude that the following items require attention (the relevant Building Code clauses are shown in brackets):
- the lack of sealing of vanity tops and laundry tub to the wall (Clause E3)
  - the lack of safety glass in conservatory and bathroom windows (Clause F2)
  - the height of the planter box edges above the ground (Clause F4)
  - the temperature of delivered hot water (Clause G12)
  - the kitchen sink waste pipe (Clause G13).
- 8.2 I also consider that the authority's inspection records and the other documentation lead me to the view that the house is likely to comply with the remaining relevant clauses of the Building Code. However, that conclusion should be confirmed by the authority's own inspection of the visible elements of the building.

## **Matter 3: The durability considerations**

### **9. Discussion**

- 9.1 The authority has concerns about the durability, and hence the compliance with the Building Code, of certain elements of the building taking into consideration the substantial completion of the building work during 1998.
- 9.2 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).
- 9.3 In previous determinations (for example Determination 2006/85) I have taken the view that a modification of this requirement can be granted if I can be satisfied that the building complied with the durability requirements at a date earlier than the date of issue of the code compliance certificate, the date being one that is agreed between the parties.
- 9.4 However, in conjunction with this I also need to consider the nature and extent of the defects, the length of time that they may have been evident, and their consequential impact on the building’s compliance with other Building Code clauses, particularly Clauses B1 Structure and E2 External Moisture.
- 9.5 Because of the extent of the defects in the external envelope, and the possible consequential impact on the building’s timber framing and therefore its structure, I am not satisfied that there is sufficient information on which to make a decision about this matter at this time.

### **10. What is to be done now?**

- 10.1 The authority should inspect the house and issue a notice to fix that requires the owners to bring the house into compliance with the Building Code, identifying the defects listed in paragraph 7.5.1 and paragraph 8.1 and referring to any further defects that might be discovered in the course of inspection, investigation and rectification, but not specifying how those defects are to be fixed. It is not for the notice to fix to specify how the defects are to be remedied and the building brought to compliance with the Building Code. That is a matter for the owners to propose and for the authority to accept or reject.
- 10.2 I suggest that the parties adopt the following process to meet the requirements of paragraph 10.1. Initially, the authority should issue the notice to fix. The applicants 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 matters. Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination.

## **11. The decision**

11.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:

- the external envelope does not comply with Building Code Clauses B2 and E2
- certain other elements of the building do not comply with Building Code Clauses E3, F2, F4, G12 and G13

and accordingly, I confirm the authority's decision to refuse to issue a code compliance certificate.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 10 June 2010.

John Gardiner  
**Manager Determinations**