



Determination 2021/059

Regarding the refusal to issue a code compliance certificate for a 9-year-old house with monolithic cladding at 2 Bunker Way, Strathmore, Wellington



1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations, Ministry of Business, Innovation and Employment (“the Ministry”)², for and on behalf of the Chief Executive of the Ministry. The applicant is the owner D Ross (“the applicant”), 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 10-year-old house. The refusal arose because:
- the authority is not satisfied that the building work complies with certain clauses³ of the Building Code (First Schedule, Building Regulations 1992); in particular in regard to its age and to the weathertightness of the claddings

¹ The Building Act, Building Code, Compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.dbh.govt.nz or by contacting the Ministry on 0800 242 243.

² After the application was made, and before the determination was completed, the Department of Building and Housing was transitioned into the Ministry of Business, Innovation and Employment. The term “the Ministry” is used for both.

³ 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.

- the building work had been undertaken under the supervision of Nationwide Building Certifiers (“the building certifier”), which was registered as a building certifier under the Building Act 1991 (“the former Act”), but which ceased operating as a certifier before it had issued a code compliance certificate for the work.

1.3 The building work was covered by two building consents as follows:

- No. 80476 (“the house consent”) issued in 2001 for the house
- No. 96867 (“the deck consent”) issued in 2002 for the basement deck addition (“the lower deck”).

1.4 The matter to be determined⁴ is therefore whether the authority was correct to refuse to issue a code compliance certificate for the building work covered by the above building consents. In deciding this, I must consider:

1.4.1 Matter 1: The external envelope

Whether the external envelope of the building (“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 backing sheets and the coatings, the decks, the windows, the roof claddings and the flashings), as well as the way components have been installed and work together. I consider this in paragraph 7.

1.4.2 Matter 2: The remaining Building Code clauses

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

1.4.3 Matter 3: The durability considerations

Whether the building elements in the house comply with Clause B2 Durability of the Building Code, taking into account the age of the building work. I consider this in paragraph 9.

1.5 Based on the information and records supplied, I consider there is sufficient evidence available to allow me to reach a conclusion on compliance of the house (refer paragraph 5). This determination therefore considers whether it is reasonable to issue a code compliance certificate for the building work under the two consents. In order to determine that, I have considered whether the completed house complies with the Building Code that was current at the time the consent was issued; or if it does not comply, whether there are sufficient grounds to conclude that once any outstanding items are repaired and inspected the house will comply. I address this in paragraph 10.

1.6 In making my decision, I have considered the submission of the applicant, the report of the expert commissioned by the Ministry to advise on this dispute (“the expert”) and the other evidence in this matter.

⁴ Under sections 177(1)(b) and 177(2)(d) of the Act.

2. The building work

- 2.1 The building work consists of a detached house that is three-storeys-high in part and situated on a steep coastal site in a specific design wind zone for the purposes of NZS 3604⁵. The specifically engineered concrete basement level to the western end of the house is set into the slope of the site. The remaining construction is generally conventional light timber frame, with concrete slabs and foundations, monolithic wall cladding, aluminium windows and profiled metal roofing. The house is assessed as having a high to very high weathertightness risk (see paragraph 7.2).
- 2.2 The house is complex in plan and form, with numerous wall to roof junctions and intersections. The 25° monopitched roofs rise to an effective three-storey height at the south oblique eaves and have roof projections of more than 600mm overall. An entrance canopy to the south has a curved monolithic-clad front face that extends to form a parapet at the edge of the liquid-applied membrane roof.
- 2.3 The cladding system to the walls is a form of monolithic cladding system known as EIFS⁶. The proprietary EIFS system consists of 40mm polystyrene backing sheets fixed directly to the framing over the building wrap and finished with a proprietary textured plaster coating system. The cladding system includes purpose-made flashings to windows, edges and other junctions.
- 2.4 The expert was able to observe some wall framing from within the ceiling space; and noted that the framing was marked 'UT KD', meaning untreated kiln-dried. Given the date of construction of the house in 2001 and the other evidence, I consider the wall framing is untreated.

2.5 The decks

- 2.5.1 The house has decks on each of the three levels. The upper level decks have liquid-applied membrane floors and are partly situated above rooms. Posts to the glazed balustrades are fixed through membrane-covered pads to deck framing.
- 2.5.2 At the basement level, a large timber framed deck extends to the north between exterior concrete block retaining walls. This deck was added to the completed house in 2002 under consent No. 96867. The deck has a free-draining timber floor and glazed balustrades to match the upper decks.

3. Background

3.1 The house

- 3.1.1 The authority issued a building consent (No. 80476) for the house on 5 September 2001 under the former Act, based on a building certificate (2001-5061) issued by the building certifier on 23 August 2001. The building consent included a note stating that the building certifier would be 'undertaking all inspections and they will be issuing the code compliance certificate'.

⁵ New Zealand Standard NZS 3604:1999 Timber Framed Buildings

⁶ Exterior Insulation and Finish System

- 3.1.2 The building certifier carried out various inspections during construction, including:
- Pre-pour foundations and slabs in October and November 2001 (which passed)
 - Pre-cladding and pre-plaster in January and February 2002 (which passed)
 - Pre-line building on 28 February 2002 (which noted 'OK to line')
 - Drainage on 16 April 2002 (which passed, noting 'as-built supplied')
 - Final inspection on 16 August 2002 (which identified three minor items to complete and noted 'OK to issue interim CCC'). No interim code compliance certificate was issued.
- 3.1.3 The engineer inspected the basement retaining walls on 30 October 2001, providing a site report dated 23 January 2002 and a 'Producer Statement – PS4 – Construction Review' in 2006 for the 'blockwork walls'.

3.2 The lower deck

- 3.2.1 The authority issued the building consent (No. 101896) for a 'timber deck at lower level' on 23 December 2002 under the former Act, based on a building certificate (2002-5634) issued by the building certifier on 20 December 2002.
- 3.2.2 The building certifier carried out an inspection of the deck sub-floor on 24 April 2003, which passed and noted 'framing to be completed.' I have seen no record of any further inspections on this deck.
- 3.3 In a letter to the applicant dated 18 March 2004, the building certifier noted that a code compliance certificate had not been issued; and explained that limits on its scope of engagement now excluded EIFS cladding. The certifier was therefore required to hand the project over to the authority for completion of any inspections. The building certifier's approval as a certifier expired on 30 December 2004.

3.4 The authority's inspections

- 3.4.1 On 11 August 2004, the authority visited the house to 'assess what stage the building work is at'. The site visit record noted that 'some exterior finishing work and ground work is still to be completed'. The authority inspected the house on 13 August 2004, identifying outstanding items and documentation.
- 3.4.2 In a letter to the applicant dated 24 August 2004, the authority referred to the site visits and listed remedial work required along with additional warranties, certificates, producer statements and detailed drawings. A subsequent site meeting was held on 4 August 2006, which confirmed that 'all items identified are to be addressed' and also discussed the additional documentation required.
- 3.4.3 A further site meeting was held on 20 June 2007 and the record notes that before the Code Compliance Certificate could be considered, further remedial work and outstanding documentation was required. A subsequent undated letter from the applicant confirmed that the following remedial work had been carried out:
- decks and entry canopy recoated with liquid-applied membrane, including the installation of raised pads below the balustrade posts

- repairs and repainting of the EIFS cladding.

3.4.4 A site report on 27 June 2007 acknowledged the applicant's letter; confirming that all documents had been provided but noting that remedial work still needed to be 'completed and inspected for approval before a CCC can be considered.' I have no records of further inspections or correspondence until 2010.

3.5 The authority's refusal to issue a code compliance certificate

3.5.1 On 3 June 2010 the authority responded to a request for a code compliance certificate and declined that request on the grounds that it could not be satisfied that the house complied with the Building Code, noting that a significant period of time had elapsed since the majority of the construction was completed. The authority also explained that if a code compliance certificate was wanted, then the applicant could apply for a 'waiver/modification' of the durability requirements but that such an application would need to be supported by a 'full report from a suitably qualified Registered Architect, Chartered Professional Engineer, or a member of the New Zealand Institute of Building Surveyors'.

3.5.2 In regard to the required report, the authority stated that:

The report's brief must extend to full assessment of the current status of compliance for all the work in relation to NZBC. The report must identify all matters of concern, but with specific regard to;

- B1 Structure
- B2 (Durability)
- E2 (External moisture) and
- E3 (Internal 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.

3.6 The Ministry received the application for a determination on 20 December 2010.

4. The submissions

4.1 The applicant forwarded copies of:

- some consent drawings and specifications
- the building consents and building certificates
- the building certifier's inspection records and correspondence
- the authority's inspection and meeting records
- some correspondence with the authority
- various producer statements, warranties, certificates and other information.

4.2 The authority did not make a submission in response to the application.

4.3 A draft determination was issued to the parties for comment on 30 March 2011. The authority accepted the draft without comment on 14 April 2011.

4.4 The applicant responded to the draft determination by email on 26 April 2011, 14 June 2011, and 3 September 2012. The applicant submitted the following:

- some areas of concrete block highlighted in the expert's report were garden walls and did not form part of the house
- destructive tests had not shown any evidence of water penetration
- aluminium joinery was installed as specified, and the joinery had performed satisfactorily for over 10 years
- the reference to the lack of safety glass noted in the draft was incorrect and he provided photographs of safety marking to panes installed to 'all bathroom windows, glass doors, and in the stairwell windows'
- leaks in the bathroom and ensuite, and the tensioning of the wire balustrade to the internal stairwell are maintenance issues
- the lack of ceiling insulation above the ensuite and bathroom has subsequently been rectified.

4.5 I have taken account of the submission and amended the determination accordingly.

5. Grounds for the establishment of code compliance

5.1 In order for me to form a view as to the 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. In the absence of any evidence to the contrary, I take the view that I am entitled to rely on the building certifier's inspection records, but I consider it important to look for evidence that corroborates or contradicts these records.

5.2 I also consider that the level of that reliance is influenced by the information available to me and also by my evaluation of the building. In the case of this house, due to its weathertightness risk profile and the complexity of many junctions, I considered it particularly important to verify that the building certifier's inspections of the external envelope were properly carried out.

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

- The inspections carried out by the building certifier, indicating satisfactory inspections of the inaccessible components (see paragraph 3.1).
- The authority's inspections of visible building elements (see paragraph 3.4).
- The expert's report (below).

6. The expert's report

6.1 General

6.1.1 As mentioned in paragraph 1.6, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors. The expert inspected the house on 28 January 2011, providing a report dated 17 February 2011.

6.1.2 The expert noted that the house generally appeared to accord with the consent drawings except for:

- some variations to window positions
- some internal changes to the basement accommodation.

6.1.3 The expert noted that although the house appeared 'generally well built and finished', there was a need for maintenance and repair of the claddings. The expert considered that its exposed position resulted in particularly high risks for the EIFS cladding. The expert noted flashings as 'tidy and effective', but noted many joinery and other junctions as 'defective'.

6.2 Windows and doors

6.2.1 The aluminium joinery is recessed by the thickness of the cladding, with sloping sill recesses, and metal head flashings. The expert noted that repair work had been carried out, which included overlaying sill/jamb reveals with new plaster coating that butted up against the metal window frames.

6.2.2 The expert removed the additional plaster coating from the jamb to sill junction of a typical window; observing that the 'remedial coat' peeled away from the original underlying cracked plaster, which indicated that moisture had affected the bond. The expert then scraped plaster from the junction and was able to observe uPVC flashings embedded into the original plaster but no evidence of seals and/or soakers.

6.3 Moisture levels

6.3.1 The expert inspected the interior and exterior of the house; taking non-invasive moisture readings with some limited invasive readings and noted the following:

- swollen skirtings to the dining room
- corroding nails to the timber moulding at the soffit junctions
- blackened decayed framing at the living room deck door exposed reveal
- cracks to the outer face of the decks, with green mould apparent
- 23% beneath a deck balustrade
- 35% to 45% readings beneath windows
- 35% at the junction of the entry canopy parapet with the wall
- 22% to 23% in the bottom plate beneath the entry canopy
- 21% to 22% around the south entry door sill

- up to 99% at foundation wall proud of the cladding above the lower west door
- 29% from the inside of some garage walls.

6.3.2 Taking account of the untreated timber framing, the non-invasive moisture readings, the obvious signs of moisture penetration, and the evidence of timber damage; the expert carried out few invasive moisture tests (included above). The expert considered that invasive moisture readings and further destructive investigation is needed to establish the full extent of moisture penetration and timber damage.

6.3.3 The expert also noted cracked tiles and high non-invasive moisture readings of:

- 45% beside the shower cubicle in the ensuite bathroom
- 90% at the wall to floor junction beside the basin in the main bathroom.

The expert considered that the above was likely to be due to leaks from adjacent plumbing fixtures, with further investigation required.

6.4 Commenting specifically on the external envelope, the expert noted that:

General

- there are cracks in the EIFS cladding and also in the plastered blockwork walls, despite past repairs and repainting
- some junctions of foundation walls with EIFS are unflashed and cracked
- the retrofitted south channel allows moisture to be trapped against cladding
- the timber moulding at the soffit to wall junction is not weatherproof, with rusting nails indicating moisture penetration and the likelihood of moisture penetrating into the framing at the oblique eaves
- investigation is needed into the full extent of moisture penetration and possible damage to the untreated framing

Windows and doors

- the aluminium joinery is not marked as suitable for the specific design wind zone and the dining room door sash has gaps at the upper joints
- the remedial plaster coating to sills and jambs is not adhered to the original plaster, and moisture penetration is apparent with cracks radiating from sills
- the plaster butts against the window frames, with some gaps apparent and no allowance for drainage at the sills or above the head flashings
- uPVC jamb and sill flashings are not sealed at the junctions
- the living room deck door has been leaking over time, with decayed timber exposed in the bottom plate and jamb (I note that other deck doors may be in a similar condition, with skirting damage indicating likely moisture penetration into bottom plates in the dining room)
- despite uPVC jamb flashings to the timber entry door, these do not 'hook' into the timber frame, and moisture penetration is apparent

Decks and canopy

- the outer edges of membrane decks are not weatherproof, with cracks in the plastered cladding and evidence of moisture penetration into deck framing
- there is no evidence of saddle flashings at junctions of the membrane decks with walls, with cracks apparent under the junctions
- the junction of the canopy parapet with the wall is not weatherproof, with no saddle flashings and moisture penetration apparent below the junctions.

6.5 The expert also assessed the house for compliance with the other relevant clauses of the Building Code and I have included his comments in paragraph 8.

6.6 A copy of the expert's report was provided to the parties on 14 March 2011.

Matter 1: The external envelope**7. Weathertightness**

7.1 The evaluation of building work for compliance with the Building Code and the risk factors considered in regards to weathertightness have been described in numerous previous determinations (for example, Determination 2004/1).

7.2 Weathertightness risk

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

Increasing risk

- the three-storeys-high house is sited in a specific design wind zone
- there are two upper level enclosed decks that are partly above rooms
- there are complex roof and wall junctions, parapets and other features, with high level oblique eaves that provide little protection for the tops of walls
- the EIFS cladding is fixed directly to the framing
- the external wall framing is untreated

Decreasing risk

- there are eaves and verge projections to shelter some of the cladding.

7.2.2 When evaluated using the E2/AS1 risk matrix, two elevations of the house demonstrate a very high weathertightness risk rating and the remaining a high risk rating. I note that, if the details shown in the current E2/AS1 were adopted to show code-compliance, the EIFS cladding would require a drained cavity, although I also note that a drained cavity was not a requirement at the time of construction in 2002.

7.3 Weathertightness performance

- 7.3.1 It is clear from the expert's report that the external envelope is unsatisfactory in terms of its weathertightness performance; resulting in moisture penetration to many areas and possibly widespread decay to the untreated framing.
- 7.3.2 Considerable work is required to make the house weathertight and durable and further investigation is necessary, including the systematic survey of all risk locations, to determine all of the causes and the full extent of moisture penetration, timber damage and the repairs required.

7.4 Weathertightness conclusion

- 7.4.1 The current performance of the building envelope is not adequate, consequently, I am satisfied that the house does not comply with Clause E2 of the Building Code.
- 7.4.2 In addition, the building envelope 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 will continue to allow the ingress of moisture in the future, the building work does not comply with the durability requirements of Clause B2.
- 7.4.3 I consider that final decisions on whether compliance can be achieved by remediation or re-cladding, or a combination of both, can only be made after a more thorough investigation of the external envelope and of the extent of decay in the underlying timber framing. This requires a careful analysis by an appropriately qualified expert, and should include a full investigation of the causes, extent and significance of moisture penetration and timber decay, with the chosen remedial option submitted to the authority for its approval.
- 7.4.4 I note that the Ministry has produced a guidance document on weathertightness remediation⁷. I consider that this will assist the owner in understanding issues and processes involved in remediation work to the cladding, and in exploring various options that may be available when considering the upcoming work required.

Matter 2: Other clause requirements

8. Discussion

- 8.1 In assessing the compliance of this house with other relevant clauses of the Building Code, I have taken into account:
- the certifier's and the authority's inspection records
 - the producer statements and other certificates
 - the expert's comments on compliance after nine years.

⁷ Weathertightness: Guide to remediation design. This guide is available on the Department's website, or by phoning 0800 242 243.

8.2 B1 Structure

- 8.2.1 Most construction is conventional timber frame; and the inspections note satisfactory inspections of foundations, retaining walls, floor slabs and other structural elements.
- 8.2.2 The engineer's producer statement confirmed the compliance of the concrete block retaining walls. However, the expert noted cracks to some concrete block walls and below the fixings of the lower deck post, which could indicate some structural stress or settlement that merits further investigation. The expert has recommended that investigation is completed to determine possible damage to the timber framing arising from water ingress.
- 8.2.3 I note that the house was completed for about five years prior to undertaking limited remedial work. I consider that decay revealed in the only area of timber framing exposed for assessment indicates that other areas with present or past moisture penetration may similarly be damaged. In conclusion, I consider there is insufficient evidence on which to be satisfied that the timber-framed and concrete block walls comply with Clause B1 Structure.

8.3 E3 Internal moisture

- 8.3.1 As noted in paragraph 6.3.3, the expert noted damaged tiles and recorded very high moisture levels in walls and floors adjacent to the ensuite shower cubicle and at the wall to floor junction beside the basin in the main bathroom. The expert considered that this was likely to result from plumbing leaks.
- 8.3.2 However, I note that elevated moisture levels could also result from defects in the waterproofing membrane underlying the tiles. Pending resolution of the cause(s) of moisture penetration, I am therefore not satisfied that the ensuite and main bathroom are impervious to internal moisture.

8.4 F2 Hazardous building materials

- 8.4.1 Safety glass appears to have been installed as required to satisfy Clause F2.

8.5 F4 Safety from falling

- 8.5.1 The expert noted that the stretched vertical wire network to the stairwell balustrade needs tensioning to maintain the requirements for maximum gaps.

8.6 G12 Water Supplies and G13 Foul Water

- 8.6.1 As noted in paragraph 6.3.3, very high moisture levels were recorded near the ensuite shower cubicle and at the wall to floor junction beside the main bathroom basin, which the expert considered likely to result from plumbing leaks. I am therefore not satisfied that the ensuite and main bathroom comply with Clauses G12 and G13.

8.7 H1 Energy Efficiency

- 8.7.1 The inspection summary indicates that satisfactory pre-line inspections were undertaken. However, the expert observed that ceiling insulation had not been

installed over the ensuite and bathroom areas. I note that the insulation would have been lacking at the time of the authority's refusal to issue the code compliance certificate; however the applicant has submitted that this has subsequently been rectified.

8.8 The remaining clauses

8.8.1 Taking account of the evidence outlined in paragraph 8.1, I note the following:

- **E1 Surface water**

An as-built drainage plan was submitted and records indicate satisfactory drainage inspections. The expert noted no evidence of problems relating to surface water.

- **F7 Warning systems**

The expert noted that smoke alarms had not been installed. However, I note that these were not required at the time of construction in 2002 (see paragraph 8.9.3).

- **G1 to G8 (Personal hygiene, Laundering, Food preparation, Ventilation Interior environment, Natural light, Electricity and Artificial light**

The house generally complies with the consent drawings, which show adequate provision to comply with requirements. The interiors were inspected by the building certifier and the authority; and no problems were observed by the expert.

8.9 Other clauses: conclusion

8.9.1 Taking account of the expert's report and the other evidence, I consider that the following areas require investigation and appropriate repair where necessary (applicable clauses are provided in brackets):

- in regard to structural compliance (Clause B1):
 - cracks to concrete block basement walls and exterior retaining walls
 - likely damage to the untreated timber framing
- confirmation of the adequacy of waterproof membrane under the cracked tiles to the ensuite and main bathroom (Clause E3)
- wires to the stairwell balustrade require tensioning (Clause F4)
- in regard to plumbing (Clause G12 and G13), likely plumbing leaks related to:
 - the cracked tile beside the ensuite shower
 - the cracked tiles near the basin to the main bathroom
 - investigation and repair of any related moisture damaged framing.

8.9.2 I consider the authority will need to satisfy itself as to

- in regard to glazing (Clause F2), confirmation of:
 - the adequacy of windows and doors for the specific wind zone
 - safety glass installed where required in bathrooms and exterior joinery
- the satisfactory installation of insulation in the ensuite and bathroom ceilings (Clause H1).

- 8.9.3 I note that the expert has also identified the lack of smoke alarms. While these were not a code requirement when the house was constructed, I strongly urge the owner to install smoke alarms in accordance with current requirements.
- 8.10 Taking account of the evidence outlined in paragraph 8.1 and the above observations, I have reasonable grounds to conclude that the house complies with the remaining relevant clauses of the Building Code.

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 completion of the house during 2002.
- 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, that is agreed to by the parties; and that if there are matters that are required to be fixed they are discrete in nature.
- 9.4 Because of the extent of further investigation required into the condition of the timber framing and therefore to parts of the building’s structure, and the potential impact of such an investigation on the external envelope, I am not satisfied that there is sufficient information on which to make a decision about this matter at this time.

10. The appropriate certificate to be issued

- 10.1 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 is seeking a code compliance certificate.
- 10.1.1 I am of the opinion that considerable investigation and remedial work is required to this house. Because of the extent of that work, I do not yet have reasonable grounds to conclude that the house can be brought into compliance with the Building Code. At this time, I am therefore unable to determine whether the authority will be able to issue a code compliance certificate in due course.

11. What is to be done now?

- 11.1 The authority should issue a notice to fix that requires the owner to bring the house into compliance with the Building Code, identifying the defects and investigations listed in paragraph 6.4 and 8.9 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 specify how the defects are to be remedied and the building brought to compliance with the Building Code. That is a matter for the owner to propose and for the authority to accept or reject.
- 11.2 I suggest that the parties adopt the following process to meet the requirements of paragraph 11.1. The applicant should respond to the notice to fix with 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.

12. The decision

- 12.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:
- the building envelope does not comply with Clauses E2 and B2 of the Building Code current at the time the consent was issued
 - the tiled ensuite and bathroom do not comply with Clause E3 of the Building Code current at the time the consent was issued
 - the stairwell balustrade does not comply with Clause F4 of the Building Code current at the time the consent was issued
 - the ensuite and bathroom do not comply with Clauses G12 and G13 of the Building Code current at the time the consent was issued
- and accordingly I confirm the authority's decision to refuse to issue a code compliance certificate.
- 12.2 I have insufficient evidence on which to be satisfied that the concrete blockwork and timber framing comply with Building Code Clauses B1 Structure.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 7 September 2012.

John Gardiner
Manager Determinations