



Determination 2014/014

The refusal to issue a code compliance certificate and the issue of a notice to fix for an 11-year-old house with monolithic cladding at 2 Ruze Vida Drive, Massey, Auckland



1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the current Act”) made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to the determination are

- the owner of the house, B Po-Ching (“the applicant”)
- Auckland Council (“the authority”)², carrying out its duties as a territorial authority or building consent authority.

1.3 This determination arises from the decision of the authority to refuse to issue a code compliance certificate for the 11-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 the weathertightness of the claddings
- the building work had been undertaken under the supervision of Approved Building Certifiers (“the building certifier”), which was duly 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 house.

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 Before the application was made, Waitakere City Council was transitioned into Auckland Council; the term “the authority” is used for both.

³ In this determination, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code.

1.4 The matter to be determined⁴ is therefore whether the authority was correct in its decisions to refuse to issue a code compliance certificate and to issue the notice to fix. In deciding this matter, I must consider whether the exterior building envelope complies with Clause B2 Durability and Clause E2 External Moisture of the Building Code that was in force at the time the consent was issued. The building envelope includes the components of the systems (such as the wall and roof claddings, the windows, the decks and the flashings), as well as the way components have been installed and work together.

1.5 I note that the owner may apply to the authority for a modification of the durability provisions for the 11-year-old house to allow the specified periods to commence from the date of substantial completion in 2002. Although I leave this to the parties to resolve, I comment on this in paragraph 8.

1.6 The evidence

1.6.1 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 complies with the Building Code that was in force at the time the consent was issued. This determination therefore considers whether it is reasonable to issue a code compliance certificate. In order to determine that, I have addressed the following questions:

- (a) Is there sufficient evidence to establish that the building work as a whole complies with the Building Code? I address this question in paragraph 5.
- (b) If not, are there sufficient grounds to conclude that, once any outstanding items are repaired and inspected, the building work will comply with the Building Code? I address this question in paragraph 9.

1.6.2 In making my decisions, I have considered

- the submissions of the parties
- the report of the property inspection company commissioned by the applicant to investigate moisture levels in the framing (“the inspection company”)
- the report of the expert commissioned by the Ministry to advise on this dispute (“the expert”)
- the other evidence in this matter.

2. The building work

2.1 The building work consists of a detached house which is two-storeys-high in part and is situated on a north-sloping site in a high wind zone⁵ for the purposes of NZS 3604⁶. The front north elevation is two-storeys-high and the rear is single-storey with a part-basement set into the slope of the site. The house is fairly simple in plan and form and is assessed as having a moderate weathertightness risk.

2.2 Construction is generally conventional light timber frame, with reinforced concrete foundations and floor slab, concrete block retaining walls, suspended timber floors to the upper and rear levels, monolithic cladding, and aluminium joinery. The 25° pitch profiled metal tile roof has eaves of about 500mm overall.

⁴ Under sections 177(1)(b), 177(2)(d) and 177(2)(f) of the current Act

⁵ According to the engineer’s bracing calculations

⁶ New Zealand Standard NZS 3604:1999 Timber Framed Buildings

- 2.3 An enclosed timber framed deck, with a membrane floor and monolithic-clad balustrades, extends to the north from the upper floor. The deck is supported on monolithic-clad framed columns which extend up to support a gabled roof above.
- 2.4 The wall cladding is a proprietary form of monolithic cladding system, which consists of 7.5mm thick fibre-cement sheets fixed through the building wrap to the framing, and finished with an applied textured coating system.
- 2.5 The specification is silent as to treatment to the timber framing and the expert observed timber markings within the sub-floor area which indicated that the framing is mainly untreated. Given the lack of evidence and the date of construction in 2002, I consider the exterior wall framing is untreated.

3. Background

- 3.1 The building certifier issued a building certificate (No. W580) dated 30 June 1999 for the subject house and the authority issued a Project Information Memorandum (No. 99003220) dated 28 June 1999 for a development at 2 to 6 Ruze Vida Drive. Separate building consents were subsequently issued for each house.
- 3.2 The authority issued a building consent (No. ABA 99003362) for the subject house on 10 February 2000 under the former Act, based on the certifier's building certificate. The certifier approved amended drawings on 26 July 2001 and the authority issued an amendment to the building consent.

3.3 Construction

- 3.3.1 The building certifier's 'Scope of engagement' included all inspections and the issue of the code compliance certificate. The certifier carried out the following inspections during construction which all passed:
- Foundations and reinforcing on 28 December 2001
 - Pre-pour slab and masonry on 11 January 2002
 - Pre-line plumbing and insulation on 17 May 2002
 - Pre-line building and insulation on 20 May 2002
 - Drainage on 21 May 2002
 - Claddings on 24 May 2002
 - Plasterboard bracing on 29 May 2002.
- 3.3.2 The applicant purchased the property from the developer in April 2002 and it appears that the house was substantially completed by about July 2002. However final inspections (which passed) were not carried out until October 2003.

3.4 The interim code compliance certificate

- 3.4.1 In 2004, the building certifier's scope of approval was amended, with the effect of making it unable to certify claddings beyond the scope of the Acceptable Solution to Clause E2 (E2/AS1). The certifier issued an interim code compliance certificate on 9 June 2004, which stated that it was:

An interim code compliance certificate in respect of part only of the building work under the above building consent as specified below:

Unit 1 All Building work, but excluding external wall cladding outside E2AS1. (Council to do final inspection and issue CCC).

3.4.2 On 14 June 2004, the building certifier handed the records and the project back to the authority for completion of the final inspections. It appears that the applicant was unaware of the need for final inspections, believing that the certifier had issued a final code compliance certificate for the building work.

3.5 The authority's inspections

3.5.1 The applicant approached the authority about another matter in 2007 and was informed then that the house did not have a code compliance certificate.

3.5.2 In a letter to the applicant dated 1 November 2007, the authority noted that it had 'no responsibility for any of the inspections or certification(s) carried out by the building certifier'. Final building, plumbing and drainage inspections would be required as the authority would have to be satisfied as to the compliance of the building work before it could issue a code compliance certificate.

3.5.3 With the agreement of the applicant, the authority carried out final inspections on 11 March 2008. Although final plumbing and drainage inspections were passed when re-inspected on 20 June 2008, the final building inspection identified the following areas as non-compliant (in summary):

- Cladding and floor clearances.
- The top to the deck balustrade.
- Access to sub-floor areas.
- Various other minor interior items.

3.6 The 2013 final inspection

3.6.1 I have seen no further correspondence until the applicant formally applied for a code compliance certificate on 3 July 2013 and the authority inspected the exterior of the house on 15 July 2013.

3.6.2 The authority took non-invasive moisture readings; recording elevated readings around windows on the north elevation and around the laundry door on the south, and noting that 'further invasive investigation will be required around openings'. Photographs were taken during the inspection and the record noted the requirement for a 'peer review'.

3.6.3 The inspection record identified the following areas of the wall cladding system as unknown or non-compliant in regard to weathertightness (in summary):

- Unknown control joints.
- Cladding cracks and unsealed edges.
- Window jamb and sill junctions.
- Cladding and floor clearances.
- Penetrations.
- Insufficient step down to the upper deck floor.
- Deck floor membrane, fall and outlets.
- Deck balustrade to wall and column junctions.

3.7 The authority's refusal

3.7.1 In a letter to the applicant dated 17 July 2013, the authority stated:

Following the site inspection and subsequent 'peer review' process, [the authority] could not be 'satisfied on reasonable grounds' that building works comply with the NZ Building Code, or that it is performing as intended.

3.7.2 The authority listed its 'areas of concern', as follows:

1. Cladding to ground clearances
2. External cladding integrity such as cracks in cladding, penetrations into cladding and sealing of bottom edge of cladding
3. Cladding to joinery junctions
4. Unknown vertical and horizontal control joints in the cladding system
5. Unknown if jamb, sill flashings and saddle flashing installed
6. Deck membrane compromised, deck falls insufficient and no overflow at deck
7. Deck drainage direct to ground and not to storm water system
8. Obstruction in guttering due to organic debris growth
9. Noted elevated moisture readings around windows on the northern elevation especially at sill level. Further invasive investigation will be required.

3.7.3 The authority instructed the applicant not to commence any remedial work until that work had been approved and noted that the letter should be read in conjunction with Notice to Fix No. 4317' (see paragraph 3.8.2). The authority also recommended that:

... you engage the services of a suitably qualified individual who is qualified in Weather Tight assessment and Remedial Design.

This person must further investigate the performance of this building, also taking into account the items below and provide a 'scope of works' and any recommendations to [the authority] for further review.

3.8 The notice to fix

3.8.1 Under cover of a letter to the applicant dated 23 July 2013, the authority attached a notice to fix and explained why the notice was issued. The authority noted that the building consent was issued under the former Act, so it must be satisfied, on reasonable grounds, that the work complies with the Building Code.

3.8.2 The notice to fix (No.4317) dated 23 July 2013 identified Building Code clauses that the building work was in breach of and listed details of non-compliance; those details did not included all items listed in its previous letter (see paragraph 3.7.2), but was limited to the laundry entry door as follows:

Compliance with Clause B2 Durability:

This has not been achieved due to visible decay of components of dwelling at the entry door to the laundry area.

Compliance with Clause E2 External Moisture (adequate resistance to moisture):

This has not been achieved due to excessive decay in the laundry area around the doorjamb. It is evident that there is insufficient threshold to the ground outside the door and insufficient cladding clearances in the immediate area of the laundry door.

3.9 The inspection company's report

- 3.9.1 The applicant engaged a property inspection company to investigate two areas on the north elevation. (Item 9 in the authority's letter of 17 July 2013 - refer paragraph 3.7.2).
- 3.9.2 The inspection used thermal imaging techniques that showed any thermal abnormality indicating higher moisture levels. The inspection company also carried out limited invasive testing from the inside using 80mm long probes to measure moisture levels at the outer face of the framing.
- 3.9.3 The report photographed and commented on the following areas:
- Lower floor north bedroom**
- 16% under a jamb/sill junction, with 14% in bottom plate below
 - no thermal anomalies indicating water penetration
 - probe drillings clean and firm.
- Upper floor north bedroom**
- 17% at a sill junction under mullion with 17% in bottom plate below
 - no thermal anomalies indicating water penetration
 - probe drillings clean and firm.
- 3.9.4 The report also noted that remedial work had been carried out to the laundry door jambs.
- 3.10 The applicant and authority met on 9 August 2013 to discuss the notice to fix. The meeting record noted that the applicant intended to apply for a determination as he felt that the building certifier had already issued a code compliance certificate. The applicant also stated that moisture investigation had been carried out and forwarded a copy of the report to the authority later that day. The meeting record also noted:
- Another concern is that the property owner underwent remediation at the laundry, without [the authority] or a specialist sighting such remediation which may have required a building consent.
- 3.11 The Ministry received an application for a determination on 28 August 2013.

4. The submissions

4.1 The applicant's submission

- 4.1.1 The applicant outlined the background to the situation, noting that he had been forced to agree to the authority undertaking additional final inspections because the building certifier 'had gone into receivership and had failed to file appropriate documentation' with the authority, despite having already issued what the applicant considered to be a code compliance certificate.
- 4.1.2 The applicant also disputed some of the authority's concerns (see paragraph 3.7.2) and submitted that:
- Items 3, 4 and 5: the joinery installation, control joints and flashings were all 'checked off by [the authority's] approved inspectors during construction' and should therefore not need to be revisited.

- Items 6 and 7: the deck is very small, has one outlet drain and is sheltered by the roof and balustrades. The deck membrane is therefore subject to little rainwater, with no evidence of water damage after almost 13 years.
- Item 9: the inspection company's report shows that moisture levels around windows fall within 'the acceptable standards.'

4.1.3 The applicant forwarded copies of

- the certifier's interim code compliance certificate dated 9 June 2004
- the letter from the authority dated 17 July 2013
- the notice to fix dated 23 July 2013
- the inspection company's report of the 24 July 2013 inspection.

4.2 The authority's submission

4.2.1 The authority clarified the sequence of events following the applicant's request to carry out a final inspection in 2013, noting that the inspection 'checklist' was emailed to the applicant on the day of the inspection. The subsequent letter outlined the authority's concerns and asked for 'a suitably qualified individual' to be engaged to assess and report on the cladding and structure. The notice to fix followed, which was limited to the obvious failure at the laundry door.

4.2.2 The authority noted that the applicant had been asked not to undertake any remedial work until a proposed remedial plan had been approved. However, during the subsequent meeting it was revealed that a moisture investigation and remedial work to the laundry door had been carried out. The authority noted that:

...there has so far been little evidence provided, confirming the current performance of the underlying structure as a result of the moisture which caused the damage to the door jamb. [The authority] is also aware there are other areas within the building showing elevated moisture readings.

4.2.3 The authority forwarded a CD-Rom, entitled 'Property File', which contained some additional documents pertinent to this determination, including

- the original and amended consent drawings and specifications
- the building consent and the building certificate
- the building certifier's inspection summary
- the authority's final inspection records.

4.3 A draft determination was issued to the parties for comment on 2 December 2013.

4.4 The authority accepted the draft without further comment in a response received on 9 December 2013.

4.5 The applicant responded on 12 March 2014, making no comment on the draft determination.

5. Grounds for the establishment of code compliance

5.1 In order for me to form a view on the compliance of this house with the Building Code, I established what evidence was available and what could 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 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 to verify that the building certifier's inspections were properly carried out or not. I also consider that the level of reliance is influenced by the information available to me and by the nature of this house.
- 5.3 In summary, I find that the following evidence will allow me to form a view as to the code compliance of the building work as a whole:
- The record of inspections carried out by the building certifier, which indicates satisfactory inspections of the building work (refer paragraph 3.3.1).
 - The drawings and other technical information.
 - The records of the final inspections undertaken by the authority.
 - The property company's report on moisture investigation of several areas.
 - The expert's report on the exterior building envelope (as outlined below).

6. The expert's report

6.1 As mentioned in paragraph 1.6.2, I engaged an independent expert, who is a member of the New Zealand Institute of Building Surveyors, to assist me. The expert inspected the house on 12 November 2013, providing a report completed on 18 November 2013. A copy of the report was forwarded to the parties on 18 November 2013.

6.2 General

- 6.2.1 The expert observed that the textured cladding was cracked and damaged in numerous locations. The expert considered that the installation was 'below standard', as there were defects and failures to comply with the manufacturer's instructions that were current at the time of installation.
- 6.2.2 The expert noted that variations from the amended consent drawings included:
- clad balustrades in lieu of open metal railings
 - west window to bedroom 3 omitted
 - significant layout changes to upper level living areas.

6.3 Windows and doors

- 6.3.1 Joinery is face-fixed, with metal head flashings and no sill flashings. The expert compared joinery installation with the manufacturer's details and, taking account of Cut-out 2 (see paragraph 6.5.2), noted:
- head flashings extend past the jambs by about 30mm
 - no drainage gap is provided above the head flashing
 - jamb flanges are fitted tight against the cladding with a fillet of sealant at the edge and no seals installed behind jamb flanges
 - the manufacturer's details showed sill flashings, describing these as providing long term protection.

(I note the omission of sill flashings for face-fixed aluminium windows was common practice at the time of installation.)

6.4 The deck

- 6.4.1 The enclosed deck has a liquid-applied membrane applied over a plywood substrate. The expert observed that the membrane coating had worn from the floor, exposing the substrate and allowing the unsealed plywood to absorb water.
- 6.4.2 The expert noted that there was a single outlet drain with no allowance for overflow. The expert removed the grate and observed that the top of the drainpipe was higher than the surface of the sump, which resulted in water being trapped around the pipe.
- 6.4.3 The clad balustrades intersect with the clad columns, which extend up to support the gabled roof above. The expert observed the flat tops to the balustrade, and Cut-out 1 confirmed the lack of underlying saddle and cap flashings (see paragraph 6.5.2).

6.5 Moisture testing and destructive investigations

- 6.5.1 The expert inspected the interior, noting ‘no obvious evidence of current moisture ingress’. The expert also took 23 invasive moisture readings through the cladding (most to the north elevation) at areas considered at-risk, noting:

- 9 readings from 18% to 24% around windows and in bottom plates below
- 2 readings over 24% at balustrade/column junctions
- over 24% in deck floor framing adjacent to the deck outlet
- over 90%, with decayed drilled to the bottom of framed deck columns
- less than 18% but decayed drillings below the meter box.

Moisture levels over 18% generally indicate that external moisture is entering the structure and further investigation is required; readings over 40% indicate that the timber is saturated and decay will be inevitable over time.

- 6.5.2 The expert also removed sections of cladding (“the cut-outs”) at four locations to investigate the underlying construction and noted the following:
- Cut-out 1 at the clad balustrade to clad column junction; water stained framing and no flashings underlying the balustrade flat top.
 - Cut-out 2 at head/jamb junction of the laundry door; no seals between the jamb flanges and fibre-cement backing sheets
 - Cut-out 3 at the bottom of framing adjacent to the laundry door; saturated timber and extensive decay.
 - Cut-out 4 to the soffit below the deck outlet; saturated framing and plywood substrate with blackened timber and visible decay.
- 6.6 Commenting specifically on the external envelope, the expert noted:
- there are cracks to the cladding in numerous locations, with high moisture levels recorded at some cracks
 - the textured coating is delaminating from the backing sheets in some locations
 - there are no vertical control joints in the cladding

- there is insufficient clearance to the ground or paving from internal floor levels and the bottom of the cladding
- the lack of sealing of the meter box has allowed past moisture penetration, with decayed drillings observed during moisture testing
- the extensive moisture penetration and decayed framing may also have compromised the structure of the house

Windows and doors

- windows and doors lack seals under the jamb flanges and no anti-capillary gaps between head flashings and the upper cladding (cut-out 2)
- the ends of head flashings are not weathertight, allowing moisture to enter the junctions (cut-out 2)
- repairs to the laundry door have been ineffective, with high moisture levels and extensive decay exposed at the bottom of the framing (cut-out 3)

The deck

- the deck membrane has deteriorated, exposing unsealed plywood
- the deck outlet traps moisture, with saturated framing and visible decay to the deck floor framing and plywood substrate (cut-out 4)
- the flat top of the deck balustrade lacks a capping, with no underlying flashings and moisture penetration into the balustrade framing (cut-out 1)
- junctions of the balustrades with the clad columns lack saddle flashings, with water stained timbers and high moisture levels (cut-out 1)
- the cladding at the bottom of the framed column butts against the paving, with high moisture levels and visibly wet and decayed drillings

7. Weathertightness

7.1 The claddings

- 7.1.1 It is clear from the expert's report that the building envelope is unsatisfactory in terms of its weathertightness performance, which has resulted in moisture penetration in numerous areas and extensive decay apparent in the wall and deck framing. Taking into account the expert's report, I conclude that areas outlined in paragraph 6.6 require rectification, but I note that this list is unlikely to be complete.
- 7.1.2 Considerable work is required to make the building envelope weathertight and durable. Further investigation is necessary, including the systematic survey of all risk locations. Such a survey will need to incorporate extensive invasive moisture testing and the removal of claddings in order to determine the causes and the full extent of moisture penetration, timber damage, and the repairs required.
- 7.1.3 Given the non-compliance with Clause E2, the likelihood of a lack of treatment to the external framing, and the expert's limited investigation, the building's current and ongoing compliance with Clause B1 should be considered in any further investigation.

7.2 Weathertightness conclusion

- 7.2.1 I consider the expert's report establishes that the current performance of the building envelope is not adequate because there is evidence of extensive moisture penetration and decay in the timber framing. Consequently, I am satisfied that the house does not comply with Clause E2 of the Building Code
- 7.2.2 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 building work to remain weathertight. Because the cladding faults are likely to allow the ingress of moisture in the future, the house does not comply with the durability requirements of Clause B2.
- 7.2.3 I consider that final decisions on whether compliance can be achieved by either targeted repairs, or re-cladding, or a combination of both, can only be made after a more thorough investigation of the claddings and the condition of the underlying timber framing. This will require a careful analysis by an appropriately qualified expert, and must include a full invasive investigation of the extent, level and significance of the moisture levels and timber decay to the framing. Once that decision is made, the chosen remedial option should be submitted to the authority for its approval.
- 7.2.4 I note that the Ministry has produced a guidance document on weathertightness remediation⁷. I consider that this guide will assist the owner in understanding the issues and processes involved in remediation work to the buildings, and in exploring various options that may be available when considering the upcoming work required.

8. The durability considerations

- 8.1 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).
- 8.2 In many previous determinations 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.
- 8.3 However, because of the extent of further investigation required into the condition of the timber framing and therefore the structure of the house, 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.

9. The appropriate certificate to be issued

- 9.1 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 this instance the applicant is seeking a code compliance certificate.

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

9.2 I am of the opinion that considerable investigation and remedial work is required to make the external building envelope of this house weathertight and durable. Because of the extent of work required, I do not yet have reasonable grounds to conclude that the building envelope 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.

10. The refusal to issue a code compliance certificate

10.1 The applicant maintains that the building certifier issued a code compliance certificate, but had failed to file appropriate documentation with the authority. However, it is clear from the records that the certificate issued on 9 June 2004 is an interim code compliance certificate for ‘part only’ of the building work because it specifically excludes the wall cladding and states that the authority is ‘to do final inspection and issue [the code compliance certificate]’. I consider the wording in the certificate was sufficient to prompt the applicant to seek final inspections from the authority.

10.2 The building consent was issued under the former Act, and accordingly the transitional provisions of the Act apply when considering the issue of a code compliance certificate for work completed under that consent. Section 436(3)(b)(i) of the transitional provisions of the Act requires the authority to issue a code compliance certificate if it ‘is satisfied that the building work concerned complies with the building code that applied at the time the building consent was granted’.

10.3 Taking into account the authority’s photo file of 15 July 2013, I consider the authority was correct in its decision to refuse to issue the code compliance certificate as it could not be satisfied on reasonable grounds that the building work complied with the Building Code that was in effect at the time the consent was granted.

10.4 Given the above, I also consider the authority was correct in its decision to issue the notice to fix. However, the notice to fix should now be modified to take account of this determination.

11. What happens next?

11.1 The notice to fix should be modified to take account the findings of this determination, identifying the areas listed in paragraph 6.6 and referring to any further defects that might be discovered in the course of investigation and rectification.

11.2 I suggest that the parties adopt the following process to meet the requirements of paragraph 11.1. Initially, the authority should revise and reissue the notice to fix. The applicant should then produce a response to this in the form of a detailed proposal for the house as a whole, produced in conjunction with a competent person with suitable experience in weathertightness remediation, 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 wall framing does not comply with Clauses B1 and B2 of the Building Code that was current at the time the consent was issued
- the exterior building envelope does not comply with Clauses E2 and Clause B2 of the Building Code that was current at the time the consent was issued
- the decision of the authority to refuse to issue a code compliance was correct
- the decision of the authority to issue the notice to fix dated 23 July 2013 was correct, but the authority is to modify the notice to fix to take account of the findings of this determination.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 18 March 2014.

John Gardiner
Manager Determinations and Assurance