



## Determination 2015/047

### Regarding the refusal to issue a code compliance certificate for a 14-year-old house with stucco wall cladding at 2130 Riverton Wallacetown Highway, Riverton



#### 1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“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:
  - an owner of the house, J Porteous (“the applicant”) acting via a property inspection company (“the inspection company”)
  - Southland District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from the decision of the authority to issue a notice to fix and refuse to issue a code compliance certificate for the 14-year-old house because it was not satisfied that the building work complied with certain clauses<sup>2</sup> of the Building Code (First Schedule, Building Regulations 1992). The authority’s concerns about the compliance of the building work relate primarily to the weathertightness and durability of the exterior cladding.
- 1.4 The authority did not provide a separate refusal to issue the code compliance certificate, but stated the refusal in the notice to fix issued in response to the owner’s application for a code compliance certificate. I have therefore taken the items listed in the notice to fix constitute the reasons for refusal for the purposes of section 95A of the current Act.

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

<sup>2</sup> In this determination, unless otherwise stated, references to sections are to sections of the current Act and references to clauses are to clauses of the Building Code.

- 1.5 The matter to be determined<sup>3</sup> is therefore whether the authority was correct to refuse to issue a code compliance certificate for the house. In deciding this matter, I must consider:
- (a) Whether the external building envelope of the house 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 monolithic wall cladding, the decking, the windows and the roof cladding) as well as the way the components have been installed and work together.
  - (b) Whether other items identified by the authority comply with the relevant clauses of the Building Code: namely Clauses B1 Structure, E1 Surface Water, G9 Electricity, G13 Foul Water, and H1 Energy Efficiency.

## 1.6 Matters outside this determination

- 1.6.1 I note that the notice to fix referred to a conservatory added to the north end of the house without a building consent. The expert did not observe a conservatory and I leave this matter to the parties to resolve. The notice to fix also referred to an unsealed splashback and the lack of an energy certificate which are minor matters not disputed by the applicant (see paragraph 4.1) that I leave to the parties to resolve.
- 1.6.2 The notice also referred to several structural matters in regard to the veranda, roof bracing and roof trusses, which are not disputed by the applicant (see paragraph 4.1) and are left to the parties to resolve. Compliance with Clause B1 referred to in this determination is therefore limited to the potential structural implications associated with weathertightness. (I note that the expert has briefly commented on the veranda in paragraph 5.6.2.)
- 1.6.3 I also note that the applicant will be able to apply to the authority for a modification of durability provisions to allow the durability periods specified in Clause B2.3.1 to commence from the date of substantial completion. Although I leave this to the parties to resolve in due course, I have taken the age of the house into account when assessing compliance and I also comment on the matter in paragraph 7.
- 1.7 In making my decision, I have considered the submissions of the parties, the report of the expert commissioned by the Ministry to advise on this dispute (“the expert”) and the other evidence in this matter.

## 2. The building work

- 2.1 The building work consists of a single-storey detached house on an excavated east-sloping site, which is in a high wind zone for the purposes of NZS 3604<sup>4</sup>. The house has an L-shaped plan with a fairly simple form and is assessed as having a low weathertightness risk.
- 2.2 Construction is generally conventional light timber frame, with concrete block foundations, a concrete floor slab, monolithic wall cladding, aluminium windows and profiled metal roofing. The 33° pitch gabled roof extends at a lower pitch to form a 1.2m deep veranda along the northeast and northwest elevations, where it terminates against the projecting wall of the garage. Elsewhere roof overhangs are about 250mm deep at the eaves and about 400mm at verges.

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<sup>3</sup> Under sections 177(1)(b), 177(2)(d) and 177(2)(f) of the Building Act

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

- 2.3 The expert took timber samples from exterior wall framing, and laboratory analysis confirmed three framing samples as ‘most likely untreated Douglas-fir’.

## **2.4 The stucco cladding**

- 2.4.1 The cladding is a monolithic cladding system described as stucco over a solid backing. In this instance it consists of fibre-cement backing sheets fixed through the building wrap directly to the framing timbers, and covered by a slip layer of wrap, reinforced solid plaster and a flexible paint coating.
- 2.4.2 I note that at the time the cladding for this house was installed in 2002, the Acceptable Solution E2/AS1<sup>5</sup> for stucco cladding systems included the incorporation of vertical battens to provide a cavity behind stucco installed on non-rigid backings only. At that time, no cavity was required for stucco on rigid backing as approved and used on this house.

## **3. Background**

- 3.1 The authority issued the original consent (No. 21742/1) to the current owner on 18 May 2001 under the Building Act 1991 (“the former Act”). The specification called for exterior wall cladding to be ‘9.5 Villa Board<sup>6</sup>, flick coat over and paint.’

### **3.2 Construction**

- 3.2.1 The consent conditions included a requirement for ‘foundation, preline, drainage and completion inspections’. The inspection company reviewed the authority’s property file and noted it included no individual inspection records, although a computer-generated summary lists the following inspections:

- foundations on 19 March 2001
- plumbing and drainage on 30 April 2001
- framing on 18 May 2001 and 25 July 2001
- final on 27 September 2002.

I note here that as well as a lack of individual inspection records there is also an anomaly in the dates listed in the summary; the foundation, plumbing and drainage, and one framing inspection date are recorded as being completed before or on the date of the consent being issued.

- 3.2.2 When fibre-cement sheets and windows were in place, the contract with the original builder was terminated, and after a new builder was engaged the owners apparently decided to change the cladding system.
- 3.2.3 The inspection company obtained copies of technical information for the installed cladding system, which I note are stamped with the consent number, signed and dated 26 April 2002 – indicating the authority’s acceptance of the cladding change.

### **3.3 The 2002 refusal to issue a code compliance certificate**

- 3.3.1 The applicant has submitted that the house was substantially completed in September 2001, and the authority’s records indicate a final inspection was carried out on 27 September 2002. There is no record of a re- inspection and no code compliance certificate was issued. In a letter to the applicant dated 3 October 2002, the authority

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<sup>5</sup> The New Zealand Building Code Handbook and Approved Documents, Building Industry Authority 2001

<sup>6</sup> Fibre-cement sheet currently used for interior linings in moisture prone rooms

stated that there were 'some minor issues that will need to be resolved' before a code compliance certificate could be issued.

3.3.2 The items identified by the authority as requiring attention included (in summary):

- the drain pipe to the kitchen/laundry gully trap (item 1)
- the bathroom fan vented into the ceiling space (item 2)
- the inadequate veranda beam and connections (item 3)

3.3.3 Item 4 in the authority's letter concerned the wall cladding and stated:

In light of the recent report into leaking buildings and subsequent media attention, advice to [the authority] from insurers has been to request a signed construction review statement from the contractor undertaking the cladding work.

In this instance confirmation will be necessary from [the plasterer] that the stucco plaster system has been provided with necessary flashing systems and constructed in accordance with the acceptable solutions to the New Zealand Building Code.

### 3.4 The 2014 final inspection

3.4.1 In a letter to the applicant dated 23 September 2014, the authority noted that the consent was 'still open without a decision having been made as to whether the Code Compliance Certificate (CCC) can be issued.' The attached application form for a code compliance certificate was subsequently completed and received by the authority on 16 October 2014.

3.4.2 The authority carried out a final building inspection and issued a notice to fix on 21 October 2014. As outlined in paragraph 1.4, I have taken this notice to constitute a refusal of the applicant's application for a code compliance certificate and I have used the information contained therein as representing the reasons for that refusal.

3.4.3 In regard to Clause B2 Durability, the authority stated:

Elevated non-invasive moisture readings were evident at crack locations and at the bottom of window and other penetrations in the stucco plaster cladding system. Elevated moisture readings can be indicative of moisture and durability issues. More invasive moisture testing by someone having recognised weathertightness expertise will be necessary.

3.4.4 The notice to fix quoted relevant code clauses and stated that the house did not comply with clauses B1, B2, E1, E2, E3, G9, G13 and H1 of the Building Code. The authority identified the following concerns (in summary, with the authority's item numbers in brackets):

- In regard to B1:
  - inadequate veranda beam and connections (item 2)
  - roof bracing not in accordance with the consent drawings (item 3)
  - altered truss layout and some missing fixings (item 5)
- In regard to E1: clearance of the gully trap above surrounding ground (item 11)
- In regard to E2:
  - gutters leaking (item 6)
  - no control joints visible in stucco (item 7)
  - window head and sill details (item 7)
  - clearances from interior floor level to ground or paving (item 7)

- high moisture levels recorded at window openings (item 13)
- In regard to E3:
  - tiled splashback not sealed to vanity (item 8)
  - bathroom fan vented into ceiling space (item 9)
- In regard to G9: lack of energy certificate (item 10)
- In regard to G13: the drain pipe to the kitchen/laundry gully trap (item 4)
- In regard to H1:
  - gaps in ceiling insulation (item 12)
  - proximity of insulation to roofing underlay (item 12).

#### 3.4.5 The authority concluded:

Due to the above deficiencies and the elevated moisture readings noted in several locations behind the cladding system, [the authority] is refusing the Code of Compliance. The cladding system needs to be assessed by a recognised weathertightness expert with any remedies necessary designed to be put forward to [the authority] for consideration.

- 3.5 The applicant engaged the inspection company to search the authority's property file and to prepare an application for determination. The Ministry received the application for a determination on 30 January 2015.

## 4. The submissions

### 4.1 The applicant's submission

- 4.1.1 The inspection company made a submission on the applicant's behalf; explaining the background to the situation and noting that the items identified by the authority were not in dispute apart from those relating to the stucco cladding. The inspection company had undertaken a visual inspection of the stucco cladding and noted (in summary):

- the plaster is in very good condition for its age
- hairline cracking mostly coincides with control joints at joinery openings
- there is some moss growth from leaking gutters
- there is no interior evidence of moisture penetration, with non-invasive moisture readings consistent throughout house and not elevated
- the house has a very low weathertightness rating
- the stucco cladding system 'was acceptable' when the house was built
- the cladding has almost reached the required 15-year durability.

- 4.1.2 The inspection company provided copies of:

- the building consent documentation
- the building consent dated 18 May 2001
- the authority's inspection summary
- the notice to fix dated 21 October 2014
- correspondence from the authority

- various other statements and other information.

## 4.2 The draft determination and responses received

4.2.1 A draft determination was issued to the parties for comment on 19 June 2015. In a response received on 24 June 2015, the authority accepted the draft without further comment.

4.2.2 The applicant's response was received on 13 July 2015. The applicant did not accept the draft and submitted (in summary):

- The house was not inspected during construction; the dates listed in the authority's inspection summary are not correct.
- The house was completed in September 2001.
- The determination does not correctly identify the address of the house.

4.2.3 In regards to the findings of the expert, and in particular in respect of the samples referred to in paragraph 5.3.6, the applicant submitted:

*Sample 1: laundry door bottom plate, and Sample 5: laundry door plasterboard*

- In July 2012 two water pipes under the tub in the laundry next to the back door burst causing 'substantial' damage (copy of insurance claim for "water damage" was provided). This was cause of the defects observed by the expert.
- There is no laundry door. (The expert's report refers to a 'laundry door', I have taken this to mean the door frame that is visible in the photographs in the expert's report: the wording in the summary of the expert's findings has been amended.)

*Sample 3: lounge sill trimmer*

- There was no fungal growth and no decay; it was dry.

*Sample 4: garage window plasterboard*

- The cause was previously identified as being the window, which was 'taken out and resealed' and is no longer leaking.

*Roof*

- In regards to the leaks in the roof (refer last bullet point of paragraph 5.5.1), this was as a result of damage caused during severe winds in November 2013 that caused the roof ridge board to lift and for which an insurance claim was made. The damage was repaired by a plumber and plasterboard in the dining room was replaced.

4.2.4 I have amended the determination as I consider appropriate. I do not accept the applicant's arguments in relation to the cause of some the defects found by the expert in that they were caused by discrete events that had occurred up to 3-years ago. I consider water ingress from such events should have long since dissipated; the applicant also refers to repair work being claimed for or undertaken which indicates that damage from these events should no longer be evident.

4.2.5 In regards to the street address, I note that in documentation provided with the application the address has been described variously as:

- 2130B on the application form (the street number has been overwritten, it is not clear what was intended).

- 2130 in the inspection company's covering letters supporting the application
- 2130A in the authority's records for the application for code compliance certificate, the notice to fix, and the summary of inspection dates

I have amended the street address in the determination to 2130.

## 5. The expert's report

5.1 As mentioned in paragraph 1.7, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors and inspected the house on 19 April 2015, providing a report completed on 5 June 2015, which was forwarded to the parties on 12 June 2015.

### 5.2 General

5.2.1 The expert noted that the scope of his investigation was to report on some of the concerns identified by the authority with regard to compliance with parts of Building Code clauses B1, B2, E1, E2, G4, G9, G13 and H1, with particular attention to weathertightness. The following concerns were investigated:

- Evidence of moisture penetration through the stucco.
- Window installation.
- The stucco cladding.
- Evidence of leaking into and moisture within the ceiling space.
- Ceiling insulation.
- Bathroom vented into ceiling space.
- The level of the kitchen gully trap.

5.2.2 The expert considered the house to be generally 'finished to an acceptable trade standard' apart from areas identified in his report, and the house appeared 'generally well presented and maintained'.

5.2.3 The expert noted that he had only seen one consent drawing, which did not state how many pages made up a full set. Based on the single drawing, he noted that the 'overall architectural shape and form' of the house appeared to accord with the drawing except that the garage was built one meter wider.

### 5.3 Evidence of moisture penetration (Clauses E2 and B2)

5.3.1 The expert noted stucco cracks and interior damage to some areas and undertook further invasive investigation; removing sections of interior lining and trim to expose the underlying construction and taking timber and plasterboard samples for analysis.

5.3.2 Beside the laundry door frame, the expert noted swollen trim and removed the skirting and small sections of lining, taking sample 1 from the bottom plate and sample 5 from the plasterboard. The expert observed:

- rust stains around fixings and corroded screw fixings
- 'black sooty' mould on the plasterboard and the back of the skirting, the skirting was swollen with mould growing along the top

- dark water stains to the bottom plate, with elevated moisture readings, with superficial decay in the outer 1mm.
- 5.3.3 At the window to bedroom 1, the expert noted swollen trim and removed a section of lining and trim at the sill. The expert took a timber sample from the trimmer (sample 2) and observed:
- corroded fixings
  - water marks to the back of the architrave
  - black stains to the trimmer.
- 5.3.4 At a lounge window, the expert noted rust stains to the architrave fixings and removed a section of lining and trim at the sill. The expert took a timber sample from the trimmer (sample 3) and observed:
- corroded fixings
  - black water marks around nails
  - darker colour of framing than expected.
- 5.3.5 At the garage windows in the gable end wall, the expert noted stucco cracks at jamb/sill junctions, with ‘mould growing’ and damaged plasterboard lining and trim. Removing a section of lining and trim beneath one window the expert took a sample of the plasterboard (sample 4) and observed:
- rust stains around fixings, and corroded screw fixings
  - ‘dense black sooty’ mould on the plasterboard and the back of the skirting
  - obvious water penetration into the framing
  - disintegrating building wrap
  - obvious decay to the timber sill reveal.
- 5.3.6 The expert forwarded three timber samples and two plasterboard samples to a laboratory for analysis. The laboratory report dated 5 May 2015 reported that:
- the timber samples appeared to be untreated Douglas fir, which was described as ‘moderately durable’
  - Sample 1: laundry door frame bottom plate  
Superficial soft rot, fungal growths, but no structurally significant decay detected, superficial decay in the outer 1mm
  - Sample 2: bedroom 1 sill trimmer  
Dense fungal growths but no structurally significant decay detected, evidence of recent activity.
  - Sample 3: lounge sill trimmer  
Dense fungal growths but no structurally significant decay detected, evidence of recent activity.
  - Sample 4: garage window plasterboard  
Advanced soft rot in paper (wood) fibres, toxigenic mould detected.
  - Sample 5: laundry plasterboard  
Advanced soft rot in paper (wood) fibres, toxigenic mould detected.



5.3.7 The report noted that the samples had ‘been exposed to conditions very close to those conducive to severe decay’ and warned that nearby and/or future severe decay is possible as the initial five to ten years of a building life is often misleading because ‘moisture hazards often compound suddenly.’ The report concluded that ‘it is important to establish the limits of fungal infection and/or decay and establish the causes, and apply appropriate remediation’.

#### **5.4 The windows (Clauses E2 and B2)**

5.4.1 The expert noted that most window heads were hard up against soffit linings and did not require head flashings. Windows in gable end walls were not protected so included metal head flashings, although these did not include drip edges, were not extended much beyond the jambs and had plaster butted against the metal.

5.4.2 I also note that windows were installed over the backing sheets, with plaster applied after the window installation. The applicant advised that the decision to change to stucco was made after fibre-cement sheets and windows were in place; resulting in windows being recessed by more than 20mm, with plaster hard against the window flanges trapping moisture at the sills.

5.4.3 The expert opened a small gap under the jamb/sill junction of the garage window in the gable end wall and was able to confirm that no sill and jamb flashings had been installed. The expert was also able to ‘easily insert a metal probe to a depth of 70mm’, which was halfway through the ‘soft, badly decayed timber framing.’

#### **5.5 The external envelope (Clauses E2 and B2)**

5.5.1 The expert inspected the external envelope and noted:

- controlled and uncontrolled cracks to the stucco
- water penetration into control joints in the garage gable end wall with mould growth out of one of the joints
- windows lack jamb and sill flashings and moisture has penetrated into some areas, resulting in moisture penetration and damage to underlying framing
- head flashings to exposed window heads lack drip edges, do not project sufficiently beyond the jamb flanges, and plaster is butted hard against the flashing with no anti-capillary gap
- timber fascias are fixed directly to backing sheets with plaster butted against the bottom of the board, allowing moisture to penetrate the joint
- there is insufficient clearance from ground, paving, and decking to the bottom of the stucco, with gutter leaks that have allowed water to splash against the bottom of the stucco and moisture penetration into the bottom plate
- the rangehood grille penetration is not sealed to the stucco
- the diverter to the bottom of the apron flashing above the laundry discharges water down the cladding and not into the gutter
- the roof ridge flashing is not weathertight and underlay has shrunk from the ridge, resulting in water entering the ceiling space in several areas.

## 5.6 Summary

- 5.6.1 The expert also investigated some other concerns identified in the notice to fix, and concluded that the following areas required further investigation and/or remedial work to comply with associated clauses of the Building Code:
- Investigation into the extent of moisture penetration and damage to the framing (B1, B2 and E2).
  - Items identified above in paragraph 5.5.1 (B2 and E2).
  - Lack of clearance from ceiling insulation to downlight fittings (C1).
  - A bathroom extractor fan vented into the ceiling space (E3 and G4).
  - The top of the gully trap insufficiently above ground level (E1 and G13)
  - Gaps in the ceiling insulation (H1).
- 5.6.2 The expert also observed that the veranda roof beam is 100 x 50mm and spans 2.3m between the posts. However, the 180 x 20mm fascia board contributes to its strength and the expert considered that the uPVC roofing would be likely to break from snowload or wind uplift before the beam failed.

## 6. Compliance of items identified by the authority

- 6.1 I note that the building consent was issued under the former Act, and accordingly the transitional provisions of the current Act apply when considering the issue of a code compliance certificate. Section 436 of the current Act states that the application must be considered and determined as if the current Act had not been passed, which includes the requirement for the authority to issue a code compliance certificate only if it is 'satisfied that the building work concerned complies with the building code that applied at the time the building consent was granted'.
- 6.2 The notice to fix included the statement that the authority was refusing to issue the code compliance certificate. I am of the view that the refusal and reasons for the refusal are more appropriately addressed in a separate notice under section 95A. The reasons for the refusal may then refer to any notice to fix issued in respect of breaches of the Building Code.
- 6.3 In order to determine whether the authority correctly exercised its power in refusing to issue the code compliance certificate (as stated in the notice to fix, with the non-compliances taken as reasons for the refusal) I must consider whether the particular items of building work considered in this determination comply with the associated clauses of the Building Code that applied when the consent was granted in 2001. The house is now about 14-years-old and I have taken that age into account when assessing the compliance of the exterior building envelope.

### 6.4 Clause E2: Weathertightness

- 6.4.1 Taking account of the expert's report, the external envelope generally appears to have been constructed in accordance with average trade practice and the manufacturer's instructions at the time of construction. However, the areas identified by the expert and outlined in paragraph 5.5.1 require maintenance, further investigation and/or remedial work.
- 6.4.2 I consider the expert's report establishes that the current performance of the building envelope is not adequate because there is evidence of moisture penetration into the

timber framing. Consequently, I am satisfied that the cladding currently does not comply with Clause E2 of the Building Code. Given the analysis of framing samples, I am also satisfied that the stucco cladding has not been complying with Clause E2 over an extended period.

- 6.4.3 Pending satisfactory investigations to establish the extent and severity of decay to the framing followed by appropriate remediation, the timber damage observed also satisfies me that the some of the house framing may not comply with Clauses B1 and B2 of the Building Code.

## **6.5 Clause B2: Durability of the cladding and framing**

- 6.5.1 B2 requires that a building continues to satisfy all the objectives of the Building Code throughout its effective life. Clause B2.3.1 requires the cladding systems satisfy Clause E2 for a minimum of 15 years, and the expected life of the framing is a minimum of 50 years. Careful attention to the performance of the external envelope is needed to ensure that it protects the underlying structure for the minimum required life of 50 years.
- 6.5.2 Because of the decay damage and the likelihood of further undiscovered damage, I am satisfied that the timber framing has not complied with Clause B2 insofar as it relates to Clause B1.
- 6.5.3 Although the building envelope is now around 14 years old, the expert's investigations have confirmed moisture ingress over an extended period. I take the view that such moisture penetration indicates that the stucco cladding will not meet the minimum life required by the Building Code and I am therefore satisfied that the building envelope does not comply with the durability requirements of Clause B2.
- 6.5.4 Because the identified moisture penetration and cladding faults occur in discrete areas, I am able to conclude that satisfactory investigation and rectification of areas outlined in paragraph 5.5.1 will result in the timber framing and the stucco cladding being brought into compliance with Clauses B1, E2 and B2 of the Building Code.
- 6.5.5 It is emphasised that each determination is conducted on a case-by-case basis. Accordingly, the fact that a particular cladding system has been established as being code compliant in relation to a particular building does not necessarily mean that the same cladding system will be code compliant in another situation.
- 6.5.6 The expert has commented on cladding deterioration resulting from the lack of maintenance of the exterior of this house. 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 Ministry has previously described these maintenance requirements (for example, Determination 2007/60).

## **6.6 Conclusion**

- 6.6.1 In summary, taking account of the expert's report, I conclude that remedial work, investigation and/or maintenance is necessary in respect of the following areas:
- Additional investigation to establish the condition of the framing generally by invasively measuring moisture levels and testing samples where moisture levels are high or there are other signs of damage (B1, B2 and E2).
  - Items identified by the expert and outlined in paragraph 5.5.1 (B2 and E2).
  - The moisture penetration and damage to framing (B1, B2 and E2).

- Lack of clearance from ceiling insulation to downlight fittings (C1).
- The bathroom extractor fan vented into the ceiling space (E3 and G4).
- The level of the top of the gully trap (E1 and G13).
- Gaps in the ceiling insulation (H1).

## **6.7 The notice to fix**

- 6.7.1 As the authority did not consider the application for a code compliance certificate until 2014, it considered the application based on the transitional provisions and was able to issue a notice to fix under Section 164 of the current Act. I also note that the ownership of the building has not changed since the consent was issued; and I am therefore of the opinion that the authority had the power to issue a notice to fix to the applicant.
- 6.7.2 At the time of the final inspection of the house, I am satisfied that the cladding did not comply with the Building Code and that the authority made an appropriate decision to issue the notice to fix. However, the expert's report satisfies me that some additional concerns have been identified. I therefore consider that the notice should now be amended accordingly.

## **7. The durability considerations**

- 7.1 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).
- 7.2 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.
- 7.3 However, because of the extent of further investigation required into the stucco cladding, 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.

## **8. What happens next?**

- 8.1 The notice to fix should be modified to take into account the findings of this determination, identifying investigations and items listed in paragraph 6.6.1 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 stipulate directly how the defects are to be remedied and the house brought to compliance with the Building Code. That is a matter for the owner to propose and for the authority to accept or reject. It is important to note that the Building Code allows for more than one means of achieving code compliance.
- 8.2 I suggest that the parties adopt the following process to meet the requirements of paragraph 8.1. 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 investigation and 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.

## **9. The decision**

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

- timber wall framing does not comply with Building Code Clause B1 and B2
- the stucco cladding does not comply with Building Code Clauses E2 and B2
- insulation at the downlights does not comply with Building Code Clause C1
- the extractor fan does not comply with Building Code Clauses E3 and G4
- the gully trap does not comply with Building Code Clauses E1 and G13
- the ceiling insulation does not comply with Building Code Clause H1.

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

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 27 July 2015.

John Gardiner  
**Manager Determinations and Assurance**