Determination 2007/64

Determination regarding a code compliance certificate for a house with monolithic cladding at 19A Southern Cross Road, Kohimarama, Auckland

1. The matter to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004[1] ("the Act") made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing ("the Department"), for and on behalf of the Chief Executive of that Department. The applicant is the owner and designer of the house, Mrs R Lee ("the applicant"), and the other party is Auckland City Council ("the territorial authority").

1.2 This determination arises from the decision of the territorial authority to refuse to issue a code compliance certificate for a 9-year-old house because it is not satisfied that it complies with various clauses of the Building Code[2] (First Schedule, Building Regulations 1992).

[1] The Building Act 2004 is available from the Department's website at www.dbh.govt.nz.
[2] The Building Code is available from the Department's website at www.dbh.govt.nz.

1.3 The matters for determination are whether:

1.3.1 Matter 1: The cladding

The cladding as installed on the house ("the cladding") complies with clause E2 "External Moisture" of the Building Code. By "the cladding as installed" I mean the components of the system (such as the backing materials, the flashings, the joints and the plaster and/or the coatings) as well as the way the components have been installed and work together.

1.3.2 Matter 2: The other compliance matters

Whether the gully traps prevent the ingress of surface water to comply with clause G13 "Foul Water", and whether the absence of handrails to the exterior stairs complies with clause D1 "Access Routes".

(I note the owner has agreed to enlarge the size of the overflow to the roof outlet.)

1.3.3 Matter 3: The durability considerations

The elements that make up the building work comply with clause B2 "Durability" of the Building Code, taking into account the age of the building work.

1.4 The territorial authority notes in its submission (refer paragraph 4.3) and in the Notice to Rectify dated 25 January 2005 (refer paragraph 3.6), that some aspects of the building work contravene Building Code clauses B1, E3, G4 and H1. However, I note that there are no specified items within the Notice to Rectify that relate to a dispute about these clauses. I have not considered them further in this determination.

1.5 In making my decision, I have considered the submissions of the parties, the report of the independent expert commissioned by the Department to advise on this dispute ("the expert"), and the other evidence in this matter. I have evaluated this information using a framework that I describe more fully in paragraph 6.1.

1.6 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.

2. The building

2.1 The building work consists of a detached house situated on a steeply sloping site, which is in a medium wind zone for the purposes of NZS 3604[3]. The house is three-storeys high to the north and one storey high to the south – with the three floor levels stepped to suit the slope. The construction of the house is conventional light timber frame, with concrete slabs, concrete block retaining walls and foundation walls, monolithic cladding and aluminium windows. The house is complex in plan and form, with a curved profiled metal upper roof projecting above a 5^{o} pitch metal roof to provide clerestorey windows, and flat membrane lower roofs. A curved roof entry canopy extends to the north, with an adjacent triangular glass canopy above the basement study door.

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

2.2 Monolithic-clad parapets surround each roof level and a monolithic-clad "chimney" structure rises through the level 2 parapet on the west wall. The upper level parapets form bands that oversail lower walls by about 400mm, and these continue as monolithic-clad flying beams at the northwest and northeast upper corners. Monolithic-clad columns support the latter; and the resulting triangular spaces are bridged by cedar beams to form pergolas.

2.3 A curved front enclosed cantilevered upper deck, with monolithic clad balustrades and a panel of open metal balustrades above a deck upstand, extends to the north from level 3. A second enclosed deck, with monolithic clad balustrades, sits above the north end of the basement garage. Both decks include monolithic columns and flying beams, which form pergola structures. A third timber slat deck extends to the west from the level 2 dining room.

2.4 The expert observed no evidence of timber treatment. The specification requires the wall framing to be H1 treated, and the deck and pergola framing to be H3 treated. The applicant has submitted copies of the quotation from the timber supplier, which indicates that the external wall framing supplied for the house was quoted as "dry frame" (with no treatment noted), the deck and pergola framing as H3, and the exposed pergola beams as cedar. I accept that the deck and pergola framing is likely to be H3 treated.

2.5 As outlined in paragraph 4.8, the applicant has subsequently supplied invoices indicating that timber other than pre-nailed frames is boric-treated, and has stated that the suppliers confirm that the timber in the pre-nailed frames would have complied with the H1 treatment called for in the specification. However, given the date of construction of the house, I am unable to determine the particular level and type of treatment described as "H1", and I therefore consider that the wall framing of this house may not be treated to a level that will provide resistance to fungal decay should the framing absorb and retain moisture.

2.6 The cladding system is what is described as monolithic cladding, and is a 40 mm "Insulclad" polystyrene system with 40mm polystyrene backing sheets fixed directly to the framing over the building wrap, and finished with a textured plaster system. The system includes purpose-made flashings to windows, edges and other junctions. The plaster coating is extended over the concrete block foundation walls and other garden walls and balustrades.

3. Background

3.1 It appears that the territorial authority issued a building consent (No 96/10971) during 1996, followed by an amended consent (No 97/09867) in 1997 (neither of which I have seen). According to the applicant, the territorial authority carried out various inspections during construction, although I have received no records of these inspections. It appears that the house was completed and occupied during 1998.

3.2 In October 2003, the territorial authority notified the owner that no code compliance certificate had been issued for the house and carried out a final inspection on 11

November 2003, which identified five items that required fixing. According to the applicant, these items were subsequently fixed.

3.3 On 24 November 2004, in response to a request for a code compliance certificate, the territorial authority carried out a cladding inspection that identified a number of defects.

3.4 In a letter to the owner dated 25 January 2005, the territorial authority regretted that the house might not comply with the Building Code in a number of respects. The territorial authority noted that the monolithic cladding did not have a cavity and that the territorial authority now had revised its processes for assessing what is required for buildings incorporating such claddings. The territorial authority concluded:

> The Council cannot be satisfied that the cladding system as installed on the above building meets the Functional Requirement of Clause E2 External Moisture of the Building Code, which states:
>
> - E2.2 Buildings shall be constructed to provide adequate resistance to penetration by, and the accumulation of, moisture from the outside.

3.5 The territorial authority attached a Notice to Rectify, also dated 25 January 2005, to this letter, together with a set of photographs illustrating items of non-compliance. The "Particulars of Contravention" attached to the notice included requirements under the following headings:

- Items not installed per the manufacturer's specifications
- Items not installed per the acceptable solutions
- Items not installed per accepted trade practice
- Ventilated cavity capacity
- Changes to Building Consent
- Durability.

3.6 The "Particulars of Contravention" also stated that the work was in breach of clauses B1 Structure, B2 Durability, E2 External Moisture, E3 Internal Moisture, G4 Ventilation and H1 Energy Efficiency. (As noted in paragraph 1.4.2, I have received no other evidence relating to a dispute about clauses B1, E3, G4 and H1 and this determination therefore does not consider these clauses.)

3.7 The Department received an application for a determination on 12 February 2007.

4. The submissions

4.1 In a covering letter to the Department dated 7 February 2007, the applicant briefly summarised the history of the project, noting that the territorial authority had indicated that a code compliance certificate would be issued on completion of the items identified in the final inspection of 11 November 2003 and this work had subsequently been completed and the house repainted. However, the territorial authority had reinspected the house and issued a long list of additional items, which it refused to discuss. The applicant described inspections and testing carried out that

showed no evidence of elevated moisture or weathertightness problems related to the cladding. The applicant also responded in detail to the cladding items identified in the Notice to Rectify, concluding:

> We feel that the council has been over zealous. In the absence of any evidence to the contrary, we believe that the dwelling does comply with the building code in place at the time of construction, even though an exact interpretation of the documentation and detailing submitted for building consent was not always adhered to through the building process.
>
> A common sense approach should be taken with regard to individual details. The alternative solutions in place have not shown any evidence or imminent likelihood of failure. No one who has inspected the dwelling over the 8 years since its completion has suggested that we have any problems with leaks.

4.2 The applicant forwarded copies of:

- the drawings and specification
- the cladding manufacturer's 1995 and 1996 details
- the territorial authority's final inspection checklist dated 11 November 2003
- the Notice to Rectify and the territorial authority's letter dated 25 January 2005
- various other statements and information.

4.3 In a letter to the Department dated 6 March 2007, the territorial authority noted that the notice to fix related to clauses B1, B2, E2, E3, G4 and H1 of the building code. As noted in paragraph 1.4.2, I have received no evidence relating to a dispute about clauses B1, E3, G4 and H1 and this determination does not therefore consider those clauses.

4.4 The territorial authority forwarded copies of:

- some of the consent documentation
- the original drawings and amended drawings
- the final inspection checklist dated 11 November 2003
- the Notice to Rectify and letter to the applicant dated 25 January 2005
- various other statements and information.

4.5 Copies of the submissions and other evidence were provided to each of the parties. Neither party made any further submissions in response to the submission of the other party.

4.6 A copy of the draft determination was issued to the parties for comment on 18 April 2007. The draft was issued for comment and for the parties to agree a date when the building elements, other than the matters to be rectified, complied with Building Code Clause B2 Durability. The territorial authority accepted the draft on 7 May 2007.

4.7 In a letter to the Department dated 1 May 2007, the applicant commented on the expert's report and the draft determination. Most of the comments related to the expert's report, and these are outlined in paragraph 5.10.

4.8 The applicant forwarded copies of invoices from the timber supplier, and made the following comments on the draft determination:

- While there is no proof that the pre-made wall frames are H1 treated, the invoices show that other timber was treated, and the suppliers have confirmed that the timber in the pre-made wall framing would have complied with the H1 treatment called for in the specification.
- In regard to handrails, the emphasis on safety of people around homes seems baffling when there is so little concern elsewhere.

I have considered these comments and have amended the draft as appropriate.

4.9 Both parties proposed that the date of 24 September 1998 should be the date when all the building elements installed in the house, apart from the items that have to be rectified, complied with the durability provisions of the building code.

5. The expert's report

5.1 As discussed in paragraph 1.5, I engaged an independent expert to provide an assessment of the condition of those building elements subject to the determination. The expert is a member of the New Zealand Institute of Building Surveyors.

5.2 The expert inspected the house on 21 March 2007, and furnished a report that was completed on 27 March 2007. The expert noted that the cladding generally appeared to be installed to a good standard, with the coating "uniform well adhered and free from fading, chalking and other paint defects". The expert noted that adequate back flashings were installed at the junctions between the two claddings.

5.3 The expert noted that the building work generally conformed to the consent drawings, but there were significant variations as follows:

- stucco cladding was replaced with Insulclad
- some metal roof flashings were replaced with membrane flashings
- the level 2 deck to the north was extended
- the timber shutters to the decks were not constructed.

5.4 The expert noted that control joints are not specified by the manufacturer as necessary for the dimensions of Insulclad used on the walls of this building.

5.5 The expert noted that the windows were recessed by the thickness of the cladding, and had metal head flashings. The expert removed a small section of plaster at the jamb to sill junction of a level 3 bathroom window and noted that uPVC flashings were installed in accordance with the manufacturer's recommendations at the time, with the jamb flashing butting onto and sealed against the sill flashing.

5.6 The expert inspected the interior of the house and no evidence of moisture was noted, except in the basement study where carpet fixings were rusty adjacent to the strapped concrete block west wall. The expert took non-invasive moisture readings internally around the house and elevated readings were obtained at the bottom of the study east

wall. This was confirmed by invasive testing, where timber drillings from the strapping were "grey and clingy". The expert took a further 17 invasive moisture readings through the cladding at risky areas, and the following elevated readings were noted:

- 23% in the east end of the top plate of the level 2 deck balustrade framing
- 100% at the bottom of the west post within the level 2 deck balustrade
- 100% at the west end of the level 3 deck upstand framing
- 100% at the west end of the monolithic clad flying beam above the level 3 deck
- 33% in the underside of the monolithic clad flying beam at the west triangular pergola of the upper roof (below the penetrations by the cedar beams)
- 23% in the bottom plate of the east wall of the north entrance.

The expert noted that the readings were taken at the end of summer, and therefore moisture readings could be expected to be even higher during winter months. Moisture levels that vary significantly after the cladding is in place generally indicate that external moisture is entering the structure and further investigation is required.

5.7 Commenting specifically on the cladding, the expert noted that:

- there are inadequate clearances from the bottom of the cladding to the ground or paving in some areas, and the existence of a hidden 20mm x 40mm x 20mm "Z" base flashing as shown in manufacturer's details could not be verified
- some of the drainage gaps under the window sill flanges are blocked
- the junction of the east end of the curved verge of the entrance canopy with the upper wall traps moisture below the level of the drainage outlet
- at the triangular glazed canopy above the basement study door, the apron flashing lacks a kickout at the bottom (in the vicinity of the wet strapping)
- adjacent to the basement study door, the junction of the cladding with the projecting concrete block planter wall lacks clearance and flashings, with the plaster continuous over both materials (in the vicinity of the wet strapping)
- the Insulclad tops to the balustrades and deck upstand are flat with handrails fixed through the tops, and moisture is penetrating the framing
- the level 3 deck lacks provision for overflow drainage
- the cladding clearance to the deck tiles is inadequate in some areas
- the Insulclad tops to the clad pergola beams are flat, and moisture is penetrating the framing
- the cedar beams penetrate the wall cladding and the monolithic clad flying beams with unflashed junctions, and moisture is penetrating the beam framing
- there are several cracks in the Insulclad parapet tops, which are uncapped and almost flat, and the cladding lacks clearance to the roof membrane in some areas - in contrast to the 15^{o} slope and 40mm clearance shown in the manufacturer's instructions

- the Insulclad parapet butts against the verge of the raised clerestorey roof (with no apron flashing) and is reliant on sealant for weathertightness
- some pipe and cable penetrations through the cladding are inadequately sealed.

5.8 Commenting on other issues, the expert noted that:

- the gully trap on the basement east wall is set too low which could result in the ingress of some surface water
- some exterior stairs lack handrails
- some of the plastered garden walls have severe cracking in the plaster coating.

5.9 A copy of the expert's report was provided to each of the parties on 6 March 2007.

5.10 In a letter to the Department, dated 1 May 2007, the applicant commented on the expert's report and the draft determination (refer paragraph 4.7). The applicant included the following comments on the expert's report:

- Remedial work to the bottom of the wing walls to the north entry was carried out in 2004, and the bottom plates were replaced with H4 treated timber and an aluminium bottom flashing.
- The junction of the blockwork and timber walls (at the basement study) is more relevant to moisture penetration than the lack of a flashing at the top of the retaining wall.
- Some handrail brackets are adhesive-fixed, so do not penetrate the tops of the balustrades.
- Pipe penetrations were supposed to have been taped to the building wrap, with any sealant being additional protection.
- The retaining walls are tanked with "Bituthene" not "Flintcote".
- The junction of the Insulclad parapet with the verge of the raised clerestorey roof has never leaked and was sealed 5 years after completion (prior to repainting).
- Garden walls should not be reported on as they do not even require a building consent.
- Handrail fixings and cladding clearances have not led to any water ingress in 8 years, proving that the details are performing well.
- The gully trap is unlikely to experience water entry from the paving.

6. Evaluation for code compliance

6.1 Evaluation framework: exterior cladding

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

- The weathertightness (and durability) of the external building envelope.

- The remaining relevant code requirements.

In the case of this house, the weathertightness considerations merit particular attention and are therefore addressed first.

6.1.2 In evaluating the design of a building and its construction, it is useful to make some comparisons with the relevant Acceptable Solutions[4], in this case E2/AS1, which will assist in determining whether the features of these houses are code compliant. However, in making this comparison, the following general observations are valid:

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

6.2 Weathertightness evaluation

6.2.1 The approach in determining whether building work is weathertight and durable and is likely to remain so, is to apply the principles of weathertightness. This involves the examination of the design of the building, the surrounding environment, the design features that are intended to prevent the penetration of water, the cladding system, its installation, and the moisture tolerance of the external framing. The Department and its antecedent, the Building Industry Authority, have also described weathertightness risk factors in previous determinations[5] (for example, Determination 2004/1) relating to cladding and these factors are also used in the evaluation process.

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

6.3 Weathertightness risk

6.3.1 In relation to these characteristics I find that this house:

- is built in a moderate wind zone
- is a maximum of three storeys high, reducing to one story at the rear
- is complex in plan and form, with monolithic clad parapets, columns and beams
- has monolithic cladding fixed directly to the framing
- has eaves or parapet projections of 400mm over most upper level walls

[4] An Acceptable Solution is a prescriptive design solution approved by the Department that provides one way (but not the only way) of complying with the Building Code. The Acceptable Solutions are available from The Department's Website at www.dbh.govt.nz.
[5] Copies of all determinations issued by the Department can be obtained from the Department's website.

- has an enclosed deck situated over garage areas, and a cantilevered enclosed deck at second floor level
- has monolithic clad deck balustrades and upstands, with top-fixed handrails
- has external wall framing that may not treated to a level that provides resistance to the onset of decay if the framing absorbs and retains moisture.

6.3.2 The house has been evaluated using the E2/AS1 risk matrix. The risk matrix allows the summing of a range of design and location factors applying to a specific building design. The resulting level of risk can range from 'low' to 'very high'. The risk level is applied to determine what claddings can be used on a building in order to comply with E2/AS1. Higher levels of risk will require more rigorous weatherproof detailing; for example, a high risk level is likely to require a particular type of cladding to be installed over a drained cavity.

6.3.3 When evaluated using the E2/AS1 risk matrix, the weathertightness features outlined in paragraph 6.2.1 show that three elevations of this house demonstrate a high weathertightness risk rating and one elevation a low risk rating. I note that, in order to comply with E2/AS1, the monolithic cladding on the south elevation of this building would not require a drained cavity (although all other elevations would).

6.4 Weathertightness performance

6.4.1 Generally the cladding appears to have been installed in accordance with good trade practice. However, I accept the expert's opinion that remedial work is necessary in respect of the following:

- Some inadequate cladding clearances above ground and paving areas.
- The lack of drainage gaps under the window sill flanges.
- The inadequate weatherproofing of the east end of the verge to the curved entrance canopy.
- The lack of a kickout to the apron flashing to the study glazed canopy.
- The junction of the cladding with the concrete block at the study east wall.
- The inadequately sealed handrail fixings, and the uncapped flat tops to the deck balustrades and upstand.
- The lack of overflow provision to the level 3 deck.
- The inadequate cladding clearances to the deck tiles.
- The flat tops to the clad flying beams, and the inadequately weatherproofed penetrations of the timber rafters.
- The flat uncapped parapet tops, and the lack of cladding clearance to the roof in some areas. (I note that the drawings show the roof membrane wrapped over the parapet tops, which, if carried out properly, will provide adequate weatherproofing.)
- The inadequately weatherproofed junctions of the parapets with the verges of the clerestorey roof.

- The inadequately sealed pipe and cable penetrations.

6.4.2 Notwithstanding the fact that the cladding is fixed directly to the timber framing, thus limiting drainage and ventilation behind the cladding, I have noted certain compensating factors that assist the performance of the cladding in this particular case:

- apart from the noted exceptions, the cladding is installed to good trade practice
- the flashings to windows and doors and junctions appear to be satisfactorily installed and effective in preventing moisture penetration into the walls
- moisture penetration appears limited to areas where defects have been identified.

6.4.3 I consider that these factors help compensate for the lack of a drained cavity to the Insuclad walls, or provide some assurance that the building work will comply with the weathertightness and durability provisions of the Building Code.

Matter 1: The cladding

7. Discussion

7.1 I consider the expert's report establishes that the current performance of the cladding is not adequate because it is allowing water penetration into the building at present. Consequently, I am satisfied that the building does not comply with clause E2 of the Building Code.

7.2 In addition, the building is also required to comply with the durability requirements of clause B2. Clause B2 requires that a building continues to satisfy all the objectives of the Building Code throughout its effective life, and that includes the requirement for the house to remain weathertight. Because the cladding faults on the building are likely to continue to allow the ingress of moisture in the future, the house does not comply with the durability requirements of clause B2.

7.3 Because the faults identified with the cladding system occur in discrete areas, I am able to conclude that satisfactory rectification of the items outlined in paragraphs 6.4.1, and any further defects that might be discovered in the course of rectification, will result in the building remaining weathertight and in compliance with clause B2, and being brought into compliance with other clauses of the Building Code.

7.4 I also note the territorial authority's concerns with regard to changes between the approved building consent and the building as constructed (refer paragraph 3.5). I consider that this matters is best left to the owner to resolve with the territorial authority.

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

7.6 Effective maintenance of claddings (in particular of monolithic claddings) is important to ensure ongoing compliance with clauses B2 and E2 of the Building Code and is the responsibility of the building owner. Clause B2.3.1 of the Building Code requires that the cladding be subject to" normal maintenance", however that term is not defined in the Act.

7.7 I take the view that normal maintenance is that work generally recognised as necessary to achieve the expected durability for a given building element. With respect to the cladding, the extent and nature of the maintenance will depend on the material, or system, its geographical location and level of exposure. Following regular inspection, normal maintenance tasks should include but not be limited to:

- where applicable, following manufacturers' maintenance recommendations
- washing down surfaces, particularly those subject to wind-driven salt spray
- re-coating protective finishes
- replacing sealant, seals and gaskets in joints.

7.8 As the external wall framing of this house may not be treated to a level that will resist the onset of decay if it gets wet, periodic checking of its moisture content should also be carried out as part of normal maintenance.

Matter 2: The other compliance matters

8. Discussion

8.1 In order for the house to comply with other requirements of the Building Code, I accept the expert's opinion that remedial work is necessary in respect of the following:

- The inadequate clearance from the top of the gulley trap to the paving on the east wall.
- The lack of handrails to some exterior stairs.

8.2 I note that acceptable solutions to both matters are described in paragraph 3.3.1of G13/AS2 and section 6 of D1/AS1, respectively.

Matter 3: The durability considerations

9. Discussion

9.1 The territorial 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 most of the building work during 1998.

9.2 The relevant provision of clause B2 of the Building Code requires that building elements must, with only normal maintenance, continue to satisfy the performance

requirements of the Building Code for certain periods ("durability periods") "from the time of issue of the applicable code compliance certificate" (clause B2.3.1).

9.3 These durability periods are:

- 5 years if the building elements are easy to access and replace, and failure of those elements would be easily detected during the normal use of the building
- 15 years if building elements are moderately difficult to access or replace, or failure of those elements would go undetected during normal use of the building, but would be easily detected during normal maintenance
- the life of the building, being not less than 50 years, if the building elements provide structural stability to the building, or are difficult to access or replace, or failure of those elements would go undetected during both normal use and maintenance.

9.4 It is not disputed, and I am therefore satisfied that all the building elements installed in the house, apart from items that have to be rectified as described in paragraphs 6.4.1 and 8.1, complied with clause B2 on 24 September 1998. This date has been confirmed by the applicant and the territorial authority, refer paragraph 4.9

9.5 In order to address these durability issues, I sought some clarification of general legal advice about waivers and modifications. I have now received that clarification and the legal framework and procedures based on this clarification are described in previous determinations (for example, Determination 2006/85) and are used to evaluate the durability issues raised in this determination.

9.6 I continue to hold that view, and therefore conclude that:

(a) the territorial authority has the power to grant an appropriate modification of clause B2 in respect of all the building elements.

(b) it is reasonable to grant such a modification, with appropriate notification, because in practical terms the building is no different from what it would have been if a code compliance certificate for the house had been issued in 1998.

9.7 I strongly recommend that the territorial authority record this determination, and any modifications resulting from it, on the property file and also on any LIM issued concerning this property.

10. The decision

10.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the building does not comply with clauses B2, E2, D1 and G13 of the Building Code, and accordingly confirm the territorial authority's decision to refuse to issue a code compliance certificate.

10.2 I also determine that:

(a) all the building elements installed in the building, apart from the items that are to be rectified, complied with clause B2 on 24 September 1998.

(b) the building consent is hereby modified as follows:

The building consent is subject to a modification to the Building Code to the effect that, clause B2.3.1 applies from 24 September 1998 instead of from the time of issue of the code compliance certificate for all building elements except those elements which have been altered or modified as set out in Determination 2007/64.

(c) following the modification set out in (b) above, the territorial authority is to issue a code compliance certificate in respect of the building consent as amended.

10.3 I note that the territorial authority has issued a Notice to Rectify that also required provision for adequate ventilation, drainage and vapour dissipation. Under the Act, a notice to fix can require the owner to bring the additions into compliance with the Building Code. The Building Industry Authority has found in a previous Determination 2000/1 that a Notice to Rectify (the equivalent to a notice to fix under the Building Act 2004) cannot specify how that compliance is to be achieved. I concur with that view.

10.4 The territorial authority shall withdraw the Notice to Rectify. A notice to fix is to be issued in its place that requires the owners to bring the building up to compliance with the Building Code, identifying the defects listed in paragraphs 6.4.1 and 8.1 and referring to any further defects that might be discovered in the course of rectification, but not specifying how those defects are to be fixed. That is a matter for the applicants to propose and for the territorial authority to accept or reject. It is important to note that the Building Code allows for more than one method of achieving compliance.

10.5 I would suggest that the parties adopt the following process to meet the requirements of paragraph 10.4. Initially, the territorial authority should issue the new notice to fix. The owner should then produce a response to this in the form of a detailed proposal, produced in conjunction with a competent and suitably qualified person, as to the rectification or otherwise of the specified issues. Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 18 June 2007.

John Gardiner
Manager Determinations