



Determination 2010/112

Refusal to issue code compliance certificates for 13-year-old alterations to a building at 28 Hobson Street, Thorndon, Wellington



1. The matters to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The applicants are the owners of the twelve units (“the units”) within a free-standing apartment building, acting via the body corporate for the building, Piedmont Body Corporate 82332 (“the body corporate”). The other party is the Wellington City Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.2 This determination arises from the decision of the authority to refuse to issue code compliance certificates for 13-year-old alterations to a building (“the alterations”), because it is not satisfied that the building work complies with certain clauses² of the Building Code (First Schedule, Building Regulations 1992). The authority’s primary concerns about the compliance of the alterations appear to relate to its age and to the weathertightness of the cladding.

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

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

1.3 The matter to be determined³ is therefore whether the authority was correct to refuse to issue code compliance certificates for the building work. In deciding this matter, I must consider:

1.3.1 Matter 1: The external envelope

Whether the external claddings to the building (“the claddings”) comply with Clause B2 Durability and Clause E2 External Moisture of the Building Code. The claddings include the components of the systems (such as the monolithic cladding, the windows, the tiled decks, the roof claddings and the flashings), as well as the way the components have been installed and work together with the original elements remaining in the building envelope. I consider this in paragraph 6.

1.3.2 Matter 2: The durability considerations

Whether the building elements comply with Clause B2 Durability of the Building Code, taking into account the age of the alterations. I consider this in paragraph 7.

1.4 In making my decision, I have considered the applicants’ submission, the report of the body corporate’s building consultant (“the consultant”), the report of the expert commissioned by the Department to advise on this dispute (“the expert”), and other evidence in this matter.

2. The building work

2.1 The building is situated on a flat site in a high wind zone for the purposes of NZS 3604⁴. The altered building is 3-storeys high in part, rectangular in plan, and is sited at right-angles to the street, with a driveway along the long elevation to the south. Each unit in the building is separately titled.

2.2 The original building

2.2.1 The original block was constructed as a two-storey high office building in the mid 1970’s. The specifically engineered structure included concrete foundations and ground floor slab, reinforced concrete columns and beams, a proprietary masonry floor slab to the first floor and glue-laminated beams supporting the low-pitched metal roof.

2.2.2 Double-skin concrete block infill panels between the concrete beams and columns completed the exterior walls, with ground floor walls at the ends of the building recessed back from the upper floor. The original aluminium windows were installed into timber-framed ‘bays’ that projected out from the concrete block walls. A raised clerestory structure along the middle of the roof provided windows to the south.

2.3 The apartment building

2.3.1 The office building was converted into twelve apartments in 1996 under two building consents, referred to in the documents as ‘Stage I’ and ‘Stage II’:

- Stage I building consent (No. 15639) was issued in about January 1996 to cover the building work to Units 1, 2, 6, 7 and 8

³ Under section 177(b)(i) of the Act (prior to 7 July 2010)

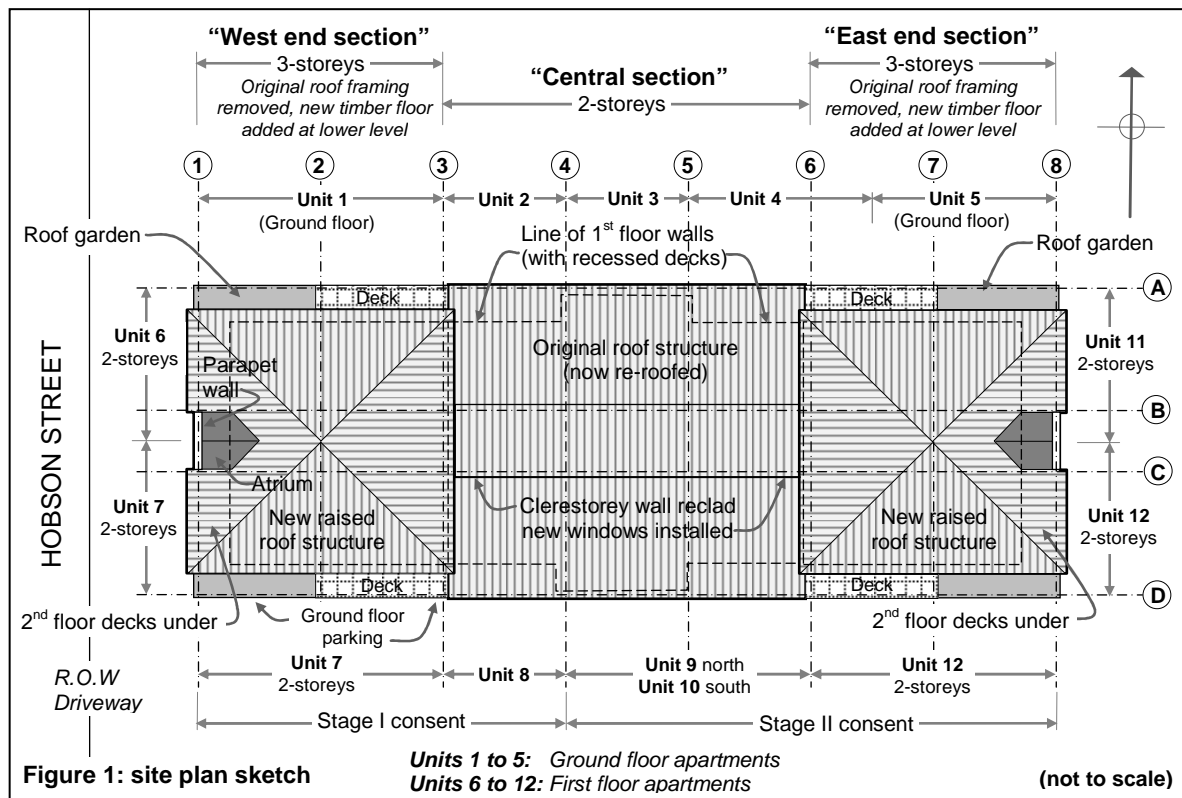
⁴ New Zealand Standard NZS 3604:1999 Timber Framed Buildings

- Stage II building consent (No. 15824) was issued in February 1996 to cover the building work to Units 3, 4, 5, 9, 10, 11 and 12.

2.3.2 The apartment building now accommodates twelve units, with:

- Units 1 to 5 and a car park area on the ground floor
- the following seven units in the upper floors:
 - Units 6 and 7 in the west end section (“the west section”)
 - Units 8, 9 and 10 in the central section (“the central section”)
 - Units 11 and 12 in the east end section (“the east section”).

2.3.3 As shown in Figure 1, the building is made up of three sections, with east and west sections 3-storeys high and the central section 2-storeys high. The new construction added to the original concrete structure is generally conventional light timber frame, with monolithic cladding and aluminium windows. The altered building is fairly complex and is assessed as having a high weathertightness risk (refer paragraph 6.2).



2.4 The central section

2.4.1 The original roof structure has been retained, along with the original clerestory structure. The original clerestory windows were removed and replaced with monolithic-clad infill walls and new aluminium windows. The profiled metal roof cladding has been recently replaced with similar roofing.

2.4.2 Many of the original concrete block infill panels have been replaced with new timber-framed monolithic-clad walls, and some of the new first floor walls are recessed back beneath the roof to provide decks, with tiles over the original concrete floors and open metal balustrades.

2.5 The east and west sections

- 2.5.1 Units 6 and 7 are the upper level units in the west section and Units 11 and 12 are the upper level units in the east section. These units are two-storeys high and were formed by removing the original roof structure and constructing a new timber-framed structure that had lower ceiling heights than elsewhere in the building. The result provides upper level timber-framed floors for the upper units in the end sections.
- 2.5.2 Three-storey high 'atriums' are recessed between the original central columns on the east and west walls, with the voids roofed over with gabled patent glazing. The east and west elevations of the atriums are timber-framed monolithic-clad walls that extend up to form parapets in front of the glazed roofs.
- 2.5.3 Each section has a separate hipped roof above the level of the clerestory to the central section. East and west walls to second floors are recessed beneath the roofs and lower floors to provide tiled deck areas on the timber-framed floor, with open metal balustrades and monolithic-clad timber-framed pilasters at the corners.
- 2.5.4 The north and south walls to the second floor are also set back from lower walls, with the timber-framed floor areas adjacent to the central section forming further tiled decks which have open metal balustrades and monolithic-clad timber-framed balustrades and pilasters at the junction with the central section roof.
- 2.5.5 The remaining areas on upper north and south walls were originally roof gardens, although only the gardens to Unit 6 and Unit 11 remain. The membrane-covered roof areas have monolithic-clad timber-framed upstands at outer edges and at junctions to adjoining deck areas, with a metal handrail fixed to the upstand top.

2.6 The wall claddings

- 2.6.1 The new timber-framed exterior walls are clad in a monolithic wall cladding system, which consists of 7.5mm fibre-cement sheets fixed through the building wrap to the framing and finished with an applied textured coating system. The cladding system is also installed to atrium walls and deck balustrades, upstands and pilasters.
- 2.6.2 The original beams, columns and remaining concrete blockwork have been plastered to provide a smooth finish, and finished with an applied textured coating system that matches and extends from the new timber-framed walls.
- 2.7 The expert was unable to identify whether the exterior timber framing was treated, but noted that owners were under the impression that it was treated. However, given the lack of evidence, the date of construction in 1996 and the apparent timber damage, I consider the external wall framing to the alterations is untreated.

3. Background

- 3.1 The authority issued two building consents for the alterations (No. 15639 for Stage I and No. 15824 for Stage II) in March and February 1996 respectively, under the Building Act 1991.

- 3.2 The inspection summaries indicate that construction commenced in February 1996; with construction of Stage I and Stage II proceeding concurrently and the authority undertaking similar inspections for both stages.
- 3.3 The inspection summary indicates that the Stage II units were issued with interim code compliance certificates following final inspections during October 1996. Units 1, 2 and 3 in Stage I were also issued with interim code compliance certificates in October 1996, with several minor items required to Units 6 and 7. According to the applicants, these were subsequently completed.
- 3.4 The engineer provided a ‘Producer Statement – PS4 – Construction Review’ for each stage; both dated 16 October 1996. No final code compliance certificates were issued, and the building later developed moisture problems.

3.5 The first report on moisture problems

- 3.5.1 Following reports of leaks into the upper apartments of the end sections, the body corporate engaged a building inspection company (“the inspection company”) in 2001 to assist with diagnosing the causes of the moisture ingress.
- 3.5.2 I have seen excerpts from the inspection company’s 2002 report, which identified significant defects and timber damage and recommended that significant remedial work be undertaken, including removing cladding, replacing damaged timber, re-cladding to the manufacturer’s recommendations and the application of an ‘appropriate elastomeric waterproof paint film’.
- 3.5.3 The report concluded:
- In summary the existing fibre cement clad timber frame exterior panel and spandrels are inadequately detailed to comply with the NZ Building Code and to prevent the ability of water migration into the new and original structure.
- In our opinion it is important that all such details be remedied as a matter of priority, this will involve considerable attention to redesign of details associated with infill panels, and connections between beams and panel junctions.
- The remedial work is required to the building envelope on all elevations of the original building and the new upper level roof top apartments.
- 3.6 Following negotiations with the developer and the builder, some remedial work was completed but I have no evidence on the extent of investigation and replacement of damaged framing. A new coating was applied to the cladding, with the coating supplier providing a ‘performance guarantee for both material and labour’ for a period of 10 years. The expiry date was noted as 31 May 2013, which suggests that the coating application was completed in May 2003.
- 3.7 In 2007, the owner of Unit 3 entered into an agreement to sell the unit. As the prospective purchaser was not satisfied with the interim code compliance certificate issued for the unit, the owner, via the body corporate sought code compliance certificates for the alterations.

3.8 The authority's response

- 3.8.1 Following an approach from the body corporate, the authority attended a site meeting on 29 September 2007 to 'discuss the inspection process should final inspections be requested for the two outstanding building consents'. The authority clarified the documentation and detail that it would require and the meeting record noted that 'no inspections were undertaken'.
- 3.8.2 In a letter to the body corporate dated 8 October 2008, the authority confirmed the site meeting and noted that it needed to be satisfied, on reasonable grounds, that building work was code-compliant before issuing code compliance certificates. The authority attached a form to request an inspection, noting:
- It is possible that due to the age of the building work and the length of time that has passed since the work was completed, the Council may not be able to be satisfied that the durability requirements of the Building Code can be met. This means a Code Compliance Certificate cannot be issued. Whether the building work at your property falls within this category can only be determined after an inspection by the Council.
- 3.8.3 On 20 November 2007, the body corporate formally requested a final inspection and a further site meeting was held but no inspection was carried out. In a letter dated 4 December 2007, the authority again warned about the risk that code compliance certificates might not be issued due to the age of the building work and added that:
- If Council officers are requested to carry out an inspection of the work and are unable to issue a CCC or refuses, the non-compliant matters will be documented and recorded against the building consent file. This information would be available to members of the public...
- 3.8.4 The authority noted that the owners could apply for a determination or
- ...engage a suitably qualified person to assess the work as identified in the building consents and give the unit owners an indication of issues and costs they may encounter should Council officers be requested to inspect the work.
- 3.8.5 After seeking legal advice, the body corporate did not pursue its request for final inspections, instead electing to seek a report on the condition of the building.

3.9 The consultant's weathertightness report

- 3.9.1 The body corporate engaged the consultant, who inspected the building on 15 April 2008 and provided a 'condition report' dated May 2008. The consultant described the building and its history, noting the remedial recommendations made in the first report by the consultancy company (see paragraph 3.5).
- 3.9.2 The consultant inspected the interior and exterior of the units, noting no evidence of moisture penetration. Moisture testing was carried out in each unit, and no elevated readings were recorded. However no destructive investigation was carried out.
- 3.9.3 The consultant noted that:
- some cracking in the claddings had occurred since the building was repainted in 2003, with cracks at cladding joints on each elevation but no evidence of moisture penetration
 - there was a leak to the roof above Unit 10 (which has since been remedied)
 - the removal of the two remaining garden areas is recommended.

- 3.10 Some minor remedial work appears to have been carried out and the authority was approached again. However, no final inspection was carried out and the annual general meeting (“AGM”) minutes dated 24 May 2009 reported on a meeting during which the authority stated that it ‘is prohibited by legislation to issue a final certificate in retrospect’ and the building also ‘does not comply with the Building Code 2004’ as it would require significant work to meet the current standard.
- 3.11 The AGM discussed the options available and elected not to pursue code compliance certificates for the building.

3.12 The initial application for a determination

- 3.12.1 The Department received an application for a determination from Unit 3’s owner on 17 November 2009. In an email to the owner dated 8 December 2009, the Department described the determination process and also explained that, due to the nature of the building and the building consents under which the work was carried out, an application would need to be made for a determination to cover the complete building.
- 3.12.2 The AGM minutes dated 7 March 2010 recorded discussions on the situation and resolved to apply to the authority for a code compliance certificate and ‘if unsuccessful, proceed with an application for a determination’.

3.13 The authority’s formal response

- 3.13.1 The body corporate formally applied for a code compliance certificate for the building work and the authority responded on 4 June 2010, explaining that when issuing a code compliance certificate it:
- ...must be satisfied, on reasonable grounds, that the building work and the materials used in the construction of the building comply with the provisions of the NZ Building Code (NZBC) at the time the consent was issued.
- 3.13.2 The authority also noted that:
- To establish NZBC compliance, it is the building owner’s responsibility to request a CCC immediately after the work is completed. If this request is not sought immediately after completion, as has occurred in this case, the owner must accept a risk that the CCC may not be issued.
- 3.13.3 The authority also explained the durability provisions of the Building Code and stated that, after reviewing the situation, it could not ‘provide you with an assurance of building code compliance’ for the building simply because ‘too long a period has elapsed since it was built’.
- 3.14 In a letter to the Department dated 10 June 2010, the remaining unit owners represented by the body corporate elected to join Unit 3’s owner in the application for a determination.

4. The submissions

- 4.1 In the original application, Unit 3's owner summarised the background to the situation, and provided copies of:
- the consent documentation for Stage II
 - the authority's inspection summary for Stage II
 - the engineer's producer statements for both stages
 - excerpts from the inspection company's 2002 report
 - the authority's record of the site meeting dated 29 September 2007
 - some correspondence from the authority
 - the consultant's weathertightness report dated May 2008
 - various other correspondence, AGM minutes and other information
 - the correspondence from the authority's contractor and the authority.
- 4.2 A draft determination was issued to the parties for comment on 19 August 2010. The body corporate accepted the draft on 2 September 2010 and noted that the building work was substantially completed in October 1996.
- 4.3 In a letter to the Department dated 31 August 2010, the authority accepted the draft determination in principle and attached a copy of the Stage I building consent and inspection summary. I have amended the draft accordingly. The authority also made the following comments (in summary):
- The authority did not submit earlier as a copy of the application was not received until after the date of the draft determination.
 - It is not reasonable to grant a modification of the durability provisions as there are clear indications of failures, which are acknowledged in the draft. (I concur with that view as outlined in paragraph 7.4.)

5. The expert's report

- 5.1 As mentioned in paragraph 1.4, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors. The expert inspected the building on 13 and 14 July 2010, providing a report dated 22 July 2010.

5.2 General

- 5.2.1 The expert noted that the original concrete structure had been 'well constructed' but was now compromised by the new cladding which, although visually 'well finished' had significant detailing issues that were evident.
- 5.2.2 The expert also noted that the leak into Unit 10 reported by the consultant was from the original roof, which had been recently replaced.

5.3 Moisture levels

5.3.1 The expert inspected the interiors and exterior of the building, and noted numerous signs of moisture penetration including:

- moisture condensing on wet cladding areas
- mould growth, cracks and moisture on the tops of the atrium gable parapets
- cracks to interior walls of the atriums
- extensive cracking, some of which had been patched
- ponding on timber-framed decks, and ‘spongy’ tiled surfaces
- water damage to the soffit under the east deck
- lining damage and water staining to some interiors.

5.3.2 Considering that the visual evidence confirmed moisture penetration into the building, the expert limited non-invasive and invasive moisture readings internally and externally to sample areas in order to establish a ‘general spread of moisture ingress’. The expert noted very high moisture readings, ranging from 27% to 90%, and/or evidence of decay at:

The east end section

- the parapets to the atrium gable end wall, with signs of decay
- the ground floor foyer to the atrium, with signs of decay
- walls between atrium and east decks, with signs of decay
- the third floor north deck, with water under the tiles and ‘sponginess’ indicating decay in the timber-framed deck floor
- the framing of the pilasters at the corners of the third floor east decks
- the framing of the balustrade wall separating the third floor north deck from the roof to the middle section
- the second floor north walls under the third floor north deck
- the ground floor north foyer beneath the third floor deck, with decay apparent
- interior walls below the third floor north garden
- the southeast of the first floor deck soffit under third floor south deck

the west end section

- the parapets to the atrium gable end wall
- the ground floor foyer to the atrium
- the ground floor interior wall near the west foyer
- the ground floor walls beside doors to north patio
- the framing of the balustrade wall separating the third floor north deck from the roof to the central section
- the framing of the pilasters at the corners of the third floor west decks
- the interior south wall below the removed garden.

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

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

General

- there are extensive cracks to the cladding, both patched or not repaired, and the clerestorey cladding is repaired with a patch of fibre-cement
- the ground floor wall cladding butts against the paving, deck timber or ground in many areas, with cracks and water entry apparent
- ground floor free-standing patio walls are cracked, and decay is visible
- the junction of fibre-cement with the plastered concrete column appears not to be flashed and cracks have opened at some junctions
- in other areas, retro-fitted flashings are allowing moisture to penetrate
- there is unsealed fibre-cement behind the ends of the gutters
- recessed window details do not appear weatherproof, with the sills coated in liquid-applied membrane and cracks apparent at sill to jamb junctions
- some penetrations through the cladding are unsealed

The decks

- deck surfaces are not weatherproof, with cracked tile joints, water under some tiles and evidence of damage to the timber-framed floors and walls below, including to some interior walls and lower soffits
- wall cladding butts against the deck tiles, which are above interior floor levels
- clad deck balustrades, upstands and pilasters are not weathertight, with flat tops, fixings through some tops, cracks and signs of likely decay in some areas
- two roof gardens have not been removed, and the timber-framed second floor below is unlikely to be weathertight

The atriums

- there are no horizontal control joints to the 3-storey high gable end walls, and horizontal cracks are apparent
- earlier patch repairs are clearly visible to inside and outside walls and the walls below the atriums and adjoining the apartment decks have high moisture levels
- advanced decay was found at the east foyer, with likely decay elsewhere
- gable end walls to the east and west atriums have no parapet capping, flat fibre-cement tops, extensive cracking, joint movement, splits and likely decay
- the parapet tops are protected only by liquid-applied membrane, and the tops have cracked, with saturated timber beneath
- the junctions of the atrium glazed roofs with the metal roofing are not weatherproof, with crude flashings, large gaps and moisture penetration apparent in the walls below.

- 5.5 The expert noted that the above defects were unlikely to be a complete list; and concluded that extensive invasive investigation of the cladding and the decks throughout the building is required, including the removal of wall claddings. The expert was of that opinion that ‘significant remedial work’ would be required to make the building weathertight, which was likely to include re-cladding the building.
- 5.6 Commenting on some other relevant code clauses, the expert also noted that:
- the moisture penetration into timber-framed deck floors may have endangered the floor structure in some areas (Clause B1)
 - the balustrade rail to the corner pilaster has pulled loose, likely due to decayed framing, and is now unsafe (Clause F4).
- 5.7 A copy of the expert’s report was provided to the parties on 8 July 2010.
- 5.8 The applicants responded to the expert’s report in a letter from the body corporate dated 5 August 2010 which made ‘interim comments’ on the report and which I have taken into account in the preparation of this determination. The comments included:
- The garage area noted in the report is not part of the building work.
 - A reference to ‘old damage’ refers to one small leak that has been remedied.
 - There were no issues about the structure or cladding when interim code compliance certificates were issued in 1996.
 - Issues arising since construction have been promptly dealt with and, since remedial work was carried out, there have been no instances of leaks into apartments other than routine roof leaks that have been attended to.
 - The exterior has been maintained and repairs have been carried out as required.

Matter 1: The cladding

6. Weathertightness

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

6.2 Weathertightness risk

- 6.2.1 The altered building has the following environmental and design features which influence its weathertightness risk profile:

Increasing risk

- the building is three-storeys high in part and sited in a high wind zone
- the plan and form is fairly complex with some complex roof to wall junctions
- most walls have monolithic cladding fixed directly to the framing
- there are enclosed timber-framed decks at first and second floor levels, some of which are situated above enclosed areas on lower floors

- the glazed atriums have monolithic-clad parapet walls
- the external wall framing is not likely to be treated to a level that provides resistance to decay if it absorbs and retains moisture

Decreasing risk

- the underlying original structure is concrete
- most walls have eaves to shelter the cladding.

6.2.2 When evaluated using the E2/AS1 risk matrix, these features show that the elevations of the building demonstrate a high weathertightness risk rating. I note that if the details shown in the current E2/AS1 were adopted to show code compliance the flush-finish fibre-cement cladding would require a drained cavity. However this was not a requirement at the time of construction.

6.3 Weathertightness performance

6.3.1 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 likely in the framing to some of the walls and decks. The new three-storey end sections, with the atrium structures and timber-framed decks and garden areas are of particular concern. Taking into account the expert's report, I conclude that areas outlined in paragraph 5.4 require rectification.

6.3.2 Considerable work is required to make the cladding 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 cladding and tiles where moisture is elevated, in order to fully determine the causes and full extent of moisture penetration, the extent of timber damage and the repairs required.

6.4 Weathertightness conclusion

6.4.1 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 untreated timber framing. Consequently, I am satisfied that the building does not comply with Clause E2 of the Building Code. In addition, the extent of any damage to the structural framing needs investigation to determine the buildings' compliance with Clause B1 Structure.

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

6.4.3 I consider that final decisions on whether code compliance can be achieved by either remediation or re-cladding, or a combination of both, can only be made after a more thorough investigation of that cladding 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.

- 6.4.4 I note that the Department has produced a guidance document on weathertightness remediation⁵. I consider that this guide will assist the owners in understanding the issues and processes involved in remediation work to the building, and in exploring various options that may be available when considering the upcoming work required to the building.

Matter 2: The durability considerations

7. Discussion

- 7.1 The authority has concerns about the durability, and hence the compliance with the Building Code, of certain elements of the building taking into consideration the completion of the building during 1996.
- 7.2 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).
- 7.3 In previous determinations (for example Determination 2006/85) I have taken the view that a modification of this requirement can be granted if I can be satisfied that the building complied with the durability requirements at a date earlier than the date of issue of the code compliance certificate, that is agreed to by the parties and that, if there are matters that are required to be fixed, they are discrete in nature.
- 7.4 Because of the extent of further investigation required into the condition of the timber framing and therefore to parts of the building’s structure, and the potential impact of such an investigation on the external envelope, I am not satisfied that there is sufficient information on which to make a decision about this matter at this time.

8. What is to be done now?

- 8.1 A notice to fix should be issued that requires the applicants to bring the building into compliance with the Building Code, including the defects identified in paragraph 5.4, but not specifying how those defects are to be fixed. It is not for the notice to fix to specify how the defects are to be remedied and the building brought to compliance with the Building Code. That is a matter for the owners to propose and for the authority to accept or reject.
- 8.2 In addition, the notice to fix should include the requirement for a full investigation into the extent and causes of moisture penetration and decay in the timber framing; referring also to the need for cladding removal, invasive moisture testing and

⁵ External moisture – A guide to weathertightness remediation. This guide is available on the Department’s website, or in hard copy by phoning 0800 242 243

laboratory testing of framing samples to confirm treatment levels, if any, and to establish the full extent, levels and structural significance of decay to the framing.

8.3 I suggest that the parties adopt the following process to meet the requirements of paragraph 8.1. Initially, the authority should issue the notice to fix. The body corporate 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.

8.4 I note that the expert has identified that moisture penetration into timber-framed deck floors may have endangered the floor structure in some areas and a loose balustrade rail to the corner pilaster which is now unsafe, and I draw this to the authority's attention for investigation into the safety of these decks.

9. The decision

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

9.2 I also determine that:

- some timber-framed decks do not comply with Clause B1 of the Building Code
- some deck balustrades do not comply with Clause F4 of the Building Code.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 15 November 2010.

John Gardiner
Manager Determinations