



## Determination 2011/011

### Refusal to issue a code compliance certificate for three 9-year-old buildings with monolithic cladding at 609 Halkett Road, West Melton, Christchurch



#### 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 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 G Miles (“the applicant”) and the other party is the Selwyn District 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 three 9-year-old buildings because it is not satisfied that they comply with certain clauses<sup>2</sup> of the Building Code (First Schedule, Building Regulations 1992). The authority’s concerns about the compliance of the buildings relate to their age and weathertightness.
- 1.3 The matter to be determined<sup>3</sup> is therefore whether the authority was correct to refuse to issue code compliance certificates for the buildings. In deciding this, I must consider:

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

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

<sup>3</sup> Under section 177(1)(b) and 177(2)(d) of the Act.

### 1.3.1 Matter 1: The external envelopes

Whether the external envelopes (“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 weatherboards, the windows, the roof claddings and the flashings), as well as the way the components have been installed and work together. (I consider this matter in paragraph 6.)

### 1.3.2 Matter 2: The durability considerations

Whether the elements that make up the building work comply with Building Code Clause B2 Durability, taking into account the age of the three buildings. (I consider this matter in paragraph 7.)

## 1.4 The building consents

1.4.1 The building work considered in this determination comprises of three buildings that were constructed and inspected concurrently. Separate building consents were issued for each building on 2 November 2000 as follows:

- BC 002174 for the main house (“the house”)
- BC 002175 for the pool house (“the pool house”)
- BC 002176 for the garage and guest house (“the garage/guest house”)

1.4.2 I have received no information regarding any other building consents issued for the property and this determination is therefore limited to the three buildings covered by the building consents outlined above.

1.5 In making my decision, I have considered the submission of the parties, the photographs taken by the authority in 2006 and 2008, the report of the expert commissioned by the Department to advise on this dispute (“the expert”) and the other evidence in this matter.

## 2. The building work

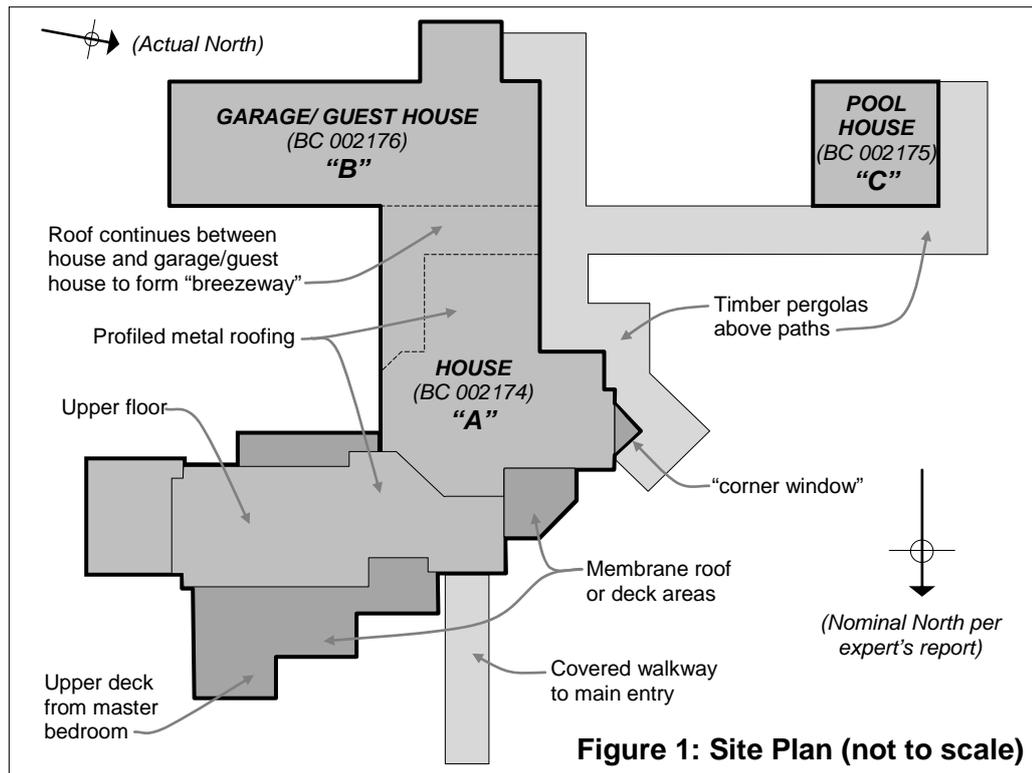
2.1 The building work consists of a development on a gently sloping large rural site that is in a high wind zone for the purposes of NZS 3604<sup>4</sup>. Construction of the three linked buildings is generally conventional light timber frame, with concrete slabs and foundations, monolithic and weatherboard wall claddings, profiled metal and membrane roofing and aluminium windows.

2.2 The expert’s report refers to the main entry of the main house as the nominal north elevation, and this determination continues that convention. The buildings are assessed as having a low to high weathertightness risk (see paragraph 6.2).

2.3 As shown in Figure 1, the house (“A”) and the garage/guest house (“B”) are linked together by the roof, which forms a breezeway between the two buildings. Buildings A and B are then linked to the poolhouse (“C”) with paths and timber pergolas. Attached pergolas continue along the west walls of the three buildings.

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



2.4 Roofs are generally 20° pitch profiled metal, apart from several small flat membrane areas to the house. Apart from the hipped roof to the pool house and a raised hipped roof above the two-storey-high main entry of the house, the metal roofs are gabled. Eaves projections are about 420mm overall, with verges of about 270mm.

2.5 The expert noted no evidence that the framing timber was treated. Given the date of framing installation in 2000 and 2001, I consider the wall framing to be untreated.

## 2.6 The house ("A")

2.6.1 The five-bedroom house is two storeys in part and complex in plan and form; with numerous wall to roof junctions and attached timber pergolas. A triangular corner window projects from the west wall of the living area, the stairwell includes a corner window, and a monolithic-clad chimney projects through the roof of the family room.

2.6.2 A large enclosed deck opens from the upper level master bedroom. The deck is situated above ground floor bedrooms and has monolithic-clad balustrades and a membrane floor. Apart from horizontal cedar weatherboards on the two-storey entry walls and the west walls of the lounge, the wall cladding is monolithic as outlined in paragraph 2.9.2. The house is assessed as having a high weathertightness risk.

## 2.7 The garage/guest house ("B")

2.7.1 The single-storey garage/guest house provides a four-car garage and self-contained guest accommodation. B is situated close to the south family room of A, with a continuous roof forming a breezeway between the two buildings. B is simple in plan and form and is assessed as having a low weathertightness risk.

## 2.8 The pool house (“C”)

2.8.1 The small single-storey pool house is sited to the west and linked to A and B with a stepped concrete path and timber pergola. C provides a bathroom, a small changing area and a living area with glazed folding doors to the north and west walls towards a planned pool that has not yet been constructed. C is simple in plan and form and is assessed as having a low weathertightness risk.

## 2.9 The wall claddings

2.9.1 A and B include several walls clad with bevel backed horizontal cedar weatherboards fixed directly through the building wrap to the framing and finished with a clear coating. In A, weatherboards are installed to the two-storey high entry walls and the west wall of the lounge. In B, weatherboards are installed to part of the west wall of the guest bedroom.

2.9.2 The cladding system to all remaining walls is a form of monolithic cladding system known as EIFS<sup>5</sup>. The proprietary EIFS system consists of 60mm polystyrene backing sheets fixed directly to the framing over the building wrap and finished with a multi-coat fibreglass mesh-reinforced plaster and coating system. The cladding system includes purpose-made flashings to windows, edges and other junctions.

2.9.3 At the time of installation the EIFS cladding was subject to BRANZ Appraisal Certificate 360 (1998), which has since been withdrawn. The EIFS installer provided a ‘Coating Compliance Form’, which stated that the cladding was completed on 28 January 2001 and noted that the installation, including the flashing system, was in accordance with the manufacturer’s specifications.

## 3. Background

3.1 The authority issued three building consents to the applicant via a building certifier on 2 November 2000 under the Building Act 1991 (refer paragraph 1.4.1).

### 3.2 The certifier’s inspections

3.2.1 The building certifier carried out various inspections of the buildings, including:

- foundations and slabs of A and B from 13 November to 4 December 2000
- pre-line inspection of B on 19 December 2000
- post-line inspection of B on 4 January 2001
- foundations of C on 4 January 2001
- pre-line inspection of A on 12 January 2001
- post-line inspections of A on 23 and 29 January 2001
- drainage of A and B on 14 February 2001
- pre-line inspection of C on 19 December 2001.

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<sup>5</sup> Exterior Insulation and Finish System

- 3.2.2 According to the applicant, A and B were substantially completed by mid-2001. The building certifier carried out a final inspection of A and B on 19 April 2002, with the inspection record noting some minor outstanding items and documentation that were subsequently ticked as completed. The record also noted that C was still ‘to be completed (enclosed and stopped)’.
- 3.2.3 In 2003, the scope of building certifiers’ approvals was amended and limitations were imposed with regard to compliance with E2/AS1<sup>6</sup> ‘only in respect of ordinary residential buildings’. This limitation prevented the certifier from approving wall claddings that were outside the scope of E2/AS1, and accordingly from issuing a code compliance certificate to cover the entire building work.
- 3.2.4 No further inspections were carried out until the building certifier re-inspected the buildings on 10 March 2005. Some outstanding items were identified, which were subsequently ticked off; and the record confirmed that a code compliance certificate could be issued. The inspection record also noted:
- [The authority] to inspect exterior cladding and pool house when completed (minor).  
...Pool house not quite finished. Pool house and vanity to be installed at later date.  
Shower screen/shower fixtures to be installed at later date.
- 3.2.5 The building certifier issued a building certificate dated 16 March 2005 for the work approved under the inspection notices, excluding ‘exterior cladding outside scope of E2/AS1’ and noting that ‘project is not complete’. The certificate stated:
- This job is handed over to [the authority] for the inspection of building works and issue of the Code Compliance Certificate pursuant to section 57(3) of the Building Act 1991.

### 3.3 The authority’s inspections

- 3.3.1 The authority then assumed responsibility for completing inspections of the monolithic cladding and the minor work remaining on the pool house. The authority recorded its inspections of the buildings under each individual building consent.
- 3.3.2 The authority carried the following inspections of the buildings:
- cladding inspections of A, B and C on 4 April 2005
  - inspection of monolithic cladding to C on 25 November 2005, with the record noting ‘cladding appears to be in sound condition’
  - cladding re-inspections of A and B on 19 April 2006, with defects identified and photographs taken
  - further photographs taken of cladding repairs to A, B and C on 31 March 2008
  - re-inspection of A, B and C on 19 March 2009
  - final plumbing and cladding inspections of A, B and C on 15 April 2010, with the records noting that no re-inspections were required.
- 3.3.3 Assuming that all outstanding items were satisfactorily completed and approved, the applicant applied for a code compliance certificate on 31 May 2010.

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<sup>6</sup> Acceptable Solution to Clause E2 of the Building Code

### 3.4 The authority's decision

3.4.1 In a letter to the applicant dated 22 July 2010, the authority outlined the durability periods required in the building code, noting that the application for code compliance certificates was not received until 10 years after the consents were issued and stating:

Because of the time that has elapsed, [the authority] cannot now be satisfied on reasonable grounds that the building work and elements will continue to satisfy the durability provisions of the Building Code for the prescribed period after the Code Compliance Certificate has been issued.

3.4.2 The authority therefore refused to issue code compliance certificates due to:

- the time elapsed since the building work was completed
- faults in the cladding had not been identified by the building certifier. Faults identified by the authority in 2005 had not been fixed until 2010, allowing moisture ingress in the intervening period
- the change in the brand of EIFS cladding and the lack of supporting detail regarding flashings and junctions
- the lack of regular maintenance of the EIFS cladding
- the authority's increased liability should code compliance certificates be issued from the current date.

3.5 The Department received the application for a determination on 28 October 2010.

## 4. The submissions

4.1 The applicant's submission described the background to the situation, noting that the 'main build was completed in mid 2001' but minor finishing work delayed final inspections, after which the building certifier was satisfied with the compliance of the building work. Although all cladding issues identified by the authority during its subsequent inspections had been promptly attended to, it had become apparent that code compliance certificates would not be issued. The applicant also debated the reasons given for the authority's refusal and concluded:

We understand the legal implications in the council issuing a CCC effective from 2010 and request a solution be found that confirms the quality and workmanship of what is a substantial property that is both sound and of a high standard of workmanship.

4.2 The applicant forwarded copies of:

- the consent drawings
- the building consents for the three buildings
- the building certifier's inspection records and some other records
- the authority's inspection summary and some other inspection records
- the authority's letter dated 22 July 2010
- other email correspondence with the authority
- various other items of information.

- 4.3 The authority acknowledged the application and commented on the applicant's submission in a letter to the Department dated 5 November 2010, noting that the EIFS cladding had changed from that approved in the building consent. The authority also noted that installation was completed by February 2001 and should have been inspected and passed by the certifier at that time, but five years later defects were identified and not all of these have been satisfactorily repaired.
- 4.4 The authority submitted copies of:
- the authority's inspection records
  - the cladding installer's producer statement dated 28 January 2001
  - a plasterer's statement dated November 2005 of repairs undertaken
  - photographs taken during inspections in 2005 and 2008
  - some other information.
- 4.5 A determination was issued to the parties on 2 February 2011. The draft was issued for comment and for the parties to agree on the dates when A, B and C were substantially completed.
- 4.6 Both parties accepted the draft without comment and agreed that compliance with Clause B2 was achieved on:
- 1 July 2001 for the house (A) and the garage/guest house (B)
  - 1 April 2005 for the pool house (C)

## **5. The expert's report**

- 5.1 As mentioned in paragraph 1.5, 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 claddings to A, B and C on 19 November 2010, providing a report dated 10 December 2010.

### **5.2 General**

- 5.2.1 The expert noted that the overall quality of construction appeared 'reasonable', with the EIFS cladding generally of 'good standard, except for items identified in paragraph 5.4, with no obvious misalignment vertically or horizontally'. Maintenance appeared satisfactory, except for lichen growth on roof parapet walls.
- 5.2.2 The aluminium joinery is recessed by the thickness of the EIFS, with sloping sill recesses and visible metal head flashings. The expert removed a small section of cladding at the jamb to sill junction of an east bedroom window and observed that the sloping uPVC sill flashings projected beyond (but were not sealed to) the uPVC jamb flashings and extended the full depth of the sill reveal under the plaster coating. (Refer to paragraph 5.4)

5.2.3 The expert also carried out the following investigations to determine the underlying construction by means of:

- a cut-out to the top of a plastered roof parapet, which exposed the sloping polystyrene top and the underlying butyl rubber membrane over the framing
- a cut-out beneath the corner mitre in the retrofitted balustrade capping, which exposed framing with no visible signs of moisture or damage
- holes drilled through the weatherboards below the west corner window, which confirmed that a metal corner flashing was fitted beneath a cover facing
- a mirror held to the bottom of mitred weatherboards, which confirmed that corner flashings were installed under the boards.

### 5.3 Moisture levels

5.3.1 The expert inspected the interior of the buildings, taking non-invasive moisture readings and noting no evidence of moisture penetration.

5.3.2 The expert carried out invasive moisture testing to 15 areas considered at high risk of moisture penetration and recorded elevated readings in three areas as follows:

- 20%, with water staining at the jamb to sill junction of a east bedroom window, with 18% below the other junction
- 19% beneath the corner of the balustrade capping to the upper deck.

5.3.3 The remaining readings ranged from 9% to 11%. Moisture levels above 18%, or which vary significantly, generally indicate that external moisture is entering the structure and further investigation is required.

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

#### **Windows and doors within the EIFS**

- at the window cut-out, the jamb flashings are not sealed to the sill flashings, with water staining indicating moisture penetration at the junction
- further investigation of other jamb to sill junctions is needed to verify that the flashings are sealed in accordance with the manufacturer's instructions
- sill flanges of metal windows are sealed against plaster at the sill reveal, which is not in accordance with the manufacturer's instructions to provide a 5mm drainage gap
- at an upper north bi-fold window in A, the drainage channel is embedded into the plaster, with no provision for water to drain to the outside

#### **Deck balustrades (A)**

- cause(s) of the elevated moisture reading under the flat mitred corner of the balustrade capping requires further investigation
- there are no saddle flashings at the junctions of the balustrade cappings with the walls, with the junction reliant on sealant for weathertightness

**Roof junctions (A and B)**

- at the bottom of the valley junction on B's south roof, a section of gutter lacks a downpipe, with ponding and corrosion apparent
- the bottom of some apron flashings rely on sealant for weathertightness, with poorly formed kickouts, gutters embedded into plaster and a downpipe discharging over one vulnerable junction
- there is exposed polystyrene at the end of a roof to wall junction on the south elevation to A
- there is insufficient clearance from the chimney cladding to A's roof, with debris able to accumulate against the junction
- the flat capping to the chimney top is top-fixed and able to pond water, with the 30mm turndown over the cladding insufficient for the high wind zone
- although uncapped parapets to A have plastered sloping polystyrene tops with membrane below, the tops are unlikely to remain weathertight in the longterm
- there are no saddle flashings at the parapet to upper wall cladding junctions

**Weatherboards**

- on the south elevation of A, the junction of the upper weatherboards to the EIFS lacks a scribe, with gaps and exposed polystyrene apparent
- on the lower walls, expanding foam between the bottom weatherboard and the foundation prevents drainage and traps moisture behind the cladding

5.5 The expert made the following additional comments on the cladding:

- Although the EIFS is close to the paving beside the garage doors, the chip seal is excavated to provide an anti-capillary gap and the paving is well-drained and sheltered, with no evidence of associated moisture penetration.
- The garage doors lack head flashings. (However, I note that the doors have timber reveals that are recessed by the 60mm of the cladding thickness and further sheltered by eaves that are about 450mm overall.)
- Although pergolas are fixed directly through the claddings, penetrations are protected by the 450mm eaves.

5.6 A copy of the expert's report was provided to the parties on 13 December 2010. The authority responded in a letter dated 7 January 2011. The matters raised are covered in the determination except for possible blockage of the gutter which I have addressed in paragraph 6.5.4.

## Matter 1: The external envelope

### 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 These buildings have the following environmental and design features which influence their weathertightness risk profile:

##### The house (A)

###### Increasing risk

- the house is two-storeys high in part and is in a high wind zone
- the walls have EIFS cladding and weatherboards fixed directly to the framing
- the house is complex in plan and form, with complex junctions
- there is an enclosed deck, with monolithic clad balustrades, above bedrooms
- there are pergolas attached to the walls
- the external wall framing is not treated to a level that provides resistance to decay if it absorbs and retains moisture.

###### Decreasing risk

- there are eaves projections to shelter the cladding.

##### The garage/guest/house (B) and poolhouse (C)

###### Increasing risk

- B and C are in a high wind zone
- the walls have EIFS cladding fixed directly to the framing
- there are pergolas attached to the walls
- the external wall framing is not treated to a level that provides resistance to decay if it absorbs and retains moisture

###### Decreasing risk

- B and C are single-storey high and simple in plan and form
- there are eaves projections to shelter the cladding.
- there are no attached decks.

6.2.2 When evaluated using the E2/AS1 risk matrix, these features show that:

- the elevations of A demonstrate a high weathertightness risk rating
- the elevations of B and C demonstrate a low weathertightness risk rating.

I note that, if the details shown in the current E2/AS1 were adopted to show code compliance, only the EIFS cladding to A would require a drained cavity. However, I also note that a drained cavity was not a requirement at the time of construction.

### **6.3 The window junctions**

- 6.3.1 I note the authority's inspection on 4 April 2005 identified 'a lot of cracking visible at sills' and the 2006 photographs submitted by the authority indicate that sealant and coating repairs had been carried out to the junctions of jamb to sill reveals of a number of windows. However, the photographs indicate that no investigation of the underlying flashing junctions was carried out during those repairs.
- 6.3.2 Taking account of the past repairs, I consider that the inadequate flashing junction exposed by the expert in one window (see paragraph 5.2.2) is likely to have been repeated at some other windows, where low moisture levels are maintained only by the use of surface sealants and paint coatings.
- 6.3.3 While the expert's investigations have revealed no other evidence of current moisture penetration or past timber damage, I consider that further investigation of all windows within the EIFS cladding is necessary, followed by the appropriate repair of any unsealed junctions of the uPVC jamb to sill flashings.

### **6.4 Weathertightness performance**

- 6.4.1 Generally the claddings appear to have been installed in accordance with good trade practice and to the manufacturer's recommendations at the time. However, taking account of the expert's comments in paragraph 5.4, together with the photographs submitted by the authority, I conclude that further investigation and remedial work is necessary in respect of the following:

#### **Windows and doors within the EIFS**

- lack and possible lack of sealant, at the junction of the jamb to sill uPVC flashings in accordance with the manufacturer's instructions
- lack of drainage gaps between the metal window sill flanges and the plaster, including at the drainage channel to the first floor bi-fold window

#### **Deck balustrades (A)**

- investigation and remediation of the cause(s) of the elevated moisture reading under the flat mitred corner of the balustrade capping and the lack of saddle flashings at the junctions with the walls

#### **Roof junctions (A and B)**

- lack of drainage from the bottom of the valley junction on B's south roof
- bottom of apron flashings, with poorly formed kickouts, gutters embedded into plaster and a downpipe discharging over a vulnerable junction
- exposed polystyrene at the end of a roof to wall junction
- lack of clearance below the chimney cladding
- the top-fixed flat chimney capping and the inadequate turndown

- uncapped roof parapets and lack of saddle flashings at junctions with walls

#### **Weatherboards**

- the junction of the EIFS to the weatherboards on the upper south wall
- lack of drainage at the bottom of ground floor weatherboards.

6.4.2 I also note the expert's comments in paragraph 5.5 and I accept that these areas are adequate in these particular circumstances.

6.4.3 Notwithstanding that the wall cladding is fixed directly to the framing, thus inhibiting free drainage and ventilation behind the cladding, I have noted certain compensating factors that assist its performance in this particular case:

- After 9 years, moisture ingress is limited to areas with identified defects.
- The cladding is generally well maintained.

These factors can assist the buildings to comply with the weathertightness and durability provisions of the Building Code.

### **6.5 Weathertightness conclusion**

6.5.1 I consider the expert's report establishes that the current performance of the building envelope of A is not adequate because there is evidence of moisture penetration into the timber framing. Consequently, I am satisfied that the house does not comply with Clause E2 of the Building Code.

6.5.2 In addition, the building envelopes of A, B and C are 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 to remain weathertight. Because the cladding faults on A, B and C are likely to allow the ingress of moisture in the future the building work does not comply with the durability requirements of Clause B2.

6.5.3 Investigation of the windows jamb to sill junctions may reveal the fault found in one window also occurring in others. However, these faults would be localised and in my view have not led to a systemic failure of the EIFS cladding. The remaining identified cladding faults occur in discrete areas and I am therefore able to conclude that satisfactory rectification of the items outlined in paragraph 6.4.1 will result in the building envelopes of A, B and C being brought into compliance with Clauses B2 and E2 of the Building Code.

6.5.4 I also strongly suggest that provision for blockage and over flow of the fascia gutters be made to prevent the possibility of water entering the wall.

6.5.5 I emphasise that each determination is conducted on a case-by-case basis. Accordingly, the fact that a particular cladding 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 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 Department has previously described these maintenance requirements (for example, Determination 2007/60).

## Matter 2: The durability considerations

### 7. Discussion

- 7.1 The authority has concerns regarding the durability, and hence the compliance with the building code, of certain elements of the buildings taking into consideration the age of the building work completed from 2001 to 2005.
- 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 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.
- 7.4 In this case the delay between the completion of the building work and the applicant’s request for a code compliance certificate has raised concerns that various elements of the buildings are now well through or beyond their required durability periods, and would consequently no longer comply with Clause B2 if a code compliance certificate were to be issued effective from today’s date. I have not been provided with any evidence that the building certifier did not accept that those elements complied with Clause B2 at the time of substantial completion.
- 7.5 The delay raises the matter of when all the elements of the buildings complied with Clause B2. The sequence of events outlined in paragraphs 3.2 and 3.3 does not give me a clear indication when the durability periods for the building work should commence although the following dates appear appropriate:
- 7.6 It is not disputed, and I am therefore satisfied, that all the building elements installed in the house, with the exception of the items that are to be rectified, complied with Clause B2 on
- 1 July 2001 for the house (A) and the garage/guesthouse (B)
  - 1 April 2005 for the pool house (C).

This date has been agreed between the parties, refer paragraph 4.6.

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

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

- (a) the authority has the power to grant an appropriate modification of Clause B2 in respect of all the building elements, if requested by the applicant
- (b) it is reasonable to grant such a modification, with appropriate notification, as in practical terms the building is no different from what it would have been if code compliance certificates for the building work had been issued in 2001 and 2005.

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

## **8. What is to be done now?**

8.1 The authority should issue a notice to fix that requires the owner to bring the buildings into compliance with the Building Code, listing the defects and investigations described in paragraph 6.4.1 and referring to any further defects that might be discovered in the course of the work, 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 The applicant 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 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:

- for the house, the external envelope does not comply with Clauses E2 and B2 of the Building Code
- for the garage/guesthouse and the poolhouse, the external envelopes do not comply with Clause B2 of the Building Code ( insofar as it applies to E2)

and accordingly, I confirm the authority's decision to refuse to issue code compliance certificates for the three buildings.

9.2 I also determine that:

- (a) all the building elements installed in the buildings, apart from the items that are to be rectified as described in Determination 2011/011, complied with Clause B2 on 1 July 2001 for the main house and the garage/guesthouse, and 1 April 2005 for the poolhouse.
- (b) the building consents are hereby modified as follows:

**Building consent 002174** is subject to a modification to the Building Code to the effect that, Clause B2.3.1 applies from 1 July 2001 instead of from the time of issue of the code compliance certificate for all the building elements, except the items to be rectified as set out in paragraphs 6.4.1 of Determination 2011/011.

**Building consent 002175** is subject to a modification to the Building Code to the effect that, Clause B2.3.1 applies from 1 April 2005 instead of from the time of issue of the code compliance certificate for all the building elements, except the items to be rectified as set out in paragraphs 6.4.1 of Determination 2011/011.

**Building consent 002176** is subject to a modification to the Building Code to the effect that, Clause B2.3.1 applies from 1 July 2001 instead of from the time of issue of the code compliance certificate for all the building elements, except the items to be rectified as set out in paragraphs 6.4.1 of Determination 2011/011.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 21 February 2011.

John Gardiner  
**Manager Determinations**