Determination 2014/046

Regarding the refusal to issue a code compliance certificate for a 9-year-old house with mixed claddings at 18 Crescent Road West, Waiheke Island, Auckland

1. The matters 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 and Assurance, Ministry of Business, Innovation and Employment ("the Ministry"), for and on behalf of the Chief Executive of the Ministry.

1.2 The parties to the determination are

- the current owners of the house, G and E Wells ("the applicants")
- Auckland Council ("the authority"), carrying out its duties as a territorial authority or building consent authority
- the prospective owner of the house ("the purchaser").

1.3 This determination arises from the decision of the authority to refuse to issue code compliance certificate for the 9-year-old house because it was not satisfied that the building work complied with certain clauses[2] of the Building Code (First Schedule, Building Regulations 1992). The authority's concerns regarding compliance of the building work primarily relate to the weathertightness of the house.

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

[2] 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.

1.4 The matter to be determined[3] is therefore whether the authority was correct to refuse to issue a code compliance certificate. In deciding this, I must consider:

1.4.1 Matter 1: The external envelope

Whether the external building envelope of the house complies with Clause B2 Durability and Clause E2 External Moisture of the Building Code that was in force at the time the consent was issued. The building envelope includes the components of the systems (such as the wall claddings, 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.

1.4.2 Matter 2: The requirement for a new building consent

Whether the authority was correct in the exercise of its powers in requiring a separate building consent for remedial work to the house. I consider this in paragraph 7.

1.5 Matters outside this determination

1.5.1 The authority has also identified items relating to Clauses E1 and E3 of the Building Code (see paragraph 3.7.2). The applicants do not dispute these minor items, which are therefore left to the parties to resolve in due course.

1.5.2 I also note that the owners may apply to the authority for a modification of the durability provisions for the 9-year-old house to allow the specified periods to commence from the date of substantial completion in 2005. I leave this to the parties to resolve when the house has been made code-compliant.

1.6 In making my decision, I have considered

- the submissions of the parties
- the report of the expert commissioned by the Ministry to advise on this dispute ("the expert")
- the report of the building surveyor engaged by the applicants to report on the weathertightness of the house ("the building surveyor")
- the other evidence in this matter.

2. The building work

2.1 The building work consists of a small single-storey detached house situated in a very high wind zone for the purposes of NZS 3604[4]. The split-level floor slab is set into the south-sloping site, with exterior concrete block retaining walls providing a level paved area to the north. The expert takes the main entry as facing south and this determination follows that convention. The house is fairly simple in plan and form and is assessed as having a low to medium weathertightness risk.

2.2 Construction is generally reinforced concrete block masonry on concrete foundations and floor slab, with aluminium joinery and timber-framing above plastered masonry walls. Timber-framed upper walls are clad in fibre-cement and the main roof in profiled metal.

2.3 The junction of the two main monopitched roofs forms a south-facing clerestorey above the floor level change, with small membrane-clad low-pitched roofs projecting to the west and east. Eaves vary from 300mm to 600mm, with no verge overhangs.

[3] Under sections 177(1)(b) and 177(2)(d) of the Act
[4] New Zealand Standard NZS 3604:1999 Timber Framed Buildings

2.4 The lower walls of the house are plastered concrete block. The wall cladding to upper end walls and the clerestorey consists of 7.5mm thick fibre-cement sheets fixed over building wrap, horizontal cavity battens, and building wrap to the framing. Although the sheets include rebated edges intended for flush joints, the cladding is painted and joints between sheets are left as gaps.

2.5 The specification called for framing to be 'Group Pine No 1 Framing H1'. The expert took samples from a cavity batten and framing; the laboratory reported that the cavity battens appeared to be H3 treated and no preservative was detected in the framing samples. Given the low level of decay in two of the three framing samples exposed to moisture the laboratory concluded that framing was either untreated or possibly LOSP-treated. Given this evidence, I am unable to determine whether the framing timber is treated to resist decay.

3. Background

3.1 The authority issued a building consent (No. BLD20040524101) to the applicants on 23 April 2004 under the Building Act 1991. The consent included a requirement for 'window and door flashings to comply with NZBC E2/AS1' and referred to joinery flashings and seals.

3.2 Although this consent was issued prior to the 2005 implementation of details contained in the third edition of the Acceptable Solution, I note that additional details were provided to augment the consent drawings. These included details showing a proprietary EIFS wall cladding system installed over vertical polystyrene battens and showed purpose-made flashings to windows, edges and other junctions.

3.3 The authority carried out various inspections from June 2004 to March 2005. Construction appears to have been protracted, with blockwork walls completed by early December and the preline inspection some four months later in March 2005. During that time concrete tile roofing was changed to corrugated metal and the butyl rubber membrane to liquid-applied membrane on the flat roofs. The upper wall cladding was also changed.

3.4 According to the applicants, the consented cladding was changed to fibre-cement on the builder's recommendation. No details were submitted and no approval for the change was sought. The preline inspection record dated 3 March 2005 noted that the authority required 'revised drawings showing changes to design & detail'.

3.5 The last recorded inspection was of foulwater drainage on 18 March 2005 and no further inspections were carried out until the applicants prepared to sell the property in 2013.

3.6 The 2013 final inspection

3.6.1 A sale and purchase agreement was entered into between the applicants and the purchaser in June 2013. A condition of that agreement was that a code compliance certificate be obtained for the house.

3.6.2 The applicants sought a code compliance certificate and the authority carried out a 'Durability final inspection' on 9 July 2013, which identified cladding defects and other outstanding items and noted:

Inspection subject to peer review and vetting

1. Flashing detail to flat roofs.
2. Flashing detail to dissimilar junction.
3. Change to kitchen fitout (as built required).
4. Roof cladding changed from tile to long run.
5. Seal kitchen top to wall junction.
6. Flashing detail to chimney.
7. Haunching of gully.

3.7 The refusal to issue a code compliance certificate

3.7.1 The authority wrote to the applicants on 11 July 2013 to advise that 'under Section 95A of the Building Act 2004 a [code compliance certificate] cannot be issued at this time.' The authority stated that:

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

3.7.2 The authority noted that its 'areas of concern' included, but were not limited to:

1. Flashing details to junctions and dissimilar cladding systems.
2. Flashing detail to flat roofs and cladding.
3. Roof membrane not as per consented plan.
4. Flashing detail to chimney.
5. Haunching of gullies.
6. Seal kitchen top and wall junctions.

3.7.3 The authority also requested as built plans for the changes to the house and recommended that:

> ... you engage the services of a suitably qualified individual who is qualified in Weather Tight assessment and Remedial Design.
>
> This person must further investigate the performance of this building, also taking into account the items below and provide a 'scope of works' and any recommendations to [the authority] for further review.

3.8 The building surveyor's report

3.8.1 The applicants engaged a building surveyor who inspected the house on 31 July 2013 and provided an undated report titled 'Remediation to weathertightness – re code compliance".

3.8.2 The surveyor described the construction and noted that 'it is obvious to see why the inspector has issues with the weathertightness of the gable ends of the house and the flat roofs'. However, the surveyor also noted that he 'found no evidence of moisture ingress into the interior of the dwelling.'

3.8.3 The surveyor inspected the interior of the house and carried out non-invasive moisture testing. No signs of moisture or elevated readings were noted and the surveyor concluded that 'the exterior envelope has been maintained and performed well since its practical completion in 2005'.

3.8.4 Commenting on the exterior claddings, the building surveyor noted various defects and provided recommendations for repair of the following defects (in summary):

- unfinished cladding under barge boards
- lack of/defective flashings to chimney

- unjointed/ unfinished fibre-cement sheet cladding
- cladding to roofing clearances
- unflashed bargeboards to cladding junctions
- unflashed corner joints to fibre-cement cladding
- lack of seals to face fixed windows in fibre cement cladding
- inappropriate membrane to flat roofs.

3.9 Subsequent correspondence

3.9.1 The applicants submitted the building surveyor's report and the authority accepted the proposed scope of work in principle in an email on 26 August 2013, but required an application for a building consent for the remedial works.

3.9.2 The applicants lodged an application for the remedial works in November 2013 and in an email dated 13 November 2013, the authority noted that:

> ...a pre-lodgement meeting with the designer is required to address certain aspects of the plans, as the plans do not provide sufficient detail as required.

3.9.3 A meeting between the applicants, their designer and the authority was held on 20 November 2013. According to the applicants, the authority classified the proposed remedial work as 'a reclad'. The proposed repairs were discussed and the level of documentation required was specified in some detail.

3.9.4 Following the meeting the applicants became concerned that undertaking the repairs under a separate building consent as a 'reclad' would result in this being noted on the LIM report. A letter to the authority dated 27 January 2014 referred to 'unsubstantiated' claims in the 'Section 95a letter' as the house had met performance requirements for nine years and the surveyor's report had indicated 'no weathertightness or durability issues'.

3.9.5 Further correspondence followed without resolution, with the authority stating in an email dated 28 January 2014 that it could not negotiate around the matter because it:

> ...has to be satisfied on reasonable grounds that the dwelling is performing and will continue to do so in the future. As identified by your expert there are areas of concern. This was also discussed at our meeting here at council with yourself and your architect.

3.10 The Ministry received an application for a determination on 10 April 2014 and sought clarification from the authority on its response to the applicants' proposals for remedial work. In an email to the Ministry dated 26 May 2014, the authority attached copies of email correspondence and indicated that the need for further response was unclear

> ...as the applicant applied for a new consent, but the documentation failed to meet the criteria for lodgement.
> It was at this point the determination was sought.
> [The authority] had previously (26 August 2013) accepted the scope of works in principle, but are still awaiting suitable documentation as per the pre lodgement meeting held here on 20 Nov 2013.

3.11 Following the expert's inspection, the purchaser of the house was added as a party to the determination as outlined in paragraph 4.3.

4. The submissions and the draft determination

4.1 The applicant's submission

4.1.1 In the submission provided with the application, the applicants' described changes that had been made during construction of the house and outlined the background to the dispute. The applicants included the following points (in summary):

- The authority refused to issue a code compliance certificate and will not negotiate how to resolve the matter in the most reasonable manner possible.
- The house is 90% concrete block and 'the remaining 10% can be easily accessed and seen to be in pristine condition', so it should be a relatively simple process to negotiate a satisfactory solution.
- In regard to the authority's concerns in Section 95A refusal:
  - Point 1: flashing of junctions will be rectified when unfinished work is completed.
  - Point 2: flashing of flat roofs refers to the lack of drip edges, which were not required when the consent was issued and are not needed now.
  - Point 3: the change in roof membrane is acknowledged, but the installed liquid-applied membrane is code-compliant and 'performing superbly'.
  - Point 4: there is no evidence 'to show anything other than satisfactory performance' from the chimney flashing.
  - Point 5 and Point 6: the gully traps and kitchen top seals are 'trivial matters that can be resolved simply.'
- A registered building surveyor found no evidence of moisture penetration into the building, with the report confirming that the exterior envelope 'has been maintained and performed well since its completion in 2005'. The house is therefore weathertight and satisfying the performance requirements of Clause E2.
- The surveyor's recommended work was to 'enhance further' the weathertightness of the house and most would be unnecessary if rendering of the timber-framed walls was completed – which would alleviate all the concerns raised by the authority about weathertightness.
- Undertaking repairs under a separate building consent as a 'reclad' would result in this being noted on the LIM report and 'forever taint this building as having been a leaky building repair'.
- The proposal is to replace the existing fibre-cement sheets with backing sheets installed in accordance with the manufacturer's instructions prior to applying a mesh-reinforced plaster system.

4.1.2 The applicant forwarded copies of:

- annotated consent drawings and details
- the building consent
- the building surveyor's report
- various correspondence, technical specifications and other information.

4.2 The authority's submission

4.2.1 Under cover of a letter dated 19 May 2014, the authority forwarded a CD-Rom entitled 'Property File', which contained some additional documents pertinent to this determination including:

- consent drawings and specifications
- the consent documentation
- the inspection records.

4.3 The purchaser's submission

4.3.1 Following the expert's inspection, the Ministry received an email dated 26 June 2014 from the prospective purchaser of the property, noting that a sales and purchase agreement had been signed a year ago. The agreement was subject to the applicants obtaining a code compliance certificate for the house.

4.3.2 The Ministry responded on 27 June 2014, noting that as a sale and purchase agreement is in place the purchaser is considered to be an owner and therefore a party to the determination under section 176 of the Act.

4.4 The draft determination and responses received

4.4.1 A draft determination was issued to the parties for comment on 21 July 2014.

4.4.2 In a response to the draft dated 1 August 2014, the applicants accepted the findings 'in general' and stated that they intend to replace both flat roofs and to cover the new roofs with a butynol type membrane as originally consented, and to 'amend or repair all flashings and wall/roof junctions…'

4.4.3 The applicants also queried why another inspection is required after 'two extensive and thorough survey inspections' had been carried out. I note here that the determination does not provide a definitive list of items to be remedied; the expert's inspection is carried out in order to provide sufficient information to corroborate or contradict the view held by the authority regarding compliance and in this case further investigation is required (refer paragraph 6.1).

4.4.4 The authority responded to the draft on 1 August 2014 and provided a submission as regards the requirement for consent. The authority holds the view that the remedial work requires a separate consent in order for consent for the original work to be amended in respect of the durability periods. The authority stated that

> The effect of issuing a [code compliance certificate] for a building consent which encompasses both historical and contemporary building work is therefore likely to be a modification as to durability for all the building work in the building consent, particularly as building elements are often interdependent. The alternative would be a [code compliance certificate] with a mishmash of durability modifications.'

4.4.5 In response, I note that the authority has been party to previous determinations with a similar set of circumstances. I refer the authority to paragraph 10.1 in Determination 2008/070[5] in which stated in the decision:

> (c) the building elements installed in [the building], complied with Clause B2 on [date].
>
> (d) the building consent for [the building] 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 [date] instead of from the time of issue of the code compliance certificate for all the building elements except those items that are to be rectified as described in [paragraph referenced in the determination].

I see no impediment to the authority applying the same approach in this instance, though in the references would be to the work identified in the scope of works supporting an amendment rather than the items identified in this determination.

4.4.6 The purchaser made no response to the draft determination despite a reminder from the Ministry to do so.

5. The expert's report

5.1 As mentioned in paragraph 1.6, I engaged an independent expert to assist me who is a member of the New Zealand Institute of Building Surveyors. The expert inspected the house on 17 June 2014, providing a report dated 3 July 2014 which was provided to the parties on 7 July 2014.

5.2 General

5.2.1 The expert noted that his inspection was to assess whether the house met the weathertightness and durability requirements of the Building Code and, if not, to 'identify the deficiencies that require remedial work to achieve compliance.'

5.2.2 Although 'generally tidily presented', the expert noted that the house had not been finished to an acceptable trade standard, with 'various defects to the plaster, fibre-cement cladding, plywood roofing and flashings'. The expert noted that the masonry plaster is generally in good condition, but the flat roof membranes are deteriorating.

5.2.3 The expert noted the following changes from the consent documents:

- Profiled metal roofing in lieu of concrete tiles.
- Unjointed/untextured fibre-cement cladding in lieu of EIFS cladding.
- Liquid-applied membrane to flat roofs in lieu of butyl rubber membrane.

5.3 Moisture investigations

5.3.1 The expert inspected the interior of the roof space at the east gable end, noting the presence of ants indicating moisture behind the cladding. The expert removed a small area of building wrap, noting that a horizontal cavity batten sealed the base of the cavity and prevented moisture within the cavity from draining to the outside.

[5] Determination 2008/070: Refusal to issue a code compliance certificate for a 10-year-old townhouse *(Department of Building and Hous*ing) 28 July 2008

5.3.2 The expert inspected the exterior, removing small areas of fascia and fibre-cement and taking four timber samples for analysis. The following moisture levels were recorded:

- 24% and water stains in horizontal batten to the east gable end (sample 1)
- 51% in top plate to masonry wall behind fascia to northeast corner (sample 2)
- 20% in soffit framing at fibre-cement/concrete junction at northeast corner
- 19% in top plate to masonry wall at northwest corner of membrane roof
- 26% in top plate to flat roof/wall junction at northwest corner (sample 3)
- 18% in top plate to masonry wall at southwest corner
- 20% in soffit batten to south elevation (sample 4).

Moisture levels above 18% generally indicate that external moisture is entering the structure and further investigation is needed.

5.3.3 The expert forwarded the timber samples to a testing laboratory for analysis and the laboratory report dated 27 June 2014 included the following (in summary):

- All samples had been exposed to moisture 'inconsistent with sound building practice and/or weathertight design' and appropriate remediation is required.
- Sample 1 (cavity batten) is H3 CCA treated, with the remaining samples either untreated or LOSP-treated.
- Sample 3 (roof/wall junction plate) contains well-established decay likely to affect structural integrity and replacement is likely to be required.
- Samples 1 and 2 contained fungal growths and superficial soft rot
- Sample 4 contained dense fungal growths and replacement may be needed.

5.3.4 Commenting on the exterior envelope, the expert noted:

Fibre-cement cladding

- the cavity behind the fibre-cement cladding includes horizontal battens that prevent drainage
- the painted fibre-cement cladding has exposed joints, with building wrap visible and fixings too close to edges, leading to cracking in some areas
- junctions between the fibre-cement cladding and plaster masonry are unflashed, with exposed timber in some areas
- the lower corner of the clerestorey roof/wall junction is not weathertight
- the trim to the clerestorey eaves is not sealed to the raking soffit lining, allowing moisture to penetrate the junction
- the apron flashing to the clerestorey overlaps the building wrap, allowing moisture from the unsealed junctions above to penetrate behind the flashing
- clerestorey windows below raking eaves lack head flashings and jamb seals
- fascia boards are fixed hard against unfinished masonry, with the lack of drip edges allowing moisture to wick into the concrete

Membrane roofs and chimney

- junctions between the ends of the flat roofs and walls are unflashed with moisture penetration and decay confirmed in one area
- plaster is finished against the membrane, allowing moisture to penetrate
- the surface of the plywood substrate is deteriorating, with numerous cracks visible through the unreinforced membrane
- the membrane is painted over the plywood square edges, with no drip edges and plywood exposed in one area
- there is no flashing between the chimney flue and the cap flashing, with a large gap apparent that will allow significant water entry
- plaster butts against the chimney cap flashing, allowing moisture to wick behind the plaster.

5.4 Items identified by the authority

5.4.1 The expert also assessed items identified by the authority during its final inspection and included in the section 95A letter; and his findings are summarised as follows:

	Items per authority's list	Applicant's position	Expert's opinion
1	Wall flashings	Agrees that fibre-cement on gable ends to be replaced with suitable substrate for plastering. Does not agree that flashings identified by surveyor are required.	Horizontal battens stop cavity drainage The clerestorey also has vulnerable unflashed/unsealed junctions, with wrap taken behind apron flashings Cladding junctions identified by building surveyor are vulnerable to water entry and require flashings
2	Flat roof flashings	No evidence that drip edges are required.	Masonry plaster not taken up behind timber fascias, with untreated packers and no waterproofing of timber plates. Evidence of moisture penetration/decay
3	Roof membrane	Roof membrane is performing.	Membrane is not reinforced and plywood substrate has deteriorated, with numerous visible cracks and edges exposed in one area
4	Chimney	Performing satisfactorily	Large gap around the chimney flue allows significant water entry. Plaster butts against cap flashing.
5	Haunching of gullies	Agreed	No dispute between parties
6	Unsealed bench/wall junctions	Agreed	No dispute between parties

6. The external envelope

6.1 Weathertightness performance

6.1.1 Although the main roof and the plastered masonry walls appear satisfactory, the cladding, cavities and windows to timber-framed upper walls have not been installed in accordance with good trade practice and applicable manufacturers' instructions and require attention.

6.1.2 It is clear from the expert's report that the clerestorey windows and the claddings to upper walls, clerestorey, soffits and flat roofs as installed are unsatisfactory in terms of their weathertightness performance, which has resulted in moisture penetration and timber damage in some areas. Taking into account the expert's report and his limited investigations, I conclude that the areas outlined in paragraph 5.3.4 require attention, but I note that this list may not yet be complete.

6.1.3 Work is required to make the building envelope weathertight and durable. Further investigation is necessary which will need to incorporate invasive moisture and sample testing and the exposure of framing where necessary in order to fully determine the extent of past and present moisture penetration, timber damage, and the repairs now required.

6.1.4 Taking account of the expert's report and the building surveyors report, I conclude that at the least further investigation and/or remedial work is necessary in respect of

- inadequate drainage from cavities behind the upper claddings
- additional invasive moisture testing of timber framing, with investigation of timber condition should high moisture levels be found
- the lack of flashings to
    - corner junctions
    - fibre-cement/masonry junctions
    - roof/wall junctions
- the uncoated and unjointed fibre-cement cladding, including to the clerestorey
- the lack of or inadequate flashings/seals to
    - the clerestorey windows
    - the clerestorey wall/raking eave junction
    - the clerestorey apron flashing installed over the building wrap
- the lack of drip edges/capillary gaps to the timber fascias
- in regard to the flat membrane roofs
    - the inadequate roof membrane
    - investigation into the deterioration of the plywood substrates
    - the lack of drip edges
    - investigation into the flashings, if any, to roof/wall junctions
    - the lack of saddle flashings to the roof ends/wall junctions
    - the plaster butting against the membrane
- the lack of flashings to the chimney flue/cap junction
- the chimney capping flashing/wall junction.

6.2 Weathertightness conclusion

6.2.1 I consider the expert's report establishes that the current performance of the building envelope is not adequate because there is evidence of moisture penetration and decay in some areas of the timber framing. Consequently, I am satisfied that the house does not comply with Clause E2 of the Building Code that was in force at the time the consent was issued.

6.2.2 The building envelope is 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 external envelope to perform for the period set out in Clause B2.3.1. Because the cladding faults will continue to allow the ingress of moisture in the future, the house does not comply with the durability requirements of Clause B2. In addition the expected life of the building itself is a minimum of 50 years and careful attention to the performance of the claddings is needed to ensure that the external envelope continues to protect the underlying structure for its minimum required life of 50 years.

6.2.3 Because the identified faults occur in discrete areas, I am able to conclude that satisfactory investigation and rectification of items outlined in paragraph 6.1.4 is likely to result in the current building envelope being brought into compliance with Clauses E2 and B2 of the Building Code.

6.2.4 Effective maintenance of claddings is important to ensure ongoing compliance with Clauses B2 and E2 of the Building Code and is the responsibility of the building owner. The Ministry has previously described these maintenance requirements, including examples where the external wall framing of the building may not be treated to a level that will resist the onset of decay if it gets wet (for example, Determination 2007/060[6]).

7. The requirement for a new building consent

7.1 The authority has provided no reasons for requiring a new building consent for the remedial work to this house, and the applicants maintain that any remedial work can be carried out as an amendment to the existing building without extensive documentation to support that work. I consider that any decision should take into account the extent of the necessary work, and whether it is of a type generally consistent with the originally consented work.

7.2 In the case of this house, I note that the remedial work identified by the applicants' building surveyor and by the expert is limited to the upper walls, the clerestorey and the small membrane roofs. Although these elements are significant to the performance of the house as a whole, the primary walls of plastered masonry and the main roof of profiled metal are performing satisfactorily, with defects limited to junctions with upper walls, clerestorey and membrane roofs.

7.3 In addition, it is likely that the elements will require only limited remedial work. Providing satisfactory investigations resolve remaining uncertainties regarding the condition of the underlying timber framing, I do not consider that the remedial work need cause significant consequential impact on adjacent elements. Notwithstanding the proposed change in the upper cladding, the required remedial work is generally consistent with the originally consented building work.

7.4 Given the above, and taking into account that the original consent has yet to receive a code compliance certificate, I take the view that the subject remedial work does not require a new building consent. I can find no justification in the Act for the authority's insistence that this repair work must be undertaken under a new building consent. Although in some circumstances more significant changes may require a

[6] Determination 2007/060: Determination regarding a code compliance certificate for a house with monolithic and weatherboard wall cladding systems (*Department of Building and Housing*) 11 June 2007

formal application for a new consent, the appropriate regulatory mechanism for this particular situation is an amendment to the existing building consent for the house.

7.5 Having reached the above conclusion, I note that the authority is entitled to require an application for an amendment to the consent to be supported by an appropriate level of documentation. Vulnerable junctions identified by the expert are complex and proposals for making these weathertight must be supported by clear, specific details. Undertaking repair work under an amendment to the existing building consent may not reduce documentation below that for a new building consent.

8. What happens next?

8.1 I suggest that the parties adopt the following process if the applicants are to seek a code compliance certificate. Taking account of the findings of this determination further investigation should be carried out, and the scope of work for repairs amended and appropriately detailed documentation prepared and submitted for the authority's approval.

8.2 Any outstanding items of disagreement can 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 the exterior building envelope does not comply with Clauses E2 and Clause B2 of the Building Code that was in force at the time the consent was issued, and accordingly I confirm the decision of the authority to decline to issue a code compliance certificate for the house.

9.2 I also determine that the authority did not correctly exercise its powers in requiring remedial work to the claddings of this house to be undertaken under a separate building consent.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 26 September 2014.

John Gardiner
Manager Determinations and Assurance