



## Determination 2015/063

# Regarding the refusal to issue code compliance certificates for two adjoining houses with monolithic cladding at 23 Winifred Street, Okitu, Gisborne



**Figure 1: East elevation of House A**

### Summary

This determination considers the compliance of the building work in light of a refusal to issue a code compliance certificate; the refusal was primarily on the grounds of concerns regarding weathertightness and durability of the exterior cladding given the building's age.

## 1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“the current Act”) made under due authorisation by me, John Gardiner, Manager Determinations and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are:
  - the owners of the properties, D and L Coulston (“the applicants”)
  - Gisborne District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from the decision of the authority to refuse to issue code compliance certificates for a 14-year-old house and an adjoining 10-year-old house because it was not satisfied that the building work complied with certain clauses<sup>2</sup> of the Building Code (First Schedule, Building Regulations 1992). The authority's

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

<sup>2</sup> In this determination, unless otherwise specified, references to clauses are to clauses of the Building Code that was in force at the time the Building Consents were issued.

concerns regarding compliance of the building work primarily relate to the weathertightness and durability of the wall and roof claddings.

- 1.4 The matter to be determined<sup>3</sup> is therefore whether the authority was correct in its decision to refuse to issue code compliance certificates for the two houses. In deciding this, I must consider whether the external building envelope the adjoining houses complies with Clause B2 Durability and Clause E2 External Moisture of the Building Code that was in force at the time the building consents were granted. The building envelope includes the components of the external moisture management system (such as the wall claddings, flooring, windows, joinery, roof claddings and flashings) as well as the way these components have been installed and work together.
- 1.5 In making my decision, I have considered the submissions of the parties, the report of the expert commissioned by the Ministry (“the expert”), and other evidence in the matter.

## 2. The building work

- 2.1 The building work consists of two adjoining houses situated on an elevated and exposed rural site. The site is located within 500m of the coast line and is therefore classed as being in a sea spray zone as defined by NZS 3604<sup>4</sup>. The houses were built in two stages; the original house (House A) was constructed in 2001 and the addition (House B) was constructed in 2005. House B connects to the south wall of House A and there is internal access from one house to the other. Both houses have been specifically designed, are moderately complex in plan and form and have been assessed as having a medium weathertightness risk.



**Figure 2: Aerial view of Houses A and B**

### 2.2 House A

- 2.2.1 House A is two stories in part and is situated on a sloping part of the site. The lower level consists of a triple garage and basement area and the upper level contains the living areas and bedrooms and includes a large octagonal shaped lounge and kitchen area at the northern end. The house has a concrete basement slab and a suspended concrete upper floor.
- 2.2.2 The ground floor walls are unpainted masonry and the upper level walls are light timber framed and clad with fibre-cement sheet direct fixed to the timber framing and finished with a textured paint. The cladding has some painted polystyrene

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

<sup>4</sup> New Zealand Standard NZS 3604:1999 Timber Framed Buildings (the standard in force at the time the consents were issued)

mouldings at horizontal sheet joints. The interior wall linings are generally plasterboard in the upper level and exposed masonry in the basement and garage. There are solid Jarrah beams supporting the roof structure in the octagonal living area.

- 2.2.3 The roof is a combination of pitched roofs with concrete tile cladding and flat roofs with painted butyl rubber membrane cladding. Eaves project between 450-1000mm over most of the perimeter with the exception of the south wall of the house which has no eaves. Gutters to the flat roof are lined with reinforced liquid applied membrane (“LAM”) with the LAM lapped over the butyl rubber roofing. There is evidence of LAM being applied to repair areas of the roof.
- 2.2.4 The exterior joinery is powder coated aluminium windows and doors which are recessed into the masonry walls and face-fixed over the timber framed walls. There are clerestory windows along the east elevation.
- 2.2.5 There are two decks located on the upper level; a north facing covered deck with a glass balustrade and a partly suspended concrete slab floor, and a large open timber deck with timber balustrades on the east elevation. The timber deck has stairs and a ramp that lead to ground level.

### 2.3 House B

- 2.3.1 House B is a single story construction on solid concrete slab foundations and is located on a mostly flat site. There is a large octagonal living area (designed to match that of House A) at the eastern end of the house.
- 2.3.2 The house is constructed from light timber framing with fibre-cement cladding with a textured paint finish. The cladding is fixed over battens to form a cavity between the cladding and the framing. There are solid Jarrah beams supported by a central steel pole supporting the roof structure in the octagonal living area. The interior of the house is mostly lined with plasterboard.
- 2.3.3 The roof is a combination of pitched and flat with concrete tile cladding on the pitched areas and EPDM<sup>5</sup> rubber membrane cladding on the near flat areas. There are eaves extending at least 400mm around the majority of the perimeter and extending up to 2400mm along the patio. The wide eaves are supported by untreated Oregon Pine posts.
- 2.3.4 The exterior joinery is powder coated aluminium windows and doors which are face-fixed over the timber framed walls. There are clerestory windows along the north elevation.

## 3. Background

### 3.1 House A

- 3.1.1 The authority issued building consent No. 0100057 to the applicants on 13 February 2001 under the Building Act 1991 (“the former Act”) for construction of House A. The consent was for a large six bedroom house with rammed-earth brick walls.
- 3.1.2 The house as built differs significantly from the consent documents. Timber framing was used instead of the consented rammed-earth brick and approximately only half of the house (the northern end) was constructed. No formal amendments to the consent documents have been sighted.

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<sup>5</sup> EPDM is a synthetic rubber roofing membrane (ethylene propylene diene terpolymer)

3.1.3 The authority's records indicate that various inspections of the foundations, concrete slab, masonry walls and timber framing for House A were carried out from 1 May 2001 until the pre-line inspection on 30 October 2001.

3.1.4 No major issues were noted by the authority at any of the above inspections and the records indicate the building work passed these inspections.

### 3.2 **House B**

3.2.1 The authority issued building consent No. 3607 on 14 December 2004 under the former Act for the construction of a second house on the site (House B) to adjoin House A.

3.2.2 The authority carried out inspections of the building work for House B from 3 February 2005 until the pre-line inspection on 16 September 2005. Inspection records show that the building work for House B passed these inspections and no concerns were noted by the authority.

3.2.3 There is no record for either house of any inspection of the cladding prior to the application of the textured coating.

### 3.3 **The final inspection**

3.3.1 Following the pre-line inspections for House A and House B in 2001 and 2005 respectively, no further inspections of the building work appear to have been carried out until the authority completed a final inspection on 10 September 2014.

3.3.2 The final inspection record only references the consent number for House B – No. 3607. I have assumed that the authority inspected House A as well as there are references on the inspection record to a downstairs area. The inspection checklist was only partially been filled in by the authority; it does not indicate whether the claddings and/or roofing passed or failed the inspection, nor does it mention any specific concerns the authority has in regard to the weathertightness of the houses.

3.3.3 The inspection records did note that that the downstairs basement (House A) required a smoke alarm and that the downstairs bathroom needed to be painted and plastered.

### 3.4 **The refusal**

3.4.1 Following the final inspection the authority sent an email to the applicants stating:

“... [the authority] has decided that the best way forward for both parties is for you to get a determination. ... the risk of signing this consent off is too great as the building is already 10 years old. Our main concern is the cladding and roofing, both showing signs of needing maintenance and/or repair.”

3.4.2 I have assumed that the authority is only referring to the consent for House B in the above email as it mentions a 10-year-old house. However, a code compliance certificate has not been issued for either house, and when the expert met with the authority on 14 May 2015 the authority indicated they had concerns with both houses.

3.5 The Ministry received an application for a determination on the 28<sup>th</sup> October 2014.

## 4. **The submissions**

### 4.1 **The initial submissions**

4.1.1 After receiving the initial application, I requested further information from the applicants. That information was received on 24 March 2015. The applicants

provided a copy of the building consent files for each house which included the following information:

- The building consent and inspection records.
- Certificate of title.
- Producer statements.
- The consent drawings and specifications.
- The engineer's calculations.

4.1.2 The applicants also provided a copy of an email from the authority confirming its concerns around the issuing of a code compliance certificate for House B.

4.1.3 The authority made no submission in response to the application for a determination, but provided a copy of the property file on CD.

4.1.4 On 13 and 22 April 2015 I asked the authority to clarify its reasons for declining the code compliance certificates. No response to these requests was received.

## 4.2 **The draft determination and the submissions received**

4.2.1 A draft determination was issued to the parties for comment on 7 August 2015.

4.2.2 A response was received from the authority on 17 August 2015, in which it did not accept the draft determination. The authority disputed that it had not fulfilled its obligations under section 95A to provide reasons for its refusal, stating that the reasons were made clear at a meeting held with the applicant on 13 March 2015. The authority included the reasons for refusal in its response to the draft, summarised as follows:

- The cladding on House A was left exposed to the weather for 'a long period of time before coating'. The house was showing cracks in the cladding and other weathertight and maintenance issues.
- 'It was probable ... that a house built at that time was built with [untreated] timber.
- A final inspection was not requested by the applicants on completion of the building work and the authority was not given an opportunity to check the completed building work before the durability periods commenced.

4.2.3 In response to the authority I note the following:

- The authority's formal advice to the applicants refusing the code compliance certificate, as required under section 95A, is quoted in paragraph 3.4.1.
- The authority did not respond to specific requests from the Ministry to clarify its reasons.
- While the authority says it met with the applicants to discuss its concerns regarding the houses, it is nevertheless incumbent on the authority to confirm those reasons with the applicant in writing.

4.2.4 The applicants responded on 7 September 2015, also stating that the draft was not accepted and noting that paragraphs 2.2.2 and 2.3.2 should refer to solid Jarrah beams rather than laminated timber beams.

- 4.2.5 The applicants also submitted the following in response to the authority's submission:
- It was accepted that the cladding on House A was left exposed for a period; however, the authority provided no evidence that this may cause a problem.
  - There are cracks in the cladding and potential watertight issues, however, moisture readings that are 'in an acceptable range'.
  - It was recalled that 'external parts' of the house were constructed with treated timber. Some parts of the internal framing are untreated due to the unavailability of treated timber; however, this is a 'very low percentage'.
- 4.2.6 The applicant also argued that:
- The authority was onsite to inspect House B during its construction and should have noticed that House A was completed.
  - The authority inspected and approved the changes to House A, but did not 'retain' these.
  - Had the authority discharged its obligations correctly in establishing compliance then it was highly likely that the current non-compliance issues with House A would have been avoided.
- 4.2.7 In response to the applicants I note that I have seen no evidence of any amended plans for House A submitted as an alteration of that consent. The applicants and the authority each provided a copy of the consent records for House A; these do not record any amendment of the approved consent.
- 4.2.8 I have considered the parties responses to the draft determination and I have amended the determination as I consider appropriate.

## 5. The expert's report

- 5.1 As mentioned in paragraph 1.5, I engaged an independent expert, who is a member of the New Zealand Institute of Building Surveyors, to assist me. The expert visited the site on the 14 and 15 May 2015 to carry out an assessment of both houses with respect to compliance with Building Code clauses B2 Durability and E2 External Moisture. The expert provided a report dated 18 June 2015, which was sent to the parties on 19 June 2015.
- 5.2 The report described the houses, the risk factors present for weathertightness, and the expert's findings. The expert noted that House A varies substantially from the consent documents and significant changes have also been made to House B.
- 5.3 The expert identified various issues with the wall and roof claddings on both houses, including non-compliance with the manufacturer's instructions and inadequate detailing. In most locations the cladding is well protected with wide eaves which have likely reduced the extent of moisture damage. A drained cavity on House B also provides additional protection from moisture ingress.
- 5.4 **Moisture testing**
- 5.4.1 The expert carried out a series of invasive moisture tests on House A at locations that may be prone to leaking or where the owner advised leaking had occurred in the past. The readings varied between 8-11% with an average of 9%, and the expert noted that the framing looked to be in fairly good condition.

5.4.2 Moisture readings of less than 18% indicate low levels of moisture content in the timber. I also hold the view that the low readings are representative of seasonal variation due to the relatively fine weather in the weeks preceding the expert's site visit.

5.4.3 No invasive moisture tests were carried out on House B.

## 5.5 Timber treatment

5.5.1 The expert did not find any evidence of treated timber in the roof space of House A but noted that:

The good condition of drill shavings viewed elsewhere (in locations where water entry has occurred and decay was expected) indicates that some timber framing may be treated.

5.5.2 It was not confirmed whether treated timber was used in the construction of House B.

## 5.6 House A

5.6.1 The expert noted that overall the standard of building work for House A is of a poor quality. The exterior is due for repainting and maintenance is needed, including the sealing of cracks in the cladding.

5.6.2 The expert's observations are summarised in the following paragraphs:

### *The masonry basement walls*

- The east elevation bitumen waterproofing over the concrete masonry walls is in poor condition, with masonry visible through the coating.
- An unpainted flat masonry sill allows water to soak into the west elevation wall and a flat window sill flashing allows water penetration under the flashing.
- Masonry cleanout holes have not been fully reinstated.
- A meter box has been installed into the masonry wall and the penetration has not been sealed.
- The masonry walls have not been plastered and painted, and the pointing has not been completed in parts.
- Fine cracks were noted at vertical joints on the interior surface of the basement masonry walls.

### *The monolithic cladding*

- Extensive cracking of the texture coating at the sheet joints is evident to the cladding on the north and east elevations.
- The upper level concrete floor to north deck threshold measured approximately 30mm. The recommended clearance is 150mm. The expert noted that the doors are well sheltered but the minimal threshold clearance has resulted in reduced clearance between the cladding and deck.
- The cladding in contact with the apron flashing on the eastern elevation is badly deteriorated and the textured coating has cracked full height. A section of the cladding at this point was removed by the expert and mould was present on the rear face of the cladding.
- Incorrectly sequenced work has resulted in the cladding at the end of the gutter on the eastern elevation not being texture-coated.

- Vertical cladding sheet junctions are on the wrong side of the clerestory window jambs (i.e. to the outside of the windows and not located under the sill), resulting in cracked vertical and horizontal cladding joints. The cladding manufacturer requires the joints to be a minimum of 200mm from the window jamb line, below the sill flashing and above the head flashing.
- The PVC sill flashings have been fixed with the lower flange correctly installed over the cladding substrate, but have then been over-coated with a very thin texture coat (the flange should be clear of the cladding and coating similar to the head flashing installation), resulting in the coating cracking below the sill and at both sides of every clerestory window. The texture coating is breaking away from the cladding at the sides of some of these windows and the cladding substrate is exposed in parts. Cracking along the bottom edge of the PVC sill flashing extends along the entire window widths below the window flanges, exposing the cladding substrate to moisture.
- Some of the head flashings extend only 20mm beyond the window flanges; the cladding manufacturer requires a minimum of 30mm.
- The timber deck on the east elevation has been installed hard against the cladding. The cladding does not have a textured coating applied at this point, meaning the water can soak directly into the fibre-cement.
- The sealant joint between the direct fixed cladding of House A and the cladding installed over cavity battens (House B) is poorly installed with gaps. The direct fixed cladding at this junction on the east elevation is not fully supported by timber framing.
- The south elevation barge boards have been installed hard against, and not over, the cladding prior to the application of the textured coating; resulting in the lower edge of the timber being embedded in the plaster, and allowing water penetration into the cladding substrate.
- The saddle flashing repair on the northern end of the west elevation parapet has been face fixed to the cladding, rather than installed behind the cladding, and the top edge has been poorly sealed into a horizontal rebate in the cladding. The expert removed part of cladding at this point and noted that mould was present on the back of the cladding and there was water staining on the building paper and timber packer. The bottom edge of the cladding was sealed to the roof membrane rather than allowing drainage.
- The cladding on the west parapet elevation is cracked down the internal corner under the saddle flashing – potentially allowing water to seep behind the cladding.
- The gas water heater was installed over the cladding prior to the application of the texture coating, allowing water to soak into the fibre-cement sheet. However, there was no obvious water damage on the adjacent interior wall linings or carpet.

### ***The roof cladding***

- The soffits are heavily water stained indicating that the gutters may have been leaking. Repairs have also been attempted to the LAM gutters on the east elevation, indicating leaks have occurred at those points.



- The expert observed highly decayed soffit framing and plywood fascia on the eastern side of the house indicating that the guttering at this location has been leaking.
- LAM repairs have been carried out to the butyl rubber membrane roof cladding on the west elevation. The LAM has cracked and broken away from the surface in one area and part of the plywood substrate is exposed. The expert did not see any reinforcing mesh in the LAM, but noted that the exposed plywood appeared to be in good condition indicating it is likely treated.
- Mould and fungal growth on the south elevation fascia below the concrete tile roofing indicates water leakage behind the gutter.
- There is an unflushed junction between the fascia and the horizontal reveal control joint. The expert removed a piece of polystyrene facing and noted that there was visible evidence of water entry behind it.

#### ***Other issues***

- Extensive structural floor cracking was noted on the basement and garage concrete floor slab, and cracking was noted in the concrete deck. The extent and size of the floor cracks indicate a possible structural issue that warrants further investigation.

## **5.7 House B**

5.7.1 The expert noted that House B is generally well presented and maintained and the overall construction quality is good. However, like House A, the exterior is due for repainting.

5.7.2 The expert's observations are summarised in the following paragraphs:

#### ***The monolithic cladding***

- Unsealed hose tap penetration (north elevation); no sealant was found at the cladding junction and the building wrap wasn't sealed to the pipe at the rear of the cavity.
- Unsealed cable penetration on the north elevation.
- A diagonal crack in the north elevation cladding near the front entry.
- Minor cracking of the cladding below the window jamb of the north facing clerestory windows. The cladding joint should not be on the jamb line but this is not considered an issue in this case as the roof membrane will be taken up behind the cladding, with the additional protection of the drained cavity.
- There is less than 150mm clearance between the floor slab and paving levels at the circular veranda, but the cladding is well sheltered by 2400mm wide eaves.
- There is a small section of unsealed cladding at the base of the south elevation cladding.
- Ground clearance between the floor slab and unpaved ground on the south elevation are approximately 80mm, rather than the minimum 225mm in the cladding manufacturer's instructions. The rigid air barrier at the back of the cavity is taken down close to ground level and is fixed hard against the concrete slab edge, increasing the risk of water being drawn up via capillary action behind the cladding toward the bottom plate.

- Vertical cladding cracking has occurred in the fibre-cement roof fascia.
- Minor flaking of the texture coating was noted at several nail fixings.

#### ***The roof cladding***

- A saddle flashing should have been installed at the south end of the west parapet, behind the cladding, but the risk of leaking is somewhat mitigated by the eaves protection and cavity drainage.
- A copper parapet capping was installed over the roof membrane prior to texture coating being applied to the fibre-cement sheet, making the sheet susceptible to water soakage at the junction.

#### ***Other issues***

- One of the structural Oregon timber posts on the veranda near the front entry is decayed and sealant has been applied to the face of the post. There is also a highly decayed post at the southeast corner of the lounge where the verandah beams are supported by a temporary prop. The decay indicates the veranda posts are not adequately treated and all the veranda posts are potentially at risk of decay.

## **6. Discussion**

### **6.1 Compliance with the Building Code**

- 6.1.1 The building consents were issued under the former Act, accordingly the transitional provisions of the current Act apply when considering the issue of code compliance certificates for building work completed under these consents. Section 436(3)(b)(i) of the transitional provisions require the authority to issue a code compliance certificate if it ‘is satisfied on reasonable grounds that the building work complies with the building code that applied at the time the building consent was granted’.
- 6.1.2 In order to determine whether the authority correctly exercised its power in refusing to issue code compliance certificates because of its concerns about weathertightness and durability, I must consider whether the building work complies with the Building Code that was in force at the time the consent was issued.

### **6.2 Clause E2 - External Moisture**

- 6.2.1 I consider the expert’s report establishes that the current performance of the building envelope to House A is not adequate because there is evidence of extensive moisture penetration and damage to parts of the cladding. This is evidenced by:
- The section of cladding on the east elevation that has badly deteriorated with mould present on the rear facing of the cladding.
  - Mould that is present on the back of the cladding near the saddle flashing on the northern end of the west parapet, as well as water staining on the adjacent building paper and timber packer.
  - Heavily water stained soffits and decayed soffit framing and plywood fascia on the eastern side of the house.
  - Visible evidence of water ingress behind the polystyrene facing on the south wall.
- 6.2.2 Therefore, I am satisfied that House A has not satisfied Clause E2 of the Building Code that was in force at the time the building consent was issued.

- 6.2.3 In addition, the building envelopes to the houses 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 for the building work to remain weathertight.
- 6.2.4 House B has a number of cladding defects, including unsealed penetrations, cracks in the cladding, and inadequate ground clearances. I hold the view that the defects to the cladding in House B are likely to allow the ingress of moisture in the future, and the building envelope will not meet the performance requirements of Clause E2 for the period set out in Clause B2.
- 6.2.5 I note that the Ministry has produced a guidance document on weathertightness remediation<sup>6</sup>. I consider that this guide will assist the applicants in understanding the issues and processes involved in remediation work to the buildings, and in exploring various options that may be available when considering the upcoming work required.

### 6.3 **Clause B1 - Structure**

6.3.1 The authority did not specifically mention any concerns relating to the structure of the houses in their decision to refuse to issue code compliance certificates. However the expert, while not specifically focussing his investigation on compliance with Clause B1, did observe decay and defects in several structural elements in both Houses A and B.

- Soffit framing and plywood fascia that form part of the structure of House A were decayed and moisture damaged.
- Highly decayed Oregon timber posts supporting the veranda eaves were identified in House B.

6.3.2 I am of the view that Houses A and B do not currently satisfy the requirements of Building Code Clause B1.

6.3.3 The expert observed extensive cracking to the garage and basement concrete slab to House A as well as the concrete deck. The compliance of the concrete structure is outside the scope of this determination.

### 6.4 **B2 - Durability**

6.4.1 The building work 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.

6.4.2 The building envelope is required to satisfy Clause E2 for a minimum of 15 years; however the expected life of the framing is a minimum of 50 years. Careful attention to the performance of the external envelope is needed to ensure that it will protect the underlying structure for its minimum required life of 50 years.

6.4.3 The cladding to House A is currently allowing water ingress that is causing dampness and damage (as summarised in paragraph 6.2.1): the cladding therefore has not satisfied Clause B2 Durability. In addition, the cladding to House B does not satisfy Clause B2 for the reasons stated in paragraph 6.2.4.

6.4.4 Structural elements, such as the timber framing, are required to satisfy Clause B1 for the life of the building not less than 50 years. House B does not comply with Clause B2 in respect of the decayed verandah posts.

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<sup>6</sup> Weathertightness – Guide to remediation design. This guide is available on the Ministry's website, or by phoning 0800 242 243

## 6.5 Maintenance

- 6.5.1 Effective maintenance of claddings is important to ensure ongoing compliance with the relevant clauses 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 2007/60<sup>7</sup>).
- 6.5.2 In the authority's email to the applicants (summarised in paragraph 3.4.1) it stated its refusal to issue a code compliance certificate was due to concerns that the cladding and roofing were already showing signs of needing maintenance and repair. I note that some degree of maintenance is expected and generally required to ensure building elements continue to satisfy their intended performance requirements.

## 6.6 The authority's actions

- 6.6.1 The authority is required under section 95A of the current Act to provide the applicant with written notification of the refusal to issue a code compliance certificate and the reasons for the refusal. (The authority also did not clarify its reasons for refusing the code compliance certificates in response to initial requests by the Ministry - refer paragraph 4.1.3, but did provide some further clarification in response to the draft determination – refer paragraph 4.2.2).
- 6.6.2 The authority's email to the applicant does not identify any compliance matters other than its 'concern' about the cladding and the roofing and 'risk of signing this consent off is too great as the building is already 10 years old.'
- 6.6.3 In my opinion, the authority has failed to meet its obligations set out in section 95A to provide in writing its reasons for declining the code compliance certificates. It is important that an owner be given clear reasons why an authority considers compliance has not been achieved so the owner can either then act on those reasons, or apply for a determination if the reasons are disputed.

## 6.7 Conclusion

- 6.7.1 It is my opinion that:
- House A does not comply with Clauses B1, B2 and E2 of the Building Code.
  - House B does not comply with Clauses B1 and B2 of the Building Code.

## 7. The durability considerations

- 7.1 In this case the delay with issuing the code compliance certificates raises concerns that many elements of the buildings are well through or have completed their durability periods and would consequently no longer comply with the requirements of Clause B2 if code compliance certificates were to now be issued.
- 7.2 I have considered this in many previous determinations and I maintain the view that the authority has the power to grant an appropriate modification of Clause B2 in respect of all the building elements, if requested by the owner. I leave the matter of amending the building consent to modify Clause B2.3.1 to the parties once the houses have been made compliant.

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<sup>7</sup> Determination 2007/060 Determination regarding a code compliance certificate for a house with monolithic and weatherboard wall cladding systems

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

- 8.1 It is now for the applicants to undertake the necessary investigation and building work required in order to obtain the code compliance certificates. I strongly suggest that the applicants engage a competent person with suitable experience in weathertightness remediation to undertake the investigation.
- 8.2 Prior to carrying out remedial work the applicants should submit to the authority a detailed proposal that refers to the items requiring remedial work as set out in this determination, as well as any defects that might be discovered in the course of further investigation. It is not for the authority to specify how the defects are to be remedied, this is a matter for the applicants to propose to the authority and for the authority to either accept or reject.
- 8.3 Once the building work has been rectified to the satisfaction of the authority the code compliance certificates can be issued.
- 8.4 I note the expert identified that the as-built houses vary significantly from the work as consented. Given the degree and extent of the variation between the consented and as-built work it is not clear why the authority did not seek to have this formalised and recorded at the time the work was done. It is suggest that the applicants supply amended plans to the authority to accurately record the completed building work.

## **9. The decision**

- 9.1 In accordance with section 188 of the Building Act 2004, I hereby determine that the building work does not comply with the Building Code that was in force at the time the consents were granted, and accordingly I confirm the authority's decision to refuse to issue code compliance certificates for building consent No. 0100057 and No. 3607.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 9 October 2015.

John Gardiner  
**Manager Determinations and Assurance**