

Determination 2005/35

Refusal of a code compliance certificate for a building with a “monolithic” cladding system: House 29

1 THE DISPUTE TO BE DETERMINED

- 1.1 This is a determination of a dispute referred to the Chief Executive of the Department of Building and Housing (“the Chief Executive”) under section 17 of the Building Act 1991 (“the Act”), as amended by section 424 of the Building Act 2004. The applicants are the trustees of the owner’s family trust (referred to throughout this determination as “the owner”), and the other party is the territorial authority. The application arises from the refusal by the territorial authority to issue a code compliance certificate for a 4-year old house, unless changes are made to its monolithic cladding system.
- 1.2 The question to be determined is whether there are reasonable grounds to believe that the external wall cladding as installed (“the cladding”), which is applied to all the external timber-framed walls of the house, complies with the building code (see sections 18 and 20 of the Act). By “external wall cladding as installed” I mean the components of the system (such as the backing sheets, the flashings, the joints and the plaster and/or the coatings) as well as the way the components have been installed and work together.
- 1.3 This determination is made under the Building Act 1991 subject to section 424 of the Building Act 2004. That section came into force (“commenced”) on 30 November 2004, and its relevant provisions are:

“...on and after the commencement of this section,—

 - (a) a reference to the Authority in the Building Act 1991 must be read as a reference to the chief executive; and
 - (b) the Building Act 1991 must be read with all necessary modifications to enable the chief executive to perform the functions and duties, and exercise the powers, of the Authority . . .”

It should be noted that the new legislation does not amend the determination process set out under the 1991 Act, other than to transfer the power to make a determination from the Building Industry Authority (“the Authority”) to the Chief Executive.

- 1.4 This determination refers to the former Authority:
 - (a) When quoting from documents received in the course of the determination, and
 - (b) When referring to determinations made by the Authority before section 424 came into force.
- 1.5 In making my decision, I have not considered any other aspects of the Building Act or the building code.
- 1.6 The extensions themselves are described in paragraphs 2.1 to 2.4, and paragraph 8 sets out the decision.

2 PROCEDURE

The building work

- 2.1 The building is a largely single level timber-framed house constructed on four different flooring levels and situated on an excavated sloping site, which is in a high wind zone in terms of NZS 3604: 1999 “Timber framed buildings”. A second level incorporates the master bedroom and ensuite. The external walls of conventional light timber frame construction are built on concrete block foundation walls, and are sheathed with monolithic cladding. The house is of a relatively complex shape, and the roofs, which are set at varying levels, are clad with concrete tiles, and generally consist of gable and hip designs using a 20% pitch form. There is one section of roof above the master bedroom that is clad with a butyl rubber membrane. Parapet walls have been constructed above the master bedroom and the walkway section between the house and garage. Planted polystyrene trim has been fitted around the exterior joinery and to make an ornate capping detail to the parapet wall design. For the most part the only eaves protection is provided by a standard quarter-round spouting detail.
- 2.2 A small timber-framed cantilevered balcony is constructed at the upper floor level with the deck finished with tiles over a butyl-rubber membrane applied over a plywood substrate. The balcony has a metal balustrade to 3 sides with the supports fixed to the tiles. A set of timber-framed steps and a landing lead up to the laundry door supported on a monolithic-clad supporting wall. The steps and landing are tiled and are protected by a metal balustrade. The house also has 2 tiled verandas, and a tiled entrance porch all of which have roofs supported on monolithic-clad beams and expanded polystyrene tapered columns. There is also an external tiled patio with access steps.
- 2.3 The specification calls for all framing timber to be No1 Boric treated, and bottom plates to be treated to H3. The expert commissioned by the Department noted that the framing he was able to observe was kiln dried but untreated. I have not received any evidence, by means of invoices or other documentation, as to the framing timber purchased for the house construction.

- 2.4 All of the timber-framed external walls of the house that are the subject of this determination are clad with a system that is described as monolithic cladding. In this instance it incorporates 7.5 mm thick fibre-cement backing sheets fixed through the building wrap directly to the framing timbers, and finished with a painted textured coating. No information has been given as to what plaster and paint systems were applied to the house.

Sequence of events

- 2.5 The territorial authority issued a building consent on 23 March 2000. The “Conditions” attached to the consent noted that the territorial authority required notice for certain inspections, including the prelining, postlining and final inspections.
- 2.6 The territorial authority made various inspections during the course of construction, from March to December 2000. A final inspection was not called for until 3 August 2003 and “recheck” inspections were carried out on 29 August and 13 October 2003. What the territorial authority record shows as “Final building recheck” was carried out on 15 December 2003 followed by a “Weathertightness Issues” inspection on 17 December 2003.
- 2.7 On 20 October 2003, the owner forwarded to the territorial authority details of how the base of the cladding was finished at the walkway.
- 2.8 On 15 December 2003 the territorial authority sent the owner a pro-forma letter, which said:

Existing properties in [name of city] City using any type of monolithic cladding without a cavity, that have not had specific inspections to deal with weathertightness issues, will be reviewed on a case-by-case basis before determining if a code compliance certificate can be issued. These properties may already have had a “final inspection”.

The above property falls into this category and is now being assessed by our code compliance certificate (CCC) resolution team comprising senior building officers and managers to determine compliance.

If it is determined that the dwelling meets the requirements of the Building Code, a code compliance certificate will be issued as soon as possible. If it cannot be determined ‘beyond reasonable doubt’ that the dwelling is code compliant, a determination from the Building Industry Authority can be sought following written confirmation that this is the way you wish to proceed.

You will be notified in writing about whether a code compliance certificate will be issued for the above property...

- 2.9 On 18 December 2003 the owner’s architect (“the architect”) wrote to the territorial authority and said:

[The owners] have advised us that they have applied for a Code of Compliance Certificate (sic) recently, and that seemingly due to nationwide concerns over leaky buildings they have encountered some difficulties.

This is to advise you that our company was involved in the construction observation of the [owner’s name] residence, and that the work was carried out by a conscientious and experienced builder to NZS 3604 and to Council Building Standards (sic).

We have never supported the notion of chem.-free timber framing, and so H3 bottom plates and boric treated timber frames were specified throughout.

Particular care was taken with fibreglassed parapet caps and all-round flashings to window frames.

Although we have not visited the building for about the last 12 months, we are advised that there is still no evidence of leaks or mould in any part of the structure. We are also advised that there has been a test for moisture in framing carried out in every room in the house. The method by which this was carried out is unknown to us, but if valid, this would tend to a water and vapour-tight building.

This company has used [cladding sheet product] systems in a number of houses. In all cases, without exception, there have been no homes with leaking problems reported to us.

We believe that this current series of problems is due in part to a lack of expert supervision, and a lack of experience through improper training and stress on the building industry generally.

We believe that the [name of owner] residence is safe and sound, and qualifies for a C.C.C.

- 2.10 On 22 January 2004 the building company that had carried out the building work ("the builder") wrote to the territorial authority and described the cladding used on the house and identified the applicator. The builder said that the only variation from the manufacturer's recommendations is the application of the textured coating over the horizontal and vertical relief joints, and that certain horizontal relief joints were not applied where there was a variance with the architect's design. The builder noted that the house was now 4-years old and shows no sign of joint problems. The backing sheets are fixed with stainless steel nails and the parapets are constructed in accordance with a specific manufacturer's recommendation.

- 2.11 On 29 January 2004 the architect wrote to the territorial authority and said:

I have received a copy of the letter from [building company] dated 22 January 2004, addressed to you.

I can confirm that the horizontal joint detail which is shown in [number of Figure] of the [manufacturer's] manual was agreed to be used by the contractor. We required [proprietary seal] placed behind the joint and the tape reinforcement in the recessed edge. On occasion, a recess was ground into the edge of the sheet with an angle grinder.

We note the Council inspector visited the building at post lining stage, and signed off the installation.

We note that there are no visible joints on the surface of the building, and we can confirm that "control joints" were deemed to be unnecessary, because no walls are longer than 10.8 m. Relief joints were adopted at the required spacings.

- 2.12 On 13 February 2004 the territorial authority wrote to the owner, saying:

We have received your request for a code compliance certificate (CCC) for a dwelling at the above address.

Before the council can issue a code compliance certificate, we must ensure that all building work meets the NZ Building Code requirements.

In particular, the building code specifies that building work must remain durable for given periods of time after the code compliance certificate is issued.

You will be aware of the current weathertightness issues often reported in the media. These issues have highlighted the care that must be taken to establish that all building elements, but particularly cladding, is durable before any CCC can be issued.

The Council has received a letter from the builder, [name of building company], however as your building is face fixed (monolithic) construction with no cavities and it is evident that there are no approved horizontal control joints in place, the Council are unable to issue a code compliance certificate for the dwelling because we are unable to verify that it fully complies with the Building Code requirements, manufacturer's details application (sic) at the time and that it will remain durable for the required period. The report from [name of building company] will be placed on the property file for your property. Visual inspection also shows signs of stress cracks and no cladding inspections were undertaken.

There has been recent information and knowledge that face sealed cladding systems without an adequate drainage and ventilation cavity will cause irrevocable damage to structural elements in the event of leakage and/or the effect of residual moisture.

Council cannot be satisfied that the cladding system as installed on the above building will meet the functional requirements of Clause E2 External Moisture of the New Zealand Building Code...

- 2.13 On 26 February 2004, the architect wrote to the owner stating that the territorial authority had in fact carried out cladding inspections and that the question of a horizontal control joint had not been raised by the territorial authority. Nor had any of the "experts" involved with the project recommended such a joint. The architect was of the opinion that the stress cracks on the building were of a minor nature.
- 2.14 The architect wrote again to the owner on 27 February 2004 noting that the 2 vertical cracks on the junior bedroom wall are in fact construction joints.
- 2.15 The builder issued a producer statement dated 3 June 2004, detailing how the construction joint between the entrance wall and the existing house had been formed.
- 2.16 On 25 June 2005, the territorial authority wrote to the architect stating that acting on legal advice it could not issue a Notice to Rectify. The territorial authority pointed out that it had doubts about compliance due to the type of cladding used on the house. Based on new information and understanding of weathertightness issues, the territorial authority identified the non-inclusion of horizontal joints and parapets as being serious risk factors. The territorial authority conceded that the stress cracks were no longer of any significance, providing that the cladding is fully sealed behind and the joinery correctly bedded.
- 2.17 The territorial authority did not issue a Notice to Rectify as required by section 43(6) of the Act.
- 2.18 The owner applied for a determination on 3 July 2004.

3 THE SUBMISSIONS

- 3.1 In a letter to the Authority dated 31 July 2004, the owner asked the Authority to note that the house was not a new building, but had been occupied for nearly 4 years without problems.
- 3.2 The owner supplied copies of:
- The plans and specifications;
 - The consent documentation;
 - The territorial authority's inspection documents;
 - The correspondence with e territorial authority, the builder, and the architect;
 - Some photographs of the building; and
 - Some technical construction data.
- 3.3 The architect wrote to the Authority on 27 July 2004 describing the construction process and the architect's involvement in the project. In the architect's opinion, a horizontal expansion joint was not required and there was no sign of cladding stress. The architect noted that after 3 years there were no leaks, nor any deterioration of the cladding.
- 3.4 The builder submitted a letter dated 16 August 2004 to the Authority, which said:

The house was constructed to the plans and specifications, supervised by the architect and inspected by [territorial authority] inspectors to Council and NZ building standards at the time of construction in the year 2000.

The house is now four years old and shows no evidence of leaks or movement and when tested for moisture in every room showed no sign of moisture.

The concerns over "leaky buildings" and the implications for Council seem to be the only reason for refusing to issue a Code Compliance Certificate.

I have no doubt that this house would have received a Code Compliance Certificate had the application been made prior to the concerns over "leaky buildings".

I acknowledge that the new system of monolith cladding incorporating a cavity is now the industry standard, however this house is one of the thousands built without a cavity and provided it is regularly maintained will continue to deflect water ingress eliminating the need for a drainage and drying cavity and therefore ensuring durability.

We have complied with the NZ Building code, the [[name of territorial authority] inspections, the Architect's site supervision instructions and the cladding manufacturers technical information.

The statement from [the territorial authority] dated 13 February 2004 that there are no approved horizontal control joints, does not take into account the design of the building. The Council's visual inspection claiming stress cracks incorrectly identifies normal relief joint movement.

The Council's claim that no cladding inspections were undertaken is clearly disproved by the copies of the inspection record showing preline and postline inspections signed off by Council inspectors.

After four years the house does not leak...

- 3.5 The territorial authority made a submission in the form of a letter to the Authority, dated 9 September 2004. The submission described the sequence of events from the date of consent onwards. It concluded with the following statement:

It is noted that monolithic cladding systems are being continuously tested, improved and detailing revised. New knowledge indicates that monolithic systems should have a drainage cavity to perform its function meeting durability requirements of the Building code. The issues such as high risk design, installation by licensed installers, selection of approved coating system, coating application by licensed applicators, quality control systems of suppliers, installers and applicators, specific independent inspections during installation have further complicated compliance verification process. New E2 document confirms the importance of the above issues.

- 3.6 The territorial authority supplied copies of:

- The building consent documentation;
- The territorial authority's inspection records;
- The correspondence with the owner, the architect, and the builder; and
- Some cladding technical information.

- 3.7 The copies of other evidence were provided to each of the parties. Neither the owner nor the territorial authority made any further submissions in response to the submissions of the other party.

4 THE RELEVANT PROVISIONS OF THE BUILDING CODE

- 4.1 The dispute for determination is whether the territorial authority's decision to refuse to issue a code compliance certificate because it was not satisfied that the cladding complied with clauses B2.3.1 and E2.3.2 of the building code (First Schedule, Building Regulations 1992) is correct. Those provisions of the building code say:

Clause B2 DURABILITY

B2.3.1

Building elements must, with only normal maintenance, continue to satisfy the performance requirements of this code for the lesser of the specified intended life of the building, if stated, or:

- (a) The life of the building, being not less than 50 years, if:
 - (i) Those building elements (including floors, walls, and fixings) provide structural stability to the building, or
 - (ii) Those building elements are difficult to access or replace, or

(iii) Failure of those building elements to comply with the building code would go undetected during both normal use and maintenance of the building.

(b) 15 years if:

(i) Those building elements (including the building envelope, exposed plumbing in the sub floor space, and in-built chimneys and flues) are moderately difficult to access or replace, or

(ii) Failure of those building elements to comply with the building code would go undetected during normal use of the building, but would be easily detected during normal maintenance.

Clause E2—EXTERNAL MOISTURE

E2.1 The objective of this provision is to safeguard people from illness or injury, which could result from external moisture entering the building.

E2.2 Buildings shall be constructed to provide adequate resistance to penetration by, and the accumulation of, moisture from the outside.

E2.3.2 Roofs and exterior walls shall prevent the penetration of water that could cause undue dampness, or damage to building elements.

- 4.2 There are no Acceptable Solutions that have been approved under section 49 of the Act that cover this cladding. The cladding is not accredited under section 59 of the Act. I am therefore of the opinion that the cladding system as installed can be considered to be an alternative solution.
- 4.3 In several previous determinations, the Authority has made the following general observations, which in my view remain valid in this case, about acceptable solutions and alternative solutions:
- Some acceptable solutions cover the worst case, so that in less extreme cases they may be modified and the resulting alternative solution will still comply with the building code; and
 - Usually when there is non-compliance with one provision of an acceptable solution, it will be necessary to add some other provision to compensate for that in order to comply with the building code.

5 THE EXPERT'S REPORT

- 5.1 The Department commissioned an independent expert (“the expert”) to inspect and report on the cladding. The expert inspected the building and furnished a report that was completed on 28 January 2005. It noted that the house is built to a generally good standard, but there are faults in the installation detailing of the cladding. In the expert’s opinion, the cladding is compromised by a failure to install it adequately to the manufacturer’s recommendations. The expert noted that the relevant technical information was that published at a later date, rather than that referred to by the architect and the builder. The expert removed portions of the cladding to examine the window flashings and at two parapet cap locations. Decayed framing timber was

exposed by the last two investigations. The expert also made the following comments regarding the cladding:

- There are no signs that vertical control joints have been installed in the cladding as recommended by the manufacturer for walls exceeding 5400mm long;
- A horizontal control joint has not been installed at mid-floor level;
- Control joint sealant is applied to the sheet joints instead of flexible sealant, and the texture coating has been carried across the flexible control joints;
- There is significant joint line cracking in the cladding at various locations;
- There is cracking at some vertical junctions between the cladding and the plastered blockwork foundation walls and where the house joins the second stage garage complex;
- There is significant cracking at the polystyrene trim around the external windows and doors, and there is no fibreglass mesh at these locations. There is also damp and unsealed wall cladding behind the trim;
- There is no capillary gap at the base of the cladding where it oversails the foundation wall;
- There is insufficient ground clearance to the base of the cladding at some locations;
- The parapet cap waterproofing is ineffective at some locations;
- Two apron flashings are sealed directly to the cladding and appear to have been fixed after the cladding was completed;
- There is an unsealed joint between the end of an apron flashing and the parapet top;
- The end of one apron flashing is not turned out from behind the cladding and at another location there is cracking between the end of the flashing and the cladding;
- There is an area of unsealed cladding adjoining the timber fascia board on the garage walkway parapet wall;
- There is no inseal or flexible sealant between the jambs and sills of the external windows and doors; and
- There is no sealant to the hose tap fitting that penetrate the cladding.

- 5.2 The expert inspected the interior of the house for signs of water damage and noted mildew damaged carpet and decayed flooring to one corner of the master bedroom. This was attributable to a previous roof flashing fault that had since been repaired. The expert also removed an area of internal lining in one bedroom and while there is mildew growth on the back of the lining, the timber framing is undamaged.

- 5.4 The expert took non-invasive readings at the interior of the external walls and no elevated readings were obtained. Further invasive readings at all elevations of the house revealed elevated readings of 19%(3), 20%(9), 21%(3), 22%(4), 23%(5), 24%(6), 30%(3), 32%(2), 38%, and 40+%(4). Moisture levels above 18% recorded after cladding is in place generally indicate that external moisture is entering the structure.
- 5.5 Copies of the expert's report were provided to each of the parties.

6 DISCUSSION

General

- 6.1 I have considered the submissions of the parties, the expert's report and the other evidence in this matter. The approach in determining whether building work complies with clauses B2.3.1 and E2.3.2, is to examine the design of the building, the surrounding environment, the design features that are intended to prevent the penetration of water, the cladding system, its installation, and the moisture tolerance of the external framing.

Weathertightness risk

- 6.2 Research data and experience, both internationally and locally, indicates that the impact of weathertightness problems in monolithic clad houses can be minimised if good and effective design and construction practices are followed.
- 6.3 The installation of exterior cladding to manufacturer's specifications and to accepted good trade practice is an important but not the only requirement to ensure good weathertightness performance.
- 6.4 The next priority is to reduce the ability of moisture to get through the cladding by using design measures that minimise the effects of the rain impacting on the walls:
- 6.5 Important matters for consideration are:
- Data show a strong relationship between the width of the eaves and the incidence of wall leaks. An effective deflection mechanism, such as eaves greater than 600 mm wide, has been shown by Canadian data to manage more than 90% of rain incidence;
 - While most reported leaks are substantially caused by defects in the cladding that require little or no wind pressure differential I believe that buildings in high and very high wind zones (as defined by NZS 3604) are likely to experience wind pressure differentials and thus a higher risk of water ingress;
 - Taller buildings result in an effective increase in the catchment area of the wall. Available data suggests a clear correlation between higher number of storeys and an increased incidence of leaking;
 - Complex roofs and overall envelope shapes where the roofs frequently intersect with the walls on upper floors create opportunities for leaks into the wall; and

- Recent data also shows that decks and balconies that are exposed in plan and/or cantilevered from the external walls are the most frequent location for water leaks.
- 6.6 Any likely penetration of moisture through the cladding can then be countered by a combination of effective drainage, ventilation of the drainage cavity and moisture tolerance in the external wall framing timber. In particular:
- The structure should allow water that has penetrated the cladding to drain out as quickly as possible. I believe that generally a drainage cavity should be provided behind the outer cladding barrier in monolithic construction;
 - The design of the outer walls should allow walls to dry to the outside once moisture penetrates the cladding and the moisture barrier. If walls do not dry, decay fungi can become established in as little as 3 months. Until scientific data on the optimum depth and configuration of the ventilation mechanism in New Zealand conditions is available, I believe that the drainage cavity should be not less than 20 mm deep; and
 - The external walls should have some degree of decay resistance or moisture tolerance to allow for situations when moisture circumvents the cladding and moisture barriers and moisture levels in the timber rise to more than 18%.
- 6.7 In relation to these characteristics, I find that the house:
- Has apart from some roof overhangs, no eave or verge projections that could help protect the cladding;
 - Is in a high wind zone;
 - Is maximum two-storeys high;
 - Has exterior window and doors without jamb or sill inseal or flexible sealants;
 - Has an overall envelope that is relatively complex on plan, with roofs having hip and wall to roof junctions;
 - Has one high-level cantilevered balcony; and
 - Has external wall framing that is likely to be constructed of timber that is unlikely to resist the onset of decay if it absorbs and retains moisture.

Weathertightness performance

- 6.8 I find that the monolithic cladding in general does not appear to have been installed according to good trade practice. As a result, there are a number of identified defects, set out in paragraph 5.1 and in the expert's report, which have contributed to the levels of moisture penetration already evident in many locations in the external walls of the house. The main areas of concern are the lack of control joints and capillary gaps, the inappropriate sealing of the backing sheet joints, the evidence of cracking, insufficient ground clearance, concerns with the apron flashings and parapet cappings, and the lack of inseal or sealants to the jambs and sills of the external windows and doors. In addition, the external wall framing timber is in all likelihood

not treated, and thus unable to delay the onset of decay if it gets wet. As reported by the expert, there is already visible evidence of decayed timber wall framing.

- 6.9 In making this decision, I have carefully considered the architect's letters concerning the construction of the building, especially as regards control joints. However, I am of the opinion that the lack of joints as identified by the expert must be rectified. In addition, I also accept that the 1998 issue of the manufacturer's recommendations is the appropriate document to follow in respect of the cladding installation.
- 6.10 I note that one elevation of the buildings demonstrates a medium weathertightness risk rating and the remainder of the elevations a high rating when calculated by the E2/AS1 risk matrix. The matrix is an assessment tool that is intended to be used at the time of application for consent, before the building work has begun and, consequently, before any assessment of the quality of the building work can be made. Poorly executed building work introduces a risk that cannot be taken into account in the consent stage, but must be taken into account when the building as constructed is assessed for the purposes of issuing a code compliance certificate.

7 CONCLUSION

- 7.1 I am satisfied that the performance of the monolithic cladding is inadequate because it has not been installed according to good trade practice. In particular, it demonstrates the key defects listed in paragraphs 5.1. I have also identified the presence of some known weathertightness risk factors in this design. The presence of the risk factors on their own is not necessarily a concern, but they have to be considered in combination with the significant faults identified in the cladding system. It is that combination of risk factors and faults that indicate that the structure does not have sufficient provisions that would compensate for the lack of a ventilated cavity. Consequently, I am not satisfied that the cladding system as installed complies with clause E2 of the building code.
- 7.2 In addition, the building is also required to comply with the durability requirements of clause B2. Clause B2 requires that a building continues to satisfy all the objectives of the building code throughout its effective life, and that includes the requirement for the house to remain weathertight. Because the cladding faults in the house are allowing the ingress of moisture, the house does not comply with the durability requirements of clause B2.
- 7.3 I find that because of the apparent complexity of the faults that have been identified with this cladding, I am unable to conclude, with the information available to me, that remediation of the identified faults, as opposed to partial or full recladding, could result in compliance with clauses B2 and E2. I consider that any final decisions on whether code compliance can be achieved by either remediation or recladding, or a combination of both, can only be made after a more thorough investigation of the cladding. This will require a careful analysis by an appropriately qualified expert as to the correct remedial option to be followed. Once that decision has been made, it should be submitted to the territorial authority for its comment and approval. If the territorial authority chooses to reject the proposal, then the owner is entitled to seek a further determination that will rule on whether the proposed remedial work will comply with the requirements of clauses E2 and B2.

- 7.4 I note that effective maintenance of monolithic claddings is important to ensure ongoing compliance with clause B2 of the building code. That maintenance is the responsibility of the building owner. The code assumes that the normal maintenance necessary to ensure the durability of the cladding is carried out. For that reason clause B2.3.1 of the building code requires that the cladding be subject to "normal maintenance". That term is not defined and I take the view that it must be given its ordinary and natural meaning in context. In other words, normal maintenance of the cladding means inspections and activities such as regular cleaning, re-painting, replacing sealants, and so on.
- 7.5 In the circumstances, I decline to incorporate any waiver or modification of the building code in its determination.

8 THE DECISION

- 8.1 In accordance with section 20 of the Act, I hereby determine that the monolithic cladding system as installed does not comply with clauses B2 and E2 of the building code and accordingly confirm the decision of the territorial authority to refuse to issue a code compliance certificate.
- 8.2 I note that the territorial authority has not issued a Notice to Rectify. The territorial authority should do so and the owner is then obliged to bring the house up to compliance with the building code. It is not for me to decide directly how the defects are to be remedied and the cladding brought to compliance with the building code. That is a matter for the owner to propose and for the territorial authority to accept or reject, with either of the parties entitled to submit doubts or disputes to the Chief Executive for another determination.
- 8.3 Finally, I consider that continuing maintenance of the cladding will be required to ensure its continuing building code compliance.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing
on 21 March 2005.

John Gardiner
Determinations Manager