

## Determination 2006/71

### Refusal of a code compliance certificate for a building with a monolithic cladding system at 647 Pipiwai Road, RD6, Whangarei



#### 1. The dispute to be determined

1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> (“the Act”) made under due authorisation by me, John Gardiner, Determinations Manager, Department of Building and Housing, for and on behalf of the Chief Executive of that Department. The applicant is Mr Tee of Morton Tee and Co (“the applicant”), who is the solicitor and agent acting on behalf of the owner, Mr Laby of McLaren Homes Ltd (“the owner/developer”) and the other party is the Whangarei District Council (“the territorial authority”).

1.2 The dispute for determination is whether the territorial authority’s decision to decline to issue a code compliance certificate for a 6-year-old house because it was not

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<sup>1</sup> The Building Act 2004 is available from the Department’s website at [www.dbh.govt.nz](http://www.dbh.govt.nz).

satisfied that the monolithic cladding complied with clauses B2 “Durability” and E2 “External Moisture” of the Building Code<sup>2</sup> (First Schedule, Building Regulations 1992) is correct.

1.3 The questions to be determined are:

### 1.3.1 Issue 1: The original code compliance certificate

Whether I should confirm, reverse or modify the territorial authority’s refusal to accept the validity of a code compliance certificate for the building that was issued by a building certifier under section 56 of the Building Act 1991.

### 1.3.2 Issue 2: The exterior wall cladding

Whether I am satisfied on reasonable grounds that the monolithic wall cladding as installed to the external walls of the building (“the cladding”), complies with the Building Code (see sections 177 and 188 of the Act). By “the monolithic wall cladding as installed” I mean the components of the system (such as the backing materials, the flashings, the joints and the plaster and/or the coatings) as well as the way the components have been installed and work together.

1.4 In making my decision, I have considered the submissions of the parties, the report of the independent expert commissioned by the Department to inspect the house (“the expert”), and the other evidence in this matter. I have evaluated this information using a framework that I describe more fully in paragraph 7.1. I have not considered any other aspects of the Act or the Building Code.

## 2. The building

2.1 The building work consists of a house (with an attached garage), which is two storeys in part. The building is situated on a large flat rural site, which is in a high wind zone for the purposes of NZS 3604. The wall structure is a proprietary wood-based panel system, with timber framed floors and roofs, aluminium windows and monolithic wall cladding. The house has a fairly simple shape, with a 38° profiled metal gable roof that rises to 2-storey height at the ridge, with the upper floor accommodated beneath the roof plane. An upper level dormer window and several lower level gables project from the main roof, while the garage roof extends as a 4° monopitch from the house walls. The lower gable to the front of the house incorporates a large arch-topped window. A 2-storey high gable extends from the upper roof level to form an entrance canopy that is supported by monolithic clad columns and beams. Eaves projections are generally 300mm while verge projections are 200mm.

2.2 The walls to the building are formed from wood-based structural panels, which are a proprietary “Triboard” system that appears to consist of 4000mm x 2450mm x 36mm thick panels formed from reconstituted wood fibres with an inner core of wood strands sandwiched between surface layers of medium density fibre. I note that the BRANZ Appraisal Certificate for the product notes that “...exterior cladding system,

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<sup>2</sup> The Building Code is available from the Department’s website at [www.dbh.govt.nz](http://www.dbh.govt.nz).

including joints, openings and perimeter junctions must be maintained to ensure adequate protection is continually provided against water ingress”.

- 2.3 The cladding system applied to the exterior walls of the building is a hybrid form of monolithic cladding, and the expert reports that it appears to be an EIFS system similar to “Insulclad” consisting of 40mm thick polystyrene backing sheets fixed directly to the Triboard panels through the building wrap and finished with an applied 5 mm mesh-reinforced “Putz-Technik” plaster system and a flexible acrylic paint coating. The cladding below the ground floor level consists of fibre cement backing sheets fixed directly to the subfloor framing (apparently with no building wrap) and finished with the same coating system as the EIFS, but without the mesh.
- 2.4 I have seen no evidence of producer statements or warranties for the wall cladding. I also note that the expert reports that there is no evidence of the EIFS system having been supplied by a single recognised proprietary installer. In a letter dated 24 April 2001, Putz-Technik New Zealand Ltd stated that the applied render “will not allow (liquid) water to pass through the profile of the plaster and, in fact, can be used as a waterproofing membrane”.

### **3. Sequence of events**

- 3.1 The territorial authority issued a building consent on 9 February 1999 to the owner/developer, based on a building certificate (dated 4 February 1999) issued by Building Certifiers (Whangarei) Ltd (“the building certifier”) for the purposes of gaining a building consent.
- 3.2 The building certifier carried out all inspections during construction of the house, including a “preline” inspection on 24 April 1999. There appears to have been no specific inspection of the backing sheets, flashings or plaster, as the next inspection appears to have been a drainage inspection on 6 August 1999 (after the wall cladding was in place).
- 3.3 The building certifier carried out the final inspection on 3 December 1999 and approved all of the exterior cladding. Recheck inspections of 3 minor outstanding items were carried out on 19 January 2000 and 15 February 2000, and the latter inspection noted “all worked completed and complies with NZ Building Code.”
- 3.4 The building certifier subsequently issued a code compliance certificate that was not dated. It seems (from the sequence of correspondence) that the certificate was issued at the beginning of 2000.
- 3.5 Sometime early in 2000, it appears that the owner/developer entered into a contract to sell the house. The purchasers (“the interim owners”) had apparently viewed the house at an “open home” and had entered into a contract to purchase the property. I am not aware of any conditions involved in that contract, or whether the sale was finalised.

3.6 In a letter dated 28 June 2000, the building certifier advised the territorial authority of his intention to withdraw the code compliance certificate, and in a subsequent letter dated 13 July noted that:

As previously advised we withdrew the Code Compliance Certificate for the above dwelling because of water leaking problems that have come to light during recent bad weather.

The builder/applicant is making little if any effort to remedy the work (other than wanting to put more paint on) and we are advised by the new owners that new leaks “are appearing daily”.

There have been numerous reports done on the dwelling which are all held by [one of the interim owners] who works at [place of work].

We urgently require a Notice to rectify to be issued for the repair of the dwelling.

3.7 The territorial authority issued a Notice to Rectify dated 14 July 2000 to the owner/developer under section 42 of the Building Act 1991, requiring remedial work to be commenced within 10 working days. The particulars of contravention attached to the notice stated that the building:

...does not comply with E2.2 of the New Zealand Building Code which states that buildings shall be constructed to provide adequate resistance to penetration by and the accumulation of moisture from outside.

This has been identified by internal flooding and appears to be caused by a lack of adequate flashings but there may be other reasons as well.

3.8 In the meantime, it appears that the leaking problems continued and, following legal advice the interim owners commissioned an investigation to be carried out by a BRANZ Accredited Advisor, Mr Alexander (“the consultant”), who inspected the house on 9 August 2000 and produced a detailed “Report on water damage” dated 8 September 2000. The consultant’s report was a detailed one – covering the moisture damage, apparent defects and the construction history, including the roles of the contractor and building certifier in the poor condition of the house. The consultant also outlined the extensive remedial work that he considered necessary in order to repair the building and to make it code compliant. The consultant concluded that:

Within 12 months of completion the dwelling has failed to satisfy numerous functional and performance requirements of the NZ Building Code. There is extensive overland flow of stormwater accumulating under the floor of the dwelling. There is extensive ingress of moisture into the Triboard panels. There are numerous causes of the moisture ingress into the Triboard and each cause is detailed in this report. The most common cause of leaking is poor window installation.

The consultant also concluded that:

It was appropriate for the Building Certifier to withdraw the Code Compliance Certificate and notify the Local Authority of the defects present at the dwelling. The Local Authority were required to issue a Notice to Rectify upon the receipt of the notification by the Building Certifier that the Code Compliance Certificate had been withdrawn.

3.9 It appears that the owner/developer subsequently commissioned a separate investigation to be carried out by R.F.Gale and Associates Ltd (“the engineer”), who inspected the house and commented on the findings of the consultant’s report in a report dated 23 November 2000. The engineer disagreed with various aspects of the consultant’s report, noting that the window installation was typical of similar EIFS buildings. The engineer outlined the remedial work (less extensive than that

recommended by the consultant) considered necessary in order to repair leaking areas in the building, and concluded:

This house is typical of many built using the same typical details and of a number built using this basic plan. To my knowledge the system is satisfactory. In this case, there appears to be two main causes of difficulty, water running under the house, and a bad front window detail. Both these items can be remedied. After the sources of moisture have been remedied, the Triboard should be left to dry over the summer and the finishing redone. In my opinion, the wetting will not have caused significant deterioration in strength.

- 3.10 The interim owners subsequently took a claim to Building Disputes Tribunal (NZ) Ltd (with the consultant's report as the basis of the claim), and the owner/developer commissioned a report on the house from a construction disputes consultant ("the disputes consultant"), who examined the two earlier reports and other evidence, inspected the house on 29 March 2001 and provided a report dated 2 April 2001. The disputes consultant generally agreed with most of the consultant's findings with regard to defects but not with the extent of the remedial work required, noting:

Mr Alexander recommends the removal of all of the EIFS cladding. I do not agree that that is necessary in this house. Some areas, particularly those that have been badly affected by leaking, will need some removal of the polystyrene and reconstruction; but I believe that the areas are localised and, in terms of the overall area of the house, are relatively small.

...before one goes into a process of extensive replacement, I believe a prudent exercise would be to take core samples in suspect areas, which can then finally establish whether the Triboard has been seriously damaged and needs to be replaced.

- 3.11 Building Disputes Tribunal (NZ) Ltd considered the claim and the other evidence and, in a report dated 18 July 2001, provided its decision as to the remedial work required to bring the house into compliance with the building code (which was generally in line with the conclusions of the disputes consultant as outlined in paragraph 3.10).
- 3.12 I note that no subsequent correspondence refers to the interim owners, so it seems that ownership of the house subsequently reverted to the owner/developer. I also note that the owner/developer appears to have relocated, as further correspondence was addressed to him at Whitecliff Timber Ltd in Auckland.
- 3.13 In a letter dated 16 October 2001 to the owner/ developer, the territorial authority noted:
- ... in answer to the letter dated 27 September 2001, the option you suggested at the conclusion of employing another certifier would be a suitable option. Council would be required to take the consent to the Code Compliance Certificate stage if you so desired but as our contractor was employed in the early stages of the complaint against the builders I think it would be better for all concerned if a Certifier was employed.
- 3.14 A second certifier became associated with inspecting remedial work that was subsequently carried out on the building (including additional site drainage work). In a letter to the owner/developer dated 6 May 2002, the second certifier reported on the work carried out and concluded that he believed the work was "reasonable and practicable". I note that the remedial work undertaken appeared to cover only part of

the work recommended in the consultant's report and excluded any removal of wall claddings or window joinery. The second certifier concluded:

I see no reason why an application to the Whangarei City Council cannot be made to reinstate the Code Compliance Certificate.

- 3.15 The second certifier sent a copy of his report to the territorial authority attached to a letter dated 6 May 2002, stating:

I believe the remedial works have been completed satisfactorily and would request that the Code Compliance Certificate be reinstated.

- 3.16 I am not aware of any further correspondence until the owner/developer requested a code compliance certificate some two years later. In a letter dated 29 July 2004, the territorial authority informed him that the building already had a code compliance certificate, and attached a copy of the certificate. This error was corrected in a subsequent letter dated 10 August 2004, which noted that the original certificate had been withdrawn by the building certifier. The territorial authority explained that, although the second certifier had requested reinstatement of the certificate following completion of remedial work, he had not issued a building certificate for the building. The territorial authority therefore refused to issue a code compliance certificate as it did not:

...accept the report from the above certifier as adequately complying with NZ Building Act 1991. Please seek a determination from the B.I.A in regards to achieving code compliance and issuing Code Compliance Certificate.

- 3.17 At this stage, it appears that the owner/developer engaged the applicant as his legal representative in this matter. In a letter to the territorial authority dated 25 August 2004 the applicant asked that the code compliance certificate be confirmed as valid and that the Notice to Rectify be withdrawn. Following telephone discussions, a subsequent letter dated 22 September noted that the applicant had instructions to issue proceedings in the High Court if agreement could not be reached and noted:

There is an obligation on the issuer to ensure that it is appropriate for a code compliance certificate to be issued. They cannot subsequently protect their own position by purporting to withdraw the same.

It follows that if a code compliance certificate has been issued, it cannot be withdrawn, and that as a consequence a Notice to Rectify cannot be validly served.

- 3.18 It appears that the owner/developer contacted the Department in December 2004 with regard to the status of a withdrawn code compliance certificate, and in a facsimile dated 28 January 2005, the Department noted that:

...it is our view that there is no power under the 1991 or 2004 Act to withdraw a Code Compliance Certificate after it has been granted.

However, the Department also pointed out that the repairs to the house were a different issue, which would have required consultation with the territorial authority and possibly a consent before the work was undertaken – with a code compliance certificate issued when the work was completed to the territorial authority's satisfaction.

3.19 Correspondence between the applicant and the territorial authority continued without resolution of the dispute and the last letter was from the territorial authority to the applicant dated 21 March 2005, which noted

...I reiterate that the Whangarei District Council considers we have no responsibility for this matter and we maintain our denial of liability”.

3.20 In a letter to the Department dated 26 August 2005, the applicant provided a brief description of the dispute with the territorial authority, and noted that:

Council has suggested that we give consideration towards a request being made to your Department for a determination and we would be grateful if you could confirm the position accordingly.

3.21 An application for determination was received by the Department on 15 November 2005. Following further correspondence, the owner/developer authorised the applicant to act on his behalf. This information was received by the Department on 22 March 2006.

#### **4. The submissions**

4.1 In the application, the applicant noted that the “Matter of doubt or dispute” was:

Refusal by Council to issue a code compliance certificate, or to confirm that the code compliance certificate which was originally issued remains effective, together with a notice to rectify issued.

4.2 The applicant forwarded copies of:

- some of the building plans
- some of the inspection records
- the Notice to Rectify
- some of the correspondence with the territorial authority
- various other statements, correspondence and information.

4.3 The territorial authority made no submission, and forwarded copies of:

- the consent documentation
- the inspection records
- the consultant’s report
- the correspondence from the building certifier
- the Notice to Rectify
- some of the correspondence with the applicant.

- 4.4 Copies of the submission and other evidence were provided to each of the parties. Neither party made any further submissions in response to the submission of the other party.
- 4.5 A copy of the draft determination, dated 21 June 2006, was provided to each of the parties. The territorial authority accepted the draft determination on 29 June 2006.
- 4.6 In a letter to the Department dated 13 July 2006, the applicant stated the draft determination was not accepted due to various concerns as follows:
- the description of Triboard as an interior product is incorrect, as it can be used externally with proper coatings
  - there are producer statements and warranties available for the structural wall panel system, which can be supplied
  - other reports were obtained around the same time as the consultant's report and these should be added to the determination
  - the potential implications of the finding that a code compliance certificate can be withdrawn are concerning
  - the description that the cladding is not a recognised proprietary system is challenged.
- 4.7 The application provided additional information, and forwarded copies of:
- BRANZ Appraisal Certificate No. 481 (2005) issued 29 June 2005
  - the engineer's report dated 23 November 2000
  - the disputes consultant's report dated 2 April 2001
  - the letter dated 18 July 2001 from Building Disputes Tribunal (NZ) Ltd.
  - various other statements, correspondence and information.
- 4.8 I have considered the applicant's comments and the additional information, and have amended the draft to include the additional information as I consider appropriate.

## **5. Existing code compliance certificate**

- 5.1 The territorial authority has refused to accept that the building has a valid code compliance certificate as it was subsequently withdrawn by the building certifier.
- 5.2 I take the view that the documentation provided is, in the absence of any evidence to the contrary, sufficient to establish that, between February and July 2000, the house was issued with a code compliance certificate by the building certifier who was a registered building certifier at the time. I consider that the documentation provided



also establishes that the building certifier withdrew the code compliance certificate on 13 July 2000.

- 5.3 The validity of the original code compliance certificate is dependent on whether the house complied with the building code when the code compliance certificate was issued. If the house did not comply, then the code compliance certificate was improperly issued at the time. I therefore consider that, if the building certifier later considered the house had not complied with the building code when he issued the code compliance certificate (and had therefore been improperly issued at the time), then he was entitled to withdraw that certificate. It follows that the territorial authority was then obliged to issue a Notice to Rectify under section 42 of the Building Act 1991.
- 5.4 In the absence of any evidence to the contrary, I consider the consultant's report establishes that (at the date of his inspection on 9 August 2000) the house did not comply with the building code. The consultant's inspection was carried out less than 8 months after completion of the building, and reported that the building had been experiencing leaks for some time. From the evidence of that report I conclude that the building would not have complied with the building code when the code compliance certificate was originally issued, and I therefore consider that the code compliance certificate was improperly issued at the date of issue.
- 5.5 Following the withdrawal of the code compliance certificate and the issue of the Notice to Rectify, some remedial work was undertaken on the house. Whether that repair work was sufficient to make the building cladding code compliant is now the subject of this determination.

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

- 6.1 The expert inspected the claddings of the building on 2 May 2006, and furnished a report that was completed on 8 May 2006. The expert noted that windows have been face-fixed against the cladding, with head flashings provided.
- 6.2 The expert took non-invasive moisture readings through interior linings throughout the house, and noted elevated readings in a number of areas. The expert noted evidence of extensive damage to interior linings in a number of locations, with holes indicating that past moisture testing had been carried out.
- 6.3 The expert took a number of invasive moisture readings through the linings and the wall claddings, and noted that invasive readings obtained were consistently lower than those from non-invasive moisture tests. The expert was not able to explain the inconsistencies in the readings. The following elevated invasive readings were recorded:
- more than 50% under the arched window, with saturated Triboard noted
  - 19% under the southeast bedroom window
  - 27% under the southeast dormer window.

Moisture levels above 18% recorded after cladding is in place generally indicate that external moisture is entering the structure. I note that the inconsistencies in the readings, noted by the expert, may be due to moisture being trapped within the sandwich layers of the Triboard and travelling laterally in unpredictable ways.

6.4 The expert made the following specific comments on the cladding:

- there is little or no clearance from the cladding to the ground, paving or to entry steps around the building
- there are cracks to the cladding at a number of locations
- windows are face-fitted, with no flashings at jambs or sills and the coating finishes against or over the window flanges, with cracks and gaps showing in some locations and no drainage provided at sills. There was evidence of poorly executed attempts at past repairs
- there are inadequate projections of the head flashings beyond the window jambs
- the window installation did not accord with the manufacturer's instructions for similar types of EIFS cladding
- penetrations through the cladding are unsealed or poorly sealed in some locations
- I also note that no horizontal flashing or movement joint has been provided at the junction between the EIFS wall cladding and the plastered fibre-cement cladding to the subfloor framing.

6.5 Copies of the expert's report were provided to each of the parties.

## **7. Evaluation for code compliance**

### **7.1 Evaluation framework**

7.1.1 In evaluating the design of a building and its construction, it is useful to make some comparisons with the relevant Acceptable Solution<sup>3</sup>, in this case E2/AS1, which will assist in determining whether the features of this house are code compliant. However, in making this comparison, the following general observations are valid:

- Some Acceptable Solutions cover the worst case, so that they may be modified in less extreme cases and the resulting alternative solution will still comply with the Building Code.

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<sup>3</sup> An Acceptable Solution is a prescriptive design solution approved by the Department that provides one way, but not the only way, of complying with the Building Code. The Acceptable Solutions are available from the Department's website at [www.dbh.govt.nz](http://www.dbh.govt.nz).

- 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.

7.1.2 The approach in determining whether building work is weathertight and durable and is likely to remain so, is to apply the principles of weathertightness. This involves the examination of 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. The Department and its antecedent, the Building Industry Authority, have also described weathertightness risk factors in previous determinations (refer to Determination 2004/1 *et al*) relating to cladding and these factors are also used in the evaluation process.

7.1.3 The consequences of a building demonstrating a high weathertightness risk is that building solutions that comply with the Building Code will need to be more robust. Conversely, where there is a low weathertightness risk, the solutions may be less robust. In any event, there is a need for both the design of the cladding system and its installation to be carefully carried out.

## 7.2 **Weathertightness risk**

7.2.1 In relation to these characteristics I find that the building:

- is built in a high wind zone
- is a maximum of two storeys high
- is fairly simple in plan and in form
- has eaves projections of 300mm and verge projections of 200mm
- has monolithic cladding which is fixed directly to the structure
- has a structure formed from wood-fibre-based panels, which must remain dry to preserve their strength.

7.2.2 When evaluated using the E2/AS1 risk matrix, these factors show that elevations of the building demonstrate a low to moderate weathertightness risk. 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 actually built is assessed for the purposes of issuing a code compliance certificate.

## 7.3 **Weathertightness performance**

7.3.1 I find that the monolithic cladding system generally (including the window installation) does not appear to have been installed according to good trade practice. As a result, there are significant defects identified in paragraph 6.4, which are likely

to have contributed to the moisture and damage already evident in the external walls of this house.

## 8. Conclusion

- 8.1 I am satisfied that the current performance of the monolithic cladding is not adequate because, apart from the “Triboard” elements, it is not a recognised proprietary system in its entirety, and it has not been installed according to good trade practice. Consequently it is allowing significant water penetration into the walls at a number of locations at present. In my opinion, it is unlikely that targeted remedial work can result in the cladding meeting any acceptable standard or in assuring the structural integrity of the wall panel system. 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 defects, identified in paragraph 6.4, in the cladding system and in the other reports supplied by the parties. It is that combination of risk factors and defects, together with the current moisture penetration and panel damage, which indicate that the structure does not have sufficient provisions that would compensate for the lack of a full drainage cavity. Consequently, I am satisfied that the cladding system as installed on the building does not comply with clause E2 of the Building Code.
- 8.2 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 on the building are likely to continue to allow the ingress of moisture in the future, the house does not comply with the durability requirements of clause B2.
- 8.3 The expert has identified the ingress of moisture into the wall panels of the building, and the presence of damage in at least one location. I note that moisture penetration into the wall panel system has been evident for some 6 years and I consider that damage to the wall structure is probable. I recommend that the territorial authority urgently require an investigation into the condition of all of the structural panels, followed by the carrying out of any remedial work necessary to ensure the structural stability of the house structure.
- 8.4 When the house is code compliant, effective maintenance of the cladding will be important to ensure ongoing compliance with clauses B2 and E2 of the Building Code and is the responsibility of the building owner. Clause B2.3.1 of the Building Code requires that the cladding be subject to “normal maintenance”, however that term is not defined in the Act.
- 8.5 Should remedial work to the building be acceptable to the territorial authority and the house made code compliant, then periodic checking of the moisture content of the structural wall panels should also be carried out as part of normal maintenance as the panels are unable to withstand moisture without incurring damage.
- 8.6 In the circumstances, I decline to incorporate any waiver or modification of the Building Code in this determination.

## **Issue 1: The original code compliance certificate**

### **9. Discussion**

- 9.1 As outlined in paragraph 5, I take the view that the documentation provided by the parties is sufficient to establish that the building was issued with a code compliance certificate by the building certifier who subsequently withdrew the certificate. I note that the validity of a code compliance certificate is also dependent on whether the building work complied with the building code at the time it was issued. If that was not the case, then the code compliance certificate was improperly issued at the time.
- 9.2 I consider that the past and current investigations into this building have provided evidence that the cladding to the building did not and still does not comply with the building code. I consider that the code compliance certificate was improperly issued at the time and therefore does not constitute a valid code compliance certificate.

### **10. The decision**

- 10.1 I confirm the territorial authority's refusal to accept the validity of the code compliance certificate for the building that was issued by a building certifier under section 56 of the Building Act 1991, and subsequently withdrawn by the same certifier.
- 10.2 I also confirm the building certifier's withdrawal of the code compliance certificate and the subsequent issue of the Notice to Rectify by the territorial authority.

## **Issue 2: The exterior wall cladding**

### **11. The decision**

- 11.1 In accordance with section 188 of the Act, I hereby determine that the monolithic cladding system as installed does not comply with clauses E2 and B2 of the Building Code. I also determine that it is likely that the building does not comply with clause B1 Structure of the Building Code. Accordingly, I confirm the territorial authority's decision to refuse to issue a code compliance certificate following completion of certain remedial work.
- 11.2 I note that the territorial authority has issued a Notice to Rectify for the building. The territorial authority should now withdraw this notice and issue a notice to fix for the building that requires the owners to bring the cladding and the structure of the building into compliance with the building code. The notice to fix may list the items to be rectified but it should not specify how compliance is to be achieved as this is for the owner to propose and for the territorial authority to accept or reject. It is important to note that the Building Code allows for more than one method of achieving compliance.

- 11.3 I would suggest that the parties adopt the following process to meet the requirements of paragraph 11.2. Initially, the territorial authority should issue the notice to fix, listing all the items that the territorial authority considers to be non-compliant. The owner should then produce a response to these in the form of a detailed proposal for the building as a whole, produced in conjunction with a competent and suitably qualified person, as to the rectification or otherwise of the specified issues. Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 9 August 2006.

John Gardiner  
**Determinations Manager**