

## Determination 2010/070

### The issue of notices to fix for alterations to a building at 14/15/16 Waiheke Resort, 4 Bay Road, Waiheke Island, Auckland



#### 1. The matters to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004<sup>1</sup> made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The applicants are the owners of an accommodation building, P and M Vukovic (“the applicants”), acting via a property management company (“the management company”), and the other party is the Auckland City Council (“the authority”) carrying out its duties and functions as a territorial authority or building consent authority.
- 1.2 This determination arises from the decision of the authority to issue notices to fix for cladding alterations to the building (“Building AN”) because the work was carried out without a building consent and it was not satisfied that it complied with certain clauses<sup>2</sup> of the Building Code (First Schedule, Building Regulations 1992).

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

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

1.3 The matter to be determined<sup>3</sup> is therefore whether the authority was correct to issue the notices to fix for Building AN. In deciding this, I must consider:

- **The appropriate notices to issue**

Whether the issue of notices to fix was the appropriate statutory mechanism to be applied if the buildings were dangerous or insanitary (I consider this in paragraph 6)

- **The external claddings**

Whether the altered wall cladding (“the cladding”) complies with Clause B2 Durability and Clause E2 External Moisture of the Building Code. The cladding includes the components of the systems (such as the fibre-cement backing sheets, the coatings, the underlying plywood sheets, the re-installed windows, the flashings and the junctions with the original construction), as well as the way the components have been installed and work together. (I consider this in paragraph 8.)

- **Other relevant code clauses**

Whether various other items identified by the authority in the notice to fix comply with the relevant clauses of the Building Code (I consider this in paragraph 8.7.).

## 1.4 Matters outside this determination

1.4.1 The notices to fix cite contraventions of all clauses of the Building Code. However, I note that the specific items within the notice are limited to Clauses B1 Structure, B2 Durability, E2 External Moisture, E3 Internal Moisture, F2 Hazardous Building Materials, G9 Electricity, G12 Water Supplies and G13 Foul Water. This determination does not consider the remaining clauses of the Building Code.

1.4.2 Notices to fix were also issued for alterations carried out to five chalets in the same development (Units 2, 3, 5, 7 and 17). Although the owners of Building AN were part of the same application, the notices to fix for the chalets are considered separately in Determination 2010/65.

1.4.3 Building AN and Unit 17 had new decks added in 2000 under the same consent (YC/00/00732) issued under the Building Act 1991 (“the former Act”). A code compliance certificate was issued for that consent on 28 November 2002; and this determination therefore does not consider the deck to this building.

1.5 In making my decision, I have considered the submissions of the parties, the report of the expert commissioned by the Department to advise on this dispute (“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.

## 2. The building work

2.1 Building AN is part of a larger ‘resort’ development situated on a steeply sloping north-facing site in a high wind zone for the purposes of NZS 3604<sup>4</sup>. The resort is operated as a holiday and conference venue and has about 52 accommodation units; ranging from small detached ‘chalets’ and motel-style ‘studios’ up to larger ‘villas’.

<sup>3</sup> Under section 177(b)(iii) of the Act

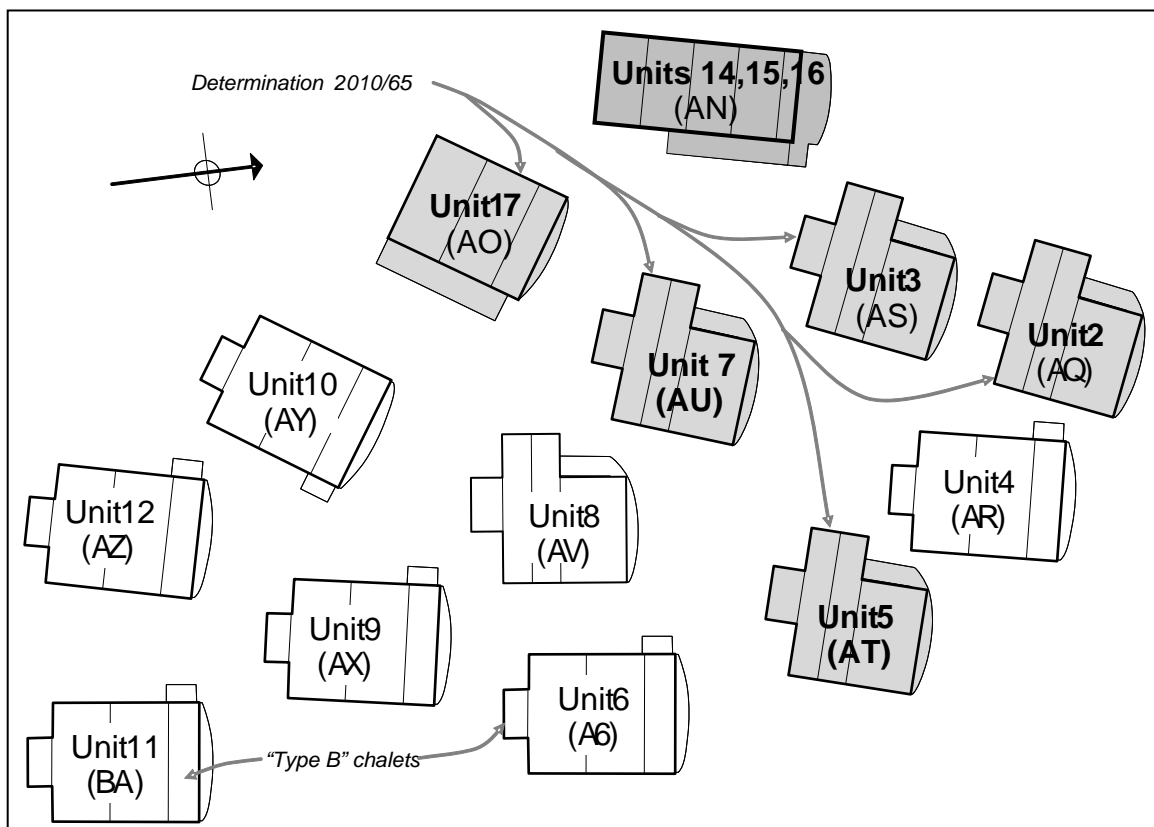
<sup>4</sup> New Zealand Standard NZS 3604:1999 Timber Framed Buildings

## 2.2 The development

- 2.2.1 The original development gained town planning consent in 1982 to establish a holiday park, which included a restaurant/kitchen, ablution blocks, an amenities building and 12 cabins (the chalets). These original buildings (including Building AN as an amenities building) were constructed prior to 1985<sup>5</sup>.
- 2.2.2 In 1990 the development was subdivided and consent was granted to unit title the accommodation buildings in 1996. The development has continued to expand since then; with new units and facilities added, along with many building consents issued for extending and altering the older buildings.

## 2.3 Building AN

- 2.3.1 Building AN has a single 'unit title' that includes 3 motel-style units. The building, together with neighbouring buildings, is shown in the following sketch:



- 2.3.2 It is not clear when Building AN was converted from its original function as an amenities building into three motel-style units. However, I note that a site plan dated June 1999 shows the building containing units 14, 15 and 16; indicating that the building had been subdivided prior to that time.
- 2.3.3 Construction is conventional light timber frame, with timber pile foundations, monolithic cladding, aluminium windows and profiled metal roofing. It has a rectangular plan and a 35° pitch double gable roof, with no eaves or verges and a low-pitched roof to the north (deck) end. A 3° pitch lean-to roof forms a covered

<sup>5</sup> Source: 1990 report on planning applications and consents

walkway over the entry doors on the east elevation. The building is assessed as having a low to moderate weathertightness risk (see paragraph 8.2).

- 2.3.4 The monolithic wall cladding consists of 7.5mm fibre-cement sheets fixed through the original 14mm V-grooved plywood cladding and building wrap to the framing, and finished with an applied textured coating system. Below floor level, the fibre-cement is installed directly over the framing, with the back of the sheets exposed to the sub-floor area.
- 2.3.5 The expert took a sample from the original plywood cladding and forwarded it to a testing laboratory for analysis. The biodeterioration consultant's analysis confirmed that the plywood samples were CCA treated to a level equivalent to about H3.2. Given the date of the original construction in about 1984, I consider that the exterior wall framing is likely to be boric-treated.

### **3. Background**

- 3.1 The authority issued a building consent (No. YC/00/00732) dated 15 February 2000 for 'additions and repairs to decks on units 1 (AM), 14/15/16 (AN) and 17 (AO). The building work under that consent was subsequently issued with a code compliance certificate dated 28 November 2002. This building consent did not include any building work to the cladding of Building AN.
- 3.2 Based on a letter dated 27 March 2000 from the authority's building inspector to the management company, confirming that he had inspected deck additions including to the north wall of Building AN on 24 March 2000, and as the deck was constructed against the original plywood, the new cladding to this building would have been installed some time after March 2000.

### **3.3 The notices to fix for Block AN**

- 3.3.1 In order to clarify the status of some older outstanding building consents, the authority carried out inspections of various buildings in the development and issued notices to fix depending on the results of those inspections. While on site, the authority noted that cladding alterations had been carried out to Building AN.
- 3.3.2 On 26 June 2008, the authority wrote to the owners of Building AN. The authority explained that it had inspected buildings in the development and had noted that the building had been re-clad without a building consent. The authority could not be satisfied that the building work was code compliant and recommended that they:
- ...engage the services of a suitably qualified person to review the attached NTF and to develop a proposed scope of work, which in their view would address all the areas of contravention. Council will then review this proposal and if it agrees with it, will then advise you as to whether a building consent needs to be applied for.
- 3.3.3 The authority issued identical notices to fix dated 5 November 2008 for each unit, which stated that it was not satisfied that the building work complied with some clauses of the Building Code, or with the Building Act.

- 3.3.4 The 'particulars of contravention or non-compliance' listed the following summarised defects for the building:

**Table 1**

<b>2.0</b>	<b>Issues related to cladding</b>
	Wall cladding changed without consent
<b>2.1</b>	<b>Items not installed per NZ Building Code</b>
a)	Roofing system not weatherproof and not to roofing code of practice
b)	Inadequate flashings to roof/wall junctions
c)	Gutter cleaning
d)	Numerous cracks and damage to cladding
e)	Cladding required behind gutters/fascias etc
f)	Inadequate window head flashings and no jamb or sill flashings
g)	Unsealed penetrations through cladding
h)	Insufficient clearances from bottom of cladding to deck
i)	No drainage gap at junction with decking
j)	Penetrations not supported, sloped and sealed
k)	Downpipes, pipework, cabling etc not adequately fixed or supported
l)	Sub-floor - Piles, framing, connections etc
m)	HWC in sub-floor not supported and restrained
n)	Sub-floor ventilation
o)	Insufficient clearances from bottom of cladding to ground and paving
p)	General lack of maintenance
q)	Out-of-date fire extinguisher
r)	Smoke detectors
s)	Safety glass to bathrooms
t)	Unsealed vanity to wall junctions
u)	Lack of vermin proof seals to vanity pipe penetrations
<b>2.2</b>	<b>Lack of drainage and ventilation of cladding</b>
<b>3.0</b>	<b>Durability issues</b>

- 3.3.5 The authority required the applicants to prepare a proposed scope of work 'prepared by a recognised building expert' to address the areas of non-compliance.
- 3.4 Correspondence between the management company and the authority followed without resolution, and the Department received an application from the property manager for Units 2, 3, 5, 7 and 17 on 18 November 2009. Due to their different size and design, those units are considered in Determination 2010/65.
- 3.5 On 2 March 2010, the owners of Building AN (Units 14/15/16) elected to join the application; and that building is considered separately in this determination.

## **4. The submissions**

- 4.1 The management company's submission outlined the background to the situation, explaining how the authority's inspections had led to a number of notices to fix being issued to the owners of various buildings in the development. The management company stated that few inspection records could be located.
- 4.2 The management company forwarded copies of:
- some inspection summaries
  - some correspondence with the authority
  - information from the LIM reports on buildings in the development
  - various drawings and other information.
- 4.3 The authority acknowledged the application; clarifying which buildings in the development were involved in the application and noting the building references used in the property records.
- 4.4 The authority forwarded copies of information and a CD-Rom that was entitled 'Property File'. The documents relating to the building work considered in this determination included:
- consent drawings for the deck additions
  - some inspection records for the deck additions
  - a letter dated 27 March 2000 from the authority's building inspector to the management company and the authority regarding the deck additions
  - the three notices to fix for Units 14, 15 and 16
  - various documents relating to the history of the development, including a 1990 report on planning applications and consents for the development.
- 4.5 A draft determination was issued to the parties for comment on 10 June 2010. The authority accepted the draft without comment. The applicant accepted the draft but noted that it appeared that the windows had been left in-situ rather than reinstalled. I have amended the determination as appropriate.

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

- 5.1 As mentioned in paragraph 1.5, I engaged an independent expert to assist me. The expert is a member of the New Zealand Institute of Building Surveyors. The expert inspected the units on 9 February, 5 March and 19 March 2010.
- 5.2 The expert provided a report that was completed on 12 April 2010. The report included the chalets, which are considered separately in Determination 2010/65. The following is therefore limited to information relevant to Building AN.

5.3 The expert included the following general comments on the wall cladding:

- The texture-coated fibre-cement cladding is installed directly over the original 14mm plywood sheet cladding. The underlying plywood sheets incorporate 9mm wide x 5mm deep vertical grooves at about 150mm centres.
- The deck was installed prior to the new cladding, with the original plywood cladding continuing down over the boundary joists. The overlaid fibre-cement finishes at the timber decking, with no gap at the junction.
- The cladding generally appears 'straight and is evenly finished' (except as noted in paragraph 5.6.1), although it is due or becoming due for repainting.
- The windows are face-fixed over the new cladding with metal head flashings that have varying projections beyond the jambs. (The applicant has noted that the existing windows appear to have been kept in-situ. The existing head flashings have been retained; with the textured coating applied over the head flashings).
- Cladding and floor level clearances above ground are generally satisfactory (except as noted in paragraph 5.6.1), as all floors are elevated above the sub-floor area. (As the sub-floor framing is exposed, I note that any moisture penetrating through that cladding should have no significant effect.)
- Pipe penetrations are from the sub-floor area rather than through the walls. The roof water is piped to storage and soakpits.

## 5.4 Moisture testing

5.4.1 The expert inspected the interior of the building and noted no visual evidence of moisture penetration. The expert took non-invasive moisture readings on the inside of interior walls, recording an average of 12% with the highest reading of 16% recorded below an upper west window.

5.4.2 The expert also took 10 invasive moisture readings on the south and west elevations at areas considered at risk and recorded readings between about 9% and 12% except for the following areas:

- more than 60% at a cladding crack below the roof valley, with soft and saturated drillings and evidence of decay
- 17% and 15% in the bottom plate the south west areas of the walls where ground clearances are limited
- 15% at an upper west window.

Moisture readings that vary significantly generally indicate that moisture is entering the framing and further investigation is required. I also note that the moisture testing was carried out at the end of a dry summer; and higher readings are expected during wetter periods.

## 5.5 Sample testing of the original plywood cladding

- 5.5.1 The expert removed a sample of the original plywood cladding from the bottom of a wall in close proximity to the ground and forwarded it to a testing laboratory for analysis. The expert noted that the original cladding had been installed over 'bituminous double-sided foil' building wrap.
- 5.5.2 The biodeterioration consultant's report confirmed that the plywood sample was 'almost certainly' CCA treated to a level equivalent to about H3.2; and reported 'pockets of early soft rot in the outer 1-2mm up to 40mm from the bottom edge'.

## 5.6 The notice to fix

- 5.6.1 The expert commented on the items identified in the notice to fix for the building as summarised in the following table. I have expanded on those comments where appropriate.

**Table 2**

	Identified defects	Expert's comments	My comments
<b>2.0</b>	<b>Issues related to cladding</b>		
	Wall cladding changed without consent		<i>No record of any consent</i>
<b>2.1</b>	<b>Items not installed per NZ Building Code</b>		
a)	Roofing system not weatherproof and not to roofing code of practice		<i>Main roof is original and unchanged, but walkway roof is affected by new cladding</i>
b)	Inadequate flashings to roof/wall junctions	Leaks at ends of valley gutters Wall/walkway junction unflashed.	
c)	Gutter cleaning	Debris build-up in gutters.	<i>This is routine maintenance</i>
d)	Numerous cracks and damage to cladding	Cracks and damage to west elevation.	
e)	Cladding required behind gutters/fascias	Cladding overlaid up to fascias.	<i>The original plywood cladding extended up behind fascias etc.</i>
f)	Inadequate window head flashings, no jamb or sill flashings	Jambs sealed with fillets of sealant applied at edge. Sealant failing in some areas. Ends of head flashings unsealed	
		Windows are face-fixed without sill flashings and drainage gaps.	<i>Face-fixed windows did not use sill flashings at the time.</i>
g)	Unsealed penetrations through cladding	No pipes through walls as main connections are through the floor	<i>Some fixings to downpipes, light fittings etc. may need sealing.</i>
h)	Cladding/deck clearances	Cladding butts against deck.	
i)	No drainage gap at junction with decking	Deck fixed against original plywood	<i>CCC issued for deck construction.</i>
j)	Penetrations not supported, sloped and sealed	No penetrations larger than 15mm through main walls – all pipe connections through floor.	<i>Some fixings to downpipes, light fittings etc. may need sealing.</i>
k)	Downpipes, pipework, cabling etc not adequately fixed or supported	Downpipe fixings inadequate.	
		Pipes and cables in sub-floor not supported. Some pipe gradients too low.	<i>Pre-existing. Unable to confirm when installed, but some may be original.</i>
l)	Sub-floor - Piles, framing, connections etc	Missing piles, connections etc.	<i>Sub-floor framing is original</i>



m)	HWC in sub-floor not supported and restrained	Old cylinder. Substandard - no platform or restraint.	<i>The cylinder appears original.</i>
n)	Sub-floor ventilation	Significant gaps under cladding.	
o)	Insufficient clearances from bottom of cladding to ground and paving	insufficient at south end.	
		Elsewhere no applicable	<i>As sub-floor walls are unlined.</i>
p)	General lack of maintenance	Generally 'average to poor'.	<i>This is maintenance</i>
q)	Out-of-date fire extinguisher	No fire extinguisher observed	<i>Unclear when interior work done.</i>
r)	Smoke detectors	No smoke detectors	<i>Not required at the time</i>
s)	Safety glass to bathrooms	Proprietary shower screens marked as safety glass.	<i>Unclear when interior work done</i>
t)	Unsealed vanity to wall junctions	Bathroom fixtures are adequately sealed.	<i>Unclear when interior work done</i>
u)	No vermin proof seals to vanity pipe penetrations	Not confirmed	<i>Existing unchanged pipework.</i>

5.7 The expert made the following additional comments on the claddings:

- There are no control joints installed to the long walls on the east and west.
- Some fibre-cement edges and other areas are unpainted.
- There are insufficient roof fixings for the high wind zone, insufficient overhangs at gutters and no over-flashing at the junction with the low-pitched roof. (However, I note that the main roof appears original.)

5.8 A copy of the expert's report was provided to the parties on 19 April 2010.

## 6. The appropriate notice to issue

6.1 Some defects have been identified which relate only to existing and/or original elements that have not been affected by the overlaid wall cladding. Some other defects relate to the deck, which was constructed under a building consent and issued with a code compliance certificate.

6.2 Defects in original or pre-existing construction cannot be required to be remedied, except in specific circumstances where they are found to be dangerous or insanitary under Section 121 of the Act. I do not consider that the notices to fix were appropriate to deal with specific concerns relating to the structural integrity or safety of the wiring of the original construction.

6.3 In regard to the above, taking account of the expert's report and the other evidence, I accept that the following areas of the original construction require investigation (the relevant clauses are noted in brackets):

- Investigation into the safety of the subfloor piles and framing (Clause B1)
- The unsupported/unsafe wiring in the subfloor areas (Clause G9).

6.4 If the above items are confirmed as being part of the original structure and are investigated and classified as dangerous in terms of s121(1)(a)(i); then the authority

is able to give written notice to ‘reduce or remove the danger’ under Section 124, which sets out the powers of territorial authorities in respect of dangerous buildings.

6.5 If items listed in paragraph 6.3 are part of the original construction, but are found not to be dangerous; I strongly recommend they be attended to along with the following additional items in the original construction noted in the expert’s report:

- The supports and restraints to the existing hot water cylinders (Clause B1)
- The unsupported pipework in the subfloor areas (Clauses G12 and G13)
- The inadequate pipe gradients in the subfloor areas (Clause G13).

## **6.6 The lack of a building consent for the cladding work**

6.6.1 The authority has identified the overlaid cladding as work carried out without a building consent in breach of Section 40 of the Act (refer Appendix, paragraph 12.1). The cladding work appears to have been undertaken at some time after the deck installation and there is no evidence that any building consent was applied for.

6.6.2 Section 41 (1) (b) of the Act states that a building consent is not required for any building work described in Schedule 1 (refer Appendix, paragraph 12.2), which includes repairs and maintenance where components are replaced with comparable components that are at least as good as the originals (for example, the replacement of a hot water cylinder in the same position).

6.6.3 I take the view that the addition of this overlaid cladding does not fall within the above category of repairs and maintenance, due to the following factors:

- The fibre-cement sheets are distinctly different in composition and moisture resistance from the original plywood cladding.
- The cladding installation has involved the removal and re-installation of the doors, along with the re-construction of the junction of the covered walkway with the walls.
- The new overlaid cladding has the potential to significantly affect the weathertightness of the walls.

6.6.4 I therefore consider that a building consent should have been sought for the cladding work to this building. However, I also note that even if a building consent had not been required, the cladding alterations would still need to comply with the Code.

6.7 Although I consider that it was appropriate to issue notices to fix in regard to the overlaid cladding, I take the view that the notices were not an appropriate means of addressing the types of defects discussed in paragraphs 6.3 to 6.5 (see paragraph 9).

## **7. Evaluation framework**

7.1 Notwithstanding the question of a building consent for the work, the cladding alterations are still required to comply with the Building Code to the extent required by Section 112 of the Act (see Appendix, paragraph 12.3). In the case of this building, the overlaid cladding must continue to comply with the code to ‘at least the

same extent as before the alteration.’ That level of compliance may therefore be lower than that applying to the construction of a new building or addition.

7.2 Taking account of the nature and history of the alteration work, I have evaluated the code compliance of the alterations (to the extent required by the Act) by considering the following two broad categories of the building work:

- The weathertightness of the external envelope (Clause E2) and durability (Clause B2 in so far as it relates to Clause E2).
- Defects identified by the authority that relate to other clause requirements.

In the case of this building, weathertightness considerations are addressed first.

## 8. The external claddings

8.1 The evaluation of building work for compliance with the Building Code and the risk factors considered in regards to weathertightness have been described in numerous previous determinations (for example, Determination 2004/1).

### 8.2 Weathertightness risk

8.2.1 This building has the following environmental and design features which influence their weathertightness risk profile:

#### Increasing risk

- the building is in a high wind zone
- except for the walkway, the building has no eaves or verges to shelter the walls
- monolithic wall cladding is fixed directly over the original plywood cladding
- although reasonably simple in plan and form, the building incorporates some complex roof and roof to wall junctions

#### Decreasing risk

- the attached free-draining timber deck has open metal balustrades
- the external wall framing is likely to be treated to a level that provides resistance to decay if it absorbs and retains moisture.

8.2.2 When evaluated using the E2/AS1 risk matrix, these features show that two elevations of the building demonstrate a low weathertightness risk rating and two a moderate risk rating. I note that, if the details shown in the current E2/AS1 were adopted to achieve code compliance, the monolithic cladding to the moderate risk elevations would require a drained cavity. However, I also note that a drained cavity was not a requirement of E2/AS1 at the likely time of the cladding work.

### 8.3 The overlaid cladding

8.3.1 The original tanalised plywood cladding remains in place beneath the new fibre-cement cladding and the potential for, and consequences of deterioration of this plywood due to moisture ingress need to be considered. Although the original plywood was likely to have provided some limited bracing function, the consent

drawings show that bracing is provided by interior linings and the new exterior fibre-cement sheets.

- 8.3.2 In the case of this building, the original plywood cladding was likely to have provided a bracing function when the original amenities building included more open interior spaces, as evidenced by the exposed timber roof members and ceilings. If the building had remained unchanged, the plywood would continue to have a durability requirement to remain compliant for the life of the building, being not less than 50 years.
- 8.3.3 However the subdivision into small motel-style units at some time prior to 1996 has resulted in walls between units and rooms which provide additional bracing to the structure. The new exterior fibre-cement sheets have also added bracing. I therefore consider that the structural-driven durability requirements of the original plywood do not apply and the fibre-cement sheets and internal walls mean the bracing complies to at least the same extent as before the alterations. I also note that the building is now more than 25-years-old.
- 8.3.4 In Determination 2008/37, which considered monolithic cladding that overlaid treated plywood substrate, I accepted that even if moisture were to gain access to the building wrap it did not follow that water would gain access to the plywood beneath it. However, this building has texture-coated fibre-cement cladding installed directly against the treated plywood, without a building wrap between the materials.
- 8.3.5 The original plywood is fixed through a bituminous double-sided foil building wrap to the borc-treated timber framing of the building. If moisture reaches the plywood, the underlying wrap should protect against moisture reaching the timber framing and the 9mm wide x 5mm deep grooves may provide some degree of drainage and drying. As the plywood is treated to the equivalent of H3.2, it should be able to withstand moisture long enough to allow repairs to the outer cladding to take place. However, maintaining the weathertightness of the cladding is important to reduce the risk of moisture damage to the underlying plywood (see paragraph 8.6.4).

## 8.4 Weathertightness performance of the building

- 8.4.1 Taking account of the expert's report and his comments on the notices to fix, I conclude that the following investigation and/or remedial work is necessary:
- investigation, including the removal of cladding and underlying plywood, into the extent of damage to the timber framing under the ends of the valley gutters

### **Windows and doors not sheltered under verandahs**

- lack of seals behind jamb flanges and lack of drainage gaps at the sill flanges
- inadequately sealed head flashings to the exposed windows

### **The wall cladding**

- the lack of vertical control joints to the long east and west walls
- cracks and damage to some areas of the cladding
- unpainted fibre-cement at sheet edges and some other areas

- lack of clearance of the cladding above the deck, to prevent moisture wicking into the bottom of the fibre-cement
- unsealed fixings of light fittings and downpipes through the cladding
- lack of downpipe fixings
- inadequate weatherproofing of the wall to walkway roof junction
- inadequate weatherproofing and leaks at the ends of the valley gutter.

8.5 I also note that the expert has identified other defects in the main roof. Although the upper roof is original and is unchanged by the cladding alterations, I suggest that the following defects also be attended to as part of maintenance of the roof:

- the inadequate roof fixings for the high wind zone
- the lack of an over-flashing at the change in roof pitch
- the inadequate overhang of the roofing over the gutters
- the debris in the gutters.

## 8.6 Weathertightness conclusion

8.6.1 I consider the expert's report establishes that the current performance of the wall cladding is not adequate because it is allowing water penetration through the claddings at present. Consequently, I am satisfied that the cladding alterations do not comply with Clause E2 of the Building Code.

8.6.2 In addition, the cladding 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 building to remain weathertight. Because the cladding faults on Block AN are likely to allow the ingress of moisture in the future, the cladding alterations do not comply with the durability requirements of Clause B2.

8.6.3 Because the faults identified with the wall cladding occur in discrete areas, I am able to conclude that satisfactory rectification of the items outlined in paragraph 8.4.1 will result in the cladding being brought into compliance with Clauses B2 and E2.

8.6.4 As discussed in paragraph 8.3.5, the installation of the cladding directly over the original plywood means that care is needed to ensure that the underlying plywood is not damaged; and that means maintaining the weathertightness of the cladding. Effective maintenance of claddings is important to ensure ongoing compliance with Clauses B2 and E2 of the Building Code and is the responsibility of the building owner. The Department has previously described these maintenance requirements, 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).

## **8.7 Other relevant code clauses**

- 8.7.1 The notices to fix also identified some defects related to Building Code Clauses E3 and F2. Taking into account the expert's report, I consider that the building complies with Clauses E3 and F2 to the extent required by the Act.
- 8.7.2 I also note that the authority raised the lack of smoke alarms. While these were not a requirement when this building was converted into accommodation units, I strongly urge the owners to install these.

## **9. The notices to fix**

- 9.1 While I consider that that it was appropriate to issue the notices to fix in regard to the overlaid cladding, I have formed the view that the notices are inadequate as they:
- do not clearly differentiate between any unconsented work and work covered by a building consent and already issued with a code compliance certificate
  - include work that appears to relate to repairs and maintenance, which does not require a building consent
  - do not identify 'substandard work' completed or started prior to the Act or already issued with a code compliance, some of which may be better managed through the issue of a dangerous and or insanitary notice (see paragraph 6.4).

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

- 10.1 I am satisfied that the cladding alterations to this building were undertaken without a building consent and that the authority made an appropriate decision to issue notices to fix. I am also satisfied that the cladding does not comply with the Building Code. However, I consider that some items identified in the notices are either adequate for alteration work (see paragraph 5.6.1), or are related to the original construction and not appropriately included in the notices (see paragraph 6).
- 10.2 The notices should be modified to take into account the extent of the existing construction, the level of compliance required for alteration work and the findings of this determination. The notices should identify the areas listed in paragraph 8.4.1 and refer to any further defects that might be discovered in the course of investigation and rectification, but should not specify how those defects are to be fixed. It is not for the notices to fix to specify how the defects are to be remedied and the building brought to compliance with the Building Code. That is a matter for the owners to propose and for the authority to accept or reject.
- 10.3 I suggest that the parties adopt the following process to meet the requirements of paragraph 10.2. Initially, the authority should issue a single notice to fix for Building AN. The applicants should then produce a response to this in the form of a detailed proposal, produced in conjunction with a competent and suitably qualified person, as to the rectification or otherwise of the specified matters. Any outstanding items of disagreement can then be referred to the Chief Executive for a further binding determination.

## **11. The decision**

In accordance with section 188 of the Building Act 2004, I hereby determine that the authority is to modify the notices to fix to take account of the findings of this determination.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing  
on 2 August 2010.

John Gardiner  
**Manager Determinations**

## 12. Appendix: The legislation

12.1 With regard to the unauthorised changes to this house, the relevant section of the former Act was Section 32(1), and of the current Act is:

**40 Buildings not to be constructed, altered, demolished, or removed without consent**

- (1) A person must not carry out any building work except in accordance with a building consent.

12.2 Section 41 (1) (b) of the Act states that a building consent is not required for any building work described in Schedule 1, which includes:

**Exempt building work**

A building consent is not required for the following building work:

- (a) any lawful repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, including all lawful repair and maintenance of that nature that is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1996...

12.3 The relevant section of the Act in regard to alterations is:

**112 Alterations to existing buildings**

- (1) A building consent authority must not grant a building consent for the alteration of an existing building, or part of an existing building, unless the building consent authority is satisfied that, after the alteration, the building will—
- (a) comply, as nearly as is reasonably practicable ... , with the provisions of the building code that relate to—
- (i) means of escape from fire; and
- (ii) access and facilities for persons with disabilities (if this is a requirement in terms of section 118); and
- (b) continue to comply with the other provisions of the building code to at least the same extent as before the alteration.
- (2) Despite subsection (1), a territorial authority may, by written notice to the owner of a building, allow the alteration of an existing building, or part of an existing building, without the building complying with provisions of the building code specified by the territorial authority if the territorial authority is satisfied that,—
- (a) if the building were required to comply with the relevant provisions of the building code, the alteration would not take place; and
- (b) the alteration will result in improvements to attributes of the building that relate to—
- (i) means of escape from fire; or
- (ii) access and facilities for persons with disabilities; and
- (c) the improvements referred to in paragraph (b) outweigh any detriment that is likely to arise as a result of the building not complying with the relevant provisions of the building code.