Claim No: 00003

Under the Weathertight Homes Resolution Services Act 2002

In the matter of An adjudication claim

Between **Bruce Walton** and **Yvonne Badcock**

Claimant

And **William Ross Holden**

First respondent

And **Auckland City Council**

Second respondent

And **Taylor Roofing (Auckland) 1992 Limited**

Third respondent

Determination of Adjudicator
27 February 2004

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1. Summary

1.1 The claimants have a leaky building and there is damage resulting from those leaks.

1.2 The then owner/builder of the property, William Ross Holden, owed a duty of care to the claimants as subsequent purchasers and has been negligent in a way that has caused them damage and loss.

1.3 Although it did not participate in the hearing because it had reached a settlement with the claimants, there is evidence that the Auckland City Council as territorial authority at the time owed the claimants a duty of care and has been negligent and has caused them loss.

1.4 Taylor Roofing (Auckland) 1992 Limited as a contractor to William Ross Holden, the then owner/builder, owed a duty of care to the claimants and has been negligent causing them loss.

1.5 The losses to the claimants may include damage and loss outside my jurisdiction as an adjudicator under the Weathertight Homes Resolution Services Act 2002 and I have declined to make findings or orders in respect of matters which do not relate to leaks to the building which have caused damage.

1.6 The liability of William Ross Holden, Auckland City Council and Taylor Roofing (Auckland) 1992 Limited is one of concurrent tort liability and each has a 100% liability to the claimants for their damage arising from leaks to the building.

1.7 I have assessed that damage as costing $74,373.75 to repair. The claimants had received $31,375.00 from Auckland City Council in full settlement of any claims they may have had against it (which may have included leaky building issues alone or other issues as well, of

which I was not advised) on the basis that the Council acknowledged no liability. That sum is deducted from the claimants' entitlements leaving $42,998.75 including GST.

1.8 The claimants are entitled to recover from William Ross Holden the total of that sum and I have ordered that he pay it to them.

1.9 The claimants are entitled to recover from Taylor Roofing (Auckland) 1992 Limited repair costs in relation to damage caused as a consequence of its involvement on-site as a subcontractor which I quantified at $8,536.66 and I have ordered that it pay that sum to them.

1.10 As to contributions between those two remaining parties, I have apportioned these on the basis that:

1.10.1 in relation to landscaping issues and resultant damage there is 100% liability with William Ross Holden;

1.10.2 in relation to mock chimney issues and resultant damage there are the percentages of liability:

1.10.2.1 75% to Taylor Roofing (Auckland) 1992 Limited;

1.10.2.2 8.75% to Auckland City Council; and

1.10.2.3 16.25% to William Ross Holden;

1.10.3 as to remaining damage **caused by leaks** there are the percentages of liability:

1.10.3.1 35% to Auckland City Council; and

1.10.3.2 65% to William Ross Holden.

1.11 There having been settlement with Auckland City Council for a sum in excess of its liability to the claimants, there is no further right of recovery by either of the other respondents, Taylor Roofing (Auckland) 1992 Limited or William Ross Holden, against Auckland City Council, nor any recovery by Auckland City Council against Taylor Roofing (Auckland) 1992 Limited or William Ross Holden.

1.12 No order for costs was made.

2. Adjudication Process

2.1 Mr Walton and Ms Badcock gave notice of adjudication under the Weathertight Homes Resolution Services Act 2002 (**the Act**) by Notice dated 9 September 2003.

2.2 In that notice they named Mr M J Leijh, Mr N Chandler and Mr W R Holden as respondents.

2.3 In the course of processing the claim I held two preliminary conferences on 14 October and 11 November 2003 and recorded the outcomes of those in Directions Nos 1 dated 17 October 2003 and 2 dated 19 November 2003.

2.4 Mr Leijh was struck out as a respondent under s34 of the Act on the basis that he was shown in the application for building consent as the designer but Mr Holden acknowledged representations from Mr Leijh that he (Mr Leijh) was not the designer and had not been involved in design aspects at all. He had prepared a design for the dwellinghouse earlier on but Mr Holden had elected not to use that design and had proceeded on his own as I mention below.

2.5 I also struck out Mr Chandler as a respondent pursuant to s34 of the Act on the basis that the first information had indicated he was the

person who signed the Code Compliance Certificate but as it transpired that related to the adjoining cross-lease residence and the Code Compliance Certificate for this dwellinghouse was signed by a representative of the Auckland City Council.

2.6 In the course of that process also I ordered pursuant to s33 of the Act that the Auckland City Council be joined as a party because the Code Compliance Certificate dated 10 December 1996 had been signed "for and on behalf of" it.

2.7 In the course of that process I also ordered that Taylor Roofing (Auckland) 1992 Limited be joined pursuant to s33 of the Act as a respondent because of its involvement as the supplier and fixer of the roof, roof flashings and guttering.

2.8 The hearing commenced on 13 February 2004 and continued on 16 February 2004. Present at the outset of the hearing were Mr Walton and Ms Badcock, the claimants; Mr W R Holden, the first respondent; Mr S Jameson, counsel for Auckland City Council, the second respondent; and Mr W Bringans representing Taylor Roofing (Auckland) 1992 Limited, the third respondent.

2.9 At the outset of the hearing Mr Jameson advised me that there had been a settlement reached between the claimants and the Auckland City Council, the terms of which were confidential but did include that a payment had been made to the claimants by the Council; that that payment was without prejudice to the Council's position and without any acknowledgement on its behalf of any liability to the claimants; that the payment and settlement was without prejudice to the claimants' rights to continue their claim against other respondents; and that a term of the settlement was that the claimants agreed to indemnify the Council against any liability that may be found against it.

2.10 In those circumstances Mr Jameson applied pursuant to s34 of the Act for the Auckland City Council to be struck out as a party on the ground that in those circumstances it had no further interest in the claim. I decided that that was inappropriate. There were questions of contributions between respondents that required to be resolved which, depending on the outcome, may result in a different outcome for the position of the Auckland City Council. Mr Jameson indicated that it was not proposed that the Auckland City Council would give any evidence; and that any submissions or other advocacy on its behalf was in the hands of the claimants, Mr Walton and Ms Badcock. In fact there had been no briefs of evidence or other significant response on the Weathertight Homes Resolution Service (**the WHR Service**) file.

2.11 We had a view of the site during the course of the hearing which was attended by all parties (except Auckland City Council).

3. The Property

3.1 The dwellinghouse is at 23A Robert Street, Ellerslie. It is a "cross-lease" title with one other residence being erected on site.

3.2 The dwellinghouse was erected during 1995, the building consent having been dated 12 July 1995 and the Code Compliance Certificate being dated 10 December 1996.

3.3 I was not specifically advised who was the owner of the property at that time but I take it to have been Mr Holden (or Mr & Mrs Holden). Certainly the construction of the dwellinghouse was done by or under the direction of Mr Holden. He was the applicant for building consent and showed his status as "Owner/Builder". There was reference in the WHRS assessor's report to "Holden Landscapes Limited" as a previous owner and the developer and builder, but at the preliminary conference on 17 October 2003 Mr Holden told me

that Bill Holden Design and Landscape Limited had not been incorporated until June 2003, well after the events to which this claim refers. There were the plans drawn by Mr Holden lodged with the application for building consent which was duly processed with the consent being given. I was not referred to the specifications or other Council documents relevant to the consent process.

3.4 Construction proceeded during 1995. That included the supply and fixing of the roof, roof flashings and guttering by or on behalf of Taylor Roofing (Auckland) 1992 Limited (**Taylor Roofing**). The Auckland City Council issued a Code Compliance Certificate dated 10 December 1996.

3.5 It included plastering with solid plaster on polystyrene backing and Mr Holden confirmed on oath as he had at the preliminary conference that he was on site physically supervising the plasterer's work, that he gave the plasterer instructions, and that he was responsible to ensure that the plasterer achieved the effect that was wanted. He confirmed there was a two coat plaster system of solid plaster and that it was his, Mr Holden's, decision to use solid plaster over an EPS surface; that he was not confident with Insulclad which he saw as inadequate; that he considered the Insulclad system inadequate because it required no flashings and he ensured that there were head and jamb flashings provided; and that he did not provide sill flashings because he considered this was unsightly and instead he made sure that the plaster applied was applied at an angle beneath the window back to the timber framing to form a sill. Mr Holden acknowledged that he was responsible for that process.

3.6 There was evidence of various Council inspections having been made to which I shall refer.

3.7 Mr Holden and his family lived in the residence after completion for about one year. Mr Walton and Ms Badcock purchased the same

from intermediate owners in 1998. They made their first application under the Act to the WHR Service on 12 February 2003. I deal below with Mr Holden's complaint that some time elapsed between when Mr Walton and Ms Badcock learned of problems with the home before they did anything about it, which is denied by Mr Walton and Ms Badcock.

4. The Claimants' Position

4.1 The claimants relied on the report provided to the WHR Service by Mr Alan W French, assessor, dated 9 May 2003 following his site visit on 24 March 2003. Mr Walton also presented evidence which included his assessment of expected repair costs.

4.2 They claim, as supported by the report of Mr French, that the dwelling is eligible as meeting the criteria set out in s7(2) of the Act and is a leaky building as defined in that Act.

4.3 Mr French's report referred to various moisture readings following his assessment of the site. He expressed the view that the causes of water entering the dwellinghouse were:

4.3.1 Insufficient flashing at the junction of the roof covering and false chimney stack and reliance on building paper only to prevent moisture entering the cladding.

4.3.2 The failure of the exterior cladding which appeared to be two coat solid plaster over 40mm EPS polystyrene. He said the cladding failed primarily because of the use of that solid plaster over the EPS system which would require a solid concrete or equivalent perimeter foundation (NZS3604 - G2.4). He said there were no sill flashings fitted (accepted by Mr Holden) therefore no moisture drainage. He said there were no movement control joints installed to reduce

any cracking. He said that the finished height of the majority of the exterior cladding was in contact with the ground in breach of various statutory requirements (also accepted by Mr Holden).

4.3.3 The exterior framing and cladding are supported on a timber pile foundation which, with this type of cladding, would not comply with NZS3604 – G2.4 (a matter mentioned above). He said this resulted in severe cracking occurring in the plaster cladding allowing moisture penetration. He gave his views on the remedial work required and the cost thereof and I refer to that below.

4.4 Mr Walton's submissions and evidence gave the history of the matter as summarised above. He said that after he and Ms Badcock purchased the property in September 1998 they decided in due course to explore the possibility of extension and so obtained (they said) in December 1999 the original plans from Mr Holden. Mr Holden gave evidence at the hearing that he was not in Auckland at that time and had moved to Rotorua and Mr Walton and Ms Badcock accept that it must have been earlier that that event occurred. At all events they obtained the plans with a view to investigating the possibility of adding rooms but decided against that.

4.5 He said that it was not until August 2002 that they noticed significant water damage at the chimney floor. He said they had been completely oblivious to any leaking in the house before then and that the area of flooring damage around the chimney (which I inspected) is only noticeable when the carpet is lifted as it is located in a corner behind their home entertainment cabinet in an area completely hidden from day to day view.

4.6 Mr Walton also gave evidence concerning the build-up of soil, paving and landscaping to the east and north walls of the dwelling

but Mr Holden accepts that it is his responsibility to effect the necessary landscaping and consequent repairs to the dwelling caused by damage from that work.

4.7 As to the solid plaster cladding, Mr Walton did acknowledge seeing a small crack of plaster during their pre-purchase viewing of the property in 1998 although the severity of it was nowhere near what it is today.

4.8 As to remedial work he expressed the view that the cladding required to be entirely removed with necessary repairs to the structure, refitting and flashing of windows and recladding with an approved system. He gave his evidence of the extent of work required for this and referred to quotations obtained from Aztec Coatings and Watertight Construction Limited. The latter is for $130,000.00 plus GST for scaffolding, removal of plaster and polystyrene, windows and doors, reinstalling of flashings, building paper, batons, Hardiebacker and replastering and repainting; with a recommended allowance of $100,000.00 plus GST to cover replacement of rotten framing and resultant damage to linings and finishings, excavation and drainage. That was very much a round figure assessment and I cannot place much weight on that quotation obtained. The Aztec quote was for an Insulclad EIFS system with an estimate of $36,750.00 plus GST and no allowance for other matters.

5. Response Auckland City Council

5.1 There was no effective presentation on behalf of the Auckland City Council. As recorded above, it had reached its settlement with Mr Holden and Ms Badcock, did not present evidence, and did not participate at the hearing. There were some aspects of its involvement that were the subject of cross-examination and submission by Mr Walton.

5.2 I deal with other parties' criticisms of the Auckland City Council's involvement and claims of its contribution below.

6. Response William Holden

6.1 Mr Holden conducted his own case throughout. His contribution to the preliminary conferences held was helpful. He made concessions of his involvement and liability straightforwardly and in a constructive manner and I commend him for that. It made the task of reaching the true position and an outcome that much easier.

6.2 He gave evidence himself but mainly relied on a report and evidence from Kerry G Murphy who inspected the dwellinghouse on 17 December 2003 and reported in a report dated 28 January 2004.

6.3 There was significant agreement between Mr Murphy's opinion and views and those of the assessor, Mr French. I deal with the specifics concerning the landscaping, the mock chimney, the window sill flashings, and the plaster systems later but his conclusions included:

6.3.1 That there was no evidence of watertightness failure of the exterior plaster cladding other than at specific other causes as noted in his report.

6.3.2 The plaster cracking was a maintenance issue "well researched and recognised".

6.3.3 The lack of control joints was a major contribution to cracking along with questionable mixing and plastering skills of the plasterer.

6.3.4 The stucco fixing to the building skeleton was adequately supported and stable with no evidence that supports any claim of movement other than normal plaster behaviour.

6.3.5 Additional foundation piles and bearers were needed in four different positions.

6.3.6 The cracking largely occurred during the curing process and would have been present when Mr Walton and Ms Badcock purchased the property; likely to have been finer and thus less easy to see; but nevertheless there.

6.3.7 The leak from the roof flashings around the mock chimney area could not have reached the advanced state of decay unless leaking for many years.

6.4 Mr Murphy produced a written statement from Mr Steve Pittman of Martin McCaulay Walton Limited dated 3 November 2003 giving "desk top" engineering comment on cracking in the cement plaster. Mr Pittman did not give evidence to the hearing. He reached the opinion, without having seen the site but having viewed the drawings, on the basis of what he was told by Mr Holden, that the cracking was associated with shrinkage cracking rather than cracking from structural movement, the majority of the cracking having been located on the northern and western elevations and around the windows and not having increased in the last five years. His report contained several pages of engineering calculations which were not explained at all to me except to note that in respect of the footings the factored ultimate bearing capacity was 150kPa against an allowable 100kPa. The conclusion I drew from that item was that there was a breach of proper standards by 50%. I regret that I significantly discount his views in his report. He relied on what he was told by Mr Holden as recorded in his report which included that "the cracking is minimal and generally on the northern and western

elevations"; "the plastering was carried out in summer under warm to hot conditions"; and "the cracking does not appear to be an ongoing process …". That all seemed to me first to be contrary to the fact. The clear evidence to my hearing was that the cracking had become worse both as to the number of cracks and the extent of the cracking. There were significant other factors raised by evidence before me that clearly was not before Mr Pittman. Indeed he did not even appear to have been given a copy of the assessor's report on which to give some balanced objective response.

6.5 Mr Murphy made certain recommendations for remedy and repair namely:

6.5.1 Cutting away the plaster at the jambs and sills of the exterior joinery to install a full set of flashings.

6.5.2 Reframing and re-timbering of the panels surrounding windows where there has been framing damage.

6.5.3 Replacing subfloor framing where there has been damage.

6.5.4 Additional bearers as indicated in Mr Pittman's report.

6.5.5 Removal of the cladding and reconstruction of framing and recladding to the exterior wall from approximately 1.5m north of the mock chimney through to the corner adjacent to the front entrance with removal, redesign and reinstallation of roofing and flashing to the mock chimney. He proposed replacement with a proprietary lightweight system (and in that regard agreed with Mr French).

6.5.6 Treating all water-affected timber or timber adjacent to rot removal with "Osmosis" Frameguard timber preservative.

6.5.7 Lowering of ground levels to comply with the minimum clearances.

6.5.8 Installation of new base cover boards with maximum provision for subfloor ventilation.

6.5.9 Repair to exterior cracks in the plaster.

6.6 His cost budget assessment totalled $50,210.00 plus GST but that does not include exterior painting, repair or filling of cracks (a maintenance issue) or redecoration other than the affected walls.

6.7 In general terms the difference in repair work and cost between Mr French and Mr Murphy was that Mr Murphy's view was that only part of the cladding needed removal (and at the hearing he described this clearly as portions of the northern wall as well as the portions of the eastern and southern walls that I have mentioned above from his report).

6.8 As to landscaping, Mr Holden acknowledged throughout that that had been his decision and responsibility and that any damage caused by landscaping being above necessary levels would be at his cost. He had offered to carry out landscaping work to the site and repeated that offer early in the hearing along with the acceptance of the cost of necessary replacement of damaged timber. At the end of the hearing, however, he rather preferred not to return to the site but "cut and run".

7. Response Taylor Roofing

7.1 Mr Bringans attended the hearing and gave evidence although his evidence was essentially hearsay being the repetition of material from a report supplied to his company by Trev Ashman Roofing Consultants Limited dated 11 February 2004. Despite my earlier

directions, that material had not been provided to other parties before the hearing but no-one asked for time to respond to it.

7.2 The report, and Mr Bringans' comments thereon, dealt with three aspects:

7.2.1 That the back flashing from the roof to the mock chimney had been installed in accordance with the manufacturer's recommendations but the plaster system finished down to the back flashing was unacceptable and not according to recommended practise by failing to leave a minimum of 30mm above the sole of the back flashing and instead covering the top of the back flashing by 75mm. Whereas the plans had shown the mock chimney to be clad with Hardiebacker, plasterer's mesh and two coats of solid plaster, in fact the mock chimney had been clad in polystyrene and solid plaster to an actual thickness of 80mm. In short there was excess cladding and plaster over the back flashing to the mock chimney causing entry of moisture.

7.2.2 The metal capping to the mock chimney had not been affixed properly. First, the flue had a vertical lock-form seam that was not sealed. Secondly, the metal capping had no up-turn to divert water away from the cladding. Thirdly, the plaster had been laid to the mock chimney **after** the metal capping rather than before such that there was an unfinished area of plastering poked under the metal capping. It was claimed that this was all unacceptable practise.

7.2.3 The evidence of moisture exiting the stucco system indicated entry above the exit point, that is above the back flashing.

7.3 Questions arose particularly from Mr French's report about the guttering to the side of the mock chimney. Mr Bringans' position was that the hidden flashing to the side of the mock chimney would discharge into the guttering that ran alongside the roof at that point. Mr French had said that there was no diverter flashing to divert water from the hidden flashing along the side of the chimney into the guttering so that it would run away. Mr Bringans' response to that was that the hidden flashing would discharge any water that did not enter the guttering straight out from the house and away from any risk of leaking.

8. Leaking Causes

8.1 Landscaping

8.1.1 It is common ground that there has been leaking because of the landscaping, backfill to the outside of the north and east walls to an excessive degree that has caused wicking and other moisture entry and it is common ground (at least between the claimants and Mr Holden) that that has caused damage and requires remedy. I do not think that the Auckland City Council or Taylor Roofing had any involvement in that work.

8.2 Mock Chimney Wall

8.2.1 As to the leaking in the west (mock chimney) wall, the only significant disagreement with the report from Trev Ashman Roofing Consultants Limited and evidence of Mr Bringans was in relation to the absence of a diverter flashing in the hidden gutters to the side of the mock chimney.

8.2.2 I accept the view expressed by Mr French that there should have been diverter flashings in those hidden gutters to ensure that all rainwater entering them was properly diverted

into the spouting. I do not accept Mr Bringans' explanation about the spouting shortfall. It was clear to me from inspection, and the evidence that was given confirmed, that the spouting was too short and did not catch all the rainwater falling onto that roof face and around the mock chimney. It is quite an inadequate explanation to say that the hidden flashing would discharge other water over the side of the dwelling. Clearly the guttering is there for the purpose of catching and taking away roof stormwater and it is quite inadequate to expect that there should be discharge of water from any flashing straight on to the ground.

8.2.3 I asked Mr French what proportion of the damage to the wall around the mock chimney would arise from the absence of the diverter flashing and what proportion from other causes identified by Mr Bringans and his response, which was not effectively disputed by Mr Bringans, was that this was likely to be 75% from the absence of diverter flashings and the remaining 25% from other causes. He said that there would be less water entry because of the excess plastering and the polystyrene backing used on the mock chimney and in particular into the guttering on the upside of it; and relatively less water entry from the matters on the mock chimney capping that I have mentioned. His view was that there would be significant water which was not diverted into the guttering and which was then able to enter the mock chimney and the wall at that point. I asked Mr Bringans for any comment on that apportionment but he was not able to respond to that, he continuing the claim for Taylor Roofing that there was no liability whatsoever and therefore the question did not arise.

8.3 Windowsill Flashings

8.3.1 It was common ground that there are no windowsill flashings on any of the windows. Mr Holden acknowledged that from the outset and that is certainly confirmed by the enquiries that Messrs French and Murphy have made.

8.3.2 I have already recounted Mr Holden's position concerning windowsill flashings at para 3.5 namely that he had no confidence in the Insulclad system which he considered was inadequate in requiring no flashings and that he in fact decided to provide head and jamb flashings but not sill flashings, which he considered to be unsightly, but rather to angle the plaster beneath the window back to the timber framing to form a sill.

8.3.3 Mr French was critical of the plastering process on the one hand and it was quite evident from the photographs and an inspection that in fact some of the sills sloped back into the window rather than away from, so causing ponding and water ingress. He said that on the rear elevation there had been moisture penetration into the sills which had led to a massive ant infestation. The timber there would be wet and the ants would be eating the cellulose.

8.3.4 Mr French in his report referred to the absence of sill flashings and there being "therefore … no moisture drainage" and he has recommended removal of external joinery and refitting following the installation of head, side and sill flashings. His view was largely agreed with by Mr Murphy who referred to "lack of adequate flashing and weatherproofing detail" and the lack of sill flashings as "a major shortcoming that is the principal reason for leaks at joinery".

8.3.5 I am satisfied, and indeed it seemed common ground between the claimants and Mr Holden, that the absence of sill flashings and the contouring of the plaster at the windowsills has caused leaks and does require remedy.

8.4 **Plaster System**

8.4.1 It is common ground that the plaster has many cracks around it at various places. This is evident from the photographs and from a site inspection.

8.4.2 It is also apparently common ground that these have worsened over the years.

8.4.3 It was also common ground that application of solid plaster to polystyrene was not a common construction method. Mr Holden spoke of having had the idea from his consultant designer, Mr Leijh, but there was no evidence about Mr Leijh's home or any matters that may have helped me to decide the adequacy or otherwise of that plaster system.

8.4.4 Mr French's view was that solid plaster over an EPS system would require solid concrete or equivalent perimeter foundation and he referred to NZS3604:1990 G2.4. He said that exterior framing and cladding of this kind on the timber pile foundation that this house has simply does not comply.

8.4.5 Mr French gave evidence of tests he had carried out concerning the effect of the two coat stucco plaster system on the fixings that had been used on site; first the fixing of the polystyrene to the timber frame and secondly the fixing of the plaster to the polystyrene. He said that the pile foundation was only appropriate for lightweight cladding

such as Insulclad. He had measured and counted the fixings to the studs in this residence which amounted to nine fixings per square metre. By comparison Rockcote, a lightweight cladding, required 32 fixings whereas in NZS4251 Part 1 1998 para 4.3.5.1 for stucco cladding the requirement was 55 fixings psm. His view was that the fixings in this job were grossly inadequate.

8.4.6 He then referred to the use of staple buttons to fix the plaster to the polystyrene and said there was no evidence of wiring through to the backing. The polystyrene was fixed to the timber frame by nails and the mesh stapled by button.

8.4.7 Mr French carried out his own tests to the flat head nails used to hold the polystyrene to the timber allowing 40mm inside the timber and 60mm for the polystyrene. Applying a 20kg weight suspended gently on the edge of the nail, the nail head deflected by 11mm and a 15kg weight deflected the nail by 4mm (**exhibit I**). On the basis of those tests he concluded that the weight of the plaster on the polystyrene affixed to the timber framing by these flat head nails would have caused the same, as indeed appeared from inspection to be the case, to deflect badly.

8.4.8 The combined effect of the inadequate number of fixings of the stucco to the polystyrene and the inadequacy of the nailing of the polystyrene to the timber frame drew Mr French to the conclusion that the **whole** of the plaster system to this dwelling was slumping with weight and would continue to do so with time.

8.4.9 In support of that argument he drew my attention to the detail on site of one crack as an example where the cracking appeared to be on the upper surface of the different

indentations and there was compression of a lower surface which indicated, he said, that there was downward movement to create that cracking. That certainly seemed to be the case to me.

8.4.10 Another matter relevant to the plaster cracking mentioned by Mr French was the support for the framing at 1300mm centres and he said that there was no foundation beneath the framing to the basement. That was self evident on my inspection. Mr Murphy's response to that was that the foundation cladding was not supporting the weight of the upper cladding at that point and there was no evidence that the cladding above was inadequately supported by foundations. Mr Murphy said on site that there were other parts of the house where there was no basement cladding where the absence of foundations was not an issue.

8.4.11 In Mr Murphy's report at paragraph 5.3 he expressed the view that:

> "There is no evidence of failure of the Stucco fixing"

and then at paragraph 10.1.4 of his report he said:

> "Water entering building – NOT proved
> Damage as result of leak – NOT proved"

In his evidence Mr Murphy acknowledged that water was entering the building and I deal with this later. His response concerning the cladding was first that this was an issue which was outside the parameters of the Act and I shall refer to that later; and secondly, that there was significant responsibility on the part of the Council in relation to the proposal to use this cladding system (and again I shall refer to this later). There did not seem to be evidence from him

that countered effectively the assessment that Mr French had made. I have already referred to the weight I am giving to Mr Pittman's assessment of the situation.

8.4.12 I formed the clear view that there was a significant problem with the plaster cladding to the whole of the home. It was clear that there was extensive cracking in many places. I accepted the concerns articulated by Mr French. The submissions and evidence addressed by Mr Murphy related more to weathertightness and Council's responsibilities.

8.4.13 The question for me raised squarely by Mr Murphy on behalf of Mr Holden was whether this failure of the cladding was a matter inside my jurisdiction. The primary basis for jurisdiction is s29 of the Act which reads:

> "(1) In relation to any claim that has been referred to adjudication, the adjudicator is to determine –
> (a) the liability (if any) of any of the parties to the claimant; and
> (b) remedies in relation to any liability determined under paragraph (a).
> (2) In relation to any liability determined under subsection (1)(a), the adjudicator may also determine -
> (a) the liability (if any) of any respondent to any other respondent; and
> (b) remedies in relation to any liability determined under paragraph (a)."

8.4.14 In s5 are the following definitions:

> "**claim** means a claim by the owner of a dwellinghouse that the owner believes –
> (a) is a leaky building; and
> (b) has suffered damage as a consequence of it being a leaky building"
>
> "**claimant** means an owner of a leaky building –
> (a) who makes an application under section 9(1); or
> (b) whose claim is transferred to mediation or adjudication under section 59 or section 60"

> "**leaky building** means a dwellinghouse into which water has penetrated as a result of any aspect of the design, construction, or alteration of the dwellinghouse, or materials used in its construction or alteration"

8.4.15 To be an eligible **claim** under s7(2), that **claim** must meet certain criteria including:

> "…(b) the dwellinghouse is a leaky building; **and**
>
> (c) damage to the dwellinghouse has resulted from the dwellinghouse being a leaky building" (emphasis added)

8.4.16 My view is that in exercising the jurisdiction conferred by s29 on an adjudicator, the determination must relate to the liability of parties to the **claimant** in that person's capacity as the owner of a **leaky building** and in relation to **claims** made in respect of a leaky building. This jurisdiction is not a general "Building Disputes Court". Its jurisdiction is limited to leaky building claims and damage as a consequence of leaks. The definition of **claim** and the eligibility criteria clearly require with the conjunctive **and** that there must be a **leaky building** but also that there must be damage suffered as a consequence of its being a leaky building.

8.4.17 Were it otherwise, a case could arise where leaks causing damage to a building formed a very small proportionate part of building construction defects and I do not think that the Act was intended to confer jurisdiction on an adjudicator to rule on all those issues simply because of that small proportion relating to leaks causing damage. It is not a question of proportionality; it is a question of jurisdiction.

8.4.18 The end consequence of that may be that a claim under this Act may be dealt with according to the processes prescribed by it but leave unresolved other building disputes that do not

involve damage as a consequence of leaks. Obviously those matters may be resolved in a mediation if there is one but so far as adjudication is concerned my view is that an adjudicator's jurisdiction is limited in the way I have described.

8.4.19 In the present case Mr Murphy acknowledged at the hearing on behalf of Mr Holden that the building was leaking as a consequence of the plaster system but continued his strong denial that any of that had caused damage.

8.4.20 That is significantly supported by Mr Walton's own evidence/report where at paragraph 3 he commences:

> "Serious structural damage has been caused by:
>
> - Leaks around windows
> - Leaks around the chimney
> - Inadequate ground clearances between the sub floor and surrounding soil.
>
> **Subsequently**, we have serious concerns about the ongoing durability of the existing cladding. We have seen it continue to deteriorate, causing leaking around the windows and around areas where cracking is occurring. The cladding system was not installed to cope with any ingress of moisture; and the flashings are either ineffective or not present. Without a cavity to allow the ventilation and drying, the structure continues to be damaged by moister [sic] ingress" (emphasis added)

8.4.21 To me that strongly suggests Mr Walton and Ms Badcock's view that the damage is from the three items bullet-pointed but the exterior cladding issue is a general building concern not necessarily affecting damage as a consequence of water penetration. Certainly the passage quoted refers to damage by moisture ingress but there was no evidence Mr Walton presented to confirm that.

8.4.22 This theme is also maintained in Mr French's report where he says that the exterior framing and cladding, supported on a timber pile foundation:

> "… has resulted in severe cracking occurring to the plaster cladding allowing moisture penetration through the cracks, along with moisture penetration through the sills and wicking occurring where the cladding is in contact with the ground",

but he does not say that that has of itself caused damage.

8.4.23 Mr Murphy's report and evidence included extensive capacitance moisture meter testing and his conclusion (para 4.24) was:

> "There were no high readings discovered using either tester, ie above 14%, unless it was in relation to a window, bottom plate where ground levels are high or at the mock chimney area. Only readings above 14% were specifically recorded on the site notes. There were between 5 and 10 times the number of normal low readings taken than the total of that recorded on the site records."

He referred to invasive moisture testing where the CM tests were discovered above 14%.

8.4.24 I have looked carefully at the assessor's report and particularly the water moisture meter information and locations of testings that were provided. Essentially these water moisture meter locations are all in areas affected by other matters to which this determination refers, namely landscaping, mock chimney wall and window sill flashings. The one exception is perhaps the reading of 23% on the south elevation near to the front door but, as I understand it, Mr Holden's proposals (through his witness, Mr Murphy) are

to replace the cladding at that area in any event (and I will be dealing with that in my orders later).

8.4.25 There was some suggestion from Mr French in his evidence that there was water damage to the building paper from leaks through the plaster system but that seemed to be limited to areas where there were leaks from other causes already mentioned.

8.4.26 There was discussion on site about the west facing wall to the bedroom above the front door where Mr Murphy acknowledged that water was entering but attempted to excuse this on the basis that it could also exit from behind the plaster cladding. Although this is far from satisfactory, and may well have been the subject of dispute in another jurisdiction, it does affirm that the entry of water into a building through the solid plaster does not necessarily of itself cause damage (and I am not prepared to assume that it has without evidence). Indeed there is significant argument that the issue for leaky buildings is water maintenance rather than water prevention and it may be said that it is preferable for water to have an opportunity having entered to escape rather than attempting comprehensive prevention – that is not a matter which has been traversed at this hearing.

8.4.27 Having considered all the evidence carefully I have concluded that there is no evidence of direct damage **solely** from water ingress from any inadequacies in the plaster system. I heard extensive evidence about the plaster system which I have mentioned above and certainly, had this been another jurisdiction, I would well have been persuaded towards finding that there was negligence on the part of Mr Holden and/or the Auckland City Council in

relation to that plaster system. Mr Holden has taken direct responsibility for the plaster and system and the Council must have some duty of care to Mr Walton and Ms Badcock as subsequent owners in its building consent to the plans and specifications which included this system and its inspection of the same. I refer to that in more detail relating to other matters below. Had this been a case where there was evidence of damage from leaking from the plaster system I could well have been ordering compensation against some or all of the respondents. There being no such evidence, however, I have no jurisdiction to order any compensation or otherwise and I decline to do so.

8.5 **Claims of Delay and Want of Maintenance**

8.5.1 It was claimed that there was delay on the part of Mr Walton and Ms Badcock in taking steps to prevent damage or carry out repairs once they had learned of the leaks to their dwelling. It was also claimed that they had failed to maintain the property.

8.5.2 As to maintenance, I do not think that there is evidence that there was any damage to their property caused through want of maintenance nor any evidence that there was unreasonable failure on their part to maintain. In any event questions of timely maintenance would have gone rather to the cracking plaster issue where I have determined that I have no jurisdiction to order compensation. The matter does not seem to me to therefore arise.

8.5.3 With regard to delay, the dwelling was constructed in 1995, the Code Compliance Certificate was signed on 10 December 1996, Mr Walton and Ms Badcock purchased in 1998, they first learned of damage from water entry in

August 2002, and they brought this claim in the WHR Service in September 2003. I do not think there is any evidence of significant delay on their part or of any failure by them to mitigate their damage. Even if they had moved in a more timely fashion the repairs and remedial work, at least so far as matters affecting leaks and damage from leaks is concerned, are likely to have been as extensive as they are required to be today and the cost is likely to have been the same.

8.5.4 I do not think that either of these matters disqualify their claim or reduce the amounts of their entitlements.

9. Repair Costs and Liability

9.1 Landscaping

9.1.1 It has been accepted throughout by Mr Holden that he has a liability for landscaping and the remedial costs resulting from that.

9.1.2 Mr French's report and remedial cost analysis does not make specific allowance for landscaping costs and his budget for remedial work to the dwellinghouse includes his estimate based on complete removal of cladding and disposal. Mr Walton in his report/evidence refers to the work required to do this landscaping work and he produced as **exhibit B** a quotation from Sturt Landscapes for excavation, paving, lawn and garden edge totalling $9,000.00 including GST but his summary of claim (**exhibit E**) placed a figure of $5,400.00 plus GST on "Re-align ground levels". Mr Murphy in his remediation estimates had placed a figure of $4,000.00 to realign ground levels and install base

ventilation and a figure of $1,500.00 to install additional subfloor/bearers (both GST exclusive).

9.1.3 This remedial work affects only Mr Holden and not either of the other parties. I have assessed that the reasonable allowance to be made for landscaping and repair work as a consequence of the landscaping and wicking problems is $5,500.00 plus GST ($6,187.50) and that is a liability of Mr Holden.

9.1.4 I am mindful of the fact that there will need to be certain design and supervision costs in respect of remedial work but that is included in matters now mentioned.

9.2 **Other Remediation Costs**

9.2.1 It was common ground between the claimants and Mr Holden that repair work would be required to the wall surrounding the mock chimney, the mock chimney itself and the west facing wall to the front door. The position of Taylor Roofing was simply that it had no liability in the matter and no evidence was given on its behalf about remedial work or cost.

9.2.2 Again this was not individually quantified by Mr French in his report but he did quantify at the hearing his estimate of remediation costs to the mock chimney and these walls as follows:

Item	**Amount**
Scaffolding for one elevation – say 25% of $60,000.00	$1,500.00
Floor repairs for the absence of the flashing – say 5% of $7,000.00	350.00
Demolition of the section of cladding and disposal – 25% of $6,100.00	1,525.00

Replacement of the framing and floor – 15% of $6,000.00	900.00
New cladding – 15% of $22,000.00	3,300.00
Redecoration – 10% of $6,500.00	650.00
Roof repairs and redesign – 10% of $7,000.00	700.00
Carpet cleaning or replacement – 100% of $1,200.00	1,200.00
Contingency – 15% of $15,000.00	2,250.00
Budget temporary accommodation – 15% of $5,000.00	750.00
Total	$13,125.00

These are all GST exclusive.

9.2.3 Mr Murphy's remediation estimates do not differentiate between mock chimney and wall and other matters but do include several items relevant to this area of repair. Because his recommendation 7.5 included cladding removal and reconstruction of the framing from soffit level to ground level for the exterior wall from approximately 1.5m north of the mock chimney right through to the corner of the building adjacent to the front entrance, including removal, redesign and reinstallation of the new mock chimney with roofing and flashing work and some subfloor replacement, I have taken it that his remediation estimates relate to the cost of that work and do not include similar work in respect of the north facing wall where at the hearing he conceded there needed to be similar remediation work done.

9.2.4 In his remediation estimates Mr Murphy has reached a total of $50,210.00 plus GST for the work that he proposes should be done. In the context now discussed I think there should be the following changes to establish total remediation costs including the mock chimney and wall:

Delete allowance for additional subfloor/bearers and realignment of ground levels and base ventilation (allowed for above under landscaping)	-$4,500.00
Delete building consent (waived by Council as	-2,500.00

condition of settlement)	
Add allowance for demolition and disposal of portion of the north wall;	2,000.00
Add replace framing and subfloor to north wall not already allowed for in landscaping remedial work	2,000.00
Add wall preparation and redecoration to north wall	2,400.00
Add reinstate plaster to north sections of wall not allowed for in Mr Murphy's estimates	4,000.00
Add extra allowance carpet cleaning/replacement	2,000.00
Add contingency	5,000.00
Total	$60,610.00

All exclusive of GST

9.2.5 That does not make allowance for temporary accommodation as suggested by Mr French because it seems to me that the work for which I am finding the respondents liable does not require that the claimants take temporary accommodation.

9.2.6 I have compared those calculations with those of Mr French in his estimates and I think the difference between the two reasonably fairly represents the difference between the costing approach of Mr French for complete removal of the plaster system and reinstatement with a lightweight system and the approach of Mr Murphy for repair and remedial work to window sill flashing affected areas and removal and replacement of only part of the solid plaster system and reinstatement with a lightweight system in those parts.

9.2.7 Of course it may be more practical for Mr Walton and Ms Badcock to completely demolish the total system and reinstate that with a lightweight system as proposed by Mr French. It may be that, had this claim been a more general one than limited to the jurisdiction under the Weathertight Homes Resolution Services Act 2002, other issues could

have been addressed and compensated. My task is to decide what order for compensation I can and should make to compensate the claimants under the Act and I think the fair amount is $60,610.00 plus GST, that is $68,186.25, for these items. (That is, all items except landscape related).

10. **Recovery Apportionment**

10.1 As mentioned above, it is my view that the sole liability for the landscaping work and its consequential damage to the dwellinghouse is that of Mr Holden. He accepts that. Neither the Council nor Taylor Roofing were involved in that matter. Mr Holden must bear 100% of the liability for that.

10.2 It has long been a part of our law that a builder of a dwelling owes a duty of care to a subsequent purchaser and can be liable to that person for any negligence in construction (see *Bowen v Paramount Builders (Hamilton) Ltd* [1977] 1 NZLR 394 and *Mt Albert Borough Council v Johnson* [1979] 2 NZLR 234). It is also well established that a territorial authority owes a duty of care to the owner of a property where construction is occurring and in respect of which the territorial authority has a role (*Invercargill City Council v Hamlin* [1996] 1 NZLR 513; *Mt Albert Borough Council v Johnson*).

10.3 It is also well established that each negligent party (tort feasor) is liable 100% to the claimant but that there can be an apportionment of liability between those tort feasors such that each can recover against the other in those proportions under s17(1)(c) of the Law Reform Act 1946.

10.4 At this stage I completely disregard the fact that Auckland City Council has reached a settlement with the claimants and I do not know if that was based on any assumption of a percentage of

estimated repair costs; it was merely put to me on the basis that the Council was not acknowledging any liability.

10.5 The liability for a Council's negligence can arise in different ways including the giving of a building consent and including the inspection process.

10.6 In this case the Council was presented with an application for building consent showing Mr Holden as the applicant in his status of "Owner/Builder". It also showed the designer as M J Leijh (ANZIA) and referred to Mr Chandler as the building certifier. The builder was named as "Holden Landscapes (and Subcontractors)". The plans lodged for building consent were quite clearly shown as having been drawn by "Holden Landscapes copyright Bill Holden". I was encouraged to find that the erroneous reference to Mr Leijh as the designer relieved the Council of a significant amount of liability at the building consent stage. I do not regard that as a significant factor. The application itself was clear in its reference to the identity of the builder and the plans were clear in their reference to the draughtsman of the same.

10.7 The plans showed (page 10) the proposal to use –

> "Builders paper 40mm polystyrene sheeting builders paper galv. metal planterers [sic] meshing, two coat solid plaster with water proofing additive"

They also showed for the mock chimney (page 10):

> "Timber frame covered with builders paper, 6mm Hardie-Backer plasterers mesh and two coats solid plaster containing water-proofing additive"

10.8 As I have said, the proposal to use two coats of solid plaster on a polystyrene sheeting appears to be relatively unusual. I am of the view that that should have alerted the Council's inspectors to more diligent care in assessing the proposal particularly when faced with

the drawings by what appeared to be a layman. Questions should have been asked about the use of that process and more detail should have been obtained. Although that issue goes to the plaster cracking issue where I have held I have no jurisdiction to order compensation for that item on its own, I do think that the Council's failure to pick up on that item and to raise more questions about it and have the solid plaster system more adequately specified should have alerted it to greater diligence in relation to other matters.

10.9 As to inspections, the Council records show what appear to be 14 different inspections (**exhibit 3**) including the entry:

> "28/11/95 2027 [employee] 7.00 [units] stucco inspection mesh incomplete rest OK"

with a further later handwritten notation showing a tick and the letters "OK" with what appear to be initials.

10.10 Again the question of the proper affixing of the stucco to the polystyrene and the failure to have used Hardiebacker on, or the inadequacies of spouting and flashings to, the mock chimney despite the plans both indicate inadequacies in inspection. I do not know if the inspector observed the absence of sill flashings but whether or not that was so, on Mr Holden's evidence it was never intended to have sill flashings and they would not have been specified at the time of building consent.

10.11 Weighing those issues up carefully I have formed the view that in relation to the matters concerning defects to this dwelling causing leaks and damage for which I have jurisdiction (other than the landscaping issues already mentioned), that is the mock chimney wall and the absence of window sill flashings, I have formed the view that the repair costs should be met as follows:

10.11.1 100% of the remediation costs arising from landscaping issues to Mr Holden.

10.11.2 75% of the remediation costs for damage resulting from the absence of appropriate guttering to the roof in the mock chimney area to Taylor Roofing.

10.11.3 As to all other remediation costs (quantified above at $68,186.25 including GST) 35% to the Auckland City Council and 65% to Mr Holden.

11. Outcome

11.1 Applying those principles to the claims made by Mr Walton and Ms Badcock, they are entitled to recover:

11.1.1 From Taylor Roofing (Auckland) 1992 Limited the cost of remediation from the mock chimney issues, that is the sum of $13,125.00 plus GST, a total of $14,765.63.

11.1.2 From Auckland City Council the cost of all remediation work other than that arising from landscaping, $60,610.00 plus GST, a total of $68,186.25.

11.1.3 From Mr Holden the cost of repairs resultant from the landscape work, $6,187.50, and the cost of all other repairs which have resulted in leaks and damage, $60,610.00 plus GST, $68,186.25, a total of $74,373.75.

11.2 Applying the principles of recovery and contribution mentioned, the following apply:

11.2.1 Taylor Roofing and Auckland City Council and Mr Holden must contribute to the cost of repairs consequent upon the

faults in the mock chimney area and surrounding walls totalling $14,765.63 including GST as to 75% by Taylor Roofing and 25% by Auckland City Council and Mr Holden, divided between those parties in the 35:65 ratio, that is 8.75% to Auckland City and 16.25% to Mr Holden. The outcome is that if Taylor Roofing pay the full sum, $14,765.63, it is entitled to recover 8.75% from Auckland City, $1,292.00 and 16.25% from Mr Holden, $2,400.00. Conversely if either the Auckland City Council or Mr Holden pay the claimants the amount of $14,765.63 they can recover their respective portions from the other parties (and for completeness the net amount payable by Taylor Roofing is $11,074.22).

11.2.2 As to the repair costs (other than landscaping) totalling $68,186.25, the respective contributions and recoveries are 35% from Auckland City Council, $23,865.00, and 65% to Mr Holden, $44,321.25.

12. Effect of Settlement

12.1 All of the above has completely ignored the settlement which had occurred between the claimants and the Auckland City Council referred to at paragraph 2.9 hereof. I must consider now the consequences on the other parties of that settlement. It has been hard for me to do so because I was not told the basis on which the agreed sum was calculated or even approached and, of course as I have said, this was without any concession of liability on the part of the Council.

12.2 The conclusions I have reached implicate the Council in all matters except those arising from the landscaping. The total liability I have fixed for the Council on the basis that it was a tort feasor is $68,186.25 (paragraph 11.1.2).

12.3 If there had been proper contributions from the tort feasors according to the apportionments I have made the contribution from the Council would have been:

Mock chimney issues – 8.75%	$1,292.00
Other issues (excluding landscaping) – 35%	23,865.00
Total	$25,157.00

12.4 The amount of settlement by the Council is for a greater sum (but, of course, there may be other building dispute issues concerning the solid plaster system that I have not dealt with but in respect of which there may have been some comprehensive settlement). I can only take the situation as it has been presented to me, that is that the claimants have had towards their losses and damages **in this claim** the sum of $31,375.00 including GST and that should be deducted from the amounts that they are entitled to from the respective parties to leave the following result:

Compensation for landscaping and resultant damage issues (para 9.1.3)	$6,187.50
Compensation for other "leaky building" issues (including mock chimney but excluding landscaping) (paras 9.2.4 and 9.2.7)	68,186.25
Total	$74,373.75
Less compensation already received Auckland City	31,375.00
Balance claim	$42,998.75

12.5 That is the maximum that in my view the claimants can now recover from Taylor Roofing and/or Mr Holden, they having already received $31,375.00 from Auckland City Council in full settlement.

12.6 I have decided that that figure should be apportioned between the three respective categories of repair and appropriate adjustments made to contributions as follows:

Percentage of net claim ($42,998.75/$74,373.75)	58%
Landscaping and repair costs: $6,187.50 x 58%	3,577.27
Net repair costs to mock chimney damage $14,765.63 x 58%	8,536.66
Other repair costs for leaky building: $68,186.25 x 58%	39,421.48

12.7 Applying the same principles of entitlement to recovery, the claimants are entitled to recover from:

Mr W R Holden (total claim)	$42,998.75
Taylor Roofing (Auckland) 1992 Ltd ($14,765.63 x 58%)	8,536.66

12.8 As to apportionment the same principles apply, namely:

12.8.1 The percentages change between Taylor Roofing and W R Holden because the Auckland City Council has made its contribution. These changes are:

12.8.1.1 Taylor Roofing - 81.55%;

12.8.1.2 W R Holden - 18.45%.

12.8.2 Taylor Roofing can recover from Mr Holden 18.45% of the net repair costs for mock chimney leakage issues, $8,536.66, that is $1,606.63 provided, of course, Taylor Roofing has paid the full amount, $8,536.66, to the claimants. There is no right of recovery against Auckland City Council because it has already contributed a sum sufficient to discharge its liability in respect of that issue.

12.8.3 Conversely Mr Holden, if he has paid the sum of $8,536.66 to the claimants, can recover from Taylor Roofing 81.55% of that sum, namely $6,930.03. Again there is no right of recovery against Auckland City Council because it has

already contributed a sum sufficient to discharge its liability in respect of that issue.

12.9 Because there has been full recovery from Auckland City Council of its liability to the claimants, neither Taylor Roofing nor Mr Holden have any claim or entitlement to contribution from it; and it has no right of contribution or recovery from Taylor Roofing nor Mr Holden.

12.10 The net result is tabulated as follows:

Gross entitlement for claimants				$74,373.75
Less recovery from Auckland City				31,375.00
Balance				42,998.75
Total liability of Taylor Roofing to claimants			8,536.66	
Total liability of W R Holden to claimants			42,998.75	
Recovery entitlement by Taylor Roofing from W R Holden (if payment made to claimants)		1,606.63		
Total recovery by W R Holden from Taylor Roofing (if full payment made by him)		6,930.03		
Net liability of W R Holden (if Taylor Roofing pays)	36,068.72			
Net liability of Taylor Roofing (if W R Holden pays)	6,930.03			
Net receipt Auckland City Council	31,375.00			
Total received by claimants	$74,373.75			

13. **Result**

13.1 Pursuant to s42 of the Weathertight Homes Resolution Services Act 2002 **I NOW ORDER**:

13.1.1 That William Ross Holden pay to the claimants, Mr Walton and Ms Badcock, the sum of $42,998.75.

13.1.2 That Taylor Roofing (Auckland) 1992 Limited pay to the claimants, Mr Walton and Ms Badcock, the sum of $8,536.66.

13.1.3 That if Taylor Roofing (Auckland) 1992 Limited has paid that sum to the claimants it may recover from William Ross Holden the sum of $1,606.63.

13.1.4 That if Mr Holden has paid the sum to the claimants for repair work concerning the mock chimney totalling $8,536.66, he may recover from Taylor Roofing (Auckland) 1992 Limited the sum of $6,930.03.

14. **Costs**

14.1 No party made any application for costs and I do not think that this is a case for any order for costs under s43 of the WHRS Act.

Notice

15. Pursuant to s41(1)(b)(iii) of the Weathertight Homes Resolution Services Act 2002 the statement is made that if an application to enforce this determination by entry as a judgment is made and any party takes no steps in relation thereto, the consequences are that it is likely that judgment will be entered for the amounts for which payment has been ordered and steps taken to enforce that judgment in accordance with the law.

DATED the 27th day of February 2004

_____

David M Carden
Adjudicator