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Wellington's biggest leaky building battle goes another round

 [Paid content](#) | Victoria Young | Wednesday December 11, 2013

Owners of apartments in what is believed to be Wellington's biggest leaky building claim have won an appeal against the Weathertight Homes Tribunal.

Last month, the High Court at Wellington decided owners in Thorndon's St Paul's apartments were not time-barred and those who had leased their units for commercial use can still claim against the Wellington City Council.

The lawyer for the body corporate, Dan Parker, says the claim is probably Wellington's biggest and settlement is likely to be about \$17 million.

Mr Parker says the body corporate attended mediation with the council this week but further investigations are required, meaning it is too early to determine if and when a settlement will be done.

While the complex has more than 100 units, the owners of 20 units were time barred by the tribunal for joining the action more than 10 years after the building was completed. The owners involved began their claim last February.

However, on appeal to the High Court, Justice Robert Dobson determined a "whole of complex" approach should be taken, which means it is not too late to join the claims.

Definition of "dwellinghouse"

The judge also ruled on whether the 21 apartments, which are leased to Quest, were "dwellinghouses" and could therefore fall within the tribunal's jurisdiction.

Quest manages some of the apartments and allows people to stay for a long or short term on a commercial basis.

Under the act, hospitals, hostels, hotels, motels, rest home or other institutions are excluded from the definition of dwellinghouse, meaning owners cannot make claims under the Weathertight Homes Tribunal.

The tribunal had ruled the Quest apartments were a hotel or motel and therefore could not claim.

However, Justice Dobson says it's clear the apartments were originally intended for private use.

He says the weathertightness legislation has been created as a form of consumer protection. This means the relevant time to assess whether the apartment complex is for private use is when it was first constructed.



St Pauls apartments



- [Court loosens weathertight homes criteria](#)

He says if not, the exclusions to the tribunal's jurisdiction will be unrelated to the circumstances in which councils sign off on buildings.

The "bright-line" approach follows Justice Paul Heath's reasoning in *Sunset Terraces*, which was followed in the [Townscape Akoranga decision](#). Mr Parker says the Townscape decision came out the day before the body corporate had filed for appeal.*

Mr Parker says that approach – which favours assessment of what the use of the buildings are when signed off by councils – is the emerging approach to assessing liability in this area of law.

*This article has been amended from an earlier version which incorrectly stated the Sunset Terraces decision came out shortly after Mr Parker filed for an appeal for the body corporate.

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