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# Combustible Alucobond cladding 'not safe' under consumer law

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Apartment owners in Australia's first-ever combustible cladding class action say Alucobond supplier Halifax Vogel Group and manufacturer 3A Composites should replace the combustible panels on their Dolls Point building and pay compensation for costs such as higher insurance premiums.

Lead applicants in the case, backed by litigation funder IMF Bentham and represented by William Roberts Lawyers, argue that the polyethylene-core panels failed to meet standards set by consumer protection laws and carried a "material risk" of causing or spreading fire, and increasing the risks to life or property in the event of a fire at their southern Sydney building.

The argument by owners of the 17 apartments sidesteps debate about the panels' compliance with the building code, a key feature of [last year's ground-breaking Lacrosse case](#) in which apartment owners sought damages from builder LU Simon.





Owners of the 17 apartments in Shore Dolls Point, at 172-174 Russell Avenue, are lead claimants in the cladding class action suit against the suppliers of Alucobond panels. **Louise Kennerley**

"What we allege is that the product was unsafe, and not fit for purpose," said IMF Bentham investment manager Gavin Beardsell on Monday.

"No doubt within that the argument's about whether at the relevant time the product in question complied with the Building Code of Australia, but that is not the ultimate issue we have to prove."

While consumer law has long given individual consumers a means of redress for defective products against manufacturers with whom they have no direct relationship, it is the first time the law has been used to bring a claim in relation to combustible cladding.

A judgment, or settlement prior to judgment, could give the compensation to owners of potentially thousands of apartments across Australia, as well as owners of commercial and government buildings and even long-term leaseholders with the obligation to rectify defects.

The statement of claim filed in the Federal Court shows owners in the four-level Shore building at 172-174 Russell Avenue argue that Alucobond PE-core cladding was "at all material times" a good acquired for consumption under Australian Consumer Law and was, accordingly, subject to ACL guarantee that it be of acceptable quality.

A further argument made by the owners of the building completed in 2012 is that the panels used on the building were not of "merchantable quality", that is, not fit for the purpose for which they were sold, under the Trade Practices Act.

HVG chief executive Bruce Rayment did not respond to a request for comment on Monday.

Shores Dolls Point, developed by a company called Prestige Apartments Australia, was completed in 2012. In December 2013, a 148-square-metre two-bedroom apartment sold for \$930,000, 15 months after it sold off-plan for \$800,000, records show.

The case is still at early stages. The applicants are still going through the processes of serving papers on Osnabruck, Germany-based 3A Composites.

Halifax Vogel, represented by Quinn Emanuel Urquhart & Sullivan lawyers, was only required to file a defence and an initial tranche of Alucobond-related marketing materials, along with an affidavit as to what other relevant documents were discoverable, to the Federal Court earlier this month.

Mr Beardsall said his side was unlikely to disclose the identity of other applicants joining the class, as owners did not generally want to make it public that their building had combustible cladding.

"One benefit of being in this class action is your identity is not known or disclosed as a group member," he said.

The class isn't only open to owners of private buildings, but to government and other public owners. These entities have to explicitly opt in to any action, unlike private building owners who were all accepted unless they opted out.

William Roberts Lawyers principal Bill Petrovski said he was not at liberty to say if any public entities had opted in to the action.



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