

# SA District Court grants relief to Air Apartments, ratifies \$17m replacement of potentially flammable cladding

A judge has ruled on the contentious “flammable” cladding dispute involving the imposing Air Apartments in Adelaide’s inner east.



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Chief court reporter Sean Fewster explains how a civil trial works in South Australia.

Potentially flammable cladding in a prestigious Adelaide apartment building can be replaced – with up to \$10 million covered by taxpayer-funded loans – without unanimous owner support, a court has ruled.

On Monday, the District Court ruled the Community Corporation of Air Apartments had satisfied state law while pursuing the \$17 million project.

In his written judgment, Judge Michael Burnett said two “special resolutions” authorising the work had been passed with a majority of owner votes, not unanimous support.

He said state law required unanimous votes – but ruled Air Apartments’ circumstances warranted the court’s “relief” to allow the work to go ahead.



Air Apartments. Picture: Brenton Edwards

“(The law) recognises that, in some cases, it might not be possible for a corporation to obtain a unanimous or special resolution authorising expenditure ... this is (such) a case,” he said.

“There is objective evidence that supports the position the action was taken in the best interests of the corporation and its members ... to address a risk that posed a substantial danger to the safety of the building and lot owners.

“The expenditure was necessary and not discretionary ... it cannot be sensibly said that the (cladding) could have been left on the building and not replaced.”



Residents of the Air Apartments who have concerns about flammable cladding on the apartment building. Picture: NCA NewsWire / Kelly Barnes

Previously, the court heard Burnside Council [had issued the imposing building](#) – on Greenhill Rd at Eastwood – with a notice requiring 80 per cent of its cladding be replaced.

Following a special resolution vote, the corporation entered into a contract with Duratec to replace all of the cladding at once, at a cost of \$17 million.

The cost of the project was to be shared between apartment owners in the form of levies.

The decision generated [public protests](#), with concerns raised about the validity of the contract and owners' access to [taxpayer-funded loans](#).





A protest truck outside Air Apartments in July 2024. Picture Mark Brake

In his judgment on Monday, Judge Burnett said the respective votes, while not unanimous, showed “considerable support” for the resolutions.

“The corporation put forward the resolutions in good faith ... after extensive consultation with members,” he said.

“The resolutions do not act unfairly to any member or group of members, they do not advantage any member over any other member.

“They seek to address a problem that is common to all members (and) do not impose an unreasonable burden on members as a whole.

“The corporation had a large number of members and, in such circumstances, it is not surprising that a resolution did not pass unanimously.”

He said the corporation had been authorised to receive “up to a maximum of \$10 million” from the loan scheme, in which “some 41 members have elected to participate”.

“The provision of a loan has since been confirmed ... there has not been any other reason articulated for the opposition to the application,” he said.

“The special resolutions ... are taken to be a unanimous resolution.”