



Guide to:

LEAKY BUILDINGS

Created: June, 2014

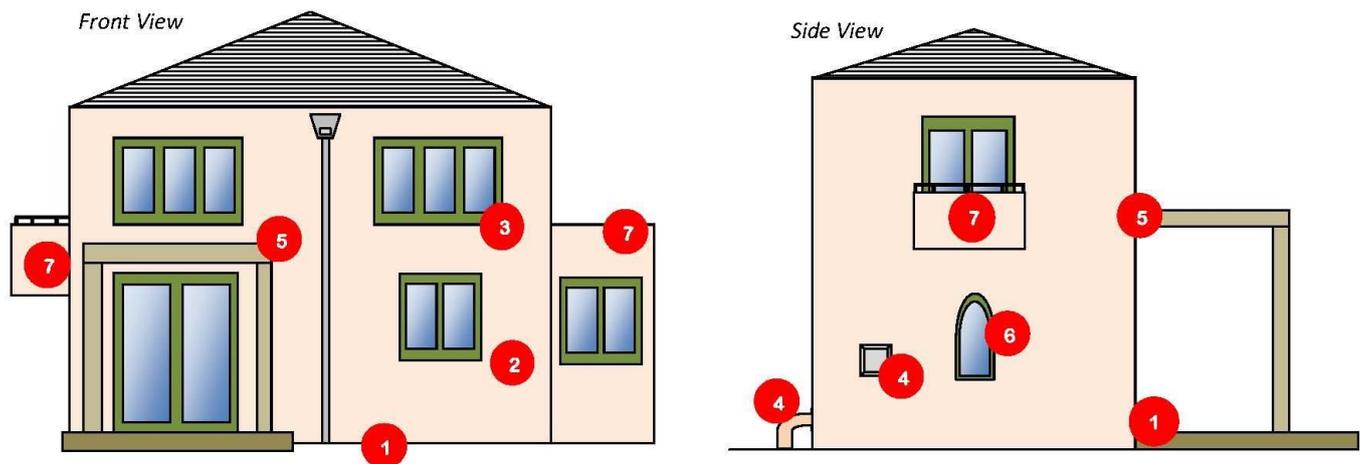
Last Updated: February, 2016

DO I HAVE A LEAKY HOME?

The term "Leaky Home" conjures up images of water dribbling down the interior of your home. Unfortunately this isn't the case. In fact there are generally very few signs that a home is leaking however there are a number of features, coupled with when the property was built, that are a good indicator of whether a home is likely to be suffering from water ingress.

Below is a list of features that pose a significant weathertightness risk. This list is not exhaustive but if you feel that your home has any of these features we would encourage you to investigate further. If you are unsure whether an area of your home may have a problem, please feel free to send us a photo or contact us.

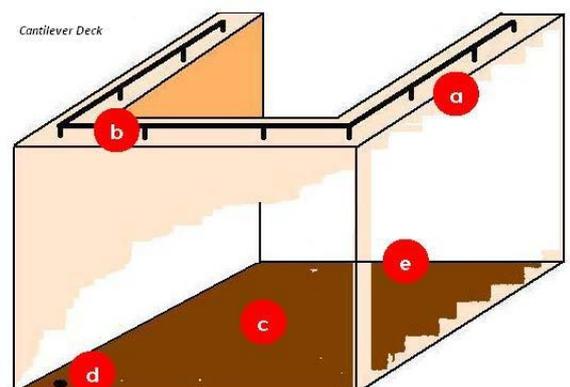
WEATHERTIGHTNESS RISK FEATURES



1. **Ground Clearance:** Inadequate clearance between the cladding and ground, paving or deck, or insufficient fall away from the building's perimeter. Clearance to solid ground (concrete, asphalt, paving, decking timber should be 150mm; clearance to soil should be 225mm.
2. **Cracking in Cladding:** Look for hairline cracks in the cladding, typically found close to windows and doors; or discolouration of cladding in these areas.
3. **Joinery:** Check for cracks along the joinery seals, between the joinery and the cladding.
4. **Penetrations:** Check all penetrations in the cladding (e.g.: around pipes, vents or meter boxes) for gaps and lack of sealant. Also check to ensure meter boxes are correctly flashed. Any lack of flashing or reliance on sealant may allow water to penetrate.
5. **Pergolas:** Pergola frame penetrating or direct fixed through the cladding may result in water ingress.
6. **Windows:** Check window flashings – round, shaped or corner windows are difficult to flash, increasing the risk of water ingress.
7. **Enclosed Balcony / Cantilever Deck:** These can result in a multitude of risks. (a) A lack of fall on the balustrade. (b) Hand railings attached through the plaster cladding. (c) Poorly applied waterproof membrane. (d) Insufficient drainage holes allowing water to pool after rain. (e) Lack of clearance between the cladding and deck floor.

Interior Signs: These can include swollen or cracked skirting boards or architraves; mould on the inside of curtains and window liners; floor coverings showing signs of water damage; swelling, cracking and popping of water liners.

Please see photos in Appendix.



I think I've got a leaky home – what should I do?

Step 1

Call HOBANZ for independent advice and to discuss the options that are available to you.

Step 2

HOBANZ will provide an initial consultation where we will review any available reports. In partnership with you we will develop a tailored solution that meets your specific needs and circumstance. If required, HOBANZ can introduce legal experts for an overview of the likely success of any claim.

Step 3

Engage HOBANZ to put together a team of experienced independent professionals. HOBANZ has a proven track record in creating successful solutions for leaky home owners, key to which is HOBANZ's ability to link trusted professionals to form one cohesive solution.

Step 4

HOBANZ will guide and support you through the journey. Our in-depth knowledge of the issues leaky home owners face and our experience in resolving these issues mean we will be on-hand to work in partnership with the professionals you engage, answer all your questions and keep things on track and moving to a successful and cost effective conclusion.

LEAKY HOMES

If you have just discovered you own a leaky home you are probably going through a myriad of feelings – anger or shame at being in this situation, blame, even denial at the fact that this has happened. All of these reactions are understandable but while you are a victim you need to resolve the situation as quickly as possible. Delays will only wear you down, can weaken any legal claim you may have and may result in your home becoming unhealthy to live in.

HOBANZ can get you on the path to recovery. We will sit down with you to gain a full understanding of your situation and what you want to achieve. We will explain the options available to you and the costs to fix it. We will ensure you have the right legal advice to decide on possible litigation. And we will support and guide you through the steps that follow.

Our aim is to help you to restore the value and quality of your home as quickly and cost effectively as possible.

FIRST STEP

We will sit down with you to discuss your situation. We will run through some of the history of your home and what action you have taken so far. We will also ask what outcome you want – is this your dream home that you want to restore? Or do you simply wish to fix and sell the property? We will ask you to bring along any information you might have to hand on your home such as any original plans and documentation you may have, WHRS assessor's report, building surveyor's report, or other relevant documents that will enable us to better understand your situation.

ASSESSING YOUR HOME

It is essential that we establish what weathertightness issues your home is suffering and the effects of these. We will help you to engage a building consultant with specialist weathertightness knowledge to undertake an investigation of your property and establish what and how much damage has been caused. Their report would also determine the appropriate level of remedial repairs, as well as the likely costs.

If you have already had a WHRS assessment done we would still recommend an independent investigation. In our experience the WHRS assessor's report often falls well short of

identifying the true extent of damage incurred and consequently the scope of repair and associated remedial cost estimates are often far below the true cost of repair.

We can help you understand what has happened to your home, what it will take to fix it and what the likely cost will be. We are there to answer any questions you have so the decisions you make are informed ones.

WHY IS THE SPECIALIST WEATHERTIGHTNESS EXPERT SO IMPORTANT?

It is the building consultant's role to not only assess the damage your home has suffered but also to identify the parties who are responsible.

If you intend to litigate - make a claim through either the Weathertight Homes Tribunal (WHT) or the Courts - it will be the responsibility of your building consultant to act as an expert. In addition to providing evidence on your behalf, they will need to be able to refute any arguments the other parties may put up and so must have in-depth knowledge of weathertightness issues and understand the construction defects they can cause.

Through our Trusted Provider Network we are able to recommend building consultants who have tried and true experience in this area as well as sound knowledge and integrity. For further information on our Trusted Provider Network please visit our website www.hobanz.org.nz.

GETTING THE RIGHT LEGAL ADVICE

Once weathertightness issues are discovered it is imperative you obtain legal advice as to whether you have a claim or not. Under the New Zealand Building Act proceedings must be filed within 10 years of the act or omission giving rise to the claim. We will ensure you receive sound advice from legal professionals who have solid experience in leaky home claims. They will review the construction and ownership documentation and assess the likely outcome of litigation.

We will then sit down with you to explain the legal opinion and advise you of the options you have. We will answer all your questions regarding the legal process in terms you will understand so the decision you make is an informed one.

WHAT IS THE ROLE OF HOBANZ?

Bringing together the right team to support you through this difficult time is our first responsibility. There are many people out there offering their services and claiming to be experts in leaky homes however there are no others that actually co-ordinate the team to ensure you, the home owner, receives the best advice, expertise and results.

We know how important each member of the team is – how the building consultant's expertise in weathertightness issues and experience as an expert witness is vital to the litigation. We also know and understand the documentation that the legal team will require and the questions they will ask. We don't specialise in one area but bring a broad, multi-disciplined understanding of leaky home repairs and claims and so offer home owners independent advice and guidance as well as cost effective solutions.

We have helped hundreds of leaky home owners through this process. We understand that owning a leaky home is an emotional, stressful and financial burden but we are there to guide and support you through this distressing time.

FINANCIAL ASSISTANCE PACKAGE (FAP)

The government's Financial Assistance Package (FAP) was introduced to help owners of leaky homes repair their properties. Under the package the government and local council – if it carried out the building inspections and issued the Code Compliance Certificate (CCC) – will each contribute 25% of the "agreed repair cost" to help owners fund the repair of their home.

While touted to be the answer for leaky home owners, the FAP is not proving to be everything it promises and is not necessarily the best option for everyone.

If Council have inspected the building works and issued the Code Compliance Certificate, even taking into account legal fees, litigation would normally provide a better outcome in most cases.

If there are no parties of substance to pursue then the 25% or 50% contribution from Council and/or Crown does give some measure of assistance, however we urge homeowners to seek advice before deciding on a course of action.

If you have registered a [claim](#) with the Ministry of Business, Innovation and Employment (MBIE) and have had a Weathertight Homes

Resolution Services' Assessor's report, HOBANZ can complete a review of that report and provide you with independent advice on all options available to you.

If you have been found eligible to participate in the Financial Assistance Package you will need to be able to fund either 50% or 75% of the estimated agreed repair cost, dependent on whether both council and crown are contributing.

If the FAP is your chosen option you will need to follow the steps as laid out by the MBIE. To the layman these steps may initially appear straightforward however they can cause confusion and stress as you progress. In addition it is vital that any professional you engage is not only able to complete the documentation required by the MBIE but is skilled and proven in addressing weathertightness issues.

REPAIR PLAN / DESIGN

You will be required to commission a repair plan to address the damage identified in the WHRS report. HOBANZ can help you select a designer experienced in weathertightness issues who can complete the design work and obtain building consent.

TENDERS / DOCUMENTATION

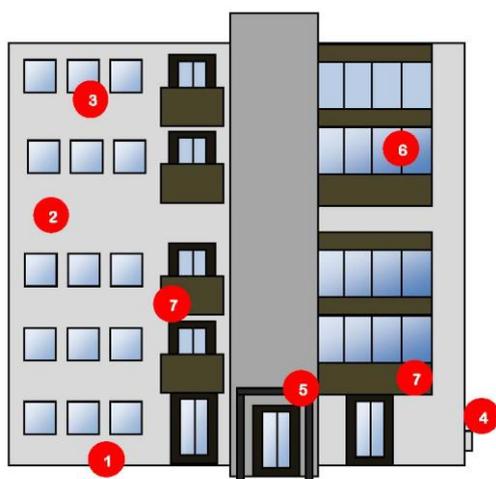
HOBANZ can run the tenders and prepare and manage the documentation required under the FAP process.

THIRD PARTY NEGOTIATIONS

HOBANZ can also help with negotiations for third party contributions under the FAP. This means that if there are others who were involved in the design or build of your property, who are liable for the cost of repairing your home, we are able to assist in negotiating contributions from them towards the cost – which will reduce the amount you will need to contribute.

The willingness of third parties to contribute may be a consideration when deciding whether the FAP is the best option for you to take.

LEAKY APARTMENT BUILDINGS



Discovering that your apartment building is leaking is a distressing event. Owners are likely to be experiencing a myriad of feelings – anger or shame at being in this situation, blame, even denial that this has happened. The Body Corporate Committee is tasked with the unenviable task of trying to fix a situation that they have no knowledge or skill in.

Unfortunately the situation needs to be resolved as quickly as possible. Delays will only wear you down, possibly weaken any legal claim you may have and could result in the building becoming structurally unsafe and unhealthy.

HOBANZ is here to help the body corporate understand their situation and make the necessary decisions to ensure the building is fixed to the satisfaction of all owners.

We will work in partnership with the Body Corporate Committee to ensure owners are kept informed during each step of the process. We will explain the options available to the body corporate and the costs involved to fix the building. We ensure you have the right legal advice to decide on possible litigation. And we will support and guide you through the steps that follow.

Our aim is to help you to restore the value and quality of your complex as quickly and cost effectively as possible.

FIRST STEP

In general it is one or two owners who initially have concerns about the weathertightness of their apartments while the remaining owners are unaware of any issues. At this stage, HOBANZ will assist the Body Corporate Committee to understand the situation and help bring together

all owners to accept there is an issue with the building.

ASSESSING THE BUILDING

It is essential that we establish what weathertightness issues the complex is suffering and the effects of these. We will help you to engage a building consultant with specialist weathertightness knowledge to undertake a thorough investigation of the complex to determine the extent and cause of damage and the effects on the structural integrity of the building(s). Their report will also determine the appropriate level of remedial repairs, as well as the likely costs.

If the Body Corporate Committee has already had a WHRS assessment we would still recommend an independent investigation by a specialist weathertightness expert. In our experience the WHRS assessor's report often falls well short of identifying the true extent of damage incurred and consequently the scope of repair and associated remedial cost estimates are often far below the true cost of repair.

We can explain to the owners what has happened to the building, what it will take to fix it and what the likely cost will be. We are there to answer any questions they may have so the decisions made are informed ones.

WHY IS THE SPECIALIST WEATHERTIGHTNESS EXPERT SO IMPORTANT?

It is the specialist weathertightness expert's role to not only assess the damage the buildings have suffered but also to identify the parties who may be responsible.

If you intend to litigate - make a claim through either the Weathertight Homes Tribunal (WHT) or the Courts - it will be the responsibility of your building consultant to act as an expert. In addition to providing evidence on behalf of the body corporate, they will need to be able to refute any arguments the other parties may put up and so must have in-depth knowledge of weathertightness issues and understand the construction defects they can cause.

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GETTING THE RIGHT LEGAL ADVICE

Once weathertightness issues are discovered it is imperative the body corporate obtain legal advice as to whether they have a claim or not. Under the New Zealand Building Act proceedings must be filed within 10 years of the act or omission giving rise to the claim. We will ensure you receive sound advice from legal professionals who have solid experience in leaky building claims. They will review the construction and ownership documentation and assess the likely outcome of litigation.

We will work in partnership with the Body Corporate Committee to explain to the owners the legal opinion and advise what options are available to them. We will answer any questions posed regarding the legal process in terms owners will understand so an informed decision can be made by the body corporate.

WHAT IS THE ROLE OF HOBANZ?

Bringing together the right team to support the Body Corporate Committee and owners through this difficult time is our first responsibility. There are many people out there offering their services and claiming to be experts in leaky buildings however there is no other organisation with the skills and expertise required to co-ordinate the team to ensure you receive the best advice, expertise and results.

We know how important each member of the team is – how the building consultant's expertise in weathertightness issues and experience as an expert is vital to the litigation. We also know and understand the documentation that the legal team will require and the questions they will ask. We don't specialise in one area but bring a broad, multi-disciplined understanding of leaky building repairs and claims and so offer Body Corporate Committees and owners independent advice and guidance as well as cost effective solutions.

We have helped numerous bodies corporate through this process. We understand that owning a leaky building is an emotional, stressful and financial burden but we can provide guidance and support to owners through this distressing time.

FREQUENTLY ASKED QUESTIONS

1. I bought my house without a CCC so can I make a claim?

A claim against the Council can be based on inspections that they have conducted and passed even though they did not ultimately issue a CCC. The courts have confirmed that negligence in the course of inspections is a sufficient basis for a claim even if the Council refused to issue a CCC. The reason why the CCC was refused will be relevant as will the timing. Even if a CCC is not issued for reasons relevant to weathertightness, if the effect of their earlier inspections was to seal in the defects by allowing construction to continue the claim can be based on those inspections. Whether or not your house received a CCC is also irrelevant in relation to your potential claim against builders, developers and vendors and any other potential parties. It is important to check when purchasing a property whether a CCC was issued. If you didn't check prior to your purchase there may be a reduction to your claim if checks would have shown you that a CCC had been refused.

2. I've heard you don't get enough money out of the Council to fix your house, so why bother making a claim?

If you pursue the Council through litigation the chances are that they may be ordered to pay the full amount of your claim subject to any deduction for fault on your part in ignoring warnings in a pre-purchase report for example, or allowing the damage to worsen through lack of maintenance. The amount that you end up with in your hand will also be reduced by legal costs. Nonetheless the vast majority of clients whom we have assisted, with the help of lawyers, end up with enough money to cover the majority of their repair costs and are in a much better position than they would have been in had they done nothing.

3. The Council is only liable for 20%, so is the Financial Assistance Package a better option?

It is a common misconception that the Council's liability is limited to 20%. In fact the Council are usually found liable for 100% of the damages. Where there are other liable parties, such as a builder or developer, the Council may only be ordered to contribute 20% of the damages and the builder or other parties make

up the remaining 80%. However, if those parties cannot pay or refuse to pay, the Council has to pay the full 100% due to a principle known as joint and several liability. If you get an order of joint and several liability of 100% against the Council, you can claim the full 100% from them and leave it to them to chase the other defendants for their contributions. This is much better than the proposed 25% in the Financial Assistance Package.

4. I knew I had a leaky home ages ago but did nothing about it, so can I make a claim?

In order to preserve your ability to bring your claim you do have to act within 6 years of the defects being discoverable or within 6 years of the damage or any signs of defects being so obvious that any reasonable person would call in an expert. This is known as the limitation period and it provides a defence for defendants if a claim is not brought within that time frame. There is a second limitation period known as the ten year long stop which means that claims cannot be brought in respect of building work more than 10 years after the acts of omissions that give rise to your claim. That could mean within 10 years of the construction for a claim against the builder or within 10 years of a code compliance certificate for a claim against the Council. So even if it has been less than 6 years you still need to check whether 10 years have passed since the construction of your home and the last date of the Council's involvement. You can stop the limitation clock for claims in the Tribunal by applying for a WHRS assessor's report. To bring a claim in the High Court or the District Court you actually have to lodge the claim, or file the particulars of claim to stop the clock. If your home is approaching ten years old you need to act quickly and apply for a WHRS assessor's report or seek legal advice.

5. The developer, builder and other people who have built my house have gone bust so there is no one left for me to sue - what can I do?

This does not necessarily mean that you will be unable to recover anything. The director of the building or developing company may have been personally involved to such an extent that he/she may be personally liable for the negligent work. In most cases your local Council will have been involved in the

construction in issuing the building consent, conducting inspections in the course of construction and in issuing a code compliance certificate. You can find out whether your local Council fulfilled this role or delegated it to a private certifier by requesting a copy of your property file from your local Council. If the Council have passed inspections and issued a code compliance certificate for your home when it had not been constructed in compliance with the building code, you may be able to establish a claim against them for the full amount of your loss. They will be held joint and severally liable with the parties involved in the negligent construction; but if those parties can no longer pay or can't be found, the Council may be ordered to pay 100%.

In addition to the Council there may be other parties to consider such as pre-purchase inspectors, or real estate agents or vendors if they have unfairly represented the condition of the house when you bought it. If your vendors had building work done on the house they may be liable under the vendors' warranties in your sale and purchase agreement.

6. It's too expensive to make a claim – the lawyers will take any money I get to pay their fees

One of the great flaws in the current system is that it is almost impossible to recover the cost of your repairs without incurring legal and experts' fees. Many of the experts' fees ought to be recoverable as part of your claim. If you bring a claim in the High Court a proportion of your legal fees will also be recoverable if you succeed. HOBANZ can assist you in preparing your case for litigation to limit some of the initial legal costs. If you chose your lawyer carefully they ought to be able to run your claim so that your costs do not unduly eat into your compensation. HOBANZ can offer guidance on which law firms may be able to help.

7. My house was built more than 10 years ago so can I make a claim?

It is important to check when the Council issued a code compliance certificate for your house. Sometimes the final inspection and code compliance certificate follow many months or years after the house has been constructed. This information can be gleaned from the property file held by the Council. A

claim against the Council can be based on the final inspection and issuance of the code compliance certificate. Builders or developers may also still be involved at this late stage. You should also consider whether the vendors or real estate agent misled you as to the condition of the property when you bought it. If you obtained a pre-purchase report and no issues were raised in that report then there may be a claim against the writer of the report.

If you would like to know more about this issue HOBANZ can refer you to lawyers who are familiar with this issue.

8. If I make a claim, it will show up on my LIM will I be able to sell?

While having a notation about a claim on your LIM may make it harder to sell your home, the widespread publicity about leaky homes means that all plaster clad homes are likely to have stigma attached to them and be hard to sell whether or not a claim has been made. It is much better therefore to make a claim so that you can afford to repair your home. The repairs ought to be done under a building consent and you would therefore have the added assurance of a new code compliance certificate from your local territorial authority. If you do choose to repair your home, there is no need to use the same materials as were used when it was built. You can choose to change the cladding to weatherboards or some other type of cladding which does not have the same stigma as many of the monolithic claddings. You may not be able to recover the full cost of changing the cladding as you can only recover the cost of a like-for-like repair but depending on the circumstances the difference may not be huge and worth it in terms of resale value. If the re-sale value of your home is a particular concern for you, HOBANZ can discuss repair options which may increase the re-sale value.

9. I bought my house recently and didn't get a builder's report before I purchased - am I able to get any compensation?

Homeowners in New Zealand are not under a legal duty to get a pre-purchase inspection report: your claim will not automatically fail for this reason. Lack of a pre-purchase inspection is only an issue if, prior to purchase, you knew something which made (or ought to have made) you suspect there were issues with the house. Even then a failure to get a report would usually only lead to a reduction in the amount you claim as opposed to preventing you claiming anything at all. This is entirely dependent on the facts of each particular case.

APPENDIX

1. Ground Clearance

Here are some examples of where there is no or very little clearance between the cladding and the ground.



In fig 1 below you can see the cladding has been buried below the paved and unpaved ground (note the moss growing on the cladding, a sign of water absorption). When the cladding is removed, you are able to see how the timber has decayed (fig 2).



fig 1



fig 2

2. Cracking & Staining of Cladding

Hairline crack that can allow water to penetrate the cladding.



Cladding re-opening following a repair due to continued water ingress



Discolouration of paintwork due to water penetration



3. Joinery

Examples of cracking along the joinery seals



4. Penetrations in Cladding



This meterbox was attached without flashings (fig 1) and relies on a silicon bead to direct moisture away (fig 2). When the cladding has been removed the blackened timber indicates decay - laboratory testing showed brown rot (fig 3).

fig 1



fig 2



fig 3

5. Pergolas

Examples of pergola beams penetrating the cladding or being bolted to the cladding



6. Windows

Flashing is buried into the cladding and has an unsealed gap



Note discoloration of the paint indicates moisture ingress from the

7. Enclosed Balcony / Cantilever Deck



In addition to checking the points indicated, check below the balcony or deck for signs of water damage ie: staining on ceilings/walls below.

When the balustrade fall is insufficient, water penetration leads to significant decay (fig 2)



fig 1



fig 2

Interior Signs



When the carpet is pulled back the water damage beneath is clearly visible – check for rust on carpet tacks

Popped gib nails and cracking



Discolouration of skirting board indicating moisture present



Cracked skirting board

