



---

## PROCEDURAL ORDER NO 4

Dated 27 March 2008

---

### 1. Application for Removal by Fourth and Fifth Respondents

1.1 The fourth respondent, Martin Kenneth Kells and the fifth respondent, Craig William Kells, have filed applications to be removed as parties to the claim.

1.2 The first respondent, Auckland City Council have filed an opposition in response to the fourth and fifth respondents' applications for removal.

1.3 The applications by the fourth and fifth respondents is based on the ten year "long-stop" limitation period, which is imposed by section 393(2) of the Building Act 2004, which prevents civil proceedings relating to building work being brought after a period of ten years or more from the date of omission on which the proceedings are based.

1.4 In the present case the issue is when did the ten year "long-stop" period commence. The fourth and fifth respondents allege that the ten year period commenced on 12 May 1997 being the date on which the Code of Compliance Certificate was issued as provided in section 393(2).

1.5 However, section 393(3)(a) provides that the date of the act or omission is:-

"in the case of civil proceedings brought against a territorial authority, a building consent authority..... the date of issue of the consent certificate, a determination as the case may be."

1.6 Consequently the "long-stop" period for the first respondent commenced on 12 May 1997 but was brought to a halt on 2 March 2005 when the claimant filed a claim with the result that the actions by the first respondent in joining the fourth and fifth respondents are not time-barred.

1.7 Alternatively, the first respondent submitted:

"WHRS Act 2006

3. Section 37 of the WHRS Act 2006 states as follows:  
“37 Application of Limitation Act 1950 to applications for assessor’s report, etc  
(1) For the purposes of the Limitation Act 1950 (and any other enactment that imposes a limitation period), the making of an application under section 32(1) has effect as if it were the filing of proceedings in a court.”
4. Section 32(1) states:  
“32. Application for assessor’s report  
(1) An owner of a dwelling house who wishes to bring a claim in respect of it may apply to the Chief Executive-  
(a) To have an assessor’s report prepared in respect of it; or  
(b) To have an assessor’s report that was prepared in respect of it on the application of a former owner approved as suitable for the owner’s claim.”
5. As a result of the operation of the above sections, time (for the purposes of limitation) against all potentially liable parties, including the fourth and fifth respondents, stopped running as at the date the claimants applied to the WHRS on 2 March 2005.”

1.8 The Tribunal accepts that submission which also results in deciding that the joinder of the fourth and fifth respondents by the first respondent is not statute-barred.

## **2. Alternative Defence**

2.1 The fourth and fifth respondents have also raised the defence to the claim on the basis that no causative link exists between their participation in the project and any of the resulting damage, and that “it will be argued by the fourth and fifth respondents that the first respondent have not (and will not) show a causal (sic) nexus or link between the acts or omissions of the fourth and fifth respondents and the defects to the property.”

2.2 The first respondent in paragraphs 14,15 and 16 of its memorandum of response has filed an opposition to that allegation.

2.3 Because of the indication in the submissions by the fourth and fifth respondents that further submissions may be made on this issue, the Tribunal does not propose to resolve this issue until the parties confirm that all submissions are complete and a decision is required.

**DATED** this 27<sup>th</sup> day of March 2008

---

**S G Lockhart QC**

Adjudicator