

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 55/2025
[2025] NZSC 109

BETWEEN GLENPANEL DEVELOPMENT LIMITED
Applicant

AND EXPERT CONSENTING PANEL
Respondent

Court: Glazebrook, Ellen France and Miller JJ

Counsel: V L Heine KC, D A C Bullock and I K Rollinson for Applicant
S M Kinsler and K C Grant for Respondent
M S Smith as counsel assisting the Court

Judgment: 28 August 2025

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

[1] Glenpanel Development Ltd seeks leave to appeal a decision of the Court of Appeal in which that Court held that Matthew Allan, the chair of an expert consenting panel convened under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the 2020 Act), was not disqualified for a conflict of interest or apparent bias.¹

[2] The Court agreed with Dunningham J that Mr Allan's status as a partner in a law firm, Brookfields, which acts for a competitor to Glenpanel, did not present a

¹ *Glenpanel Development Ltd v Expert Consenting Panel* [2025] NZCA 154 (Mallon, Cooke and Collins JJ) [CA judgment] at [61] and [63].

conflict of interest, and nor did his role as an advisor to Auckland Council and Auckland Transport, in which capacity he had advised on the meaning of the 2020 Act.² Further, no question of apparent bias or predetermination arose in circumstances where there was no evidence that Glenpanel's competitor had any interest in opposing the development which was the subject of the application.³

[3] However, the Court of Appeal allowed Glenpanel's appeal for other reasons. It directed that the panel reconsider the application in light of this Court's subsequent decision in *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency*.⁴

[4] Mr Allan has since resigned from the panel, so he will play no part in its decision. Further, the 2020 Act has been repealed, although it will continue to govern the reconsideration.

[5] Glenpanel maintains that this Court should nonetheless grant leave to appeal. It contends that an issue of general or public importance arises because permanent fast-track consenting processes have now been enacted in the Fast-track Approvals Act 2024 and they similarly provide for the appointment of expert panels.⁵

[6] Glenpanel also contends that there remains a live issue because the lawfulness of Mr Allan's conduct might bear on the amount of costs it is or might be required to pay to the Environmental Protection Agency under the 2020 Act's processes for recovery of administrative costs.

[7] We accept that a question of general or public importance may arise regarding the tests for apparent bias and conflicts of interest for lawyers who act in a quasi-judicial capacity as members of expert consenting panels. But because Mr Allan will not participate in the panel's reconsideration the issue is no longer live in this proceeding. The question of exposure to administrative costs appears to have been

² *Glenpanel Development Ltd v Expert Consenting Panel* [2023] NZHC 2069, (2023) 25 ELRNZ 114 [HC judgment] at [156] and [158]–[159]; and CA judgment, above n 1, at [57]–[61].

³ HC judgment, above n 2, at [154]; and see CA judgment, above n 1, at [58].

⁴ CA judgment, above n 1, at [37]–[47] citing *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26, [2024] 1 NZLR 242.

⁵ See Senior Courts Act 2016, s 74(2)(a).

raised as something of an afterthought; we have no information about the criteria applied or the amount which might be attributed to the Court of Appeal's decision that Mr Allan was not disqualified.

[8] For these reasons, we are not satisfied that a question of general or public importance arises and calls for decision in this case. The application for leave to appeal is dismissed.

[9] As the respondent has (rightfully) abided throughout, there is no order as to costs.⁶

Solicitors:
Lee Salmon Long, Auckland for Applicant
Meredith Connell, Wellington for Respondent

⁶ See CA judgment, above n 1, at [64]. There is also no question whether Glenpanel should be ordered under s 178 of the Senior Courts Act to pay the costs of counsel assisting: see *Fish Man Ltd (in liq) v Hadfield* [2017] NZCA 589, [2018] 2 NZLR 428 at [96].