IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 105/2025
[2025] NZSC 180

BETWEEN	BODY CORPORATE 355492 Applicant
AND	CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Respondent

Court: Glazebrook, Ellen France and Miller JJ

Counsel: G B Lewis and N Prachankhet for Applicant
A J Wicks and R M McConnell for Respondent

Judgment: 1 December 2025

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of $2,500.

REASONS

[1] The Weathertight Homes Resolution Services Act 2006 seeks to provide a speedy, flexible and cost-effective procedure for "owners of dwellinghouses that are leaky buildings" to have their claims assessed and resolved, with financial assistance available for accepted claims.[1]

[2] The applicant body corporate owns Oaks Shores, a four-block multi-unit complex in Queenstown. The complex has suffered leaks requiring weathertightness

[1] See Weathertight Homes Resolution Services Act 2006, s 3. No new claims may be lodged under the Act.

repairs. Accordingly, the applicant has brought a multi-unit complex claim seeking central government financial assistance under the Act.[2]

[3] For claimants to be eligible for financial assistance, the respondent (or their delegate) must first consider whether the claim meets the eligibility criteria.[3] Those criteria relevantly refer to "dwellinghouses in the multi-unit complex to which the claim relates".[4] In February 2016 a claims advisor emailed the applicant stating that the respondent had found the claim was eligible.[5] The units in Block 4 were listed as part of that claim. However, the advisor went on to note that, based on an initial evaluation, "some of the units" within Oaks Shores may qualify for financial assistance. The appendix was said to contain "[a] summary of the initial qualifying statuses of the units". The appendix stated the units in Block 4 were not considered to be dwellinghouses because the relevant building consent for Block 4 "was issued for [a] 'commercial' building". The appendix concluded with a statement that only dwellinghouse units can receive financial assistance.

[4] The applicant contends that, contrary to the findings of the Courts below,[6] the respondent determined that the claim was eligible and that determination included Block 4's units and common areas. The applicant submits that when the respondent's delegate communicated that decision, it became final. The applicant says that the claims advisor's further advice about potential financial assistance was unsolicited and inconsistent with the respondent's eligibility decision. That advice could not override or modify the respondent's decision.

[5] The applicant submits that the proposed appeal will avoid a substantial miscarriage of justice for the owners of units in Block 4, who will otherwise miss out on significant financial assistance to which they are entitled.[7] The applicant also says the proposed appeal raises issues of general or public importance concerning the

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2 The local council did not participate in the financial assistance scheme under the legislation.
3 Weathertight Homes Resolution Services Act, s 48(1). See also s 32.
4 Section 16; and see s 8 definition of "dwellinghouse". See similarly ss 7(6), 19 and 30.
5 See *Body Corporate 355492 v Chief Executive of the Ministry of Business, Innovation and Employment* [2025] NZCA 431 (Palmer, Grice and Gault JJ) [CA judgment] at [38].
6 *Body Corporate 355492 v Chief Executive of the Ministry of Business, Innovation, and Employment* [2024] NZHC 1422, [2024] 3 NZLR 84 (O'Gorman J) [HC judgment] at [90]–[92]; and CA judgment, above n 5, at [2(b)] and [43]–[44].
7 Senior Courts Act 2016, s 74(2)(b).

interpretation of administrative decisions, especially whether administrative decisions as communicated may be relied upon as final or whether their true meaning is subject to internal records and other extrinsic material.[8]

[6] We are not persuaded the Courts below erred in the interpretation of the decision as communicated. At no point did the decision suggest that the Block 4 units were eligible. Rather, it confirmed that although the entire complex constituted an eligible claim (in accordance with the Act's purpose to consolidate dwellinghouse claims for their speedy resolution), the Block 4 units did not appear to be dwellinghouses and so were provisionally ineligible.

[7] This means it was not strictly necessary for the Courts below to refer to any extrinsic material to aid the interpretation. In other words, the issues assessed by the applicant to be of general or public importance do not arise for decision in this case. Nor is there any risk of a substantial miscarriage of justice, as that term is understood in the civil context.[9]

[8] The applicant proposes a second ground of appeal that we can deal with briefly.[10] The Courts below observed, albeit for different reasons, that car parks in Block 4 allocated for the exclusive use of Block 3 unit owners are potentially eligible.[11] Yet the High Court refused to grant relief because the decision-maker did not in fact purport to exclude the car parks.[12] The Court of Appeal then found the issue was not strictly before it and said it only indicated its view to assist the parties.[13] The respondent does not seek to relitigate the issue in this Court, but the applicant argues that the Court of Appeal ought to have granted relief and that the respondent

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8 Section 74(2)(a).

9 *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

10 We note for completeness that the applicant has not challenged the findings below that the only available interpretation of the Act is one which excludes commercial units within a multi-unit complex, or that the Block 4 units are properly classed as commercial units: see, for example, CA judgment, above n 5, at [2(a)] and [20]–[29]. We therefore make no comment on these issues.

11 HC judgment, above n 6, at [118]; and CA judgment, above n 5, at [58].

12 HC judgment, above n 6, at [130].

13 CA judgment, above n 5, at [58].

now accepts the decision-maker did not mean to exclude all of Block 4.[14] We agree with the respondent that this proposed ground of appeal is now moot.[15] In any event, as noted above, the decision conveyed that the Block 4 units were provisionally ineligible.

[9] For these reasons, the application for leave to appeal is dismissed.

[10] The applicant must pay the respondent costs of $2,500.

Solicitors:
Grimshaw & Co, Auckland for Applicant
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

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[14] The applicant says it was informed of the respondent's "concession" only one day before the respondent filed its submissions on the leave application. The correctness of that complaint is unclear as the Court of Appeal recorded that if it upheld the High Court judgment, the respondent "would take that as confirmation that the carparks are eligible": CA judgment, above n 5, at [56]. However, in the circumstances, we grant leave for the parties to file their additional memoranda.

[15] See Senior Courts Act, s 74(1).