

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 31/2025  
[2025] NZSC 93

BETWEEN	MICHAEL AND JULIA FUGE, BRYCE MARLOWE TOWN, CHLOE ANN FUGE AND JULIA ELIZABETH FUGE AS TRUSTEES OF THE ABERDEEN FOUR TRUST Applicants
AND	WIMAX NEW ZEALAND LTD Respondent

Court: Ellen France, Williams and Miller JJ

Counsel: A R Galbraith KC, A S Ross KC and P W G Ahern for Applicants  
J E Hodder KC, K M Quinn KC and C B Pearce for Respondent

Judgment: 30 July 2025

---

JUDGMENT OF THE COURT

---

**A** Leave to appeal is granted (*Wimax New Zealand Ltd v Fuge (as trustees of the Aberdeen Four Trust)* [2025] NZCA 31, [2025] 2 NZLR 308).

**B** The approved question is whether the Court of Appeal was correct to give an affirmative answer to the question of law posed at [61] of its reasons, namely:

**Did the High Court err in holding there was an actionable interference with a vehicular right of way easement in circumstances where the encroaching structures did not substantially interfere with the grantee's current use of the right of way and what was relied on was the effect the structures might have on possible future plans to develop the benefited property?**

---

## REASONS

[1] Leave does not extend to the second question of law answered by the Court of Appeal.<sup>1</sup> That would be inappropriate for the reasons given by the Court at [60] and [134]–[136]. In particular, this Court does not intend to decide whether encroachments on the burdened land affect the questions whether any future development would be “as of right” under planning instruments and whether encroachments would affect a discretionary decision to approve or decline such development.

[2] For the assistance of counsel, the Court wishes to focus on whether, having regard to s 313 and sch 5 of the Property Law Act 2007 and sch 4 of the Land Transfer Regulations 2002,<sup>2</sup> it is necessary in law to decide the issue of actionable interference by reference to the present requirements of the grantee, and not the reasonable possibility of future development.<sup>3</sup>

Solicitors:  
Kent Legal, Auckland for Applicants  
Thompson Blackie Biddles, Auckland for Respondent

---

<sup>1</sup> *Wimax New Zealand Ltd v Fuge (as trustees of the Aberdeen Four Trust)* [2025] NZCA 31, [2025] 2 NZLR 308 (French, Mallon and Ellis JJ) at [142].

<sup>2</sup> Schedule 5 of the Land Transfer Regulations 2018 being inapplicable in this case.

<sup>3</sup> See *Synlait Milk Ltd v New Zealand Industrial Park Ltd* [2020] NZSC 157, [2020] 1 NZLR 657.