

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 59/2024
[2026] NZSC 116

BETWEEN	MALCOLM JAMES DAISLEY Applicant
AND	WHANGAREI DISTRICT COUNCIL Respondent

Court: Winkelmann CJ, Glazebrook, Ellen France, Kós and O'Regan JJ

Counsel: Applicant in person
D H McLellan KC, F P Divich and C L D Cox for Respondent

Judgment: 27 August 2026

JUDGMENT OF THE COURT

- A** **The application for recall of this Court's judgment of 4 June 2026 (*Whangarei District Council v Daisley* [2026] NZSC 72) is dismissed.**
- B** **There is no order as to costs.**
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REASONS

[1] Mr Daisley seeks recall of this Court's judgment allowing (by majority, and in part) the Whangarei District Council's appeal.¹

[2] He argues that this Court made a fundamental error of statutory interpretation in construing s 28(b) of the Limitation Act 1950, was wrong to reverse the finding of the Court of Appeal that the Council was subjectively reckless, and erred (this time, along with the Court of Appeal) on the question of whether continuing breach occurred

¹ *Whangarei District Council v Daisley* [2026] NZSC 72 (Winkelmann CJ, Glazebrook, Ellen France, Kós and O'Regan JJ).

(which might postpone limitation). The essence of this argument is that the minority reasons in this Court were right, and the majority's, wrong. He also wishes to emphasise evidence which might suggest the Council's officers were reckless in issuing abatement notices—this being relevant to the dismissed cross-appeal concerning misfeasance in a public office.

[3] These arguments repackage or enlarge on arguments already rejected as untenable by this Court. There is no exceptional circumstance justifying recall on any of the three categories articulated in *Horowhenua County v Nash (No 2)*, approved by this Court in *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)*.²

[4] Only the third category in *Horowhenua County*—"where for some other very special reason justice requires that the judgment be recalled"—might conceivably apply here. But in the case of alleged reasoning error, that would depend on an error so clear and material that its existence would be conceded by all concerned, if acting reasonably.

[5] This is not such a case. The Court considered very carefully the arguments made for Mr Daisley—essentially repeated on this application—but the majority did not agree with them. That another view might have been taken, and was by one member of the Court, cannot justify recall.

[6] It is not necessary in these circumstances to consider Mr Daisley's additional application for stay pending determination of the recall application.

[7] The Council, having filed submissions on the application, seeks costs. In the circumstances, where it is evident Mr Daisley was unaware of the rule in *Horowhenua County*, we are not persuaded this is the occasion on which to make such an order, although we do not rule out costs orders being made on future recall applications.

² *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633; and *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2]. See also *Green Growth No 2 Ltd v Queen Elizabeth the Second National Trust* [2018] NZSC 115 at [20].

Result

[8] The application for recall of this Court's judgment of 4 June 2026 (*Whangarei District Council v Daisley* [2026] NZSC 72) is dismissed.

[9] We make no order as to costs.

Solicitors:
Heaney & Partners, Auckland for Respondent