



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

3 FEBRUARY 2026

MEDIA RELEASE

**FUGE AND OTHERS AS TRUSTEES OF THE ABERDEEN FOUR TRUST v WIMAX
NEW ZEALAND LIMITED**

(SC 31/2025)

Hearing in the Supreme Court Tuesday 17 February 2026

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court.

Background

This appeal concerns whether structures encroaching on a vehicular right of way constitute an actionable interference in nuisance, not because they substantially interfere with the user's use of the right of way, but because they might affect possible future plans to develop the user's property.

The respondent, Wimax, owns land upon which is a driveway. The driveway is used by Wimax, as well as the appellant trustees and several others under rights of way to access their otherwise landlocked properties. The rights of way are held over an approximately 6.2 m-wide strip, whereas the width of the sealed driveway varies between 3.1 and 4.5 m.

Between 2014 and 2016, Wimax erected several structures adjacent to the sealed driveway but in areas covered by the strip. Those structures replaced historic structures and do not encroach further than the historic structures.

The trustees discovered the structures encroached on the strip and sought Wimax to remove them. The trustees argued that any future multi-unit development on their own land would first require the driveway to be widened, which the encroaching structures prevented. The trustees were unsuccessful before an arbitrator, who held that the structures did not constitute an actionable interference since they did not affect the functionality of the driveway. Nor, the arbitrator held, could possible loss of economic benefits be a basis for relief.

On 20 May 2022, the High Court allowed the trustees' appeal. The Judge held that the trustees were entitled under the right of way to use the whole of the 6.2 m-wide strip to access their property. He remitted the question of remedy back to the arbitrator.

On 26 February 2025, the Court of Appeal allowed Wimax’s appeal. The Court held that the structures were not an actionable interference since the existing driveway was adequate and effective, and there was no current need for it to be widened. The Court of Appeal in any event dismissed the trustees’ appeal, in which they contended the High Court was wrong to remit the question of remedy.

This appeal

On 30 July 2025, this Court granted the trustees leave to appeal.

The approved question is the same posed by the Court of Appeal, namely whether “the High Court err[ed] 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 [trustees’] 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”.

The Court wishes to focus on the effect of the Property Law Act 2007 and Land Transfer Regulations 2002.

The trustees were not granted leave to appeal whether the High Court was wrong to remit the question of remedy.

Viewing of hearing

The courtroom is open to the public.

This hearing of the appeal will also be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

The panel

The Hon Justice Miller	The Hon Justice Ellen France	The Rt Hon Chief Justice Winkelmann	The Hon Justice Williams	The Hon Justice Cooke
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Judges as seen from the public gallery

Counsel

- Trustees (Appellants): *A R Galbraith KC, A S Ross KC and P W G Ahern*
- Wimax (Respondent): *J E Hodder KC, K M Quinn KC and C B Pearce*

Sitting hours

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaubepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2025\] NZCA 31](#) (26 February 2025)
Supreme Court leave decision: [\[2025\] NZSC 93](#) (30 July 2025)

