



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

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11 April 2023

## **MEDIA RELEASE**

**LOCAL GOVERNMENT MUTUAL FUNDS TRUSTEE LIMITED v NAPIER CITY COUNCIL**

(SC 103/2022)

**Hearing in the Supreme Court Thursday 27 April**

### **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. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

#### **Background**

The Appellant, Local Government Mutual Funds Trustee Limited (RiskPool), was the trustee of an indemnity cover scheme for local governments. It operated similarly to an insurer. RiskPool provided the Napier City Council (the Council) with cover for liability in negligence when authorising and certifying building compliance. This cover did not extend to weathertightness defects. The meaning of this exclusion clause is the main issue of this case.

In 2013, the Council was sued by the owners of a defective building development called the Waterfront Apartment complex. The owners alleged that the Council was negligent in issuing building consents and code compliance certificates. Some, but not all, of the defects concerned weathertightness. The Council paid the owners a bulk sum and then sought to recover some of that amount from RiskPool.

RiskPool maintained that the claim was not covered as it included weathertightness defects. The Council argued that only those parts of the claim relating to weathertightness should be excluded. The Council sued RiskPool for breach of contract in the High Court.

In June 2021, the High Court held that RiskPool had not breached the contract by failing to pay the Council. The Court found that where a weathertightness claim is made, the exclusion clause also excludes cover for non-weathertightness defects that arise.

The Council appealed the decision to the Court of Appeal. RiskPool also cross appealed on the High Court's findings of the amount of liability owed. In September 2022, the Court of Appeal



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allowed the Council's appeal. It found that RiskPool was in breach of contract for declining cover and applying the exclusion clause to the entire claim. The Court dismissed the cross appeal but referred the matter back to the High Court to determine the amount of RiskPool's liability.

### **This appeal**

RiskPool applied for leave to appeal the decision of the Court of Appeal in the Supreme Court. In December 2022, the Supreme Court granted leave.

The issue to be determined is whether the Court of Appeal was correct in its interpretation of the exclusion clause that the claim was only excluded to the extent that the Council's liability arose directly or indirectly out of weathertightness defects.

### **Viewing of hearing**

The Courtroom is open to the public in accordance with the [COVID 19 Protection Framework Protocol](#).

This hearing of the appeal will 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 Williams	The Hon Justice O'Regan	The Rt Hon Chief Justice Winkelmann	The Hon Justice Ellen France	The Hon Justice Kós
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Judges as seen from the public gallery

### **Counsel**

- Local Government Mutual Funds Trustee Limited (Appellant): *M G Ring KC and C J Hlavac*
- Napier City Council (Respondent): *D H McLellan KC and G N M Tompkins*

### **Sitting hours**

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



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## Enquiries

Any enquiries about the hearing should be directed via email to [supremecourt@justice.govt.nz](mailto: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 Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2022\] NZCA 422](#) (8 September 2022)

Supreme Court leave decision: [\[2022\] NZSC 152](#) (21 December 2022)