

AUSTRALIA / JUDGMENT

Feat Active Pty Ltd t/a AW Design Build v Tellett

[2026] NSWCATAP 247**COURT**

Civil and Administrative Tribunal

DECIDED

07 August 2026

BEFORER C Titterton OAM, Senior Member
K Merrick, Senior Member**CASE / FILE NUMBER**

2026/00107983

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Civil and Administrative Tribunal New South Wales

Medium Neutral Citation: Feat Active Pty Ltd t/a AW Design Build v Tellett [2026] NSWCATAP 247**Hearing dates:** 30 July 2026**Date of orders:** 7 August 2026**Decision date:** 07 August 2026**Jurisdiction:** Appeal Panel**Before:** R C Titterton OAM, Senior Member
K Merrick, Senior Member**Decision:** (1) To the extent that the appeal raises a question of law, the appeal is dismissed.
(2) To the extent that the appeal raises any other error, leave to appeal is refused and the appeal is otherwise dismissed.**Catchwords:** APPEALS – no question of principle**Legislation Cited:** Civil and Administrative Tribunal Act 2014 (NSW), ss 4, 78, 80; cl 12 of Sch 4
Civil and Administrative Tribunal Rules 2014 (NSW), r 29(b)
Home Building Act 1989 (NSW), s 48O

Cases Cited:	Collins v Urban [2014] NSAWCATAP 17 Idoport Pty Ltd v National Australia Bank Ltd [2001] NSWSC 123 Nguyen v Nguyen [2025] NSWCATAP 238 Ottaviano v Leculier [2026] NSWCATAP 49 Pholi v Wearne [2014] NSWCATAP 78 Prendergast v Western Murray Irrigation Ltd [2014] NSWCATAP 69 NSW Land and Housing Corporation v Orr [2019] NSWCA 231 Ramos Miguel v Tinoco [2026] NSWCATAP 28 Roberts v Franks [2026] NSWCATAP 144 Ryan v BKB Motor Vehicle Repairs Pty Ltd [2017] NSWCATAP 39 Tanwar Institute of Professional Studies Pty Ltd v Ruggeri [2025] NSWCATAP 326 Unique Commercial Group Pty Ltd v Cusumano [2024] NSWCATAP 204
Texts Cited:	None
Category:	Principal judgment
Parties:	Feat Active Pty Ltd T/a AW Design Build (First Appellant) Adam Wilson (Second Appellant) SS Cornerstone Pty Ltd (Third Appellant) Jake Suh (Fourth Appellant) Jason Tellett (Respondent)
Representation:	A Wilson (Director) (First Appellant) Second Appellant (Self-Represented) Third Appellant (No Appearance) Fourth Appellant (No Appearance)
File Number(s):	2026/00107983
Publication restriction:	None Decision under appeal
Court or tribunal:	Civil and Administrative Tribunal
Jurisdiction:	Consumer and Commercial Division
Date of Decision:	18 February 2026
Before:	R Block, Senior Member
File Number(s):	2025/00374927

REASONS FOR DECISION

Introduction

This is an internal appeal to the Appeal Panel from the reasons for decision and orders in proceedings 2025/00374927 (Primary Proceedings).

In that matter, for the reasons given on 18 February 2026 (Primary Decision), the Consumer and Commercial Division of the Tribunal (Tribunal) ordered the first appellant, Feat Active Pty Ltd t/a AW Design Build, to pay the respondent \$50,544.42.

Background: The Primary Proceedings

In the Primary Proceedings, on 26 September 2025, the respondent filed an application seeking relief under s 48O of the Home Building Act 1989 (NSW) (HB Act) against the second appellant, Mr Adam Wilson.

The respondent sought the following orders:

Section 48O: Rectification of defective work

NCAT to order the builder to complete the rectification work within 30 days of the hearing

Section 48O(2): Money Order

NCAT to order compensation for the costs of the Consultant and other associated costs.

Alternatively, a money order for an alternative builder to complete the work based on the quotes that will be presented at the hearing plus all ancillary costs.

As to why the respondent was applying to the Tribunal, the respondent stated in the application:

Since February 2024, during heavy rain there is significant water ingress through the ceiling under the balcony into the living area and water damage to the ceiling itself. The builder has been unresponsive since this time with only the threat of legal action in July 2024 prompting any response at all.

In August 2025, I commissioned an independent consultant to investigate the building work and they classified the problem as a MAJOR defect under the act and therefore under 6 years warranty from September 2022. (Failed water membrane, inadequate flashing).

The report was issued to Adam Wilson, giving a clear deadline for responding. The work is urgent as there is significant damage to the ceiling and water ingress into the living area whenever there is only moderate rain now due to the temporary cover after the investigation - the bowed ceiling limiting adhesion. Despite chasing, Mr Wilson has yet to respond and needs to be handed a work order, which is timebound to 30 days, to ensure the work is carried out. Alternatively, all parties can agree that a separate builder carries out the works.

The Money Order is to recover the costs of the consultant and hearing and other ancillary costs. The hearing could easily have been avoided if Mr Wilson had been willing to accept his responsibilities under the 1989 Homebuilding Act. Similarly, he could have investigated the problem himself prior to the Consultant being engaged. He has shown zero urgency or interest in the matter since it first arose, simply hoping that it would “go away”.

Alternatively, as outlined above, the money order could be used to pay for a separate builder to do the work plus the ancillary costs.

At a directions hearing on 11 November 2025, the Tribunal made the usual orders for the filing of evidence. In addition, the first appellant was joined as party to the proceedings and the Mr Wilson removed.

However, on 21 November 2025, Mr Wilson was joined again as a respondent to the proceedings.

Then, on 18 December 2025, Mr Jake Suh t/as Cornerstone Pty Ltd was joined as a respondent to the proceedings.

By the time of the final hearing there were four respondents, being:

the first appellant, Feat Active Pty Ltd t/as AW Design Build, described by the Tribunal as the Builder (Builder);

the second appellant, Mr Wilson who is a director of the Builder;

the third appellant being SS Cornerstone Pty Ltd (described by the Tribunal as the Contractor Company); and

the fourth appellant, Mr Jake Suh, who is the sole director of the Contractor Company.

On 2 February 2025, the matter was set down for a final hearing on 18 February 2025.

Neither the Contractor Company nor Mr Suh participated in the Tribunal proceedings, as was the case on this appeal.

After a contested hearing, the only order made by the Tribunal was that the Builder pay the respondent the sum of \$50,544.42.

The Appeal

On 13 March 2026, a Notice of Appeal was filed. It is tolerably clear that all four respondents in the Tribunal proceedings were named as appellants in the appeal. In any event, all parties to first instance proceedings are parties to any internal appeal: Civil and Administrative Tribunal Rules 2014 (NSW) (NCAT Rules), r 29(b).

We note that Mr Wilson represented himself and the Builder, and that the third and fourth appellants did not appear.

In the Notice of Appeal, the appellants seek leave to appeal for the following reasons:

The appeal is arguable.

The tribunal Member failed to interpret applicants evidence properly.

The Tribunal accepted evidence by applicant less than 6 days' prior to hearing. This created an unfair and unreasonable situation for the respondent in not having time to respond.

New evidence will show that the applicant breached the statutory warranty obligations by allowing his own third party remedy before the giving the respondent full opportunity to do so.

No evidence will show that the experts report by the applicant only shows failure in compliance, Not the failure in causation.

(typographical and other errors as in original).

Attached to the Notice of Appeal is a document titled “Grounds of Appeal” which states:

B. Grounds for Appeal

- i. **Error of Law:** On 21/11/2025 Mr Tellett was granted leave to include Adam Wilson as respondent on the grounds that Adam Wilson failed to provide HOW Insurance This is an error of Law due to the fact that a previous application (11/11/2025) to add Adam Wilson was dismissed due to Adam Wilson providing evidence that HOW Insurance was not legally required in this instance as the Contract amount was under the threshold.
- ii. **Error of Law:** The member has made an error of Law in not correctly determining the out of time Addendum report by Mr Tellett’s Building inspector stating that the waterproofing does no[t] meet Australian Standards. This comment only states a failure to meet the ‘Standard’, and not a statement of causation that the physical Waterproofing application has failed.
- iii. **Procedural Fairness:** The Tribunal accepted evidence lodged after the deadline by Mr Tellett on the 11/2/2026, with less than 7 days remaining until the hearing. This significantly disadvantaged Mr Wilson, not allowing enough time to access and prepare a response to the evidence. There are also many other false claims made in the evidence that have not been challenged.

We will refer to these grounds respectively as Grounds One, Two and Three.

At the appeal hearing, the appellants did not press Ground One. We do not address that ground any further in these reasons.

In addition to those grounds of appeal, in the Notice of Appeal the appellants say that the Primary Decision was against the weight of the evidence, and that there is new evidence now available that was not reasonably available at the time of the hearing. We will refer to these grounds respectively as Grounds Four and Five.

The appellants say that the Primary Decision should be set aside, and that the respondent’s application to the Tribunal dismissed.

On 4 June 2026, the appellants filed another Notice of Appeal. We will treat this Notice of Appeal as an Amended Notice of Appeal. It adds an additional ground of appeal, namely that the Primary Decision was not fair and equitable (Ground Six).

At the conclusion of the appeal hearing, the appellants did not press Ground Six.

In support of the appeal, the appellants rely on a short statement of Mr David Wright-Hall dated 12 March 2026, a copy of the Primary Decision, and the certificate issued by the Tribunal on 20 February 2026 pursuant to s 78 of the Civil and Administrative Tribunal Act 2014 (NSW) (NCAT Act).

Despite directions of the Appeal Panel, the appellants did not file any of the evidence before the Tribunal, a transcript of the Tribunal hearing or a sound recording of the hearing. These last two items were directed to be filed in the event that the appellants wanted to rely on something that had occurred at the Tribunal hearing.

However, at the hearing, the appellants sought to rely on some of the evidence before the Tribunal, being a number of photographs. After discussion, the respondent did not object to the appellants filing these photographs and to rely on them at the appeal. The respondent did however object to the tender of a number of pages of written submissions, chiefly because he was taken by surprise. After hearing oral submissions from the parties, we refused to allow the appellants to file these submissions, although we did allow Mr Wilson to speak to them.

Respondent's position

The respondent filed a response to the Amended Notice of Appeal on 24 June 2026. In summary, he asserts that the appellants were seeking to re-argue factual findings and the Tribunal's assessment of the evidence.

The respondent also filed a 34 page bundle titled "Response to Appellant's Evidence". This bundle consisted of submissions in response to the grounds of appeal; extracts from the expert building report he relied on at the Tribunal hearing, being the report of Mr George Rench of Interbau Pty Ltd dated "August 2025" (Expert Report); the statement of Mr David Wright-Hall dated 20 December 2025, which the Builder relied on at the Tribunal hearing and several other pieces of evidence before the Tribunal.

The Primary Decision

It is appropriate to summarise the structure and relevant contents of the Primary Decision. We note that the hearing took place on 18 February 2025, with the written reasons being published to the parties on 20 February 2025.

By way of introduction, we note that the structure of the Primary Decision was entirely orthodox, and the Senior Member set out the relevant principles to be applied and made relevant findings of fact, and applied the relevant principles to those facts and reached her conclusions.

We consider that the reasons for decision surpassed the minimum acceptable standard enunciated by the Court of Appeal in *NSW Land and Housing Corporation v Orr* [2019] NSWCA 231 at [66], and no complaint was made (in terms) by the appellants that the reasons were inadequate.

At [1] of the Primary Decision, the Tribunal notes that the respondent's application was made pursuant to the HB Act.

At [2], the Tribunal notes that the respondent's claim was a claim for a breach of statutory warranty pursuant to s 18B(1) of the HB Act, and that it was satisfied that it had jurisdiction to hear and determine the application.

At [3], the Tribunal identifies the respondents to the proceedings, being the present appellants.

At [4], the Tribunal notes that:

the application was also an application pursuant to s 29(1)(b) of the Australian Consumer Law; the respondent was also seeking compensation for alleged false or misleading representations made by the appellants about the quality and standard of their building services.

Paragraphs [5]–[7], then sets out the relief sought by the respondent.

At [8]–[22], the Tribunal sets out the background to the respondent's application, noting the contract between him and the Builder, briefly summarises the expert evidence relied on by the respondent, including the Expert Report; deals with some licensing issues and briefly refers to s 48MA of the HB Act.

At [22], the Tribunal states that there was no dispute as to whether the statutory warranties in s 18B of the HB Act apply to the subject contract, and that the dispute between the parties concerned the attribution of responsibility and liability for defects and damage.

At [23]–[25], the Tribunal sets out the issues in dispute, being:

23. The [respondent] is seeking an award of (i) \$48,463.80 for rectification of the defects (ii) \$9,164 for reimbursement of the cost of the Expert Report and consulting fees (iii) \$1,891 for reimbursement of fees for legal advice obtained; and (iv) \$119 for reimbursement of Tribunal fees.
24. The [respondent] alleges that the waterproofing conducted by the Contractor Company and Contractor Director were not compliant with the applicable standards, and therefore one or more of the [appellants] is liable to compensate him for the resultant loss and damage.
25. The [respondent] further alleges that the [Buile] made false and misleading representations as to the compliance of the Works with applicable standards.

At [26]–[31], the Tribunal briefly summarises the material before it, and notes that the first and second appellants had submitted additional material on 11 February 2026 to the Tribunal. The Tribunal decided that as this material was lodged well after the due date for the evidence, no extension of time had been sought or granted for its late lodgement, and the evidence had not been provided to the respondent in time for him to review and compile a response, the Tribunal had not considered those materials for the purposes of the Primary Decision.

After then setting out the relevant provisions of the HB Act, at [37]-[42] the Tribunal considers “Which of the four named Respondents is liable”. For the reasons there stated the Tribunal concluded that the only liable respondent was the Builder.

Paragraphs [43]–[44] deal with the Builder’s lack of insurance, a matter not relevant to this appeal.

At [44]–[70], the Tribunal then considers whether the Builder breached the statutory warranties contained in s 18B of the HB Act.

The Tribunal describes how the respondent relied on the Expert Report (at [45]–[47]), and that the Builder:

asserted that the Expert Report had erred in its conclusions, and had failed to identify the cause of the leak, and take into account the damage they alleged must have been done to the balcony subsequently.

contested whether its waterproofing was substandard or was the cause of the water ingress, that 17 months elapsed between the completion of the job in October 2022 and the first water ingress incident in February 2024, a period the Builder submitted had been one of the wettest periods ever according to Bureau of Meteorology records

asserted that if the subject works were not compliant, there would have significant water ingress immediately.

As to this last point, the Tribunal noted at [50] that this statement did not accord with the views expressed in the Expert Report, and at [51] that the respondent had emailed the Builder in February 2024 about previous leaks worsening over time, “so this had been an issue for a while”.

The Tribunal then concludes:

52. Further, in the correspondence provided by the parties, the [respondent] had emailed the Builder 10 days after completion of the Works to advise there was a stain on the ceiling after weekend rain, noting it was the first time they had ever had such a leak. It appears the [first appellant] did not respond to that email, or any subsequent concerns expressed by the [respondent].
53. Accordingly, I do not accept the Builder’s submission that there were no leaks for 17 months after the Works had been completed.

At [55], the Tribunal states that the Builder “ultimately” sent “a building industry colleague, Mr David Wright-Hall”, to investigate the respondent’s claims, in June 2024, and then Mr Wilson attended the subject premises in late June 2024.

At [56]–[59], the Tribunal notes the Builder’s submissions that:

they observed:

that the additional patching work the [respondent] was going to undertake had not been done;

the balcony had suffered significant damage resulting in cracked tiles, particularly around the balustrade;

new silicone had been applied badly;

sheets had been prised up causing the previously applied silicone to be compromised;

the brackets were damaged; and

the glass balustrade had been dislodged. [1]

this looked significantly different from the completed works in October 2022, and it appeared that additional works had been undertaken; [2]

the Builder believed that the damage to the [subject works] could only have resulted from substantial external force, while the respondent denied any works had been undertaken except for some minor unrelated works in May 2025, and denied the occurrence of any event or major force; [3]

the Expert Report did not “look into” how the defects occurred; [4]

there must have been some event or incident involving considerable force to cause the damage observed in the photographs provided by Mr Wright-Hall. [5]

The Tribunal then states that no further supposition or evidence was adduced by the Builder in this regard, and that therefore the Tribunal was unable to give the Builder’s views significant weight.

At [60], the Tribunal records that the respondent gave evidence that while he eventually had a roofing expert conduct some minor repairs in May/June 2025, the water ingress issues long predated any additional work being conducted to the balcony, and were therefore directly attributable to the subject works effected by the various appellants.

As to the evidence relied on by the Builder, the Tribunal stated:

61. ... Mr Wright-Hall’s statement was not submitted nor relied upon as an expert report and did not comply with the requirements in any case. [Mr Wilson] advised that he did not realise he was supposed to obtain and lodge his own expert report. It was explained to him that there are not mandatory requirements in terms of what must be produced as evidence to the Tribunal, however having received the Expert Report some months ago, and disagreeing with its conclusions, it was incumbent on the [Builder] to obtain their own report countering the assertions therein.
62. In home building disputes where the subject matter is highly specialised, the Tribunal and any lay parties are reliant on independent experts.

63. The [Builder] insisted that there must have been an intervening event, and that the water ingress should have happened much sooner if it was caused by the waterproofing deficiencies. However, no evidence was adduced to support these statements, despite the vehemence with which they were delivered, and it does in fact appear that water ingress happened much sooner than he has presumed.

(emphasis added)

The Tribunal then states the Builder:

acknowledged that he was not familiar with the applicable building standards for waterproofing, and relied entirely on the expertise of the Contractor Company and Contractor Director; [6]

did not ask for the Contractor Company's licence number to verify they held one, rather it appeared they relied on a third party's recommendation of the Contractor Company and Contractor Director. [7]

The Tribunal then concludes:

69. The Expert Report is comprehensive and compelling, and matches up with the correspondence and the parameters of the Contract, despite the Respondent Builder's claims to the contrary. I accept its contents and findings, and accordingly find on the balance of probabilities, that the Respondent Builder is liable for the breach of the s 18B(1) statutory warranties resulting in a number of major defects in the Works.
70. The Scott schedule has detailed the issues and the attendant rectification costs, which amount to \$48,463.80.

(emphasis added)

At [71]–[76], the Tribunal then dealt with the respondent's claim that the Builder had made false and misleading representation in relation to the services he provided. The Tribunal found this claim established because, based on the Expert Report, the Builder's representations that the subject works were all completed in accordance with applicable standards "turned out to be a false representation". [8]

Further, the Tribunal found that the Builder:

was significantly incurious about the licence status, qualifications and experience of the Contractor Company he engaged, and despite being alerted to water ingress issues as early as 10 days after completion of the works, he failed to take action to investigate or address such issues; [9]

was similarly incurious about the waterproofing requirements and standards, and fully acknowledged during the hearing, that he was not, and is not, knowledgeable about those. Nevertheless, he felt qualified to assert that the waterproofing had been done properly and the subsequent water ingress must be attributable to something else and the Expert Report findings must be wrong. [10]

The Tribunal concluded:

76. I appreciate that the [Builder] genuinely believes this, but again I am unable to give significant weight to his fervent beliefs in the face of compelling evidence to the contrary. Therefore, on balance, I find that the [Builder] did make false and misleading representations to the [respondent] regarding the quality and standard of the Works.
77. As per the reasoning provided above, I rely substantially on the Expert Report and find that the [Builder] was in breach of their statutory warranties pursuant to s 18B(1) of the Act, as the waterproofing was found to be non-compliant with applicable standards, and on balance, was the most likely cause of the water ingress occurring directly below the balcony to the living room of the Premises, which I find to have presented from around 12 October 2022 as per the correspondence between the parties.

Nature of an appeal

Section 80 of the NCAT Act sets out the basis upon which appeals from decisions of the Tribunal may be brought. That section states that an appeal may be made as of right on any “question of law” (that is, not an “error of law”), or with leave of the Appeal Panel on any other grounds (s 80(2)(b)).

A question of law

In *Prendergast v Western Murray Irrigation Ltd* [2014] NSWCATAP 69 at [13], the Appeal Panel set out a non-exhaustive list of possible questions of law giving rise to an appeal as of right:

- whether there has been a failure to provide proper reasons;
- whether the Tribunal identified the wrong issue or asked the wrong question;
- whether a wrong principle of law had been applied;
- whether there was a failure to afford procedural fairness;
- whether the Tribunal failed to take into account relevant (that is, mandatory) considerations;
- whether the Tribunal took into account an irrelevant consideration;
- whether there was no evidence to support a finding of fact;
- whether the decision was so unreasonable that no reasonable decision-maker would make it.

These matters were clarified and expanded by the Appeal Panel in *Unique Commercial Group Pty Ltd v Cusumano* [2024] NSWCATAP 204 (Unique). Relevantly, the Appeal Panel stated:

35 It has become commonplace for parties, and their lawyers, to simply copy from various items listed in *Prendergast* as questions of law and present them in a Notice of Appeal, without modification of clarification to meet the circumstances of the relevant appeal.

36 Commonly, that will be wrong.

37 What constitutes a question of law is vexed and context dependent in the sense that the distinction between matters of fact and of law may turn on the circumstances in which the question arises: *Targeted Property Investments Pty Ltd v Look Up Technologies Pty Ltd* (No 2) [2023] NSWSC 416 at [33(4)], citing *Thomas and Naaz* [2023] NSWCA 40 at [52] and *Da Costa v The Queen* (1968) 118 CLR 186 at 194; [1968] HCA 51.

...

39 Therefore, discernment and care must be taken to ensure the grounds relied upon by the appellant, properly understood, raise questions of law and arise in the proceedings; or whether leave is required.

40 In light of the above authorities, a question of law should be articulated with sufficient precision to allow an Appeal Panel to identify it as a pure question of law.

In *Prendergast*, the Appeal Panel stated at [12], in circumstances where the appellants are not legally represented, it is apposite for the Tribunal to approach the issue by looking at the grounds of appeal generally, and necessary for the Appeal Panel to determine whether a question of law has in fact been raised.

Leave of the Appeal Panel on any other grounds

Clause 12 of Sch 4 of the NCAT Act provides that, in an appeal from a decision of the Consumer and Commercial Division of the Tribunal, an Appeal Panel may grant leave to appeal only if satisfied that the appellant may have suffered a substantial miscarriage of justice because:

the decision of the Tribunal under appeal was not fair and equitable; or

the decision of the Tribunal under appeal was against the weight of evidence; or

significant new evidence has arisen (being evidence that was not reasonably available at the time the proceedings under appeal were being dealt with).

The principles to be applied by an Appeal Panel in determining whether or not leave to appeal should be granted are well settled. In *Collins v Urban* [2014] NSAWCATAP 17, the Appeal Panel conducted a review of the relevant cases at [65]–[79] and concluded at [84](2) that ordinarily it is appropriate to grant leave to appeal only in matters that involve:

issues of principle;

questions of public importance or matters of administration or policy which might have general application; or

an injustice which is reasonably clear, in the sense of going beyond merely what is arguable, or an error that is plain and readily apparent which is central to the Tribunal's decision and not merely peripheral, so

a factual error that was unreasonably arrived at and clearly mistaken; or

the Tribunal having gone about the fact finding process in such an unorthodox manner or in such a way that it was likely to produce an unfair result so that it would be in the interests of justice for it to be reviewed.

Even if an appellant establishes that they may have suffered a substantial miscarriage of justice in the sense explained above, the Appeal Panel retains a discretion whether to grant leave under s 80(2) of the NCAT Act. An appellant must demonstrate something more than that the Tribunal was arguably wrong: *Pholi v Wearne* [2014] NSWCATAP 78 at [32].

As the Appeal Panel stated in *Unique*:

41 Where the ground of appeal does not raise a pure question of law, the appellant may seek leave to appeal.

42 The principles governing an application for leave to appeal under the NCAT Act are well-established and are repeated in many decisions of the Appeal Panel, often quoting *Collins v Urban* [2014] NSWCATAP 17. They are the same principles applied by the courts. It is enough, as a summary, to refer to *Secretary, Department of Family and Community Services v Smith* (2017) 95 NSWLR 597; [2017] NSWCA 206 at [28], where Gleeson JA (on behalf of the bench) said:

Only if the decision is attended with sufficient doubt to warrant its reconsideration on appeal will leave be granted. Ordinarily, it is only appropriate to grant leave where there is an issue of principle, a question of general public importance, or an injustice which is reasonably clear, in the sense of going beyond what is merely arguable. It is well established that it is not sufficient merely to show that the trial judge was arguably wrong.

43 Further, as Basten JA said (*White JA* agreeing) in *Hungry Jack's Pty Ltd v Fourtounas* [2020] NSWCA 325 (*Hungry Jack's*) at [9]:

The existence of error is not, however, sufficient to obtain a grant of leave to appeal; more is required than identification of error on the part of the trial judge, even if it can be said that the error is reasonably clear. Generally, the court will also need to be satisfied that there is a matter of some public importance engaged and that the costs of further litigation are not disproportionate to the amount in issue. Further, it should be established that, to leave any putative error uncorrected, would give rise to a substantial miscarriage of justice." (Citation omitted)

We turn now to the grounds of appeal. As noted Ground One was not pressed.

Ground Two

Ground Two is set out above and for convenience reference is restated here:

Error of Law: The member has made an error of Law in not correctly determining the out of time Addendum report by Mr Tellett's Building inspector stating that the waterproofing does not meet Australian Standards. This comment only states a failure to meet the 'Standard', and not a statement of causation that the physical Waterproofing application has failed.

There are a number of difficulties with this ground of appeal.

The first is that it is clear that the Tribunal did not receive the expert Addendum into evidence. It had been provided late and in breach of the Tribunal's directions and in the interests of procedural fairness, and the Tribunal stated at [31] that it had not taken its contents into consideration.

The second issue is that the Tribunal did consider both breach of relevant standards and separately the issue of causation: see [47]–[53], [69] and [77] of the Primary Decision, where the Tribunal states:

47. The Respondent Builder asserted that the Expert Report had erred in its conclusions, and had failed to identify the cause of the leak, and take into account the damage they alleged must have been done to the balcony subsequently the cause of the water ingress, given his belief that 17 months elapsed between the completion of the job (October 2022) and the first water ingress incident in February 2024.
49. The Respondent Builder submitted that this period had been one of the wettest periods ever completion of the Works.
50. The Respondent Builder asserted that if the Works were not compliant, there would have been Significant water ingress immediately. This does not accord with the views expressed in the Expert Report.
51. In this regard I note that the Applicant had emailed the Respondent Builder in February 2024 about previous leaks worsening over time, so this had been an issue for a while.
52. Further, in the correspondence provided by the parties, the Applicant had emailed the Respondent Builder 10 days after completion of the Works to advise there was a stain on the ceiling after weekend rain, noting it was the first time they had ever had such a leak. It appears the Respondent Builder did not respond to that email, or any subsequent concerns expressed by the Applicant.
53. Accordingly, I do not accept the Respondent Builder's submission that there were no leaks for 17 months after the Works had been completed.

...

69. The Expert Report is comprehensive and compelling, and matches up with the correspondence and the parameters of the Contract, despite the Respondent Builder's claims to the contrary. I accept its contents and findings, and accordingly find on the balance of probabilities, that the Respondent Builder is liable for the breach of the s 18B(1) statutory warranties resulting in a number of major defects in the Works.

...

77. As per the reasoning provided above, I rely substantially on the Expert Report and find that the Respondent Builder was in breach of their statutory warranties pursuant to s 18B(1) of the Act, as the waterproofing was found to be non-compliant with applicable standards, and on balance, was the most likely cause of the water ingress occurring directly below the balcony to the living room of the Premises, which I find to have presented from around 12 October 2022 as per the correspondence between the parties.

To the extent that Ground Two raises a question of law, we detect no error and dismiss the appeal on this ground. To the extent that this ground raises any other error, leave to appeal is refused with the result that the appeal is otherwise dismissed on this ground.

Ground Three

Ground Three is set out above. It has two limbs to it. The first limb is that:

The Tribunal accepted evidence lodged after the deadline by Mr Tellett on the 11/2/2026, with less than 7 days remaining until the hearing. This significantly disadvantaged Mr Wilson, not allowing enough time to access and prepare a response to this evidence.

The second limb is that:

There are also many other false claims made in the evidence that have not been challenged.

As to the second limb, this is simply a generalised complaint in which we see no substance.

As to the first limb, this appears to us, as we explained at the appeal hearing, to be an appeal in respect of an interlocutory decision, that being the decision to allow the respondent leave to rely on evidence that had not been lodged in accordance with the Tribunal's directions.

An appeal in respect of an interlocutory decision requires a grant of leave: NCAT Act, s 80(2)(a).

However, it appears to us that this submission is misconceived. As we have noted, the Tribunal did not accept the additional material lodged on 11 Feb 2026. The Tribunal stated at [31]:

The [respondent] advised that he had submitted additional material on 11 February 2026 to the Tribunal, however this material was not lodged in accordance with Tribunal process ie it was lodged well after the due date for the [respondent's] evidence, no extension of time had been sought or granted for the late lodgement of additional material, it had not been provided to the other party in time for them to review and compile a response, and hence it had not been included in the materials considered during the hearing. In the interests of procedural fairness

for the [appellants], this material has therefore not been considered by the Tribunal in this decision.

The point that Mr Wilson was agitating became clear during the hearing. He submitted that the Tribunal had taken the material set out in the (rejected) Addendum into account as (he submitted) its substance was contained in the Primary Decision. In particular, he relied on [14] of the Primary Decision which states:

The Expert Report asserts that the balcony was not constructed in accordance with industry standards, and that the waterproof membrane has failed due to non-compliant installation, allowing water to penetrate the living room below. The Expert Report alleges a failure to comply with the Building Code of Australia, AS 4654.2 pertaining to waterproofing membranes, and flashing installation standards.

The appellants submitted that this paragraph was based on the Addendum, and not the Expert Report. However, he was not able to prove this point as he had not filed the Addendum, nor the Expert Report, with the Registry.

The respondent in response took us to select sections of the Expert's Report which he submitted (in any event) supported par [14] of the Primary Decision. The first section stated:

Executive Summary of Findings

... The 2nd area of water ingress is occurring toward the centre of balcony, and I consider is due to pour flashing methodology and an inadequate waterproof membrane. From the invasive survey undertaken in this area, it can be seen that water is ingressing through the sheet joint in the Scion fibre cement substrate. If an effective waterproof membrane were installed there would be no water ingress.

The second section stated

6.4 Waterproof Membrane

Reference to Image 09 - shows that the waterproof membrane was not installed prior to the subsill installation and the door.

Accordingly, the work is considered non-compliant with the NCC.

It is considered that the waterproof membrane has been poorly installed or is nonexistent. This is based on the fact that the Scion fibre cement board is totally saturated when measured by the moisture meter from the access gained through the internal ceiling of the Ground Floor Family Room.

This is shown clearly in Images 16,17 & 18.

We have previously established that there is no membrane on the screed above the Scion sheet, as shown by the damp screed from where a tile was removed ref: Image 08

Accordingly, the water staining, and the quantity of water that was found ponding on the roofing insulate sissalation, directly under the Scion fibre cement joint, cannot occur if an effective waterproof membrane was installed.

It is considered that this item is defective as it does not meet the requirements of the NCC 2016 Volume 2. Clause P2.2.2 Home Building Act 1989 Section 18B (1)(a, and/or b, and/or c)

We note that the respondent only filed what he considered were relevant extracts of the Expert Report. Based on the only evidence before us, we see no reference to AS 4654.2. Therefore, it appears that the Tribunal may have erred in including a reference to that Australian Standard. But we do not know with certainty that there was not a reference elsewhere in the Expert Report, because we do not have the whole Expert Report nor the Addendum before us.

But even giving the appellants the benefit of the doubt on this issue, and assuming that we thought that the Tribunal was in error (which we do not), we would not grant leave to appeal on this point. That is because the expert clearly concluded that the waterproofing works were defective as they did not meet the requirements of the National Construction Code.

In other words, the Tribunal was nonetheless correct in concluding at [61]:

The Expert Report is comprehensive and compelling, and matches up with the correspondence and the parameters of the Contract, despite the Respondent Builder's claims to the contrary. I accept its contents and findings, and accordingly find on the balance of probabilities, that the [Builder] is liable for the breach of the s 18B (1) statutory warranties resulting in a number of major defects in the Works.

To the extent that Ground Three raises a question of law, we detect no error and dismiss the appeal on this ground. To the extent that this ground raises any other error, leave to appeal is refused with the result that the appeal is otherwise dismissed on this ground.

We turn now to Grounds Four and Five, which require a grant of leave.

Ground Four

Ground Four was that the Primary Decision was against the weight of the evidence. In the Amended Notice of Appeal, the appellants state:

What evidence did you give at the hearing? What documents did you show the Tribunal?

Personal Testimony at the hearing on the waterproofing issue.

We pause to note that that evidence was not provided to us. However, Mr Wilson's evidence is referred to, and has clearly been given consideration by the Tribunal in the Primary Decision.

In the Amended Notice of Appeal, the appellants then state:

What evidence did the other party give? What documents did the other party show the Tribunal?

Building Inspection report.

Again, that evidence was not provided to us.

In the Amended Notice of Appeal, the appellants then state in response to the question “What evidence should the Tribunal have given more weight to? Why?”:

In the Addendum report 11/2/2026 by Mr Tellet’s Building inspector stating that the waterproofing does not meet Australian Standards. This comment only states a failure to meet the ‘Standard’ and not a statement of causation that the physical Waterproofing application has failed.

It is an important distinction to note:

Failure to meet a standard is not a failure of the product/service. This has been misconstrued by the member.

Mr Wllson is legally entitled opportunity to remedy any issue found within the project.

In summary, the Tribunal was right to have given weight to this evidence, but the weight was applied with the incorrect interpretation harming Mr Wilson’s case.

As we have noted, the Addendum was not provided to us. However, as noted earlier in respect of Ground Two, the Tribunal addressed both the issue of breach of relevant standards and separately the issue of causation.

To the extent that that the appellants rely on Ground Four, leave to appeal is refused with the result that the appeal is otherwise dismissed.

Ground Five

Ground Five was that there is new evidence now available that was not reasonably available at the time of the of the hearing.

This is a reference to the statement of David Wriight-Hall of 12 March 2026, a date which is about three weeks after the Tribunal hearing. In this statement, Mr Wright-Hall recounts that he had attended the respondent’s residence on 20 May 2025.

The Primary Decision records that the Builder had sent Mr Wright-Hall to investigate the respondent’s claims in June 2024 and states:

59. The Respondent Builder asserts that the Expert report does not look into how the defects occurred. The Respondent Builder further contended that there must have been some event or incident involving considerable force to cause the damage they observed in the photographs provided by their colleague, Mr Wright-Hall. No further supposition or evidence was adduced in this regard and I am unable to give it significant weight.

60. The Applicant noted that whilst he had eventually had a roofing expert conduct some minor repairs in May/June 2025, the water ingress issues long pre-dated any additional work being conducted to the balcony, and were therefore directly attributable to the Works effected by the various Respondents.
61. It was noted that Mr Wright-Hall's statement was not submitted nor relied upon as an expert report and did not comply with the requirements in any case. The Respondent Builder advised that he did not realise he was supposed to obtain and lodge his own expert report. It was explained to him that there are not mandatory requirements in terms of what must be produced as evidence to the Tribunal, however having received the Expert Report some months ago, and disagreeing with its conclusions, it was incumbent on the Respondent Builder to obtain their own report countering the assertions therein.

The only submission on why the new evidence was not available at the time of

Mr Wilson was only given 6 days to respond to evidence submitted by Mr Tellett, and with an extremely full work schedule was unable to gather the required evidence before the hearing.

We reject that explanation, given that there was in fact a statement of Mr Wright-Hall before the Tribunal. We see no reason at all why this new evidence should be received. Leave to appeal is refused, with the result that the appeal is otherwise dismissed on this ground.

Conclusion

We observed above that the respondent had submitted that the appellants were seeking to re-argue factual findings and the Tribunal's assessment of the evidence.

We agree.

As the Appeal Panel noted in *Tanwar Institute of Professional Studies Pty Ltd v Ruggeri* [2025] NSWCATAP 326, and in words which we adopt in this appeal, it is difficult to escape the conclusion that the appellants are simply seeking to reagitate factual findings of the Tribunal that were available to it.

The Appeal Panel has stated on many occasions that an appeal does not simply provide a losing party in the Tribunal with the opportunity to run their case again: *Ryan v BKB Motor Vehicle Repairs Pty Ltd* [2017] NSWCATAP 39 at [10]; *Nguyen v Nguyen* [2025] NSWCATAP 238 at [40]; *Ramos Miguel v Tinoco* [2026] NSWCATAP 28 at [83]; *Ottaviano v Leculier* [2026] NSWCATAP 49 at [92].

And, as the Tribunal Guideline, Internal Appeals (November 2023) states at [4], generally, an appeal is not an opportunity to have a "second go" at a hearing.

There were other complaints raised in Mr Wilson's oral submissions which we will deal with briefly, even though they did not form any part of any of the grounds of appeal.

The first complaint was that the Tribunal erred in preferring the evidence of the respondent's expert over his own evidence, in circumstances where he and the first appellant both held contractor's licences.

We see no error as:

the issue of a party being their own expert was considered exhaustively by the late Justice Einstein in *Idoport Pty Ltd v National Australia Bank Ltd* [2001] NSWSC 123. To summarise a very long judgment, his Honour stated at [157] that, if appropriately qualified, a person who is a party to proceedings can be their own expert, but "the question of the weight of that evidence is altogether another matter for determination: see *Roberts v Franks* [2026] NSWCATAP 144 at [49]; and

at least in relation to the waterproofing issue, as the Tribunal found at [75], Mr Wilson was not knowledgeable about "waterproofing requirements and standards".

Another complaint was that the Tribunal erred in not finding that there was some intervening event between the undertaking of the waterproofing work and the defect being identified, with the Tribunal erring in finding causation established.

We see no error by the Tribunal as the findings made by the Tribunal in the Primary Decision were clearly available to it based on the Tribunal's acceptance of the "comprehensive and compelling" Expert Report. Further the Tribunal Member referred in the Reasons for Decision to the appellant's submission that there must have been some intervening event, but noted that no further supposition or evidence was adduced in this regard and she was unable to give it significant weight. [11]

Orders

The Appeal Panel orders that:

To the extent that the appeal raises a question of law, the appeal is dismissed.

To the extent that the appeal raises any other error, leave to appeal is refused and the appeal is otherwise dismissed.

Endnotes

1.

Primary Decision, [56].

2.

Primary Decision, [57].

3.

Primary Decision, [58].

4.

Primary Decision, [59].

5.

Primary Decision, [59].

6.

Primary Decision, [64].

7.

Primary Decision, [65].

8.

Primary Decision, [72].

9.

Primary Decision, [74].

10.

Primary Decision, [75].

11.

I hereby certify that this is a true and accurate record of the reasons for
decision of the Civil and Administrative Tribunal of New South Wales.

Registrar

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