

IN THE HIGH COURT OF NEW ZEALAND  
NAPIER REGISTRY

I TE KŌTI MATUA O AOTEAROA  
TE AHURIRI ROHE

CIV-2024-441-00053

**BETWEEN** **KOPU ROAD ORCHARDS LIMITED** a duly incorporated company  
having its registered office at 272 Kopu Road, Wairoa, business  
entity  
  
First plaintiff

**A N D** **DIANNE RUTH DOWNEY & CHRISTINE JANET NEALE** of 266-272  
Kopu Road as trustees of the **CABBAGE TREE TRUST**  
  
Second plaintiffs

**A N D** **HAWKES BAY REGIONAL COUNCIL** a local authority constituted by the  
Local Government (Bay of Plenty Region) Reorganisation Order 1989 with  
its head office at 159 Dalton Street, Napier South  
  
Defendant

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**AMENDED STATEMENT OF DEFENCE  
TO FIRST AMENDED STATEMENT OF CLAIM DATED 5 DECEMBER 2024  
DATED 20 FEBRUARY 2025**

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Robertsons  
Barristers and Solicitors  
PO Box 2068, Shortland Street, Auckland 1140  
t 64 9 362 7050 | f 64 9 302 2448  
Solicitor: Michael Robertson | mrobertson@robertsonslaw.co.nz

**AMENDED STATEMENT OF DEFENCE TO FIRST AMENDED STATEMENT OF CLAIM  
DATED 5 DECEMBER 2024**

**THE DEFENDANT BY ITS SOLICITOR SAYS:**

**Parties**

- 1 It admits that the first plaintiff is a duly incorporated company with its registered office at 272 Kopu Road, Wairoa. Except as expressly admitted the defendant has insufficient knowledge and therefore does not admit to paragraph 1 of the First Amended Statement of Claim dated 5 December 2024 (the **Claim**).
- 2 It admits that Dianne Ruth Downey and Christine Janet Neale are two of the three named and listed registered owners on the Certificates of Title for HB86/186, HB86/191, HB86/192 and HBD2/1201 (together the **properties**). Except as expressly admitted the defendant has insufficient knowledge of and therefore does not admit paragraph 2 of the Claim.
- 3 In response to paragraph 3, the defendant denies that it is a local territorial authority and says further that it is a Regional Council constituted by the *Local Government (Hawkes Bay) Reorganisation Order 1989* and holds responsibilities of a Regional Council for the Hawkes Bay region, including the Wairoa District as imposed by law. It otherwise admits that it:
  - a Is constituted by the *Local Government (Hawkes Bay) Reorganisation Order 1989*;
  - b has its head office at 159 Dalton Street, Napier South; and
  - c is responsible for the Wairoa area.

**Flood 26 June 2024**

- 4 It admits that flooding occurred in Wairoa on or about 26 June 2024. Except as expressly admitted it does not admit paragraph 4 of the Claim.
- 5 It denies paragraph 5 of the Claim.

6 It admits paragraph 6 of the Claim.

7 It does not admit paragraph 7 of the Claim.

8 It has insufficient knowledge of and therefore does not admit paragraph 8 of the Claim.

### **Classes**

9 It apprehends that it is not required to plead to paragraph 9 of the Claim.

10 It apprehends that it is not required to plead to paragraph 10 of the Claim.

11 It apprehends that it is not required to plead to paragraph 11 of the Claim.

12 It apprehends that it is not required to plead to paragraph 12 of the Claim.

### **Background**

13 It admits paragraph 13 of the Claim.

14 It admits that some parts of the Catchment are prone to flooding and that the Catchment carries large volumes of water. Except as expressly admitted it does not admit paragraph 14 of the Claim.

15 It admits paragraph 15 of the Claim.

16 It admits paragraph 16 of the Claim.

17 It admits that the Wairoa River and tributaries carry fine particles of silt. Except as expressly admitted it does not admit paragraph 17 of the Claim.

18 It admits paragraph 18 of the Claim.

- 19 It admits paragraph 19 of the Claim.
- 20 It admits paragraph 20 of the Claim.
- 21 It denies paragraph 21 of the Claim.
- 22 It admits that the mouth has been regularly manually opened since early European settlement. Except as expressly admitted it denies paragraph 22 of the Claim.
- 23 It does not admit paragraph 23 of the Claim.
- 24 It admits paragraph 24 of the Claim.
- 25 It does not admit paragraph 25 of the Claim.
- 26 It does not admit paragraph 26 of the Claim.
- 27 It has insufficient knowledge of and therefore does not admit paragraph 27 of the Claim.
- 28 It denies paragraph 28 of the Claim.
- 29 It admits that its staff members worked closely with one contractor in relation to the Wairoa River mouth however it says further that other contractors were used for other asset management activities. Except as expressly admitted it denies paragraph 29 of the Claim.
- 30 It does not admit paragraph 30 of the Claim.
- 31 It denies paragraph 31 of the Claim.
- 32 It denies paragraph 32 of the Claim.

**Bar work**

- 33 It denies paragraph 33 of the Claim. It says further that the conditions in March 2022 were not the same as June 2024.
- 34 It denies paragraph 34 of the Claim. It says further that it had sought opportunities for the mechanical re-alignment of the river mouth on multiple occasions between January and June 2024, however no such opportunities were identified over this period.
- 35 It does not admit paragraph 35 of the Claim.
- 36 It admits paragraph 36 of the Claim and says further that the opening of the bars at Nuhaka and Waitahuna differ from the opening of the Wairoa River bar which is significantly larger and more complex.
- 37 It admits paragraph 37 of the Claim.
- 38 It admits paragraph 38 of the Claim.
- 39 It denies paragraph 39 of the Claim.

**Status**

- 40 In response to paragraph 40 of the Claim it admits that between January 2024 and June 2024 there was no viable opportunity for re-alignment of the bar. Except as expressly admitted it otherwise denies paragraph 40 of the Claim.
- 41 It admits paragraph 41 of the Claim.
- 42 It denies paragraph 42 of the Claim.
- 43 It has insufficient knowledge and does not admit paragraph 43 of the Claim.

**Loss**

44 It admits paragraph 44 of the Claim.

45 It admits that:

- a the indicative mid-point of the first plaintiff's business was valued by Bayleys at \$3.63m; and
- b the appraisal value of the properties is between \$1,650,000 to \$1,950,000.

Except as expressly admitted it has insufficient knowledge and does not admit paragraph 45 of the Claim.

46 It denies paragraph 46 of the Claim.

47 It apprehends that it is not required to plead to paragraph 47 of the Claim.

**Obligations**

48 It denies paragraph 48 of the Claim and says further it has the functions, duties and powers as prescribed by the clause 15(d) of the order.

49 It admits paragraph 49 of the Claim.

**First cause of action against defendant – Negligence**

50 It admits that it owed the plaintiffs a duty of reasonable skill and care in accordance with duties imposed by law. Except as expressly admitted it denies paragraph 50 of the Claim.

51 It denies paragraph 51 of the Claim.

52 It denies paragraph 52 of the Claim.

53 It denies paragraph 53 of the Claim.

54 It apprehends that it is not required to plead to paragraph 54 of the Claim.

55 It apprehends that it is not required to plead to paragraph 55 of the Claim.

**Second cause of action against defendant – Nuisance**

56 It does not admit paragraph 56 of the Claim.

57 It denies paragraph 57 of the Claim.

58 It admits that flooding occurred in Wairoa on or about 26 June 2024. Except as expressly admitted, it denies paragraph 58 of the Claim.

59 It denies paragraph 59 of the Claim.

60 It apprehends that it is not required to plead to paragraph 60 of the Claim.

61 It apprehends that it is not required to plead to paragraph 61 of the Claim.

**Second cause of action against defendant – *Rylands v Fletcher***

62 It admits that it has the powers to manage the River for flood protection purposes as imposed by law. Except as is expressly admitted, it denies paragraph 62 of the Claim.

63 It does not admit paragraph 63 of the Claim.

64 It denies paragraph 64 of the Claim.

65 It admits that flooding occurred in Wairoa on or about 26 June 2024. Except as expressly admitted it does not admit to paragraph 65 of the Claim.

66 It denies paragraph 66 of the Claim.

67 It apprehends that it is not required to plead to paragraph 67 of the Claim.

68 It apprehends that it is not required to plead to paragraph 68 of the Claim.

**Fourth cause of action against defendant – Breach of statutory duty**

69 It admits that at all material times it had duties, powers, rights and privileges as imposed by law. Except as expressly admitted it denies paragraph 69 of the Claim.

70 It denies paragraph 70 of the Claim.

71 It denies paragraph 71 of the Claim.

72 It apprehends that it is not required to plead to paragraph 72 of the Claim.

73 It apprehends that it is not required to plead to paragraph 73 of the Claim.

This Amended Statement of Defence is filed by **MICHAEL OWEN ROBERTSON**, Solicitor for the Defendant, of the firm of Robertsons. The address for service of the Defendant is Level 2, General Building, 33 Shortland Street, Auckland.

Documents for service on the Defendant may be left at that address for service or may be:

a Posted to the solicitor at Robertsons, PO Box 2068, Shortland Street, Auckland 1140; or

b Emailed to the solicitor at [mrobertson@robertsonslaw.co.nz](mailto:mrobertson@robertsonslaw.co.nz).