

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 LTD**

First Plaintiff

AND **DR DOWNEY and CJ NEALE** as trustees of the **CABBAGE
TREE TRUST**

Second plaintiffs

AND **HAWKES BAY REGIONAL COUNCIL** I

Defendant

**PLAINTIFFS' APPLICATION FOR ORDER FOR EXAMINATION OF WITNESS
BEFORE TRIAL (ROBERT JOHN CRAM)**

Dated: 18 August 2025

Next event date Chambers list,
26 August 2025
10am

Judicial officer

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TO the Registrar of the High Court at Napier

AND TO: the defendant

This document notifies you that:

- 1 The plaintiffs, Kopu Road Orchards Ltd, and DR Downey and CJ Neale as trustees of the Cabbage Tree Trust, will on the 26th day of August 2025 at 10am apply to the Court for the following orders:
 - (1) The evidence of Robert John Cram of Wairoa, Retired, in this proceeding shall be taken by deposition at the High Court in Napier in advance of any trial.
 - (2) In consultation with counsel, the Registrar shall allocate a half-day hearing for the deposition as soon as is reasonably practicable.
 - (3) At least 15 working days before the hearing, the plaintiffs shall serve an affidavit of Mr Cram's evidence.
 - (4) The deposition shall be conducted before a Judge, Registrar or Deputy Registrar, pursuant to the following directions:
 - (a) The defendant, HBRC, is to provide the source documents and / or correspondence it intends to rely on to cross examine Mr Cram, 10 working days in advance of the deposition.
 - (b) The deposition is to be recorded by video, the costs of which are to be met initially by the plaintiffs.
 - (c) The Registrar shall prepare a transcript of Mr Cram's deposition and provide a copy to each of the parties.
 - (d) If Mr Cram's age and health allow him to be available at trial, HBRC has leave to apply to cross-examine Mr Cram on any new items.
 - (5) Both parties have leave to apply for further directions on 3 days' notice.

2 The grounds on which these orders are sought are as follows:

Issues

- (1) This proceeding is a proposed representative action by residents of Wairoa against HBRC in respect of their property damage and consequential losses caused by a serious flooding event on 26 June 2024 (**flooding**).
- (2) The issues include whether HBRC negligently caused the flooding by failing to instruct a civil works contractor adequately and/or promptly to open the Wairoa river mouth and bar (and or undertake maintenance work on the bar), as a result of which the Wairoa river 'backed-up', broke its banks and caused the flooding.

Relevance

- (3) Mr Cram can give material, relevant and admissible factual evidence on this issue in that he is:
 - (a) A retired and highly experienced, civil works contractor who, for approximately 34 years up to 1989, was the contractor responsible for maintaining and opening the Wairoa river mouth and bar.
 - (b) The only witness known to the plaintiffs, and is highly likely to be the only living witness, with personal knowledge of pre-1989 management by civil authorities (in particular the predecessor of the HBCR – the Hawkes Bay Catchment Board) of the Wairoa river mouth and bar in potential flood conditions.
 - (c) Qualified, by his personal knowledge and experience, to give admissible evidence as to:
 - (i) The time reasonably required to cut a channel opening in the bar following receipt of instructions.
 - (ii) Instructions in relation to previous bar openings, and the implementation of those instructions, both topics being relevant to what a reasonably competent civil authority should do, and when.

Reasons for examination now

- (4) Mr Cram is nearly 92 years old, frail, and at risk of passing away before trial.
 - (5) The plaintiffs would be prejudiced if Mr Cram's evidence was not taken now, in that, because of his age and health, there is a serious and realistic risk that he would not be available to give evidence at the trial of this proceeding, given that this is not likely to take place in less than about 3 years' time.
 - (6) The evidence is material to the issues in the litigation.
 - (7) There is no or insufficient countervailing material disadvantage or prejudice to HBRC in taking Mr Cram's evidence by deposition now, because HBRC already has extensive and detailed information in its own technical documents and expert reports that would enable its counsel to cross-examine Mr Cram.
 - (8) The HBRC has in its possession relevant details and documentation regarding bar openings and maintenance. It is the plaintiffs who are at a disadvantage in terms of the factual source information relating to previous bar openings. Ordinarily the evidence of witnesses like Mr Cram would be prepared, after discovery.
 - (9) In the circumstances the plaintiffs propose that HBRC provide the documents it intends to rely on to cross examine Mr Cram, in advance of his evidence being taken.
 - (10) The orders are necessary and desirable in the interests of justice.
- 3 This application is made in reliance on:
- (1) High Court Rule 1,2 & 9.17.
 - (2) *Keir v Simms* [2024] NZHC 3535.
 - (3) The memorandum of the plaintiffs accompanying this application.

(4) The affidavit of Robert John Cram in support of this application.

DATED: 18 August 2025

A handwritten signature in blue ink, consisting of a large, stylized 'C' followed by a series of loops and a long horizontal stroke.

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O. Collette-Moxon / GDR Shand

Counsel for plaintiffs