

IN THE HIGH COURT OF NEW ZEALAND
NAPIER REGISTRY
I TE KŌTI MATUA O AOTEAROA
TE AHURIRI ROHE

CIV-2024-441-0053

BETWEEN

KOPU ROAD ORCHARDS LTD

First plaintiff

AND

DR DOWNEY & CJ NEALE

Second plaintiffs

AND

HAWKES BAY REGIONAL COUNCIL

Defendant

PLAINTIFF(S)' APPLICATION TO SUE AS REPRESENTATIVE(S)
UNDER R4.24
DATED: 26th September 2025

Judicial Officer: TBA
Next Event Date: TBA

This document is filed by:

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GRANT SHAND
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EXPERT
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LAWYERS

To: Registrar of the High Court at Napier

And

To: Defendant

This document notifies you that -

- 1 The plaintiff(s), will on 28th October 2025 at 11am, apply to the High Court at Napier for orders that:
 - (1) Leave is granted for them to sue as representative(s) of all of those people within the class in schedule A;
 - (2) Representation is on an “*opt out*” basis in terms of the order at schedule B;
 - (3) The form and method of communication to class members be reserved to be settled by the Court later in consultation with the parties;
 - (4) The defendant pays the plaintiffs’ costs of and incidental to the application(s);
 - (5) Leave is granted for further application(s) to the Court.
- 2 The grounds on which the orders are sought are:
 - (1) The plaintiffs in the first amended statement of claim 25 November 2024 seek to recover from the defendant for loss/damage suffered by the Wairoa flood(s) on 26 June 2024;
 - (2) The current statement of claim raises issues of fact and law that are common to all class members who have the same/similar interest(s);
 - (3) The class members are set out in schedule A;
 - (4) Determination of these common issues via a representative proceeding will serve the interests of expedition and judicial economy and will reduce costs, eliminate duplication of effort and avoid the risk(s) of inconsistent findings;
 - (5) Granting the representative order will enable the determination of class members’ claims that would otherwise be uneconomic to bring as individual proceedings and will thus facilitate access to justice;
 - (6) Granting the representative order will not deprive the defendant of any defence that it might have had if the claim(s) were brought as

individual proceedings, nor will it give individual claimants a claim that they would not have otherwise had;

- (7) Granting the representative order will best secure the just, speedy, and inexpensive determination of the claim(s);
- (8) It is in the interests of justice that the Court grant the representative order;
- (9) The representative order provides for an “opt-out” mechanism for those who do wish to bring individual proceedings or who for any other reason do not wish to take part in this proceeding;
- (10) Opt out is appropriate because:
 - (a) There are at least 500 affected people;
 - (b) It is the choice of the plaintiffs;
 - (c) It would be more efficient and effective to protect interests of claimants;
 - (d) It enhances access to justice;
- (11) Directions about service and form and content of any communication ought to await finalisation of representation application.

3 This application is made in reliance on:

- (1) R4.24 of the *High Court Rules*;
- (2) *Cridge v Studorp Ltd* [2017] NZCA 376;
- (3) *Ross v Southern Response Earthquake Services Ltd* [2019] NZCA 431;
- (4) *Southern Response Earthquake Services Ltd v Ross* [2020] NZSC 126;
- (5) *Simons & ors v ANZ Bank New Zealand Ltd* [2024] NZCA 330;
- (6) *Easton Agricultural Ltd & anor v Manawatu-Wanganui Regional Council* (Unreported, High Court, Palmerston North, 7 September 2011, civ 2008-454-31, Kos J);
- (7) *Easton Agricultural Ltd & anor v Manawatu-Wanganui Regional Council* [2013] NZCA 79;
- (8) Affidavit(s) by:
 - (a) Dianne Ruth Downey;
 - (b) Further deponents to come.



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GDR Shand

Counsel for the plaintiffs

Schedule A – class definition

- 1 The holder of an interest in land (whether in the nature of freehold title, leasehold, or otherwise):
 - (1) Who suffered loss or damage whenever occurring by reason of the inundation of that land by flood water from the Wairoa River on about 26/27 June 2024; alternatively
 - (2) Whose use or enjoyment of that interest was interfered with by reason of the flooding of that land such that they suffered loss or damage.
- 2 Owner or possessor of personal property that was damaged or destroyed by reason of the Wairoa flooding on about 26/27 June 2024.
- 3 A person, or entity, that conducted a business or enterprise, that suffered economic loss by reason of the Wairoa flooding on about 26/27 June 2024.
- 4 A person, or entity, that suffered pure economic loss (being economic loss not consequential on property damage) by reason of the Wairoa flooding on about 26/27 June 2024.

Schedule B – Order

- 1 The plaintiffs are granted leave pursuant to rule 4.24 of the High Court Rules to proceed in this proceeding on behalf of all persons who have the same interest in the subject matter of the proceeding, namely:
 - (1) The holder of an interest in land (whether in the nature of freehold title, leasehold, or otherwise):
 - (a) Who suffered loss or damage whenever occurring by reason of the inundation of that land by flood water from the Wairoa River on about 26/27 June 2024; alternatively
 - (b) Whose use or enjoyment of that interest was interfered with by reason of the flooding of that land such that they suffered loss or damage.
 - (2) Owner or possessor of personal property that was damaged or destroyed by reason of the Wairoa flooding on about 26/27 June 2024.
 - (3) A person, or entity, that conducted a business or enterprise, that suffered economic loss by reason of the Wairoa flooding on about 26/27 June 2024.
 - (4) A person, or entity, that suffered pure economic loss (being economic loss not consequential on property damage) by reason of the Wairoa flooding on about 26/27 June 2024.
- 2 A class member may elect to opt out of the proceeding by completing an opt out election form approved by the Court for that purpose; and sending it to the Court Registrar on or before a date fixed by the Court.
- 3 The plaintiffs may discontinue the proceeding only with the leave of the Court.
- 4 The order is to take effect from 16 July 2024.