

**IN THE HIGH COURT OF NEW ZEALAND  
NAPIER REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TE AHURIRI ROHE**

**CIV-2026-441-0037**

**BETWEEN                    THE RESIDENTS AND BUSINESSES OF WAIROA  
   (listed in Schedule 1 to the Statement of Claim)**

Plaintiffs

**A N D                        HAWKE'S BAY REGIONAL COUNCIL**

Defendant

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**STATEMENT OF DEFENCE OF DEFENDANT TO  
STATEMENT OF CLAIM DATED 20 FEBRUARY 2026**

**DATED: 27 MARCH 2026**

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**THE DEFENDANT BY ITS SOLICITOR SAYS:****PARTIES**

- 1 It admits that Schedule 1 includes details of the Plaintiffs' type of property, location of the property, and insured and uninsured losses. Except as expressly admitted, it has insufficient knowledge and therefore does not admit paragraph 1 of the Statement of Claim dated 20 February 2026 (the **Claim**).
- 2 It admits paragraph 2 of the Claim.

**OVERVIEW OF PLAINTIFFS' CLAIMS**

- 3 In response to paragraph 3, it admits that:
  - a some areas of the Wairoa region were at risk of flooding;
  - b the opening and positioning of the Wairoa river mouth and bar (the **Bar**) operated as a flood protection defence for the Wairoa township;
  - c it had an approach to maintaining and opening the Bar which relied on a number of factors, including the presence of optimal conditions over a continuous period of time; and
  - d the opening of the Bar was a highly complex exercise and was traditionally undertaken by a local contractor, Pryde Contracting Limited (**Pryde**).

Except as expressly admitted, it denies paragraph 3 of the Claim.

- 4 In response to paragraph 4, it admits that a flooding event occurred in the Wairoa region on or about 26 June 2024. Except as expressly admitted, it denies paragraph 4 of the Claim and says further that:
  - a between January 2024 and June 2024 there was no viable opportunity for the re-alignment of the Bar; and
  - b a flooding event occurred in the lower part of the Wairoa township consequent upon rainfall, sea conditions and/or sea water inundation.

5 It admits that the Ministry for the Environment commissioned an independent external review in relation to Hawke’s Bay Regional Council’s (HBRC) management of the Bar, and that a report was issued by Bush International Consulting on 30 August 2024 which contained findings relevant to the same. Except as expressly admitted, it does not admit paragraph 5 of the Claim.

## **Background**

### **Statutory and Regulatory Framework**

#### *Soil Conservation and Rivers Control Act 1941 & Local Government Act 2002*

6 It admits paragraph 6 of the Claim.

7 It admits paragraph 7 of the Claim save as to say that the relevant clause of the Local Government (Hawke’s Bay Region) Reorganisation Order 1989 is clause 15(d).

8 It admits paragraph 8 of the Claim.

9 It admits paragraph 9 of the Claim.

#### *Land Drainage Act 1908*

10 It admits that it has powers and duties as imposed at law, including under the Land Drainage Act 1908. Except as expressly admitted, it does not admit paragraph 10 of the Claim.

#### *Resource Management Act 1991*

11 It admits paragraph 11 of the Claim.

12 It admits paragraph 12 of the Claim.

13 It admits paragraph 13 of the Claim.

14 It admits that it has powers and duties as imposed at law, including under the Resource Management Act 1991. 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.

*HBRC's essential responsibilities*

17 It admits that it has powers and duties as imposed at law. Except as expressly admitted, it does not admit paragraph 17 of the Claim.

18 It admits that it published an Asset Management Policy in 2017. Except as expressly admitted, it does not admit paragraph 18 of the Claim.

**Wairoa**

*Wairoa Catchment*

19 In response to paragraph 19, it admits that:

- a the Wairoa Catchment is 3563 square kilometres and ranges in altitude from sea level to approximately 1,300 metres above sea level;
- b all major tributaries converge into one main stem, the Wairoa River, at the start of a 3,000-hectare flood plain;
- c the tributaries and the Wairoa River are steep and have a short run of approximately 40 - 70 kilometres whereas the flood plain has a very gradual fall to the sea;
- d some parts of the Wairoa Catchment are prone to flooding; and
- e the Wairoa River and tributaries carry fine particles of silt.

Except as expressly admitted, it does not admit paragraph 19 of the Claim.

20 It admits that part of the township lies on the bank of the river (upstream of the river mouth). Except as expressly admitted, it denies paragraph 20 of the Claim and says further that part of the township lies further upstream away from the river mouth.

21 It admits paragraph 21 of the Claim.

*River mouth and bar*

- 22 It has insufficient knowledge and therefore does not admit paragraph 22 of the Claim.
- 23 It does not admit paragraph 23 of the Claim.
- 24 It does not admit paragraph 24 of the Claim.
- 25 It does not admit paragraph 25 of the Claim and says further that the river mouth has been regularly manually opened since early European settlement, and that not all attempts at opening the river mouth have been successful.
- 26 It does not admit paragraph 26 of the Claim.

**Historic weather events**

- 27 It does not admit paragraph 27 of the Claim and says further that in certain circumstances, an opening of the Bar to the west of Pilot Hill may act as a flood protection from high seas, and in other circumstances, an opening of the Bar to the east of Pilot Hill may act as a flood defence during high rainfall and low sea conditions.

*May 1948 flood*

- 28 It admits that there was a flooding event in Wairoa in 1948. Except as expressly admitted, it does not admit paragraph 28 of the Claim.
- 29 It does not admit paragraph 29 of the Claim.

*Cyclone Bola – March 1988*

- 30 It admits that there was a flooding event in Wairoa in 1988. Except as expressly admitted, it does not admit paragraph 30 of the Claim.
- 31 It does not admit paragraph 31 of the Claim.

**HBRC's management of the bar – strategy***Personnel*

- 32 It does not admit paragraph 32 of the Claim.
- 33 In response to paragraph 33, it admits that the opening of the Bar has been undertaken by Pryde since around 1990 and says further that it relied on input from Pryde for this undertaking. Except as expressly admitted, it denies paragraph 33 of the Claim.
- 34 In response to paragraph 34, it admits that the relevant personnel did not live in Wairoa, that the 2024 funding was funded from general rates and was not part of any particular scheme, and that this funding was under the control of HBRC's Operations Manager. Except as expressly admitted it denies paragraph 34 of the Claim and says further that:
- a Monitoring and surveillance of the Bar was undertaken by the HBRC's Graduate Engineer (not Scheme Manager);
  - b as part of the role, the Graduate Engineer visited Wairoa on a weekly basis;
  - c personnel were typically pre-deployed to Wairoa in advance of weather events, and two staff members were pre-deployed ahead of the June 2024 event;
  - d its Operations Manager was responsible for maintenance plans, implementation and day-to-day decisions in relation to opening the Bar;
  - e the technical engineering team does not share the duties of the Graduate Engineer in relation to monitoring the Bar; and
  - f the technical engineering team provide input to support decision-making, but do not have day-to-day responsibility of the bar management.

*Reports obtained by HBRC before 2000*

- 35 It does not admit paragraph 35 of the Claim.
- 36 It admits paragraph 36 of the Claim.

37 It admits paragraph 37 of the Claim.

38 It admits paragraph 38 of the Claim.

39 It admits paragraph 39 of the Claim and says further that:

a in past circumstances, the head of the river rises to an approximate elevation of 3.5m before breaking through the crest, preventing flooding in Wairoa; and

b this can only occur if the sea conditions are sufficiently low.

40 It admits that Tonkin & Taylor issued a report in December 1999 which contained findings relevant to storm events in Wairoa. Except as expressly admitted, it does not admit paragraph 40 of the Claim.

41 It does not admit paragraph 41 of the Claim.

*HBRC's proposals (published in 2000)*

42 It admits paragraph 42 of the Claim.

43 It admits paragraph 43 of the Claim save as to paragraph 43.14.

*HBRC's river mouth opening arrangements before 2000*

44 It does not admit paragraph 44 of the Claim.

45 It does not admit paragraph 45 of the Claim.

*HBRC's river mouth opening arrangements after 2000*

46 It admits paragraph 46 of the Claim and says further that the correct title of the role responsible for monitoring the river and mouth is Graduate Engineer, and that the Graduate Engineer visited Wairoa on a weekly basis.

47 It does not admit paragraph 47 of the Claim.

**HBRC's management of the bar – execution**

*Summary of events*

48 It admits Pryde was engaged to open the Bar on several occasions between 1990 and 2024. Except as expressly admitted, it does not admit paragraph 48 of the Claim.

*March 2022 bar opening*

49 It does not admit paragraph 49 of the Claim.

50 It does not admit paragraph 50 of the Claim.

51 It does not admit paragraph 51 of the Claim.

52 It does not admit paragraph 52 of the Claim.

53 It does not admit paragraph 53 of the Claim.

54 It does not admit paragraph 54 of the Claim.

*Cyclone Gabrielle in February 2023*

55 It does not admit paragraph 55 of the Claim.

56 It does not admit paragraph 56 of the Claim.

57 It does not admit paragraph 57 of the Claim.

*Near-miss storm in November 2023*

58 It does not admit paragraph 58 of the Claim.

59 It does not admit paragraph 59 of the Claim.

60 It does not admit paragraph 60 of the Claim.

61 It does not admit paragraph 61 of the Claim.

*April – May 2024*

62 It does not admit paragraph 62 of the Claim.

63 It does not admit paragraph 63 of the Claim.

64 It does not admit paragraph 64 of the Claim.

*HBRC's unused Crown funding*

65 It admits that it requested government funding for river monitoring and control across all its operational sites, not just Wairoa. Except as expressly admitted, it does not admit paragraph 65 of the Claim.

66 It does not admit paragraph 66 of the Claim and says further that the funding was part of the North Island Weather Events programme and not for general use.

67 It does not admit paragraph 67 of the Claim.

**June 2024 Wairoa Flooding***Conditions before the flood*

68 It does not admit paragraph 68 of the Claim and says further that between January 2024 and June 2024 there was no viable opportunity for the re-alignment of the Bar.

69 It does not admit paragraph 69 of the Claim.

70 It admits that an inspection took place with Pryde on or around 18 June 2024. Except as expressly admitted, it does not admit paragraph 70 of the Claim and says further that:

- a the correct title of the role is Graduate Engineer;
- b the Graduate Engineer collected information from Pryde and passed this on to the Operations Manager; and
- c decisions regarding the opening of the river mouth were then made by the Operations Manager.

*Friday 21 June 2024*

71 It admits that on or around Friday 21 June 2024 weather predictions noted a substantial low coming across the East Coast. Except as expressly admitted, it does not admit paragraph 71 of the Claim and says further:

- a that the correct title of the role is Graduate Engineer; and
- b minimal rain was predicted for Wairoa and, accordingly, Wairoa was not considered to be at risk.

*Weekend 22 – 23 June 2024*

- 72 Save as to say the correct spelling is Waihoratuna, it admits paragraph 72 of the Claim and says further that the opening of the bars at Nuhaka and Waihoratuna differ from the opening of the Bar, with the Bar being significantly larger and more complex.
- 73 It does not admit paragraph 73 of the Claim and says further that the correct title of the role is Graduate Engineer.

*Monday 24 June 2024*

- 74 It admits that MetService issued a rainfall warning and says further that:
  - a the relevant staff member was Ant Rewcastle, not Chris Dolley;
  - b the correct title of the role is Graduate Engineer (not Schemes Manager);
  - c MetService’s morning rainfall warning related to rain which was expected to hit inland Hawke’s Bay, and that the amount of rain was not considered to be an issue for Wairoa;
  - d at around 4pm that afternoon, it became aware of forecasted swells at Haumoana (southern, coastal area of Hawke’s Bay). This was recognised to be a 1-in-50-year swell event in Haumoana and HBRC responded as such (with a State of Emergency being declared). However, Wairoa (at the more northern end of the Hawke’s Bay region) was not considered to be of concern;
  - e given the forecasted rainfall at this point (and not due to any concern of flooding), discussions took place and a recommendation to reposition the Bar was actioned. At about 2pm, HBRC instructed Pryde to mobilise machinery to the site to start preparatory work;

- f by 9.48pm MetService forecasting had changed again. HBRC advised Central Hawke’s Bay District Council and Wairoa District Council personnel that MetService had updated its ‘Severe Weather warnings’ to include all of Hawke’s Bay in Orange; and
- g HBRC’s forecast model showed the river level reaching the yacht club (sitting at the lowest point below Kopu Road). Wairoa otherwise remained not an ‘immediate issue’.

Except as expressly admitted, it does not admit paragraph 74 of the Claim.

*Tuesday 25 June 2024*

75 In response to paragraph 75, it admits that:

- a MetService reissued its ‘Orange’ warning for all of Hawke’s Bay with conditions worsened for Northern Hawke’s Bay, including Wairoa;
- b HBRC’s forecasting provided that the river levels would be below road level and HBRC’s “green” alert level was triggered, being an annual/one-in-one-year significant rain event, with rivers remaining in their main channels and otherwise not causing flooding; and
- c with the Bar opening already underway, HBRC did not consider there was any further action that could be taken. HBRC continued to monitor the forecasts and water levels overnight given that other areas of the Hawke’s Bay region were considered to be in imminent danger and concern.

Except as expressly admitted, it denies paragraph 75 of the Claim and says further that the correct title of the role is Graduate Engineer.

*Wednesday 26 June 2024*

76 In response to paragraph 76, it admits that:

- a by the very early hours of the morning, rainfall had exceeded its forecasted levels and the river continued to rise higher than had been previously forecasted, reaching the “Orange” one-in-five-year level;

- b sea conditions were extreme, with 6-7m high swells and 70 knot winds pushing seawater over top of the beach crest into the lower reach of the river;
- c a state of emergency for Wairoa was subsequently declared;
- d by later that morning, Pryde's equipment had flooded and it was unsafe for Pryde to continue working towards opening the Bar (Pryde had stopped work the previous day due to safety concerns from waves overtopping); and
- e a flooding event occurred in the lower part of the Wairoa township consequent upon rainfall, sea conditions and/or sea water inundation.

Except as expressly admitted, it does not admit paragraph 76 of the Claim and says further that the correct title of the role is Graduate Engineer.

*Conditions during the June 2024 flood*

- 77 It does not admit paragraph 77 of the Claim.
- 78 It does not admit paragraph 78 of the Claim.
- 79 It does not admit paragraph 79 of the Claim.

**Post June 2024 review & improvement of HBRC's bar management**

*Independent review*

- 80 It admits paragraph 80 of the Claim.
- 81 It admits that the Bush International Consulting report contained findings relevant to the opening of the Bar. Except as expressly admitted, it does not admit paragraph 81 of the Claim.
- 82 It admits that the Bush International Consulting report contained recommendations relevant to the opening of the Bar. Except as expressly admitted, it does not admit paragraph 82 of the Claim.

*HBRC's improved procedures*

83 It does not admit paragraph 83 of the Claim.

84 It does not admit paragraph 84 of the Claim.

85 It does not admit paragraph 85 of the Claim.

86 It does not admit paragraph 86 of the Claim.

87 It does not admit paragraph 87 of the Claim.

*HBRC's implementation of its improved procedures*

88 It does not admit paragraph 88 of the Claim.

89 It does not admit paragraph 89 of the Claim.

90 It does not admit paragraph 90 of the Claim.

*Effectiveness of HBRC's improved procedures*

91 It does not admit paragraph 91 of the Claim.

*January 2026*

92 It does not admit paragraph 92 of the Claim.

93 It does not admit paragraph 93 of the Claim.

94 It does not admit paragraph 94 of the Claim.

*Weekend 15 – 16 February 2026*

95 It does not admit paragraph 95 of the Claim.

96 It does not admit paragraph 96 of the Claim.

97 It does not admit paragraph 97 of the Claim.

**CAUSES OF ACTION**

**First cause of action – negligence**

- 98 It admits that it owed the Plaintiffs duties as imposed at law. Except as expressly admitted, it denies paragraph 98 of the Claim.
- 99 It does not admit paragraph 99 of the Claim.
- 100 It denies paragraph 100 of the Claim.
- 101 It denies paragraph 101 of the Claim.
- 102 It denies paragraph 102 of the Claim.
- 103 It admits that, where and to the extent applicable, GST would need to be accounted for pursuant to the Goods and Services Tax Act 1985. Except as expressly admitted, it denies paragraph 103 of the Claim.

**Second cause of action – nuisance**

- 104 It has insufficient knowledge of and therefore does not admit paragraph 104 of the Claim.
- 105 It admits that it had statutory powers to manage the Bar for flood protection purposes as imposed at law. Except as expressly admitted, it denies paragraph 105 of the Claim.
- 106 It denies paragraph 106 of the Claim.
- 107 It denies paragraph 107 of the Claim.
- 108 It admits that, where and to the extent applicable, GST would need to be accounted for pursuant to the Goods and Services Tax Act 1985. Except as expressly admitted, it denies paragraph 108 of the Claim.

**Affirmative Defence – Soil Conservation and Rivers Control Act 1941, s 148(1)**

- 109 Pursuant to s 148(1) of the Soil Conservation and Rivers Control Act 1941, HBRC cannot be liable, without negligence, for injury to any land or other property caused by the accidental overflowing of any watercourse, or by the sudden breaking of any bank, dam, sluice or reservoir made or maintained by it.

This 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).