

IN THE HIGH COURT OF NEW ZEALAND NAPIER REGISTRY

I TE KŌTI MATUA O AOTEAROA TE AHURIRI ROHE

CIV-2024-441-00053

WAIROA FLOODS 2024 HBRC REPRESENTATIVE PROCEEDING

NOTICE OF OPT OUT RIGHTS

This is an important notice issued by the High Court. You should read it if you had property damaged in the Wairoa floods of 26/27 June 2024, as you may be a class member of the **WAIROA FLOODS 2024 HBRC REPRESENTATIVE PROCEEDING**

The opt out deadline is 29th May 2026 at 5.00pm,

What you need to do to respond to this notice

As explained below, you can do one of two things in response to this notice:

- 1 **You can opt out** of being a potential class member of the proceeding by 5pm on 29th May 2026. If you opt out:
 - (1) You will not retain any potential future entitlement to share in the benefit of any judgment or settlement; **but**
 - (2) You will retain any entitlement you currently have to pursue your own claim against the Hawkes Bay Regional Council ("HBRC").
- 2 **You can do nothing;** and remain a potential class member. If you remain a potential class member:
 - (1) If the proceeding is successful, you may get to share in the benefits, including any money that HBRC is required to pay, subject to you taking certain steps and satisfying certain conditions; **but**

- (2) If the proceeding is not successful, you may not be able to take the same claim to court again.

3 The opt out deadline is 5pm on 29th May 2026

ABOUT THIS NOTICE

Why is this notice important?

- 4 A representative proceeding has been commenced in the High Court of New Zealand against HBRC. The High Court has ordered that this notice be made available to anyone who might be a “class member” on whose behalf the proceeding is brought. At the moment, it is not possible to say whether you are a class member or not. You may be a class member if you meet the criteria set out below.
- 5 This notice contains important information about potential class members’ rights and, in particular, their right to opt out of the proceeding. Please read it carefully. **Any questions you have concerning the matters contained in this notice should NOT be directed to the Court.** If there is anything in the notice that you do not understand, you should seek legal advice. You can also contact the plaintiffs’ lawyer(s), Grant Shand, for further information, by emailing them at grant@grantshand.co.nz.

What is a representative proceeding?

- 6 A representative proceeding is a lawsuit brought by one or more people (**plaintiffs**) on behalf of themselves and other people (**class members**) who have similar claims against someone who is alleged to have affected their legal rights (**defendant**). Class members who have not opted out of the representative proceeding are “bound” by the outcome. A binding outcome can happen in two ways: either a judgment issued by the Court or an agreed settlement.
- 7 A judgment or settlement will limit and may prevent class members from being able to bring their own proceedings against the defendant. In particular:
 - (1) In a judgment, the Court will decide various factual and legal issues in respect of the claims made by the plaintiffs and class members. Those decisions bind the plaintiffs, class members and the defendant. Importantly, if a class member brings proceedings against the defendant, it is likely that neither of them against the defendant, it is likely

that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with factual or legal decisions made in the representative proceeding;

- (2) Any settlement that provides for payment to class members is likely to extinguish all rights to relief which a class member might have against the defendant that arise in any way out of the events or transactions which are the subject-matter of the representative proceeding.
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- 8 Class members may be required to take steps prior to or following any judgment or settlement in order to be able to claim any money under that judgment or settlement. If any such steps are required in this case, that would be communicated separately in a future notice to class members.
 - 9 If you consider that you have claims against HBRC which are based on your individual circumstances or otherwise additional to the claims described in the representative proceeding, then it is important that you seek independent legal advice about the potential binding effects of the representative proceeding before the deadline for opting out.

INFORMATION ABOUT THIS REPRESENTATIVE PROCEEDING

What is this representative proceeding about?

- 10 On 26th June 2024 the Wairoa River burst its banks in rain damaging hundreds of properties. The plaintiffs allege that the HBRC breached its legal obligations. The breaches caused the flooding and damage. There are causes of action against the HBRC in:
 - (1) Negligence;
 - (2) Nuisance;;
 - (3) Rylands v Fletcher;
 - (4) Breach of statutory duty.
- 11 The plaintiffs are seeking:
 - (1) Damages for losses;
 - (2) General damages for stress, inconvenience, pain and suffering;
 - (3) Interest;

(4) Costs.

12 HBRC denies the claims.

13 Copies of the pleadings are available on the website <https://www.wairoaflooding.co.nz/claim-documents>.

Are you a class member?

14 You will be a class member if you are/were:

- (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; or
 - (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; and
 - (c) Who has not been indemnified, and is not entitled to be indemnified, by IAG New Zealand Ltd, Vero Insurance New Zealand Ltd, AA Insurance Ltd and/or Tower Ltd for any such 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 who has not been indemnified, and is not entitled to be indemnified, by IAG New Zealand Ltd, Vero Insurance New Zealand Ltd, AA Insurance Ltd and/or Tower Ltd for any such damage or destruction;
- (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 who has not been indemnified, and is not entitled to be indemnified, by IAG New Zealand Limited, Vero Insurance New Zealand Limited, AA Insurance Limited and/or Tower Ltd for any such economic loss;
- (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 who has not been indemnified, and is not entitled to be indemnified, by IAG New Zealand Ltd, Vero Insurance New Zealand Ltd, AA Insurance Ltd and/or Tower Ltd.

- 15 If you would like to understand more about whether you are potentially in the class, you can seek your own legal advice.

Who are the plaintiffs and who are their lawyer(s)?

- 16 The plaintiffs bringing the representative proceeding are:
- (1) Kopu Road Orchards Ltd;
 - (2) Dianne Ruth Downey and Christine Janet Neale.
- 17 The plaintiffs' key responsibilities are to make decisions about the conduct of the representative proceeding, including settlement, and instruct the lawyers. In carrying out these responsibilities, they must consider the interests of the other class members and avoid or manage any conflicts of interest that may affect their role.
- 18 The representative proceeding is being run by Grant Shand, who is the solicitor for the plaintiffs. His contact details are:
- (1) 027 434 5489;
 - (2) grant@grantshand.co.nz;
 - (3) PO Box 137 243, Parnell.

What is an “opt out” representative proceeding and what are your options?

- 19 The plaintiffs did not need to seek the consent of class members to commence the representative proceeding on their behalf, however, class members may choose not to be part of the proceeding if they want. This is called “opting out”. Explanations of how you can opt out and what will happen if you opt out and if you don't are set out below.

What will happen if you opt out?

- 20 If you opt out, you will not be bound by or entitled to share in any benefit that you would otherwise have had in any judgment or settlement in the representative proceeding. This means you will not receive any money from the representative proceeding if it is successful.

- 21 If you opt out, you will be entitled to bring any separate claim that may be available to you in relation to these matters against HBRC, provided that you file your legal proceedings within any time limit (known as a “limitation period”) that may apply to your claim. If you wish to bring your own claim against HBRC, you should seek legal advice about your claim and the applicable limitation period.

How can you opt out?

- 22 If you do not wish to remain a potential class member, you must opt out of the representative proceeding. To opt out, you must complete the “Opt Out Form” attached to this notice, then send it to Grant Shand by email or post.

IMPORTANT: Your completed Opt Out Form must reach Grant Shand no later than 5pm on 29th May 2026, otherwise it will not be effective.

- 23 If you are a joint owner, you can complete the Opt Out Form individually (with each owner completing and signing a separate form) or together with the other owners (with each owner completing and signing the same form).
- 24 If you are sure that you do not want to be part of the representative proceeding, you should opt out even though you may not be a potential class member.

What will happen if you do not opt out

- 25 If you are found to be a class member in due course, you will be bound by any judgment in or settlement of the representative proceeding. If the representative proceeding is successful, you may be entitled to share in the benefit of any order, judgment or settlement in favour of the plaintiffs and class members, however, you may have to take certain steps or satisfy certain conditions before your individual entitlement arises.
- 26 If the proceeding is unsuccessful, or not as successful as you would have wished, you may not be able to pursue the same claims against HBRC in other legal proceedings.

What do you need to do to remain a potential class member?

- 27 If you wish to remain a potential class member, there is nothing you need to do at the present time.

Costs

- 28 Class members in a representative proceeding are not individually responsible for the legal costs associated with bringing the proceeding. Only the plaintiffs are responsible for those costs.
- 29 If the representative proceeding is unsuccessful, class members will not be liable to contribute to the plaintiffs' costs. They also will not, in any circumstances, be liable for any adverse costs orders made against the plaintiffs (that is, orders requiring the plaintiffs to pay HBRC's costs if they lose).
- 30 The plaintiffs may in the future, if a litigation funder becomes involved, apply to the High Court for it to make a "common fund order" (**CFO**) with effect that if the representative proceeding is **successful**, all class members who are entitled to share in the benefit of the judgment or settlement will be required to contribute towards reimbursing any funder for the costs it has funded and to the funder's commission (calculated on a percentage basis). The costs and commission will be deducted from the overall sum recovered from HBRC before any payments are made to the plaintiffs and class members.
- 31 It is not possible to say what percentage of the total amount payable will be paid to any funder as commission at this time.
- 32 If no litigation funder becomes involved the plaintiffs may apply for a group costs order with effect that if the representative proceeding is **successful**, all class members who are entitled to share in the benefit of the judgment or settlement will be required to contribute towards paying reasonable costs and disbursements. The costs and disbursements will be deducted from the overall sum recovered from HBRC before any payments are made to the plaintiffs and class members.

- 33 No amounts will be paid from any judgment or settlement unless the Court approves those amounts.

WHERE TO FIND RELEVANT DOCUMENTS

- 34 Copies of relevant documents, including the relevant pleadings (as amended from time to time) and court judgments issued in the case so far can be obtained by:
- (1) Downloading them from the representative proceeding website, <https://www.wairoaflooding.co.nz/>; or
 - (2) Contacting Grant Shand at grant@grantshand.co.nz and/or 027 434 5489.
- 35 If you think you are or may be a potential class member, it is recommended that you read these documents as they will assist you to understand the representative proceeding and the orders that have been sought and made by the Courts to date. Please consider these items carefully. If you are unsure about anything, you should contact Grant Shand or seek your own separate legal advice. You should not delay in making your decision.