



## **FIRST AMENDED STATEMENT OF CLAIM**

**Friday the 18<sup>th</sup> day of August 2023**

### **THE PLAINTIFFS BY THEIR SOLICITOR SAY:**

#### **Parties**

#### Plaintiffs

1. The first plaintiffs:
  - (1) At all material times from 18 October 1989 owned and occupied 14 Rata Avenue, Edgecumbe;
  - (2) Suffered loss/damage by flooding on and after 6 April 2017 as set out in schedule 1.
2. The second plaintiff:
  - (1) At all material times from 21 June 2004 owned and occupied 10 Rata Avenue, Edgecumbe;
  - (2) Suffered loss/damage by flooding on and after 6 April 2017 as set out in schedule 1.
3. The third plaintiff:
  - (1) At all material times from 21 June 1996 owned and occupied 19 Kowhai Avenue, Edgecumbe;
  - (2) Suffered loss/damage by flooding on and after 6 April 2017 as set out in schedule 1.
4. The fourth plaintiff:
  - (1) At all material times owned and occupied 17 Rata Avenue, Edgecumbe;
  - (2) Suffered loss/damage by flooding on and after 6 April 2017 as set out in schedule 1.

5. The fifth plaintiff:
- (1) Is a duly incorporated company having its registered office at 13 Holyoake Crescent, Kawerau;
  - (2) At all material times owned and operated the Super Value supermarket at 7 Bridge Street, Edgecumbe;
  - (3) Suffered loss/damage by flooding on and after 6 April 2017 as set out in schedule 1.

#### Defendant

6. The defendant is a local territorial authority:
- (1) Constituted by the *Local Government (Bay of Plenty Region) Reorganisation Order 1989* (“the order”);
  - (2) With its head office at 5 Quay Street, Whakatane;
  - (3) Responsible for the Edgecumbe area.

#### Classes

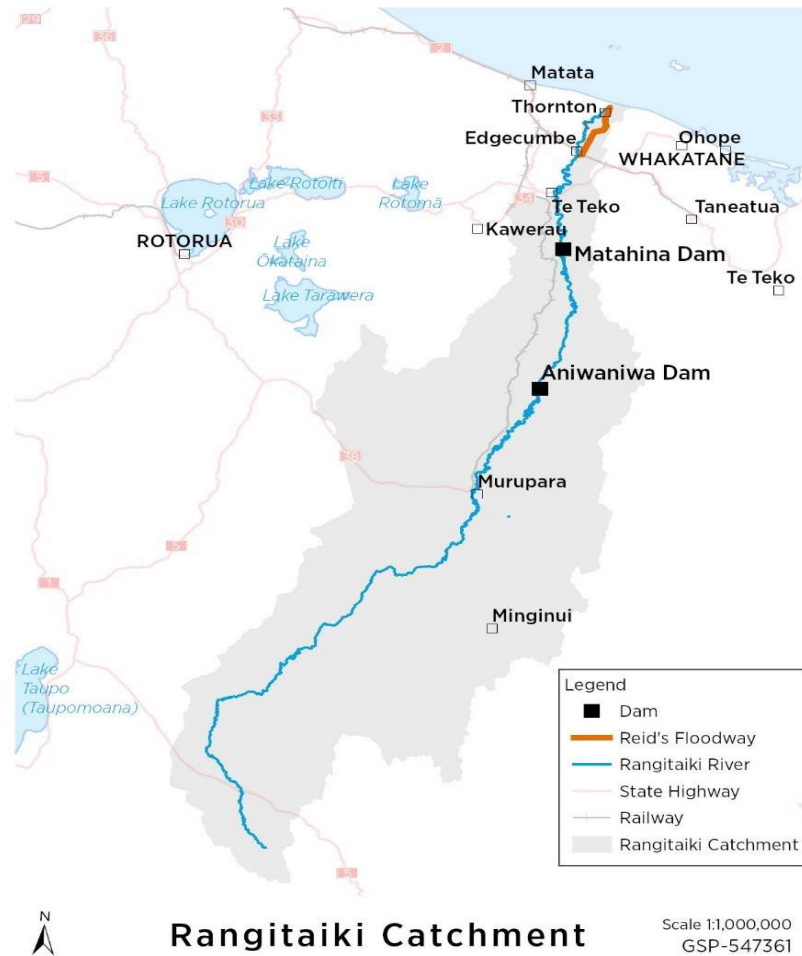
7. Other Edgecumbe property residents/owners are/were in a similar situation to the plaintiffs being residents/property owners that suffered loss/damage by the flood on 6 April 2017.
8. The residents/owners form class(es) of persons having the same interest in this proceeding, in that each of them suffered property loss/damage by the Edgecumbe floods on and after 6 April 2017.
9. In addition to individual claims the plaintiffs seek to bring claims on behalf of similarly affected people under r4.24 of the High Court Rules.
10. The plaintiffs claim relief on their behalf in schedule 1 and on behalf of other group members in amounts to be quantified.

#### Background

11. The Rangitāiki River (“the River”) is the largest river in the Bay of Plenty.

12. The River is approximately 155km long, passing through a number of communities; including Edgecumbe.
13. The Matahina Dam:
  - (1) Was constructed on the River for the purpose of generating hydroelectricity;
  - (2) Was commissioned in 1967;
  - (3) Resulted in the creation of Lake Matahina.
14. Following flood events including, in particular, a flood in 1962; the Rangitāiki-Tarawera Flood Protection Scheme (“the Scheme”) was instituted that was:
  - (1) An integrated plan for extensive new and upgraded flood protection works;
  - (2) Constructed between 1965 and 1983.
15. In 1973, as part of the Scheme, two flood protection walls were constructed in Edgecumbe:
  - (1) Between 54-64 College Road (“the College Road floodwall”) approximately 500m downstream from Edgecumbe Bridge;
  - (2) Downstream from the College Road floodwall between 89 and 101 College Road (“the downstream floodwall”).

16. Figure 1 shows the River catchment area and critical structures of the Scheme:



17. In 1987, a magnitude 6.5 earthquake occurred with its epicentre just north of Edgecumbe, that:

- (1) Caused subsidence of the land around Edgecumbe;
- (2) Increased the risk of flooding from the River:
  - (a) The Edgecumbe earthquake moved the dam a further 150mm downstream;
  - (b) The dam was weakened by the earthquake;
  - (c) Subsidence of the land to the immediate south of Edgecumbe by up to 2m, and around 0.5m to 1m in the immediate vicinity of College Road put Edgecumbe and

surrounding areas at significant risk from flooding from the River;

- (d) The ground continued to settle after the earthquake and by 2002 some areas had subsided by another 0.5m.

### **The College Road Floodwall**

- 18. In about 1993, a new College Road floodwall was constructed in the same position and on the same foundation as the original 1973 wall.
- 19. Following a major flood in Edgecumbe in July 1998, Opus International Consultants Limited was commissioned to carry out subsurface site investigation and additional analyses to assess the effects of subsurface conditions on stop bank performance in five areas including the College Road floodwall.
- 20. Opus:
  - (1) Concluded that the College Road floodwall and stop bank on which it stood had inadequate factors of safety and that vertical exit hydraulic gradients were too high;
  - (2) Recommended that drainage be improved by the installation of a cut-off drain along the landward toe of the wall with a crib wall overlying the drain and supporting the stop bank toe (“the toe drainage works”).
- 21. The toe drainage works were designed by Opus in 1999 and constructed in 2000.
- 22. On about 18 July 2004, there was another major flood in which:
  - (1) River levels rose above the base of the College Road floodwall;
  - (2) The river berm adjacent to the College Road Floodwall was eroded away;
  - (3) Water leaked through a construction joint in the College Road floodwall.

23. Following the July 2004 flood the river berm was subsequently rebuilt by the defendant with “rotten rock” to a higher level and rip rap added to prevent further erosion.
24. In 2012, a handrail and concrete walkway were constructed over a 20m long section of the College Road floodwall with the knowledge and approval of the defendant.

### **Reid’s Floodway and Spillway**

25. Reid’s Floodway:
  - (1) Ran parallel to the main Rangitaiki River channel from upstream of Edgecumbe to Thornton;
  - (2) Was a major feature of the flood protection infrastructure for the River as constructed between 1965 and 1980.
26. As originally designed and described in the 1968 Scheme Review, Reid’s Floodway was intended to be a flood storage structure rather than a conveyance system.
27. In the 2004 flood:
  - (1) The volume of flood water spilling into Reid’s Floodway substantially exceeded its capacity;
  - (2) Reid’s Floodway did not provide any significant benefit due to its threshold for operation being set at a high level;
  - (3) There was widespread flooding of rural land to the east of the Rangitaiki River;
  - (4) The limited utility of the Floodway was highlighted.
28. In 2007, the defendant engaged Opus to report on engineering options mitigating flooding from the River.
29. Opus identified various options for widening Reid’s floodway including:
  - (1) Widening the lower 3.7 km of the 50m Floodway to a total width of approximately Floodway to 200m;

- (2) Widening the Floodway by 50m to 100m;
  - (3) Widening the Floodway by 20m to 70m.
30. The defendant chose to widen the Floodway by 50m to 100m that:
- (1) Opus projected would double its capacity to 190m<sup>3</sup>/s and lower the water level in the main river by 0.5m in a 100-year flood event;
  - (2) Changed the Floodway from a storage system to a conveyance system.
31. In addition to the lower Floodway widening, the 2007 Opus report proposed to upgrade the spillway section into the Floodway with a control gate to enable management of the flow as divided between the Floodway and the main River channel during flood events.
32. Resource consents were granted in September 2009 for works that included widening of the lower Floodway by 50m as well as a 70m wide inflatable rubber dam with a 158m fixed spillway to control flow into the Floodway.
33. Floodway widening works were originally to be undertaken from 2009/10 through to 2012/13, to be followed by the construction of the Spillway in 2013/14.
34. Following several delays, the programme for completion of the Floodway and Spillway was eventually pushed out for some years and had not been completed as at 6 April 2017.

### **The Matahina Dam**

35. At material times, Trustpower, managed the operation of the Matahina Dam.
36. As a part of the re consenting process for the Matahina Dam in 2013, an operating protocol was agreed between the defendant and Trustpower.
37. Pursuant to this protocol, Trustpower was responsible for operating the dam in accordance with its resource consent which included:



- (1) Provision for the defendant to make specific dam management specific requests during floods;
  - (2) The defendant having the option to authorise Trustpower to lower Lake Matahina to 70.0mRL during a major flood.
38. Pursuant to the obligations referred to in paragraphs 55 and 56 below the defendant was responsible to Edgecumbe residents and property owners for optimising the operation of Lake Matahina to minimise downstream flood flows by requesting lowering of the dam in advance of anticipated floods.
39. During floods, Trustpower was reliant on the defendant's flood forecasting system to advise Trustpower when floods greater than 500m<sup>3</sup>/s were forecast to occur and when lake drawdown to 71.6mRL was required.
40. The defendant was also responsible for providing specific instructions to Trustpower on the required Dam outflows to reach the target lake levels.

#### **6 April 2017**

41. Edgecumbe's protection from floods on 6 April 2017 comprised:
- (1) Matahina Dam;
  - (2) Flood banks/walls on either side of the River, including the College Road floodwall and the downstream floodwall;
  - (3) Reid's Floodway and Spillway which was intended as necessary to divert part of the River flow above Edgecumbe out of the River into a substantial canal;
  - (4) The drainage systems that carried excess surface water, in particular from farms to the west of Edgecumbe, and discharge into the Omeheu Canal and Tarawera River.
42. Heavy rain fell in the Bay of Plenty/Rotorua areas in the first days of April 2017; being 3 - 6 April 2017.

43. The rainfall caused the River level at the College Road floodwall to rise to an elevation of 6.190mRL on 6 April 2017.
44. The magnitude of the flood event brought it within the scope of the Regional Council's flood hazard management procedures.
45. The use of the Matahina Dam to manage flows reduced the 6 April 2017 flood to a less than one-in-100 year flood downstream of the Matahina Dam.
46. The eventual peak flow of 740m<sup>3</sup>/s was equivalent to approximately a 70-year return period flood event.
47. At around 08:30am on 6 April 2017, the ground heaved at the site of the College Road floodwall.
48. The College Road flood wall failed on 6 April 2017.
49. As a result of the failure of the College Road flood wall the River flooded the Edgecumbe township and surrounding area.
50. At the time of the 6 April 2017 flood:
  - (1) Work on the Floodway and the Spillway was still incomplete;
  - (2) All stop banks on either side of the River did not meet the one-in-100 years design standard, specifically in relation to height;
  - (3) There was no automatic river water level monitoring device installed close to critical structures such as a floodwall and Moore's Drain, Reynold's Corner, the College Road Floodwall, Sullivan's Bend, Kokohinau Corner, Reid's Floodway, downstream of the Reid's Floodway spillway, and flood banks on either side of the River to enable accurate water levels to be recorded;
  - (4) The toe drain to the floodwall did not function as the toe drain to the floodwall did not carry seepage away from the floodwall.

51. The flooding was caused by:
- (1) The concrete surface above the College Road floodwall for the walkway prevented the dissipation of seepage to the surface during the floods confining the pore pressure within the ground beneath the floodwall and the crib wall resulting in an escalation of pore pressure in the ground on the landward side of the wall;
  - (2) The College Road floodwall was not correctly proportioned to resist water loading:
    - (a) in relation to height and passive pressure acting around the bottom edge of foundation slabs should not be included as resistance in the design of structures;
    - (b) The floodwall was not a design which minimised the potential impact of natural ground variability;
    - (c) The floodwall needed a higher quality of fill;
    - (d) Floodwalls should not be used in areas characterised by variable and piping prone ground conditions unless specially engineered with extended cutoffs, or riverside blankets to control seepage;
  - (3) The subsurface drain installed as part of the cribwall was not functioning to relieve water pressures as it did not intercept and control sub-surface water flow;
  - (4) Internal instability (piping) contributed to the loss of foundation support of the floodwall as it is a significant seepage factor:
    - (a) The void created by the loss of soil particles moves progressively back through the ground along the seepage path, creating a 'pipe' in the ground – seepage erosion;
    - (b) The ground loses its strength and ability to resist any applied load;
  - (5) The Floodway not having been enlarged as directed by Opus;

- (6) The defendant not manually excavating the spillway leading to Reid's Canal prior to the height of the flood on 6 April 2017.

52. As a result of the flooding:

- (1) As recorded in the Cullen Report 18 September 2017 (page 11) at least 15 houses were rendered uninhabitable details of which the plaintiffs do not currently have, but this information is known to the defendant and the Whakatane District Council and will be provided upon receipt;
- (2) As recorded in the Cullen Report 18 September 2017 (page 11) in excess of 250 more houses required repairs of a level which necessitated their being evacuated for a considerable period details of which the plaintiffs do not currently have, but this information is known to the defendant and the Whakatane District Council and will be provided upon receipt;
- (3) All houses and businesses within Edgecumbe township were required to be evacuated;
- (4) Residents' and land owners' chattels, vehicles, machinery and tools were damaged, full details of which will be provided:
  - (a) Upon receipt by the plaintiffs;
  - (b) In stage 2 of the representative action by individuals/entities that are part of the approved class.
- (5) Residents and land owners suffered stress, inconvenience, pain and suffering; full details of which will be provided:
  - (a) Upon receipt by the plaintiffs;
  - (b) In stage 2 of the representative action by individuals that are part of the approved class.
- (6) People suffered lost income full details of which will be provided:
  - (a) Upon receipt by the plaintiffs;

(b) In stage 2 of the representative action by individuals/entities that are part of the approved class.

(7) Residents were required to pay for:

(a) Temporary accommodation;

(b) Repairs/replacement of buildings and contents;

(c) Moving and storage.

Full details of which will be provided:

(d) Upon receipt by the plaintiffs;

(e) In stage 2 of the representative action by individuals/entities that are part of the approved class.

### **Losses**

53. The plaintiffs suffered the loss/damage in Schedule 1.

54. Other people suffered similar loss/damage full details of which will be provided:

(1) Upon receipt by the plaintiffs;

(2) In stage 2 of the representative action by individuals/entities that are part of the approved class.

### **Obligations**

55. By clause 16 of the order the functions, duties and powers of the defendant shall be inter alia the functions, duties, and powers of a catchment board and a regional water board under the *Soil Conservation and Rivers Control Act 1941* and the *Water and Soil Conservation Act 1967*.

56. By s126 of the *Soil Conservation and Rivers Control Act 1941*:

(1) It shall be a function of the defendant to minimise and prevent damage within its district by floods and erosion;

- (2) The defendant shall have all such powers, rights, and privileges as may reasonably be necessary or expedient to enable it to carry out its functions, and in particular shall have power to construct, reconstruct, alter, repair, and maintain all such works and do and execute all such other acts and deeds including the breaching of any stopbank as may in the opinion of the Board be necessary or expedient for:
  - (a) Controlling or regulating the flow of water towards and into watercourses;
  - (b) Controlling or regulating the flow of water in and from watercourses;
  - (c) Preventing or lessening any likelihood of the overflow or breaking of the banks of any watercourse;
  - (d) Preventing or lessening any damage which may be occasioned by any such overflow or breaking of the banks;
  - (e) Preventing or lessening erosion or the likelihood of erosion;
  - (f) Promoting soil conservation.

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

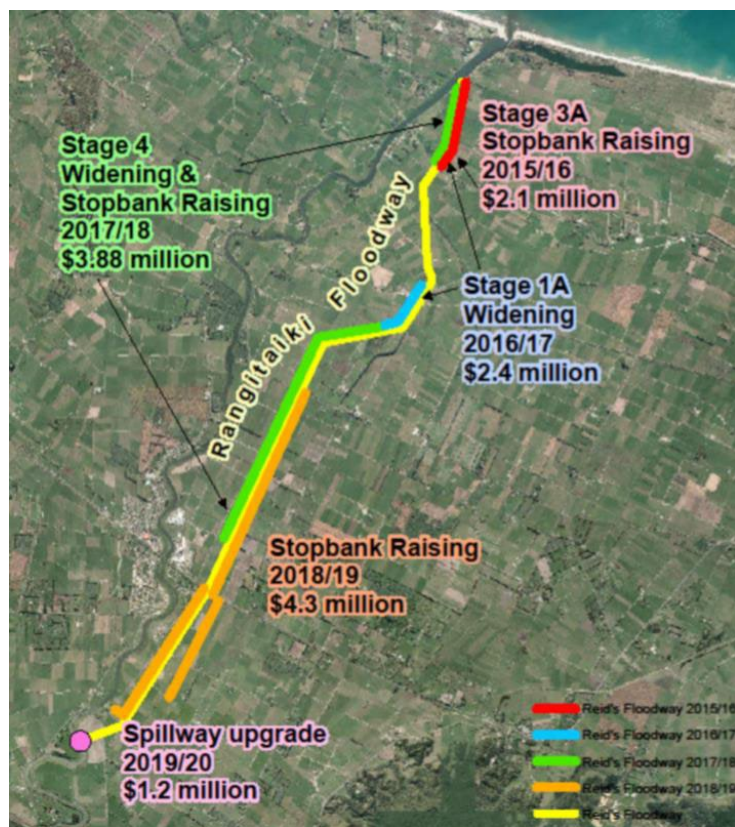
57. In the circumstances the defendant had obligation(s) to the plaintiffs and others to exercise reasonable skill and care in respect of:
  - (1) Monitoring and maintenance of the Scheme and its elements;
  - (2) Implementation of recommendations about Scheme improvement/management;
  - (3) Operation of flood control elements;
  - (4) Response to the risk of flooding in April 2017;

- (5) so as to minimise/prevent flooding of the Edgecumbe township and surrounding area.

58. The defendant breached the obligation(s) by failing to:

- (1) Monitor and maintain the Scheme and its elements with reasonable skill and care:

- (a) Modifications to Reid's Floodway and Spillway were incomplete and/or inadequate. As at January 2017, the works to complete the Reid's Floodway upgrade is shown in the figure below;



- (b) Did not have and use instrumentation such as physical, automatic river water level monitoring devices, automatic alarms when river levels reach certain levels and as further identified in section 10.12 of the *Flood Warning Manual (Bay of Plenty Regional Council, 2016) Thompson, D.* for monitoring of critical elements such as performance of stopbank and floodwall assets, pore water pressure, water levels and deformation at the locations referred to in the preceding paragraph 50 (3);

(c) Did not carry out frequent effective visual inspections of condition(s):

A As set out in the defendant's *Stopbank Design and Construction Guidelines 2014* apart from the day to day observations and reports of repairs required, it is important to carry out condition assessments in the form of regular inspections, say at least once a year. This inspection should be carried out by an experienced person, with a check sheet to record information. The inspection should cover associated works including drains, floodways and waterways, transitions and penetrations to ensure that there are no problems in these areas; e.g. rabbit burrows, trees, scour of banks, build-up of debris or weed growth, which would affect the capacity, and consequently the function of the stopbank. Inspections should also be carried out during and after major flood events to record the event and stopbank performance, as well as any works required as a result of the event. Where there is adequate warning time before a flood event, an inspection should be carried out to ensure all necessary preventative actions have been taken and no repair works remain undone. The annual inspection will provide the basis for updating the maintenance program, which enables stopbanks to be maintained to provide the required level of protection over time;

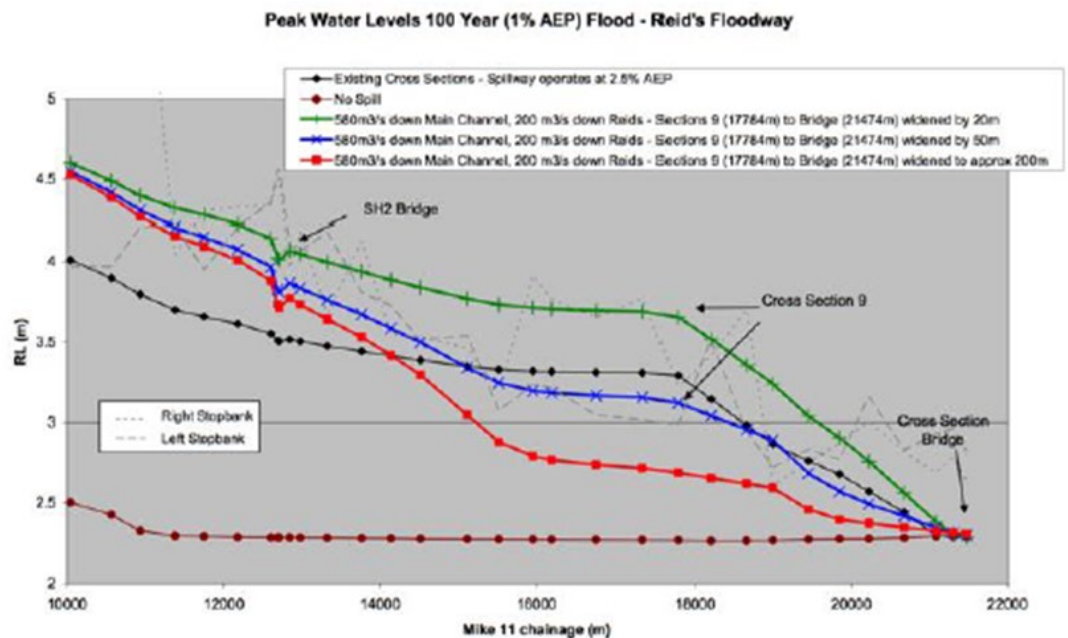
(d) Did not carry out yearly inspections and report on condition and ability of the elements to withstand design loading. The elements include the fill of the floodwall, pressure relief valve outlets and geotechnical monitoring of all stopbanks and floodwalls along the River. The inspection should cover associated works including drains, floodways and waterways, transitions and



penetrations to ensure that there are no problems in these areas; e.g. rabbit burrows, trees, scour of banks, build-up of debris or weed growth, which would affect the capacity, and consequently the function of the stopbank. Apart from the day to day observations and reports of repairs required, it is important to carry out condition assessments in the form of regular inspections, say at least once a year.

- (e) Did not carry out five yearly comprehensive safety review where all aspects of engineering safety are reviewed in detail. The risk to flood defence structures from uncertainties around ground conditions should be minimised by carrying out comprehensive investigation, design, and construction supervision for all stopbanks and floodwalls. Investigations should be located so as to be representative of the ground on which the structure is to be placed;
  - (f) The 72 km of stopbanks including the College Road floodwall were deficient. Deficiencies include the design and construction, wall foundations, fill, waterstops, and stability. The College Road Floodwall included these deficiencies and was ultimately deficient as it failed;
  - (g) Failed to identify and remedy defects referred to in the preceding paragraph.
- (2) Implement recommendations about Scheme improvement/maintenance:
- (a) Neither the approach, nor the planned improvements, to the Rangitāiki River Flood Scheme had been fully implemented at the time of the 2017 Flood, including as set out in the preceding paragraph 58 (1)(a), the works to enlarge the floodway and improve the spillway were not completed, Reid's Floodway was not fully operational, the construction of the spillway control structure, and the upper floodway stopbank raising;

- (b) Modifications to Reid's Floodway and Spillway were incomplete and/or inadequate as referred to in the preceding paragraph. The modifications were inadequate as they were incomplete and the defendant chose to widen the Floodway by 50m to 100m, not widening the lower 3.7km of the 50m Floodway to a total width of approximately 200m being an option identified by Opus as plead at paragraphs 29 and 30 above;
- (c) Following the 2004 flood, the degree of widening of Reid's Floodway was less than optimal to reduce flood levels and geotechnical risks. The decision to not widen the lower reaches of Reid's Floodway to be at least as wide as the 200m upper section has now been shown to have significant consequences in terms of managing flood levels in the upper reaches of the floodway. Refer below figure Comparison of Lower Floodway Widening Options (Source: Opus International Consultants, 2007);



- (d) Widening the lower floodway to 200m to reduce flood levels as much as possible would have reduced geotechnical risks of failure and provide more than the bare minimum of freeboard;

- (e) The decision to not widen the lower reaches of Reid's Floodway to be at least as wide as the 200m upper section had significant consequences in terms of managing flood levels in the upper reaches of the Floodway. The main River had to take a higher proportion of the total flood flow. If the Reid's Floodway upgrades had been completed, with the lowered fixed crest spillway, the flow in the river at 08:30 on 6 April would have been reduced to 575 m<sup>3</sup>/s and there would have been a flow of approximately 120m<sup>3</sup>/s in the floodway. This reduced volume of flow in the River at College Road would have lowered water levels by approximately 0.45.
- (3) Operate the flood control elements with reasonable skill and care:
- (a) The Floodway and Spillway were not used, nor were they capable of being used, to reduce the volume of water in the River so that levels did not exceed the known safe limits being less than the base of the floodwall – lying at 5.35mRL;
  - (b) Widening of the Floodway to 200 metres should have been planned to occur over its whole length, rather than narrowing significantly towards its outlet;
  - (c) The defendant did not optimise the operation of Lake Matahina to minimise downstream flood flows. If a lake level of 70.0mRL had been achieved then the downstream flows could have been reduced by a further 25 to 30m<sup>3</sup>/s, which is a further 3% reduction and it would have delayed the level of 6.19mRL being reached at the College Road Floodwall by approximately one hour. If the failure had been delayed by one hour it is possible that some works could have been completed which may have lessened the likelihood of the wall failing. If both the minimum lake level of 70.0mRL and the maximum design level of 76.8mRL had been utilised

then there could have been a total of 50 to 60m<sup>3</sup>/s reduction in downstream flood flows;

- (d) Full storage in the Dam was not provided. With more accurate inflow information it may have been possible to reduce the dam outflows by 25 to 30m<sup>3</sup>/s and achieve the same one hour delay in the critical river water levels being achieved;
  - (e) The concrete walkway confined water underneath the College Road Floodwall, which increased water pressure in the ground underneath the College Road Floodwall and lead to its failure.
- (4) Respond to the risk of flooding with reasonable skill and care:
- (a) The operation of the Scheme assets, including design, construction, engineering, maintenance and management that the defendant manages was inadequate. The Scheme assets include: Matahina Dam, all stopbanks/floodbanks on either side of the River and Reid's Floodway and Spillway, drainage systems which carry excess surface water;
  - (b) The Floodway could have been manually excavated prior to the height of the flood when water was elevated against the College Road floodwall as soon as it was realised that there was an issue at the College Road Floodwall and prior to the height of the flood when water was elevated against the stopbank;
  - (c) More time could have been brought if the defendant had had better information about the River flows above Lake Matahina or if there had been some differences in the management of the lake levels as referred to in the preceding paragraph 58 (3)(c). Additional/back-up river flow gauges would have provided better information on upper catchment flows that would provide opportunities for improved optimisation of dam outflows and use of the upper range of Lake Matahina storage during flood

events. This could be combined with an enhanced flood forecasting model that includes measured flow data assimilation up to the time of forecast.

59. As a result of the defendant's breaches the:
- (1) Wall failed;
  - (2) Flooding occurred;
  - (3) Plaintiffs and others suffered loss and damage in schedule 1 including stress and inconvenience.
60. It was reasonably foreseeable that breaches would cause the flooding and resultant loss/damage.
61. The plaintiffs and group members seek interest from 6 April 2017 under ss9 & 10 of the *Interest on Money Claims Act 2016*.
62. Interest from the Ministry of Justice interest calculator is to be calculated.

**WHEREFORE THE PLAINTIFFS SEEK ON THEIR OWN BEHALF**

- A Judgment for the amounts in schedule 1;
- B Interest under the *Interest on Money Claims Act 2016* together with ongoing interest;
- C Costs.

**AND THE PLAINTIFFS SEEK ON BEHALF OF EACH GROUP MEMBER**

- A A declaration that the defendant is liable on the cause of action;
- B Judgment for the loss/damages for each group member;
- C Interest under the *Interest on Money Claims Act 2016* together with ongoing interest;
- D Costs.

## **Second cause of action against defendant - Nuisance**

The plaintiffs repeat paragraphs 1 to 56.

63. The plaintiffs and others (those people or entities within the class specified in the Schedule to the Representative Order Application whose details are currently unknown to the plaintiffs) occupied and/or owned land and buildings adjacent to or near the College Road floodwall and were entitled to the right to use and enjoy the land and buildings.
64. At all material times, the defendant was responsible for maintaining and monitoring the stop banks of the River including the College Road floodwall, and was responsible for ensuring that the stopbanks contained the River.
65. On about 6 April 2017, the College Road floodwall failed causing the River to flood the plaintiffs' and others' properties (the flooding), which in turn caused loss/damage to the plaintiffs and others in schedule 1.
66. The flooding interfered with the plaintiffs' and others' use and enjoyment of the land to a substantial and unreasonable level so that the plaintiffs and others suffered distress and inconvenience.
67. The plaintiffs and group members seek interest from 6 April 2017 under ss9 & 10 of the *Interest on Money Claims Act 2016*.
68. Interest from the Ministry of Justice interest calculator is to be calculated.

## **WHEREFORE THE PLAINTIFFS SEEK ON THEIR OWN BEHALF**

- A Judgment for the amounts in schedule 1;
- B Interest under the *Interest on Money Claims Act 2016* together with ongoing interest;
- C Costs.

**AND THE PLAINTIFFS SEEK ON BEHALF OF EACH GROUP MEMBER**

- A A declaration that the defendant is liable on the cause of action;
- B Judgment for the loss/damages for each group member;
- C Interest under the *Interest on Money Claims Act 2016* together with ongoing interest;
- D Costs.

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

The plaintiffs repeat paragraphs 1 to 56 above.

- 69. At all material times, the defendant was responsible for controlling the River catchment and ensuring that the River did not burst its banks in the area of the Edgecumbe township.
- 70. The water in the River in flood was a hazardous substance which would cause damage if it escaped.
- 71. The use of the College Road floodwall as a part of the flood defences was a non-natural use of the land and brought increased danger to the area given it failed and caused River water to escape and flood properties.
- 72. On about 6 April 2017, the College Road floodwall failed causing River water to escape and flood the plaintiffs' and others' (those people or entities within the class specified in the Schedule to the Representative Order Application whose details are currently unknown to the plaintiffs) properties.
- 73. As a consequence of the flooding, the plaintiffs and others have suffered:
  - (1) Damage and loss in schedule 1;
  - (2) Distress and inconvenience.
- 74. The plaintiffs and group members seek interest from 6 April 2017 under ss9 & 10 of the *Interest on Money Claims Act 2016*.

75. Interest from the Ministry of Justice interest calculator is to be calculated.

**WHEREFORE THE PLAINTIFFS SEEK ON THEIR OWN BEHALF**

- A Judgment for the amounts in schedule 1;
- B Interest under the *Interest on Money Claims Act 2016* together with ongoing interest;
- C Costs.

**AND THE PLAINTIFFS SEEK ON BEHALF OF EACH GROUP MEMBER**

- A A declaration that the defendant is liable on the cause of action;
- B Judgment for the loss/damages for each group member;
- C Interest under the *Interest on Money Claims Act 2016* together with ongoing interest;
- D Costs.

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

The plaintiffs repeat paragraphs 1 to 56.

76. Pursuant to section 126 of the *Soil Conservation and Rivers Control Act 1941* the defendant at material times:
- (a) Had a duty to minimise and prevent damage within its district by floods and erosion;
  - (b) Had all such powers, rights, and privileges as may reasonably be necessary or expedient to enable it to carry out its functions, and in particular shall have power to construct, reconstruct, alter, repair, and maintain all such works and do and execute all such other acts and deeds including the breaching of any stopbank as may in the opinion of the Board be necessary or expedient for:



- (c) Controlling or regulating the flow of water towards and into watercourses;
- (d) Controlling or regulating the flow of water in and from watercourses;
- (e) Preventing or lessening any likelihood of the overflow or breaking of the banks of any watercourse;
- (f) Preventing or lessening any damage which may be occasioned by any such overflow or breaking of the banks;
- (g) Preventing or lessening erosion or the likelihood of erosion;
- (h) Promoting soil conservation.

77. In breach of this statutory duty, the defendant failed to prevent/minimise the flooding of Edgcumbe township and surrounding areas on 6 April 2017 as referred to in the preceding paragraphs 58 and 59 above.

78. As a result of the defendant's breach of statutory duty, the plaintiffs and others have suffered:

- (1) Loss and damage in schedule 1;
- (2) Distress and inconvenience.

79. The plaintiffs and group members seek interest from 6 April 2017 under ss9 & 10 of the *Interest on Money Claims Act 2016*.

80. Interest from the Ministry of Justice interest calculator is to be calculated.

**WHEREFORE THE PLAINTIFFS SEEK ON THEIR OWN BEHALF**

A Judgment for the amounts in schedule 1;

B Interest under the *Interest on Money Claims Act 2016* together with ongoing interest;

C Costs.

**AND THE PLAINTIFFS SEEK ON BEHALF OF EACH GROUP MEMBER**

A A declaration that the defendant is liable on the cause of action;

B Judgment for the loss/damages for each group member;

C Interest under the *Interest on Money Claims Act 2016* together with ongoing interest;

D Costs.

**THIS FIRST AMENDED STATEMENT OF CLAIM** is filed by **HAMISH DAVIES AND PIETER VENTER**, of the firm Shine Lawyers NZ Limited Solicitor for the plaintiffs.

The address for service of the plaintiffs is Shine Lawyers Building, Level 10, 33 Federal Street, Auckland 1010.

Documents for service on the above-named plaintiffs may be left at that address for service or may be posted to the solicitor at PO Box 273, Shortland Street, Auckland 1140, or emailed to the solicitor at: [hdavies@shinelawyers.co.nz](mailto:hdavies@shinelawyers.co.nz) and [pventer@shinelawyers.co.nz](mailto:pventer@shinelawyers.co.nz)

## Schedule 1

### Damages

DP MCCONNACHIE & FD MCINTOSH 14 Rata Avenue

- 1 \$50,000 for lost/damaged house contents;
- 2 \$200,000 for house remedial costs;
- 3 \$10,000 for temporary accommodation and storage;
- 4 \$60,000 for general damages.

J MCNEILL 10 Rata Avenue

- 1 \$140,000 for lost/damaged house contents;
- 2 \$200,000 for house remedial costs;
- 3 \$10,000 for temporary accommodation and storage;
- 4 \$70,000 for lost income;
- 5 \$30,000 for general damages.

MG MEAD 19 Kowhai Avenue

- 1 \$170,000 for lost/damaged house contents;
- 2 \$200,000 for house remedial costs;
- 3 \$10,000 for temporary accommodation and storage;
- 4 \$75,000 for lost income;
- 5 \$30,000 for general damages.

KD STEVENSON 17 Rata Avenue

- 1 \$150,000 for lost/damaged house contents;
- 2 \$200,000 for house remedial costs;
- 3 \$10,000 for temporary accommodation and storage;
- 4 \$30,000 for general damages.

EDGE CUMBE SUPERMARKET LIMITED 7 Bridge St

- 1 \$1M for contents and fit out;
- 2 \$300,000 for lost/damaged stock;
- 3 \$1M for lost income.