

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ**

Decision No. [2023] NZEnvC 77

IN THE MATTER

of the Resource Management Act 1991

AND

an application for declarations under
s 311 of the Act

BETWEEN

CANTERBURY REGIONAL
COUNCIL

(ENV-2023-CHC-7)

Applicant

Court: Environment Judge J E Borthwick

Last case event: 26 April 2023

Date of Decision: 2 May 2023

Date of Issue: 2 May 2023

**DECISION OF THE ENVIRONMENT COURT ON APPLICATION
TO ACCESS COURT DOCUMENTS BY NON-PARTIES**

A: The application to access court documents is granted.

REASONS

Introduction

[1] The proceeding to which this application relates involves an application for declaration by Canterbury Regional Council seeking clarification as to its statutory

CRC declarations



duty to enforce the provisions of the National Water Conservation (Rakaia River) Order 1988.

[2] David Williams, a reporter for Newsroom, filed an application requesting access to the affidavits attached to the application for declaration.¹ This application was granted on 10 March 2023 in decision [2023] NZEnvC 040.

[3] Mr Williams filed a second application on 11 April 2023 requesting access to “all notices in support or opposition, plus affidavits, all Minutes from the court, affidavits in reply, and s 274 notices and affidavits”.²

District Court (Access to Court Documents) Rules 2017

[4] Rule 8(1) of the District Court (Access to Court Documents) Rules 2017 stipulates that every person has the right to access the formal court record relating to a civil proceeding. The formal court record is defined by Rule 4 as documents kept in the registry of the court and include a register or index, a published list that gives notice of a hearing, a document that constitutes notice of its contents to the public, a judgment, an order, or a Minute of the court, including any record of the reasons given by a judicial officer.

[5] Where a person is not entitled to access a document relating to a proceeding as of right, Rule 11 provides the option to make a written request for access. Rule 11 has several procedural requirements, including that the applicant must detail the documents sought and the reasons and purpose for doing so. Mr Williams’ application explains the documents are sought:

... to write a news story on a topic of public interest, involving a public agency (ECan), environmental protection of a river (Rakaia WCO) and the use of natural

¹ Application for access to court documents dated 22 February 2023 at 2.

² Application for access to court documents dated 11 April 2022 at 2.

resources to generate power and irrigate farmland involving a publicly listed company (Manawa).

[6] Rule 11 dictates that once the parties to the proceeding have been provided the opportunity to respond, the Judge may then refuse the application, grant the request in whole or in part with or without conditions, or refer it to a Registrar to determine.³

Referral to parties

[7] Mr Williams' request was referred to the parties on 21 April 2023 and they were asked to advise the court of their position in relation to the request. The Minister for the Environment,⁴ New Zealand Federation of Freshwater Anglers,⁵ Environmental Defence Society,⁶ North Canterbury Fish and Game Council and the New Zealand Fish and Game Council,⁷ New Zealand Salmon Anglers and the Future Rivers Trust,⁸ Central Plains Water Trust,⁹ Barrhill Chertsey Irrigation Limited, Dairy Holdings Limited and Rakaia Irrigation Limited,¹⁰ Manawa Energy,¹¹ Te Ngāi Tūāhuriri Rūnanga, Te Rūnanga o Arowhenua, Te Rūnanga o Ngāi Tahu and Te Taumutu Rūnanga Incorporated¹² responded, and confirmed that they do not object to access being provided to Mr Williams.

³ District Court (Access to Court Documents) Rules 2017, Rule 11(7).

⁴ Email of Darsheka Ranchhod for the Minister for the Environment (24 April 2023).

⁵ Email of Lara Burkhardt for New Zealand Federation of Freshwater Anglers (23 April 2023).

⁶ Email of Kate Storer for Environmental Defence Society (24 April 2023).

⁷ Email of Rosie Hill for North Canterbury Fish and Game Council and New Zealand Fish and Game Council (24 April 2023).

⁸ Email of Lisa Black for New Zealand Salmon Anglers and Future Rivers Trust (24 April 2023).

⁹ Email of Jenna Silcock for Central Plains Water Trust (26 April 2023).

¹⁰ Email of Ben Williams for Barrhill Chertsey Irrigation Limited, Dairy Holdings Limited and Rakaia Irrigation Limited (26 April 2023).

¹¹ Email of Laura Jefferies for Manawa Energy (26 April 2023).

¹² Email of Jessica Riddell for Te Ngāi Tūāhuriri Rūnanga, Te Rūnanga o Arowhenua, Te Rūnanga o Ngāi Tahu and Te Taumutu Rūnanga Incorporated (26 April 2023).

Consideration

[8] For applications of this kind, the Judge must consider the nature of the request, the reasons given for it and any relevant factors to the proceedings, which may include but are not limited to:

- (a) the orderly and fair administration of justice;¹³
- (b) the right to bring and defend civil proceedings without the disclosure of any more information concerning private or commercially sensitive matters than is necessary to satisfy the principle of open justice;¹⁴
- (c) the principle of open justice, including the encouragement of fair and accurate reporting of, and comment on, court hearings and decisions;¹⁵ and
- (d) the freedom to seek, receive and impart information.¹⁶

[9] As for requests for access to documents that are not part of the formal court records, there is a need to strike the correct balance between providing for open justice and protecting the privacy interest of parties. I am satisfied that disclosure of the requested documents will provide context to the application for declaration to assist Mr Williams' reporting on this proceeding, which I expect will be a matter of public interest. In coming to my decision, I have given weight to the fact that no party has raised any issue with or objection to the documents being disclosed to Mr Williams.

Outcome

[10] I direct the registry to provide Mr Williams access to:

- (a) all notices in support or opposition filed;

¹³ District Court (Access to Court Documents) Rules 2017, rule 12(a).

¹⁴ District Court (Access to Court Documents) Rules 2017, rule 12(c).

¹⁵ District Court (Access to Court Documents) Rules 2017, rule 12(e).

¹⁶ District Court (Access to Court Documents) Rules 2017, rule 12(f).

- (b) all s 274 notices filed;
- (c) all affidavits filed; and
- (d) all Minutes issued by the court (as part of the formal court record).

Jane S.

J E Borthwick
Environment Judge

