

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TAMAKI MAKAU**

Decision [2024] NZEnvC 057

IN THE MATTER OF

an application under s 86D of the
Resource Management Act 1991

BETWEEN

HASTINGS DISTRICT COUNCIL

(ENV-2024-AKL-024)

Applicant

Court: Environment Judge MJL Dickey sitting alone under s 279 of the
Act

Hearing: On the papers
Last case event: 13 March 2024

Date of Decision: 26 March 2024

Date of Issue: 26 March 2024

**DECISION OF THE ENVIRONMENT COURT ON APPLICATION
FOR ACCESS TO COURT DOCUMENTS BY NON-PARTIES AND
REQUEST TO BE HEARD**

A: The following documents are to be released to Proarch Consultants Limited on
an information only basis:

- (a) Notice of motion dated 23 February 2024;
- (b) Memorandum in support of application dated 23 February 2024;
- (c) Affidavit of Rowan Regis Wallis sworn 23 February 2024; and
- (d) Affidavit of Angus Bruce Charteris affirmed 23 February 2024.



Hastings District Council

B: The request to be heard is refused.

REASONS

Introduction

[2] The proceeding which is addressed in this decision concerns an *ex parte* application by Hastings District Council under s 86D of the Resource Management Act 1991 for orders that specified rules in Plan Change 6 to the Hastings District Plan (Partly Operative) have legal effect from the date of the order.

[3] On 7 March 2024, a representative from Proarch Consultants Limited (**Proarch**) emailed the Court asking, on behalf of their clients:

Could the Court confirm whether any consent authority has approached the Court for its proposed plan to have immediate legal effect pursuant to s86B or 86BA of the RMA? We advise the Court that if the Court has been approached pursuant to s86B or 86BA of the RMA to decide a matter, our clients would like to be informed and heard. This includes any application pursuant to s86B or 86BA of the RMA lodged before 1 July 2024.

[4] The Court advised Proarch that it has two s 86D applications currently before the Court, one being dealt with in the Christchurch Registry and the other in the Auckland Registry. In relation to the Auckland Registry matter, the Court advised the matter was lodged by Hasting District Council, and the Council is seeking an order for rules in PC6 to have legal effect from the date of the order.

[5] By email dated 8 March 2023, Proarch requested a copy of the application documents, affidavits, submissions, hearing dates etc., and asked that the Court advise whether their client can be heard on the matter.

District Court (Access to Court Documents) Rules 2017

[6] 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 judgment, an order, or a minute of the court, including any record of the reasons given by a judicial officer.

[7] 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.

[8] 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.¹

Hastings District Council position

[9] Proarch's request was referred to Hastings District Council.

[10] By email dated 13 March 2024, Ms Davidson on behalf of Hastings District Council provided the following response:

By way of response, the Council is unaware of who Proarch's client is or what interest they might have in Plan Change 6 or the application for an order. No contact has been made with the Council or myself from anyone at Proarch nor anyone understood to be represented by, or connected, to Proarch. Council is not aware of any person with any relationship to Proarch with an interest in Category 3 land or in the vicinity. No submission has been received on Plan Change 6 from Proarch or anyone having any apparent connection to that firm.

In those circumstances, and given I understand no grounds have been provided by Proarch as to why their client might have an interest in the application, Council strongly opposes the request for Proarch's client be heard. The Council's position remains as stated in the application that there is no person who would be prejudiced by the making of the order. It would be concerned if the Court's consideration of the application was delayed as a result of the involvement of an unknown party.

The Council will abide the Court's decision on whether the documents are provided on an information only basis.

¹ District Court (Access to Court Documents) Rules 2017, rule 11(7).

Consideration

[11] Proarch's request on 7 March 2024 was wide ranging, across all registries. This decision only addresses the requests as they relate to this application (ENV-2024-AKL-024), it does not address any other s 86D applications that may be before the Court.

[12] The application documents form part of the formal court record and will therefore be provided. The notice of motion was supported by a memorandum, an affidavit of Rowan Regis Wallis, and an affidavit of Angus Bruce Charteris. As the memorandum and affidavits support the application and are referred to in the application, they will be provided to Proarch. The documents will be provided on an information only basis.

[13] The Court notes for completeness that there are no submissions and/or notice of hearing on file.

[14] Proarch stated they have clients who would like to be informed and heard. The clients were unnamed and any grounds on which they might have an interest were not set out. The Council opposes the request for Proarch's clients to be heard. I have noted the Council's position that no person would be prejudiced by the making of the orders under s 86D. I have determined the application on that basis, among other matters to which I was obliged to have regard. For these reasons, the request for Proarch's clients to be heard is refused.

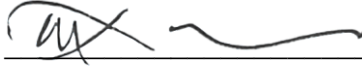
Outcome

[15] The following documents are to be released to Proarch Consultants Limited on an information only basis:

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- (b) Memorandum in support of application dated 23 February 2024;
- (c) Affidavit of Rowan Regis Wallis sworn 23 February 2024; and

(d) Affidavit of Angus Bruce Charteris affirmed 23 February 2024.

[16] The request to be heard is refused.



MJL Dickey
Environment Judge

