

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2024] NZEnvC 062

IN THE MATTER OF

an application for enforcement order
under s 314 of the Resource
Management Act 1991

BETWEEN

GISBORNE DISTRICT COUNCIL

(ENV-2023-AKL-159)

Applicant

AND

CHINA FORESTRY GROUP NEW
ZEALAND COMPANY LIMITED

First Respondent

AND

YUXIA SUN

Second Respondent

AND

WOOD MARKETING SERVICES
LIMITED

Third Respondent

AND

IN THE MATTER OF

an application for enforcement order
under s 314 of the Resource
Management Act 1991

BETWEEN

GISBORNE DISTRICT COUNCIL

(ENV-2023-AKL-194)

Applicant

AND

TIMBERGROW LIMITED

First Respondent

AND

CHIONG YONG TIONG

Second Respondent



AND

ERNSLAW ONE LIMITED

Third Respondent

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

Hearing: On the papers

Last Case Event: 20 March 2024

Date of Decision: 5 April 2024

Date of Issue: 5 April 2024

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

A: The application for access to Court documents is granted.

B: The following documents are to be released to Stuff Limited:

- (a) the applications for enforcement orders, including the names of the forests and the Respondents involved.
- (b) the memorandum filed on behalf of Timbergrow Limited, Chiong Yong Tiong and Ernslaw One Limited dated 13 December 2023.

REASONS

Introduction

[1] These matters concern applications for enforcement orders by Gisborne District Council. The application against the China Forestry Group New Zealand Company Limited, Yuxia Sun and Wood Marketing Services Limited relates to the Kanuka Forest, a plantation pine forest located at Waimata Valley Road, Waimata (**the Kanuka Forest Application**).

[2] The application against Timbergrow Limited, Chiong Yong Tiong and Ernslaw One Limited relates to the West Ho Forest, a plantation pine forest at West Ho Road, Tolaga Bay, Gisborne (**the West Ho Forest Application**).

Application for access to Court documents

[3] On 12 March 2024 media company Stuff Limited sought access to copies of the applications for enforcement orders, evidence and the names of the forests and the Respondents named in the applications. Stuff's representative advised that they were "writing about the Gisborne District Council's forestry compliance team ... and the actions/steps it has taken in regards to slash and debris in the region".

[4] The parties were directed to advise the Court of their positions in relation to the application for access to documents.

[5] For the Kanuka Forest Application:

- (a) the Council, Wood Marketing Services Limited and s 274 party Mana o Taiao Tairawhiti do not object to Stuff's application; and
- (b) China Forestry Group and Yuxia Sun have advised that they will abide by the Court's decision.

[6] For the West Ho Forest Application:

- (a) Timbergrow Limited, Chiong Yong Tiong and Ernslaw One Limited object to the release of the evidence/affidavits filed on the grounds that evidence has only been provided by the Council at this stage of the proceeding and is untested;
- (b) they do not object to the application, name of the forest or the names of the Respondents being released, however they want these documents to be accompanied by their memorandum in response to the application.

District Court (Access to Court Documents) Rules 2017

[7] 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.

[8] However, access to pleadings and evidence are governed by Rules 11 to 14. Rule 11 enables a written request for access to be made. Rule 11 has several procedural requirements, including that the applicant must detail the documents sought and the reasons and purpose for doing so.

[9] 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

[10] In determining a request for access under Rule 11, I must consider the nature of, and the reasons given for, the request and take into account each of the relevant matters set out in Rule 12 of the Rules or any objection to the request. I must have regard to the orderly and fair administration of justice, the principle of open justice (including the encouragement of fair and accurate reporting of, and comment on, Court hearings and decisions) and the freedom to seek, receive, and impart information.

[11] Stuff has made it clear that it seeks the information to assist it in reporting on the Council's actions/steps it has taken in regards to slash and debris in the region. The respondents to the West Ho Forest Application are concerned that the affidavits filed thus far have only been provided by the Council and are, at this stage of the proceeding, untested and have not been responded to.

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

[12] The Rules distinguish between the grant of access at the different stages of the proceedings being the pre-substantive hearing phase, the period during the substantive hearing and the period after the substantive hearing. If the application is made before the substantive hearing, Rule 13(1) states the Court “must have regard to the fact that the protection of confidentiality and privacy interests, and to the orderly and fair administration of justice may require that access to documents be limited”.

[13] The question for me is that the way in which the proceedings have advanced, a timetable has only recently been proposed (and now directed) for the exchange of evidence leading to a hearing. Those affidavits filed on the Council’s behalf have not, therefore, been responded to.

[14] As the High Court described in *Safari Construction (2005) Limited v Concept Builders Queenstown Limited*:²

Access to documents at the pre-substantive hearing stage is generally limited because, as the Court of Appeal explained in *Crimson Consulting v Berry* [2018] NZCA 460 at [39]:

... when matters are still at the pleading stage, there is an element of unfairness on parties in the publication of one side of the story. The allegations and the statement of claim have not yet been tested by the giving of evidence. There being no hearing in Court, the need for transparency and public scrutiny is less, because pre-trial the Court is not determining substantive issues.

[15] The Court in *Safari* noted that although evidence had been filed in that proceeding, it was entirely untested. It also noted that the pleadings and associated civil proceedings had not been finalised. Noting in that case that the particular judgments at issue contained sufficient information about the allegations made to understand the nature of them, it was not clear to the Court that providing supporting affidavits could take matters any further when that evidence is untested. The Court balanced the usual expectation that access to Court documents when proceedings are at an early stage will only be permitted in limited cases. It observed that its decision

² *Safari Construction (2005) Limited v Concept Builders Queenstown Limited* [2023] NZHC 2811 at [14].

does not preclude the applicant seeking access to Court documents either at a later stage or when more specificity can be given about the reasons access is sought and is considered to be of material assistance.

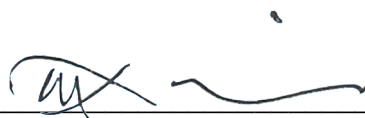
[16] In this proceeding, all parties are actively engaged in the process, but the respondents have not yet filed any evidence. However, a timetable for evidence exchange has recently been directed. I propose to therefore allow the request insofar as it pertains to the Application for Enforcement Orders, but refuse access to the affidavits filed in both sets of enforcement proceedings.

[17] I also authorise the release of the memorandum filed on behalf of Timbergrow Limited and others in response to the enforcement proceedings.

Outcome

[18] The following documents are to be released to Stuff Limited:

- (a) the applications for enforcement order (excluding any affidavits), including the names of the forests and the Respondents involved.
- (b) the memorandum filed on behalf of Timbergrow Limited, Chiong Yong Tiong and Ernslaw One Limited dated 13 December 2023.



MJL Dickey
Environment Judge

