

IN THE DISTRICT COURT
HELD AT AUCKLAND
I TE KOTI A ROHE
TAMAKI MAKARAU

CIV 2025-004-000013

BETWEEN

MARGARET CHANEL SMITH & DAVID JOHN SMITH as to a one third share and **THERESA JEAN SMITH** as to a two thirds share; all of 30 Oraha Road, Kumeu, homeowners
Plaintiffs

AND

AUCKLAND TRANSPORT a council controlled organisation of the Auckland Council with its head office at 20 Viaduct Harbour Avenue, Westhaven
First Defendant

AND

AUCKLAND COUNCIL a unitary territorial authority with its headquarters at Manukau Civic Building at 31-33 Manukau Station Road, Manukau
Second Defendant

AND

ARMINO LIMITED a duly incorporated company having its registered office at Cappella Group, Level 1, 14 Viaduct Harbour Avenue, Auckland Central, developer
Third defendant

STATEMENT OF CLAIM

Dated: 12th December 2024

Judicial Officer: TBA
Next Event Date: TBA

This document is filed by:

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GRANT SHAND
BARRISTERS & SOLICITORS

EXPERT
INSURANCE
LAWYERS

STATEMENT OF CLAIM
Friday the 12th day of December 2025

The plaintiffs by their solicitor say:

Parties

Plaintiffs

- 1 The plaintiffs own 30 Oraha Rd, Kumeu, Auckland being all the land comprised and described in CT NA29D/27 ("the property").

Auckland Transport

- 2 The first defendant, Auckland Transport:
 - (1) Is a:
 - (a) Statutory body established by the *Local Government (Auckland Council) Amendment Act 2010*;
 - (b) Council-controlled organisation of the Auckland Council;
 - (2) Has its head office at 20 Viaduct Harbour Avenue, Westhaven, Auckland.

Auckland Council

- 3 The second defendant Auckland Council:
 - (1) Is a unitary territorial authority established under the *Local Government (Auckland Council) Act 2009*;
 - (2) Has its headquarters at Manukau Civic Building at 31-33 Manukau Station Road, Manukau.

Armino

- 4 The third defendant, Armino Ltd is a:
 - (1) Duly incorporated company having its registered office at Cappella Group, Level 1, 14 Viaduct Harbour Avenue, Auckland;
 - (2) Property developer.

Obligations

Auckland Transport

- 5 Under the *Local Government (Auckland Council) Amendment Act 2010* and the *Local Government Act 1974*:
 - (1) Roads shall be under the control of Auckland Transport;
 - (2) Auckland Transport shall have the power in respect of roads to:

- (a) Construct, upgrade, and repair all roads with such materials and in such manner as the council thinks fit;
 - (b) Lay out new roads;
 - (c) Divert or alter the course of any road;
 - (d) increase or diminish the width of any road;
 - (e) Determine what part of a road shall be a carriageway, and what part a footpath or cycle track only;
 - (f) Alter the level of any road or any part of any road;
- (3) Auckland Transport may, in such manner as it thinks fit, form or upgrade footpaths on one side or both sides of any road, and may construct those footpaths of such dimensions and of such materials and in such manner as it thinks fit.

Auckland Council

6 Auckland Council:

- (1) Is now the local authority responsible for all local government decisions in the Auckland region.
- (2) Was created in November 2010 through the Local Government (Auckland Council) Act 2009, which merged seven city and district councils (Auckland City, Manukau City, North Shore City, Waitākere City, Papakura District, Rodney District, Franklin District) with the Auckland Regional Council into a single organisation;
- (3) Inherited all functions, services, debts, contracts, and responsibilities of the disestablished councils.

7 The plaintiffs' property was previously within the jurisdiction of the Rodney District Council/Auckland Regional Council.

8 The *Local Government (Auckland Region) Reorganisation Order 1989* established the Auckland Regional Council.

9 By clause 16 of the order the functions, duties and powers of the ARC 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*.

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

- (1) It shall be a function of the ARC to minimise and prevent damage within its district by floods and erosion;
- (2) The ARC shall have all such powers, rights, and privileges as may reasonably be necessary or expedient to enable it to carry out its functions.

Armino

11 Arborfield Group Holdings Ltd:

- (1) Was incorporated on 25 August 2000;
- (2) From about 2016 developed 105 Oraha Road, Huapai (Lot 1 DP311880), Lot 2 DP 452240, Burns Lane, Huapai and 59 Burns Lane, Huapai (Lot 16 DP 56200 comprising the:
 - (a) Creation of at least 50 residential lots and balance lots;
 - (b) Construction of a stormwater network which comprises bio-retention devices (tree pits and swales); construction of low pressure wastewater system extending from the existing pump station located at the bottom of Oraha Road, and the extension of the water supply network to serve the development; a primary piped network and overland flow paths which will discharge into the streams and gullies and ultimately the Kumeu River;
 - (c) Formation of a footpath along Oraha Road linking to Huapai Town Centre.

12 On 31 March 2020 Arborfield amalgamated with Cappella Trust Investments Ltd and Pakenham Group Ltd to become Pakenham Group Ltd.

13 Pakenham Group Ltd changed its name to Armino Ltd on 27 June 2025.

14 Armino is liable for the conduct of Arborfield.

- 15 Arborfield owed the plaintiffs; and other residents of Orahā Rd, a non-delegable duty to exercise reasonable skill and care when performing the development work.

Development Work

- 16 On about 1 March 2016 Auckland Council hearing commissioners by a written decision granted resource consent for 50 residential lots and 2 balance lots and associated works at 105 Orahā Road, Huapai (Lot 1 DP 311880), Lot 2 DP 452240, Burns Lane, Huapai and 59 Burns Lane, Huapai (Lot 16 DP 56200).

- 17 The consent to the development consent is subject to the following conditions

1. The 52 lot subdivision and associated activities shall be carried out in accordance with the plans and all information submitted with the application, detailed below, and all referenced by the authorising agency as consent number 65615 and 66002.

43. A 1.8m wide footpath shall be constructed along the full site frontage on Orahā Road and along the northern side of Orahā Road to connect into the existing footpath on the south-western side of the bridge crossing outside 30 Orahā Road in accordance with the AR Civil Plan referenced AR-41-15 Drawing 314 Rev. A dated 12/12/2015. The footpath shall ensure a safe pedestrian crossing point from the northern side of Orahā Road to the southern side as outlined in section 7 of the Commute Traffic report to the to the satisfaction of the SHA Programme Director Consenting, DPO.

The design of the footpath shall ensure appropriate stormwater management and shall not make worse the carriageway stormwater management.

- 18 On dates currently unknown to the plaintiffs; the third defendant with the knowledge and approval of the first and second defendants:

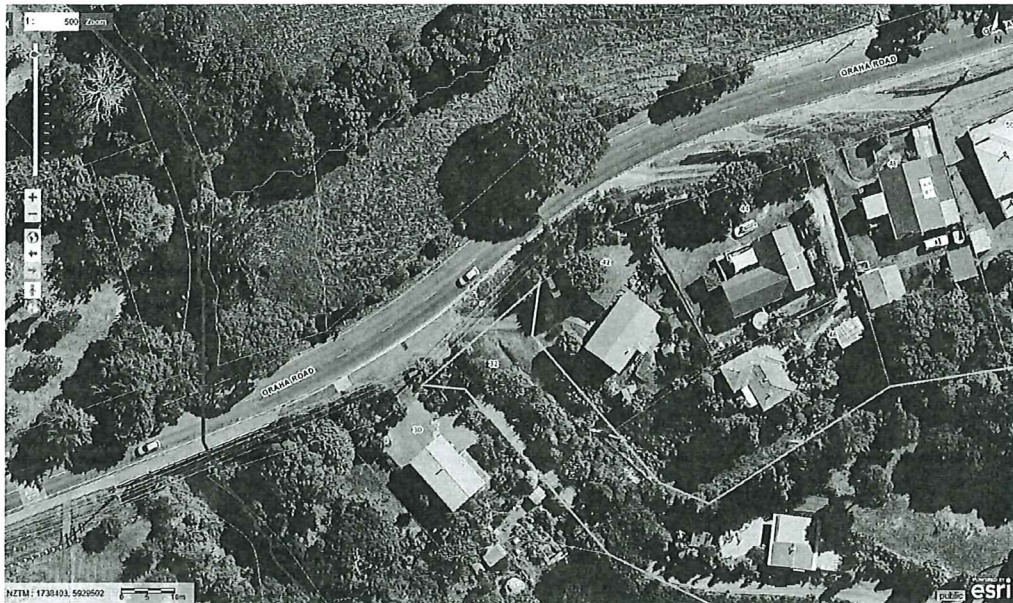
- (1) Cut out a bank on the South side of Orahā Rd outside #42 with no retaining;
- (2) Removed drains from adjacent to Orahā Rd between #79 and between #89 to 91;
- (3) Concreted over the drainage system;

- (4) Installed footpaths on the northside of Oraha Rd between opposite #46-48 and between #89-91 that angle towards the road;
- (5) Installed footpaths on the southside of Oraha Rd;
- (6) Did not install any:
 - (a) Drainage pits;
 - (b) Swales;
 - (c) Vegetation strips.

19 The work is/was contrary to:

- (1) The consent and its conditions in paras 16 & 17 above;
- (2) Clause E1 of the Building Code.

20 Prior to the work the natural OLFP is/was north of Oraha Rd over paddocks to the Kumeu River as pictured below with the blue line.



21 Before the work water run off went into drains on both sides outside 79 Oraha Rd.

22 After the work where the drain is/was replaced with a footpath & no additional stormwater drain surface the storm water flows onto the road & down towards 30, 32 & 42 Oraha Rd.

- 23 Before the work outside 52 Oraha Rd, water off Oraha Rd mostly went into paddocks on the Northern side.
- 24 After the work outside 52 Oraha Rd with a footpath angled towards the road and no drainage increased water is diverted towards Southern side of Oraha Rd; primarily to 30, 32 & 40.
- 25 Before the work at 42 & 44 Oraha Rd water mostly went into paddock(s) on the northern side of road and the bank that went up to road edge soaked up water and diverted in northwards.
- 26 After the work outside 42 Oraha Rd with a concrete footpath and cut bank, increased water is being diverted towards the southern side of Oraha Rd as the bank no longer absorbs water or directs it towards the road.
- 27 After the work there is now a foot path outside 30 & 32 Oraha Rd that water runs over and down into the properties.
- 28 As a result of the work:
- (1) The original OLFP over paddocks on the northside of Oraha Rd no longer exists;
 - (2) The water is prevented from following the original OLFP;
 - (3) There is now an OLFP on the southside of Oraha Rd that goes through #30 & #32;
 - (4) Since about 2023 an OLFP is on the Lim. property file and other Auckland Council records as running over #30 & #32.
 - (5) The properties are now restricted and significantly devalued;
 - (6) Water now diverts onto #30, #32 & #42 causing damage to those properties;
 - (7) The bank outside #42 collapses and does not absorb water.
- 29 To remediate requires:
- (1) On the northern side the removal of footpaths and restoration of drain(s);
 - (2) On the southern side the removal of footpaths and restoration of bank outside 42-46 Oraha Rd back to the road verge where it used to go;
 - (3) Remediation of damaged property;
 - (4) Alteration of the OLFP to its original location;

(5) Removal of the OLFP from the records for #30 & #32.

30 The plaintiffs have communicated with the Auckland Council and Auckland Transport about the issues; but they have failed/refused to do anything.

31 As a result of the work and results of it:

(1) The plaintiffs have suffered loss and damage comprising:

(a) Property damage requiring remediation;

(b) Loss in value of their property;

(2) Distress, inconvenience, anxiety and loss or enjoyment of the plaintiffs' dwellings, further particulars to be supplied prior to trial;

(3) Other property owners have likely been adversely affected similarly.

Classes

32 Other Oraha Rd property residents/owners are/were in a similar situation to the plaintiffs being residents/property owners that suffered loss/damage by the work/conduct.

33 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 work/conduct.

34 In addition to individual claims the plaintiffs seek to bring claims on behalf of similarly affected people under r4.24 of the *District Court Rules 2014*.

35 The plaintiffs claim relief on their behalf and on behalf of other group members in amounts to be quantified.

36 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.

First cause of action against first defendant – Negligence

37 Roads and footpaths in Auckland are under the control of Auckland Transport.

38 At all material times Auckland Transport was responsible for performing duties and exercising powers under the *Local Government (Auckland Council) Amendment Act 2010* and the *Local Government Act 1974:Building Act* in relation to:

- (1) Roads;
- (2) Footpaths;
- (3) Drains adjacent to footpaths/roads.

39 In the circumstances Auckland Transport had obligation(s) to the plaintiffs and others to exercise reasonable skill and care in respect of:

- (1) Roads;
- (2) Footpaths;
- (3) Drains adjacent to the footpaths/roads.

40 Auckland Transport breached its obligations by permitting, involvement in and not remediating the work in para 18 above.

41 As a result of its breaches:

- (1) There are the problems in para 28 above;
- (2) The plaintiffs and others suffered the loss/damage in para 31 above .

42 It was reasonably foreseeable that its breaches would cause the problems, loss and damage.

43 To come within the jurisdiction of the District Court the plaintiffs waive their monetary claim above \$350,000.

44 The plaintiffs and group members seek interest on \$350,000 from 1 June 2024 under ss9 & 10 of the *Interest on Money Claims Act 2018*.

45 Interest under the calculator is about \$28,232.72.

WHEREFORE THE PLAINTIFFS SEEK ON THEIR OWN BEHALF AGAINST THE FIRST DEFENDANT

- A An order that the first defendant:
 - (1) On the northern side remove footpaths and restore drain(s);
 - (2) On the southern side remove footpaths and restore bank outside 42-46 Oraha Rd back to the road verge where it used to go;
- B Judgment for cost to remediate damaged property and lost value;
- C Costs.

Alternatively

- A Judgment for amounts to be determined;
- B Interest under the *Interest on Money Claims Act 2016* of \$28,232.72 together with ongoing interest;
- C Costs.

AND THE PLAINTIFFS SEEK ON BEHALF OF EACH GROUP MEMBER

- A A declaration that the first defendant is liable on the cause of action;
- B Judgment for the loss/damages for each group member;
- C Costs.

Second cause of action against first defendant – Breach of statutory duty

The plaintiffs repeat paragraphs 1 to 36.

46 Pursuant to the *Local Government (Auckland Council) Amendment Act 2010* and the *Local Government Act 1974* the first defendant at all material times had a duty to plan, build, design, operate and maintain the roads, footpaths, streetscapes and associated drains.

47 Auckland Transport breached its duties by permitting, involvement in and not remediating the work in para 18 above.

48 As a result of its breaches:

(1) There are the problems in para 28 above;

(2) The plaintiffs and others suffered the loss/damage in para 31 above.

49 It was reasonably foreseeable that its breaches would cause the problems, loss and damage.

50 To come within the jurisdiction of the District Court the plaintiffs waive their monetary claim above \$350,000.

51 The plaintiffs and group members seek interest on \$350,000 from 1 June 2024 under ss9 & 10 of the *Interest on Money Claims Act 2018*.

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- B Interest under the *Interest on Money Claims Act 2016* of \$28,232.72 together with ongoing interest;
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AND THE PLAINTIFFS SEEK ON BEHALF OF EACH GROUP MEMBER

- A A declaration that the first defendant is liable on the cause of action;
- B Judgment for the loss/damages for each group member;
- C Costs.

First cause of action against second defendant - negligence

The plaintiffs repeat paragraphs 1 to 36.

53 Auckland Council Is the local authority responsible for all local government decisions in the Auckland region.

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

- (1) It shall be a function of the Auckland Council to minimise and prevent damage within its district by floods and erosion;
- (2) The Auckland Council shall have all such powers, rights, and privileges as may reasonably be necessary or expedient to enable it to carry out its functions.

55 Auckland Council breached its obligations by permitting, involvement in and not remediating the work in para 18 above.

56 As a result of its breaches:

- (1) There are the problems in para 28 above;
- (2) The plaintiffs and others suffered the loss/damage in para 31 above .

57 It was reasonably foreseeable that its breaches would cause the problems, loss and damage.

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59 The plaintiffs and group members seek interest on \$350,000 from 1 June 2024 under ss9 & 10 of the *Interest on Money Claims Act 2018*.

60 Interest under the calculator is about \$28,232.72.

WHEREFORE THE PLAINTIFFS SEEK ON THEIR OWN BEHALF AGAINST THE SECOND DEFENDANT

- A An order that the second defendant:
 - (1) Alter the OLFP to its original location;
 - (2) Remove the OLFP from the records for #30 & #32.
 - (3) On the northern side restore drain(s);
- B Judgment for cost to remediate damaged property and lost value;
- C Costs.

Alternatively

- A Judgment for amounts to be determined;
- B Interest under the *Interest on Money Claims Act 2016* of \$28,232.72 together with ongoing interest;
- C Costs.

AND THE PLAINTIFFS SEEK ON BEHALF OF EACH GROUP MEMBER

- A A declaration that the second defendant is liable on the cause of action;
- B Judgment for the loss/damages for each group member;
- C Costs.

Second cause of action against second defendant - Breach of statutory duty

The plaintiffs repeat paragraphs 1 to 36.

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

- (1) It shall be a function of the Auckland Council to minimise and prevent damage within its district by floods and erosion;
- (2) The Auckland Council shall have all such powers, rights, and privileges as may reasonably be necessary or expedient to enable it to carry out its functions.

62 Auckland Council breached its obligations by permitting, involvement in and not remediating the work in para 18 above.

63 As a result of its breaches:

- (1) There are the problems in para 28 above;
- (2) The plaintiffs and others suffered the loss/damage in para 31 above .

64 It was reasonably foreseeable that its breaches would cause the problems, loss and damage.

65 To come within the jurisdiction of the District Court the plaintiffs waive their monetary claim above \$350,000.

66 The plaintiffs and group members seek interest on \$350,000 from 1 June 2024 under ss9 & 10 of the *Interest on Money Claims Act 2018*.

67 Interest under the calculator is about \$28,232.72.

WHEREFORE THE PLAINTIFFS SEEK ON THEIR OWN BEHALF AGAINST THE SECOND DEFENDANT

- A An order that the second defendant:
 - (1) Alter the OLFP to its original location;
 - (2) Remove the OLFP from the records for 30 & 32.
 - (3) On the northern side restore drain(s);
- B Judgment for cost to remediate damaged property and lost value;
- C Costs.

Alternatively

- A Judgment for amounts to be determined;
- B Interest under the *Interest on Money Claims Act 2016* of \$28,232.72 together with ongoing interest;
- C Costs.

AND THE PLAINTIFFS SEEK ON BEHALF OF EACH GROUP MEMBER

- A A declaration that the second defendant is liable on the cause of action;
- B Judgment for the loss/damages for each group member;
- C Costs.

Cause of action against third defendant - negligence

The plaintiffs repeat paragraphs 1 to 36

68 Arborfield owed the plaintiffs; and other residents of Oraha Rd, a non-delegable duty to exercise reasonable skill and care when performing the development work in paras 18.

69 Armino is liable for the conduct of Arborfield.

70 Arborfield breached its duties by the work in para 18 above.

71 As a result of its breaches:

- (1) There are the problems in para 28 above;
- (2) The plaintiffs and others suffered the loss/damage in para 31 above.

72 It was reasonably foreseeable that its breaches would cause the problems, loss and damage.

73 To come within the jurisdiction of the District Court the plaintiffs waive their monetary claim above \$350,000.

74 The plaintiffs and group members seek interest on \$350,000 from 1 June 2024 under ss9 & 10 of the *Interest on Money Claims Act 2018*.

75 Interest under the calculator is about \$28,232.72.

WHEREFORE THE PLAINTIFFS SEEK ON THEIR OWN BEHALF AGAINST THE THIRD DEFENDANT

- A Judgment for amounts to be determined;
- B Interest under the *Interest on Money Claims Act 2016* of \$28,232.72 together with ongoing interest;
- C Costs.

AND THE PLAINTIFFS SEEK ON BEHALF OF EACH GROUP MEMBER

- A A declaration that the third defendant is liable on the cause of action;
- B Judgment for the loss/damages for each group member;
- C Costs.

This statement of claim is filed by Grant Donald Richard Shand, Barrister and Solicitor, whose address for service is 145 Torkar Road, Clarks Beach, Auckland.

Documents for service on the plaintiffs may be:

- a) left at the address for service; or
- b) posted to the solicitor at PO Box 137-243, Parnell, Auckland 1010; or
- c) transmitted to the solicitor by email: grant@grantshand.co.nz