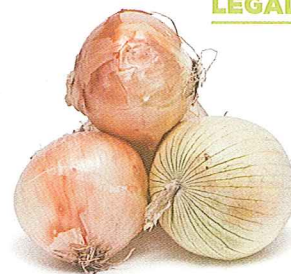


Do onions float?



In *Easton Agriculture & Anor v Manawatu Wanganui Regional Council* (CIV-2008-454-31, 7 September 2011, Palmerston North High Court), we succeeded in defending a claim against the council for \$2,540,387 arising from the 2004 Manawatu floods.

BY SARAH MACKY

The massive storm in the Lower North Island was a 1 in 110 year event. It caused the third-largest flood flow in the Manawatu River since records began.

The Manawatu Wanganui Regional Council (Horizons) managed the Lower Manawatu Flood Control Scheme. This scheme protects a land area of 320km² from flooding including the city of Palmerston North. It comprises 250km of stopbanks and a floodway called the Moutoa floodway to which flood waters are diverted from the Manawatu River through the Moutoa floodgates in times of peak flow.

The construction of the Lower Manawatu Flood Control Scheme stopbanks, Moutoa floodway and Moutoa floodgates took place between 1959 and 1965. The construction of the Moutoa floodway stopbanks included construction of the south stopbank up under pre-existing structures such as the Whirokino trestle bridge. This construction was undertaken by the council's predecessor.

The maintenance of the Lower Manawatu Flood Control Scheme is funded by the community and more directly by those who gain benefit from the protection offered by the Scheme. During the storm, the council decided the peak flow was likely to be such that the floodwaters should be diverted through the Moutoa

floodgates into the floodway. While the floodway was in use, a section of the south stopbank in the Moutoa floodway breached. The breach occurred in the vicinity of the Whirokino trestle bridge which cut through the top of the south stopbank. As a result of the breached stopbank, the plaintiffs' potato and onion farms were flooded. The plaintiffs' crops were lost. The force of the storm resulted in some of the plaintiffs' onions ending up piled one and a half metres against the plaintiffs' fences.

The plaintiffs said a gap existed under the Whirokino trestle bridge and that the gap and the interaction between the stopbank, the floodwaters and the bridge had caused the stopbank to breach. The plaintiffs alleged the council should have addressed these issues and if it had the stopbank breach would not have occurred. They claimed against the council for their losses. The causes of action were in negligence, nuisance, breach of statutory duty and *Rylands v Fletcher*.

When local government reorganisation occurred in 1989, Horizons took over the duties of the catchment board in managing the Lower Manawatu Flood Control Scheme. Section 148 of the Soil Conservation & Rivers Control Act 1941 provides a defence to a claim against a council for breach of a stopbank where the breach of the

stopbank was caused without any negligence on the part of the council. The court found this defence applied and so that put an end to the causes of action in nuisance, breach of statutory duty and *Rylands v Fletcher*. This is the first case where this defence has succeeded in New Zealand. That left the claim in negligence to be dealt with.

The evidence established the existence of a gap between the top of the stopbank and the underside of the Whirokino trestle bridge. The council had a system of regular inspections that it undertook of the stopbanks. In addition, the council had engaged experts to inspect the stopbank over the years. The council inspectors did not notice the gap under the bridge. The court concluded that the council ought to have seen the gap and because it did not, that the council had fallen below a reasonable standard of care in not seeing the gap and doing something about it. However, despite finding that the gap existed, the court found that the gap did not in fact cause the stopbank to breach. The part of the stopbank directly under the Whirokino trestle bridge was built up with concrete bags. The experts all agreed that the concrete bags would be the slowest to dislodge compared with the loose material in the stopbanks upstream and downstream of the bridge. The court found that breaches occurred initially in those two areas and because of that, the plaintiffs' properties would have flooded in any event. Therefore, the plaintiffs' claims against the council failed.

In every case you learn something new. The answer to the question in the title "Do onions float?" is a resounding yes.

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