

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision [2025] NZEnvC 201**

IN THE MATTER OF

an application under ss314 and 316 of  
the Resource Management Act 1991

BETWEEN

GISBORNE DISTRICT COUNCIL

(ENV-2025-AKL-020)

Applicant

AND

WOODLETT INVESTMENTS  
LIMITED

First Respondent

AND

DUNCAN MACKENZIE  
WOODHOUSE

Second Respondent

AND

SAMNIC FOREST MANAGEMENT  
LIMITED

Third Respondent

AND

GAVIN FRANCIS FORTUNE

Fourth Respondent

AND

SCOTT BARRY FUNNELL

Fifth Respondent

AND

RICHARD HAYES

Sixth Respondent

AND

MANA TAIAO TAIRĀWHITI INC

s 274 party



AND

IN THE MATTER OF      appeals under s 325 of the Resource  
Management Act 1991

BETWEEN                SAMNIC FOREST MANAGEMENT  
LIMITED, RICHARD HAYES,  
SCOTT FUNNELL AND GAVIN  
FORTUNE

(ENV-2024-AKL-245)

WOODLETT INVESTMENTS  
LIMITED

(ENV-2024-AKL-251)

Appellants

AND                        GISBORNE DISTRICT COUNCIL

Respondent

Court:                    Environment Judge MJL Dickey  
Environment Commissioner K Edmonds

Hearing:                24 March 2025 – 1 April 2025 and 10 April 2025

Appearances:        A Hopkinson for Gisborne District Council  
F Pilditch for Samnic Forest Management Limited, Gavin  
Fortune, Scott Barry Funnell and Richard Stewart Hayes  
D Fraundorfer for Woodlett Investments Limited and Duncan  
Mackenzie Woodhouse  
AC Limmer KC for Mana Taiao Tairāwhiti Incorporated

Date of Decision:    18 June 2025

Date of Issue:        18 June 2025

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## DECISION OF THE ENVIRONMENT COURT

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Our broad findings are:

A: That enforcement orders should be imposed:

There are issues in the Forest relating to woody debris and lack of water, and sediment, controls. Those issues have given rise to adverse effects on the environment which will continue without orders being made to address the problems.

B: Orders pursuant to s 314(1)(a)(i) and (ii), s 314(1)(b)(i) and (ii), s 314(1)(c) and s 314(1)(da) should be imposed on all respondents because all have a responsibility for the state of the Forest:

#### **Woodlett and Mr Woodhouse**

1. Woodlett owns the land. Woodlett consented to the applications for resource consent being made and to later variations.
2. It commenced replanting compartments from 2018.
3. It knew or should have made itself aware of compliance issues and taken steps to ensure the issues were rectified.
4. From late 2022 it was in sole charge of the Forest and had, at least, maintenance responsibilities – which include ensuring that woody debris and sediment do not enter waterways.
5. Mr Woodhouse is the sole director and alter ego of Woodlett and was aware, or should have been aware, of what was happening at the Forest.

#### **Samnic and its directors**

6. Samnic is the holder of the Resource Consents and undertook the harvest. Compliance issues were evident from 2017 and continue to the present day. While it complied with aspects of Council directions and Notices, certain problems kept arising.
7. Samnic did not completely remediate the Forest in 2022 before leaving it.

8. Samnic's 'hand back' of compartments and/or transfer of Resource Consents for those compartments to Woodlett does not absolve it of all responsibility for compliance with the Resource Consents. Further, we doubt there is any legal basis to transfer or partly transfer a Land use consent which attaches to land under s 134 of the RMA, even if it contains a s 13 consent.
9. Samnic's directors had various roles in the company's operations, and were all aware or took part in decisions made in respect of the Forest.

C. Enforcement orders:

Some amendments to dates for compliance should be made. There are other amendments needed to improve on the form of the orders and their implementation. Directions are contained at the end of our decision.

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## REASONS

### A. Background

[1] These proceedings concern Samnic Forest, also known as Waingaromia Forest (**Forest**), a 940ha plantation pine forest located 45km north of Gisborne and 20km northwest of Tolaga Bay on Tuahu Road, Tauwhareparae, Tolaga Bay.

[2] Woodlett Investments Limited (**Woodlett**) owns the land on which the Forest is located. Duncan MacKenzie Woodhouse is the sole director of Woodlett.

[3] Samnic Forest Management Limited (**Samnic**) was the manager of the Forest and had overall responsibility for commercial harvesting of pine trees at the Forest. Samnic holds all previous and current resource consents authorising commercial forestry harvesting there.

[4] Gavin Francis Fortune, Scott Barry Funnell and Richard Hayes are the directors of Samnic.

[5] Since 2015/2016 the Forest has been progressively harvested and replanted. Harvesting concluded in May 2022. In some areas of the Forest the new planting is 10 years old.

[6] There are two sets of proceedings involving the Forest. There are appeals relating to abatement notices issued to all the respondents in November 2024. There is also an application for enforcement orders made by the Council against all respondents and filed in January 2025.

[7] The Council alleges that the present state of the Forest poses a risk to the environment, particularly those properties located downstream and extending as far as Tolaga Bay. It alleges that the risk arose from the way in which the Forest was harvested, the state in which it was left following harvesting and replanting and the way in which it is being maintained. It alleges that there are issues relating to woody debris (including felled trees, windthrow trees, slash, harvesting debris) or sediment. The risk is that any of those elements are located where they may enter water.

[8] Relying on ss 15(1)(a) and (b), 17(3)(a) and (b), and 314(1)(a)-(da) and 314(2)-(5) of the Resource Management Act 1991 (**RMA**), the Council alleges that all respondents have either caused or are responsible, as landowner or occupier, for adverse effects on the environment occurring at the Forest. Those effects result from non-compliance with resource consents and/or breaches of ss 15 and 17 of the RMA.

[9] The Council submits that enforcement orders are necessary to address those adverse effects. All Respondents deny responsibility for the state of the Forest and oppose orders being made against them.

[10] It is convenient to address the application for enforcement orders first. That is because, in large part, if the application for enforcement orders is successful the abatement notices cease to have any utility.

[11] In essence we must determine:

- (a) whether or not enforcement orders should be imposed;
- (b) on whom the enforcement orders should be imposed;
- (c) the form of the enforcement orders.

## **B. Application for enforcement orders**

[12] All the orders sought stem from the location of woody debris from commercial forestry (including felled trees, windthrow trees, slash, harvesting debris) (**woody debris**) or sediment located on the property.

[13] The underlying focus of the orders is to ensure that the discharge of woody debris and sediment onto land where it may enter water or beyond the Forest boundary ceases.

[14] The proposed orders set out steps to be complied with that will assist in ensuring control of the discharge of woody debris and sediment into waterways in and beyond the property.

### **Risk assessment – woody debris and sediment**

[15] The first step requires all respondents to undertake a risk assessment at the Forest to identify:

- (a) all locations where woody debris has accumulated in streams, rivers or ephemeral flow paths;
- (b) all locations where woody debris is located on the edge or below the skid site (landing);
- (c) all locations where sediment is at a high risk of collapse and entering watercourses, including ephemeral flow paths;
- (d) all locations where woody debris on slopes is at high risk of being mobilised into watercourses (including ephemeral flow paths);
- (e) options for removing the woody debris at the above locations and/or for decreasing risk.

[16] Once that assessment is undertaken, the Risk Assessment Report and Risk Assessment Map is to be prepared and provided to the Council for approval by 1 June 2025. There are various requirements associated with the Report.

[17] Once the Risk Assessment Report has been approved, the respondents are required to remove woody debris from streams, skid sites and other at-risk locations within five months and no later than 7 December 2025. That work is to be certified in writing that it has been undertaken in accordance with the approved Risk Assessment Report.

### **Water controls**

[18] Sitting alongside the requirement to undertake a risk assessment and remove woody debris are orders which seek that various water controls be installed at the Forest. The basic requirement is that effective water and sediment controls are installed to eliminate or minimise erosion and the mobilisation of sediment at all

skid/slash landings and all tracks and roads at the Forest as soon as possible and by no later than 1 June 2025. The water controls must comply with certain requirements specified in the application for enforcement orders.

[19] Finally, there are requirements relating to fortnightly progress reports and the Council's costs.

### **Slash catcher network**

[20] Orders are also sought specifically against Woodlett and Mr Woodhouse. They require that a suitably qualified and experienced person be engaged to prepare a report and map recommending the locations and designs for a proposed network of slash catchers (**the Slash Catcher Network Report**) to be installed at the Forest in order to minimise or eliminate the residual risk of woody debris mobilising beyond the Forest.

[21] As may be expected, the Report must address certain matters which are outlined in the application and must be submitted to the Council for written approval by 1 July 2025. Within two months of receiving the Council's approval an application for resource consent for the slash catcher network is to be made. Within six months of resource consent being granted, and not later than 20 June 2026, the slash catcher network shall be installed. There are various requirements which follow relating to regular clearance, monitoring and maintenance and reporting.

## **C. Grounds for the application for enforcement orders**

### **Scope for orders**

[22] The orders are sought pursuant to certain parts of ss 15, 17 and 314 of the RMA.

[23] Section 15(1)(a) and (b) provides that no person may discharge any contaminant into water, or onto or into land in circumstances where that contaminant may enter water (unless the discharge is expressly allowed by a national environmental standard or other regulation, a regional plan (or proposed plan) rule or a resource consent). It is not in dispute that woody debris and sediment is a contaminant.

[24] Section 17(3)(a) and (b) provides that an enforcement order can be made to address activities that are noxious, dangerous, offensive or objectionable to such extent that they have or are likely to have adverse effects on the environment; or require the adverse effects caused by or on behalf of a person to be addressed.

[25] A range of enforcement orders is available under s 314. Broadly, orders under s314(1)(a)(i) and (ii) can require a person to cease or be prohibited from commencing anything done or to be done on that person's behalf that contravenes or is likely to contravene rules in a plan and a resource consent, among others; or is likely to be noxious, dangerous, offensive or objectionable to such an extent that it has or is likely to have an adverse effect on the environment.

[26] Often working together with s 314 (1)(a), orders under s 314(1)(b)(i) and (ii) can require a person to do something that is necessary to ensure compliance by or on behalf of that person with the RMA, plan rules or a resource consent, among others; and under (ii) to avoid, remedy, or mitigate any likely adverse effects on the environment caused by or on behalf of that person.

[27] Section 314(1)(c) contemplates a broad order that will result in adverse effects caused by or on behalf of that person being remedied or mitigated. Section 314(1)(d) enables orders to be made addressing payment or recovery of actual and reasonable costs in certain circumstances. Section 314(2) defines actual and reasonable costs for the purposes of s 314(1)(d).

[28] Section 314(1)(da) provides that orders can be made that require positive action. The Court can require a person to do something that is necessary to avoid, remedy or mitigate any actual or likely adverse effects on the environment relating to any land of which the person is the owner or occupier.

[29] Section 314(3) provides that, except as provided in s 319(2), an enforcement order may be made on such terms and conditions as the Environment Court thinks fit; and 314(5) provides that orders can apply to personal representatives, successors and assigns of the person against whom the order is made.

[30] Finally, under s 314(4) an order may require the restoration of any natural and physical resource to the state it was in before the adverse effect occurred.

### **Forest features**

[31] The Forest has steep terrain and is prone to severe erosion. It is predominantly within Land Overlay 3 and Land Overlay 3A, which are the overlays of the Tairāwhiti Resource Management Plan (**TRMP**) that identify the District's most erodible land. In many locations in the Forest there are steep cliffs or gulleys above streams.

[32] The majority of the Forest is classified as “red zone”,<sup>1</sup> having an erosion susceptibility rating of “very high”.

[33] The Pangopango Stream flows through the Forest. There are tributary streams within the Forest that flow into that stream. All streams at the Forest flow to the Waiau River, which is just outside the Forest's northern boundary. That river flows into the Hikuwai River, which in turn flows into the Ūawa River that then flows into the sea at Tolaga Bay.<sup>2</sup>

### **Harvesting of pine trees at Samnic Forest and resource consents**

[34] There is no dispute that harvesting of pine trees at the Forest began in 2015/2016 and concluded in 2022. Resource consents issued to Samnic authorised harvesting of pine trees and associated earthworks. Those resource consents are:

- (a) 2015 Harvesting Consents<sup>3</sup> that authorise the construction of logging roads and clearfell harvesting of exotic plantation forest. They also authorised earthworks associated with harvesting, namely earthworks to construct forestry roads and log processing landings (also known as “skids”). These consents expired in 2020;

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<sup>1</sup> Being land defined in Regulation 3 of the Resource Management (National Environmental Standards for Commercial Forestry) Regulation 2017 (**NES-CF**).

<sup>2</sup> The Hikuwai River is identified as a key habitat for long-finned eel in Schedule G15 of the TRMP. Torrentfish, common and red-finned bully and short-finned eel are also found in the Hikuwai River.

<sup>3</sup> Resource consents numbered 106640-00 and 106840-00. They included consent under s 13 RMA to the suspension and use of a temporary hauler cable over the bed of a river.

- (b) 2020 Harvesting Consents<sup>4</sup> which authorised the clearfell harvesting of the balance of the forest that was originally harvested under the 2015 harvesting consents (what remained was compartment 17, part of 16, 9.1, 9.2 and part of 8), being more or less 80ha of radiata pine trees. They also authorised the full replanting of the Forest. Those consents expire in October 2025;
- (c) Logjam Consent issued in January 2021<sup>5</sup> that authorises the removal of a logjam and stockpile of debris on skids 64 and 65. This consent expires on 2 March 2026;
- (d) The 2020 Harvesting Consents were varied in 2022.<sup>6</sup> Those consents, obtained in September 2022, retrospectively authorise the construction of Road 62 and skid 99. That road and skid/landing had been constructed without the necessary resource consents. The unconsented road and landing were subject to a Council prosecution discussed later in this decision.

[35] A map of the Forest dated 7 June 2017<sup>7</sup> shows the locations of skid sites and the harvesting compartments. There are 22 compartments, or stands, on which pinus radiata were planted. We know from the two 2015 Harvesting Consents that there were some 67 landings. A copy of the Map is attached as **Annexure A**. More detailed maps of landings or skid sites were provided at the hearing.<sup>8</sup> The location of various roads can also be seen on the maps, including No. 6 Road and River Road. The maps also show the location of skids/landing sites.

[36] None of the Resource Consents issued to Samnic expressly authorised the discharge of contaminants (e.g. slash, harvesting debris, felled trees, windthrow trees and/or sediment) into water or onto land at the Forest where those contaminants could enter water.

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<sup>4</sup> Resource consents numbered NF2020-109613-00, L0-2020-109614-00, LL-2020-109615-00 and LB-2020-109616-00. They included consent under s 13 for use of a cable as for the 2015 Harvesting Consents.

<sup>5</sup> Resource consents numbered LR-2020-110126-00 and LL-2020-110220-00. They included consent under s 13 for stream bed disturbance.

<sup>6</sup> Resource consents renumbered NF-2022-109613-01, LR-2022-109614-01, LL-2022-109615-01, and LV-2022-1096161-01.

<sup>7</sup> Exhibit 13.

<sup>8</sup> Exhibit 12.

[37] There is no dispute about what the Resource Consents authorised. Samnic, however, raises an argument as to the extent to which the Council recognised the adverse effects of discharges to land and water at the time it considered granting the applications for harvesting consents. We address that later.

### **Compliance issues at the Forest**

[38] All agreed that harvesting began in late 2015-early 2016. Compliance issues were first identified in March 2017 and concerns raised about the standard of certain infrastructure and the harvesting practices.

[39] There is no dispute between the parties that harvesting practices at the Forest were occasionally poor, and that there have been ongoing compliance issues since harvesting began in 2015/2016. Samnic maintained, however, that harvesting activities were not always poor.

[40] The point where significant issues arise between the respondents and the Council, and between the respondents themselves, begins around November 2022. That is when Samnic physically exited the Forest, and the point at which, it says, its responsibilities under the Resource Consents and more broadly within the Forest ended. That is because it had transferred the Resource Consents to Woodlett and/or “handed back” the Forest and had completed the required remedial work.

[41] Having said that, the issues are somewhat nuanced because Samnic handed back compartments to Woodlett over the course of the harvesting and said that meant that Woodlett assumed responsibility for maintaining those compartments.

[42] To set in context what followed Samnic’s exit from the Forest, it is important to understand the history of compliance issues. Prior to these proceedings Abatement Notices were issued by the Council in 2017, 2018 and 2022. Prosecutions were also commenced towards the end of 2022. Interspersing and sometimes overlapping the Abatement Notices were various inspections of the Forest and the production of Field Sheets that drew attention to various works needing to be done.

[43] A summary of Abatement Notices, various inspections and assessments, the prosecution, and more recent inspections is contained in **Annexure B**. There is a consistent theme, throughout the years, of problems with infrastructure – roads, landings/skids, erosion and sediment control and poor harvesting practices – including inappropriate placement of woody debris.

### **Environmental effects**

[44] There appears to be no dispute that issues at the Forest have caused or resulted in significant adverse environmental effects within and downstream of the Forest. The evidence called by the Council was extensive and the application provides a useful summary of those issues. We address those in more detail later.

[45] It is for note that the issues at the Forest are part of a broader problem in the Tairāwhiti region involving ongoing, large-scale forestry debris mobilisation in weather events. This issue was the subject of a Ministerial inquiry in 2023 (Ministerial Land Use Inquiry), which set out its findings in a report titled *Outrage to Optimism* (May 2023).

### **D. Mana Taiao Tairāwhiti Incorporated**

[46] Mana Taiao Tairāwhiti (**MTT**) was involved in these proceedings to represent the interests of the environment downstream of Waingaromio/the Forest. It was involved to ensure the voices of those most affected are not lost.

[47] Evidence was provided by Mr Bruce Donald Reeves Jefferd, a director of Papatahi Land Limited, which owns land across two farms. He detailed the severe impacts caused by forestry debris on Papatahi farm following Cyclones Hale and Gabrielle. He highlighted the financial and emotional toll repeated damage has had on him and his family.

[48] Ms Helen Joanne Renolds also gave evidence. She attested to the ongoing presence of woody debris on Ūawa and on Tolaga Bay beach. Her evidence illustrated the environmental, financial and psychological impact of discharges of forestry debris, including the “rain anxiety” both adults and children in the community live with.

[49] Mr Manu Stuart Caddie, a co-founder of MTT, gave evidence that highlighted the significant environmental and cultural impacts of discharges from forests in the Ūawa/Hikuwai catchment. He described the harm caused by the discharges is an ongoing threat to the awa, whenua and moana; they undermine the mauri (life force) of the waterways and the surrounding environment, which is central to the Māori worldview.

[50] MTT called for the de-risking of forests in the Tairāwhiti region. It referred to the MILU Report,<sup>9</sup> which noted that “reducing the risk of debris mobilisation requires the debris not be left in vulnerable locations...”.

[51] Ms Limmer submitted that, while the Respondents lay the blame for the state of the Forest at the feet of each other and the Council, little enough regard has been had to the one truly innocent party in all this – te Taiao, the people and communities.

## **E. The cases for the Respondents**

[52] As between Woodlett, Mr Woodhouse and Samnic and its directors there is a significant issue. Each point the finger at the other in terms of responsibility for addressing the state of the Forest.

[53] Woodlett is the owner of the land on which the Forest is situated; it said it provided the land as a passive landowner in return for an annual rent. It was not until 2019 that it undertook replanting in the Forest. It argued that, as holder of the Resource Consents and Forest Manager, Samnic is responsible for ensuring compliance with the consent conditions and that, despite leaving the Forest at the end of 2022, Samnic still has responsibilities to address the environmental issues.

[54] For Woodlett, Mr Fraundorfer submitted that Samnic carried out all forestry operations, including construction and maintenance of the forest infrastructure, harvesting and post-harvest activities. It had total control and responsibility for the Forest under both its Resource Consents and the Forestry Right. By contrast, the landowner and Mr Woodhouse had never caused any breach of the Resource

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<sup>9</sup> MILU Report, Appendix 1, pp 6 and 7.

Consents, nor ever discharged woody debris or any other material that have led to a breach of the Resource Consents.<sup>10</sup>

[55] Woodlett supported the Council's view that non-compliance with the Resource Consents was not properly addressed by Samnic before it left the Forest, and that these problems at the Forest were exacerbated by Cyclones Hale and Gabrielle at the beginning of 2023.

[56] Mr Fraundorfer submitted that Woodlett has never been subject to prior enforcement action. Woodlett was not even made aware of Samnic's non-compliance until 2022 when Mr Woodhouse was asked to attend an interview with the Council. The result of the interview was an assurance by the Council that Woodlett and Mr Woodhouse were not being pursued. At least from 2022, when they became aware of non-compliance issues at the Forest, Woodlett and Mr Woodhouse understandably believed that the Council was complying with its statutory duties under the RMA and enforcing the conditions of the Resource Consents against Samnic.<sup>11</sup>

[57] Mr Fraundorfer submitted that enforcement orders sought by the Council against Samnic and its directors should be granted; there is no legal basis for enforcement orders against Woodlett or Mr Woodhouse under ss 314(1)(a) and 314(1)(da). Orders under the latter provision are not necessary to avoid, remedy or mitigate any actual or likely adverse effects on the environment. That is because Samnic and its directors are the responsible parties.

[58] Samnic accepted that sites such as the Forest, if not maintained post-harvest, create adverse effects on the environment. For its part, it said that the Resource Consents contemplated adverse effects on the environment but authorised the harvesting and associated activities. It said that it complied with the conditions of the Resource Consents save for some isolated exceptions. It also said that it rehabilitated the Forest in terms of the obligations under the Resource Consents, Abatement Notices and Council directions before it left in 2022, and that any problems which

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<sup>10</sup> Woodlett Opening Submissions, [6].

<sup>11</sup> Woodlett Opening Submissions, [8] and [9].

then manifested themselves following the Cyclones are problems for Woodlett and Mr Woodhouse to address.

[59] Samnic also argued that over the four years that it was harvesting the Forest it transferred the Resource Consents and/or handed back compartments in the Forest to Woodlett. That hand back meant that the land and infrastructure within those compartments became Woodlett's responsibility to maintain. Indeed, apart from one area that was harvested and then re-planted by Samnic, the balance of replanting was undertaken by Woodlett. For Samnic, Mr Pilditch submitted that Woodlett, having benefitted from a passive income, has carried out almost no maintenance.

[60] Samnic also argued that the Council has not established that it has caused adverse effects to the necessary standard of proof. Finally, it raised the issue of access to the Forest; that it had no right to enter and undertake works as the Forestry Right has been extinguished.

[61] Woodlett disputed that there was a transfer of the Consents and that the handing back of compartments transfers responsibility for compliance with the Consents. It argued, in any event, that its ability to maintain the Forest was constrained by the state in which it was left.

[62] Woodlett advised that it consents to Samnic entering the Forest to undertake any works the Court may order in this proceeding.

[63] Both Samnic and Woodlett raised issues under s 319(2) as to the exercise of the Court's discretion to make orders, and both challenge the appropriateness of orders being made against the directors.

## **F. Contracts, agreements, correspondence informing the issues between the Respondents**

### **F1. Contractual relationships**

[64] Much was made in the hearing by the respondents of the contractual relationships between them. That knowledge does little to progress the matter of how

to ensure that the Forest is remediated so as not to cause discharges of woody debris or sediment to the environment. However, understanding those contractual relationships goes some way to understanding each party's view of its responsibilities.

[65] Counsel for Samnic provided a useful summary of those relationships. We understand there is no dispute about this and we accordingly adopt it.

### **Forestry Agreement - 1993**

[66] In March 1993 a Forestry Agreement was signed between SB Developments, the landowner of the Forest and a custodial trustee on behalf of a joint venture (**the JV**). The joint venture was made up of 20 companies, each named Samnic Forest, Waingaromia (No. X) Limited with 'X' being number 1-20 respectively. Samnic was incorporated in 1993 and was employed by the JV to manage the harvest of the Forest once it had matured.

[67] We understand that Samnic's three directors, Mr Woodhouse and Woodlett held shares in the JV.

### **Forestry Right - 1995**

[68] The Forestry Agreement created a forestry right dated April 1995 that was registered against the title for the Forest (**Forestry Right**). It referenced the Forestry Agreement. The grantor was the landowner, and the grantee was the custodial trustee on behalf of the JV. The Forestry Right provided to the grantee certain rights and privileges and contained mutual and individual covenants.

[69] As might be expected, the Forestry Right conferred on the grantee the right to, among others, cultivate, maintain, harvest, carry away and otherwise utilise all trees, timber and log and related produce on the land. Rights were conferred to make and install and use, with the consent of the grantor, infrastructure necessary for the purpose of managing, felling and carrying away the trees. There is also the right to make and install roads.

[70] Among others, the Respondents highlighted clause 3.12 of the Forestry Right. It provides:<sup>12</sup>

3.12 The Grantee shall, after the Trees have been harvested, clear and make ready for replanting the Forestry Land in accordance with sound forestry principles and to the satisfaction of the Grantor PROVIDED HOWEVER that the Grantee shall not be under any obligation to replant or reforestate the Forestry Land...

[71] The Forestry Right specified that it co-existed with the Forestry Agreement, becomes effective on 1 July 1993, and terminates on the earlier of:<sup>13</sup>

- a. 28 October 2027;
- b. the date when the Forestry Land has been clear felled to the Grantor's satisfaction;
- ...

[72] It was generally agreed that at the point of harvest Woodlett was the exclusive landowner, and that the custodial trustee continued to hold the Forestry Right in favour of the JV to harvest the Forest. Samnic managed the harvest, although it employed on-the-ground harvest managers for the more technical, day-to-day management. To do so, it relied on the Forestry Right to grant it access to the land as an agent for the JV.

[73] Because the harvesting occurred under a Forestry Right, at no point did the land transfer from Woodlett to the JV, the custodial trustee or Samnic.

[74] The commercial arrangements were straightforward. The JV purchased the standing trees from Woodlett with a one-off payment. From that point the JV was required to make an annual payment for the rights to access Woodlett's land. These annual payments began at \$99,500 + GST and were CPI adjusted. By 2016-2017 Woodlett was charging an average of \$202,315 + GST per annum.

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<sup>12</sup> Affidavit of Scott Barry Funnell, Director of Samnic, Annexure E (**Forestry Right**).

<sup>13</sup> Forestry Right, page 2.

## **F2. Hand backs and transfers of parts of the Resource Consents over the course of the harvest**

[75] Though ‘hand backs’ were not referred to as such in the Forestry Right, Samnic and Woodlett agreed a system of hand backs of compartments following harvesting that would result in the reduction of the annual payments.

[76] Over the course of harvesting the Forest, from 2016 each compartment was ‘handed back’ to Woodlett once harvested.

[77] Samnic explained that the process of handing back did not involve the actual transfer of land. Instead, it was recognition that Samnic had finished harvesting the area and that therefore the JV was extinguishing the Forestry Right in relation to that section of Samnic Forest. That was understood as between Woodlett and Samnic. It had the effect of reducing the annual payment for the rights to access Woodlett’s land. Whether it had any other implications to the parties’ responsibilities at the Forest is in dispute.

[78] The handing back of compartments in the Forest to Woodlett occurred over a period of approximately four years, as each compartment was harvested. The first compartments were handed back in 2018 and the last of the compartments was handed back in May 2022. As each compartment was handed back, Woodlett would make adjustments to the annual land rental fee that the JV was required to pay under the Forestry Right. The annual fee began to fall as a consequence from 2018/2019. A list of when each compartment was handed back is contained at the end of **Annexure B**.

[79] Samnic’s final email sending confirmation and clarification that all the compartments had been handed back was sent to the Council on 1 June 2022.

[80] Woodlett and the Council dispute the effects of the hand backs and the purported transfer of the Resource Consents.

### **G. Are orders needed?**

[81] We can deal with the challenge to the need for the enforcement orders quite simply. There is no question that the Forest in its present state poses a risk to the environment. We heard uncontroverted expert evidence on that point. There was no suggestion that the state of the Forest is in any way static. In fact, it was accepted that forests are dynamic places and that nothing stays the same.

[82] Leaving to one side the issue of compliance or otherwise with the Resource Consents, it is clear to us that woody debris and sediment have been discharged from the Forest in breach of s 15(1)(b) of the RMA in recent years. There are presently no steps in place to prevent further discharges.

### **Forestry in Tairāwhiti<sup>14</sup>**

[83] Severe erosion issues have been longstanding in Tairāwhiti, with soil conservation programmes operating since at least the 1950s. As a means of reducing the impacts of erosion, 35,000 hectares of severely eroding pastoral hill country was progressively retired and replanted in exotic forest species as “protection forests” between 1972-1985. In 1988 Cyclone Bola caused further significant soil erosion, damaging existing areas of planted exotic forest and extensive areas of remaining pastoral hill country. Following Cyclone Bola, the East Coast Forestry Project was set up on 1992 – it subsidised large-scale planting of *pinus radiata* across the district. Many of the forests planted at that time are now being harvested. As these harvests have proceeded, the issue of woody debris and sediment discharge have become of increasing concern.

[84] Since 2015 the Tairāwhiti region has experienced significant damage to watercourses, beaches near river mouths, and infrastructure as the result of woody debris (including felled trees, windthrow trees, slash, harvesting debris) from commercial forestry discharging from commercial pine forests during significant rain events. These significant rain events (and the associated damage from forestry slash

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<sup>14</sup> From Application for Enforcement Orders; and Affidavit of Joanna Barbara Noble, Director Sustainable Futures at the Council at [23]-[32].

mobilised in these events) are a persistent risk. The frequency and scale of the damage from such events has increased recently.

[85] The poor forestry harvesting practices in the region, in combination with the steep topography and highly erodible soils, mean that unless forest owners and operators remove woody debris from commercial forestry (including felled trees, windthrow trees, slash, harvesting debris) from unstable locations during harvesting, the environmental impacts in forests and downstream of forests will recur until all of the material is flushed from them.

[86] The Forest is typical in all respects. It has steep hill faces and highly erodible soil. Clear-fell harvesting has been carried out over significant areas of the forest, with poor skid site construction and large amounts of slash and felled trees being left on unstable skid sites at the conclusion of harvesting where it can migrate down slopes into streams and rivers that flow into the Hikuwai River, which flows into the sea at Tolaga Bay.

[87] There is a large volume of woody debris from commercial forestry in and close to the watercourses within the Forest, as well as unstable accumulations of woody debris on the slopes. This woody debris causes erosion of the stream banks and beds and habitat destruction. Significant concentrations of woody debris have created debris dams/logjams. These have and continue to have major impacts such as blocking streams entirely and causing significant erosion and scour. If these dams “blow”, it can cause significant damage and severely alter the watercourse.

[88] Once mobilised within a watercourse large volumes of woody material can block and damage infrastructure downstream, choke waterways, or end up washing up on downstream beaches. Therefore, woody material has the potential to cause significant impact on the environment and aquatic ecosystems. The fact there are large volumes of woody debris and unstable accumulations within the Forest elevates the environmental risks in the Forest.

[89] The forestry activities have also mobilised sediment on a large scale. Sediment, as a stressor, has particularly negative consequences for aquatic ecosystems. It can

smother aquatic species and habitats and reduce oxygen levels, creating stress on the ecosystem and generally making it more difficult for aquatic species to live.

[90] Further, the forestry activities at the Forest may have accelerated erosion and sediment mobilisation in highly erosion-prone areas at the Forest.

[91] The ongoing discharges of contaminants to watercourses that have occurred at the Forest are contraventions of s 15(1)(b) of the RMA. That section provides that no person may discharge any contaminant onto land in circumstances that may result in the contaminant entering water. It is not in dispute that woody debris from commercial forestry, including felled trees, windthrow trees, slash and harvesting debris and sediment, are all contaminants as defined in s 2 of the RMA.

[92] The Council also asserts that the issues at the Forest engage s 17(1) of the RMA, which provides that every person has a duty to avoid, remedy or mitigate any adverse effect on the environment.

### **Environmental effects**

[93] The environmental effects associated with logjams and woody debris in watercourses at the Forest were described by Mr David John Sluter, who was employed by the Council as a senior Environmental Scientist – Land and Soil between 2016 and 2024. His unchallenged evidence is as follows:<sup>15</sup>

38. In my Environmental Assessment Report, annexed as **DS4**, I outlined a range of ecological effects identified at Samnic Forest. These included the following:

The two main environmental impacts from the activities within Samnic Waingaromia Forest are the effects of increased sedimentation and the effects from woody material on the watercourses both within and downstream of the property. It is also worth noting that the management practices may have accelerated erosion and sediment mobilisation in the highly erosion prone areas within the block. These management practices include disturbance caused from cable hauling, extensive tracking and earthworks with little to no water controls, the management of slash and the volume of material cut and left on the slopes.

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<sup>15</sup> Affidavit of David John Sluter, 29 January 2025, at [38]-[41].

Throughout the forest it appears that there has been significant disturbance on the hill slopes, the banks and riparian margins of the watercourses as well as in places within the actual watercourses. This disturbance could have a number of impacts, with increased erosion of the slopes and streambanks as well as increased sediment delivery into watercourses being the primary concerns.

Depending on the scale of the disturbance and if left untreated then this could also lead to further erosion and instability further up the slopes, delivering more sediment to watercourses and potentially becoming untreatable. Tracks with no water controls that are adjacent to watercourses will continue to deliver sediment and if water is concentrated and starts to scour then this will cause further erosion and sediment generation.

The forestry activity has had a significant effect on the mobilisation of sediment, and sediment as a stressor has particularly negative consequences for aquatic ecosystems. Sediment can smother aquatic species and habitats and reduce oxygen levels, creating stress on the ecosystem and generally making it more difficult for aquatic species to live. Therefore due to the scale and severity of the disturbance, it is considered that there are high environmental effects from sediment within the Samnic Waingaromia Forest.

There is also a large volume of woody material in and within close proximity to the watercourses within the forest as well as unstable accumulations of woody material on the slopes. This woody material could be mobilised during a rain event and transported into the watercourse, where large volumes of material can cause erosion of the stream banks and beds and habitat destruction. If there is a significant concentration of woody material then this could create a dam, which can have major impacts such as blocking the stream entirely and causing significant erosion and scour. If this dam then blows it can cause significant damage and severely alter the watercourse.

Once mobilised within the watercourse, large volumes of woody material can block and damage infrastructure downstream, choke waterways or even end up washing up on the beach and causing a marine hazard. Therefore woody material has the potential to cause significant impact on the environment and aquatic ecosystems. Due [to] the volume of woody material and the unstable accumulations within the property, it is considered that there are high environmental effects from woody material within the Samnic Waingaromia Forest.

39. Having reviewed the Council evidence from 2023 and 2024, it is my opinion that these adverse effects persist in Samnic Forest. Due to the failure to address these issues that were identified in previous inspections (particularly in 2022), the forest was vulnerable to further debris mobilisation, erosion and skid collapses when the weather events impacts the forest in early 2023. The potential adverse effects I identified in 2022 appear to have manifested in 2023 and will continue to occur as long as the issues at the forest remain unremedied.
40. As stated in my 2022 assessment there are a number of protected watercourses in Samnic Forest that flow into the Pangopango Stream, which in turn flows into the Waiau River, which leads to the Hikuwai

River and the Uawa River. Debris and sediment from forestry harvesting activities at Samnic Forest therefore poses a risk to these high value downstream watercourses if mobilised in future events.

41. The evidence I have seen indicates that Samnic Forest was the primary contributor to sediment and debris impacts in the Waiau River downstream of Samnic Forest during Cyclones Hale and Gabrielle.

[94] Mr Sluter's evidence confirmed that the potential adverse effects he identified in 2022 appeared to have eventuated in 2023 and will continue to occur as long as the issues at the Forest remain unremedied.

[95] Mr Matthew William McCloy, a Forestry Engineering consultant called by the Council, observed during his 13 November 2024 inspection<sup>16</sup> that:

36 ...

- (a) The underlying geology in this forest has some of the most severe erosion in Tairāwhiti. The loss of soil and the current sad state of the forest has been exacerbated by wide scale clearfelling, poor logging operations, inadequate roading practices and poor re-establishment.
- (b) The forest appears as a raw, highly erodible landscape. In my opinion it is an example of a poorly managed forest harvest on a sensitive site. There are large volumes of slash (including full stems) and excessive logging waste around landing sites that has migrated to the Pangopango Stream and the Waiau River. The slash has caused multiple debris dams and the streams have been reamed out by debris flow causing more erosion.
- (c) The environmental issues in this forest start with short cuts taken in the initial road and landing construction and has then been compounded [by] poor harvesting practices followed by poor or inadequate poor water control practices in such a highly erodible site.
- (d) At the forest I observed numerous examples of the Forestry Owners Association (**FOA**) Guidelines and/or the New Zealand Forest Road Engineering Manual not being followed. I consider that had the above standards and guidelines been followed properly, then the level of environmental damage would have been much lower.
- (e) This forest has a slash problem. There are large quantities of slash from logging waste at landings that have been poorly managed. There has been an attempt to pull back some of this slash but it has not been done to a high enough standard and most landings now have partially rotting slash piles that need to be addressed.
- (f) The accumulation of slash at landings relate to poor harvesting practices undertaken by the forest manager. I consider that a long

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<sup>16</sup> Reply Affidavit of MW McCloy, 19 March 2025, at [36].

reach excavator along with a helicopter grapple would be capable of mitigating most of this slash risk at the landings or burnt to stabilise this waste material from mobilisation.

- (g) I also consider that the areas of unconsolidated fill need to be pulled back to the hard. This includes all *Pinus Radiata* that has been used to hold up landing fill or used as corduroy. This must be done to a high standard to avoid further pockets of rotting organic creating a surcharge loading that then triggers more erosion and debris flows. The material needs to be placed in a stable position and have adequate water controls reinstated once the slash and unconsolidated fill has been removed.
- (h) In addition, I have observed secondary issues relating to poor construction of forestry infrastructure at Samnic Forest. This includes installation of poor or inappropriate water controls due to the large amounts of sidecasting, including uncontrolled culvert outlets causing scouring, and installation of long canvas socks which are difficult to maintain.

...

[96] Mr McCloy concluded:<sup>17</sup>

- 38. This forest has some of the most extreme erosion in New Zealand and it needs special attention to prevent further land losses and slash discharges. The legacy of poor landing construction practices and poor harvesting practices have contributed to the mess that now needs intervention.
- 39. The highly erodible soils and the widescale clearfell of the forest umbrella removed at any one time has increased the environmental risk of the forest to storm events. The earthworks water controls have triggered more erosion or landslides and combined with the large amounts of logging slash left on the cutover has led to large debris flows. There have also been landing site failures due to poor construction, poor water controls and large quantities of slash at landings poorly managed.
- 40. This forest needs a detailed forest environmental management plan and map as proposed by the Council's enforcement order application. This map needs to identify all the erosion features and locations of infrastructure which is then used to produce a long-term forest management plan for this forest.

[97] Dr John Allen McConchie, an expert in hydrology and geomorphology called by the Council, summarised the effects of the Forest on the environment as follows:<sup>18</sup>

- 99. Based on my initial assessment in 2022, consideration of the Council photographs and drone footage, a further site inspection in 2024, and comparison with the response of other forests I have visited throughout Tairāwhiti, it is my opinion that:

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<sup>17</sup> Reply Affidavit of MW McCloy, at [38]-[40].

<sup>18</sup> Affidavit of Dr JA McConchie, 31 January 2025, at [99], [100].

- (a) Given the scale and magnitude of the poor design, construction, and management practice relating to forest harvesting in Samnic Forest, the risk of slope and infrastructure failure is a persistent problem;
- (b) These practices have had significant environmental effects over a wide area, including the scale and magnitude of slope failures and erosion and the consequential adverse environmental impacts;
- (c) The remedial actions carried out since May 2022 are completely inadequate. Additional and ongoing work is required to de-risk Samnic Forest with regard to the potential mobilisation of woody debris and sediment;
- (d) Particular attention needs to be paid to:
  - (i) The development of a robust, transparent, and reproducible methodology and ‘tool’ for assessing the risk of woody debris and sediment mobilisation from skids and key locations. This will allow remediation to be focused on those sites that pose the greatest risk to the environment, and the community downstream;
  - (ii) The implementation of robust and resilient water controls;
  - (iii) The integration of effective and resilient sediment control devices;
  - (iv) Integrated site management that considers all those factors that affect the risk of mobilisation of woody debris and sediment; and
  - (v) Developing a strategy for the removal of the large logjams present within the forest that are at risk of remobilisation.

100. I am concerned that if measures are not undertaken to reduce the risks identified, further slope instability and erosion and the mobilisation of woody debris and sediment (and their consequential adverse environment effect) will continue at Samnic Forest.

[98] Dr McConchie’s assessment of the need for issues to be addressed is supported by Mr Donald Robert Hammond, a forestry consultant called by Woodlett, save that he noted in some replanted areas the older trees will be improving site stability.<sup>19</sup>

[99] Finally, we had the evidence called by MTT from those living in the wider community. They spoke powerfully of the impacts on them from forestry harvesting in Tairāwhiti.

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<sup>19</sup> Notes of Evidence (**NOE**) 24 March 2025, DR Hammond, pages 753 lines 20-35 and 758 lines 1-5.

### **Criticism of evidence**

[100] Samnic submitted that the Council should have set out a forensic explanation of any problems in the forest and an assessment of what is most at risk. Mr Pilditch submitted that no expert has given that the attention it deserved except Mr Hammond, the forestry consultant who gave evidence for Woodlett.

[101] In order to assess causation and appropriate terms for enforcement orders, Mr Pilditch submitted that what was required was for the experts to, among others, visit all roads and landings in the forest, compare aerial imaging after certain key events (for example weather events and hand back), assess the age of trees in each compartment to assess risks of debris migration, and identify specific landings and roads at risk.<sup>20</sup>

[102] Finally on this issue, Mr Pilditch submitted that in other proceedings the issue of causation has not arisen because there has never been such a profound delay in seeking enforcement orders. He criticised the “backwards-looking” nature of the enforcement order application.

### **Evaluation**

[103] Fundamentally, there is agreement that issues remain at the Forest relating to woody debris, water and sediment control. Woodlett and Mr Woodhouse accept the Council’s evidence on those issues. Samnic and its directors, however, argue that the evidence is at too high a level, and in cases too broad to provide a useful basis for the making of enforcement orders. They submitted that more assessment should have been undertaken to particularise roads, landings and sites that pose a risk to the environment.

[104] We find that on the balance of probabilities the grounds for making orders to address the ongoing effects of the Forest are made out. The expert evidence is clear. No expert evidence in opposition was called. The evidence of Dr McConchie, Mr McCloy and Mr Sluter was not upset on cross-examination.

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<sup>20</sup> Samnic closing submissions at [11]-[13].

[105] We find there is a strong likelihood of actual and potential adverse effects arising from the state of the Forest that must be addressed. The proposed orders are directed at first undertaking a risk assessment of the Forest. That is entirely appropriate in all the circumstances having regard to the history of the harvest and Council engagement with Samnic. We find that the Council has adequately identified the issues, and what is now required is further assessment to determine the level of risk and the means and timing for addressing it. We accept that the orders will be unlikely to completely avoid any actual or likely adverse effects, rather that they are designed to reduce risk and minimise the adverse effects where possible.

## **H. Against whom?**

[106] The next question the Court must determine is against whom should the orders be made.

[107] Samnic's view is that its actions have not caused or given rise to the existing state of the Forest. It said quite simply that it did its job harvesting each compartment and handing it back, and when it left the job for good the Forest was left compliant with the Resource Consents and in Woodlett's hands.

[108] Woodlett and the Council say that when Samnic left the Forest it was not compliant with the Resource Consents. Woodlett, relying on the Council's evidence, maintained that those non-compliances throughout the harvesting meant it was not possible for it to exercise its maintenance responsibilities, because that which it was required to maintain was either inadequate in terms of roads, drainage, erosion, and sediment controls, or non-compliant in terms of slash on or near landing and skid sites.

## **H1. Samnic**

[109] On whether enforcement orders should be made, against whom, and what those Orders should entail, Mr Pilditch submitted that all those decisions must rest on an assessment of the evidence, be reasonable, logical and not result in the arbitrary imposition of burdens.

[110] Samnic called evidence from each of its directors. Mr Richard Stewart Hayes provided evidence on how Samnic managed the harvest, the applications for Resource Consents, the termination of the Forestry Right and the transfer of the Resource Consents. He also gave evidence concerning Samnic's environmental compliance at the Forest. Mr Gavin Francis Fortune provided evidence about Samnic's right to harvest the Forest, the way it managed the harvest and how Samnic's responsibilities were transferred to Woodlett. He also deposed that Samnic has few remaining assets and has no income because Samnic's employment by the JV has concluded. As a result, it would be impossible for Samnic to comply with the proposed orders. Mr Scott Barry Funnell provided evidence about the background to harvesting the Forest, including the ownership and contractual arrangements. Messrs Fortune and Funnell agreed with and endorsed Mr Hayes' affidavit evidence.

[111] Mr Hayes clearly had the 'hands on' role for Samnic in managing its activities in the Forest, but Messrs Funnell and Fortune were aware of and on occasion endorsed those activities. Samnic called no expert evidence.

### **Delay**

[112] Mr Pilditch was heavily critical of the Council's case, submitting that the Court is left with a body of evidence which raises questions that the Court cannot answer. One of the reasons for that is the convoluted narrative and delay that has led to this point. He criticised the role of the Council from the beginning and referred to the Abatement Notices issued in 2017, 2018 and 2022. While accepting that on occasion there were good discussions between Samnic and the Council as to the matters needing to be addressed, he submitted that the Council's follow-up on the Abatement Notices left something to be desired.

[113] Mr Pilditch criticised the Council for the delay in bringing this application. He observed that in late 2022 Samnic completed the works it was required to undertake by the 2022 Abatement Notices. He submitted that the Council knew that harvesting was coming to an end, which provided an opportunity for it to discuss issues with Samnic. Samnic was in the Forest liaising with the JV, and had the capacity and the ability to deal with issues.

[114] Mr Pilditch submitted that Samnic showed nothing but a willingness to engage with the Council and seek to respond to issues and do a compliant job. The delay between that opportunity and now, with the intervention of two extreme weather events, the lengthy period of non-maintenance by Woodlett, and the fact that Samnic has not been on the ground, places Samnic in a profoundly prejudiced position and also places the Court in a difficult position. He submitted that the Court does not have the evidence it needs to ensure the orders are appropriate, just and reasonable.<sup>21</sup> He submitted that if the Court concludes that it is unable to resolve those questions, that has to be the answer to the application.

### **Causation**

[115] Mr Pilditch also submitted that it is not enough to say that Samnic harvested and caused problems. The issue is to have confidence that if, in relation to a particular area things were not left in accordance with the Resource Consents or appropriately constructed and create a likelihood of risk, that may then be a matter directed at Samnic. He observed that the Court, however, is confronted with the Forest in 2024, when Samnic was there in 2022. He asked how the Court can distinguish between what can be laid at the feet of Samnic and at the feet of Woodlett. He submitted that the Court cannot answer that question on the evidence it has received because of that overlapping period.

### **Samnic acted in accordance with the resource consents and any Council directions were complied with**

[116] Mr Pilditch argued that the Council has simply not produced the evidence to demonstrate – aside from isolated incidents that were remedied – that Samnic acted otherwise than in accordance with the Resource Consents. He noted that if breaches of the Resource Consents were remediated at the time – such that there is no evidence of ongoing breaches – the discretion to make an enforcement order cannot arise.

[117] Mr Pilditch detailed the historical instances of non-compliance or feedback during Samnic's tenure as the harvest manager. As his submissions were at somewhat

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<sup>21</sup> NOE 10 April 2025, F Pilditch, page 54 line 23.

of a high level, we record any further relevant evidence after his submissions on each event.

### ***April 2017***

[118] Mr Pilditch submitted that Samnic was abated in respect of Landings 3, 8 and 9. Mr Hayes gave evidence that Samnic responded to the Abatement Notice and he was not challenged on this point.<sup>22</sup> The Council took no further action on the Abatement Notice. Compartments in which these landings were situated (compartments 1 and 3) were handed back between September 2018 – April 2019.

[119] We observe that the Abatement Notices addressed more than Landings 3, 8 and 9. The detail of the Resource Consent conditions breached and some of the work required is set out in **Annexure B**.

[120] A Compliance Record of Inspection dated 27 April 2017 noted general compliance with the Abatement Notices, but also recorded that further work had been undertaken outside the Harvesting Consent.<sup>23</sup>

### ***July and August 2018***

[121] After the Queen's Birthday storm in June 2018 Samnic was abated in relation to Landings 10, 11, 12 and 13 (compartments 1, 2 and 2.5). The Notices concerned compaction or armouring of fill on landings, water directed to fill and accumulation of logging debris. The relevant compartments were handed back in September 2018, subject to remediation that was underway and completed by mid-2019.<sup>24</sup> Samnic notified the Council after work was completed but the Council did not inspect the work and again no further concerns were raised.

[122] We record that the Forest was inspected prior to the issue of the Abatement Notices identifying non-compliance with the 2015 Harvesting Consents, logging debris and waste.

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<sup>22</sup> NOE 24 March 2025, RS Hayes page 482.

<sup>23</sup> Exhibit 2 – Abatement Notice Compliance Record, 27 April 2017 (Harvesting Consent LV-2015-106840-00).

<sup>24</sup> The dates on which the compartments were handed back are set out at the end of **Annexure B** to this decision.

[123] The Abatement Notices did not refer to specific Landings. They related to breaches of conditions of consents – as seen in **Annexure B** – and required compliance by 1 October 2018. The Notices were not appealed. There is no evidence that Samnic notified the Council after the remedial work was undertaken or that the Council inspected the Forest for compliance immediately after 1 October 2018.

### ***2019***

[124] Mr Pilditch submitted that the Forest was inspected twice as part of a pre-consent inspection. The Council's Report described the parts of the Forest inspected (No. 6 Road, Landings 5 and 9, 10, 12, 13, 14, 16, 17/18, 24, 55, 57 and 64/65 situated in compartments 1, 2, 3, 4, 5.1, 7, 9.2, 15, 17 and 18) as compliant or in minor non-compliance. Harvesting was not completed on Landings 55-64 (compartments 16, 17 and 18),<sup>25</sup> which were not handed back until May 2022. The other skids identified were handed back between September 2018 and April 2019 and most are situated on the road (River Road) that PF Olsen has used for access since 2022. Despite the positive assessment of Landing 55 in 2019 the Council alleges it was poorly constructed.

[125] We note that the non-compliances referred to in the Report included woody material mixed with side-cast material being left on or below Landing edges and slash in a watercourse.

### ***July 2020-November 2021***

[126] Samnic reported a logjam in the Pangopango Stream to the Council (as did a neighbour). Mr Pilditch submitted that rather than quibble about where the debris in Pangopango Stream came from (whether upstream from a different forest or from Samnic Forest) Samnic took a responsible and pragmatic response: applying for and obtaining a resource consent.<sup>26</sup> Part of Samnic's application was for consent to install a slash catcher. The Council asked it to remove that part of the application and proceed with a resource consent application to simply clean out the logjam. Samnic

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<sup>25</sup> Field Sheet 5 August 2019, W Mooney – Exhibit 21.

<sup>26</sup> Logjam Consent (LR-2020-110126-00) 27 January 2021.

complied and cleaned it out. Mr Pilditch observed that now the Council seeks a slash catcher as part of the application for enforcement orders.

[127] We record that the Logjam consent was granted on 27 January 2021. Council officers carried out a compliance inspection on 24 November 2021 and raised concerns about water controls, skid sites that required slash to be pulled back and disturbed earth that required stabilising to avoid loose material from mobilising downhill.<sup>27</sup> The Council does not accept that the Logjam Consent was fully complied with.

### ***March 2022***

[128] Mr Pilditch submitted that the Council's 21 November 2021 inspection and those of March and April 2022 were after a series of extreme weather events, including a 1:100 year rain event. Council inspections on 20 April 2022 and 5 September 2022 observed that forestry harvesting debris and sediment had discharged from skid sites and roads into tributaries of the Pangopango Stream, and identified further non-compliances with consent conditions. As a result the July 2022 Abatement Notices were issued.

### ***July 2022***

[129] Mr Pilditch said that the July Abatement Notices were in respect of Landings 33, 40 and 41, No. 6 Road and some Landings on No. 6 Road (55, 56, 58, 60, 62-65) and an unconsented stub road and landing off No. 6 Road, and submitted:

- (a) the Abatement Notices dated 18 July 2022 relied on a report from Danielle Castle of the Council, which incorrectly attached photographs of a neighbouring forest in support of an assessment that the general state of the forest was poor. The Council then reissued the report with the same content but without the photographs of that forest;<sup>28</sup>

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<sup>27</sup> Affidavit of Kevin Joseph Ford, Senior investigator in the Council's compliance and monitoring team, 29 January 2025, at [49].

<sup>28</sup> Reply affidavit of KJ Ford, 29 January 2025, at Annexure KF4 and NOE 24 March 2025, RS Hayes, page 579.

- (b) setting aside the concerns with the Council's generalised complaints, which factored in the state of the neighbouring forest, the fundamental problems at the Forest at that time were poor workmanship – largely attributable to a rogue contractor at skids 40-41 – and the unconsented stub road and skid.<sup>29</sup> Mr Pilditch submitted that there is, however, ample evidence to show that all of the problems identified in the Abatement Notices were remedied by Samnic;
- (c) the issues with skids along No. 6 Road (for example Landings 55 and 58) were not as acute. Mr Pilditch observed that Landings 55 and 64/65 did not ultimately form part of the 2022 prosecution. The Landings were built to withstand a five-year rain event and suffered partial collapse in a 100-year rain event; all work and infrastructure has a threshold. Skid 58, in particular, is situated below a catchment that funnels water onto it, and has been rehabilitated at least three times to Samnic's knowledge;<sup>30</sup>
- (d) in addition to the Landings, the Summary of Facts for the 2022 prosecution referred to woody debris being left on the slopes. Mr Pilditch noted that: the charging documents did not refer to the woody debris; the Resource Consents did not require collection of all woody debris; the consented harvesting methodology is known to result in debris;<sup>31</sup> there is no evidence about how much debris was left behind; and Regulation 69 of the NES-PF (now NESCF) allows slash and harvesting debris to be left on the harvest area, with certain provisos;
- (e) if there are problems now on Road 6, they can only be related to post-hand back maintenance:
  - (i) the Council inspection by Mr Sluter recording incomplete remediation occurred in September 2022 prior to completion of all remedial works,<sup>32</sup> however:

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<sup>29</sup> As reflected in the Summary of Facts at sentencing on the prosecution – the only part of Road 6 that was criticised related to the intersection with the unconsented road.

<sup>30</sup> NOE 24 March 2025, RS Hayes, page 667.

<sup>31</sup> NOE 24 March 2025, DR Hammond, Forestry consultant called by Woodlett, page 773 onwards.

<sup>32</sup> NOE 24 March 2025, Dr JA McConchie, page 161.

- 1) the 11 November 2022 Report noted that Landings 56, 60, 62, 63 and 64/65 were substantively compliant at that point in time;
  - 2) the invoices and emails concerning remediation demonstrate it took place prior to charges being laid;<sup>33</sup> and
  - 3) Samnic invited the Council to inspect the remediation when it was completed but the Council did not inspect until 9 May 2023 (after Cyclone Gabrielle);
- (ii) relying on Mr Sluter's 11 November Report, charges were laid against Samnic in November 2022;
- (iii) the Abatement Notices formed the basis of the 2022 prosecution, but the prosecution never:
- 1) charged ongoing breaches or submitted that breaches were ongoing as an aggravating factor of the offending. Mr Pilditch submitted that no doubt if the contraventions were ongoing the Council would have drawn this to the attention of the Court;
  - 2) sought an enforcement order at the time of sentence or an interim enforcement order beforehand;
- (iv) water controls on No. 6 Road were installed by Samnic's Contractor in accordance with recommended guidelines;<sup>34</sup>
- (v) Dr McConchie and Mr Hammond agree that it is highly likely all water controls were damaged by Cyclones Hale and Gabrielle three weeks later;<sup>35</sup>

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<sup>33</sup> NOE 24 March 2025, RS Hayes, page 663.

<sup>34</sup> NOE 24 March 2025, SB Funnell, page 461.

<sup>35</sup> NOE 24 March 2025, DR Hammond, page 781.

- (vi) Mr Hammond acknowledged that water controls degrade if not maintained.<sup>36</sup> Mr Woodhouse also acknowledged that the culverts had become blocked.<sup>37</sup>

[130] We record that the detail of the Abatement Notices is contained in **Annexure B**. The Notices allege non-compliances with conditions in the 2020 Harvesting Consents and the Logjam Consent. While the Notices reference certain landings and roads at the Forest they go further. The Notices are wide-ranging in their effect and are not limited. There is clear reference to inadequate erosion and sediment controls, lack of effective maintenance of those controls, fill from road construction being side cast, inadequate stormwater controls, blockages of ephemeral streams, unstable accumulations of slash, log ends, tree heads, forestry waste or mixed spoil, among others.

[131] Further, we could not find a reference in the NOE recording that Dr McConchie or Mr Hammond agreed that it is likely all water controls were damaged by Cyclones Hale and Gabrielle.

[132] Samnic stated that having completed its remediation of the Forest it invited the Council to inspect the Forest. There is no evidence to support that statement.

[133] As summarised in **Annexure B**, there is detailed evidence of issues at the Forest provided in the inspection records for November 2021, April and May 2022, the Abatement Notices of July 2022, and the inspection records for September and October 2022. Those records are supplemented by the 11 November 2022 Report of Mr Sluter and the November 2022 Report of Dr McConchie.

[134] We have detail of the invoices provided to Samnic from its contractors for March to October 2022 for remediation. It is clear that the majority of the remediation work occurred before the Council's inspection of 5 September 2022, from which the overall grading of consent compliance was "D" – significant non-compliance.

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<sup>36</sup> NOE 24 March 2025, DR Hammond, page 781.

<sup>37</sup> NOE 24 March 2025, DM Woodhouse, page 342 lines 21-30.

## ***2023***

[135] The Forest was inspected numerous times in 2023 before and following Cyclones Hale and Gabrielle. The detail of those inspections is set out in **Annexure B**.

[136] A Report of the 9 May 2023 inspection was prepared but not provided to Samnic and Woodlett until February 2024. The detail of that Report is contained in **Annexure B**.

## ***2024***

[137] Further Council inspections at the Forest were carried out on 17 October 2024, 13 October 2024 and 19 November 2024.

[138] The details of those inspections are outlined in **Annexure B**. We accept that Samnic did not receive the reports of those inspections until it was served with the 2024 Abatement Notices.

[139] Samnic records that it was again abated in 2024 in respect of Landings 3, 8 and 9 (with concerns set out in the Council's report dated 19 November 2024), referring back to the 2017 Abatement Notices which concerned the same areas. Mr Pilditch noted that the three landings form part of what is now the PF Olsen accessway to the neighbouring forest so have heavy vehicles driving over them on a regular basis.<sup>38</sup> He submitted that there is insufficient evidence that Samnic is the cause of any Resource Consent breaches at those landings.

### **Samnic summary of evidence**

[140] Aside from the specified instances above, Mr Pilditch submitted that the Council's evidence was focussed on alleged generic issues at the Forest rather than pointing to non-compliance at specific skid sites. He submitted that the Council's allegation that the Forest is generally in poor shape now is not reliable, given:

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<sup>38</sup> We note this refers to the PF Olsen Access Agreement referencing River Road to Skids 45-48 – Exhibit 11. We are unsure about the references to Landings 3, 8 and 9.

- (a) by all accounts the Forest is a highly erodible environment which degrades quickly through lack of maintenance;
- (b) Dr McConchie and Mr Hammond both agreed that it is hard to determine, post construction, if construction was defective versus lack of maintenance. For example, Mr Hammond stated: “Look, I saw indications of tension cracks. The extent to which it was compacted, I can’t comment. I didn’t have the opportunity to really investigate that”.<sup>39</sup>

[141] Samnic accepted that there have been some compliance enforcement actions taken over the course of harvesting the Forest. It said that each of these actions have been responded to and that the Council either confirmed the works it sought to be done had been completed (or largely completed), or it undertook an inspection and did not advise of any further or ongoing compliance issues. In those circumstances, Samnic said that it understood the Council considered the Forest to be broadly compliant at the time harvesting concluded and Samnic’s involvement at the Forest ceased.

[142] Mr Pilditch submitted that the generalised evidence lacks the specificity that would be required to impose the orders sought and fails to meet the evidential threshold to prove causation against Samnic. It has prevented the Respondents from being put on notice and engaging meaningfully with the issues the Council has identified and what needs to be addressed. He submitted that where the Council has failed to identify the specific area an issue relates to, or the specific issue that is alleged, that evidence should be set aside by the Court. Taking this information into account, it would be unduly prejudicial to the Respondents if they have not been provided with a reasonable opportunity by the Council to respond to its allegations.

[143] He submitted that the issue is heightened as the enforcement orders are being sought on the basis that breaches and non-compliance with the RMA have caused the adverse effects that need to be addressed. These are significant allegations as, even though an application for enforcement orders is a civil application, the Council seeks the orders through allegations of a breach of obligations – which are criminal matters.

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<sup>39</sup> NOE 24 March 2025, DR Hammond, page 747 lines 27-29.

## **Council's response to Samnic**

### ***General***

[144] In 2015 and 2020 Samnic obtained the required land use consents to authorise harvest of the Forest. Between 2016 and 2022 Samnic undertook the harvesting, engaging a number of contractors to assist.

[145] Samnic's operations were subject to a number of Council inspections and abatement notices and the 2022 prosecution.

[146] Samnic constructed/installed infrastructure, undertook harvesting and post harvesting remedial works. The Council submitted that the works undertaken by Samnic created actual or likely adverse effects on the environment:

- (a) poor design, construction and management led to the risk of slope and infrastructure failure being a persistent problem;
- (b) large amounts of slash and felled trees were left in unstable locations;
- (c) forestry debris and sediment has mobilised into streams and watercourses within the Forest on a number of occasions during harvesting;
- (d) the adverse environmental effects associated with logjams and woody debris in the Forest and outlined in the Council's evidence and that filed by MTT;
- (e) the wider impacts of woody debris and sediment outlined in the evidence of Ms Noble and Mr Sluter.

[147] Mr Hopkinson also submitted that the evidence addressed the likelihood of actual and potential effects arising from harvesting at the Forest, including:

- (a) scale and magnitude of poor design, construction and management relating to harvesting means the risk of slips and infrastructure failure is a persistent problem;<sup>40</sup>

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<sup>40</sup> Affidavit of Dr McConchie at [99](a).

(b) debris remains on skids and slopes, and is at risk of mobilisation into the watercourses in future storm events;<sup>41</sup>

(c) if measures are not undertaken to reduce the risks further, instability, erosion and woody debris and sediment mobilisation will continue.<sup>42</sup>

[148] It is therefore appropriate that orders be made against Samnic because it had a causative role in the current issues.

### ***Remedial***

[149] In response to Samnic’s assertion that it invited the Council to inspect remediation at the Forest when it was completed in 2022, the Council said that there is no evidence that there was any such invitation.

[150] The evidence confirmed that the Council inspected the areas subject to the remedial works in September 2022 and January and February 2023.<sup>43</sup> Mr Sluter’s evidence referred to the remedial works he viewed on 5 September 2022.<sup>44</sup>

[151] The 2 February 2023 inspection involved checking compliance with the 2022 Abatement Notices, and identified numerous ongoing compliance issues in areas that Samnic has claimed were remediated in 2022, for example: “The slip on skid 65 seemed to be in the same condition as observed in the previous site visit on 5 September 2022”.<sup>45</sup>

### ***Ongoing breaches***

[152] Samnic also asserted that at the 2024 sentencing for the 2022 prosecution the Council never submitted that breaches were ongoing as an aggravating factor. The

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<sup>41</sup> Affidavit of Mr McCloy, at [36(b)], [36(e)] and [36(f)]; NOE 24 March 2025, DR Hammond page 748 lines 32-34.

<sup>42</sup> Affidavit of Dr McConchie at [99](c); NOE 24 March 2025, DR Hammond, page 752 lines 20-23.

<sup>43</sup> Affidavit of Andrew Oliver Henri Shelton, Regional Monitoring and Compliance Officer – Forestry, 20 January 2025, at [24] to [35] and annexures AS4 and AS5.

<sup>44</sup> Affidavit of DJ Sluter at [22](e) and also recorded in **Annexure B** to this decision.

<sup>45</sup> NOE 10 April 2025, A Hopkinson, page 112; Council File Note dated 10 February 2023 recording site visit of 2 February 2023 – Exhibit 24.

Council denied that. It filed with its reply submissions some of the sentencing materials from the prosecution. It can be seen from those materials the fact that the issues had not been addressed at the Forest, and the poor state of the Forest in May 2023 was highlighted by the Council to the Court during sentencing.

[153] Mr Hopkinson submitted that the attempts by Samnic's directors to downplay Samnic's poor compliance history was a recurring theme in this case. He submitted there is ample evidence of non-compliance set out in the Council's evidence, particularly the summary provided by Mr Ford in his evidence.

[154] Mr Hopkinson submitted that the issues that form the basis for the application began in 2017 and have accrued progressively since. Samnic and its directors had the opportunity for their own expert witness to visit the Forest to verify the Council's evidence of non-compliance and continuing environmental risks. While it engaged an expert, Samnic chose not to rely on any expert evidence at the hearing.

## **H2. Woodlett**

[155] Woodlett called evidence from Mr Woodhouse, the company's director, from Mr Hammond, a forestry consultant and from Mr Neville John Brown, a director and silviculture manager of Forwood Forest Management Limited employed by Woodlett from 2019 to assist with replanting of the Forest, pest control and spraying.

[156] Mr Woodhouse' evidence addressed the contractual arrangements between Woodlett, Samnic and the JV, his involvement with the Council's investigations and the current state of the Forest. Mr Hammond summarised the history of the Forest, the Forestry Right and addressed the scope of the enforcement orders sought by the Council. By the time of the hearing he had visited the Forest and was able to give evidence as to what he had observed there.

[157] Woodlett submitted, and it said the Council accepted, that the issues at the Forest are legacy issues: they were caused by Samnic during its operations, including poor construction of forestry infrastructure, poor forestry management and poor harvest and post-harvest practices. Woodlett said it was a passive landowner, and that

when compartments were handed back to it over the course of the harvest they were not in a state that could be maintained. It pointed to a number of events over the course of the harvest in support of its position.

### **Prosecution**

[158] Mr Fraundorfer submitted that it is notable that when prosecuted, Samnic pleaded guilty to largely the same issues that now arise in this proceeding, including a breach of s 15(1)(b) of the RMA.<sup>46</sup>

[159] He submitted that as part of the agreed summary of facts for the prosecution<sup>47</sup> Samnic accepted that its poor forest management and non-compliance with consent conditions led to discharges of slash, logging debris, waste logging material and/or sediment to watercourses following significant rainfall events in March and April 2022.<sup>48</sup> Samnic agreed that it had committed numerous breaches of resource consent conditions<sup>49</sup> and the RMA, and had conducted forestry practices that fell short of the National Environmental Standards for Plantation Forestry and the standards generally observed by the forestry industry in New Zealand.<sup>50</sup>

### **Remediation not accepted**

[160] At the prosecution sentencing in 2024 an argument emerged that Samnic had completed remedial works in 2022 prior to the commencement of the prosecution in November that year. That assertion was also made in this hearing. Mr Fraundorfer submitted, and the Council agreed, that the evidence demonstrated that any remedial work undertaken by Samnic was not of a sufficient standard to address the issues that arose during harvesting of the Forest.

[161] In support of his submission, Mr Fraundorfer detailed the inspections undertaken by the Council and the reports that followed in 2022 – all of which are summarised in **Annexure B**. He noted the time line of remedial works in that year in

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<sup>46</sup> *Gisborne District Council v Samnic Forest Management Limited* [2024] NZDC 18066 at [1].

<sup>47</sup> Affidavit of RS Hayes (Enforcement), Annexure M.

<sup>48</sup> Summary of Facts (SOF) at [2].

<sup>49</sup> SOF at [54]-[81].

<sup>50</sup> SOF at [80]-[81].

relation to the dates of Council inspections. He also pointed to various correspondence, particularly Samnic's advice to Woodlett on 9 August 2022 that it had undertaken remedial works and that it would resolve matters to the letter of the consent.<sup>51</sup>

[162] Finally, Mr Fraundorfer submitted that Samnic's failure to appropriately remediate the Forest is supported by the Council's witnesses. For example, Mr Sluter said:<sup>52</sup>

Some of these skid sites where you know, failures were observed in 2017 and then you're right, they were observed again in 2022, 2023, 2024.

[163] Likewise, Mr Shelton confirmed that the areas of concern he observed were a direct result of poor harvest works.<sup>53</sup> When taken to the summary of the works from 2021 and 2022 that led to the prosecution, he confirmed that they had not been remedied and that s 15(1)(b) of the RMA was still being breached.<sup>54</sup>

[164] Mr Fraundorfer pointed to Mr McCloy's evidence that he had advised Samnic on the 2022 variation application. Mr McCloy advised Samnic in July 2022 that the remediation work was not good enough and observed that the Forest was a mess, describing it as "being the poster boy for what not to do".<sup>55</sup>

[165] Dr McConchie stated that some remediation work had been done in 2022 and in his "opinion that work was of a pretty poor standard. But there were large areas where no work had been done and problems persisted".<sup>56</sup> His evidence was that remedial works carried out since May 2022 by Samnic were "completely inadequate"<sup>57</sup> and he confirmed that the work remained non-remedied at the time of his 2024 visit.<sup>58</sup>

[166] Mr Fraundorfer also referred to Mr Ford's evidence. Mr Ford, who had reviewed all the files, was shown the invoices of Samnic's remedial works in 2022 and

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<sup>51</sup> Affidavit of DM Woodhouse (Enforcement), Annexure J.

<sup>52</sup> NOE 24 March 2025, DJ Sluter, page 235.

<sup>53</sup> NOE 24 March 2025, AOH Shelton, page 119.

<sup>54</sup> NOE 24 March 2025, AOH Shelton, page 120.

<sup>55</sup> NOE 24 March 2025, MW McCloy, page 246 lines 5 and 6.

<sup>56</sup> NOE 24 March 2025, Dr JA McConchie, page 180.

<sup>57</sup> Affidavit of Dr JA McConchie at [99](c).

<sup>58</sup> NOE 24 March 2025, Dr JA McConchie, page 158 from line 21.

asked if he saw any evidence of sufficient remedial work being done. He confirmed that the inspections from 2022 onwards showed significant non-compliance, as with the earlier inspections.<sup>59</sup>

## Causation

### *Section 314(1)(a)*

[167] The Council alleged that Woodlett, as the Forest's owner, has failed "to continue monitoring skid sites, streams or water controls at the forest since harvesting and to take proactive steps to prevent the migration of woody debris from harvesting activities to watercourses within the forest".<sup>60</sup>

[168] Woodlett asserted that there is no basis for orders to be made against it or Mr Woodhouse under s 314(1)(a). Woodlett recorded it was not the owner of the trees, it was the owner of the land. Mr Fraundorfer submitted that there is no legal basis for making orders against Woodlett or Mr Woodhouse because nothing was done by them or on their behalf.

[169] Mr Fraundorfer cited *Manawatu-Wanganui Regional Council v Fern Holdings (4) Ltd (Fern Holdings)*.<sup>61</sup> In that case works giving rise to erosion and sediment control issues were undertaken by or for a former owner of the land. The Court found that, although the respondent had inherited the issues, that did not mean the works were undertaken by or on behalf of the subsequent owner. He also cited *Ryan v de France (de France)*,<sup>62</sup> where the Court declined to make orders against a landowner in respect of glass at a property because the glass was likely put there by another party.

[170] He submitted that the Council has not discharged its burden of proof because the woody debris was discharged and the harvesting was done by or on behalf of Samnic alone. He recorded that Mr Ford accepted that Woodlett had not discharged

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<sup>59</sup> NOE 24 March 2025, KJ Ford, page 94.

<sup>60</sup> Council's Opening Submissions at [98].

<sup>61</sup> *Manawatu-Wanganui Regional Council v Fern Holdings (4) Ltd* [2016] NZEnvC 19, at [33], [37], [38].

<sup>62</sup> *Ryan v de France* [2015] NZEnvC 13, at [114].

any woody debris onto the land<sup>63</sup> and it did not cause the issue: Woodlett was simply the landowner.<sup>64</sup>

***Section 314(1)(da)***

[171] Under this head, the Council alleged that Woodlett as landowner has failed to avoid, remedy or mitigate any actual or likely adverse effects on the environment relating to land of which it is the owner.

[172] Mr Fraundorfer accepted that it is necessary to impose orders on Samnic and its directors. Provided those orders are made, the question then is whether it is also necessary to impose orders on Woodlett or Mr Woodhouse. He submitted that it is unnecessary.

[173] Alternatively, if the Court is satisfied it is necessary, he submitted that the orders must be more refined than those sought in the application and not be made on a joint and several basis with Samnic and its directors. Mr Fraundorfer submitted that the ramifications are obvious, as there will be limited ability to seek a contribution recovery from Samnic and its directors.

[174] Mr Fraundorfer referred us to *Voullaire v Jones*,<sup>65</sup> where the ability to make orders against an innocent landowner or occupier was considered. The Court noted that it is “not necessarily unfair because, as in fact happened in this case, the potential liability of the current owner can be reflected by a reduction in the purchase price it paid for the land”.

[175] He submitted that the circumstance in *Voullaire* are distinguishable from this case. He recorded that Woodlett did not receive any consideration or benefit in return for inheriting Samnic’s non-compliance. He noted:

- (a) that the annual fee reduced each time compartments were handed back; and

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<sup>63</sup> NOE 24 March 2025, KJ Ford, page 100 line 15.

<sup>64</sup> NOE 24 March 2025, KJ Ford, page 100 line 16.

<sup>65</sup> *Voullaire v Jones* CA24.97, 8 December 1997, at page 15.

- (b) Woodlett was not aware of Samnic’s non-compliance until 2022, and was led to believe that the Council was enforcing Samnic’s obligations under the Resource Consents.

[176] In those circumstances it would be unfair to make an order against Woodlett.

[177] Mr Fraundorfer also submitted that the Council has failed to establish that the orders are necessary, referring in particular to the required installation of slash catchers. In any event, he submitted that a risk assessment is required to identify the remedial work needed to address the adverse effects at the Forest. Had that been done, the parties would be in a better position to determine whether the broader orders sought by the Council would be required. Because the Council did not undertake that assessment in advance it has failed to prove that each of the orders are necessary. He submitted that all that is now needed is for appropriate orders to be made against Samnic requiring it to undertake a risk assessment and prepare a remediation works plan.

### **Council’s response to Woodlett**

#### ***General***

[178] The Council accepted the observations made by Woodlett as to legacy issues and Samnic’s acceptance of liability for similar issues in the 2022 prosecution. Mr Hopkinson acknowledged that Woodlett was not responsible for the construction/installation of infrastructure or harvesting or post-harvesting remedial works in the Forest – those were undertaken by Samnic.

[179] Mr Hopkinson submitted, however, that the evidence before the Court sets out that issues at the Forest involved both construction and maintenance issues.

[180] Mr Hopkinson referred to Woodlett’s evidence, which acknowledged there were issues that required remediation. For example, Mr Woodhouse accepted some remedial work is necessary.<sup>66</sup> Mr Hammond also acknowledged a number of issues at the Forest, noting that it was in a “pretty poor state”.<sup>67</sup>

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<sup>66</sup> Affidavit of DM Woodhouse (Enforcement), at [4](d).

<sup>67</sup> NOE 24 March 2025, DR Hammond, page 748 line 31.

***Present role***

[181] Mr Hopkinson submitted that the evidence before the Court establishes that Woodlett is not simply a “passive landowner”:

- (a) Woodlett is now in sole charge of the Forest. However, it had active involvement in the Forest from 2018 when it took over the replanting work from Samnic;
- (b) Mr Woodhouse acknowledged that Woodlett agreed to take responsibility for maintenance of all tracks and roads at the Forest as each compartment was handed back;<sup>68</sup>
- (c) little maintenance has been undertaken since Samnic handed back compartments save for minor track clearance and clearing some material with a small digger.<sup>69</sup>

[182] Further, Mr Woodhouse has been aware of the issues from at least July 2022, when he was invited to attend a formal interview regarding non-compliance at the Forest.<sup>70</sup> Prior to the interview he was provided with the detail of the Council’s April and May inspections and the June 2022 Abatement Notices issued to Samnic. At the interview Mr Woodhouse was told that the Council considered both the landowner and the consent holder were responsible for the Forest, and that he and Samnic needed to be clear on who was responsible for maintenance, managing the Forest and making sure there was ongoing compliance.<sup>71</sup>

[183] Having said that, Mr Hopkinson submitted that the evidence demonstrates that Mr Woodhouse should have been aware of issues even earlier than July 2022 because:

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<sup>68</sup> NOE 24 March 2025, page 380 lines 17-24 – Exhibit 6 (correspondence Woodhouse-Hayes, 3 July 2015); NOE 24 March 2025, DM Woodhouse, page 382 lines 18-30.

<sup>69</sup> NOE 24 March 2025, DM Woodhouse, page 348 lines 8-13.

<sup>70</sup> NOE 24 March 2025, DM Woodhouse, page 323 lines 1-16; NOE, DM Woodhouse, page 326 lines 27-31; Affidavit of DM Woodhouse (Enforcement), Annexure M.

<sup>71</sup> NOE 24 March 2025, DM Woodhouse, page 332, lines 1-35, page 333, lines 1-3; Exhibit 3 – transcript of Gisborne District Council interview on 6 August 2022 at pages 16-17.

- (a) he was aware of the log jam that occurred in around July 2020, and engaged in correspondence with the directors of Samnic regarding that log jam;<sup>72</sup>
- (b) he sent photographs of woody debris for clearing to the Samnic directors in January 2021;<sup>73</sup> and
- (c) he entered into correspondence with one of the directors of Samnic in January 2022 regarding remedial work required at the Forest.

[184] Mr Hopkinson also submitted that some of the issues at the Forest arise from a lack of maintenance. He observed that despite having sole control of the Forest since late 2022 it appears that Woodlett has not undertaken any substantive maintenance. Mr Brown (Woodlett's Forest Manager) confirmed in cross-examination that limited work, which involved opening roads after Cyclones Hale and Gabrielle (in early 2023), clearing slips, opening 'a few water tables' to gain access for replanting, and ongoing pest control works had been undertaken. He confirmed that no works have been undertaken in watercourses, logs had not been removed and rehabilitation of skids had not been undertaken.<sup>74</sup>

[185] The evidence demonstrates that issues at the Forest relate to both construction and maintenance.<sup>75</sup> In particular, Dr McConchie observed that the situation at the forest has deteriorated rather than improved since his previous site visit.<sup>76</sup>

[186] For those reasons the Council submitted that it is appropriate that both Woodlett as landowner and Mr Woodhouse as the sole director of the company are subject to enforcement orders. Section 314(1)(da) provides that orders can be made against a landowner where orders are necessary in order to avoid, remedy or mitigate any actual or likely adverse effect on the environment.

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<sup>72</sup> Affidavit of DM Woodhouse (Enforcement), Exhibit F.

<sup>73</sup> Affidavit of DM Woodhouse (Enforcement), Exhibit D.

<sup>74</sup> NOE 24 March 2025, NJ Brown, page 419, lines 11-28.

<sup>75</sup> Affidavit of Dr McConchie at [86], [88], [90], [97]; NOE 24 March 2025, DR Hammond, pages 748-754.

<sup>76</sup> Affidavit of Dr McConchie at [97] and [98].

[187] Finally, in response to Woodlett’s submission that if orders are to be made they should not be on a joint and several basis, Mr Hopkinson submitted that the evidence establishes that while there are issues in the Forest arising from harvesting practices (poor construction, debris), the lack of maintenance since 2022 has exacerbated the issues making it appropriate that orders are made on a joint and several basis.

### **H3. Evaluation**

#### **Law on causation**

[188] Mr Hopkinson reminded us that the causation test from prosecutions has been applied by the Court when considering enforcement orders. He referred to the Court of Appeal’s approach to causation in *McKnight v NZ Biogas Industries Ltd*.<sup>77</sup> The Court held that the test for causation is a factual one, based on an assessment of the defendant’s position with respect to the activity that it undertakes and which causes pollution. If it can and should control the activity when pollution occurs then it is responsible for the pollution. The Court gave “cause” its ordinary and natural meaning – “anyone may cause something to happen, intentionally or negligently or inadvertently without negligence and without intention...”

[189] We were also referred to case authority for the Environment Court’s approach to s 314(1)(da), where it found that there must be a causative link between the respondents as owners or occupiers and the adverse effects, even if that link is not the sole operative cause of the effects.<sup>78</sup>

[190] We accept those approaches to determining causation.

#### **Focussed evidence**

[191] We find that far from focussing on generic issues at the Forest rather than specific skid/landing sites, the Council’s evidence was exhaustively fulsome in its description of issues at the Forest.

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<sup>77</sup> *McKnight v NZ Biogas Industries Ltd* [1994] 2 NZLR 664, at 671.

<sup>78</sup> *Waitakere City Council v Britten* [2010] NZEnvC 12, at [5].

[192] Issues arose almost immediately when harvesting began and have continued ever since, as set out in the evidence of Dr McConchie, Mr McCloy, Mr Sluter, Mr Shelton and Mr Ford. The detail of those issues is summarised in **Annexure B**. Each witness focussed on certain time periods in the forest. Dr McConchie, Mr McCloy, Mr Wilkes<sup>79</sup> and Mr Ford visited the Forest most recently; Mr Shelton visited in 2023; Dr McConchie and Mr Sluter's inspections overlapped in 2022 but Mr Sluter also visited prior to 2022, with Mr Sluter's last visit being in 2022. Their observations of the Forest over the period of the harvest helped form a picture of the issues that arose.

[193] Dating from 2017 there were three sets of Abatement Notices and five Inspection Reports outlining significant non-compliances at the Forest. Some are more specific than others insofar as examples are provided, but the overarching theme is one of poor construction of infrastructure, including skids/landings and erosion and sediment control, poor management of forestry debris and generally poor or no maintenance. Also, there was the prosecution commenced in 2022 against Samnic and its directors in respect of offending between 1 April 2021 and 20 April 2022.

[194] Given the breadth of issues raised over the years we see no benefit in a landing by landing analysis of issues. The need for the orders is clear and the sequence of events leading to this point is also clear. The detailed analysis of what areas remain at risk is the first step proposed in the enforcement orders.

### ***Causation - Samnic***

[195] There was no disagreement that Samnic left the Forest in October 2022 and, aside from some conversations with Council officers since, has not returned.

[196] Almost since harvesting began the Council raised concerns about various works that were communicated in person or through inspection reports or Abatement Notices. Samnic said it responded to and remedied all concerns. The evidence enables us to conclude that, while some concerns raised were remedied at the time,

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<sup>79</sup> Mr Matt Clark Wilkes, a Forestry Compliance Officer employed by the Council.

certain issues kept re-emerging. In fact, between April 2022 and August 2022 the problems were significant enough to culminate in prosecution.

[197] Samnic maintained that despite the various issues and the prosecution it remediated all that it was obliged to remediate in 2022, advised the Council and left the Forest. Invoices were provided showing over \$400,000 was spent.

[198] In determining if all of the required remediation occurred before Samnic left the Forest in November/December 2022 we look to the records of inspections with which we were provided. Samnic said that after it completed remediation it advised the Council and invited it to inspect the Forest, however there is no evidence of that.

[199] Samnic also maintained that as there was no inspection of the Forest after 5 September 2022 and before the start of 2023, because of the later devastation caused by the Cyclones it is not possible to conclude that its remediation was inadequate. In other words it claimed that the state of the Forest deteriorated only because of Cyclones Hale and Gabrielle.

[200] However, we have the opinions of those who are experts in hydrology, forestry and compliance on the state of the Forest on 5 September 2022, after most of Samnic's remediation was completed. They are recorded in Mr Sluter's 11 November 2022 Report and in the Council's 12 October 2022 (compliance) letter to Samnic – which identified significant non-compliances.<sup>80</sup> There were aerial inspections in January, February and April 2023 and again in May 2023.<sup>81</sup> The 2 February 2023 inspection noted "...large amounts of small woody debris had been left on the edge of skid sites"<sup>82</sup> and "large amounts of harvesting waste (slash) and trees remained on slopes at the forest..."<sup>83</sup> Without exception those who provided evidence expressed concerns about the state of the Forest.<sup>84</sup>

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<sup>80</sup> Referred to in the **Annexure B** summary and the 12 October 2022 letter is Exhibit 23.

<sup>81</sup> Council File Note dated 10 February 2023 recording site visit of 2 February 2023 – Exhibit 24.

<sup>82</sup> NOE 24 March 2025, AOH Shelton, page 112.

<sup>83</sup> NOE 24 March 2025, RS Hayes, page 646.

<sup>84</sup> Those concerns are summarised in **Annexure B** to this decision.

[201] It is possible to form a reliable view on the state of various landings, skids, roads, and location of debris at the Forest prior to the Cyclones. While there is no side-by-side pictorial comparison of the Forest between October 2022 and January 2023<sup>85</sup> the experts, particularly Mr McCloy, Dr McConchie and Mr Sluter, provided compelling evidence about the likely state of the Forest before the Cyclones.

[202] Furthermore, it is clear to us that the woody debris on the slopes and in the waterways did not come from the neighbouring forest as Samnic suggested it might. We have no evidence to support that suggestion. The woody debris presently littering the slopes and the waterways at the Forest has come from sites within the Forest and poses a risk of entering waterways and being discharged from the Forest to neighbouring and downstream lands.

[203] We accept that the 2023 inspections before and after Cyclone Hale and Cyclone Gabrielle demonstrate that, while the Cyclones caused damage at the Forest, many of the issues then identified were underlying and were exacerbated by the storms.

[204] In addition to localised concerns, wider and more general issues with the work at the Forest were raised over the course of the harvest. Samnic argued that it is not enough to raise general issues because that gave it nothing to focus on. We disagree, and find that a prudent operator, faced with the level of concern regularly communicated to it, should have undertaken a risk assessment of the Forest to determine what and where the issues were and formulate a plan for dealing with them.

[205] We find on the balance of probabilities that issues identified at the Forest were not satisfactorily addressed prior to Samnic departing the Forest.

### ***Causation – Woodlett***

[206] We are entirely dissatisfied with the appropriateness of Woodlett's and Mr Woodhouse's self-described passive role in the Forest.

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<sup>85</sup> We note that there was a Google Map of the Forest from December of 2022 but it is insufficiently detailed to assist.

[207] The cases to which we were referred by Mr Fraundorfer in support of Woodlett's submission that it is not responsible for the issues can be distinguished from this case because they concerned a previous owner undertaking work on the land (*Fern Holdings*) or another party bringing a contaminant onto the land (*de France*). Here, Woodlett was not only the owner of the land before and after the harvest, it authorised Resource Consents being sought, it undertook replanting and it was, or should have been, aware of what was occurring on the land. Further, since the end of 2022 it has been in sole charge of the Forest.

[208] Hand back of compartments and the subsequent replanting of the land from 2018 speaks to us of the passing of some responsibility for the ongoing state of the land. In that regard, we refer to woody debris left on slopes, in watercourses, or above or below landing sites or in an unsafe position on landing sites. It cannot be the case that Woodlett can occupy the compartments for replanting and stewardship of the new trees but ignore the debris on that land.

[209] If work in the compartments that were handed back had not been completed as required by the Resource Consents we would have expected that Woodlett would have raised concerns about that with Samnic and with the Council, and kept raising those concerns until the issues were remediated. It is not enough to adopt a passive onlooker role as owner of the land.

[210] That then raises the question about responsibility for the physical state of the roads, landings, skid sites and drains, among others. We accept that if the basic infrastructure was flawed it would have been difficult to maintain those works without, on occasion, resorting to reconstruction.

[211] That said, we find that Woodlett had responsibilities to ensure that the Resource Consents were being complied with. It is not enough to claim ignorance of what was happening. Woodlett and Mr Woodhouse should have involved themselves more. While having no direct involvement, we infer that the JV (in whom we understand Mr Woodhouse and Woodlett were shareholders) would have received reports from Samnic throughout the harvest that should have included advice on compliance issues

and abatement notices dating from 2017. That information would have been passed on to shareholders.

[212] If we are wrong, and the JV was in the dark over such matters, we find that at the least Mr Woodhouse would have become aware in July 2020 – with the logjam in the Pangopango Stream – that there were problems in the Forest. At that point he should have actively informed himself of what was happening. It is insufficient to send several emails and not follow them up.

[213] Further, it is relevant to record that Woodlett licenced PF Olsen to use River Road through the Forest to access a neighbouring forest. We had little detail of this arrangement, but note from the Licence itself that it involved regular use of the road and skids 45-48. Woodlett was paid a substantial licence fee for that access. The licence required that PF Olsen maintain the road. While the Licence agreement we were provided with was undated, we understand that the arrangement began in the early part of 2022.<sup>86</sup>

[214] We find that Woodlett had responsibilities to contribute to the maintenance of River Road (and skids 45-48) at least from the time PF Olsen began to use it (February 2022). Having said that, both Samnic and Woodlett must have also used the road, or part of it, until the harvest and replanting was completed.

[215] We find that for those compartments in which Woodlett undertook replanting it is not realistic to suggest that it had no maintenance obligations. Whether those obligations were solely its responsibility is another matter that we shall come to. We make that observation because there are certain aspects of the infrastructure that would have been used by Woodlett, Samnic and PF Olsen.

[216] Woodlett said that it never accepted responsibility for compliance with the Resource Consents as it was always concerned that there were non-compliances which Samnic needed to remedy or properly remedy. That may be so. However, it is not

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<sup>86</sup> Exhibit 11 and NOE 24 March 2025, DM Woodhouse, page 399. We are uncertain whether it continues or was terminated on 31 December 2022 (the date specified in the Licence).

simply a matter of accepting responsibility. It has a statutory responsibility, as landowner, to ensure that activities on its land comply with the RMA.

[217] Further, from the evidence we received, the sum total of Woodlett's concerns about non compliances are contained in the following emails produced by Mr Woodhouse:

- (a) email from D Woodhouse to Scott Funnell – Logjam 14 January 2021;<sup>87</sup>
- (b) email from D Woodhouse to R Hayes – Logjam 4 February 2021;<sup>88</sup>
- (c) email from D Woodhouse to R Hayes – Various and Logjam 30 July 2021;<sup>89</sup>
- (d) email from D Woodhouse to R Hayes – Remedials needed 26 January 2022;<sup>90</sup>
- (e) email from R Hayes to D Woodhouse - Seeking permission to enter to do remediation 2 July 2022 and response D Woodhouse 4 July 2022;<sup>91</sup>
- (f) email from D Woodhouse to Dinu Harry concerned about abatement notice and cost to rectify 22 July 2022;<sup>92</sup>
- (g) email to R Hayes from D Woodhouse – Seeking update on remediation works 9 August 2022;<sup>93</sup> and
- (h) email from D Woodhouse to R Hayes – Deny resource consents run with the land 12 August 2022.<sup>94</sup>

[218] These emails span the period January 2021 to August 2022. Mr Woodhouse was also alerted to serious issues of non-compliance when the Council contacted him in July 2022 and met with him in August of that year.

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<sup>87</sup> Affidavit of DM Woodhouse (Enforcement), Annexure D.

<sup>88</sup> Affidavit of DM Woodhouse (Enforcement), Annexure D.

<sup>89</sup> Woodhouse Annexure E.

<sup>90</sup> Woodhouse Annexure F.

<sup>91</sup> Woodhouse Annexure I.

<sup>92</sup> Woodhouse Annexure N.

<sup>93</sup> Woodhouse Annexure J.

<sup>94</sup> Woodhouse Annexure L.

[219] As landowner, Woodlett should have exercised more care in monitoring activity in the Forest, following up on compliance issues during harvesting and taking some responsibility for maintaining the compartments in which it commenced replanting. Further, it should have stepped in from at least November 2022 to ensure that the Resource Consents and s 15 of the RMA were complied with.

[220] Despite having sole control of the Forest since late 2022 Woodlett has not undertaken any substantive maintenance. Mr Brown confirmed in cross-examination that limited work had been undertaken which involved opening roads after Cyclones Hale and Gabrielle (in early 2023), clearing slips, opening a few water tables to gain access for re-planting and ongoing pest control works. He confirmed that no works had been undertaken in watercourses, logs had not been removed and rehabilitation of skids had not been undertaken.<sup>95</sup>

### ***All respondents***

[221] It is appropriate to record that the Samnic directors acknowledged that the effects of Cyclone Gabrielle were devastating and that the downstream communities were not at fault. However they did not accept responsibility for the present state of the Forest. Without accepting that Woodlett should be liable, Mr Woodhouse acknowledged the harm, accepted the community's anxiety and expressed a willingness to assist.

[222] It is also relevant to take notice of Samnic's physical absence from the Forest since November 2022. The Forest and its infrastructure is, however, in a parlous state. The woody debris and poor water management problems that existed in 2022 remain to this day. We know harvesting was completed in mid-2022 so there are no 'newly' harvested trees. There is no evidence that new woody debris has arrived from elsewhere.

[223] We find that all Respondents are responsible for the state of the Forest in terms of securing and or disposing of woody debris, among others. That is because the

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<sup>95</sup> NOE 24 March 2025, NJ Brown, page 419 lines 11-28.

events that have led to this point related to works done or not done by or on behalf of the Respondents.

[224] As to roads, drains, culverts and other infrastructure, we record that the No. 6 Road is the main access into and out of the Forest. We infer, therefore, that it must have been used by Samnic up until it completed the harvest and by Woodlett for replanting. River Road must also have been used by Samnic to complete the harvest, by Woodlett to undertake replanting, and by PF Olsen to access the neighbouring forest.

[225] Without analysing the state of each road, skid/landing, culvert and watercourse in the Forest we cannot attribute to or divide responsibility between the Respondents.

[226] We find on the balance of probabilities that the evidence supports the need for a risk assessment to be undertaken as to the state of the Forest, as sought in the Council's application, and that all Respondents are responsible for ensuring that it is undertaken. That risk assessment will not only inform what needs to be done, but may well provide some insight into the cause of any infrastructural failings.

## **I. Other issues**

[227] As to the relationship between Samnic and Woodlett and whether that bears on the making of orders against them, we address the claims regarding transfer of the Resource Consents and the effects of 'hand back'.

### **I1. Transfer of obligations under the resource consent**

[228] Samnic asserted that it had progressively transferred the Resource Consents to Woodlett as it harvested each compartment. Mr Pilditch relied on s 134(1) of the RMA, which provides that land use consents can be enjoyed by owners and occupiers of land. He submitted that if a land use consent has a s 13 element to it, s 134(3) requires that the consenting authority be notified in writing of any transfer and no more. He noted that s 134(3) enables the notification to be related to "the whole or any part" of the holder's interest in the consent.

[229] Section 134 provides as follows:

**134 Land Use and Subdivision consents attached to land**

- (1) Except as provided in ss (2), a land use consent and a subdivision consent shall attach to the land to which each relates and accordingly may be enjoyed by the owners and occupiers of the land for the time being, unless a consent expressly provides otherwise.
- (2) Subsection (1) does not apply to any land use consent to do something that would otherwise contravene s 13.
- (3) The holder of a land use consent described in subsection (2) may transfer the whole or any part of the holder's interest in the consent to any other person unless the consent expressly provides otherwise.
- (4) The transfer of the holder's consent in a consent described in subsection (2) has no effect until written notice of the transfer is given to the consent authority that granted the consent.

[230] Mr Pilditch noted that there was no real dispute that all of the Resource Consents are land use consents. Also, that it appears all agree that the Consents contain conditions allowing certain activities under s 13 of the RMA.

[231] He submitted that there are two significant aspects of s 134 that are relevant. First, that a resource consent may be partially transferred (s 134(3)); and secondly that land use consents which allow activities under s 13 are transferred when written notice is provided to the consent authority, the Council (s 134(4)).

[232] Because a resource consent can be partially transferred Samnic was able to transfer the Resource Consents to Woodlett, compartment by compartment, as the harvest in each concluded. It did so because, under the Forestry Agreement, Forestry Right and 2015 Agreement<sup>96</sup> the JV would cease to have rights over the land it completed harvesting on, and Woodlett would need to rely on the Resource Consents to replant.

[233] Even if the Court does not accept this was a partial transfer, Mr Pilditch submitted that the transfer was still complete by 1 June 2022 when the Council was advised the harvest had concluded and that Woodlett was now solely responsible for the Forest.

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<sup>96</sup> We assume this refers to the letter from Mr Woodhouse to Samnic dated 3 July 2015.

[234] Mr Pilditch submitted that, more importantly, the plain wording of s 134(4) is clear that the transfer occurs at the point in time the Council is provided with written notice of the transfer. Any other interpretation would be inconsistent with the wording of s 134.

[235] He referred to the Advice Note contained in the 2020 Harvest Consents (by which stage approximately 90 per cent of the Forest had been handed back to Woodlett), which states:<sup>97</sup>

The Consent Holder is advised that under s 134 of the Resource Management Act 1991, land use consents are attached to the land to which the consent relates. Therefore, if the property is sold, the land use consent stays with the property. However the existing Consent Holder must notify the Gisborne District Council that the consent is to be transferred, otherwise any future monitoring charges and enforcement action if necessary, will continue to be addressed to the original consent holder. Contact the Gisborne District Council for a transfer of consent form.

[236] He observed that the Advice Note is not a condition of consent, and also noted there are no requirements under s 134 relating to the form of the notice. Mr Pilditch submitted that no form is required, and that under s 134(4) the transfer occurs automatically on any written notice to the Council. Despite advice from Samnic to the Council regarding the transfer, the Council did not provide Samnic with a form to complete, nor advise that it needed anything further from Samnic or Woodlett.

[237] Mr Pilditch also submitted that the Council appeared to treat a resource consent as some form of chose in action that is owned by the consent holder and may be traded by it – but only with the Council’s consent. He submitted that land use consents expressly operate against that proposition; they attach to the land, transfer with the land, and do not confer rights in relation to land. Once Samnic’s rights were extinguished, which plainly they were, he submitted it ceased to have any interest in the land to which the Consents attach.

[238] Finally, Mr Pilditch submitted that a transfer under s 134 carries with it no requirement to advise the landowner. That is because if the landowner is not the

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<sup>97</sup> Advice Note (d) of the 2020 Harvest Consents.

consent holder it has to have given written approval for the resource consent, and therefore was aware of its legal obligations as landowner prior to the application for resource consent even being submitted.

[239] Even if that were not the case, Mr Pilditch submitted that it is trite for Woodlett to say that it was not aware that the hand back of the land did not include the transfer of any outstanding obligations under the Resource Consents, for the reasons we outline when addressing the ‘hand backs’.

### ***Woodlett’s response***

[240] Woodlett submitted that the evidence overwhelmingly supports the fact that Samnic remains the consent holder. Even if it had transferred its consents to Woodlett (which is denied), or surrendered its consents under s 138 of the RMA (which it has not), Samnic remains liable for breaches of those consents during the time it was a consent holder.

[241] Mr Fraundorfer referred to the continuing obligations under a resource consent. He cited *Bay of Plenty Regional Council v Waaka* where the Court concluded that the consent holder was bound by the continuing obligations under expired resource consents.<sup>98</sup> Those obligations related to the rehabilitation of the landfill site that was permitted by the resource consent. The Court expressly recognised that the conditions of a consent may contemplate steps being taken beyond the consent that could be enforceable outside the consent.<sup>99</sup> The continuing obligations under a consent were not avoided by expiry or surrender of the consent.<sup>100</sup> The Court observed (citations omitted):

[25] Where the consent has been operated under and upon, one cannot avoid the imposition of conditions simply by the subsequent surrender of that consent (see s 138 of the Act and *Auckland City Council v Easton*).

[26] I have concluded that this also applies to the expiry of a consent under section 125 of the Act. This of course will turn on whether the condition is intended to endure or expire with the consent. The rehabilitation of the site in this case is clearly a condition that is intended to take effect at the end of or

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<sup>98</sup> *Bay of Plenty Regional Council v Waaka* EnvC A80/2009, 4 September 2009, at [21]-[32].

<sup>99</sup> At [24].

<sup>100</sup> At [24].

after the operation consented to. To suggest that a consent holder could avoid that condition by simply not undertaking the work during the term of the consent would in my view be to undermine the basis of the consent itself. It would also be inconsistent with the surrender provisions of section 138 of the Act.

[242] Mr Fraundorfer submitted that Samnic breached the consent conditions during the period that it was consent holder, and that it remains in breach of those conditions as alleged in the 2024 Abatement Notices. For example, neither the 2015 nor 2022 Harvesting Consents authorised discharges into watercourses yet there are continued discharges into watercourses from harvesting activities. Further, at the hearing Mr Ford deposed that the full logjam clearance authorised by the 2021 Logjam Consent was never fully cleared by Samnic.<sup>101</sup> Mr Fraundorfer submitted that Samnic remains liable for those breaches as consent holder.

### ***Council's Response***

[243] Not only do Samnic and others say that they have transferred the Resource Consents but they go a step further, arguing that it is possible to divide off compartments from the Resource Consents and transfer each compartment back to the landowner. Samnic pursued this argument despite Woodlett and Mr Woodhouse arguing that the hand back of the Resource Consents was not accepted by the land owner.

[244] Mr Hopkinson noted that a consent to do something that would otherwise contravene s 9 or s 13 of the RMA is a land use consent. The Court has previously noted that the nature of a resource consent is permissive rather than mandatory. The purpose of granting a resource consent is to make an opportunity available, and no person can be forced to make any particular use of his or her land. The terms of a resource consent become mandatory only when exercised.<sup>102</sup>

[245] A resource consent is neither real nor personal property.<sup>103</sup> Rather, it is permission to do something on the land that would otherwise be unlawful.<sup>104</sup>

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<sup>101</sup> NOE 24 March 2025, KJ Ford, page 97 lines 12 and 22.

<sup>102</sup> *Brookes v Queenstown Lakes District Council* PT C81/94, 2 September 1994.

<sup>103</sup> Section 122 of the RMA.

<sup>104</sup> *Hampton v Canterbury Regional Council* [2015] NZCA 509, noting however that case related

[246] No discharge consents were sought or obtained in relation to the Forest. Only land use consents were granted to authorise the harvesting activity and construction of roads, tracks and landings. A consent was also granted<sup>105</sup> to disturb a stream bed and riparian management area within the Pangopango Stream in order to remove the large logjam from that stream.

[247] A land owner does not need to apply for a resource consent; it is commonplace for an occupier or other entity, with the consent of the landowner, to both apply for and exercise a consent over land they do not own.<sup>106</sup>

[248] In this case there is no dispute that the Resource Consents were granted to and relied on by Samnic for its commercial forestry harvesting activity at the Forest.

[249] Mr Hopkinson submitted there is no dispute that the harvesting activities were not undertaken in compliance with the Harvesting Consents and/or the provisions of the RMA. There is an extensive history of abatement notices, Council inspection reports and a prosecution relating to compliance issues associated with Samnic's harvesting activities.

[250] Samnic and its directors argue that s 134 enables them to unilaterally "hand back" the consents to the underlying land owner (section by section or compartment by compartment) and thereby absolve themselves of any liability for any previous compliance issues in those areas (and any future enforcement orders relating to those issues and areas).

[251] Mr Hopkinson submitted that that argument appears to misunderstand the purpose of a land use consent. Under s 134 a land use consent attaches to the land to which it relates and can be enjoyed by the owners and the occupiers of the land. The ability to use the land for that purpose attaches to the land itself. However, s 134 does not provide that liability associated with non-compliance with the terms of the

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to transfer of water permits.

<sup>105</sup> Pursuant to Rules C6.3.2(19) and C6.4.5(2) of the TRMP.

<sup>106</sup> As the Court of Appeal noted in *Hampton* at [104], as a general proposition no property or interest in property changes hands when a resource consent is granted.

resource consent can be avoided by no longer occupying the land. That argument conflicts with the enforcement provisions of the RMA (for example s 314(1)(b) and (c) which relate to actions previously caused by or on behalf of the person) and the overall purpose of the RMA set out in s 5.

[252] Finally, Mr Hopkinson noted that the only consents transferable under s 134 are those which allow activities under s 13 of the RMA.

### ***Evaluation***

[253] Before addressing the matter of hand backs, we find that s 134 does not authorise the transfer of the Resource Consents. Land use consents run with the land. Only a s 13 consent can be transferred. While all the Harvesting Consents and the Log Jam Consent included a s 13 consent, it does not follow that that consent enables the whole of the Consents to be transferred. While it is arguable that any s 13 consent could be severed from the Consents and transferred, that does not assist Samnic.

[254] In any event, we determine that we do not need to make a finding on the matter of transfer or otherwise as we find that transfer or expiry of a consent does not relieve the consent holder, or anyone else acting under a consent, from responsibility for compliance. In that, we rely on the words of ss 134 and 138 of the RMA and the case authority to which we were referred.<sup>107</sup>

[255] Finally, the orders seek to address the adverse effects caused by or on behalf of the respondents in terms of ss 314(1)(b)(ii) and 314(1)(c) of the RMA. Those provisions are directed at having those who have caused adverse effects address them.

## **I2. Hand back**

### ***Samnic***

[256] Mr Pilditch argued that even if the Resource Consents were not transferred, there is no foundation for Woodlett to say that it was not aware that the hand back of the land did not include the transfer of any outstanding obligations under the Resource Consents for the following reasons:

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<sup>107</sup> *Bay of Plenty Regional Council v Waaka* EnvC A80/2009, at [21]-[32].

- (a) Woodlett relied on a resource consent to replant (and to harvest a compartment within the forest that Woodlett owned). It liaised with the Council about that replanting.
- (b) Woodlett sent an email dated 19 August 2016 to Mr Hayes in relation to a variation to the Resource Consent conditions about replanting that Mr Woodhouse intended to rely on. Mr Pilditch submitted that he was clearly aware that he was responsible for the Resource Consents once Samnic left the Forest.<sup>108</sup>
- (c) Woodlett signed an agreement with PF Olsen to allow access through the Forest, chiefly River Road, following Samnic's involvement with it. This included PF Olsen maintaining and potentially creating roads and infrastructure for which PF Olsen had to pay an environmental bond for Woodlett's benefit.<sup>109</sup> PF Olsen could only have undertaken those activities in reliance on the 2020 Harvesting Consent. Woodlett received revenue of approximately \$275,000 + GST for this access.<sup>110</sup>
- (d) Mr Woodhouse signed a letter to Samnic dated 3 July 2015 (**July 2015 letter**) stating:<sup>111</sup>
  - 5. ...Samnic shall create and maintain all roads and tracks as outlined in the harvest plan and hand these over to the land owner when each compartment is handed back, after which maintenance is the responsibility of the land owner.

Mr Pilditch submitted this is unequivocal evidence that Mr Woodhouse knew and intended from the start of the harvest to be responsible for Forest maintenance as each compartment was handed back.<sup>112</sup>

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<sup>108</sup> Email dated 19 August 2016 from D Woodhouse to R Hayes – Exhibit 9.

<sup>109</sup> Access License Agreement between Woodlett and PF Olsen, at [10] – Exhibit 11.

<sup>110</sup> Clause 10 of the undated Access Licence Agreement between Woodlett and Waiteata No. 2 Forest Partnership – Exhibit 11. The Partnership's Harvest Manager was PF Olsen Ltd.

<sup>111</sup> Letter dated 3 July 2015 from D Woodhouse to Samnic – signed 10 August 2015 by Mr Woodhouse – Exhibit 6.

<sup>112</sup> Also referred to in Exhibit 3, page 16 Council's interview with Mr Woodhouse.

- (e) Woodlett reduced its rent (Forestry Right fee) to the JV. As each compartment was handed back, it arranged for inspections and it paid the consent monitoring fees in 2023.
- (f) Woodlett wrote to auditors BDO in 2021, acknowledging the hand backs at that time and indicating there were no concerns.<sup>113</sup>
- (g) The Resource Consents permit or authorise an activity. In this case the only active Resource Consents are the 2020 Harvest Consents and the Logjam Consent:
  - (vii) the Logjam Consent authorised clearance of the logjam. That occurred and concluded. No ongoing maintenance conditions were required and therefore the Resource Consent is effectively concluded and cannot be used to compel any party to conduct further works; and
  - (viii) the 2020 Harvest Consents are similar but permit harvesting of the remaining area of the Forest as well as replanting. They contain only one relevant post-harvest condition; not to leave unstable accumulation of slash and waste logging material or spoil. All of the other conditions are conditions relating to the harvest. Therefore, the Council has little ability to compel Samnic to conduct work as a result of responsibilities under the Resource Consents (if Samnic still holds the Resource Consents, which is not accepted).
- (h) Samnic's role in the Forest ceased on the expiry of the Forestry Right, which is referred to in the decision of the High Court.<sup>114</sup>

[257] Samnic said that when each compartment was handed back the Council was notified by letter of the hand back and of the transfer of the Resource Consents. Each

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<sup>113</sup> NOE 24 March 2025, Dm Woodhouse, page 395-396; Affidavit of RS Hayes (Enforcement) dated 10 March 2025, Annexure D – Letter BDO to D Woodhouse dated 30 July 2021 countersigned by D Woodhouse on 17 August 2021.

<sup>114</sup> Affidavit of GF Fortune, **Annexure B** – *Samnic Forest Management Limited v Samnic Forest Waingaromia (No. 1) Limited* [2025] NZHC 253 at [37].

letter was similarly worded and noted its understanding that, under s 134 RMA, resource consents attach to the land and “that this means that the hand back will transfer the resource consents (and any remaining obligations under them) to the landowner”.<sup>115</sup> As the notifications made express reference to s 134 there should not have been any doubt on the Council’s or Woodlett’s part as to what Samnic was doing. It considered it was removing itself from any responsibility for compliance with the relevant Resource Consents for those compartments, or for any maintenance of those compartments.

[258] Samnic submitted that the Court ought not to exercise any discretion to make an order if the cause of the adverse effects is lack of maintenance, because the land owner clearly assumed responsibility for the maintenance. In essence, Samnic is being asked to improve Woodlett’s asset from which Woodlett would derive continued value but not Samnic.

### ***Woodlett’s response***

[259] In response, Woodlett submitted:

- (a) Samnic’s notifications of hand backs were for replanting purposes only. Woodlett carried out replanting pursuant to Samnic’s Resource Consents as, under the Forestry Right, the land owner was responsible for replanting. As Samnic’s harvesting occurred on a progressive or compartmental basis, Woodlett would arrange for replanting of those compartments once harvesting had been completed. Replanting within 18 months was a condition of the Consents. Replanting cannot amount to an implied acceptance of all Samnic’s obligations including its ongoing breaches of its Resource Consents;
- (b) Samnic never transferred the Resource Consents to Woodlett. Woodlett relied on the need for a transfer of consent form to be completed, noting that a form was never completed;

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<sup>115</sup> Affidavit of RS Hayes (Enforcement), correspondence at Annexure F.

- (c) the July 2015 letter does not state that Woodlett would accept Samnic's Resource Consent obligations, responsibilities or liabilities on hand back of compartments.<sup>116</sup> It does not amount to an express or implied acceptance of Samnic's obligations;
- (d) as deposed by Mr McCloy and Mr Hammond, even where a hand back occurs under a Forestry Right the original consent holder remains liable until the consented activity is completely concluded,<sup>117</sup> and there should be very clear communication of acceptance of hand backs or transfers of Resource Consents given the potentially very significant obligations being taken on by the transferee.<sup>118</sup> That did not occur in this case. Mr McCloy deposed that he had been involved in a number of forests where there were hand backs and had never seen a consent holder attempt to use that mechanism to argue that hand back constitutes a transfer of consent.<sup>119</sup>
- (e) Woodlett was never copied into Samnic's correspondence to the Council regarding hand backs or the transfer of its Resource Consents to Woodlett. When Mr Woodhouse became aware of Samnic's correspondence he immediately responded, stating that Woodlett had never accepted responsibility for Samnic's Resource Consents or liabilities under those Consents.<sup>120</sup>
- (f) Samnic was the applicant and consent holder on all Resource Consents. Even after Samnic had allegedly handed back parts of the Forest, Samnic did not name Woodlett as consent holder in any of its resource consent applications;<sup>121</sup> nor did it alert the Council that Woodlett may hold parts of

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<sup>116</sup> Letter from D Woodhouse to Directors of Samnic dated 3 July 2015, Exhibit 6.

<sup>117</sup> Reply Affidavit of MW McCloy, at [30].

<sup>118</sup> Affidavit of DR Hammond, at [50].

<sup>119</sup> Reply Affidavit of MW McCloy, at [30].

<sup>120</sup> Affidavit of K Ford at KF11: email from D Woodhouse to R Hayes and others dated 6 March 2024; and Affidavit of D Woodhouse, Annexure L – Email from D Woodhouse to R Hayes dated 12 August 2022.

<sup>121</sup> Samnic was the applicant for the 2020 consents, the 2021 Logjam consent and 2022 Variation consent application (reply Affidavit of K Ford – Annexure KF5). Each of these were applied for after Samnic began handing back land after the first harvests in 2018/2019.

the Resource Consents for the Forest. Ms Noble's evidence was that it was not possible to transfer part of a consent; it was likely a variation to the resource consent would be required. Mr McCloy deposed that he had "done thousands of hectares of hand back in [his] time with corporates, and [they] could not relinquish the resource consent attached to the title until the last hectare or stick of tree was gone and cleaned up".<sup>122</sup>

- (g) Woodlett undertaking replanting did not extinguish the Forestry Right. The land had never been clear felled to Woodlett's satisfaction. Replanting cannot imply satisfaction. Mr Hayes conceded that Woodlett had never confirmed it was satisfied with the condition of the land, and indeed there were ongoing compliance issues. Likewise, Mr Funnell confirmed that to his knowledge Samnic had never received notification from Woodlett that it was satisfied with the condition of the land being handed back.<sup>123</sup>

[260] Mr Fraundorfer submitted that the July 2015 letter does not support Samnic's argument about transfer of responsibilities. On a plain reading of the letter, any maintenance obligations that Woodlett accepted could only attach to the roads and tracks. The obligations did not attach to skid sites, forestry debris, sediment and other waste left on the slopes and/or watercourses, erosion and stability controls, water tables or other infrastructure at the Forest. The remediation works required to be undertaken by Samnic as part of its post-harvest operations were very different to any general forest maintenance that Woodlett had agreed to undertake whether in 2015 or otherwise.

[261] Consistent with that analysis, Mr Fraundorfer submitted that at all material times Woodlett understood and maintained that Samnic was responsible for the infrastructure and any issues arising from its post-harvest operations at the Forest. He observed that on numerous occasions Mr Woodhouse emailed Mr Hayes about remedial work in the Forest that Samnic had not completed.<sup>124</sup> Each time, Mr Hayes

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<sup>122</sup> NOE 24 March 2025, MW McCloy, page 248 lines 26-28.

<sup>123</sup> NOE 24 March 2025, SB Funnell, page 464 lines 15-19. Also, NOE 24 March 2025, GF Fortune, page 726 lines 20-27; Affidavit of D Woodhouse (Enforcement orders) at [35]; NOE, RS Hayes, page 624 lines 15-24.

<sup>124</sup> The emails referred to, and others, are set out in [217] of this decision..

responded that Samnic was working to complete the remedial works. Samnic never said to Woodlett that it would not undertake remedial works or other works to comply with Samnic's Resource Consent conditions on the basis that those works were Woodlett's responsibility. The first time Samnic raised this argument was during the course of these proceedings.

[262] Mr Fraundorfer said that even if the focus is on the roads, as the July 2015 letter suggests, the evidence was overwhelming that it was the poor construction, not maintenance, that caused problems. He referred to No. 6 Road, which has always been a problem. He noted that Mr Woodhouse was subjected to extensive cross examination on this point and that his answers remained consistent, recording that:<sup>125</sup>

It's pretty hard to maintain something, or even start to maintain something if there is abatement notices still happening, and they were never constructed to a reasonable standard at the, in the outset. An industry standard, I should say.

...

When there's an abatement notice to rectify things, how can you maintain something if its broken? Or never constructed to a best practice to start with? That's a resource consent.

[263] For those reasons, Mr Fraundorfer submitted that it is artificial for Samnic to now claim Woodlett was the consent holder or the party responsible for remedial work at the Forest. Samnic did not obtain the Council's sign off and did not hand over the Forest to Woodlett in a condition that complied with the Consent conditions nor in a condition that Woodlett was able to maintain without taking on responsibility for Samnic's obligations, which Woodlett understood were subject to Council enforcement.

[264] Finally, in respect of Woodlett's own maintenance obligations separate to Samnic's non-compliance Woodlett does not accept that the concerns identified by the Council relate to a failure to maintain as alleged by Samnic. Mr Woodhouse and Mr Brown gave evidence that Woodlett had been undertaking general maintenance at the Forest. From 2019 Woodlett engaged Mr Brown to assist with the replanting, spraying and pest control. After the Cyclones Woodlett engaged Forward and other contractors to reopen roads, fix soakholes, clear water tables and culverts and carry

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<sup>125</sup> NOE 24 March 2025, DM Woodhouse, page 397.

out maintenance.<sup>126</sup> Woodlett was limited in the maintenance it could undertake by the condition in which Samnic had left the Forest.

### ***Council's response***

[265] The Council does not accept Samnic's argument that the hand back was a transfer of Samnic's responsibility for its obligations under the Consents, including responsibility for any contraventions of those Consents. Mr Hopkinson submitted that this is contrary to the primacy the RMA places on a consent holder's obligations to ensure compliance with a resource consent. Further, it also does not address the key grounds for the Council's application, which is that the orders are necessary to avoid, remedy or mitigate any actual or likely adverse effect on the environment caused by or on behalf of them.<sup>127</sup>

[266] The Council's response to Woodlett's resulting level of responsibility is set out earlier in this decision. In short, the Council submitted that Woodlett is in sole charge of the Forest, it previously acknowledged responsibility for maintenance of tracks and roads as compartments were handed back, and that some of the issues at the Forest arise from a lack of maintenance.

### ***Evaluation***

[267] Contractual relationships cannot override or supplant statutory responsibilities. For the purpose of making orders, we do not need to determine whether or not Woodlett accepted responsibility for each compartment as it was handed back, or if Woodlett accepted it would be responsible for roads and drains, among others.

[268] The law is clear. All those who use land must act in accordance with the requirements of the RMA. A landowner cannot avoid responsibility for compliance by contracting with another to undertake an activity. They and the person undertaking the activity are responsible for what occurs on the land.

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<sup>126</sup> Affidavit of W Brown at [20] and Affidavit of DM Woodhouse (Enforcement orders) at [51].

<sup>127</sup> In accordance with ss 314(1)(b)(ii) and 314(1)(c) of the RMA.

[269] Indeed, s 314(1)(a) provides that the Court may require a person to cease and/or prohibit a person from anything “done or to be done by or on behalf of that person”. Section 314(1)(b)(ii) and (c) similarly refer to “caused by or on behalf” in requiring works. Section 314(1)(da) enables orders to be made in respect of land of which the person is the owner or occupier.

[270] We find that all respondents are responsible for addressing the problems at the Forest.

## **J. Discretion to make orders**

### **J1. Samnic arguments about s 319 and discharge consents**

[271] Samnic submitted that, under s 319(2) of the RMA, the Court must not make an order if:

- (a) Samnic acted “in accordance with a rule or plan; resource consent; or designation”; and
- (b) the “adverse effects” in respect of which the order is sought were expressly recognised by the person who granted the resource consent at the time of the granting that consent.

[272] Section 319(2) provides:

- (2) Except as provided in subsection (3), the Environment Court must not make an enforcement order under s 314(1)(a)(ii), (b)(ii), (c), (d)(iv), or (da) against a person if –
  - (a) that person is acting in accordance with –
    - (i) a rule in a plan; or
    - (ii) a resource consent; or
    - (iii) a designation; and
    - ...
  - (c) the adverse effects in respect of which the order is sought were expressly recognised by the person who approved the plan, or granted the resource consent, or approved the designation, at the time of the approval or granting, as the case may be.

- (3) The Environment Court may make an enforcement order if –
- (a) the Court considers it appropriate after having regard to the time that has elapsed and any change in circumstances since the approval or granting, as the case may be; or
  - (b) the person is acting in accordance with a resource consent that has been changed or cancelled under s 314(1)(e).

[273] Mr Pilditch submitted that the provision is a critical control against hindsight imposition of orders for what was an authorised activity with an established set of conditions. He argued that what has occurred here is that the Council, acting in hindsight, seeks to require Samnic to repeat the same works to different standards than those which were imposed under the Consent.

[274] He argued that there is no doubt that the Council recognised the potential adverse effects for which the orders are sought, and submitted that “it would be remarkable for GDC to suggest, given its own evidence, that the risk of slash and sediment discharge was *not* expressly considered when Samnic applied for the resource consents in 2015 and 2020”.<sup>128</sup>

[275] Mr Pilditch submitted that for every Resource Consent issued the Council contemplated (that is, expressly recognised) that the harvesting could have the adverse effects described in the application for enforcement orders. He provided a table setting out examples from each Resource Consent where the Council specifically acknowledged the adverse effects in the consenting process. He pointed to Ms Noble’s evidence that before the 2015 Resource Consents were granted the Council was aware of the danger of slash mobilisation during rain events and the devastating impact slash mobilisation could have. Ms Noble noted that by the Queen’s Birthday storm event in 2018 the Council was much more aware of the effects of slash mobilisation, and at the time the 2020 Harvest Consents were issued the effects of slash mobilisation were at the forefront of the Council’s mind.<sup>129</sup>

[276] Mr Pilditch argued that although the effects of Cyclones Hale and Gabrielle were devastating, they were not out of the realm of appreciation given the effects of

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<sup>128</sup> Samnic’s Closing Submissions at [19].

<sup>129</sup> NOE 24 March 2025, JB Noble, pages 259 and 260.

significant slash mobilisation during the 2018 Queen's Birthday storm. He argued that the effects of that mobilisation were expressly considered by the Council when granting each of the three Harvesting Consents; the evidence demonstrated that the Council gave greater consideration to the effects of serious slash mobilisation each time it granted the Resource Consents.

[277] In those circumstances, Mr Pilditch submitted that s 319(2) prevents the Court making enforcement orders against Samnic.

[278] In closing, Mr Pilditch raised an alternative argument. While accepting that none of the Resource Consents are s 15 discharge consents, he argued that all of the Resource Consents were intended to allow clearfell harvesting.<sup>130</sup>

[279] Referring to the 2020 Harvest Consent application report provided by Mr Ford,<sup>131</sup> he noted that Samnic had set out rules from the NES-PF and the regional plan affected by the proposal; that those provisions require the Council to impose measures to minimise erosion and sediment.<sup>132</sup>

[280] While there was no s 15 discharge consent sought, he submitted that the Council still had to turn its mind to managing slash, sediment and erosion. The Council cannot say that because no s 15 consent was applied for it did not need to assess the effects of slash and sediment in the environment. Mr Pilditch submitted that those were matters over which the Council retained control, even under land use consents; that if the Council considered that further consents were required it should have raised it.

[281] From that he infers that in assessing the applications the Council believed there would be no discharge of slash or sediment; or that the consent permitted the discharge and controlled it through conditions; or that, provided the slash was removed at the end of the harvest, it was not a contaminant.

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<sup>130</sup> He noted that some councils issue a single global consent addressing all relevant restrictions under Part 3 of the RMA, citing a recent case of *Kaiama Farm Ltd v Marlborough City Council* [2024] NZEnvC 150. He submitted that the Court did not criticise that approach, and in determining the scope of the consent looked to the scope of the consent application.

<sup>131</sup> Reply Affidavit of K Ford: KF5, pages 19 & 20 of the report.

<sup>132</sup> By way of example, NES-PF Regulation 60(3)(b) and rule 7.1.6(29) TRMP.

[282] Concluding, he submitted that the Council had to consider the adverse effects of increased slash and sediment on the environment when it issued the Resource Consents; conditions in the Consents expressly addressed the risk of adverse effects arising from sediment and slash.

[283] Under s 319(2), he submitted that the question is whether the adverse effects which the orders seek to address were expressly considered by the person who granted the consent. He submitted that the ‘type’ of consent is not important.

### ***Council’s response***

[284] The Council noted that only land use consents were granted for the harvesting activities. No discharge consents under s 15 were ever sought or obtained by Samnic.

[285] Samnic submitted that the discharges of large woody debris and sediment were implicitly authorised by the land use consents.<sup>133</sup> However, no case law was provided to support ‘implicit authorisation’. Mr Hopkinson submitted that s 15(1) of the RMA provides that no person may discharge contaminants unless they are expressly authorised to do so. There is no evidence that the decisions granting land use consents for the Forest authorised discharges of large amounts of woody debris and/or sediment.

[286] Further, there is no evidence in those decisions that discharges of woody debris and/or sediments were expressly recognised by the Council when granting the land use consents. Mr Hopkinson respectfully agreed with Ms Limmer’s submission for MTT that it is fanciful for the Respondents to now argue that the Resource Consents somehow authorise or recognise the discharges on the basis that the effects of the mobilisation of slash and sediment in the Ūawa catchment are less than minor.<sup>134</sup>

[287] Mr Hopkinson also submitted that it is trite law that a consent authority cannot grant more than what has been applied for. Samnic’s applications clearly sought land use consents for the harvesting activities; and while some temporary discharges of

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<sup>133</sup> NOE 24 March 2025, NJ Brown, page 436 lines 13-17.

<sup>134</sup> NOE 24 March 2025, JB Noble, page 286, line 3 – page 287, line 5.

woody debris as a result of dragging trees across watercourses may have been contemplated, hence the s 13 RMA consents for disturbance of the watercourses, it is clear that discharge consents were not sought or obtained.

[288] The scope of the consent application lodged by Samnic in 2020 made it clear that no discharge permit was sought.<sup>135</sup> There is no dispute that the 2020 Harvest Consents and the two 2015 Harvesting Consents were land use consents.

[289] Finally, Mr Hopkinson submitted that it is telling that Samnic has previously pleaded guilty to breaching s 15(1)(b) of the RMA, and that its argument is inconsistent with letters Samnic sent purporting to transfer consent obligations on the basis they were land use consents under s 134 RMA.

### ***Evaluation***

[290] We find that none of the 2020 Resource Consents authorised discharges of contaminants. In fact all contained conditions which made it clear that:

- (a) there was to be no side cast material deposited into any watercourse;
- (b) runoff onto landings shall be intercepted by cutoff drains and is to discharge clear of all fill;
- (c) water table culverts shall be installed and shall not discharge directly onto fill or side cast material;
- (d) no unstable accumulations of slash, log ends, tree heads or waste logging material, including mixed in spoil, shall be left on or beneath landing edges at the conclusion of logging at each landing.

[291] While the various officer reports for some of the Resource Consent applications noted the potential for certain environmental effects (such as woody harvesting debris, deposits in watercourses being translocated downstream) to arise, that is not to say that such activities were authorised by any of those consents. Discharges were not authorised.

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<sup>135</sup> Reply Affidavit, K Ford, Exhibit KF5; NOE RS Hayes, page 534 line 18, page 536 line 31.

[292] Mr Pilditch argued that discharges were ‘implicitly authorised’. We understand him to suggest that for an activity that requires different consents, for example as here a discharge as part of a land use consent, it is possible to implicitly authorise the discharge component even though it was not applied for nor mentioned in the land use consent. We do not accept that. The RMA divides its focus so as to control the use of land, air and water. Separate consents are required to authorise activities which affect those resources.

[293] Section 319(2) guards against a consent holder being ordered to cease an activity for which the adverse effects were recognised and authorised at the time of consent. It does not prohibit the Court from granting enforcement orders in respect of activities that have not been consented or for enforcement of conditions that have been breached.

[294] Here, not only were the discharges not authorised but they also breached the conditions of the Resource Consents and s 15(1)(b) of the RMA.

[295] We find that s 319(2) does not operate as a bar to the making of orders. If we are wrong, we note that s 319(3)(a) provides that orders may be made having regard to the time that has elapsed and any change in circumstances. Given the extensive damage wreaked in Tairāwhiti from Cyclones Hale and Gabrielle we find we can rely on s 319(3).

## **J2. Discretion to impose an order should not be exercised against Samnic and its directors**

[296] Mr Pilditch submitted that the application against Samnic is directed at the wrong party; that Samnic was the agent of the JV under the joint venture agreement throughout the planting and harvest of the Forest.

[297] Insofar as there had been any profits made from the Forest Samnic has not derived them. The profits have instead gone to the JV for payment to the relevant contractors and Woodlett. Any money has subsequently been distributed to the shareholders of the JV (of which the three directors of Samnic are minority shareholders).

[298] Mr Pilditch observed that, in forestry operations, any profit is derived from the income from selling the trees less the expense of harvesting. Given that the Council alleged deficiencies in the manner of the harvesting of trees, the costs for remediating any issues with the harvesting ought to derive from the profit. He submitted that if the Court finds the issues are made out, the cost of remediation ought to be drawn from the income derived from selling the harvested trees because there is a causative link between that income and the works which were (or were not) undertaken to acquire that income.

[299] He relied on three primary policy drivers for adopting this type of approach when imposing obligations:

- (a) the ‘polluter pays’ principle is maintained by considering who actually caused/profited from the adverse environmental effects;
- (b) it prevents any financial gain from causing adverse environmental effects; and
- (c) it avoids placing unfair and unreasonable financial burdens on parties who were agents for the venture. The Council seeks orders against a company that acted for and had to account to the JV and its three individual directors, who likewise had to act in the best interests of Samnic and the JV. The directors explained in their evidence that Samnic and its directors are unlikely to have the financial ability to comply with the orders.

[300] Mr Pilditch submitted that natural justice weighs strongly against granting orders.<sup>136</sup> He noted that the application was filed in January 2025 in relation to harvesting activities that Samnic ceased in 2022. Mr Pilditch submitted that Samnic relied on the Resource Consents’ conditions to determine its obligations. When it was abated it remedied the issues. It completed the harvesting and nearly all of the 2022 Abatement Notice works by late 2022.

[301] He also submitted that Dr McConchie and Mr Hammond agreed that the current application is concerned with asking the Respondents to re-do work to a

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<sup>136</sup> Citing s 27(1) of the New Zealand Bill of Rights Act 1990.

different standard (i.e. retrospectively amending the Resource Consents). The issue of shifting goalposts would not have arisen if the application had been brought in a timely manner because factors such as the standard of the work being carried out, the regulator's expectations and best practice guidelines would have been aligned.

[302] Mr Pilditch reiterated that Samnic is tasked with defending works at the Forest, including Abatement Notices, when it has not been there for over two years, had no reason to be there in 2023; was not advised of the May 2023 inspection until 2024 due to an oversight by the Council, and was not alerted to there being any outstanding issues during the sentencing phase of the 2022 prosecution in May 2024.

[303] Mr Pilditch noted that Samnic was expected to respond to evidence, much of which was gathered after its involvement, when it is in no position to realistically consider and, if necessary, challenge the reliability of conclusions that it was its practices rather than the endemic lack of maintenance before, during and after extreme weather events that are the cause of ongoing issues.

[304] Samnic acknowledged that it was responsible for the compartments it harvested and for a reasonable time thereafter to allow for timely inspection by Woodlett or the Council and to complete any required works. By way of example, on 2 July 2022 (after the final compartment was harvested in May 2022) Mr Hayes emailed Mr Woodhouse advising that Samnic had further works it wanted to do to comply with Council inspections of the Forest in April and May 2022. He noted that, technically, as Samnic had handed all the land back and its access rights lapsed on 30 June 2022, it needed permission from Woodlett to access the site to complete the works.

[305] Having said that, Mr Pilditch submitted that it is not appropriate for the Council to turn around years after Samnic (and its contractors and their machinery) left the Forest and apply for orders for issues that it did not raise at the time they occurred. If the Council had raised additional concerns (beyond the matters covered in the Abatement Notices) in a timely manner, Samnic would have had various options available to it. For example it could have withheld payments from contractors, terminated contracts, or brought civil claims.

[306] Finally, he noted that the responsibility for the land and maintenance of the harvested Forest was handed back to Woodlett throughout the harvesting period, allowing it to replant. As each compartment was handed back Samnic notified the Council. Even if the transfers of the Resource Consents for the compartments were not valid, the Council was on notice from 2018 that these were opportune times to conduct inspections.

[307] Mr Pilditch submitted that Samnic's hand back notices to the Council were demonstrative of Samnic's clear and open communication with the Council throughout its tenure in the Forest. Where problems arose it constructively engaged with the Council, acting on the concerns and arranged for the problems to be remedied. Its communications put the Council on notice that inspections were required.

### ***Council response***

[308] As to natural justice weighing strongly against granting enforcement orders, the Council observed that there was an eight-day hearing in relation to the application during which there was ample opportunity for the Respondents to test the Council's case and adduce their own detailed evidence and legal arguments.

[309] There is no evidence to support Mr Pilditch's submission that the goal posts have shifted, or that a different standard has been introduced thereby retrospectively amending the Resource Consents.

[310] Mr Hopkinson noted that Mr Hayes stated that the 2015 Harvesting Consents pre-dated the 2020 Forestry Owners' Association roading standards, effectively inviting the Court to infer that roading standards had been updated in that time. However, the NZ Forest Owners Association Road Engineering Manual was first published in 2011 and has effectively not changed.<sup>137</sup>

[311] Mr Hopkinson provided some of the Council's sentencing materials from the 2022 prosecution, which was heard in 2024. He submitted the fact that issues at the

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<sup>137</sup> Council Closing Submissions at [112](b).

Forest had not been addressed, and the poor state of the Forest, was highlighted at sentencing.

### ***Evaluation***

[312] We find that, as Harvest Manager, Samnic is an appropriate respondent. There is no application against the JV, so there is little we can respond to on that point save to note that the JV engaged Samnic to manage all matters relating to the harvest of the Forest. We have no evidence as to whether or not the JV directed or had a hand in the direction of operations or the making of decisions.

[313] As to Mr Pilditch's submission that it is appropriate that the cost of remediation ought to be drawn from income from selling harvested trees, that may well be so. But it does not assist. The fact remains that the state of the Forest land is such as to be causing adverse effects on the environment. Those effects must be addressed. What fund the cost of addressing those effects comes from is not for the Court to concern itself with.

[314] Samnic has been given ample opportunity to be heard in these proceedings and to call evidence. There are no concerns of natural justice.

[315] Samnic did not properly or entirely remediate the Forest before it left in 2022. We do not accept that the application for enforcement orders is seeking to require the respondents to re-do work. The effect of not completing work properly has exacerbated problems. In these circumstances, Samnic has an ongoing responsibility for compliance at the Forest as consent holder and the company that was responsible for undertaking the harvest.

[316] We address the responsibilities of Samnic's directors later in this decision.

### **J3. Discretion to make an order should not be exercised against Woodlett and Mr Woodhouse**

[317] Even if the Court finds that orders against Woodlett are necessary, Mr Fraundorfer submitted that the Court should exercise its discretion under s 319 to refuse to make orders because the issues were not of Woodlett's or Mr Woodhouse's

making. He alleged that the issues would have been resolved earlier had the Council taken appropriate steps to enforce Samnic's obligations under the Resource Consents and the RMA.

[318] Finally, he submitted that if the Court is satisfied that it is necessary to make enforcement orders against Woodlett and Mr Woodhouse, the orders currently sought are too wide, not sufficiently focussed, and that a staged approach should be taken.

### ***Council response***

[319] The orders are necessary because the evidence establishes that the risk of woody debris and sediment from the Forest entering water remains an issue. Both parties bear responsibility for the issues, and both should be included in orders. The Council noted that Woodlett has operational control as landowner and ongoing forest manager.

[320] It rejected any suggestion that the Council has breached its duties under the RMA to monitor the activities. Mr Hopkinson submitted that the Council has appropriately undertaken its monitoring, compliance and enforcement functions.

### ***Evaluation***

[321] We find that Woodlett as landowner and Mr Woodhouse as director should be subject to enforcement orders. They had responsibilities in the Forest prior to and following Samnic's departure. Woodlett is the landowner and forest manager and has been since the end of 2022.

[322] For completeness, we find that the Council has actively involved itself in trying to ensure compliance with the RMA and the Resource Consents. It has not sat on its hands and any suggestion that it should have done more is without foundation. It is a public body and it is not for it to expend funds on further assessments that the Respondents say it should have undertaken in order to pinpoint more exactly where issues are located. That is for those who caused them to attend to.

#### J4. Application against directors

[323] The Council has brought an application for orders to be made against Samnic, Woodlett and their directors.

##### *Samnic*

[324] Samnic asked that the application against its directors be dismissed for the same reasons advanced for the company. Fundamentally, however, Mr Pilditch submitted that the circumstances of this case mean that it was wholly inappropriate to join the directors of the agent for the JV which formerly managed the Forest. It appeared that the reason for joining the directors was because of a concern about the solvency of Samnic. That is not a principled basis for joining the directors. In fact, joining them because of a concern about the ability of the company to meet any order undermines the usual protection afforded by limited liability status.

[325] In circumstances where the directors were agents for Samnic, and not acting on their own account, Mr Pilditch submitted that the Council should only have joined the directors if it had gathered evidence specific to them to demonstrate why it was appropriate for those directors to cease or take action to address adverse effects being caused by the company, or if it had identified breaches of the directors' duties. It is not enough to show that the directors of Samnic were involved in the management of the company, that is merely acting as directors.

[326] Mr Pilditch relied on the Court's rationale for dismissing charges against directors in *Worksafe New Zealand v Buttle* (**Buttle**).<sup>138</sup> The issue was whether there was sufficient evidence to prove (to a criminal standard) that the directors were liable under the relevant provisions of the Health and Safety at Work Act 2015 (**HSWA**). The Court found that the charges against the directors must be proved against them individually. It noted that the evidence considered them as a group, as a board, and that is not enough.<sup>139</sup>

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<sup>138</sup> *Worksafe New Zealand v Buttle* [2023] NZDC 18939.

<sup>139</sup> *Buttle*, at [12].

[327] He also referred to cases involving civil proceedings against directors and against companies under the Fair Trading Act 1986, for example where the company and a director were found jointly liable where the director was instrumental in causing the misleading conduct.<sup>140</sup>

[328] Mr Pilditch submitted there is no evidence as to how the directors have breached the RMA or the Resource Consents. Further, that there is no suggestion of bad faith. The directors gave evidence that they strove to comply with the Council's requirements, and provided evidence that they took proper advice, engaged appropriately qualified professionals to undertake the harvesting, day-to-day management and, where appropriate, remediate the Forest.

[329] He submitted that the directors acted collectively as a Board and none of the decisions can be attributed to any individual director. There is no evidence that any individual director breached their duties or acted individually.

### ***Woodlett***

[330] Woodlett argued, for different reasons, that it is not appropriate to make an order against Mr Woodhouse. Mr Fraundorfer said that s 314(1) (da) is not engaged, as Mr Woodhouse is not an owner or occupier of the land. Woodlett owns the land. Further, that the Council has failed to establish an order is necessary.

[331] First, he advised that Woodlett is not insolvent and has assets to satisfy any orders made, including property. That is in contrast to Samnic. Mr Woodhouse has confirmed, on behalf of Woodlett, that the company is willing to comply with any ongoing monitoring and maintenance requirements, provided Samnic first carries out remedial work.

[332] Second, Mr Woodhouse has never been the subject of any enforcement action by the Council, save for this application.

[333] Finally, his circumstances can be distinguished from other cases in which directors were held liable largely because in those cases the respondents were directors

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<sup>140</sup> *Sullivan v Wellsford Properties Ltd* [2019] NZCA 168

of the consent holder company and both had a history of non-compliance,<sup>141</sup> or orders were made by consent and the respondents were directors of the consent holder, not the landowner;<sup>142</sup> the company and its director were directly responsible for the conduct;<sup>143</sup> or the orders followed a prosecution. Mr Fraundorfer distinguished a further case where the respondent was a director of both the land owning company and the company providing forest management services.<sup>144</sup> And finally, he distinguished *Whangarei District Council v Sustainable Solvents Group Limited*<sup>145</sup> on the basis that interim orders were made ex parte, and the final orders were made by consent.

[334] Mr Fraundorfer argued that if orders are made against Samnic and its directors it is not necessary to make orders against Woodlett or Mr Woodhouse. Also, he submitted that Samnic raised issues about its financial state, and to avoid Woodlett being left with responsibility for any orders that may be made Samnic directors should be part of the orders.

### ***Council's response***

[335] The Council said its case is straightforward. To ensure compliance, any orders should include the company directors. It is important that directors are held personally accountable for their company's legal responsibilities under the RMA. Enforcement mechanisms have more weight and positive effect, from a compliance perspective, when they relate to directors personally. Mr Hopkinson also observed that if either respondent company goes into liquidation the enforcement orders will become useless.<sup>146</sup>

[336] The Council responded to the submissions raised about director responsibility and the evidence required to establish responsibility in this case.

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<sup>141</sup> *Tasman District Council v The Best Berry Co Ltd* [2011] NZEnvC 230.

<sup>142</sup> *Southland Regional Council v McDowall Rural Services Ltd* [2017] NZEnvC 023.

<sup>143</sup> *Wellington City Council v Futuna Trust Ltd* ENC Wellington ENF058.02, 17 September 2002.

<sup>144</sup> *Gisborne District Council v Timbergrow Limited* [2024] NZEnvC 212.

<sup>145</sup> *Whangarei District Council v Sustainable Solvents Group Limited* [2020] NZEnvC 020.

<sup>146</sup> Noting a previous case where that had occurred, *DNS Forest Products (2009) Limited v Gisborne District Council* [2020] NZHC 2437.

[337] Mr Hopkinson respectfully submitted that the *Buttle* case has no bearing on the legal liability of directors of a consent holder in an enforcement order application under s 314 of the RMA. Having said that, he submitted that the issue in that case was whether there was sufficient evidence to prove the specific charge under the HSWA. He submitted it is not binding authority on this Court for a proposition that enforcement orders under the RMA can never be made against company directors.

[338] In support of the application against the directors we were referred to other decisions where the Court has imposed orders. In the *Sustainable Solvents Group Limited*<sup>147</sup> case Judge Kirkpatrick held:<sup>148</sup>

I consider that all six respondents should be subject to the orders. The evidence shows that all three companies bear at least some responsibility for what has occurred or not occurred on the site in recent years. It is appropriate for the directors and shareholders also to be subject to the same orders **so that the people who control and own the companies are accountable in the same way.**

(emphasis added)

[339] We were also referred to the Court's comments in a recent decision that s 314 RMA enables orders to be made against any person.<sup>149</sup> The Court highlighted that the provisions of s 314 are distinct from s 340(3) RMA, which governs directors' liability for offending by a company. The Court said:<sup>150</sup>

...directors of companies have clear responsibilities under both the common law and the Companies Act legislation. Company directors are the face of a company and must, among others, ensure that a company fulfils its legal obligations. There may, therefore, be circumstances when it is appropriate to require a company and its directors to cease or take action to address adverse effects being caused by a company.

[340] As to the evidence, Mr Hopkinson submitted that the forestry activities were undertaken on behalf of Samnic and the consents were in its name. Mr Hayes was involved in the preparation of the 2020 Harvesting Consent and Logjam applications. Further, all directors have previously been issued with abatement notices in their capacity as directors and did not appeal or challenge them. As part of the 2022

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<sup>147</sup> *Whangarei District Council v Sustainable Solvents Group Limited* [2020] NZEnvC 020.

<sup>148</sup> At [34].

<sup>149</sup> *Gisborne District Council v China Forestry Group NZ Company Limited* [2024] NZEnvC 189.

<sup>150</sup> At [141]

prosecution all were charged with offences but those charges were later withdrawn as part of a plea arrangement with Samnic. Mr Hopkinson submitted in those circumstances all directors had personal knowledge of the issues.<sup>151</sup>

[341] As to Woodlett, Mr Hopkinson submitted that it is clear that as sole director, Mr Woodhouse had authority to make decisions for the company. He has had personal knowledge of the compliance issues at the Forest since at least July 2022. He was provided with copies of abatement notices and inspection records following his Council interview during the investigation that preceded the 2022 prosecution.

### ***Evaluation***

[342] We find that we can make orders against ‘any person’ in terms of s 314. We accept that, jurisdictionally, we are able to make orders against company directors.<sup>152</sup> Respectfully, we find that given it involved different legislation the *Buttle* decision does not assist us in this proceeding. Having said that, we accept that we must be satisfied that the actions or omissions that have led to the state of the Forest are the responsibility of Samnic, Woodlett and their respective directors. On the balance of probabilities, we are so satisfied. Works were undertaken by them or on their behalf on land in respect of which they were the owner or occupier.

[343] It is clear to us that the Samnic directors were involved in the harvest of the Forest. Each director had different roles, but all were aware of what was happening in the Forest and involved (if only peripherally for some, i.e. Mr Funnell) in decisions that were made. The directors have previously been issued with abatement notices and did not appeal or challenge them. As Woodlett’s sole director, Mr Woodhouse was aware of the progress of the harvest and was involved in decision-making as to applications for resource consent, variations, replanting among others. Further, since November 2022 Mr Woodhouse and his company have had sole responsibility for the Forest.

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<sup>151</sup> Mr Fortune advised that he observed all information Mr Hayes sent, and that since the beginning of the harvest he spoke to Mr Hayes ‘almost every day’ or Mr Funnell. He stated that, although he wasn’t the originator of the email he was ‘over everything that happened’. NOE, page 667 lines 1-14.

<sup>152</sup> *Whangarei District Council v Sustainable Solvents Group Limited* [2020] NZEnvC 020 and *Gisborne District Council v China Forestry Group NZ Company Limited* [2024] NZEnvC 189.

[344] It is appropriate that any orders we make include all directors.

### **K. Appeals against Abatement Notices**

[345] The Council described the Abatement Notices being appealed as falling into two broad categories. The first category of Notices require that a number of remedial actions be undertaken in the Forest. They are directed at Woodlett, Samnic and its directors. The Council maintains that the Abatement Notices were appropriately issued but the remedial actions required have been overtaken by the application for enforcement orders. As such, if the enforcement orders sought are granted by the Court, these Abatement Notices would be cancelled by the Council.

[346] Given the Court is making enforcement orders in this proceeding we expect the Council will cancel the Notices.<sup>153</sup>

[347] The second category of Abatement Notices require the directors of Samnic to cease contravening various conditions of the Resource Consents. The Notices relate to the 2020 Resource Consents and to the Logjam Consent.

[348] The Council maintains that those Notices were appropriately issued, that they are necessary to ensure compliance with the conditions of the Resource Consents, they echo previous Abatement Notices issued by the Council to Samnic in July 2022 which were not appealed or cancelled and remain in force, and should be confirmed by the Court.

[349] Appeals against abatement notices are governed by s 325 of the RMA. Section 325(5) of the RMA contains a similar prohibition to that contained in s 319(2) for enforcement orders. The appellants do not assert that any of the circumstances set out in s 325(5) of the RMA apply.

### **Woodlett appeal**

[350] Woodlett challenged the basis for issue of the Abatement Notice.

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<sup>153</sup> Abatement Notice 2024-A348, -A344, -A345, -A349 and -352.

[351] We conclude that as the matters broadly addressed in the Woodlett Abatement Notice are addressed in the enforcement orders, there is no need for the Abatement Notice to remain on foot. We record the Council's intention to cancel the Abatement Notice in those circumstances.

### **Samnic appeals**

[352] The grounds for challenging the Notices are largely those raised in opposition to the application for enforcement orders; Samnic is no longer responsible for the Forest, any breach of the Resource Consents and RMA have arisen due to the lack of maintenance by Woodlett, Samnic does not have legal access to the Forest and is precluded from complying with the Notices.

[353] There are other challenges relating to the areas referred to in the Notices, the appropriateness of the enforcement mechanism and the fact that the establishment of the Tairāwhiti Forestry Action Group (**TFAG**) may result in policy changes that could affect how compliance may be achieved.

[354] The Council submitted that the grounds for appeal have not been made out as the evidence before the Court demonstrated that breaches of the Resource Consents have occurred as a result of Samnic's actions and they are not precluded from complying with the Abatement Notices due to lack of access as Woodlett gives permission for access.

[355] The remaining grounds of the appeal relating to land area and the establishment of the TFG were not pursued.

[356] We disallow the appeals by Samnic and its directors against the second category of Abatement Notices. We confirm the Notices, being those relating to the 2020 Resource Consents and the Logjam Consent. We record that the Council intends to cancel the first category of Abatement Notices in the event enforcement orders are made.

## **L. Form of orders**

[357] No substantive issues were raised about the wording of the proposed orders. However Mr Pilditch raised issues about lack of specificity of exact locations where work would be required, delegation of the Court’s functions to the Council and the standards to be met.

[358] Mr Hopkinson submitted that the evidence demonstrated that remedial works are required to substantively de-risk the Forest. He submitted that in cross-examination Mr Hammond largely agreed with the points raised by Dr McConchie and Mr McCloy. To the extent there were differences they related to whether ‘windthrow’ trees should be incorporated into the woody debris to be removed, whether sufficient time is allowed in the orders for the steps to be taken as winter approaches, and whether slash catchers are required.

[359] The Council submitted that windthrow needs to remain in the orders as it can form a significant component of the woody debris that is mobilised during a landslide or rain event; its evidence established that a significant amount of woody debris on steep harvested slopes at the Forest consists of windthrow trees.<sup>154</sup>

[360] Woodlett was concerned about the duration of the requirements for ongoing monitoring and maintenance in the application for enforcement orders. Mr Fraundorfer referred to activities setting and passing a “stress test” rain event that would remove the need for further action (and presumably result in the termination of the enforcement orders).

## **Evaluation**

[361] Mr Hopkinson submitted that the Court should not amend the orders, although he conceded there may be matters such as dates (which is certainly required) that require amendment.

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<sup>154</sup> Affidavit of Matt Wilkes at [41], Affidavit of Andrew Shelton at [42(b)], Affidavit of Dr McConchie at [88(a)].

[362] We were directed to enforcement orders in similar vein to those already agreed between other parties and signed off by the Court in a consent order. The Council has treated those enforcement orders as a template to be followed in dealing with forestry-related issues in the region.

[363] We also, however, did not have sufficient direct evidence on how all stages of those enforcement orders are working in practice to understand how their circumstances might relate to this case, although we were able to ask questions of those witnesses we had in front of us.

[364] We are mindful of the Council's submissions, along with those of other parties, when considering a number of issues relating to the form of the orders and their implementation.

### ***The risk assessment process***

[365] This is the first and underpinning step in the proposed enforcement orders. It involves a Risk Assessment Report and a Risk Assessment Map identifying all of the at-risk locations identified in the assessment. Witnesses told us that the Risk Assessment Report and accompanying Map might be prepared in one month. When asked what the methodology for it might be, Dr McConchie told us that there was no standard methodology, but that different approaches had been used for different forests in the region. Mr Hammond, for Woodlett, had no experience of this process. We suspect that the work to go into developing a robust methodology and then the Report and Map will require more than one month, even assuming the necessary experts are available to undertake it.

[366] The next step is for the Council to give its written approval to that Risk Assessment Report and Risk Assessment Map. That includes approving the best option for specified at-risk areas.

[367] Given the importance of this step, we see it as necessary that the orders provide for the Council to comment on the proposed methodology and the expertise involved to inform the risk assessment process before the work on the Report and Map commences.

### ***Water controls***

[368] The Risk Assessment Report and associated Map refer to recording the skid sites, waterways, roads and slopes identified through the risk assessment process (at-risk sites) and their assessed “risk ranking” for the purpose of prioritising remedial works.

[369] The proposed enforcement orders then have specific requirements under the heading “Water controls”. In clause 1(i), for the installation of effective water and sediment controls to eliminate or minimise erosion and the mobilisation of sediment at all skids/landings and on all tracks as soon as possible and by a specified date. There is a long list of requirements for what that would involve in clause 1(j), some more general, others more prescriptive, and some more qualified.

[370] Unlike for woody debris removal there is no reference in the requirements to the Council having any role in approving the works (or any reference to the Risk Assessment Map and Risk Assessment Report). Instead, the check is by written certification from a suitably qualified and experienced independent expert (approved in writing by the Council) that the works to achieve the above requirements have been installed.

[371] In light of the evidence, better integration of the water and sediment control elements with the Risk Assessment Report and Risk Assessment Map and woody debris removal elements of the enforcement order might be called for. The Council, too, may need to have a greater role than merely receiving written certification from a suitably qualified and experienced independent expert.

### ***Who should be involved in the processes set down in the proposed enforcement orders?***

[372] A question arose as to how the proposed enforcement orders provide for (or ensure) the necessary expertise to inform the risk assessment process and identification of options for and appropriate remedial actions, including their written certification from a suitably qualified and experienced independent expert. That also includes the integrated consideration of risk and remedial approaches to woody debris

removal from streams, skid sites and other at-risk locations, along with water and sediment controls for skids/landings and all tracks and roads.

[373] Dr McConchie saw the enforcement orders as allowing for the Council to sign off on one expert, who could call on the appropriate inputs from other experts when needed.

[374] Mr Hammond, who had no direct experience of the process proposed in the enforcement orders, considered it would be most useful to have two experts who would be able to confer on the matters involved. He agreed with Dr McConchie about the central issues that would need to be considered.

[375] The orders could be clearer in their expectations and requirements on this point.

### ***Ongoing maintenance as a factor***

[376] Another question was how ongoing maintenance was to be a factor in considering appropriate remedial actions. That particularly arose from the further requirements on the landowners to engage a suitably qualified and experienced person to recommend the locations and designs for a proposed network of slash catchers (the **Slash Catcher Network report**) to be installed at the Forest in order to minimise or eliminate the residual risk of woody debris from commercial forestry (including felled trees, windthrow trees, slash, harvesting debris) mobilising beyond the Forest.

[377] The Council is to assess the viability of the network and its written approval is required. The landowners then have two months to lodge an application for resource consent for the Slash Catcher Network. If no consent is granted the Council can apply to the Court to vary the enforcement orders to require an alternative Network.

[378] As was conceded by several of the experts, slash catchers are expensive and require a lot of maintenance and may not be needed if other satisfactory mitigation is in place. Also, there was evidence that it is more desirable to avoid the need for slash catchers by using other methods where possible, and to use them only as a last resort.

***Is there a need for better Council oversight of any stages of the work required by the orders?***

[379] Given the important role of the Risk Assessment Report and Risk Assessment Map, we consider it important that there be a step explaining the methodology to be used and the expertise to be involved in their development. That methodology should be supplied to the Council with a specified timeframe in which the Council is to provide its comments. That should ensure that the Council has no surprises as to the nature and quality of the documents it will be called on to assess and give written approval to.

[380] It may also be desirable to integrate the above with the requirements for water controls, and to have experts involved to achieve this. That would add a step to advise the Council of who and how this is to be done and the Council to comment.

***Is there a need for Court oversight of any stages of the work required by the orders?***

[381] The proposed enforcement orders assign joint and several liability. We are not in a position to direct what that might mean in terms of a reasonable expectation of a relative contribution from Samnic and the landowner for the works, whether of an analytical or physical nature, to be undertaken under the enforcement orders. It is in the interests of both parties to put the past behind them and to work together to achieve a positive outcome from the enforcement orders.

[382] However given the nature and importance of the case, we have concluded that the Court should retain some oversight of progress with the stages and aspects of the enforcement orders' requirements.

[383] It is necessary that the Court be provided with a copy of the methodology for the Risk Assessment Report and Risk Assessment Map and the Council's comments on them as soon as those are available. Also, the names of the experts who are to inform and be involved in the work.

[384] It is also desirable that there is a programme of regular reports to the Court as various milestones are achieved.

## M. Directions

[385] Accordingly, we direct that the Council advise on amendments to the proposed orders to address:

- (a) For the risk assessment process:
  - (i) a requirement for a proposed methodology for the Risk Assessment Report and Risk Assessment Map accompanied by the names of the experts who are to inform and be involved in the work; and
  - (ii) a timeframe in which the Council can comment on them; and
  - (iii) a requirement that the Court is to be provided with the proposed methodology for the Report and Map and the Council's comments on them as soon as these are available; and
- (b) How the requirements for water controls can be better integrated with the risk assessment process and successive steps in the orders.
- (c) New compliance dates.
- (d) Other matters raised by the Court in relation to the requirements for Council approval and certification.
- (e) A programme of regular reports to the Court as various milestones are achieved.

[386] The amended orders are to be provided to the Court within 14 days.

## N. Costs

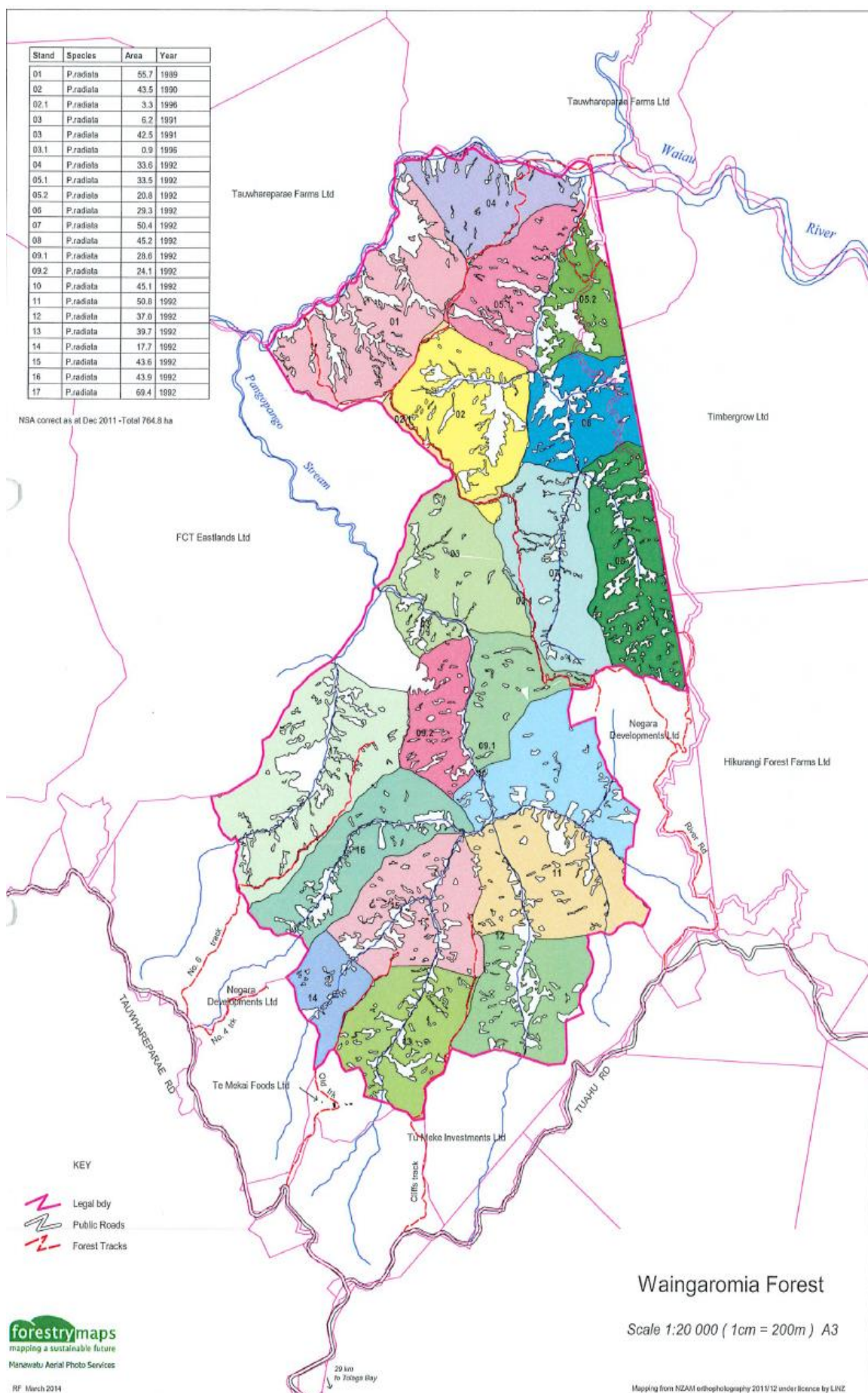
[387] Costs are reserved.



Judge MJL Dickey  
Environment Judge | Kaiwhakawā o te Kōti Taiao



# Annexure A – this reproduced image is not to scale



## Abatement notices and inspections

**2017**

### Notices dated 3 April 2017

[1] In March 2017 Council identified contraventions of the 2015 Harvesting Consents. In particular there were logs stacked in a protected watercourse obstructing water flow. Each of Samnic's directors were issued with an Abatement Notice relating to those contraventions in April 2017. Abatement Notices were also issued to the directors of the forest management company used by Samnic at that time (Kohntrol Forest Service Limited) and to the director of the company carrying out harvesting and roading operations at that time (Stubbs Contractors Limited).

[2] The Notices identified non-compliance with conditions 1, 2, 6, 8, 9, 10, 19, 21 and 23 of the 2015 Harvesting Consent (106840-00) and noted:

- (a) roads and Landings not in the alignment shown in the consent map from Landing 15. An additional Landing had been formed;
- (b) road widths at Landings 8 to 9 in excess of permitted width;
- (c) movement on the outside edge of Landings – Landings 9 and 3 have evidence of that;
- (d) Landings have no cut-off drains to distribute water off the Landings (referred to image of Landing 9);
- (e) while culverts have been installed, some do not have adequate protection in place and are discharging fill, causing scouring (referred to image at Landing 9);
- (f) earthworks undertaken in vulnerable areas due to re-alignment of road from Landing 15. Upper batters of those sites will continue to move, and care needed to contain excess spoil;

- (g) the channel of the protected watercourse is obstructed by stacks of logs and tracking in the channel. Sediment has migrated within the watercourse (referred to images);
- (h) logs dragged and stacked in water channel and machinery tracked through watercourse; and
- (i) waste logging left where it would migrate downstream (particular references to Landings 9 and 3).

[3] The Notice required that the above conditions be complied with. By way of example all Landings were to be assessed and slash pulled up onto landings where it is at risk of migration. Particular attention was to be paid at Landings 3 and 9.

[4] None of the Abatement Notices were appealed.

## ***2018***

[5] A storm impacted the Gisborne region in June 2018 (Queen's Birthday weekend).

[6] The storm caused large-scale mobilisation of woody debris from commercial forests throughout the region. A number of properties and beaches were covered in woody debris during this storm, including Tolaga Bay beach which is the downstream receiving environment for the watercourses that flow out of the Forest. The Council carried out a region-wide investigation of active commercial pine forests following that storm and during this investigation it identified further contraventions of the 2015 Harvesting Consent conditions.

[7] On 30 July 2018 the Council inspected skids/Landings 8, 10, 12, 13, 15-18, 45, 50, 58, 58T and 62 and roadways on which skids are located. The inspections revealed common non-compliances with consent conditions 6, 8 and 21 (2015-106640-00) and 6, 4, 8 and 23 (2015-106840-00). Concerns with lack of benching, compaction or armouring of fill on roads or Landings, a combination of logging debris and waratah waste left on the edge or below Landings, among others.<sup>155</sup>

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<sup>155</sup> Affidavit of DJ Sluter Annexure DS2 – Sluter Field Sheet dated 30 July 2018.

Notices dated 5 August 2018

[8] Two separate Abatement Notices identifying non-compliance with the conditions of the Harvesting Consents referred to above were issued, and they noted:

- (a) little or no benching, compaction or armouring of fill on the roads and Landings constructed on slopes greater than 25 degrees (breach of condition 6);
- (b) water on Landings directed onto fill and logging debris (breach of condition 8) (and contravening s 15(1)(b) RMA);
- (c) a number of Landings where harvesting operations had been completed had unstable accumulations of either a combination of logging debris, slash and/or waste logging material mixed with soil left on the edge of Landings, with many Landings having perched slash/slovens overhanging the Landings (breach of conditions 21 (of 2015-106640) and 23 (2016-106840)).

[9] The Notices required that Samnic cease breaching the above conditions by 1 October 2018.

**2019**

[10] In 2 April 2019 a Council officer visited the Forest to assess an application for variations of the Resource Consent in relation to replanting. He observed large amounts of felled trees that had been left on steep harvested slopes.

[11] On 5 August 2019 a Council officer inspected the Forest and identified contraventions of the 2015 Harvesting Consents' conditions. These included woody material mixed with side-cast material being left on or below landing edges and slash in a watercourse.<sup>156</sup>

**2020**

[12] Between 17 and 19 July 2020 there was another significant rainfall event in the region. On 22 July 2020 the Council began a further region-wide investigation of

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<sup>156</sup> Field Sheet 5 August 2019, W Mooney – Exhibit 21.

active plantation pine forests in the Gisborne region to assess damage following the storm event. During that investigation it discovered a 150-metre-long forestry debris jam in the Pangopango Stream at the Forest. Samnic subsequently applied for and was granted the Logjam Consent in January 2021 to remove the logjam.

## ***2021***

[13] Council officers carried out a compliance inspection at the Forest on 24 November 2021 and raised concerns about water controls, skid sites that required slash to be pulled back and disturbed earth that required stabilising to avoid loose material from mobilising downhill.

## ***2022***

[14] Following another significant rain event in March 2022 the Council inspected a number of commercial pine forests in the region. The Forest was inspected in April and May 2022.<sup>157</sup> During those inspections Council officers identified significant non-compliance with consent conditions for the 2020 Harvesting Consents and a number of locations where debris and sediment had discharged from skid sites at the Forest into tributaries of the Pangopango Stream.

[15] Debris from logjams had been placed above the banks of the Stream (rather than being stockpiled on skids 64 and 65 as required by the Logjam Consent). Officers also identified 400m of unconsented earthworks and an unconsented skid site near skid 62.

### *Notices dated 18 July 2022*

[16] As a result of the Council's inspections of the Forest in April and May 2022 the Council issued two Abatement Notices dated 18 July 2022 to Samnic.

[17] The Notices were issued for breaches of the 2020 Harvesting Consents and for breaches of the 2 March 2021 Logjam Consent. They identified breaches of

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<sup>157</sup> Danielle Castle, Job Sheet recording site visits dated 27 June 2022 – Exhibit 22.

conditions 1, 9-12, 20, 27 and 31 of the Harvesting Consents and conditions 20, 29, 30 and 32 of the Logjam Consent.

[18] For the Harvesting Consents the Notices recorded the following breaches:

- (a) 380m of road and a new skid near skid 62 had been constructed without authorisation (condition 1);
- (b) inadequate erosion and sediment controls on forestry infrastructure that concentrated runoff where rilling and erosion occurred as well as sediment discharge to waterbodies in the Forest (condition 9);
- (c) general lack of effective maintenance of erosion and sediment controls around the Forest (condition 10);
- (d) fill from road construction had been side-cast and could readily wash or erode into a waterbody (condition 11(b));
- (e) inadequate stormwater and sediment controls on Landings, roads and tracks contributed to discharges onto fill material and areas of unstable land, causing scouring and runoff (condition 12);
- (f) many ephemeral channels blocked with forestry waste (condition 20);
- (g) unstable accumulation of slash, log ends, tree heads, forestry waste or mixed spoil was observed to have been left on or beneath Landing edges at the conclusion of logging, and materials left where it may readily migrate downhill and/or enter a waterbody (condition 27);
- (h) a number of Landings/skid sites had large amounts of forestry harvesting waste material perched on the edge of Landings in unstable positions. Tension cracks were apparent in some locations. Perched material on the edges of Landings is at risk of collapse and likely to result in the discharge of forestry waste and sediment to land and into water;
- (i) discharges from where fill has eroded directly into the watercourses below collapsed roads and/or skids;

- (j) general lack of run-off controls at the Forest, which means water is flowing off roads, tracks and Landings into fill. Perennial rivers below the roads and tracks affected by those issues; and
- (k) no Replanting Management Works Plan (RMP) provided to Council for certification, in breach of condition 31. The landowner submitted an RMP for certification on 14 June 2022 that identified planting ongoing annually since 2018.

[19] The Logjam Consents related to a logjam estimated to contain between 1,400 and 2,800 tonnes of forestry harvesting with dimensions of 150m length, 20m width and 2m depth. The Notices specifically recorded the following breaches:

- (a) debris was stockpiled on the banks of the Pangopango Stream where it could be moved by stormwater (condition 20);
- (b) unstable accumulations of slash, log ends, tree heads and/or waste logging material at skid site/Landing 64 and/or beneath the Landing edges were causing erosion, cracking and slumping at the skid where it could readily migrate downhill and enter a waterbody (condition 29);
- (c) stockpiles and/or large accumulations of logs and/or debris were left on the banks of the Stream in a position where they will be entrained in flood flows of a minimum annual exceedance probability (20 year) (condition 29);
- (d) skids 64 and 65 are unstable as they are constructed from unconsolidated side-cast material and have been over-burdened with forestry waste. Cracking and slumping was evident (condition 30);
- (e) large amounts of logging debris was observed on slopes above the Pangopango Stream as well as in the tributaries upstream; and
- (f) the Site Rehabilitation Plan (SRP) required to have been submitted within two weeks of completing the removal of the debris dam from the Stream (condition 32) has never been submitted to the Council.

[20] Mr David Sluter and Dr McConchie provided evidence of the results of inspections of the Forest in 2022, and also annexed copies of the reports each had written based on those inspections. Mr Sluter was part of a team of Council officers that inspected the Forest in April 2022. Dr McConchie was part of the team that inspected the Forest in May 2022.

[21] The results of the April and May inspections formed the basis for the Abatement Notices issued in July. A detailed report of those visits was compiled in late June by another Council officer who was present at both visits.<sup>158</sup>

[22] Mr Sluter's 11 November 2022 Report (**Sluter Report**) provided an assessment of the effects of the non-compliances but also provided a comparison of the state of the Forest between his visits in April and September 2022. He assessed changes made since the Abatement Notices were served on Samnic in July of that year. Also, a Council report dated 12 October 2022 (**October Report**)<sup>159</sup> provided an analysis of steps taken since July and those that remained.

[23] The Sluter report and the October Report can be read together. The October Report gave an overall grading of compliance as "D". That grading is 'Significant Non-compliance' and means 'significant and/or serious actual or potential adverse environmental effects. Immediate action is required to resolve the issues.'

[24] The October Report detailed the following compliance issues following a visit covering No. 6 Road and skids along the road. With reference to conditions 9, 10, 11, 12 and 13:

**Compliance issues:** Deep drains have been cut around each skid site/landing with intermittent soak holes. However, many of the drains are insufficiently or incorrectly sloped causing ponding and instability as the fill becomes saturated. Soak holes have been installed in multiple locations, but many of these are incorrectly located and likely to cause further slips, and are likely to cause slumping and instability from soil saturation. Soak hole issues include:

- There being no outlets in the soak hole.
- Soak holes being installed at a low point without a safe overflow.
- Soak holes being installed in fill material.

<sup>158</sup> Danielle Castle, Job Sheet recording site visits dated 27 June 2022 – Exhibit 22.

<sup>159</sup> Letter dated 12 October 2022 from Council (G Holdaway) to Samnic – Exhibit 23.

Numerous new forestry tracks have been installed at the forest since the last Council visit. Very few of the new tracks had cut off drains or water bars installed to address the risks associated with stormwater flows. Some of these new tracks have no clear purpose or have been installed in order to complete remedial works. Along some of the fresh tracks and the existing road, fresh side casted fill/sediment is covering vegetation. The berms of forestry tracks are not an acceptable storage location for fill and sediment cast aside during road maintenance.

Two berm pipes on tracks were found to be too high to capture and re-direct water flow, and scour was beginning to occur below the pipes with water now discharging into the fill.

In at least two locations sidecast fill has been pushed onto forestry debris or slash.

**Examples of these issues are shown in the photographs ... [skids 56, 64/65 and new tracking, 63 – fresh earthworks, 60.]**

**Recommendations:** Stormwater should be directed away from slash and sediment on skid sites. If there is no appropriate discharge point for stormwater on a skid site (e.g. because there is too much slash on the ridgeline), stormwater should be piped to a stable location below the skid where it cannot cause erosion of the skid site. A soak hole with no outlet is not an appropriate termination point for stormwater in these soils as it is likely to become saturated and to destabilise the soil on the skid site. All tracks should have regular cut off drains or water bars to eliminate water flowing onto Disturbed soils and slash. Soil/fill that has been side casted should be seeded to re-establish vegetation cover and reduce erosion and sediment mobilisation. Where slash or woody material is underneath soil the soil must be pulled back to ensure these areas do not collapse.

(bracketed words added for context)

[25] With reference to the following conditions:

**Condition:**

19. Logs shall not be stacked near the edge of landings constructed adjacent to or near the leading edge of gullies, landslides or slips.

27. No unstable accumulations of slash, log ends, tree heads, waste logging material, or mixed spoil shall be left:

- a. On or beneath landing edges at the conclusion of logging at each landing;
- b. In such a position where it may readily migrate downhill and/or enter a waterbody, watercourse or adjoining property; and
- c. In such a position that it will be entrained in flood flows of a minimum 5% annual exceedance probability (20 year).

**Compliance issues:** While some efforts have been made to pull back slash around the skid sites I inspected, I observed that some slash piles are unstable or are in unsuitable locations – especially around landing 36. There are also areas where fill is sitting on top of slash. This is poor practice and increases the risk of slash and sediment mobilising down hill faces and discharging into watercourses below the skid site.

**Examples of these issues are shown in the photographs [skids 56, 63]**

**Recommendations:** Continue to pull back slash and ensure no fill is on top of slash. If slash cannot be pulled back to a suitable and stable location on or near the skid, it should be moved to a suitable and stable location elsewhere.

(bracketed words added for context)

[26] The Sluter Report referred to compliance issues at various skid sites: 56, 64/65, 63, 62, 60, 58, 54 and identified issues with water controls and soakage pits on the unconsented road. It also recorded that some works had occurred to address certain issues.

November 2022: prosecution commenced

[27] The Council prosecuted Samnic and its three directors (the fourth fifth and sixth respondents in this proceeding) in relation to unlawful discharges of slash, logging debris, waste logging material and/or sediment into watercourses; and for carrying out earthworks to construct the forestry road and Landing/skid without the required resource consent. These proceedings were commenced in November 2022.

[28] In August 2024, Samnic pleaded guilty to two offences and was convicted and fined \$91,000. In accordance with the plea arrangement the Council withdrew the charges against Samnic's directors. The prosecution also involved the forestry manager that had replaced Kohntrol Forest Services Limited in 2019 (Forest Management Services Limited) which pleaded guilty to two offences and was fined \$35,000.<sup>160</sup>

March 2022 – October 2022 remediation

[29] Mr Hayes deposed that all necessary remedial works were completed by October 2022. He provided a schedule of invoices.<sup>161</sup> The schedule summarised invoices received by Samnic dating from 6 March 2022 to 14 October 2022.

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<sup>160</sup> *Gisborne District Council v Samnic Forest Management Limited and Forest Management Solutions Limited* [2024] NZDC 18066.

<sup>161</sup> Second Affidavit, Attachment N. (Affidavit provided to District Court at sentencing dated 9 May 2024).

[30] Mr Hayes referred to the Sluter Report and stated that the recommended works were undertaken. While the Report was dated 11 November 2022, it is clear that Samnic was aware of the concerns arising from Council visits in April, May and September of 2022.<sup>162</sup>

[31] Mr Hayes spoke to the schedule of invoices, and summarised the work undertaken. From the invoices it is clear to us that rehabilitation of roads and skid sites by Samnic's contractor, Phoenix, began in March 2022 and continued until 18 September 2022 (date of the last invoice). The majority of the works were completed by 31 August 2022 (date of invoice). The final invoice from Phoenix recorded that it cleared new slips, water control, cut off in backline, track to Pangopango Stream, clearing slash from river etc.

[32] Culvert socks and posts were supplied between July and early September 2022.

[33] The invoices record that Samnic's forest manager (Forest Management Solutions Limited) supervised culverts, socks and seeding between April 2022 and October 2022. Invoices record certain works occurring after 5 September 2022 (the date of the Council's inspection) and finishing around 14 October 2022. The sum of invoices for that last period is around \$26,000.

[34] The total of invoices for remediation was \$400,514.10.

### ***January and March 2023***

[35] For Gisborne, problems with the discharge of woody debris and sediment from forests in the region were exacerbated by the effects of Cyclone Hale in early January 2023 and by Cyclone Gabrielle in mid-February 2023. During those weather events large volumes of felled trees, slash, logging debris, waste logging material and windthrow trees from commercial pine forests were mobilised and discharged into the tributaries of the main catchment rivers in the region. Eight bridges were destroyed (including three in the catchment downstream of Samnic Forest) and many

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<sup>162</sup> Council Job Sheet of 27 June 2022 – Exhibit 22, and Letter from Gisborne Council to Samnic dated 12 October 2022 – Exhibit 23.

other roads and bridges were adversely impacted by forestry slash. Tolaga Bay beach was once again inundated with forestry slash and pine logs.

[36] Following those cyclones the Council instituted another region-wide assessment of plantation pine forests. The assessment involved aerial surveys by helicopter and ground-based inspections of the forests, to confirm whether or not commercial forestry debris, slash and felled trees had mobilised from forests during Cyclone Gabrielle and caused damage to infrastructure, properties and beaches.

### 13 January 2023

[37] On 13 January 2023, following Cyclone Hale, Council officers undertook a helicopter assessment of various forests, including the most recently harvested areas of the Forest (including skids 64 and 65 at the end of No. 6 Road). Photographs were taken of various areas. The officers observed:

- (a) the areas they flew over had been harvested and replanted with young trees;
- (b) there were some skid site collapses;
- (c) slash and logs in watercourses – in particular, they observed what appeared to be fresh discharges of woody debris and sediment to the Pangopango Stream;
- (d) large amounts of harvesting waste (slash) and trees remained on slopes in the forest, where it was likely to migrate down slopes into streams as a result of erosion and/or future rain events;
- (e) a number of slips had recently occurred at the Forest.<sup>163</sup>

### 23 January 2023

[38] On 23 January 2023 another flight was undertaken. Photographs recorded the state of various sites: No. 6 Road with woody debris in a tributary stream; skid 64 and view looking south-east up the Pangopango Stream, wood debris on slopes and within the watercourse; and skid 99, with woody debris evident.<sup>164</sup>

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<sup>163</sup> Affidavit of A Shelton at [24].

<sup>164</sup> Affidavit of A Shelton at [26].

2 February 2023

[39] On 2 February 2023 (before Cyclone Gabrielle) a further inspection occurred. Mr Sluter observed:<sup>165</sup>

- (a) collapses of woody debris from the edge of skid sites;
- (b) slash and logs in watercourses;
- (c) fresh discharges of woody debris and sediment to tributaries of the Pangopango Stream;
- (d) large amounts of harvesting waste (slash) and trees remained on lopes at the Forest, where it was likely to migrate down slopes and into streams as a result of erosion and/or future rain events;
- (e) a number of slips;
- (f) water controls were poorly installed and maintained. Uncontrolled water was flowing into uncompacted fill and form skid edges. Sediment pits/soakage holes were overwhelmed;
- (g) large amounts of woody debris had been left on the edges of skid sites.

[40] Photographs were taken to show examples of these issues.

[41] Mr Sluter accompanied Mr Shelton on that visit. He was surprised by the quantity of felled trees and forestry harvesting waste that remained scattered on steep slopes of the Forest.

[42] A File Note of the February visit was prepared outlining:<sup>166</sup>

- (a) the detail of the inspection, noting that a slip on Road 6 meant that it did not seem safe enough to drive up to skids 56, 63, 64/65 – looked at in the October Report. However, officers noted that 150m down from skid 56 a soak hole

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<sup>165</sup> Affidavit of D Sluter at [30]

<sup>166</sup> Council File Note 10 February 2023 – Exhibit 24.

had collapsed, resulting in deep scouring – appeared to be from a culvert receiving water from skid 57;

- (b) tension cracking on pre-skid 56;
- (c) issues with skids 15, 13 collapse. Noted for 13 that December 2022 imagery shows a large trail of slash left below the skid prior to Cyclone Hale. No identifiable slips as seen in site visit compared with December 2023;
- (d) issues with skid 1, woody material on bed of Pangopango Stream;
- (e) skid 65 seemed in same condition as at 5 September 2022;
- (f) skids 63, 62 and unconsented road seemed unchanged from September 2022;
- (g) skid 24 – slip off road to watercourse – issues also with water, culvert, foundations. Google imagery from December 2022 of skids 1, 3 and 24 – no slips or collapse on road to skid 24 seen;
- (h) further slip and collapse on Skid 3 – sediment and slash to watercourse. Back of 24 and 25 failures occurred though not mobilised into watercourse;
- (i) skid 35 – berm made of unconsolidated fill and water issues;
- (j) skids 49, 41 – large volumes of slash below skids;
- (k) issues with skids 38 and 39.

General observations in the File Note were that large amounts of cut to waste were placed on slopes of the Forest in unstable positions where they were likely to make their way to watercourses. Further, many soak holes were built throughout the Forest – several in fill material, some over 1m deep – with no outlet.

[43] The conclusion of the File Note was:

Fresh skids/road collapses on skids 1, 3, 13 and road to Skid 24.

Doesn't appear as if any effective remediation done post issuing Abatement Notice and September monitoring report.

11 March 2023

[44] An aerial survey was undertaken on 11 March 2023, after Cyclone Gabrielle. The Forest was identified as warranting a compliance inspection following the Cyclones. Officers flew over the Pangopango Stream and the northwestern part of the Forest, including the confluence of the Pangopango Stream with the Waiau River. They observed signs of storm damage including fresh slope failures and scouring of hillsides and fresh discharges of woody debris and sediment to the Pangopango Stream. Photographs were taken to show examples of the damage.<sup>167</sup>

[45] The above inspections, and others that followed, are important because they come after Samnic's departure from the Forest and after its claimed completion of remediation works at the Forest. We address that in more detail later.

**Further Council inspections*****Ground-based inspection 9 May 2023***

[46] The Council carried out a ground-based inspection of the Forest on 9 May 2023. The Council alleges that the Forest infrastructure and water controls had continued to fail due to the past poor construction methods and lack of maintenance.

[47] A Field Sheet following the inspection recorded particular issues as follows:<sup>168</sup>

- (a) there was a large amount of slash present in the Forest's two main streams;
- (b) a number of skid sites had collapsed or were at high risk of collapse;
- (c) a large amount of harvesting waste remained on steep slopes at the Forest;
- (d) slash piles stored above the Pangopango Stream had been de-stabilised by water during the weather events causing collapse of that material into the stream below;

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<sup>167</sup> Affidavit of A Shelton at [32]-[36].

<sup>168</sup> Affidavit of K Ford, Annexure KF16.

- (e) the Forest's infrastructure and water controls had failed due to poor construction methods and a lack of maintenance.

[48] A number of conditions of the 2020 Harvesting Consents that were being contravened were outlined, and Samnic and its directors were directed to take the following steps:

- Ensure all overhanging slash, log ends, tree heads, waste logging material, and mixed spoil on all skids and access roads are pulled back onto the skids (and end-hauled if necessary). Ensure that that material is not left in a position where it can migrate downhill or enter a watercourse or adjoining property;
- At skid 55 pull back the fill material at the eastern end of the skid to natural ground to take the weight off the unstable ground underneath the skid. Pull back the logging debris and soil that is overburdening the northern side of the skid in the area where it has collapsed;
- Ensure all slumped material on or beneath the edges of all skids are pulled back onto the skids. Ensure this material is not left in the position where it can migrate downhill or enter a watercourse or adjoining property;
- Ensure water controls on skids and roads leading onto skids are constructed and maintained so that water is directed to a point where the discharge can be controlled and directed beyond side-cast material, waratah waste and logging debris onto stable ground;
- Ensure water bars are constructed on all access tracks and tracking beyond the skids, Landings and roads;
- Bund and control runoff from skids with piping and fluming to natural ground;
- Ensure maintenance works are undertaken to remove soil material from culvert entrances and water tables;
- Ensure flumes are either reinstated or attached to culvert outlets;
- Ensure all excess material from either maintenance works or slip removal is end-hauled to a safe location and not placed on the outside edge of roads;

- Remove woody debris including windthrow, slash, logs and waste logging material from ephemeral channels, streams and the five per cent AEP (20 year) flood plain.

[49] The Field Sheet concluded as follows:

The harvesting waste and windthrow left on the slopes were at risk of migrating downslopes in rain events is a major environmental risk with the potential to cause significant damage to the watercourses in the forest and downstream. The Council reserves its right to take further enforcement action if necessary.  
**NB: THE ISSUES REFERRED TO IN THIS FIELD SHEET MUST BE ADDRESSED AS A MATTER OF PRIORITY**

[50] The Field Sheet recorded that the level of compliance at the Forest was “D – Significant non-compliance”.

[51] The Council did not supply the field sheet for the May 2023 site visit to Samnic’s directors, Mr Woodhouse or Mr Brown (Woodlett’s Forest Manager) until 7 February 2024.

### ***Flyover on 29 November 2023***

[52] Following a further rain event that impacted Gisborne in November 2023 the Council carried out aerial assessments of several forests and assessed the Forest on 29 November 2023. Council officers observed that the Forest remained in a poor state and there was extensive forestry harvest and debris in streams and on slopes at risk of further mobilisation.<sup>169</sup>

### ***Council inspection on 17 October 2024***

[53] Council officers carried out a compliance inspection on 17 October 2024 and assessed approximately 22 areas in the Forest, including 12 skid sites. The officers observed that the Forest had deteriorated since their inspections in May 2023 and that little or no remedial work or maintenance had been carried out. There had been further skid site collapses at the Forest since May 2023 and more debris mobilisation into watercourses throughout the Forest.

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<sup>169</sup> Affidavit of K Ford at [81]-[83], Affidavit of A Shelton at [53]-[56].

[54] The main issues identified during the October 2024 inspection were:<sup>170</sup>

- Poor or absent water controls were causing erosion of roads and skid sites. For example, in many locations no run-off controls had been installed to prevent concentration of run-off on roads or skid sites. In other locations where water controls had been installed they had not been maintained in an effective capacity;
- There were a number of collapsed skids where forestry harvesting debris had migrated downslopes to watercourses or remained on slopes where it was at high risk of mobilising to watercourses if further weather events or landslides occurred;
- Some skids showed signs of imminent collapse with tension cracks behind harvesting debris that was placed on the edge of the skid or was slumping over the edge of the skid;
- There were large amounts of woody debris within waterways and ephemeral channels in the forest. In some locations this material had formed debris jams/logjams.

November 2024 Abatement Notices

[55] As a result of those issues identified during the October 2024 inspection the Council issued three sets of Abatement Notices to the respondents on 19 November 2024, all of which have been appealed.

[56] One set of Abatement Notices required Samnic, its three directors and Woodlett to address compliance issues at the Forest, including removing commercial forestry debris from watercourses, slopes and the edges of skid sites, and installing erosion and sediment controls at all skids, tracks and roads in the Forest.

[57] Another set of Abatement Notices were issued to Samnic's three directors requiring them to cease contravening the 2020 Harvesting Consents. These Notices replicate the Abatement Notice issued to Samnic in July 2022.

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<sup>170</sup> Affidavit of K Ford at [84]-[125], Annexure KF20 and Affidavit of A Shelton at [57]-[82].

[58] A third set of Abatement Notices was issued to Samnic's three directors requiring them to cease contravening the 2020 Logjam Consents. These Notices replicate the Abatement Notices issued to Samnic in July 2022.

### **Council inspection of the Forest on 13 November 2024**

[59] A further inspection of the Forest took place on 13 November 2024 with the assistance of independent experts Dr Jack McConchie and Matt McCloy.

[60] During that inspection Council officers observed that the compliance issues identified in the two previous inspections had not been addressed, including<sup>171</sup>:

- (a) poor construction and maintenance of skid sites and tracks between skids causing skid collapses and mobilisation of harvesting debris from skid sites;
- (b) a lack of water controls at the skid sites and roads between skid sites;
- (c) streams below and surrounding the skid sites were filled with harvesting debris, causing debris dams in the streams;
- (d) harvesting debris was spread around the slopes near skid sites where it was at risk of mobilisation to watercourses in future landslides or rain events.

### **Hand back of compartments**

[61] For completeness, we record the dates on which the compartments were handed back to Woodlett:

|                                |                  |
|--------------------------------|------------------|
| Compartments 2, 4, 5.1         | 1 September 2018 |
| Compartments 1, 11, 12, 13, 14 | 31 March 2019    |
| Compartments 3, 7              | 31 August 2019   |
| Compartments 8, 9.1, 9.2, 15   | May 2020         |
| Compartments 5.2, 6            | 1 January 2021   |
| Compartments 10, 17            | 21 May 2022      |
| Compartments 2.1, 3.1, 16      | 31 May 2022      |

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<sup>171</sup> Affidavit of K Ford at [128]-[132], Affidavit of Dr McConchie at [94]-[98], Affidavit of MW McCloy at [36]-[37] and Affidavit of A Shelton at [83]-[84].