IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2025-404-1731
[2026] NZHC 1880

IN THE MATTER	of an appeal under s 299 and 305 of the Resource Management Act 1991
BETWEEN	SAMNIC FOREST MANAGEMENT LIMITED First Appellant
	GAVIN FRANCIS FORTUNE Second Appellant
	SCOTT BARRY FUNNELL Third Appellant
	RICHARD STEWART HAYES Fourth Appellant

Cont/…

Hearing:	29 and 30 October 2025 Further submissions filed 7 and 8 November 2025
Appearances:	F Pilditch KC and E R Harrison for Appellants A A Hopkinson and R C Zame for Respondent A C Limmer KC for First Section 301 Party D M Fraundorfer for Second and Third Section 301 Parties
Judgment:	30 June 2026

JUDGMENT OF BECROFT J

This judgment was delivered by me on 30 June 2026 at 4pm
pursuant to r 11.5 of the High Court Rules 2016.
Registrar/Deputy Registrar
………………………………………

Solicitors:
Wynn Williams, Auckland
ConneyLeesMorgan, Auckland
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AND	GISBORNE DISTRICT COUNCIL Respondent
AND	MANA TAIAO TAIRĀWHITI INCORPORATED First Section 301 Party
	WOODLETT INVESTMENTS LIMITED Second Section 301 Party
	DUNCAN MACKENZIE WOODHOUSE Third Section 301 Party

What this case is all about

[1] This appeal concerns the "fallout" from the harvesting and subsequent management of a forest in the Gisborne region. The forest is known as the Samnic Forest or the Waingaromia Forest (the Forest). It is a 940-hectare plantation pine forest. Since 2015/16, the Forest has been progressively harvested and replanted. In some areas, the replanting is now 10 years old. Harvesting concluded in 2022.

[2] The Gisborne District Council (GDC) brought proceedings seeking enforcement orders under the Resource Management Act 1991 (RMA) against the company responsible for harvesting the pines and the landowner. The Environment Court summarised the application as follows:[1]

> [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.
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> [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.
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> [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.

[3] In the decision under appeal, the Environment Court held that it was appropriate to make the enforcement orders sought by the GDC. Those orders were made in a subsequent decision once outstanding procedural matters had been clarified.[2] The Court also declined an appeal against abatement notices issued in November 2024.

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1 *Gisborne District Council v Woodlett Investments Ltd* [2025] NZEnvC 201 [substantive decision].

2 *Gisborne District Council v Woodlett Investments Ltd* [2025] NZEnvC 230 [orders enforcement decision].

[4] Those decisions are now the subject of this appeal.

Parties

[5] There are four main parties of note.

[6] The first is Samnic Forest Management Ltd (Samnic). Its directors are Mr Gavin Fortune, Mr Scott Funnell and Mr Richard Hayes. Samnic was contracted to carry out the harvesting of the Forest. The enforcement orders were made against both Samnic and each of its directors personally.

[7] The second is Woodlett Investments Ltd (Woodlett). Its sole director is Mr Duncan Woodhouse. Woodlett is the owner of the land. Enforcement orders were also made against Woodlett and Mr Woodhouse personally.

[8] The third is the GDC. It made the application for the enforcement orders.

[9] The fourth is Mana Taiao Tairāwhiti Incorporated (MTT). It appeared pursuant to s 274 of the RMA at the Environment Court hearing. That section provides for the joinder of interested parties. MTT represented the interests of the environment downstream of the Forest.

This appeal

[10] Samnic and its directors appeal against the Environment Court decision both as to the making of the enforcement orders and the refusal to cancel the relevant abatement notices.

[11] Woodlett and its director appeal only against the decision to impose the enforcement orders on a joint and several basis.

[12] The GDC opposes both appeals as respondent.

[13] MTT also opposes the appeals.

Factual background

[14] The Environment Court described the features of the Forest as follows:[3]

> [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.
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> [32] The majority of the Forest is classified as "red zone", having an erosion susceptibility rating of "very high".
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> [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.

[15] The background contractual arrangements governing forestry at the Forest was outlined by the Environment Court from [66]–[74]. As I understand it, this summary was helpfully provided by counsel for Samnic. There was no dispute about it, and it is not challenged on appeal. I adopt the summary as follows:[4]

> **Forestry Agreement - 1993**
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> [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.
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> [67] We understand that Samnic's three directors, Mr Woodhouse and Woodlett held shares in the JV.
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> **Forestry Right - 1995**
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> [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.

[3] Footnotes omitted.
[4] Footnotes omitted.

[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:

> 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:

> 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.[5] 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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5 Woodlett acquired the forest from SB Developments. It came into ownership on 23 March 2006.

[16] Harvesting of the Forest by Samnic began in late 2015 or early 2016. Resource consents issued to Samnic authorised harvesting of pines trees and associated earthworks. The resource consents as described by the Environment Court were as follows:[6]

> (a) 2015 Harvesting Consents 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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> (b) 2020 Harvesting Consents 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;
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> (c) Logjam Consent issued in January 2021 that authorises the removal of a logjam and stockpile of debris on skids 64 and 65. This consent expires on 2 March 2026;
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> (d) The 2020 Harvesting Consents were varied in 2022. 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.

[17] The Court further observed:[7]

> 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.

[18] There is no dispute that harvesting practices were occasionally poor. As a result, several abatement notices were issued by the GDC in 2017, 2018 and 2022 respectively. The Environment Court observed that the abatement notices showed common themes of "problems with infrastructure, erosion and sediment control and poor harvesting practices". As for the effect of the harvesting practices, there was, and is, no dispute that "issues at the Forest have caused or resulted in significant adverse environmental effects within and downstream of the Forest."[8]

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6 Substantive decision, above n 1, at [34].
7 At [36].
8 At [44].

[19] It is also important to note that throughout the period of harvesting the Forest, Samnic gradually "handed back" compartments of the land to Woodlett. The Environment Court summarised this arrangement as follows:

> [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.
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> [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. …
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> [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.

[20] Once each compartment of land was handed back to Woodlett, Woodlett then undertook replanting in that compartment. This began in 2018.

[21] The dispute mentioned above at [77] of the Environment Court's decision, as to the legal effect of the "handing back", is one of the issues in this appeal.

Decision under appeal

[22] The Court's decision is comprehensive, stretching to 387 paragraphs and 97 pages. There are also two annexures of 18 pages. I attempt to summarise it as follows.

Should enforcement orders be made?

[23] Having reviewed the evidence of the state of the Forest, the Court was satisfied that the Forest in its present state poses a risk to the environment. In particular, it noted there were issues relating to woody debris, water and sediment control. Accordingly, the Court found that making enforcement orders was necessary.

Against whom?

[24] The Court then turned to the question of against which party the enforcement orders should be made.

[25] In brief, it was noted that Woodlett, Mr Woodhouse, Samnic and its directors all "point the finger at each other in terms of addressing the state of the Forest." The Environment Court summarised:

> [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.

[26] The Court then addressed, in turn, whether orders should be made against Samnic and its directors, and Woodlett and Mr Woodhouse.

[27] The Court was satisfied that enforcement orders should be made against Samnic because its activities were a cause of the current state of the Forest. Samnic's argument was that at the time it left the Forest in 2022, it had remediated everything it had been required to remediate under the respective abatement notices and therefore should not be responsible for any current issues in the Forest.

[28] The Court rejected that argument and found on the evidence that, although some concerns were remedied at the time, the issues with the Forest were not satisfactorily addressed prior to Samnic leaving the Forest.[9]

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9 Substantive decision, above n 1, at [205].

[29] As to the directors' liability, the Court found that the directors had various roles in the company's operations and were all aware or took part in decisions made in respect of the Forest. On that basis, the Court was satisfied any orders should include Samnic's directors.

[30] The Court was also satisfied that enforcement orders should be made against Woodlett because its actions (or lack thereof) were a cause of the Forest's current state.

[31] Woodlett had argued that it was simply a passive landowner and that when compartments were handed back, they were not in a state that could be maintained. The Court rejected this argument noting it was "entirely dissatisfied with the appropriateness of Woodlett's and Mr Woodhouse's self-described passive role in the Forest."[10]

[32] The Court emphasised that, once it became apparent that the land had been returned in a state that did not comply with the resource consents, it would have expected Woodlett to raise concerns with Samnic and the GDC and continue to do so until the issues were remedied.

[33] The Court noted that Woodlett also had obligations to ensure that activities on its land complied with the resource consents.

[34] Accordingly, the Court's view was that it should have taken a more active role when it became aware of issues with the forest.

[35] Finally, regarding maintenance once land was handed back, although it may have been difficult to maintain areas where basic infrastructure was flawed, Woodlett had maintenance obligations in respect of the land itself — especially in areas where it was replanting. The Court noted that, "Despite having sole control of the Forest since late 2022 Woodlett has not undertaken any substantive maintenance".[11] Accordingly, the Court held it was appropriate to make an enforcement order against Woodlett as well.

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10 Substantive decision, above n 1, at [206].
11 At [220].

[36] As to Mr Woodhouse, the Court held it was appropriate to make orders against him, because he was the sole director of Woodlett and was aware, or should have been aware, of what was happening at the Forest.

[37] Many of the enforcement orders made were on a joint and several basis.

Effect of transfers of resource consents or handing back of land

[38] The Court then turned to consider whether the handing back of land, and Samnic's argument that it had transferred its obligations under the resource consents to Woodlett as it harvested each compartment, affected whether the orders should be made. It concluded that it did not.

[39] With respect to the purported transfer of the resource consents, the Court found that s 134 of the RMA, which Samnic relied on, did not authorise transfer of the resource consents in this case.[12] The consents ran with the land. In any case, transfer of a consent would not absolve Samnic of responsibility for compliance.[13] Further, the provisions under which the enforcement orders were sought, "are directed at having those who have caused adverse effects address them".[14]

[40] With respect to handing back, the Court found that contractual relationships cannot override responsibilities under the RMA. Therefore, the Court did not determine whether Woodlett had accepted responsibility for each compartment "as is" when handed back. This was because it would not absolve Samnic of the obligation it had to comply with the RMA. It also would not prevent an enforcement order being made against it under the terms of s 314 which include orders in respect of adverse effects caused by a particular party.

Section 319(2)

[41] The Court then addressed Samnic's argument that s 319(2) prohibited an order being made against it. Samnic argued this was a proper interpretation of the section

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12 Substantive decision, above n 1, at [253].
13 At [254].
14 At [255].

on the basis that it had all relevant times acted under the authority of the resource consents and the adverse effects now complained about were expressly recognised by the GDC at the time of granting consent.

[42] The Court rejected this argument. It noted that none of the 2020 resource consents authorised discharges of contaminants (It had earlier been noted that woody debris and sediment is a contaminant.) Simply because the potential for these consequences was noted in the consents did not mean discharges were implicitly authorised. The Court said that s 319(2) of the RMA guards against (and protects) a consent holder being ordered to cease an activity for which adverse effects were recognised *and authorised* at the time of the consent. That was not the case here. So, s 319(2) did not operate as a bar to the making of the orders.

Discretion not to make orders

[43] Samnic and Woodlett also argued that the Court should exercise its discretion to make no orders against them.

[44] Samnic argued that it was simply an agent of the joint venture and said the appropriate party to make orders against would be that joint venture.

[45] The Court rejected this argument and said that, as harvest manager, Samnic was the appropriate respondent. It also dismissed any issues of natural justice that Samnic had raised regarding delay.

[46] Woodlett argued that the Court should exercise its discretion not to make orders against it because the problems in the Forest were not of its making. It also argued that the issues would have been resolved earlier if the GDC had taken appropriate action to enforce Samnic's obligations earlier.

[47] The Court also rejected this argument. It noted that Woodlett had obligations as landowner both before and after Samnic's departure from the Forest. Therefore, it was not an innocent party. The Court also noted that the GDC had actively involved itself in trying to ensure compliance with the RMA. It had not sat on its hands. Thus, Woodlett's argument held no weight.

Orders against directors personally?

[48] The GDC had also sought orders personally against the directors of Samnic and Woodlett. They opposed. Nevertheless, the Court made the orders against them. The Court noted that it can make orders under s 314 of the RMA against "any person". Therefore, jurisdictionally, it could make orders against company directors. It decided that in order to make the orders it 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."

[49] The Court was so satisfied because:[15]

> 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.

Abatement notices

[50] The final issue addressed was the appeal against the abatement notices issued in 2024. Some of the abatement notices covered matters that are now part of the enforcement orders made by the Court. The Court noted that it expected the GDC to cancel the notices in light of the enforcement orders it was making and recorded the GDC's intention to do so.

[51] However, the remaining abatement notices, the content of which was not covered by the enforcement orders, required the directors of Samnic to cease contravening various conditions of the resource consents. The Court declined the appeal against these notices. It noted that access to the land was not an issue which would prevent Samnic complying with the notices because Woodlett had given permission for access.

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[15] Substantive decision, above n 1, at [343].

Form of orders

[52] The Court considered that the draft orders filed by the parties required amendment. It called for further submissions as to form and wording of the final orders. The Court required a "Risk Assessment Report and a Risk Assessment Map identifying all the at-risk locations identified in the assessment." The Court also required the methodology for the Report.

[53] The Council was given an opportunity to comment. The Court concluded that "given the nature and importance" of the case, Court should retain some oversight of progress with the stages and aspects of the enforcement orders' requirements." A programme of regular reports to the Court, with milestones (achieved or otherwise) was required.

[54] In a subsequent decision on 7 July 2025, the Court issued a 12-page decision with the detailed orders set out in 18-page attachment.

Grounds of Appeal

[55] Samnic and its three directors comprehensively appeals against those two decisions on the following nine grounds:

> (a) The Environment Court erred in its application of s 314 of the RMA. This error resulted in the erroneous conclusion SFML [Samnic] had not transferred the resource consents that it held (and responsibilities under those consents) to the forest owner, Woodlett Investments Limited (Woodlett).
>
> (b) The Environment Court erred in its application of s 319(2) of the RMA. Insufficient weight was given to the role and knowledge of adverse environmental effects of GDC at the time it granted resource consents to SFML.
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> (c) The Environment Court failed to correctly apply s 319(2) of the RMA by giving insufficient weight to the evidence that SFML [Samnic] had acted in accordance with its resource consents, including evidence that the current/existing issues related to slash mobilisation and discharge were predominantly a result of failure to maintain earthworks.
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> (d) The Environment Court erred in its application of the findings of the High Court in Samnic Forest Management Limited v Samnic Forest Waingaromia (No.1) Ltd & Ors [2025] NZHC 253. Specifically, the

Court failed to adopt the factual findings of a higher Court namely, that the forestry right agreement that enabled SFML to harvest Samnic Forest had been terminated, as the forest had been entirely harvested as of 31 May 2022.

(e) The Environment Court wrongly regarded the contractual arrangements as irrelevant to the exercise of her discretion under s 319(1) of the RMA and/or failed to give adequate weight to the contractual arrangements between SFML and the joint venture. SFML was the manager of the Joint Venture in accordance with the Joint Venture Agreement. SFML would have been wound up prior to GDC issuing abatement notices and applying for enforcement orders against it, were it not for tensions within the joint venture. SFML was only set up to manage the harvest of Samnic Forest on behalf of the joint venture, and did not derive profits from the harvest.

(f) In its Decision, the Environment Court failed to appropriately exercise its discretion under s 319(1) of the RMA by not properly assessing the causation of potential adverse effects in Samnic Forest or evaluating SFML and Woodlett's respective culpability for the forest's condition.

(g) The Environment Court erred in its application of discretion under s 319(1) of the RMA by wrongly regarding as irrelevant, and/ or failing to give sufficient weight to, GDC's conduct in relation to the harvest. In particular, GDC permitted SFML's harvesting activities and methodology through the resource consent conditions it imposed at the time, and only retroactively sought to impose more stringent requirements regarding Samnic Forest over two years after the harvest's conclusion. GDC had prosecuted SFML previously, but did not include its concerns that became the subject of the enforcement orders and the abatement notices in those proceedings. In light of this, the Environment Court's Decision contravened natural justice requirements that are guaranteed under the New Zealand Bill of Rights Act 1990.

(h) The Environment Court wrongfully exercised its discretion under s 319(1) by imposing enforcement orders against SFML and its directors which are not sufficiently particularised, making it impossible for the Appellants to comply with them.

(i) The Environment Court misapplied ss 314 and 319 of the RMA by unlawfully delegating its function in making and controlling its own orders to GDC in respect of the enforcement orders which counsel for GDC amended on 2 July 2025.

[56] Samnic's directors also bring a more limited appeal arguing that:

(a) The Environment Court wrongfully exercised its discretion under s 319(1) of the RMA in imposing enforcement orders against the directors of SFML [Samnic] personally despite no evidence of personal acts or omissions. There is no evidence that any of the directors of SFML derogated from their duties as directors. Resultantly, there was no justification for the imposition of orders against SFML's directors personally.

[57] Woodlett and Mr Woodhouse also bring a cross-appeal alleging that the Environment Court:

(a) erred in law in determining that all respondents had the same level of responsibility for the compliance issues at Samnic Forest; and

(b) erred in law by failing to apportion liability for compliance with the enforcement orders between the respondents.

Legal principles

[58] Pursuant to s 299 of the RMA, an appeal against a decision of the Environment Court can only be brought on a question of law.

[59] A Court will have erred in law where it has:[16]

(a) applied a wrong legal test — misinterpretation of a statutory provision will obviously constitute an error of law;

(b) taken into account matters which it should not have taken into account;

(c) failed to take into account matters which it should have taken into account; or

(d) come to a conclusion without evidence or to one which, on the evidence, it could not reasonably have come.

Analysis

[60] Mr Pilditch, who argued the case comprehensively and carefully for Samnic, effectively presented the appeal grounds by grouping them. I deal with them in the groupings he used.

Did the Environment Court err in finding that s 319(2) did not operate as a bar to the making of certain types of enforcement orders in this case?

[61] Section 319 of the RMA is the empowering provision for making enforcement orders. It provides:

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16 *Re Rangitīkei District Council* [2023] NZHC 2608 at [32].

319 Decision on application

(1) After considering an application for an enforcement order, the Environment Court may—

(a) except as provided in subsection (2), make any appropriate order under section 314; or

(b) refuse the application.

(1A) No court may order that compensation or redress be paid or provided to any person for any loss or damage arising from the revocation or suspension of the person's resource consent under section 314(1)(ea).

(2) Except as provided in subsection (3), the Environment Court must not make an enforcement order under section 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

(b) 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 was acting in accordance with a resource consent that has been changed or cancelled under section 314(1)(e).

Does s 319(2) apply?

[62] Mr Pilditch advanced two arguments as to why s 319(2) of this section must apply in this case. If it applied, Mr Pilditch explained that the Court was severely limited in what enforcement orders it could have made against Samnic. In Mr Pilditch's view, the Court (illegitimately) went beyond those limits in making the orders that it did. This, he said, clearly constituted an error of law.

(a) <u>The proper interpretation of "acting in accordance with" (s 319(2)(a))</u>

[63] Mr Pilditch's first argument was that "acting in accordance with" (a resource consent) in subs (2)(a) simply (and only) meant "purporting to act under the authority of" and not "acting in compliance with". This argument relied on the internal statutory

context of the Act. It was a careful and thoughtful argument, which I set out and address as follows.

[64] Mr Pilditch drew my attention to the orders (under s 314) that s 319(2) prohibits if it applies. He pointed out that if s 319(2) is engaged, there are only two types of enforcement orders left which could be made. The two orders are s 314(1)(a)(i) and (1)(b)(i). I set out those provisions in full:[17]

> **314 Scope of enforcement order**
>
> (1) An enforcement order is an order made under section 319 by the Environment Court that may do any 1 or more of the following:
>
> (a) require a person to cease, or prohibit a person from commencing, anything done or to be done by or on behalf of that person, that, in the opinion of the court,—
>
> (i) contravenes or is likely to contravene this Act, any regulations, a rule in a plan, a rule in a proposed plan, a requirement for a designation or for a heritage order, *or a resource consent*, section 10 (certain existing uses protected), or section 20A (certain existing lawful activities allowed);
>
> …
>
> (b) require a person to do something that, in the opinion of the court, is necessary in order to—
>
> (i) ensure compliance by or on behalf of that person with this Act, any regulations, a rule in a plan, a rule in a proposed plan, a requirement for a designation or for a heritage order, *or a resource consent*;

[65] Mr Pilditch highlighted that those two provisions contemplate orders to ensure compliance with resource consents. He submitted that it would be illogical for the legislation to limit enforcement orders to situations where parties were already acting in compliance with their resource consents. After all, why would the Court need to make an order to ensure compliance with a resource consent, or order someone to cease activity in contravention of a resource consent, if they were already acting in compliance with their consent?

[66] Mr Pilditch submitted the more logical position would be to understand s 319(2) as limiting the enforcement orders available against those acting under a resource consent (even if not in compliance with that consent). In the case of parties

[17] Emphasis added.

acting outside of their resource consents, an enforcement order could be made to ensure they do comply, but enforcement orders could go no further. This would properly reflect the fact that the parties' activities are essentially governed entirely by the terms and conditions of the resource consents they have been granted.

[67] Mr Pilditch's argument is not without merit. There certainly would be something of a contradiction if the legislation expressly limited the types of enforcement orders that could be made to orders requiring compliance with a resource consent — if the party was already acting in compliance with that consent.

[68] However, the permitted orders under s 314 go further than that. The permitted orders also include orders requiring, for example, compliance with the Act. In my view, it is possible for a person to be acting in compliance with their resource consent conditions but nevertheless acting in breach of the Act. Mr Hopkinson drew my attention, for instance to ss 15 and 17 (discussed in more detail at [107]). Therefore, the contradiction that Mr Pilditch submits exists, is not borne out.

[69] Moreover, the straightforward interpretation of the words "in accordance with" suggests acting consistently with, or in conformity with, rather than "purporting to act under the authority of." Frankly, that latter suggestion just flies in the face of the English language. Accordingly, I consider that the better interpretation of "acting in accordance with" is acting in compliance with. I consider this to be the plain meaning and intention of the words. I also consider this best gives effect to the purpose of the RMA to promote the sustainable management of natural and physical resources.[18] In my view, it would not promote sustainable management to unduly narrow, or restrict, the situations where certain enforcement orders are available. This was also the view reached by the specialist Environment Court, and I agree with it.

[70] Finally, while I accept it is persuasive but not binding authority, this Court in *Awarua Farm (Marlborough) Ltd v Marlborough District Council* proceeded on the basis that the provision meant "acting in compliance with".[19] Although the point does not seem to have been argued, Goddard J noted that s 319(2) "does not apply here

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[18] Resource Management Act 1991, s 5.

[19] *Awarua farm (Marlborough) Ltd v Marlborough District Council* [2014] NZHC 2264.

because not only were the appellants failing to act in accordance with the resource consent, but [s 319(2)(b) was also not satisfied]."[20]

[71] I therefore reject Mr Pilditch's argument that s 319(2)(a) is engaged because Samnic was simply purporting to act in reliance on a resource consent. I am quite satisfied that the Environment Court adopted the correct interpretation of s 319(2)(a). That Court had clearly determined on the facts that Samnic was *not* acting "in accordance" with its resource consent conditions. Section 319(2)(a) was not engaged.

(b) Was Samnic *actually* acting in accordance with its resource consent?

[72] Mr Pilditch also advanced an alternative argument as to why s 319(2)(a) was satisfied on these facts. His argument was that Samnic was *in fact* acting in accordance with its resource consents. Recognising that this falls more as a question of fact than a question of law, Mr Pilditch framed this appeal point to say that the Environment Court had not made a finding that Samnic was not acting in compliance with its resource consents.

[73] Mr Pilditch did not significantly advance this argument in oral submissions. It may well be that he intended to abandon it. However, I deal with it briefly. In my view there is no basis for the argument.

[74] Annexure B of the Environment Court judgment sets out a list of the different abatement notices that were issued to Samnic during the time that it was harvesting the Forest.[21] Many of these abatement notices specifically mentioned conditions of Samnic's resource consents that it was breaching. And many of the abatement notices were not appealed. I am satisfied that the presence of Annexure B means that the Environment Court implicitly, if not expressly, found that Samnic was not acting in compliance with its resource consent.

20 At [29].
21 Substantive decision, above n 1.

(c) Were the adverse effects on the environment resulting from Samnic's activities "expressly recognised" at the time of granting consent? (s 319(2)(b))

[75] Given my conclusion that the Environment Court made no error in law in finding s 319(2)(a) did not apply, I do not need to consider Mr Pilditch's arguments advanced in respect of s 319(2)(b). Subsections (2)(a) and (b) are conjunctive: both need to be made out for s 319(2) to apply.

[76] However, for completeness, I will briefly record each party's views as to whether "the adverse effects, in respect of which the enforcement orders [were made] were expressly recognised by the [GDC] at the time when the consents were granted." It seems to be common ground that the adverse effects in respect of which the enforcement orders were sought is the discharge of woody debris and slash into waterways and then beyond the boundaries of the Forest.

[77] Samnic argued that this was recognised as a risk by the GDC when it granted the consents. For example, one of the consents granted in 2015 contained the following notation:

> Environmental effects which may arise from the land disturbance associated with the proposed activity include:
>
> …
>
> Woody harvesting debris deposits in watercourses and being translocated downstream

[78] In Samnic's submission, this unequivocally shows that the GDC expressly recognised the potential adverse effects.

[79] In response, the GDC argued that the provision does not apply because the GDC did not foresee the *extent* of the discharges that eventuated. In fact, no discharge consents were granted (which would have been required to authorise discharges that were more than minor). It follows that clearly the GDC did not foresee, nor expressly authorise, the discharges for which enforcement orders were eventually sought.

[80] On this point, there is little disagreement as to the facts. Just as for the argument about subs (2)(a), the issue is one of statutory interpretation. Is it merely the "type of effects" that have to be recognised? If so, then Samnic's argument must be

correct. The GDC did recognise that slash and woody debris could be deposited and translocated. It just did not foresee the extent of what happened and, at the time the consents were granted, the GDC clearly anticipated the effects would be less than minor.

[81] Alternatively, if the subsection requires recognition of both the type and extent of the adverse effects, then the GDC must be correct. Very clearly, in my view, the GDC did not foresee the extent of the discharges that have occurred and, as I understand it, are still occurring. If it had, the GDC would have required discharge requests and consents.

[82] Beyond those very preliminary remarks I do not venture. Neither party made submissions as to how the provision should be interpreted, or why. Each simply proceeded on the assumption that its interpretation was correct and explained how the facts met, or did not meet, their interpretation. This question must be left for another day.

(d) <u>Conclusion as to applicability of s 319(2)</u>

[83] I now summarise my conclusions as to the applicability of s 319(2).

(a) The Environment Court did not err in law by not applying s 319(2).

(b) On the factual findings made by the Environment Court, at least one of the prerequisites (subs (2)(a)) is simply not established.

(c) Adopting a purposive approach, under s 319(2) the situations where the Environment Court is forbidden from making enforcement orders should be realistically and strictly construed.

(d) On its face, subs (2) prevents enforcement orders being made in situations where a properly obtained resource consent is being complied with *and* what the enforcement order seeks to prevent is exactly that which was expressly recognised by the consent giver in the first place. Any wider, or more "flexible" interpretation would surely defeat the purpose of the section in the context of the Act's purposes.

(e) Does s 319(3) apply in any case?

[84] The final point to address is the possible applicability of s 319(3). This subsection provides an exception, or escape route, from the strictures of s 319(2). The relevant part in this case is s 319(3)(a), which allows the Court to nevertheless make an order (despite subs (2)) in situations where "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".

[85] Again, this subsection, strictly speaking, only falls for consideration if I had accepted Samnic's submission that s 319(2) prevented the Environment Court from making the orders it did. However, for completeness, I briefly discuss the issue.

[86] The first thing to note is that the Environment Court expressly stated that it would have relied on s 319(3), in the alternative, had s 319(2) been made out.[22] The change in circumstances relied upon by the Environment Court was the extensive damage wreaked in Tairāwhiti from Cyclones Hale and Gabrielle.

[87] Despite his strenuous arguments as to the application of s 319(2), which I have dismissed, Mr Pilditch did not appear to actively challenge this aspect of the Environment Court's decision. Accordingly, I can only repeat the Environment Court's finding, which seems entirely reasonable: because of the extensive damage caused by these cyclones, s 319(3) would come into play — as a backstop, had s 319(2) been engaged. There would have been no reason that I can see not to adopt the Court's findings on this point.

[88] I now turn to Mr Pilditch's remaining grounds of appeal.

Breach of natural justice and prejudicial delay?

[89] Under this head, Mr Pilditch's overarching submission was that the failure to seek enforcement orders until 2025, more than two years after Samnic had left the Forest, was unfairly prejudicial to Samnic and was a breach of natural justice.

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22 Substantive decision, above n 1, at [295].

[90] Mr Pilditch began by emphasising that s 27(1) of the New Zealand Bill of Rights Act 1990 which provides:

> Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.

[91] He submitted that natural justice generally requires fairness with regard to the rights or interests at stake, and the procedures necessary for a fair hearing.

[92] He submitted that that although natural justice concerns were raised in the Environment Court hearing, the Judge effectively ignored them and simply concluded, "[t]here are no concerns of natural justice." In doing so, Mr Pilditch seemed to submit that the Judge had ignored a relevant consideration and therefore erred in law.

[93] Two main issues emerge. The first is that because of the delay, Samnic's submission is that it is forced (unfairly) to defend its own work at the Forest more than two years after it had left. In the meantime, Woodlett had maintenance obligations with which it has failed to comply. Samnic submitted that it may well be that the current issues in the Forest are attributable to Woodlett's failure to maintain and not the fault of Samnic. But owing to the delay, Samnic is not in a position to establish this.

[94] In all the circumstances, I do not consider Samnic to have been unfairly prejudiced by the delay. In doing so, I accept the submissions of Mr Hopkinson for the GDC. Mr Hopkinson carefully set out how the GDC had taken extensive action over time against Samnic to have it comply with the RMA.

[95] Mr Hopkinson also noted that the Environment Court made its own factual finding on this point noting the following at [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.

[96] For completeness, I note that early in its decision, the Environment Court noted the history of compliance issues. It stated:

> [42] … 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.

[97] There is then an extensive summary of these issues in the annexure to the Court's decision.

[98] In my view, it is clear the GDC application for enforcement orders only came as the last resort. It was the final move, part of a series of graduated steps increasing in seriousness, to bring the GDC's concerns to the attention of Samnic and Woodlett and to ensure remedial action. The application for enforcement orders did not come out of the blue. It came at the end of an escalating enforcement process that included a prosecution.

[99] There is also the reality that the criminal proceedings meant that any institution and continuation of the civil proceedings would inevitably have brought about a successful application for a stay until the criminal prosecution had been concluded.

[100] Thus, while I understand Samnic's concerns in this respect, and Mr Pilditch has emphasised the position clearly, in the circumstances and taking into account the difficulties posed by the Covid-19 pandemic and the resulting restrictions, there has not been unfair prejudicial delay. It is an insufficient reason to justify this Court's intervention on appeal.

[101] I also record that I reject Samnic's argument that it was not alerted (during the May 2024 sentencing for the criminal charges) that there were outstanding issues in the Forest. The material filed by the GDC for that hearing clearly highlighted ongoing

concerns about the state of the Forest including that the "remediation carried out by Samnic was poor" and that "Samnic has since refused to do any further remediation" in relation to unstable accumulations of fill or slash material.

[102] The second issue raised under this head is that Samnic is being retrospectively required to do work to a much higher standard than that initially required under the resource consents. This, too, is said to be a breach of natural justice.

[103] Mr Pilditch submitted that if Samnic had initially known of these conditions now sought to be implemented, it would have never contemplated managing the Forest in the first place. This is because it would not have been economically feasible to do so.

[104] On its face, that is a persuasive submission. But it is easier to make than to substantiate. There are three aspects to consider which in my view mean that the submission cannot succeed.

[105] First, there is an evidential issue. Samnic has not adduced any evidence in support of this submission. For instance, there is no cost comparison or analysis of the expected revenue or profits from the outset if the current position had been known.

[106] Second, Samnic did not comply with its resource consents in any case. So, it is not as if Samnic came to the Environment Court with clean hands having been entirely compliant with its resource consents. At least to some extent, the enforcement orders have been triggered by Samnic's non-compliance with the resource consents. However, I acknowledge that the enforcement orders do seem to go further than that.

[107] It is the third aspect to this issue which is particularly important. Beyond the conditions of Samnic's consents, Samnic also had separate obligations and duties under the RMA itself. Notably, under s 15 of the RMA, Samnic had an obligation not to discharge contaminants into the environment as specified by that section. Additionally, under s 17, Samnic had an obligation to avoid, remedy or mitigate any adverse effect on the environment arising from its activities. I have already adverted

to these duties when discussing s 319(2); but the simple point is that Samnic had duties that went above and beyond the specific conditions in the resource consents.

[108] While I accept that it may have been preferable for the resource consent conditions to have been stricter from the outset, the reality is that Samnic had additional obligations under the RMA and the enforcement orders can properly address breaches of those duties.

The effect of "handing back" compartments

[109] The next appeal ground related to whether the resource consents that Samnic had applied for and initially held, could be transferred to Woodlett and whether that had actually happened in this case. Mr Pilditch's argument was not only that the consents could be transferred but also, they had been. The result, in his submission, was that Samnic could not be held responsible for events or harm to the environment once the land was handed back and the consents were transferred. In other words, Samnic could not be perpetually liable under the consents.

[110] On one level, this argument turns on the correct interpretation of s 134 of the RMA. That section provides that land use consents generally run with the land — unless they are consents to do something that would otherwise contravene s 13 of the RMA. Section 134 provides:

> **134 Land use and subdivision consents attach to land**
>
> (1) Except as provided in subsection (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 the consent expressly provides otherwise.
>
> (2) Subsection (1) does not apply to any land use consent to do something that would otherwise contravene section 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 interest 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.

[111] In short, the argument for Samnic was that, given the resource consents contained "a s 13 element"[23] (interference with the bed of a river), the entire consents could be, and were, transferred according to s 134. The argument for the GDC was that only the s 13 element of a consent could be transferred. The rest of the consent continued to run with the land.

[112] This issue was something of a red herring. This is because even Mr Pilditch accepted that Samnic could be held responsible for its action prior to handing back the land. On my reading of the decision, the enforcement orders were issued against Samnic (and the directors) because of non-compliance with the resource consents and other adverse effects caused by Samnic while it was in the Forest. I do not read it as suggesting that Samnic was held responsible for current adverse effects only because it remained the consent holder.

[113] Accordingly, this ground of appeal falls away regardless of whether the resource consents could be transferred.

Did the Environment Court have the jurisdiction to make the orders?

[114] The next substantive ground was whether the Environment Court had the jurisdiction to make the orders. This ground raises the correct interpretation of both ss 314 and 319 of the RMA, as well as whether the Environment Court made the orders clearly enough and/or made the necessary factual findings enabling it to make the orders.

[115] The starting point here is s 314 which I have already partially set out. It is a detailed section. For ease of reference, it relevantly provides:

> **Scope of enforcement order**
>
> (1) An enforcement order is an order made under section 319 by the Environment Court that may do any 1 or more of the following:
>
> (a) require a person to cease, or prohibit a person from commencing, anything done or to be done by or on behalf of that person, that, in the opinion of the court,—
>
> (i) contravenes or is likely to contravene this Act, any regulations, a rule in a plan, a rule in a proposed plan,

[23] Section 13 of the RMA places a restriction on certain uses of beds of lakes and rivers.

a requirement for a designation or for a heritage order, or a resource consent, section 10 (certain existing uses protected), or section 20A (certain existing lawful activities allowed); or

(ii) is 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:

(b) require a person to do something that, in the opinion of the court, is necessary in order to—

(i) ensure compliance by or on behalf of that person with this Act, any regulations, a rule in a plan, a rule in a proposed plan, a requirement for a designation or for a heritage order, or a resource consent; or

(ii) avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by or on behalf of that person:

(c) require a person to remedy or mitigate any adverse effect on the environment caused by or on behalf of that person:

(d) require a person to pay money to or reimburse any other person for any actual and reasonable costs and expenses which that other person has incurred or is likely to incur in avoiding, remedying, or mitigating any adverse effect on the environment, where the person against whom the order is sought fails to comply with—

(i) an order under any other paragraph of this subsection; or

(ii) an abatement notice; or

(iii) a rule in a plan or a proposed plan or a resource consent; or

(iv) any of that person's other obligations under this Act:

(da) require a person to do something that, in the opinion of the court, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment relating to any land of which the person is the owner or occupier:

…

(2) For the purposes of subsection (1)(d), actual and reasonable costs include the costs of investigation, supervision, and monitoring of the adverse effect on the environment, and the costs of any actions required to avoid, remedy, or mitigate the adverse effect.

(3) Except as provided in section 319(2), an enforcement order may be made on such terms and conditions as the Environment Court thinks fit (including the payment of any administrative charge under section 36, the provision of security, or the entry into a bond for performance).

…

[116] It is now necessary to say a little about the orders which were made and their form. The process that led to the orders are discussed previously at [49] – [51].

[117] The orders are very comprehensive and detailed. Necessarily, they are complicated given the scale of the Forest and the various problems and damage identified by the Court. It is hard to envisage a shorter way of spelling out the orders, although the appellants were all critical of their length and form. Without viewing the orders, it is hard to describe them. I attempt that exercise as follows.

[118] The form of the orders was first to list the sections under which they were made. The Court stated it was doing so in accordance with ss 314(1)(a)(i) and (ii), 314(1)(b)(i) and (ii), 314(1)(c) and 314(1)(da) of the RMA.

[119] Second, the Court listed all the parties against whom orders were made, being the first to sixth respondents in this appeal.

[120] Third, the Court listed and specified the orders made (a) – (p). These are just too detailed to list. They include obligations to cease discharging woody debris from commercial forestry; engaging experts to prepare a Risk Assessment Report and Map; removal and disposal of woody debris from the Forest; installing effective water and sediment controls to minimise erosion; and to provide regular reports as to completion.

[121] The Court ordered that all the respondents were to comply with all the orders and were jointly and severally liable for costs of monitoring and enforcing the orders.

[122] The Court then listed the additional orders made against Woodlett and Mr Woodhouse as "landowner respondents". For those orders (a) –(t), the Court did not provide the statutory basis. I infer the initial list of statutory provisions provided the basis for these orders also. These orders largely related to the design, implementation, and location of a network of slash catchers for the Forest. I infer such "network" was to prevent the escape of slash from the Forest.

[123] Mr Pilditch was critical of the form of the orders, and particularly the lack of specificity as to which orders were made under which statutory section. He submitted that meant the factual basis upon which they were made was unclear.

[124] In response, the GDC submitted that the Environment Court had made the necessary findings to make an order under each of the specified subsections against either Samnic and all the other parties and, in the case of landowners, Woodlett and Mr Woodhouse. However, more fundamentally, (and given the effect of the orders was similar) the Court only needed the jurisdiction to make the orders against Samnic and its directors pursuant to one subsection. So even if Mr Pilditch's submissions have some weight in relation to certain subsections, that would not wholly undermine the basis for making all the orders.

[125] I agree that it is hard to establish, or marry-up, the exact statutory basis for each of the (a) – (p) orders against all the respondents and for the further orders (a) – (t) against the "landowners." But it is far from impossible; when the wording of each order is compared to the sections listed by the Court, it becomes reasonably clear which section is being relied upon. In short, of the subsections under the RMA referred to by the Environment Court, I am satisfied that at least some were available to make some of the enforcement orders against the respondents. If some could not be made, others to substantially the same effect could be made. Practically, that disposes of Mr Pilditch's concerns. My detailed reasoning is as follows.

[126] I begin by accepting that s 314(1)(da) only provides a basis for an order against Woodlett as the owner of the land and Mr Woodhouse. Samnic never owned the land, nor was presently occupying it. Accordingly, as a matter of law, the Environment Court could not have relied on this subsection to make enforcement orders against Samnic. But the further orders (a) to (t) against the landowners can certainly be made under that provision.

[127] There was also significant debate at the hearing as to whether s 314(1)(a) could apply to Samnic and its directors. This is because that provision contemplates a person being ordered to "cease" or not commence doing anything that may (amongst other things) contravene the RMA, a resource consent, or cause adverse effects to the

environment. Given that Samnic is not currently in the Forest, on a plain reading of the section, Mr Pilditch's argument is that Samnic (or its directors) are currently not doing anything that it, or they, could be ordered to cease. Nor is it proposing to commence doing anything in the Forest.

[128] Therefore, Mr Pilditch argues, the orders, apparently under this provision, requiring Samnic to "cease discharging" woody debris and sediment into areas where it may enter water and to cease discharging woody debris beyond the boundary of the Forest" cannot be made.

[129] However, counsel for Woodlett, the GDC and MTT all urged me to see s 314(1)(a) in a quite different light. They argued that Samnic "continues" to "discharge" woody debris and sediment from the land. Therefore, the Environment Court could appropriately order it to cease doing so. The Court of Appeal decision *McKnight v New Zealand Biogas Industries Ltd* was cited in support of this proposition.[24] That decision held that to "discharge" includes "allows to escape". This, of course, is a passive act and does not require Samnic to be present in the Forest. Given that woody debris and sediment from Samnic's past commercial forestry activities continue to be discharged off the land, those parties submit that s 314(1)(a) could and should apply.

[130] This is an interesting question. It is primarily one of statutory interpretation. A purposive approach would support the interpretation that Samnic's inadequate practices had the effect of continuing to allow discharges into the environment. On the other hand, there is something a little artificial in applying that meaning when Samnic is long gone from the land and has no control over it. Given my findings as to the lawfulness and appropriate basis for the other orders that were made against Samnic, it is not an issue I have to decide.

[131] For what it is worth, my tentative view is to accept the combined arguments of Woodlett, the GDC, and MTT that, in this case, where Woodlett expressly gave Samnic permission to access the land, Samnic's lack of action to address the adverse environmental effects it caused amounts to continuing to allow woody debris and

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24 *McKnight v New Zealand Biogas Industries Ltd* [1994] 2 NZLR 664 (CA).

sediment to escape, irrespective of it having already vacated the land. If necessary, I would have held it was possible (though not necessary) for the Environment Court to make those orders under that subsection.

[132] There was no substantial dispute that s 314(1)(b) and (c) were available against Samnic. But Mr Pilditch maintained that the extent of the enforcement orders made exceeded that which was available under those subsections.

[133] I accept that Mr Pilditch is correct in one respect: the very first of the orders made referred to as (a), required Samnic to "cease discharging …". This order, on the natural meaning of s 314(1)(b) is not available under *P33*provision. That provision contemplates a person being ordered to undertake positive acts (ensure compliance, avoid, remedy or mitigate) rather than to simply "cease" or stop doing something. The latter is only (or at least primarily) available under s 314(1)(a). I have already noted that I do not need to make a decision as to applicability of that paragraph to Samnic and the directors because the remaining orders (c) – (p) achieve the same purpose.

[134] Those orders provide for the report and map already described, and for the removal of all woody debris, including felled trees, windthrow trees, slash, and harvesting debris from all streams, skid sites and other at-risk locations identified in the risk assessment report. In my view, all those orders plainly come within the wording of s 314(2) and (3) as set out above. The requirement for a risk assessment plan and map are necessary incidental orders to ensure remediation and mitigation of adverse effects on the environment within at risk areas within such a large forest.

[135] That being the case, I do not accept the argument that the orders against Samnic or the directors exceeded what the statute allowed.

[136] The next branch of Mr Pilditch's argument was that regardless of whether an order could be made under certain sections of s 314, for each order, the Environment Court needed to specify exactly what section it was relying on. This is because this would make a significant difference to both the scope of the orders the Environment Court could make and the factual findings that must underlie those orders.

[137] So, for example, if only s 314(1)(b)(i) was available against Samnic and the three directors, then the Court could only make an enforcement order which used the wording of that provision — that is to ensure compliance with the Act, or a regulation, or a resource consent or anything else specified in that subsection. Mr Pilcitch's point is that the Court could not make generic orders requiring action from Samnic which were not necessary to comply with the Act or a resource consent etc. So far as it goes, that submission must be correct. Orders made under a statute cannot go further than the empowering provision allows.

[138] Alternatively, if only s 314(1)(c) was available then the Court could only make an order requiring Samnic to remedy or mitigate adverse effects that it had caused. Making an order under that subsection would then require express causation findings for each adverse effect the orders sought to remedy. In Mr Pilditch's submission the Court made inadequate findings in this respect.

[139] I accept in principle Mr Pilditch's general argument. However, in this case, it makes no difference. First as I have explained, it is possible to marry-up the orders with a relevant empowering provision. Second, I take the view that the Environment Court did make all the necessary factual findings to make the relevant enforcement orders it did against Samnic under the respective subsections.

[140] As I have mentioned, all the other orders after the first two "cease" orders are less specific and could perhaps be summarised as formulating and executing a comprehensive plan to address the discharges that were ordered to be ceased in the initial order at [1](a) and [1](b).[25] When examining s 314, this work may well include some work that ensures compliance with the resource consents under s 314(1)(b)(i). But overall, I am quite satisfied that the Environment Court made no error of law in imposing the orders also under s 314(1)(b)(ii) and/or, the similar but more widely expressed, s 314(1)(c). This is because the Environment Court made clear findings that Samnic had caused the issues which are now the subject of the enforcement orders.

25 *Gisborne District Council v Samnic Forest Management Ltd* [2025] NZEnvC 230.

[141] The Environment Court was well aware of Mr Pilditch's argument that it was impossible to assess causation in 2025 when Samnic had left the Forest in 2022. However, the Environment Court rejected that argument and made the following factual findings:

> [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 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.

[142] Those paragraphs make clear that, on the facts, the Environment Court was satisfied that Samnic had caused the issues facing the Forest in the present day. That does not mean that its actions were the sole cause. By making orders against Woodlett and its director as well, the Environment Court acknowledged that there was also fault on Woodlett's behalf. However, there was no error of law in the Environment Court making detailed and extensive orders against Sanmic to remediate and clean up the Forest under s 314(1)(b) and (c), having found, as a matter of fact, that it had caused the issues.

[143] At this stage, I need to address Mr Pilditch's argument that it was not good enough for the Environment Court to make sweeping findings about Samnic's role in causing the issues at the Forest as a whole. It was submitted that the Court needed to identify specific causation for each and every issue that might need addressing in the Forest to deal with the overall discharge problem.

[144] While I certainly acknowledge that more specificity is generally preferable in making causation findings, in a forest the size of this one (940 hectares), it is completely unrealistic to suggest that the Court needed to make causation findings at a greater degree of specificity than it did. In saying this, I stress that the Court did engage in quite considerable detail with this question, notably with the different inspections that had been carried out over time and the issues identified therein. In light of that exercise, the causation findings that it made were entirely adequate. There was certainly no error of law in the Environment Court's approach.

[145] To require anything further would make the enforcement order provisions entirely unworkable. As Mr Hopkinson, for the GDC, submitted, enforcement orders are an important mechanism for ensuring compliance with the RMA and for remedying adverse effects on the environment. I am not prepared in this judgment to require such a level of scrutiny and detail in the necessary causation findings which the appellants suggest. Every case must be considered in the light of its own circumstances. The causation analysis is very much fact specific. Here, it was entirely adequate.

[146] Therefore, I conclude that there was no jurisdictional error of law in the Court making the type of enforcement orders it did against Samnic and the other appellants.

[147] Before I leave this appeal ground, there is one important observation to make. I think it would have been preferable for the Court to state what was the statutory basis for each order. This is a good discipline. It makes the orders clearer on their face. It encourages accuracy of wording. And when there are so many parties, it enables them each to know the precise basis upon which the orders against them are made.

Was it an error to make the enforcement orders against Samnic's directors personally?

[148] This issue attracted considerable concern. Mr Pilditch strongly maintained that it was an error to impose the enforcement orders against Samnic's directors personally as well as against Samnic itself.

[149] In support of this argument, he stressed that the three directors were part of a larger group of individuals involved in the joint venture to harvest the Forest. Any profits that stood to be gained from harvesting the Forest would flow back to the joint venture. Samnic's three directors were simply those who put their hands up to manage the management entity. They were paid very limited director's fees. Mr Pilditch submitted that it was completely unfair to impose enforcement orders against them in this context. He stressed the orders may mean they lose their family homes to pay for the clean-up of the Forest.

[150] The directors attended the full appeal hearing. The human dimension of this decision for them was palpable. I accept that the directors were not expecting, and strongly argued against, these orders. While I have every sympathy for the directors of Samnic and understand the potentially personally catastrophic consequences that may eventuate from the making of these enforcement orders, I remind myself that this appeal is only on questions of law.

[151] In terms of the categories of errors of law, I am quite satisfied that the Environment Court has not misinterpreted the legislation. The legislation quite clearly sets out that enforcement orders can be made against any "person". Self-evidently, this includes directors.

[152] I am also not satisfied that the point raised about the joint venture could be said to constitute a failure to consider a relevant consideration. The Environment Court clearly was aware of the arrangements for and with the joint venture, as it set out that information comprehensively at the beginning of its judgment.

[153] The essence of Mr Pilditch's argument was to challenge the objective rationality of identifying Samnic Forest Management, and its three directors, as culpable parties that ought to comply with enforcement orders, to the exclusion of:

(a) The 20 joint venture companies that engaged Samnic Forest Management as manager, and who ostensibly would have profited from the joint venture;

(b) Their directors and shareholders;

(c) PF Olsen, Kohntrol, Mr Mooney who were paid to manage the harvest, compliance and consenting process for Samnic Forest Management and the joint venture; and

(d) The contractors who did the work which, according to the GDC, was substandard.

[154] In essence, Mr Pilditch was seriously questioning why these three directors were chosen to bear personal responsibility, when other individuals in the joint venture might have been similarly liable, and when parties contracted by Samnic were actually more culpable?

[155] I have reflected on all Mr Pilditch has submitted. Hard as it may be for the three directors to hear, I have to say that there is a logic to the Court's decision. Samnic was incorporated in 1993 for the specific purpose of managing the harvest of the Forest once it had matured. 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 joint venture. So, it was Samnic which bore the responsibility, and which operated under the authority of the Forestry Right. Presumably, the directors have the ability to mount a civil claim against those who were employed to do the front-line work. Equally, there may be a right to claim contributions (personally) from the other, as I understand it, 17 directors of the other blocks. After all, the three directors were ensuring that Samnic carried out the necessary work for the whole joint venture. That said, I accept this would be a

complicated issue, and Mr Pilditch stressed that there could be no recourse in practice to the joint venture itself.

[156] That logic seems to underpin the Court's reasoning. There is also the point that the three directors willingly assumed the role as directors of Samnic and to varying degrees were involved in actively overseeing the Forest's harvest. Although, as between themselves, there were differences as to the nature and quality of their involvement, I conclude it was right to treat all three in the same way. In short, there is an answer to the questions posed by Mr Pilditch at [154], above.

[157] At the hearing, Mr Pilditch submitted that in making orders against the directors, the Court had illegitimately pierced the "corporate veil". Further, he stressed that (in my paraphrasing), if the Court was going to go behind the corporate veil and find the director's liable, then it needed to look the whole way through the veil to see the joint venture as being liable as well.

[158] Again, I am unconvinced by this argument. This decision is not the place for a detailed exposition of the somewhat complex concept of "lifting the corporate veil". The company law textbooks discuss the concept in detail, see for instance *Company Law in New Zealand*.[26] The concept is not, of itself, a legal rule or principle. It is simply a description of the consequence of the application of some other rule or principle.[27] The learned authors of *Company Law in New Zealand* make clear that the consequences of lifting the corporate veil will usually expose shareholders to liability for obligations owed by the company. The corporate veil is not designed to protect directors where a cause of action is made out against them in their capacity as directors. Mr Hopkinson for the GDC made this point strongly, arguing that reliance on the concept by the appellants in this context was misconceived. I agree with him. In any case, as I have said, I am confident from its decision that the Environment Court was aware of, and took into account, all relevant issues.

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26 Peter Watts, Neil Campbell and Christopher Hare (eds) *Company Law in New Zealand* (2nd ed, LexisNexis, Wellington, 2016)

27 At [3.9]

[159] I do not consider the decision to hold the three directors personally liable comes close to a decision that could not have reasonably been reached. While the arrangement may have been such that any profits would flow back to the joint venture, as I have already said, Samnic's three directors did put their hands up to direct the managing entity. As directors, they had the responsibility to ensure that Samnic complied with its resource consents and with the RMA. Non-compliance, as a matter of fact was established to the Court's satisfaction. In circumstances where enforcement orders are clearly required, there is nothing especially unreasonable about imposing personal liability on them. The decision is not, with respect, arbitrary or capricious.

[160] Finally, on this point I note that there was some obvious tension between counsel at the hearing as to how much Samnic's directors may have been paid in director's fees. For the sake of this judgment, I record that I have not considered that matter in reaching this conclusion. Whether the directors were paid minimally or handsomely, they had a responsibility to ensure that Samnic complied with the RMA. The consequences of their failure to do so in this case are the resulting enforcement orders against them.

[161] Having now dealt with all the substantive grounds of appeal, and found all of them wanting, I dismiss Samnic and the three directors' appeals.

Woodlett's cross-appeal: Should the Environment Court have apportioned liability?

[162] Woodlett appealed against the Environment Court's decision under s 301 of the RMA. It did so on a much more limited basis. It, and its director, submitted that the Environment Court ought to have apportioned liability between the respective parties instead of imposing the orders on a joint and several basis.

[163] Woodlett submits that the Environment Court was in a position to distinguish between the two parties' contributions to the compliance issues and ought to have apportioned liability on that basis.

[164] Woodlett directed me to several decisions in the wider civil sphere including *Yan v Mainzeal Property and Construction Ltd (in liq),* where apportionment of liability had occurred.[28] That case is of limited value as it does not relate to an Environment Court decision or arise in the context of the RMA. In fact, it has nothing to do with the Environment Court. It also directed me to a recent decision of the Environment Court, in *Whangarei District Council v Sustainable Solvents Ltd,* where the Court apportioned liability between the two sets of respondents on a 70:30 basis.[29] That case is no more than an example of a situation where the Court found that it could apportion liability, as I accept it can. But it does not stand for any general proposition that the Court should apportion liability in every case.

[165] Having suggested that apportionment was the correct position, Woodlett submitted on a number of factual points as to why its culpability was less than Samnic's. This was not unconvincing. But again, when I stand back, I am not satisfied that the Environment Court made any error of law in not ordering apportionment.

[166] The Court held at [381] that it was not in a position to direct what joint and several liability might mean in terms of a reasonable expectation of a relative contribution from Samnic and Woodlett. Woodlett submits that in coming to that finding, the Court ignored several factual issues, such as that Woodlett and Mr Woodhouse had no history of compliance problems or issues.

[167] Unfortunately for Woodlett, all those submissions are, in my view, quite plainly attempts to relitigate and recast the facts as found by the Environment Court. The submissions focus on the points in Woodlett's favour but notably ignore the more adverse findings made by the Court against Woodlett. The Environment Court's decision quite clearly sees Woodlett's faults as significant in causing the compliance issues at the Forest. At [260], the Court recorded "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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[28] *Yan v Mainzeal Property and Construction Ltd (in liq)* [2023] NZSC 113, [2023] 1 NZLR 296.
[29] *Whangarei District Council v Sustainable Solvents Ltd* [2022] NZEnvC 78.

[168] The Court further stated that Woodlett ought to have been monitoring RMA compliance in the Forest and, of course, noted that Woodlett had not undertaken any substantive maintenance in the Forest since 2022.[30]

[169] In my view, the Court was aware of all the matters it needed to be in deciding not to apportion liability. It made a clear finding that it was not able to do so. On the evidence before the Court that was not an unreasonable conclusion. There was clearly some difficulty in assessing the respective culpability of the parties in a complex situation (where one party had failed to remedy issues prior to leaving the Forest and the other had failed to undertake any of the required maintenance since).

[170] While I accept that the Environment Court can apportion liability in appropriate circumstances, I do not consider there is any imperative to do so in every case. It will not always be the appropriate role of the Environment Court to micro analyse apportionment questions.

[171] As the Court urged the parties to do in this case, it will often be better if parties can cooperate reasonably to ensure enforcement orders are complied with. After all, they have the Court's decision and are best placed to understand the nuances of the causation responsibilities. Or, if that is not possible, they may eventually need to initiate separate civil proceedings. But I am quite satisfied that in these circumstances, the Environment Court did not err in law in failing to apportion liability between the parties.

[172] A standard practice of apportionment, which is close to what Woodlett submits should be the situation in cases like this, would turn a case into a civil liability hearing; require a detailed knowledge and assessment of the contractual arrangements between the relevant parties; and open up significant appeal points as to the legal correctness and reasonableness of any apportionment. I am not sure that is the role of a specialist Environment Court.

[173] That observation is consistent with the purposes of the Act and in particular s 5(2)(c) which highlights the need for sustainable management while also "avoiding,

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30 At [220].

remedying, or mitigating any adverse effects of activities on the environment." The Environment Court's specialist role here is to identify the nature and extent of any slash issues in the Forest, to identify adverse environmental effects, to establish who caused them (and who must fix them), and to ensure they are promptly fixed to stop slash bleeding into the environment. Its primary role is not to provide a civil adjudication between the causative actors.

[174] Accordingly, I consider that there will be cases where the Court's statutory purpose of securing remediation and mitigation is best served by making joint and several enforceable orders against those responsible, rather than delaying relief while complex questions of relative liability are resolved.[31]

[175] Therefore, I also dismiss Woodlett's and Mr Woodhouse's appeal.

Result

[176] The appeal brought by Samnic, Mr Fortune, Mr Funnell and Mr Hayes is dismissed.

[177] The appeal brought by Woodlett and Mr Woodhouse is also dismissed.

Costs

[178] The parties are directed to endeavour to agree costs within **20 working days** of the date of this judgment. Failing agreement, the GDC is to file submissions as to costs within **14 working days** thereafter. The appellants may file submissions in reply within a further **14 working days**. Submissions must not exceed five pages, excluding any attachments.

[179] As to MTT, I am inclined to the view that an award of costs is not appropriate. Although its interest in the proceeding was understandable and its perspective important, it did not appear to make the kind of distinct or significant contribution that has been recognised as justifying an award of costs to an intervener. MTT's

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31 As set out at [172] above, in those circumstances, questions of contribution may be better left to be resolved between the parties, and in separate civil proceedings if necessary.

perspective was substantially aligned with, and adequately advanced by, the GDC. If MTT takes a contrary view, I am prepared to accept its submissions, to be filed at the same time as the GDC's submissions.

[180] A decision as to costs will then be made on the papers.

Becroft J