

**IN THE DISTRICT COURT
AT GISBORNE**

**I TE KŌTI-Ā-ROHE
KI TŪRANGANUI-A-KIWA**

**CRI-2022-016-001668
[2024] NZDC 18066**

GISBORNE DISTRICT COUNCIL
Prosecutor

v

**SAMNIC FOREST MANAGEMENT LIMITED
FOREST MANAGEMENT SOLUTIONS LIMITED**

Defendant(s)

Hearing: 24 May 2024

Appearances: A Hopkinson for Gisborne District Council
N Beadle and I Kwek for Samnic Forest Management
E Harrison and E Pairman for Forest Management Solutions

Judgment: 1 August 2024

SENTENCING NOTES OF JUDGE D A KIRKPATRICK

Introduction

[1] The defendants, Samnic Forest Management Limited (**Samnic**) and Forest Management Solutions Limited (**FMSL**), appear for sentence having each pleaded guilty to two representative charges for contravening the Resource Management Act 1991 (**RMA**):

- (a) Section 15(1)(b) of the RMA between 27 April 2021 and 20 April 2022 by discharging a contaminant (namely slash, logging debris, waste logging material and/or sediment) onto land where it may enter water,

namely watercourses in Samnic Forest including the Pangopango Stream; and

- (b) Section 9(1) of the RMA between 1 April 2021 and 20 April 2022 by carrying out earthworks to construct a 400 metre forestry road and a skid site in a red zone, where a resource consent was required for such earthworks under regulation 35(2)(b) of the National Environmental Standards for Plantation Forestry (**NES-PF**).

[2] Each charge is an offence under s 338(1)(a) of the RMA for which the maximum penalty for a person other than a natural person is a fine not exceeding \$600,000.

Background

[3] Samnic Forest is a 940 hectare plantation forest located on Tuahu Road, Tauwhareparae, about 45 kilometres north of Gisborne and 20 kilometres northwest of Tolaga Bay.

[4] The terrain in the forest is steep and prone to severe erosion. The majority of the forest falls within areas that are identified as “red zone” under the NES-PF. The Pangopango Stream and its tributaries flow through the forest. The stream is a tributary of the Waiiau River which in turn is a tributary of the Hikuwai River, which in turn flows into the Uawa River which discharges into the sea at Tolaga Bay.

[5] Samnic held the harvesting rights to Samnic Forest and also the resource consents for forestry activities at the time of the offending. FMSL has been engaged by Samnic as the forest manager since 2019.

[6] The Gisborne region experiences extreme rainfall events which, although infrequent, are a persistent risk. A major event in March 1988, known as Cyclone Bola, resulted in a large number of slope failures. As a result, extensive areas of hill country being used for pastoral farming were replanted with pine trees. These trees have now reached maturity for being harvested.

[7] Since 2013, there have been six major storm events in the Gisborne region where the rainfall has caused large amounts of forestry slash and sediment to be mobilised and washed downstream:

- (a) In 2013, when forestry slash ended up on a beach at Tokomaru Bay;
- (b) In 2014, when forestry slash ended up on a beach at Tolaga Bay;
- (c) On 12 April 2017, when Cyclone Cook caused significant flooding in the headwaters of the Uawa catchment and a large buildup of slash in the Mangaheia River at Wigan Bridge, following which an investigation reported that:
 - (i) The practice of storing slash on floodplains needed to be discontinued;
 - (ii) Roads and tracks within forests needed to be designed to minimise the risks of failure and avoid side-casting as much as practicable; and
 - (iii) Ridge top landings should be placed to eliminate the risk of edge failure, with suitable areas for storing slash to minimise the risks of mobilisation into gullies and floodplains;
- (d) On Queen's Birthday weekend in 2018, a storm centred on the area of Tolaga Bay and Whangara resulted in substantial mobilisation of forestry slash and sediment with damage to houses, fences, crops and pasture;
- (e) In November 2021, rainfall of over 200 mm in 24 hours mobilised slash and other debris, exacerbating an existing log jam in the Pangopango River that was over 150 metres long; and
- (f) During the summer of 2021–2022, the East Coast experienced several periods of extreme rainfall.

[8] On five occasions between April 2017 and November 2021, the Gisborne District Council raised concerns with one or both of the defendants about poor harvesting practices and contraventions of resource consent conditions:

- (a) On 3 April 2017, abatement notices for consent contraventions were issued to each of the directors of Samnic;
- (b) On 5 August 2018, two abatement notices were issued to Samnic for further contraventions of consent conditions;
- (c) On 5 August 2019, an inspection by Council officers identified further non-compliance with consent conditions;
- (d) Following a weather event in July 2020, a log jam of slash and debris of 6,000 m³ and 150 m long formed in the Pangopango Stream and Samnic obtained consent to remove that material from the stream;
- (e) Following an inspection in November 2021, the Council raised further concerns about erosions due to poor water controls, the need to pull slash back from skid sites and the risk of areas of unstable earth collapsing.

[9] The offending to which the current charges was identified when Council officers inspected the forest in April and May 2022 as a part of a region-wide investigation of forestry operations following significant rain events in March 2022. These inspections found:

- (a) skid site and roading failures at five locations with degree slides of harvest waste and contamination of water courses with sediment, caused by contraventions of consent conditions and poor practice;
- (b) an unconsented and poorly constructed 400 m long road together with an unconsented and poorly constructed skid site at the end of the road, located in a red zone as defined in the NES-PF and in an area subject to Land Overlay 3 being the Regional Plan classification of land most

susceptible to erosion, sediment generation and soil loss, which had not been stabilised and did not comply with the forest road engineering manual of the New Zealand Forest Owners Association (NZFOA) or other guides to best practice and where fill was eroding from the unconsented road and debris had collapsed from the unconsented skid; and

- (c) debris and sediment had discharged into tributaries of the Pangopango Stream.

Relevant controls

[10] Between 2015 and 2020 Samnic held resource consents which authorised in construction of logging roads and clearfell harvesting of exotic plantation forest at the Samnic Forest.

[11] On or about 9 April 2020, Samnic applied to the Council for new consents to complete the harvesting of the forest. The application records that the proposed activity was in a balance area of about 80 hectares, that no earthworks were required as all infrastructure was already in place and that resource consent was required under regulation 70(3)(b) of the NES-PF for harvesting more than two hectares of red zoned land in any three-month period as a controlled activity.

[12] The application included statements about how the harvest would be undertaken to avoid, remedy, or mitigate potential adverse effects on the environment. This included that all harvesting operations would comply with the NZFOA Environmental Code of Practice for Plantation Forestry 2007. The Council granted consent on 7 October 2020. The consent did not authorise any earthworks in relation to forestry harvesting, forestry tracks or forestry roads.

[13] Relevant conditions included:

- (a) That the harvest would proceed in accordance with the information and plans submitted in support of the application;

- (b) That all land disturbance activities would include erosion and sediment controls in general accordance with the Bay of Plenty Regional Council Erosion and Sediment Control for Forestry Operations Guidelines and maintain an effective capacity in good working order at all times and no unstable accumulations of slash, loggings, tree heads, or waste logging materials or mixed soil was to be left on or beneath landing edges or in a position where it could readily migrate downhill or being entrained in flood flows. None of the conditions authorised discharges of any such material into water or onto land where it could enter water.

[14] The application and information included reference to the NZFOA Environmental Code of Practice (2007).

Chronology of offending

[15] In early April 2021, Samnic engaged a roading contractor, Yarding Solutions Limited, to undertake the remaining road construction for the harvest, including construction of a road between skids 40 and 41 and construction of an additional piece of road and skid site of Number 6 Road from skids 62. At that time, Samnic did not have any current resource consent for the earthworks required for these proposed roads, with the consent relating to the road between skids 40 and 41 having expired and there being no consent for any road or any skid connected to Number 6 Road.

[16] The unconsented road was constructed in July and August 2021. Between 18-21 August 2021 there was a nationwide lockdown as a response to the COVID-19 pandemic. Yarding Solutions accordingly ceased earthworks on 17 August 2021 and resumed work on 1 September 2021. It appears that Yarding Solutions finally ceased its work on or about 3 September 2021. From December 2021 to March 2022, Samnic engaged Phoenix Roading which had constructed the Number 6 Road to carry out remediation of roads and skid sites, including those constructed by Yarding Solutions, as well as other rehabilitation works to the skids and the forest.

[17] On 23 March 2022 a state of emergency was declared for the Gisborne region after significant rain events occurred. Parts of the forest suffered moderate damage including slip erosion from slope failures, compounded by windthrow and logging

waste material present on some slopes. In some areas there were failures of “bird nests” of logging slash on the sites of skid sites on top of various steep slopes which can be very destructive where they discharge woody material into the turbulent flow of water. Numerous photographs were presented showing the land and after these events.

[18] Council officers undertook inspections of parts of Samnic Forest on 20 April and 6 May 2022 and observed:

- (a) uncontrolled stormwater flows had resulted in the erosion of fill faces and consequent discharges of sediment and debris to watercourses;
- (b) lack of effective stormwater and erosion controls for unconsolidated side-cast material, with culvert flumes missing, twisted or in need of repair;
- (c) Culvert outlets discharging onto fills with consequent erosion and scouring;
- (d) Water on landings being directed onto the fill and debris; and
- (e) Unstable accumulations of debris, slash and slash or waste logging materials mixed with soil and left on the edge of landings following harvesting operations.

[19] The roading and skid site failures had occurred on Number 6 Road, at skids 40 and 58, from the track between skids 40 and 41, and from the unconsented skid located off Number 6 Road.

[20] These matters were, variously, contraventions of conditions 9, 10, 11 and 12 of the 2020 resource consent.

[21] During the inspections, officers found a length of approximately 400 metres of new road heading south from skid 62 which had been built during 2021, with a skid site at its end. There is no consent for the road or the skid site. The area appeared to

be unstable and was within the red zone identified under the NES-PF and the corresponding Overlay 3 in the regional plan. There were inadequate erosion controls that did not follow the NZFOA forest engineering manual or its other best practice guides.

[22] A second inspection of the forest occurred on 6 May 2022 in the execution of a search warrant. Failure of skid 58 was identified with contraventions of conditions 12 and 27 of the 2020 resource consent. The inspection also identified compliance issues at skids 40 and 41 and the track between them of a similar kind to those identified elsewhere.

[23] On 28 June 2022 the Council provided a detailed report to the directors of both defendants and to the forest owner, setting out remedial action to be taken to address compliance issues. On 18 July 2022, the Council issued two abatement notices to Samnic and to its three directors requiring them to cease contravening the conditions of the resource consents for Samnic Forest.

[24] In July 2022, Samnic applied for a variation to a 2020 resource consent to retrospectively allow for the creation of the 400 m road and the skid site discovered during the Council's investigation and the application was granted.

[25] A subsequent ecological assessment identified that large volumes of soil and harvest residues had discharged into waterways in Samnic Forest during the March 2022 event. Much of it caused or exacerbated by non-compliance with the resource consent and failures to carry out best practice. A report prepared by an environmental scientist for the Council dated 11 November 2022 included the following conclusions:

- (a) The two main environmental impacts were of increased sedimentation and of woody material on water courses both within and downstream of the forest;
- (b) Management practices may have accelerated erosion and sediment mobilisation in highly erosion prone areas in the forest;

- (c) There had been significant disturbance on the hill slopes, the banks and riparian margins of the watercourses and in places within the watercourses which, if left untreated, could lead to further erosion and instability;
- (d) Tracks with no water controls that are adjacent to water courses will continue to deliver sediment and, if water is concentrated and starts to scour, this will cause further erosion and sediment generation;
- (e) Forestry activity has had a significant effect on mobilisation of sedimentation which can have particularly negative consequences for aquatic ecosystems through smothering aquatic species and habitats and reducing oxygen levels;
- (f) Due to the scale and severity of the disturbance, there are high environmental effects from sediment within the forest;
- (g) There is a large volume of woody material in close proximity to the watercourses as well as unstable accumulations on the slopes which could be mobilised during rain events and wash into watercourses;
- (h) Once mobilised, large volumes of woody material can block and damage infrastructure downstream, choke waterways or end up on beaches causing marine hazards.

[26] The report recommended remedial work including:

- (a) Suitable controls installed on all tracks, roads and skid sites to divert water away from filled and onto stable ground;
- (b) Any remaining unstable or perched accumulations of fill and slash should be pulled back to stable locations and no fills should be placed on top of slash;

- (c) Any remaining woody material within water courses should be removed and placed in stable locations;
- (d) All remaining work material, disturbed areas and exposed riparian materials should be grass-seeded;
- (e) Any exposed or unstable riparian margins should be planted with willow poles and indigenous vegetation;
- (f) Not all environmental effects can be remedied and mitigated as some hill slope or stream banks' stability may be untreatable due to the scale and severity of erosion present.

Prosecutor's submissions

[27] The prosecutor submits that appropriate starting points would be a global fine of \$130,000 for Samnic and a global fine of \$60,000 for FMSL.

[28] There are no identified victims of the offending and accordingly no restorative justice process must be considered under s 24A of the Sentencing Act.

[29] The prosecutor submits that the offending involved a high degree of carelessness. Both defendants were responsible for the manner in which the harvest was undertaken and therefore with ensuring compliance with the conditions of the resource consents which had been imposed to avoid or mitigate adverse effects of their activities on the environment. The defendants were aware that it was a high-risk environment, in terms of both its classification as being highly erodible land and its history of storms resulting in mobilisation of slash in watercourses, and a vulnerable environment in terms of the protected watercourses in this forest.

[30] The offending involved a number of contraventions of consent conditions, as set out in the chronology. It also did not accord with relevant forestry industry standards for earthworks and harvesting. The importance of compliance with conditions and the seriousness of contraventions of conditions would have been well known to the defendants given previous decisions of this Court in relation to offending

by foresters, such as *Gisborne District Council v Juken New Zealand Ltd*.¹ They were on notice of these issues in relation to their own operations given the abatement notices issued to Samnic's directors in 2017 and 2018 and the concerns raised with them in 2019 and 2021. Further, the 2020 harvesting consent did not authorise earthworks such as the new track and skid site. The assessment of Council officers was that there appeared to have been a focus on extracting logs of higher value and leaving unstable debris and slash.

[31] The effects were serious in terms of the discharges in March 2022. Even allowing for the severity of the event, the effects were exacerbated by non-compliances and failures to follow best practice.

[32] Comparable cases cited by the prosecutor are:

- (a) *Gisborne District Council v Juken New Zealand Limited*² where heavy rain in June 2018 had led to numerous sediment and debris slides from skid sites related to similar breaches of consent conditions as in the Samnic forest. The Court found that the defendant's poor management practices had been careless in the extreme and adopted a starting point of \$200,000.
- (b) *Gisborne District Council v Lane*³ where unconsented earthworks in constructing a forestry track caused discharges of sediment, and related abatement notices were not complied with. The Court found there had been deliberate defiance of legal requirements and adopted starting points of \$120,000 for the earthworks and discharges and \$40,000 for the non-compliance with abatement notices.
- (c) *Gisborne District Council v PF Olsen Limited*⁴ where there was one charge of unlawful discharge of slash and sediment following collapses of landings and part of a road due to poor stormwater controls,

¹ *Gisborne District Council v Juken New Zealand Ltd* [2019] NZDC 24075.

² Fn 1.

³ *Gisborne District Council v Lane* [2022] NZDC 10666.

⁴ *Gisborne District Council v PF Olsen Limited* [2020] NZDC 19089.

earthworks and harvest practices. The Court found the defendant's culpability to be high and adopted a starting point of \$200,000.

- (d) *Gisborne District Council v DNS Forest Products 2009 Limited*⁵ where there was one charge of unlawful discharge of slash and sediment following slips and skid collapses due to poor road construction, water controls, and slash management. There had been issues between the defendant and its contractors leading to these problems. A starting point of \$150,000 was adopted.
- (e) *Marlborough District Council v Laurie Forestry Services Limited*⁶ where there were two charges for discharges of sediment and unlawful land use following slips from a skid site. The Court found there had been a relatively high degree of carelessness by the defendant even though it was aware of problems with the skid site and adopted a starting point of \$100,000.

[33] These decisions also contain remarks about the seriousness of cumulative effects of sediment discharges and the importance of avoiding their adverse effects by adopting appropriate best practice and ensuring compliance with conditions of consent.

[34] In light of these decisions, counsel submitted that offending against ss 9 (relating to land use) and 15 (relating to discharges) of the RMA, while different, should be treated as inter-related in forestry cases for the purpose of identifying a global starting point that takes into account all aggravating and mitigating features of the offending.⁷ This was not contested by either defendant and I accept it.

[35] On that basis, the prosecutor submitted that the starting point for Samnic should be a fine of \$130,000 and for FMSL should be \$60,000. Counsel submitted that setting individual starting points and fines should occur, rather than setting a single

⁵ *Gisborne District Council v DNS Forest Products 2009 Limited* [2020] NZDC 1112.

⁶ *Marlborough District Council v Laurie Forestry Services Limited* [2019] NZDC 2602.

⁷ *R v Taueki* [2005] 3 NZLR 372 (CA).

global fine and apportioning it between defendants, on the basis that the criminal law does not normally disaggregate harm.⁸

[36] Counsel submitted that Samnic's culpability is relatively high given its role as the holder of the consent and the forestry rights, with overall responsibility for the activities and the management of the risks. As a commercial forestry operator, it knew of the risks and should have ensured that the conditions of consent were met. Environmental harm occurred, including cumulative effects downstream. For both specific and general deterrence, the penalty must be sufficient to demonstrate the need for compliance and best practice.

[37] Counsel submitted that FMSL had relatively lower culpability given its more limited involvement and the fact that it inherited some of the compliance issues from the previous contractor. Even so, it failed to manage the risks for three years and failed to check that the works in 2021 were properly authorised. It was also aware of the risks involved and should bear a share of responsibility for the failures and consequent harm that occurred.

[38] There are no aggravating factors relating to either defendant, such as previous convictions or poor enforcement records. Their guilty pleas were entered 15 months after the prosecution commenced following a number of appearances and adjournments. The prosecutor submits that a discount of 20% in each case would be appropriate.⁹

Defendants' submissions

Samnic

[39] Counsel for Samnic accepts that a starting point of \$130,000 is appropriate for its offending but submits that discounts of 25% for its guilty plea, 5% for its co-operation and 5% for remediation and improvements should be allowed.

⁸ *Walling v Waikato Regional Council* [2023] NZHC 3437 at [33]-[34] and *Calford Holdings Ltd v Waikato Regional Council* HC Hamilton, CRI-2008-419-94 and -97, Lang J, 26 May 2009 at [31]-[35].

⁹ *Hessell v R* [2011] 1 NZLR 607 (SC) at [75].

[40] Counsel points to generally good grades given to Samnic by the Council's inspectors, with an exception for the log jam in the stream and notes the role of contractors in undertaking particular works. Counsel refers to the complications from the state of emergency relating to the Covid-19 pandemic and the effect of that on forestry management, including preventing access to address issues revealed during the Council's aerial assessments.

[41] Counsel submits that Samnic arranged for remedial works without delay or challenging the cost, submitted to be a little over \$400,000 plus GST. Samnic acknowledged an oversight in managing the consent for roading, including obtaining a consent for the additional road, but immediately sought and obtained a variation to its consent for that.

[42] On those grounds, counsel submits that specific deterrence is not required in Samnic's case, that its culpability is careless at most and mitigated by circumstances produced by the pandemic and the weather, and its attitude exemplified by its obtaining of the variation of consent to address the roading issue.

[43] Counsel comments on the comparable cases referred to by the prosecutor and submits that \$130,000 is an appropriate starting point. Counsel submits that the timing of its guilty plea was influenced by good faith resolution discussions and so the full 25% discount should still be given. Counsel points to Samnic's good faith in co-operating with the Council and undertaking remediation as the basis for further discounts totalling 10%.

FMSL

[44] Counsel for FMSL submits that an appropriate starting in its case would be \$30 – 40,000, allowing for the impact of the pandemic and considering properly comparable cases, and that discounts of 25% for early plea and 10% for good character are warranted.

[45] The principal issue raised by FMSL is that much of the narrative in the agreed summary of facts concerns Samnic or the acts and omissions of others which pre-date FMSL's involvement with this forest. In particular, counsel submits that remediation

took too long and was not always done well, the stub road was built without consent and to a poor standard, and a track was built poorly with side-cast waste. Counsel characterises another contractor involved in the roading work in 2021 as rogue and submits that legacy issues should reduce FMSL's culpability.

[46] FMSL acknowledges two primary faults:

- (a) Not realising that no consent was in place for the stub road; and
- (b) Not ensuring that all contractors had removed or stabilised slash and installed sufficient controls to cope with severe weather events.

[47] Counsel submits that FMSL is a small company with limited resources. It was not the first contractor on the site and it took over a number of problems and generally improved the situation.

[48] Counsel refers to three further comparable case in support of her submissions on sentence:

- (a) *R v Kenepuru Limited Partnership*¹⁰ where the charges related to a subdivision over two years between 2020 and 2021 and involved issues relating to earthworks and failure to control sediment and the breach of an abatement notice. There were a number of defendants and the starting points ranged between \$52,500 for the owner and consent holder, \$40,000 for the development manager and \$35,000 for the project engineers.
- (b) *Auckland Council v Wells Northland Ltd*¹¹ involving construction of an unauthorised river crossing where the forestry company's liability was distinguished from that of a contractor undertaking day-to-day management of the site. A global starting point of \$80,000 was

¹⁰ *R v Kenepuru Limited Partnership* [2023] NZDC 22734.

¹¹ *Auckland Council v Wells Northland Ltd* [2022] NZDC 17254 (sentence indication) and [2023] NZDC 2909 (final decision).

identified and then split equally between the company (which had ceased trading by the date of sentencing) and its director.

- (c) *Bay of Plenty Regional Council v Whitikau Holdings Ltd*¹² where the charges against several defendants involved harvesting in stream beds, discharging debris and sediment and contravening an abatement notice. Counsel submits that the starting points identified for a contractor of \$30,000 and for its principal of \$20,000, compared to \$80,000 for the forest owner, demonstrates the difference that should be attached to their respective roles.

[49] On the question of the timing of its guilty plea, counsel submits that there had been a substantial resolution reached in the number of charges and the summary of facts in a complex environmental case following resolution discussions with two other parties and resulting in the charging and factual position being markedly different from when the charges were first filed. On that basis and in reliance on *Hessell v R*¹³ counsel submits that the full 25 percent discount for an early guilty plea is appropriate in this case.

[50] On the issue of character, counsel submits that FMSL has no previous convictions and did not receive any of the abatement notices which were issued to Samnic prior to FMSL's involvement. On that basis counsel submits that a further discount of 10% would be appropriate.

Legal framework for sentencing

[51] There is no dispute as to the approach which the Court should take on sentencing under the Resource Management Act. In sentencing an offender, the Court must follow the two-stage approach as set out in *Moses v R*,¹⁴ first identifying the starting point incorporating any aggravating and mitigating features of the offence, and then assessing and applying all aggravating and mitigating factors personal to the offender together with any discount for a guilty plea (calculated as a percentage of the

¹² *Bay of Plenty Regional Council v Whitikau Holdings Ltd* [2018] NZDC 3850.

¹³ Fn 9 at [62].

¹⁴ *Moses v R* [2020] NZCA 296 at [45] – [47].

starting point). The two stages involve separating the circumstances of the offence from those of the offender.

[52] All of the purposes and principles in ss 7 and 8 of the Sentencing Act 2002 must be borne in mind, as well as the purpose of the RMA to promote the sustainable management of natural and physical resources. Of particular relevance under the Sentencing Act 2002 are the purposes of accountability, promoting a sense of responsibility, denunciation and deterrence, and the principles relating to the gravity of the offending and the degree of culpability of the offender, the seriousness of the type of offence, the general desirability of consistency with appropriate sentencing levels and the effect of the offending in the community.

[53] As to the overall sentencing approach for offending against the RMA, *Machinery Movers Ltd v Auckland Regional Council*¹⁵ and *Thurston v Manawatū-Whanganui Regional Council*¹⁶ are the leading decisions of the High Court which provide a comprehensive summary of the applicable principles. Briefly, the RMA seeks not only to punish offenders but also to achieve economic and educational goals by imposing penalties which deter potential offenders and encourage environmental responsibility through making offending more costly than compliance. Relevant considerations include the nature of the environment affected, the extent of the damage, the deliberateness of the offence, the attitude of the defendant, the nature, size and wealth of their operations, the extent of efforts to comply with their obligations, remorse, profits realised and any previous relevant offending or evidence of good character.

Evaluation

[54] Section 8(e) of the Sentencing Act requires the Court to take into account the general desirability of consistency with appropriate sentencing levels in respect of similar offending. That is stated to be a principle of sentencing, not a rule or other form of absolute requirement. Each case must be evaluated against the principles according to its facts and relevant circumstances. In cases of offending against the RMA, past

¹⁵ *Machinery Movers Ltd v Auckland Regional Council* [1994] 1 NZLR 492 at 503 (HC).

¹⁶ *Thurston v Manawatū-Whanganui Regional Council* HC Palmerston North CRI-2009-454-24, 27 August 2010 at [39] – [66] and [100].

cases demonstrate a high degree of variation in the facts, individual culpability, and environmental effects, making it at least difficult and potentially unreasonable to make direct comparisons between cases. Analysis of large numbers of previous RMA sentencing decisions rarely yields any straightforward pattern and a sentencing judge is likely to be better assisted by a more focussed approach to the factors relating to the gravity of the offending and any relatively recent decisions where such factors have been significant either to the establishment of the starting point or to any uplift or discount.¹⁷

[55] In the case of Samnic, I am greatly assisted by counsel for the prosecutor and counsel for the defendant agreeing on the level of an appropriate starting point, notwithstanding disagreement on a number of matters of detail. Reviewing the cases cited and the submissions of both counsel, I am satisfied that a starting point of \$130,000 is appropriate in Samnic's case.

[56] The position of FMSL is more complicated. In particular, the timing of its involvement and the role of third parties who would appear to have greater culpability but who are not before the Court has caused me concern. The broad scope of the offence provisions of the RMA can result in the whole chain of people involved in an activity such as forestry being equally liable on a broadly worded charge. Without doubting that criminal liability should, in principle, not be disaggregated, it is still clear that relative culpability of co-defendants must be evaluated on the particular facts of the case.

[57] While FMSL plainly is culpable for its failures in managing the operations as it was contracted to do, the problems left by the roading contractor clearly compounded the issues. Allowing for that in my consideration of the comparable cases, including the three that counsel for the defendant referred to which involved multiple defendants, I consider that an appropriate starting point is somewhere between the figures advanced by counsel and I set it at \$50,000.

¹⁷ *Auckland Council v Radius Contracting Ltd & Farmer* [2021] NZDC 938 at [80].

[58] I accept that the evaluation of the discount that should be given for a guilty plea depends on more than simply its timing and must include consideration of any amendments to the charges or the number of them and the content of the summary of facts. The difference between counsel is not great. I will deduct 25% in each case.

[59] Further discounts for good character and co-operation raise the question of whether ordinary or expected behaviour is sufficiently great to warrant a discount from the starting point for offending which ought to be avoidable and from engagement with a council to put right the effects of the offending. I will combine the two factors and deduct 5 % in each case.

Sentence

[60] On the charges in CRNs 22016500776 and 22016500778, I convict Samnic Forest Management Limited and sentence it to pay a fine of \$91,000 divided equally between the two charges, together with court costs of \$130 and solicitor's fee of \$113 on each charge.

[61] On the charges in CRNs 22016500801 and 2201650803, I convict Forest Management Solutions Limited and sentence it to pay a fine of \$35,000 divided equally between the two charges, together with court costs of \$130 and solicitor's fee of \$113 on each charge.

[62] As required by s 342 of the Resource Management Act 1991, I order that the fines, less 10% to be credited to a Crown Bank Account, shall be paid to the Gisborne District Council.

Judge D A Kirkpatrick

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 01/08/2024