

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TAMAKI MAKAU**

Decision [2024] NZEnvC 212

IN THE MATTER OF

an application under ss 314 and 316 of
the Resource Management Act 1991

BETWEEN

GISBORNE DISTRICT COUNCIL

(ENV-2023-AKL-000194)

Applicant

AND

TIMBERGROW LIMITED

First Respondent

AND

CHIONG YONG TONG

Second Respondent

AND

ERNSLAW ONE LIMITED

Third Respondent

AND

MANA TAIAO TAIRĀWHITI
INCORPORATED

Section 274 Party

Court: Environment Judge M J L Dickey sitting alone under s 279(1)(b)
of the Act

Last case event: 16 August 2024

Appearances: A Hopkinson and R Zame for Gisborne District Council
T Conder for the Respondents
A Limmer KC for Mana Taiao Tairāwhiti Incorporated

Date of Decision: 29 August 2024

Date of Issue: 29 August 2024



DETERMINATION OF THE ENVIRONMENT COURT ON APPLICATION FOR ENFORCEMENT ORDERS

A: Under ss 314, 316 and 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, makes the orders set out in **Annexure A** to this determination.

B: Costs are reserved.

REASONS

[1] These orders are made by consent. It is appropriate however that the Court provides the context for the application and the statutory basis for the orders. A recent decision of the Court, *Gisborne District Council v China Forestry Group New Zealand Company Limited*,¹ addresses the statutory foundation for enforcement orders in circumstances that are similar to this case and to that extent is a useful reference. The issues relate to the discharge of woody debris and sediment from commercial forestry activities.

[2] In setting out the background, basis for the orders and the Respondents' initial opposition to them, I record that the evidence supporting the Council's position was not tested in a hearing.

Background

[3] On 21 November 2023, the Gisborne District Council (the **Council**) filed an application for enforcement orders against Timbergrow Limited, Chiong Yong Tong and Ernslaw One Limited (together, the **Respondents**) relating to the plantation pine forest known as "West Ho Forest" at West Ho Road, Tolaga Bay (Legal Identifier GS5D/262 and GS5C/62). The application was filed together with 14 affidavits in support.²

¹ *Gisborne District Council v China Forestry Group New Zealand Company Limited* [2024] NZEnvC 189.

² Affidavit of Bevan Blunder sworn 24 October 2023; Affidavit of Jamie Botes sworn 24

Application for Enforcement Orders

[4] West Ho Forest is owned by the First Respondent, Timbergrow Limited (**Timbergrow**). The Second Respondent, Mr Tong is the company's sole director based in New Zealand, and is also a director of the Third Respondent, Ernslaw One Limited (**Ernslaw**). Ernslaw is contracted by Timbergrow to provide forest management services at West Ho Forest.

Grounds for application

[5] The application records that most of West Ho Forest is in the red zone, being land defined in Regulation 3 of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (**NESPF**) as having an erosion susceptibility rating of “very high”.³

[6] A number of streams flow through West Ho Forest that are tributaries to the Mākahakaha Stream and the Whakaaraunga Stream. These two streams join to form the Pakarae River, located approximately 1 km south of West Ho Forest. The Pakarae River then flows approximately 23 km to the sea at Whangara Beach, which is 25 km north of Gisborne city and is the site of Whitireia Marae.⁴

[7] The tributary streams in West Ho Forest are identified in Schedule G21 of the Tairāwhiti Resource Management Plan (**TRMP**) as protected watercourses and as tributaries of the Pakarae River, the Mākahakaha Stream and the Whakaauranga Stream.⁵

October 2023; Affidavit of Rob Sinel sworn 24 October 2023; Affidavit of Kevin Ford sworn 24 October 2023; Affidavit of Jo Noble sworn 2 November 2023; Affidavit of David Sluter sworn 30 October 2023; Affidavit of James Dobson sworn 30 October 2023; Affidavit of Andrew Shelton sworn 30 October 2023; Affidavit of Brodie O'Loughlin sworn 20 October 2023; Affidavit of Bob Jackman sworn 8 November 2023; Affidavit of Jason Love sworn 30 October 2023; Affidavit of John Holst sworn affirmed 26 October 2023; Affidavit of Murry Cave affirmed 21 November 2023; and Affidavit of Jack McConchie sworn 12 September 2023.

³ Application for Enforcement Orders dated 21 November 2023, at [13].

⁴ Above n 3 at [14].

⁵ At [15].

Resource consents

[8] Ernslaw has obtained a number of resource consents for its forestry operations at West Ho Forest, including three harvesting consents (**Resource Consents**):

- (a) LV-2014-106510-00 was granted by the Council on 24 November 2014 and relates to compartments 1, 20 and 17 at West Ho Forest, and expires on 31 December 2024;
- (b) LV-2015-106735-00 was granted by the Council on 20 July 2014 and relates to compartments 3, 8, 10, 11, 12, 13 and 16 at West Ho Forest, and expires on 31 December 2025; and
- (c) LV-2015-106955-00 was granted by the Council on 14 December 2015 and relates to compartments 9, 14 and 15 at West Ho Forest, and expires on 31 December 2025.

[9] The application records that the Resource Consents do not expressly authorise the discharge of contaminants (namely forest debris, slash, logging waste, windthrow trees and/or sediment) to land where that contaminant could enter water.⁶

[10] The pine trees in West Ho Forest were harvested from 2014 to 2020. The forest was re-planted with pine trees in July 2020.

Council inspections of West Ho Forest in 2018

[11] In June 2018, the Gisborne region was affected by significant weather events, mobilising large volumes of slash, forestry debris and felled trees in various forests in the region. The mobilised forestry debris caused extensive damage at Tolaga Bay and in areas to the west of Tolaga Bay. These events prompted the Council to investigate forestry operations to the west of Tolaga Bay as well as other places in the region.

[12] On 7 July 2018, Council officers inspected West Ho Forest and observed the following issues:⁷

⁶ Above n 3 at [18].

⁷ Above n 3 at [21].

- (a) a number of skid sites (landings) had collapsed, causing debris slides of slash, harvesting waste material and sediment to enter watercourses in the forest;
- (b) skid sites where harvesting operations had been completed, had unstable accumulations of logging debris, slash, waste logging material and soil left on the edge of landings, with perched slash overhanging on many skid sites or being perched below the landings;
- (c) logging slash had been removed from the watercourse below a skid but was stockpiled on the floodplain where it was at significant risk of re-mobilisation;
- (d) runoff from roads was being directed through cut-off drains and culverts onto fill and side-cast material;
- (e) water on landings was being directed onto fill and logging debris, including waratah waste mixed with soil on the edge of landings; and
- (f) there was a lack of water controls on the tracks in the forest and scouring was noticeable at the discharge point of some cut-offs.

[13] Following the inspection, the Council issued two abatement notices to Ernslaw, requiring it to:⁸

- (a) cease contravening conditions 3, 5, 14, 16 and 20 of Resource Consent LV-2015-106735-00, and/or section 15 RMA by 1 October 2018 in Compartments 3, 8, 10-13 and 16 of West Ho Forest (abatement notice A2018/A009); and
- (b) cease contravening conditions 3, 5, 10, 16 and 18 of Resource Consent LV-2014-106510-00 and/or section 15 RMA by 1 October 2018 in Compartments 1 and 17 of West Ho Forest (abatement notice A2018/A008).

⁸ Application for Enforcement Orders dated 21 November 2023, at [22].

[14] Ernslaw appealed the abatement notices and sought a stay of the notices on the basis that it was making good progress to stabilise roads and landings and clear material from watercourses in the forest, but it needed time to reach agreement with the Council on the precise nature and extent of works required to achieve compliance with the conditions of the Resource Consents.⁹

[15] The stay was granted in September 2018¹⁰ and further inspections of West Ho Forest were carried out on 24 October and 11 December 2018 to check progress in compliance with the two abatement notices. The Council cancelled the abatement notices on 24 September 2019, having been satisfied that compliance was achieved.¹¹

Council inspections following Cyclone Hale and Cyclone Gabrielle

[16] The Gisborne region was affected by Cyclone Hale on 8 to 12 January 2023 and then by Cyclone Gabrielle on 13 and 14 February 2023.

[17] During these weather events (particularly Cyclone Gabrielle) large volumes of felled trees, slash, logging debris, waste logging material and windthrow trees from commercial pine forests were mobilised and discharged into tributaries of the Pakarae River. This material flowed down the Pakarae River causing damage to the downstream areas and infrastructure, including extensive damage to a farm located on the southern boundary of West Ho Forest known as “Jackman’s Farm” (at 1180 Arakihi Road, Tauwhareparae).¹²

[18] Following Cyclone Gabrielle, a Council enforcement officer inspected Whangara Beach on 11 March 2023 and found large amounts of forestry debris, slash and logs covering a section of the beach near the Pakarae River mouth. The Council officer observed that the logs on the beach had machine cut ends, had been stripped of branches, had waratah processing marks on them and many of them had spray painted markings or numbers.¹³

⁹ Above n 8 at [23].

¹⁰ [2018] NZEnvC 184.

¹¹ Above n 8 at [24] – [25].

¹² Above n 8 at [28] – [29].

¹³ At [32].

[19] The application records that the material on the beach was from the Pakarae River catchment, and therefore from plantation pine forests upstream of that catchment. The main plantation pine forest in the Pakarae River catchment is West Ho Forest.¹⁴

[20] On 28 March 2023, Council enforcement officers inspected West Ho Forest, accompanied by a manager from Ernslaw. The officers observed the following issues at West Ho Forest:¹⁵

- (a) logging debris collapses from some of the skid sites;
- (b) large amounts of harvesting waste (slash) and sediment migrated to watercourses in the forest;
- (c) a lack of functioning water controls in and around some of the skids and most of the roading infrastructure;
- (d) a large amount of harvesting waste including trees cut to waste, slash and windthrow remaining on the steep slopes at the forest;
- (e) slope collapses (slips) had occurred in many locations collecting the woody debris from the “cutover” (i.e. areas from which some or all of the trees have been recently cut). The woody debris collected by the slope collapses created debris flows which in many cases discharged into water courses along with high levels of sediment;
- (f) many watercourses in the forest contained woody debris, harvesting waste and windthrow;
- (g) in areas of the forest where slips were observed, harvesting waste and sediment posed a substantial risk of further discharges from land to water;
- (h) a high risk that woody debris and sediment would be mobilised into watercourses due to the steepness of slopes and erosion prone soil

¹⁴ At [33].

¹⁵ At [35].

geology;

- (i) a large amount of harvesting waste in the bed of the streams, which had the potential to be mobilised downstream during heavy rain, including harvesting waste in the Mākahakaha Stream;
- (j) the roadside ditches (commonly referred to as “water tables”) in many locations had been overwhelmed with soil and woody debris due to batter slope failures, causing water to be redirected off the roads into fill causing scouring and sediment discharges to land and in some cases watercourses;
- (k) windthrow and cut to waste left on steep slopes was prevalent in the forest; and
- (l) upper and lower batters on forestry roads were very unstable with multiple collapses affecting water controls throughout the forest.

Council inspection of Jackman’s Farm in April 2023

[21] In April 2023, a Council officer reviewed satellite imagery of the area to the south of West Ho Forest and identified a large build up of forestry debris and logs in the headwaters of Pakarae River approximately 700 m to the south of West Ho Forest (i.e. on Jackman’s Farm).¹⁶

[22] On 5 April 2023, Council officers inspected Jackman’s Farm accompanied by one of the farm’s owners, Bob Jackman. The Council officers identified the following issues on the farm:¹⁷

- (a) a substantial build-up of logging debris beside the Arakihi Bridge near the farm;
- (b) a large log jam (extending at least 300 m in length and a few metres deep) in a section of the Mākahakaha Stream at the farm, diverting a section of the stream to flow in a straight line;

¹⁶ Application for Enforcement Orders dated 21 November 2023 at [35].

¹⁷ At [36].

- (c) an internal bridge on the farm had been completely destroyed by slash; and
- (d) slash and silt had built up on the side and underneath the woolshed on the farm, lifting it up completely and effectively destroying it.

Council's communications with Ernslaw about issues at West Ho Forest

[23] On 26 May 2023, the Council sent an email to Ernslaw regarding the issues identified at West Ho Forest in its March 2023 inspection and inquiring as to remedial work it had planned for the forest. A follow up email was sent on 16 June 2023. No response was received to the emails.¹⁸

Aerial survey of West Ho Forest on 29 June 2023

[24] On 29 June 2023, a Council enforcement officer carried out an aerial survey of West Ho Forest. The officer observed that there was a significant amount of slash, forestry harvesting debris and felled trees remaining on the slopes at West Ho Forest.¹⁹

Further Council inspection of West Ho Forest on 24 July 2023

[25] On 24 July 2023, Council enforcement officers undertook a further inspection of West Ho Forest. During this inspection, the officers observed the following issues at the forest:²⁰

- (a) full or partial failures at a number of skid sites. In some cases, forestry debris and sediment had made its way down slopes and into watercourses below. In other cases, there was evidence of slipping or large voids in skids, increasing the risk of imminent collapse;
- (b) erosion issues along roads at the forest, including roading failures and slip batter failures;
- (c) blocked and detached culverts on some roads at the forest; and

¹⁸ Above n 16 at [39] – [40].

¹⁹ At [41] – [42].

²⁰ Above n 16 at [43].

- (d) poor practices at a number of skid sites, including poor water controls around skid sites, and thick layers of bark and bark fines on the edge of skids that were at risk of collapse.

Further Council inspections of Jackman's Farm and Whangara Beach

[26] On 1 August 2023, Council enforcement officers inspected Jackman's Farm to assess the composition of woody debris at the farm and options for remediation.

[27] Based on the Council's assessment of the material at Jackman's Farm, the woody debris there was comprised of the following:²¹

- (a) 89% pine, which included waste logging material (such as cut logs, stumps, slash, cut ends (slovens), thinnings (cut to waste), cut branches and felled trees) as well as pine trees that still had their root balls;
- (b) 3.4% Willow/Poplar and Acacia (which are non-commercial tree species that are common in the region);
- (c) 4.2% indigenous (e.g. from ponga trees, puriri trees, manuka trees, etc); and
- (d) 3.4% manmade wooden material, e.g. fence posts, battens.

[28] On 8 September 2023, Council enforcement officers carried out a further inspection of Whangara Beach and observed that a large amount of slash, woody debris and logs remained covering an area of the beach near the Pakarae River mouth. Slash and logs were also seen on the banks of the Pakarae River upstream of the river mouth. A number of the logs had machine cut ends, waratah processing marks and/or spray paint markings.²²

Further inspection of West Ho Forest on 4 October 2023

[29] On 4 October 2023, Council enforcement officers undertook a further site

²¹ Above n 16 at [45].

²² Application for Enforcement Orders dated 21 November 2023, at [47].

inspection of West Ho Forest, accompanied by Ernslaw's environmental manager.

[30] During the inspection the Council officers observed the following issues at the forest:²³

- (a) large amounts of felled trees, slash and windthrow remained on the slopes;
- (b) felled trees, slash and woody material remained in watercourses;
- (c) slips on a number of harvested slopes in the forest;
- (d) blocked and poor water controls at a number of sites, water controls at the forest had become overwhelmed in a number of locations and were no longer working;
- (e) skid sites with large amounts of overburden off the edge;
- (f) some skid sites had collapsed or partially collapsed;
- (g) wood and bark fines was evident in the soil in places;
- (h) sediment from slips was also observed in streams; and
- (i) a debris catcher Ernslaw installed in the Mākahakaha Stream pursuant to the Resource Consents had been destroyed by forestry debris, and only remnants of that debris catcher remained.

[31] At the end of the inspection, officers flew from West Ho Forest along the streams and river paths heading from West Ho Forest to Whangara Beach. They observed 17 significant accumulations of logging debris along the Pakarae River downstream of West Ho Forest.²⁴

²³ At [51].

²⁴ Above n 22 at [52].

Further grounds for application

[32] In making its application, the Council relied on s 15(1)(b) of the RMA, which provides:

15 Discharge of contaminants into environment

(1) No person may discharge any –

...

(b) contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water...

[33] Forestry debris, slash, logging waste, windthrow trees and sediment are all contaminants as defined in s 2 of the Act.

[34] The Council argued that the ongoing discharges into watercourses that have occurred at and from West Ho Forest are contraventions of s 15(1)(b) of the Act and are contraventions of the conditions of the Resource Consents.

[35] It submitted that the issues at West Ho Forest also engage s 17 of the Act, which states:

17 Duty to avoid, remedy, or mitigate adverse effects

(1) Every person has a duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of the person, whether or not the activity is carried on in accordance with –

(a) any of sections 10, 10A, 10B and 20A; or

(b) a national environmental standard, a rule, a resource consent, or a designation.

...

[36] The application came after three attempts by the Council to contact Ernslaw in 2023 regarding the compliance and environmental issues at West Ho Forest, to which

the Council had not received any response until 27 October 2023.²⁵

[37] Since 2015, the Tairāwhiti region has experienced significant damage to watercourses, beaches near river mouths and infrastructure as the result of forestry slash, felled trees and other logging material discharging from commercial pine forests during significant rain events. At the time of filing the application, the material on the slopes and skid sites at West Ho Forest remained at high risk of mobilisation into the Mākahakaha Stream, the Whakaraunga Stream, the Pakarae River, onto Jackman's Farm and onto Whangara Beach.²⁶

Notice of Opposition

Grounds for opposition

[38] On 13 December 2023, the Respondents filed a notice of opposition to the application.

[39] The notice recorded that the Respondents opposed the orders relating to the streams on the following grounds:²⁷

- (a) the removal of all harvest material and windthrow trees from the area described is not able to be conducted in a manner that does not cause additional and disproportionate environmental harm to the affected areas;
- (b) the orders sought require the Respondents to obtain the agreement of the Council to an environmental management plan, which should be determined prior to making an order that the Respondents complete the works;
- (c) debris traps are a more effective, sustainable and practicable way to address the risks associated with debris in some areas.

[40] The Respondents also opposed the orders relating to the forest on the following

²⁵ Application for Enforcement Orders dated 21 November 2023, at [61].

²⁶ Above n 27 at [57] and [62].

²⁷ Notice of Opposition dated 13 December 2023 at [2](a).

grounds:²⁸

- (a) the removal of all harvest material and windthrow trees from some of the areas described would involve a disproportionately high level of health and safety risk that is not proportionate to the harm sought to be prevented and a more targeted approach is required;
- (b) the removal of all harvest material and windthrow trees from the area described is not able to be conducted in a manner that does not cause additional and disproportionate environmental harm to the affected areas;
- (c) the order described is overly broad and is not sufficiently clear to determine the precise area affected; and
- (d) debris traps are a more effective, sustainable and practicable way to address the risks associated with debris in some areas.

[41] In relation to the order concerning discharge, the Respondents opposed the order on the basis that it served no useful purpose as it simply directed the Respondents not to break the law. The Respondents argued that the order intended to create criminal liability in circumstances where the RMA would not create such liability.²⁹

[42] In relation to the orders concerning Jackman's Farm, the Respondents advised that:

- (a) the area described in the application is overly broad, and should be narrowed;
- (b) the owner of Jackman's Farm does not want parts of the property cleared; and
- (c) the harvest material and windthrow trees at Jackman's Farm includes material from other forests not connected with the Respondents.

²⁸ Above n 27 at [2](b).

²⁹ At [2](c).

[43] The Respondents submitted that the orders that sought certain works to be completed by 1 June 2024 were impractical due to:

- (a) the volume of work required both on West Ho Forest and other sites;
- (b) constraints related to the availability of labour and machinery; and
- (c) the limited access to some of the relevant sites due to damaged or missing infrastructure.

[44] The Second Respondent, Mr Tong, opposed the making of any order against him personally on the basis that he was not personally liable for the actions alleged and considered that it was not appropriate that a personal order be made against him.

[45] The Respondents opposed the making of any order that they meet the costs of this proceeding on the following grounds:

- (a) they considered the application was premature in that the Council did not attempt to agree to the scope of a consent order with Ernslaw prior to commencing proceedings;
- (b) the application seeks that Ernslaw take steps that the Council has not previously discussed with it; and
- (c) Ernslaw is prepared to agree to undertake part of the works sought in the application without the need for an enforcement order.

[46] Ernslaw generally agreed with the grounds set out in the application but also commented that:³⁰

- (a) a significant amount of the debris on Whangara Beach as observed by the Council officer on 11 March 2023 was not related to its forestry operations and that some of the debris came from forests not managed by any of the Respondents;

³⁰ Notice of Opposition dated 13 December 2023, at [6].

- (b) West Ho Forest is in the Pakarae River catchment, but it is not the only such forest;
- (c) it does not agree with the causes of damage and discharges at West Ho Forest as observed by the Council officers on 28 March 2023, and denied that any discharges arose from failures on the part of the Respondents;
- (d) it had no knowledge of the log jam and damage downstream of West Ho Forest that was identified in the satellite imagery that was reviewed by the Council officer in April 2023, it also had no knowledge of the Council's inspection of Jackman's Farm on 5 April 2023, and therefore denied the allegations raised therein;
- (e) it had no knowledge of the aerial survey carried out by a Council officer on 29 June 2023 and therefore denied the allegations therein;
- (f) it acknowledged that a further inspection of West Ho Forest was carried out by Council officers on 24 July 2024 and acknowledged that damage was observed but otherwise denies the allegations therein;
- (g) in relation to the damage on Whangara Beach and Jackman's Beach as observed by Council officers on 1 August 2023, Ernslaw made the same comments as set out in (a) above;
- (h) it relies on the words actually used during the discussion between the Council officers and its environmental manager during the Council's inspection of West Ho Forest on 4 October 2023. Ernslaw asserted that it had separately communicated with the Council about some of the remedial work it was completing and about the difficulties in accessing West Ho Forest;
- (i) it disagreed with the characterisation of the extent of the issues observed at West Ho Forest in the Council's inspection on 4 October 2023;
- (j) it had no knowledge that, following the inspection on 4 October 2024, the Council officers flew from West Ho Forest along the streams and

river paths from West Ho Forest to Whangara Beach and therefore denied the allegations raised therein; and

- (k) it did not respond to the further grounds set out in the application at paragraphs [53] to [62].

[47] The Respondents indicated however that they were prepared to participate in mediation to attempt to agree the terms of a consent order to complete works to address the risk factors present at West Ho Forest and Jackman's Farm.³¹

Agreement reached

[48] On 21 December 2023, the Court directed the parties to court-assisted mediation. By this time, Mana Taiao Tairāwhiti Incorporated had joined the proceeding as an interested party under s 274 of the RMA. No other person has given notice of an intention to join the proceeding under s 274 of the Act.

[49] The parties attended mediations on 8 April 2024 and 12 June 2024. A joint memorandum was filed on 19 June 2024 updating the Court as to progress.

[50] Following the mediation of 8 April 2024, it was advised that works pursuant to a mediation agreement had commenced, in particular:

- (a) the Council had approved the Stage 1 remedial works at Mākahakaha Stream;
- (b) the Respondents had begun pulling back woody debris from the commercial forestry;
- (c) on 15 April 2024, the Respondents' independent expert provided the Council with a map of the forest showing safe disposal area;
- (d) helicopter trials pursuant to the agreement had taken place;
- (e) on 6 May 2024, the Respondents provided a report to the Council

³¹ Above n 30 at [5].

regarding the helicopter trials;

- (f) the Council considered Ernslaw's debris slash catcher report and took the view that the proposed slash catcher in that report was not sufficient to address the risk of future debris mobilisation; and
- (g) on 30 May 2024, the Council carried out an inspection at West Ho Forest and provided a summary of its views from that inspection to the Respondents.

[51] On 11 June 2024, the Council provided amended proposed enforcement orders to the Respondents to be discussed at the mediation scheduled for the following day.

[52] At the mediation of 12 June 2024, the parties agreed that:

- (a) by 19 June, the Council would consider the Respondents' proposed amendments to the proposed enforcement orders and would circulate an update to the other parties; and
- (b) by 10 July 2024, the parties would file a joint memorandum asking the Court to impose the agreed enforcement orders by consent, or, if agreement had not been reached by then, would seek timetabling directions for a hearing.

[53] On 23 July 2024, the Council filed a memorandum setting out the orders it sought to be made by consent. It is advised that the objective of the orders sought is to prevent future discharges of woody debris or sediment (including felled trees, windthrow trees, slash, harvesting debris) from commercial forestry activities into watercourses within and beyond West Ho Forest.

[54] On 8 August 2023, the parties filed a joint memorandum advising the Court that agreement had been reached on the orders. The parties have agreed that these orders can be made by consent, with no issue as to costs.

Evaluation

[55] Relying on various provisions of the Act, including ss 15, 17, and 314(1)-(5), the Council seeks various orders. In summary, the sections on which the Council relies, and which enable the Court to make enforcement orders are as follows:

- (a) Section 314(1)(a)(i) to require a person to cease anything that contravenes or is likely to contravene the Act and under (a)(ii) is likely to be noxious, dangerous, offensive or objectionable so as to have adverse effect on the environment.
- (b) Section 314(1)(b)(i) to ensure compliance by or on behalf of a person with the Act and under (b)(ii) that is necessary to avoid, remedy or mitigate a likely adverse effect on the environment caused by or on behalf of that person.
- (c) Section 314(1)(c) to remedy or mitigate any adverse effect on the environment caused by or on behalf of that person.
- (d) Section 314(1)(da) to do something that is necessary to avoid, remedy or mitigate an adverse effect on the environment relating to land of which the person is the owner or occupier.
- (e) Section 15 prohibits the discharge of contaminants unless they are expressly allowed by a rule in a plan, national environmental standard or other regulation or a resource consent.
- (f) Section 17 imposes a general duty to avoid, remedy or mitigate the adverse effects of an activity.

[56] I accept that the mobilisation events that occurred at West Ho Forest were in contravention of the resource consents obtained by the Respondents.

[57] I accept that West Ho Forest is one of the main plantation pine forests located in the Pakarae River catchment. I also accept that woody debris and sediment from West Ho Forest mobilised into the various tributaries of the Pakarae River and

subsequently onto Whangara Beach during Cyclone Hale and Cyclone Gabrielle.

[58] I accept that it is necessary to make enforcement orders against all the Respondents to ensure that the discharges of woody debris and sediment from the Forest ceases and that the remedial works are undertaken on Jackman's Farm.

[59] The Court understands that the positions of the parties on the facts in the evidence and other documents filed in this proceeding are largely unchanged.

[60] In the memorandum of counsel for the Council dated 14 August 2024, Mr Hopkinson advised that since the application for enforcement orders was commenced, the Council and Respondents have conducted a number of site inspections at West Ho Forest, and have also considered further information provided by an independent forest consultant in assessing the present risks at the forest, and the effect of the works that the Respondents have undertaken in the forest since the Council's evidence was prepared.

[61] The Court understands that both parties recognise and acknowledge the risks presented at West Ho Forest and the importance of effectively managing those risks. There are no factual disputes between the parties that are material to the proposed enforcement orders.³²

Outcome

[62] The Court notes that the proposed orders refer to s 315(2) and (3) of the Act. Despite these orders being agreed, I find that s 315 (2) and (3) are not applicable. If it should later prove necessary, an application can be made pursuant to s 315.

[63] Under ss 314, 316 and 279(1)(b) of the Resource Management Act 1991, the Court, by consent, makes the orders as set out at the beginning of this determination.

³² Memorandum for the Council dated 16 August 2024 at [4].

[64] Under s 285 of the RMA, there is no order as to costs.



M J L Dickey
Environment Judge



Annexure A – Enforcement Orders

A: Under ss 314, 316 and 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, makes the following orders:

Orders

1. That, pursuant to ss 15(1)(a), 15(1)(b), 17(3)(a), 17(3)(b), 314(1)(a)(i), 314(1)(a)(ii), 314(1)(b)(i), 314(1)(b)(ii), 314(1)(c), 314(1)(d), 314(1)(da), 314(2), 314(3), 314(4) and 315(1) of the RMA, Timbergrow Limited, Chiong Yong Tong and Ernslaw One Limited (Respondents), are required, in respect of the forest known as “West Ho Forest” at West Ho Road, Tolaga Bay, Gisborne (Legal Identifier GS5D/262 and GS5C/62) to:
 - (a) Cease discharging woody debris from commercial forestry (including felled trees, windthrow trees, slash, harvesting debris) or sediment from commercial forestry activities onto or into land where it may enter water.

Woody debris removal from streams and other risk locations

- (b) Remove all woody debris from commercial forestry (including felled trees, windthrow trees, slash, harvesting debris) from all streams and locations identified in the map at Appendix A of these orders and place that material in a safe disposal site identified in the map at Appendix A by 1 December 2024.
 - (c) Obtain written certification from a suitably qualified and experienced independent expert (approved in writing by Gisborne District Council) that the foregoing works in Order 1(b) have been completed and are sufficient to eliminate or minimise the risk of the material being re-mobilised in future rain events.
 - (d) Provide the foregoing certification (i.e. referred to in Order 1(c)) to Gisborne District Council by 15 December 2024.

Skid site woody debris removal and rehabilitation

- (e) Pull back felled trees, slash and waste logging material from the edge of skid sites that can be reached by a long-reach digger and place that material on hard ground well back from the edge of the skid site (or move it to an identified safe disposal site in the map at Appendix A of these orders) by 1 September 2024.
- (f) Obtain written certification from a suitably qualified and experienced independent expert (approved in writing by Gisborne District Council) that the foregoing works in Order 1(e) have been carried out to a high standard and are sufficient to eliminate or minimise the risk of felled trees, slash and waste logging material on skid sites/landings collapsing and/or mobilising.
- (g) Provide the foregoing certification (i.e. referred to in Order 1(f)) to Gisborne District Council by 15 September 2024.

Water controls

- (h) Install water controls at all skids/landings and on all tracks and roads by 1 September 2024 to eliminate or minimise the risk of erosion, skid site collapse, track collapse or road collapse.
- (i) Engage a suitably qualified and experienced independent expert (approved in writing by Gisborne District Council) to develop hydrological principles and guidelines that will be applied to the works carried out in accordance with Order 1(h).
- (j) Ensure that the water controls installed under Order 1(h):
 - (i) accord with those hydrological principles and guidelines prepared under Order 1(i);
 - (ii) prevent ponding except in specified areas, e.g. sedimentation traps;
 - (iii) discharge runoff via diffuse/dispersed methods wherever possible;
 - (iv) direct water to solid/stable ground and generally planar or convex

- slopes;
 - (v) have discharges that are flumed, ideally with hard pipe flumes, with appropriate erosion control at both the break in slope and point of discharge;
 - (vi) direct water away from fill;
 - (vii) direct water away from skid sites/landings;
 - (viii) direct water away from the edges of skid sites/landings;
 - (ix) manage the accumulation of runoff so that it does not exceed the capacity and erosion resistance of drains and water tables;
 - (x) include an adequate number of appropriately sized and spaced culverts and cut-offs on track/roads, in general accordance with the “*NZ Forest Road Engineering Manual - Operators Guide 2020*” (NZ Forest Owners Association, October 2012, updated February 2020); and
 - (xi) include engineered secondary flow paths for situations where the capacity of any drain or water table may be exceeded.
- (k) Obtain written certification from a suitably qualified and experienced independent expert (approved in writing by Gisborne District Council) that the foregoing works in Order 1(h) are fit for purpose, consistent with, or better than, industry best practice, conform with Order 1(j) above, and will eliminate or minimise the risk of erosion at skid sites, tracks and roads.
- (l) Provide the foregoing certification (i.e. referred to in 1(k)) to Gisborne District Council by 15 October 2024.

Slash Catcher Network/Woody debris catching devices

- (m) Install a network of slash catchers at West Ho Forest by 31 August 2025 in accordance with the following process:
- (i) The Respondents will prepare an assessment report for a proposed network of slash catchers (the **Slash Catcher Network**) to be installed at West Ho Forest to ensure that woody debris from commercial forestry (including felled trees, windthrow trees, slash, harvesting

debris) will not migrate beyond the boundary of West Ho Forest.

- (ii) The assessment report for the Slash Catcher Network must include the following matters:
 - (1) number and location of slash catchers;
 - (2) catchment size that each slash catcher will service;
 - (3) estimated volume of debris for each slash catcher location;
 - (4) proposed design of each slash catcher;
 - (5) effects on flows, erosion and river and bank stability;
 - (6) potential impact if slash catcher is overtopped or bypassed and how this risk will be mitigated; and
 - (7) access and maintenance, including proposed disposal areas.
- (iii) The Respondents will provide the assessment report for the Slash Catcher Network to Gisborne District Council and Mana Taiao Tairāwhiti by 31 August 2024.
- (iv) If Gisborne District Council approves the Slash Catcher Network set out in the assessment report – after seeking and receiving feedback from Mana Taiao Tairāwhiti – the Respondents will lodge an application for a resource consent for the Slash Catcher Network within two months of receiving the Council’s written approval.
- (v) The Respondents will install the Slash Catcher Network within 12 months of receiving Resource Consent and in any event no later than 31 August 2025.
- (vi) If the Slash Catcher Network assessment report is not approved by Gisborne District Council by 1 December 2024 and/or resource consent is not granted for the Slash Catcher Network by 1 June 2025, then Gisborne District Council can apply (on notice to the parties) to the Court to vary these enforcement orders to require installation of an alternative Slash Catcher Network.

- (n) Inspect the slash catchers in the Slash Catcher Network after every rain event when either 15 mm/hr or 100mm/24-hours or more of rain is recorded at Gisborne District Council's Mangaheia River @ Willowbank rain gauge, and ensure that:
 - (i) the slash catchers are regularly cleared of woody debris from commercial forestry (including felled trees, windthrow trees, slash, harvesting debris) and indigenous vegetation;
 - (ii) any damage to the slash catchers is repaired promptly; and
 - (iii) the slash catchers are effectively preventing woody debris from commercial forestry (including felled trees, windthrow trees, slash, harvesting debris) from migrating beyond the boundary of West Ho Forest;
- (o) Obtain written certification from a suitably qualified and experienced independent expert (who has been approved in writing by Gisborne District Council) that the slash catchers referred to above in Order 1(m) have been appropriately installed in accordance with the assessment report referred to in Order 1(m)(i) and Order 1(m)(ii) and provide this certification to Gisborne District Council by 31 August 2025.

Monitoring and maintenance

- (p) Carry out ongoing monitoring of all skid sites and water controls and carry out any necessary maintenance and remedial work to ensure skid sites pose low risk of triggering erosion, landslides and/or debris collapses, and to ensure that all water controls remain effective.
- (q) Carry out ongoing monitoring of all streams in West Ho Forest and if any further woody debris from commercial forestry (including felled trees, windthrow trees, slash, harvesting debris) is mobilised into any streams, remove that debris and place it in a safe disposal location (as identified in the map at Appendix A of these orders) within 28 days of discovering that debris unless the Council is satisfied the debris cannot be removed. The Council's decision must be made reasonably and after taking account of feedback from Mana Taiao

Tairāwhiti.

- (r) Carry out ongoing monitoring of the safe disposal locations identified in the map at Appendix A of these orders to ensure that material in these locations is not at risk of being mobilised or triggering erosion, landslides and/or debris collapses.
- (s) Ensure a suitably qualified and experienced expert (**SQEP**) (approved in writing by Gisborne District Council) conducts inspections of all of the skid sites, water controls and safe disposal locations as follows:
 - (i) until the Slash Catcher Network is installed, the frequency of inspections by the SQEP shall be at least once every 3 months and after every major rain event;
 - (ii) after the Slash Catcher Network is installed, the frequency of inspections by the SQEP shall be at least once every 12 months and after every major rain event; and
 - (iii) for the purposes of this clause a major rain event is an event where either 15mm/hr or 100mm/24-hours or more rain is recorded at Gisborne District Council's Mangaheia River @ Willowbank rain gauge.
- (t) Ensure that a suitably qualified and experienced independent expert (who has been approved by Gisborne District Council in writing) inspects all of the skid sites, water controls, slash catchers within the Slash Catcher Network, and safe disposal locations in West Ho Forest, at least once every 12 months, for a period of five years from the date of these orders.
- (u) Prepares a further remedial works plan for any remedial works required to address issues identified in the inspections referred to in 1(s) or 1(t) (which includes a timeframe for those works) and provides that plan to the Council for approval.
- (v) Carry out all remedial works set out in any approved further remedial works plan prepared under Order 1(u) within the timeframe specified in that plan

and provides written confirmation to Gisborne District Council's enforcement manager of completion of those remedial works, within seven days of completion.

Reporting

- (w) Provide a written inspection report to Gisborne District Council's enforcement manager (copied to Mana Taiao Tairāwhiti) within seven days of:
 - (i) each inspection by a SQEP referred to at Order 1(s), confirming that the inspection has occurred, whether the remedial works and water controls are being appropriately maintained, and identifying whether any further remedial works or maintenance is required and if so, the timeframe within which the remedial works or maintenance should be undertaken by the Respondents;
 - (ii) each slash catcher inspection referred to at 1(n) above confirming that the inspection has occurred and including descriptions of debris cleared, damage to the structure and any repairs undertaken;
 - (iii) each inspection by an independent expert referred to at order 1(t) above, confirming that the inspection has occurred, whether the remedial works and water controls are being appropriately maintained, confirming that the slash catchers are effectively preventing woody debris from commercial forestry (including felled trees, windthrow trees, slash, harvesting debris) from migrating beyond the boundary of West Ho Forest, and identifying whether any further remedial works or maintenance is required and if so, the timeframe within which the remedial works or maintenance should be undertaken by the Respondents; and
 - (iv) any stream inspection or debris removal from a stream referred to at 1(q) above.
- (x) Until the works required by clauses 1(b) to (l) are completed, provide fortnightly updates to parties on progress made towards compliance with those orders.

- (y) Once fortnightly updates are no longer required pursuant to 1(x) immediately above, continue to provide updates on a monthly basis until the works required by clauses 1(m) to (o) are completed.

Future harvesting activities

- (z) If the Respondents intend to resume harvesting activities at West Ho Forest pursuant to extant resource consents, then the Respondents must:
 - (i) notify Gisborne District Council and Mana Taiao Tairāwhiti in writing at least 4 months prior to resuming any further harvesting works at West Ho Forest;
 - (ii) provide a Risk Management Plan (**RMP**) for any further harvesting at West Ho Forest, to Gisborne District Council for approval, at least 4 months prior to undertaking any further harvesting activities. Before giving approval the Council shall consider feedback from Mana Taiao Tairāwhiti on the proposed RMP;
 - (iii) the objective of the RMP is to ensure that future harvesting activities at West Ho Forest do not create a risk of discharge of commercial forestry (including felled trees, windthrow trees, slash, harvesting debris) or sediment into waterbodies within West Ho Forest and/or beyond the boundary of West Ho Forest;
 - (iv) the RMP shall set out the measures that will be undertaken in order to achieve the above objective, including by reference (but not limited to):
 - (1) the extent of the area that will be harvested at any one time;
 - (2) the measures to address waste harvesting material;
 - (3) the effective management of skid skids to ensure that woody debris does not migrate beyond the boundaries of the skid site;
 - (4) the design, establishment and maintenance of appropriate water controls at skid sites and roading, including the development of hydrological principles and guidelines to be applied to the works. For the avoidance of doubt, the water controls shall address the matters set out in Order 1(j) above;

- (5) if the Slash Catcher Network is to be utilised to manage residual risk from woody debris, consideration of the capacity of the Slash Catcher Network to fulfil that function or whether further slash catchers are required and if so, the location and design;
- (v) any further harvesting at West Ho Forest shall be undertaken in accordance with the relevant resource consents and the approved RMP; and
- (vi) any further harvesting at West Ho Forest shall be subject to the same monitoring and reporting requirements as set out in Orders 1(p) – (w) above.

Orders relating to Jackman’s Farm

2. That, pursuant to sections 15(1)(a), 15(1)(b), 17(3)(a), 17(3)(b), 314(1)(a)(i), 314(1)(a)(ii), 314(1)(b)(i), 314(1)(b)(ii), 314(1)(c), 314(1)(d), 314(1)(da), 314(2), 314(3), 314(4), 314(5) and 315(1) of the RMA, Timbergrow Limited, Chiong Yong Tong, and Ernslaw One Limited (**Respondents**), are required, in respect of the property known as “Jackman’s Farm” at Arakihi Road, Tolaga Bay, Gisborne (Legal Identifier GS116/16) to:

Remedial works relating to Mākahakaha Stream at Jackman’s Farm

- (a) Lodge a resource consent application for proposed remediation works on the oxbow section of the Mākahakaha Stream at Jackman’s Farm in accordance with the design in Appendix B of these orders (or an alternative design approved in writing by Gisborne District Council) by 1 December 2024.
- (b) If consent is granted by Gisborne District Council undertake the remediation works on the oxbow section of the Mākahakaha Stream at Jackman’s Farm in accordance with the resource consent within six months of approval.
- (c) If consent is not granted by Gisborne District Council for the remediation works on the oxbow section of the Mākahakaha Stream at Jackman’s Farm any party to these orders can apply to the Court for alternative orders in

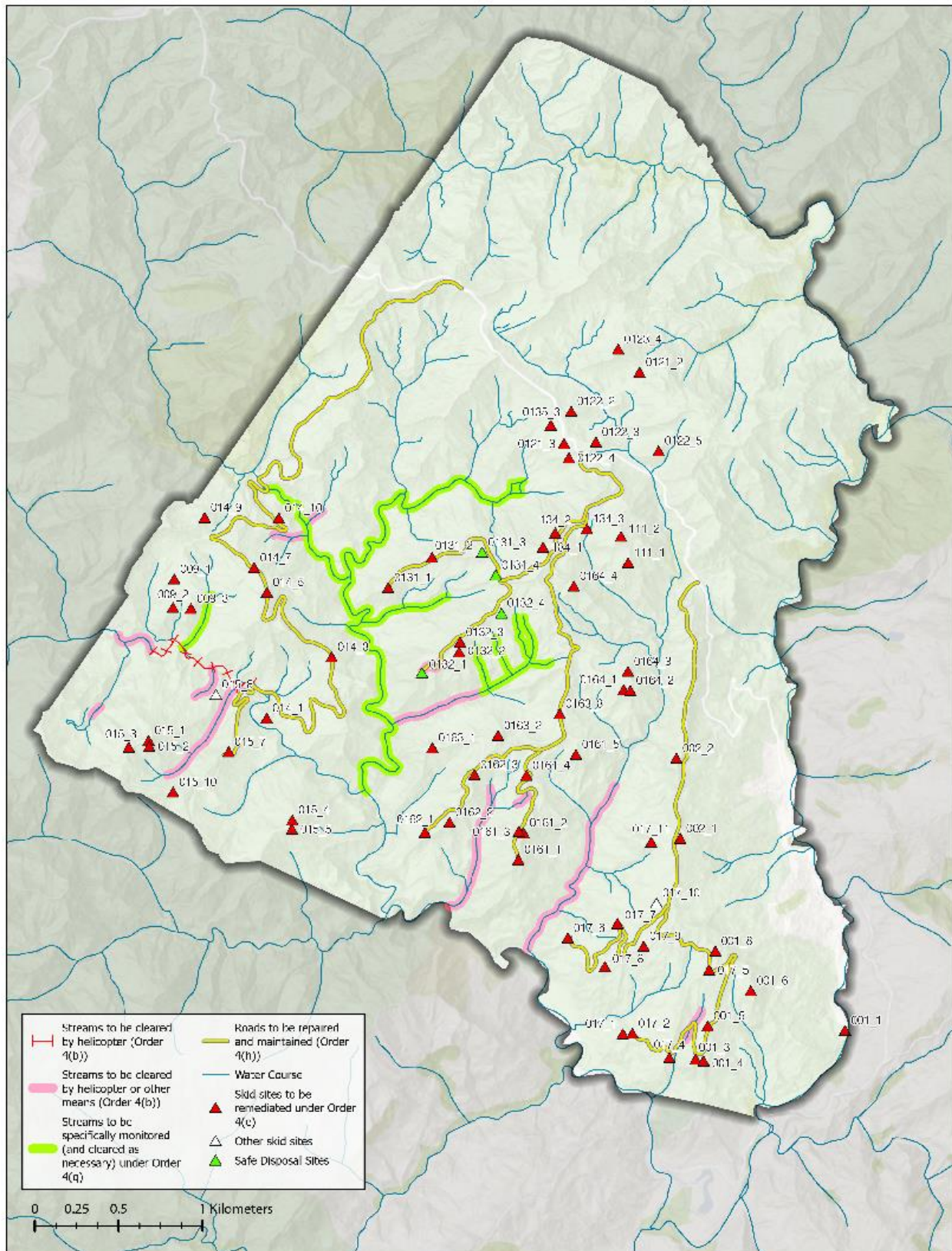
relation to the oxbow on Jackman's Farm.

Remedial works at Jackman's Farm

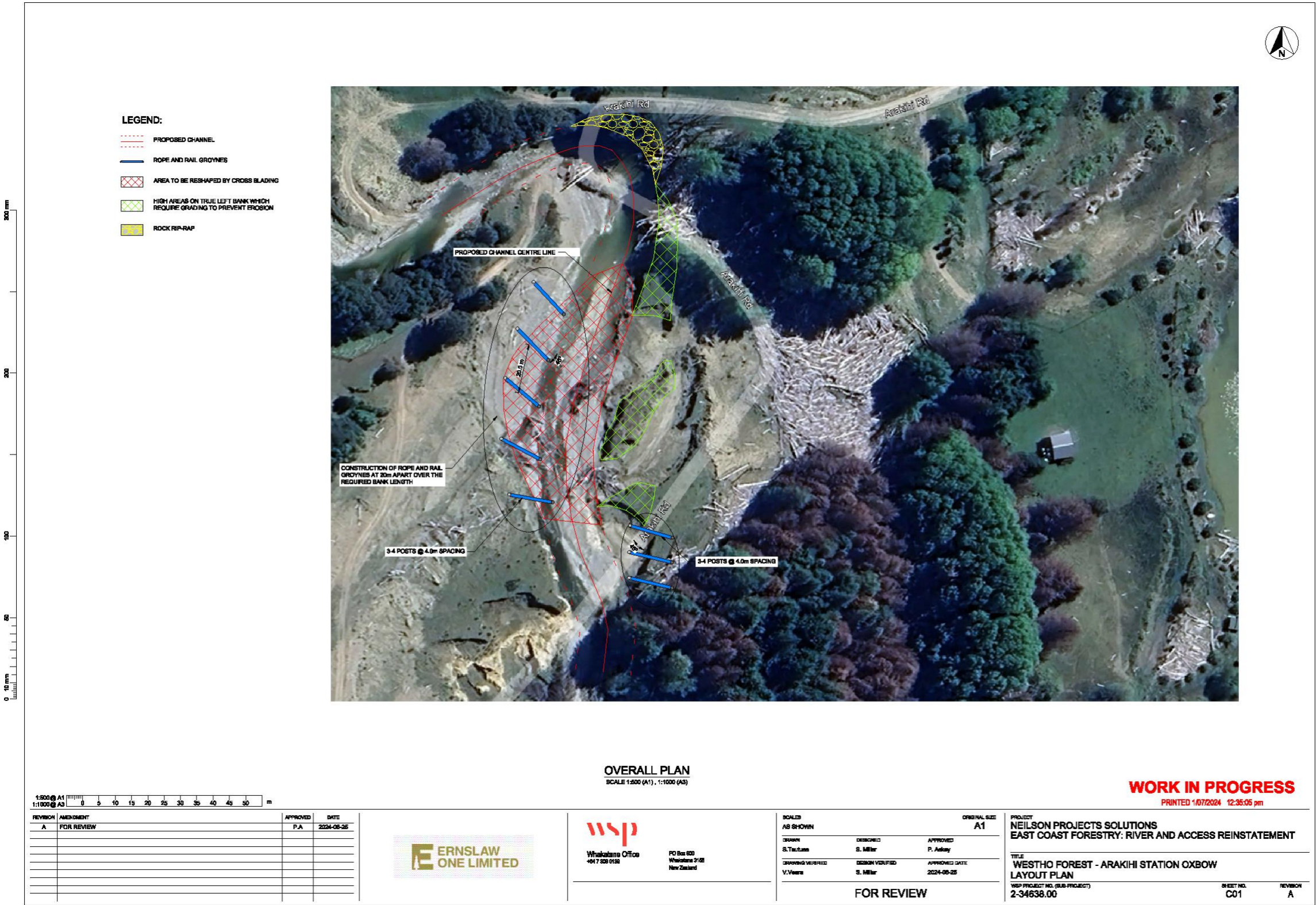
- (d) Remove and bury all woody debris from commercial forestry (including felled trees, windthrow trees, slash, harvesting debris) from land areas at Jackman's Farm and bury that material (at locations shown in the map at Appendix C of these orders) by 1 September 2024.
 - (e) Repair ten damaged floodgates at Jackman's Farm (in the locations agreed with Bob Jackman) by 1 December 2024.
 - (f) Restore two stream-crossings at Jackman's Farm, being the access to the woolshed across the Pakarae River, and access to the Laneway across the Mākahakaha Stream near the inlet of the oxbow (as shown in the map at Appendix C of these orders) by 1 December 2024.
 - (g) Undertake fencing repairs and contribute 50% of costs to replace sheepyards at Jackman's Farm (as shown in the map at Appendix C of these orders) by 1 December 2024 or when the sheepyard replacement work is invoiced.
- B: The Respondents will comply with these enforcement orders from the time they are made and continue complying with these enforcement orders unless they are varied or cancelled by the Environment Court.
- C: The Respondents will be jointly and severally liable for the actual and reasonable costs incurred by Gisborne District Council in ensuring compliance with these enforcement orders.
- D: The foregoing orders will apply to the personal representatives, successors, and assigns of the Respondents to the same extent as they apply to the Respondents.
- E: If any of the dates provided for compliance in this enforcement order are unable to be met, then any party to these orders can apply to the Court to vary the deadline for compliance, 60 days prior to expiry of that deadline.

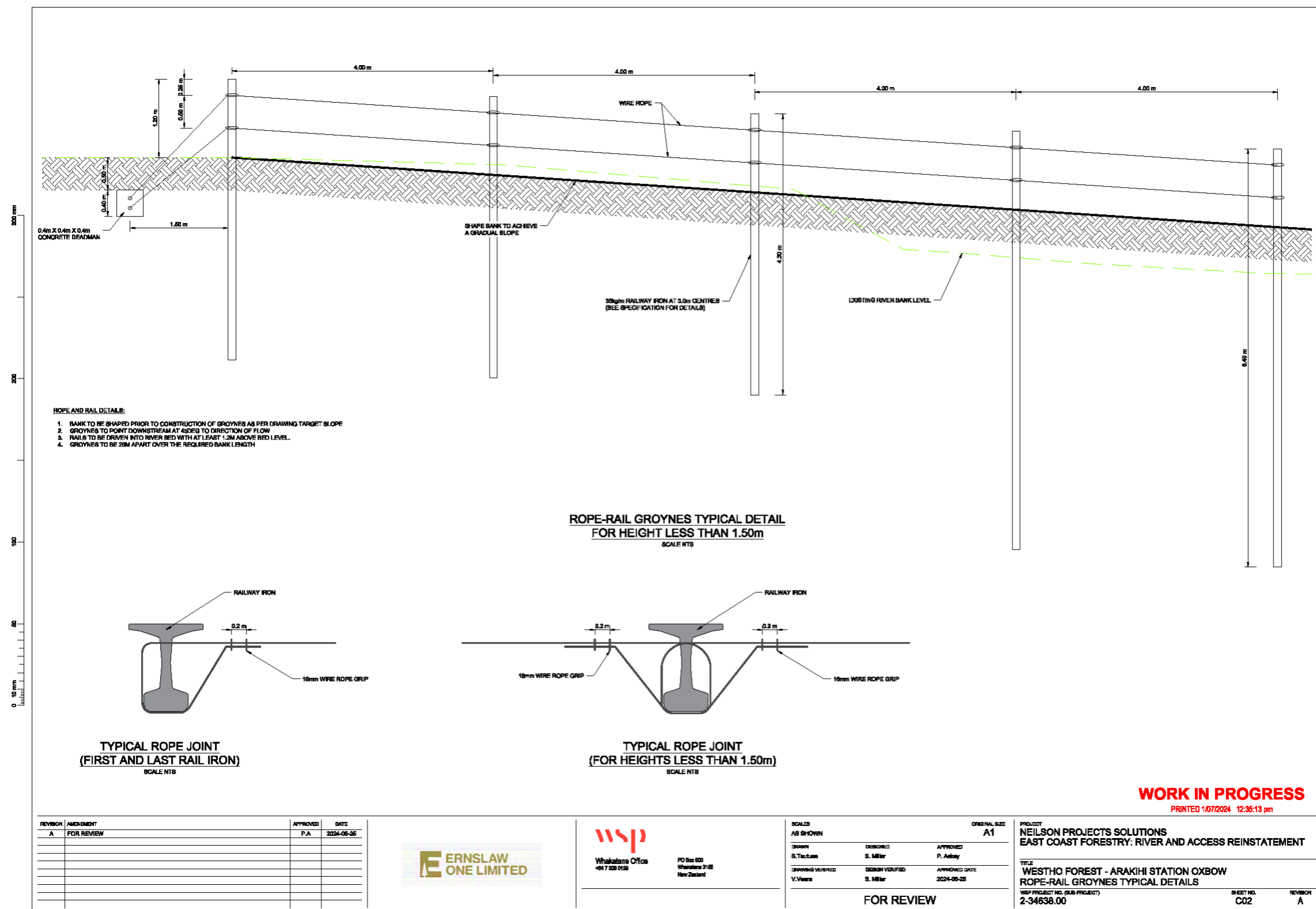
- F: If it later transpires that the foregoing orders do not prevent discharges of woody debris from commercial forestry (including felled trees, windthrow trees, slash, harvesting debris) within or beyond West Ho Forest, Gisborne District Council or Mana Taiao Tairāwhiti can apply to the Court to vary these orders.
- G: The terms of these orders can later be varied by the Court on an application to the Court and/or by the filing of a consent memorandum by the parties.
- H: Under s 285 of the RMA, there is no order as to costs.

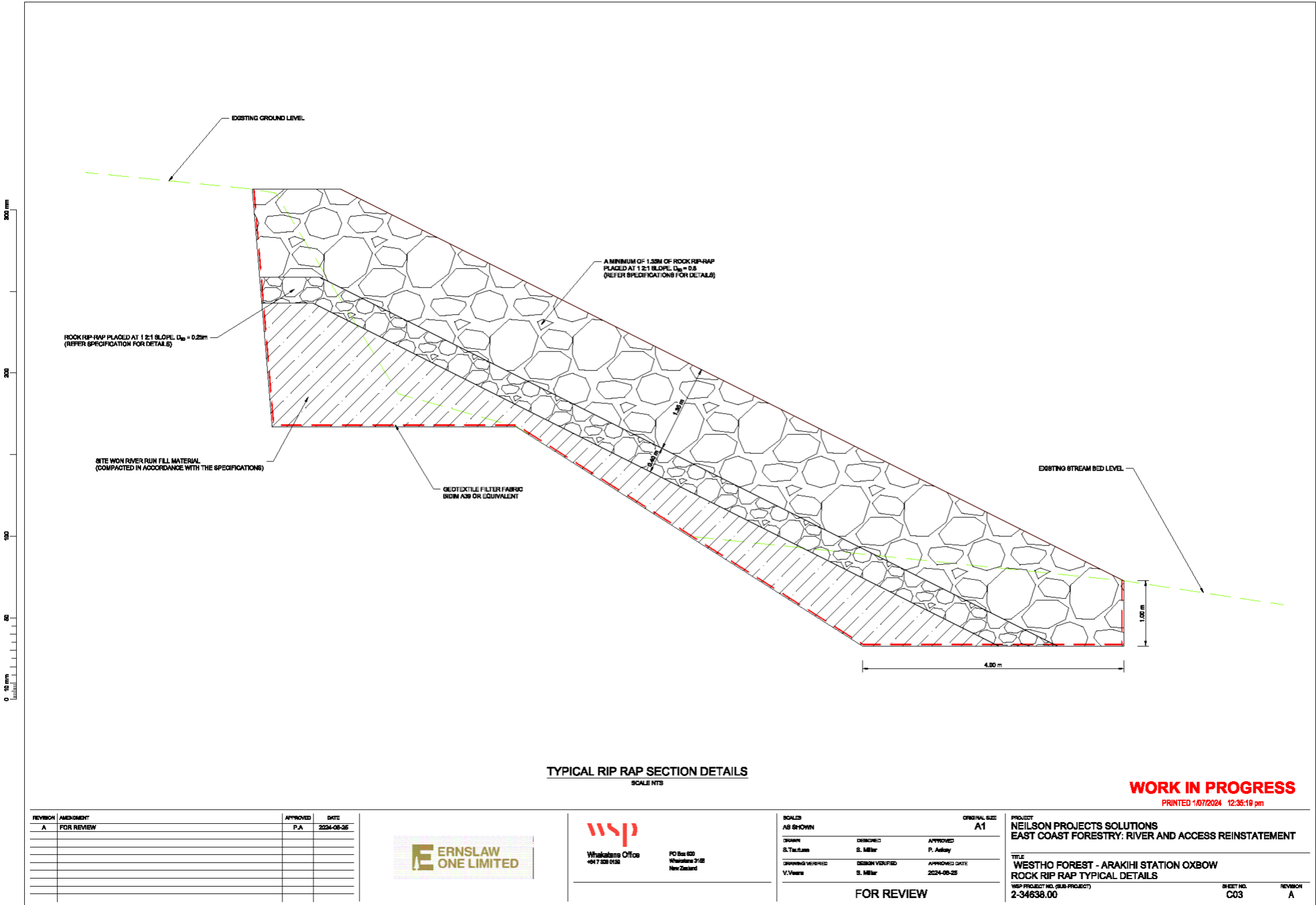
Appendix A – West Ho Forest Remedial Work Map



Appendix B – Arakihi oxbow







Appendix C – Remedial works at Jackman's Farm



