

**IN THE DISTRICT COURT
AT GISBORNE**

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

**CRI-2023-016-000423
[2023] NZDC 26744**

GISBORNE DISTRICT COUNCIL
Prosecutor

v

FORWOOD FOREST MANAGEMENT LIMITED
Defendant(s)

Hearing: 12 October 2023
Appearances: A Hopkins for the prosecutor
L Castle for the defendant
Judgment: 1 December 2023

SENTENCING NOTES OF JUDGE D A KIRKPATRICK

Introduction

[1] This prosecution relates to the defendant's management and carrying out of forestry harvesting and associated earthworks activities at Papakorokoro Forest near Gisborne. The defendant has pleaded guilty to 11 charges involving the following matters:

- (a) In the CRNs 23016500391 to -397, between 27 April and 8 June 2022 the defendant disturbed and deposited substances on the bed of the Mangaoai Stream without resource consent and discharged contaminants into water and onto land where it may enter water and

carried out forestry harvesting activities in contravention of a rule in a plan.

- (b) In the CRNs 23016500398 to -399, between 20 December 2021 and 27 April 2022 the defendant caused or permitted earthworks to occur in a red zone in a manner that contravened the National Environmental Standards for Plantation Forestry (**NES-PF**) and the conditions of the relevant resource consents.
- (c) In the CRNs 23016500400 to -403, between 23 March and 27 April 2022 the defendant placed a structure in and disturbed the bed of the Mangaruaki Stream and deposited fill to create a stream crossing and install culverts in that stream without consent.

[2] The matters set out in these charges are contraventions of, variously, ss 9, 13 and 15 of the Resource Management Act 1991 (RMA) and so are offences under s 338(1)(a) for which the maximum penalty under s 339(1)(b), for a person other than a natural person, is a fine not exceeding \$600,000.

[3] Corresponding charges laid against one of the defendant's directors, being the manager of its activities Matthew Kyle Strijbosch, were withdrawn by leave following the entry of guilty pleas by the defendant.

Background

[4] The Papakorokoro Forest is situated approximately 30 km north of Gisborne on Ngākoroa Road to the east of Te Karaka. It is owned by Forestate Gisborne Holdings 2018 Ltd, a company incorporated in Canada. The entity with the cutting rights and the holder of all consents at Papakorokoro Forest is Greenheart Papakorokoro Forest NZ Limited (**Greenheart**).

[5] There are three main streams within the Papakorokoro Forest, namely the Mangaruaki, the Hukanui and Mangaoai. The first two streams flow west to join the

Mangaoi Stream and eventually flow into the Waipaoa River, downstream from Te Karaka.

[6] 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” for erosion susceptibility under the NES-PF (i.e., very high risk). There is a history of erosion and forestry debris in the Gisborne region, with large rainfall events causing large amounts of forestry slash and sediment to be mobilised and washed downstream of forests.

[7] Extreme rainfall events are a persistent risk on the East Coast of the North Island of New Zealand. Following Cyclone Bola in March 1988, and in response to the large number of slope failures experienced then, extensive areas of pastoral hill country were planted with *Pinus radiata*. These forests have now reached maturity and are being harvested.

[8] Between 2013 and 2022 there were six major storm-induced slash events in the Gisborne region, being events where rainfall caused large amounts of forestry slash and sediment to be mobilised and washed downstream of forests.

[9] During the summer of 2021-22, Gisborne and the East Coast of the North Island experienced several periods of extreme rainfall. The summer was characterised by La Niña conditions, an oceanic and atmospheric phenomenon which brings a greater frequency and persistence of easterly weather systems. When easterly moving, moisture-laden weather systems meet the ranges of the East Coast, orographic enhancement results in heavy rainfall with potential consequences of slope instability and flooding.

[10] The defendant Forwood Forestry Management Limited was engaged to manage the forestry operations at Papakorokoro Forest during 2021 and 2022, replacing a previous harvest manager. As manager, the defendant was responsible for engaging and overseeing the earthworks and harvesting contractors, and for ensuring that the activities under their management complied with regulatory requirements and the conditions of the relevant resource consents. Harvesting continued from January

2021 to March 2022. By March 2022, work within the forest was predominantly at the rehabilitation stage, with only a few sections of the forest awaiting harvesting.

[11] There had been previous compliance issues, with the Council identifying concerns that the forest's slash management was non-compliant and general poor practice within the forest during inspections on 30 March 2021, 30 July 2021 and 20 December 2021. The Council had concerns about the volume of large breakage in the ephemeral channels in e-mail correspondence on 21 September 2021. Council officers discussed their concerns with the defendant's director, Matthew Strijbosch, and identified the works that needed to be done to remediate the site.

Resource consents for harvesting

[12] In 2018 the Council granted consent to the Renouf Forest Partnership for installation of a permanent stream crossing over the Mangaruaki Stream. This crossing enabled access to a number of forest areas, including Papakorokoro.

[13] On 21 January 2019, Greenheart was granted resource consent to carry out clear-fell harvesting with associated earthworks to construct new roads and skid sites, cable hauling over streams, broad cast aerial spraying and planting of pinus radiata within the central sector at Papakorokoro Forest. A bulldozer was required to be positioned in several places in the Mangaoai Stream for a number of days as part of harvesting. An earthworks management plan was submitted with the resource consent application listing a series of best management practices to be followed in order to mitigate adverse effects due to earthworks.

[14] On 12 May 2020, Greenheart was granted resource consent to undertake clear-fell harvesting within red zone land in Papakorokoro Forest with associated earthworks to upgrade 3,020 metres of existing road and to construct 2,270 metres of new road. The consent also allowed for replanting of 1,000 seedlings, removal of indigenous vegetation, cable hauling over streams and vegetation disturbance within the riparian management area.

[15] The 2019 and 2020 harvesting consents did not authorise:

- (a) works or disturbances associated with the construction of a stream crossing within the Mangaruaki Stream;
- (b) works or disturbances associated with the use of multiple machines within Mangaoai Stream; and
- (c) discharges of slash, logging debris, waste logging material and/or sediment to land or into water.

[16] The New Zealand Forest Owners Association (**FOA**) Environmental Code of Practice (2007) (**FOA Code**) and the FOA's guidelines to best practice for forestry earthworks, slash management and harvesting set out recommended standards of practice to be observed by those within the forestry industry. The defendant's resource consent application relating to Papakorokoro Forest referred to the FOA guides and stated that all harvesting operations and earthworks at Papakorokoro Forest would comply with the FOA Code.

Offending

[17] On 9 March 2022 Council received an email from the forest owner's agent expressing concern about recent remedial work at the forest. Before this could be investigated a major rain event occurred.

[18] On 23 March 2022 significant rain events began to occur and persisted for approximately 10 consecutive days, resulting in slips, infrastructure failures and the loss of the Tokomaru Bridge. A state of emergency was declared for the Gisborne / Tairāwhiti region and was lifted on 1 April 2022. The Council commenced an investigation into active forestry operations across the region following reports of forestry slash washing up on beaches, forestry infrastructure failures, and several log jams.

Mangaruaki Stream – unconsented stream crossing

[19] During the March 2022 storm events, the stream crossing at Renouf Forest over the Mangaruaki Stream and used to access Papakorokoro Forest was washed out.

[20] Between 23 March and 27 April 2022, the defendant installed a new stream crossing order to gain road access to Papakorokoro Forest. The defendant did not apply for resource consent prior to carrying out the works and did not notify Council of its intention to construct the stream crossing.

[21] On 27 April 2022 Council officers carried out pre-arranged inspections at Papakorokoro Forest to monitor compliance with consent conditions. The officers discovered the newly constructed stream crossing, consisting of deposited fill material and two culvert pipes within the bed of the Mangaruaki Stream. Upon inspection, the officers found that:

- (a) the crossing had been installed in a bend of the stream approximately 50 metres downstream from the stream crossing location approved under the Renouf Forest resource consent;
- (b) the stream crossing and culverts were not authorised in that location by any resource consent;
- (c) the crossing had been installed within red zone soils, whereas the crossing location approved under the Renouf Forest consent was within green zone soils;
- (d) the twin culverts used were undersized for the catchment and each smaller than the single 1.5 metre culvert approved in the Renouf Forest consent;
- (e) the fill material and the embankment at the stream bend were unarmoured;
- (f) there was no “critical dip”, which is a dip or spillway on the downhill side of a stream crossing to intercept and prevent a stream from flowing down a road when water overtops the crossing; and
- (g) The unconsented crossing did not meet the permitted activity standards of the NES-PF.

[22] Overall, it appeared that the crossing was poorly constructed and at risk of failure. Failure of the stream crossing would result in discharges of fill material to the stream and cause further erosion.

Eastern boundary road and skid 20 – non-complying earthworks in red zone

[23] During the inspection on 27 April 2022, the officers inspected the recently constructed eastern boundary road and skid 20, observing the following issues:

- (a) tension cracking along the entire length of the road and on the recently constructed skid 20 at the end of this road;
- (b) slumping of berms;
- (c) the grass seeding of the fill face was insufficient to stabilise the road given the apparent lack of appropriate benching and compaction;
- (d) a lack of stormwater controls on the freshly built skid 20 had resulted in scour down the fill face; and
- (e) stormwater controls along the boundary road were sparse and did not comply with condition 16 of Greenheart's 2020 resource consent.

[24] Road building was in progress at the time of Council's inspection. The construction methodologies being used did not comply with the FOA's guidelines for best practice for forestry earthworks. The officers observed the following issues with the construction methodology being used:

- (a) side-cast material was being pushed off the edge of the road and down a steep slope;
- (b) there was no visible benching below the road;

- (c) there was no evidence of clean fill material being keyed into the subgrade and compacted in layers, nor did the officers see any end-hauling activity or end-haul storage sites;
- (d) side-cast material was being pushed on top of woody debris and logs, posing a risk of future instability;
- (e) road surface compaction was being carried out with a tracked machine, rather than an appropriate compaction machine such as a sheepfoot roller; and
- (f) the digger operator undertaking the earthworks stated he was not familiar with the FOA guidelines.

[25] Accordingly, there were contraventions of conditions of the 2020 harvesting consent. The construction of the eastern boundary road and skid 20 within the red zone did not meet the permitted activity standards of the NES-PF for forestry earthworks.

[26] Overall, it appeared that the road and skid 20 were poorly constructed and at risk of failure. Failure of the road and / or skid site would result in discharges of fill material to the gully below and cause further erosion.

Mangaoai Stream – forestry activity within the stream bed

[27] On 19 May 2022, the Council received an email from the forest owner’s agent expressing concern about diggers shovelling logs within the Mangaoai Stream on 18 May 2022. Photographs show two excavators working within the stream, several fuel canisters lying within a metre of the stream, and a third machine working within the stream.

[28] Council officers carried out a compliance inspection on 20 May 2022. At the time of the inspection, cable hauling was in progress. The officers observed:

- (a) two excavators operating within the Mangaoai Stream, with visible disturbance and sedimentation from tracking throughout the streambed;

- (b) cut material in the watercourse for shovelling, with logs stacked within and adjacent to the stream that were not windthrow or slash as they had cut ends with no roots attached;
- (c) that trees had been dragged butt first down the stream to be hauled up to skid 12; and
- (d) the machine tracking and dragging of logs within and adjacent to the Mangaoai Stream resulted in the discharge of sediment into the stream and the stream appeared turbid.

[29] Condition 31 of the 2019 resource consent required works to be undertaken in accordance with the Tail Hold Management Plan. The defendant's activities did not follow the Tail Hold Management Plan because:

- (a) stream banks had been excessively disturbed by tracking along and within the watercourse;
- (b) fuel containers had been deposited less than 20 metres away from the watercourse;
- (c) there was more than one machine operating in the stream area; and
- (d) despite the wet weather, the machines had not been removed from the stream.

[30] The shovelling of logs within the stream also contravened consent conditions 20 and 30 of the 2019 resource consent by causing disturbance of land and the watercourse beyond occasional felling and sweeping damage, and by dragging logs downstream.

[31] The area of harvesting activities was within an area identified by the consent holder as a "Difficult Harvest Area". A map in the 2019 consent recorded that 2.4 hectares "may be able to be logged" and 3.6ha of the areas would "probably" be left unlogged. Some of these potential unlogged areas were felled and trees were shovelled

through the stream. If the trees had been left standing, this would have avoided excessive disturbance and damage of the stream.

[32] On 20 May 2022 the officers spoke to Mr Strijbosch under caution. He confirmed that logs in the stream were being shovelled but suggested it was not a major shovelling operation, confirmed that machines were in the stream area, and stated he was unsure how many times vehicles were crossing the stream.

[33] The owner's agent provided the Council with a photograph taken of the Mangaoai Stream on 8 June 2022 showing cut-logs and tracking within the stream bed.

Council inspection report and abatement notices

[34] On 13 July 2022 Council officers emailed an inspection report to Mr Strijbosch, setting out remedial actions to be taken to address the compliance issues.

[35] On 2 June 2022 the Council issued abatement notices to the defendant and to the consent holder requiring them to:

- (a) cease ground-based activities in contravention of condition one of the 2019 consent which requires activities to proceed in general accordance with the resource consent application; and
- (b) cease dragging logs upstream or downstream in contravention of condition 30 of the resource consents.

[36] On 15 December 2022 the Council issued abatement notices to the defendant requiring it to:

- (a) cease using the unconsented crossing and culverts from the Mangaruaki Stream; and
- (b) remove the unconsented crossing and culverts from the Mangaruaki Stream by 1 March 2023.

[37] The unconsented crossing was ultimately removed by the force of water flowing in the stream as a result of Cyclone Gabrielle on 13-14 February 2023.

Retrospective variation to consent

[38] In July 2022 the defendant applied on behalf of Greenheart to vary the 2019 harvesting consent to allow:

- (a) changes to the Tail Hold Management Plan to better facilitate logging near or in the Mangaoai Stream;
- (b) use of an excavator to aid in the tidy up of woody material in Mangaoai Stream;
- (c) change to harvest plan for logging skids 7 and 20 to include three new backline tracks.

[39] The application for variation did not seek authorisation for ground-based harvesting activities within the Mangaoai Stream, nor did it seek to vary condition 30 of the consent which prohibits logs from being dragged upstream or downstream.

[40] The Council granted the variation to the consent on 13 September 2022.

Environmental impact

[41] The affected watercourses were the Mangaruaki Stream and Mangaoai Stream. Mangaoai Stream is a tributary of the Waipaoa River and is a Scheduled Stream in the Plan, classified as a habitat for long finned eel.

[42] The two main environmental impacts from the non-compliant activities within Papakorokoro Forest were:

- (a) the impact of increased sedimentation and the impact of woody material on the watercourse both within and downstream of the forest; and

- (b) management practices may have accelerated erosion and sediment mobilisation in highly erosion prone areas within the forest.

[43] Tracks with no water controls that are adjacent to watercourses can continue to deliver sediment to the water. If water is concentrated and starts to scour the ground surface, then this will cause further erosion and sediment generation. Forestry activity can have a significant effect on the mobilisation of sediment, and sediment as a stressor has particularly negative consequences for aquatic ecosystems. Sediment can smother aquatic species and habitats and reduce oxygen levels, creating stress on the ecosystem and generally making it more difficult for aquatic species to live.

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

[45] Once mobilised within a watercourse, large volumes of woody material can block and damage infrastructure downstream, choke waterways or end up washing up on a beach and causing a marine hazard.

[46] In this context, woody material mobilised from Papakorokoro Forest has the potential to cause significant impact on aquatic ecosystems and on the environment generally.

Prosecutor's submissions

[47] The prosecutor submits the defendant's culpability is at the high end of the scale. As the manager of forestry harvesting and earthworks at Papakorokoro Forest in 2021 and 2022, the defendant was responsible for ensuring compliance with the

resource consents and regional rules and meeting its environmental obligations. The defendant had been warned about its poor forestry practices on four occasions from March to November 2021. The defendant was aware that it was operating in a high risk and vulnerable environment. The prosecutor submits the offending was not deliberate but involved a high degree of carelessness and that a strong deterrent message needs to be given.

[48] The prosecutor submits the offending has occurred in the context of the defendant's commercial forestry harvesting operation. The defendant could not carry out harvesting in the Forest without the resource consents that had been issued. The offending involved direct contraventions of several conditions of the resource consents. The prosecutor further submits the offending did not meet the standards of the FOA Environmental Code of Practice (2007) on which the applications for resource consent had been based.

[49] The prosecutor could not find any previous sentencing decisions with directly comparable facts to this case but submitted that the consistency sought by s 8(e) of the Sentencing Act 2002 is not an absolute end in itself.¹ Counsel submitted the following may provide general guidance:

- (a) *Bay of Plenty Regional Council v Whitiakau Holdings Limited*² involved offences relating to carrying out forestry harvesting activities in the bed of streams, discharges of forestry debris, trees and sediment to land where they may enter water, and contravening an abatement notice. Whitiakau Holdings was the owner of the plantation pine forest and responsible for managing harvesting. A global starting point of \$80,000 was adopted;
- (b) *Gisborne District Council v Lane*³ involved four charges relating to earthworks to construct a forestry track without resource consent, discharging sediment to land where it may enter water in the course of

¹ *Orchard v R* [2019] NZCA 529.

² *Bay of Plenty Regional Council v Whitiakau Holdings Limited* [2018] NZDC 3850.

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

the unconsented earthworks, and two offences of contravening abatement notices by continuing to carry out earthworks and discharging sediment. A combined starting point of \$160,000 was adopted;

- (c) *Auckland Council v Wells Northland Limited & Wells*⁴ involved a charge of constructing a river crossing in contravention of the NES-PF and carrying out forestry harvesting without a resource consent. The defendants had been engaged by the forest manager to undertake and supervise the harvesting. A global starting point of \$80,000 was adopted;
- (d) *Gisborne District Council v PF Olsen Limited*⁵ involved one charge of discharging a contaminant (slash, logging debris, waste logging material and sediment) onto land where it may enter water. PF Olsen Ltd was engaged by the forest owner to manage forestry harvesting. A starting point of \$200,000 was adopted;
- (e) *Southland Regional Council v Hardegger*⁶ involved three sets of charges relating to works undertaken in streams on the defendant's farm; placing a culvert in the bed of a stream, disturbing the bed of the stream by straightening a bend and by placing gravel to hold back water during downstream earthworks. A starting point of \$50,000 was adopted; and
- (f) *Marlborough District Council v Laurie Forestry Services Limited*⁷ involved two charges related to the discharge of contaminants (primarily sediment) onto land and water during forestry harvesting operations. Laurie Forestry was responsible for managing forestry harvesting operations. A starting point of \$100,000 was adopted.

⁴ *Auckland Council v Wells Northland Limited & Wells* [2023] NZDC 2909.

⁵ *Gisborne District Council v PF Olsen Limited* [2020] NZDC 19089.

⁶ *Southland Regional Council v Hardegger* [2016] NZDC 21850.

⁷ *Marlborough District Council v Laurie Forestry Services Limited* [2019] NZDC 2602.

[50] The prosecutor submits that, based on the foregoing cases, an appropriate starting point for the penalty in this case would be a global fine of \$120,000 or, if the Court were to adopt separate starting points for the offences, it should be \$40,000 for each of the three groups of offences.

[51] The prosecutor submits that because the defendant does not have any previous criminal convictions, it is open to the Court to allow a discount of five per cent for previous good character. While there was a history of previous compliance issues involving the defendant at Papakorokoro Forest, the prosecutor submits that should not be an adverse consideration at stage two of the sentencing exercise. The previous issues did not result in any enforcement action and the prosecutor is suggesting these previous issues be dealt with as elevating the defendant's culpability at stage one of the sentencing exercise.

[52] The prosecutor submits there is no evidence of exceptional remorse or particular co-operation that would justify further discount.

[53] The prosecutor accepts that the defendant is entitled to a full discount of 25% for its early guilty pleas.

Defendant's submissions

[54] The defendant submits that its offending was not at the high end of the scale or highly careless.

[55] Counsel for the defendant notes that skid site 20 did not fail and did not contribute slash to any waterway, as far as it was aware, and that the improvements made to skid 20 and the road after 27 April 2022 were not inspected by the Council.

[56] Counsel submits that the defendant reinstated the crossing in the exact location it had always been in since its involvement in the forest began so that all users could have continued access. That the crossing had not been constructed in the correct place was not identified earlier, leaving the defendant "carrying the can" for the situation with the crossing created by its predecessor.

[57] The defendant installed two small culverts instead of one but otherwise says it replaced like for like. It thought it made some minor improvements because the version initially installed (not by the defendant) had kept being undermined. The defendant notes a consultant later advised that even the consented size was too small. The defendant ultimately accepts that the Council should have been notified before the reinstatement, and that the reinstated culvert sizes were too small.

[58] The defendant accepts that the way in which the machines ended up in the stream was not satisfactory, noting that the logging crew was engaged by Greenheart independently of the defendant but accepting that it could have supervised the crew better. There was a lack of familiarity with the forest and the requirements by the actual operator. Mr Strijbosch provided an affidavit setting out some personal reasons for some of the lack of supervision and confirmed that he had little involvement in the harvesting in that area, and neither did the owner/manager of the logging crew.

[59] In relation to the machine that got stuck in a stream and needed assistance to get out from two other machines, the defendant observes that in hindsight and with better planning an application to vary the harvest plan could have been made in advance, or a decision could have been made not to log that area, although that would have left the trees standing, which would create other problems.

[60] The defendant submits that there are no ongoing adverse effects or any real level of damage to the environment. While it may be the case that woody debris exists near waterways in the Papakorokoro Forest, none of this was the subject of an abatement notice requiring rectification by the defendant. The breaches were not deliberate, nor did they provide any advantage to the defendant, while there was significant cost incurred to reinstate the crossing for the benefit of others.

[61] The defendant does accept that there is an issue of deterrence which requires the imposition of a fine.

[62] Counsel for the defendant submits that the decisions in *Whitikau*, *Lane* and *Laurie* appear to be the most similar, although none have the specific factors here of why the offending occurred. Counsel submits the situation is different from *Whitikau*

in that the defendant there was the forest owner and harvesting also continued after the issuing of an abatement notice. This offending is different from *Lane* in that the defendant there was told that consent was needed. This offending is different from *Laurie* in that the extent of actual environmental damage there was more significant and a large skid site had entirely failed.

[63] Counsel for defendant submits that the offending involving works in a stream are the most culpable, followed by the stream crossing and then the relatively minor earthworks. Counsel submits that an overall starting point of \$80,000 would be appropriate with an apportionment based on that assessment of culpability of \$40,000, \$25,000 and \$15,000.

[64] Counsel agrees with the prosecutor that a total discount of 30 per cent would be appropriate.

Legal framework for sentencing

[65] 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*,⁸ 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 starting point). The two stages involve separating the circumstances of the offence from those of the offender.

[66] 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

⁸ *Moses v R* [2020] NZCA 296 at [45] – [47].

type of offence, the general desirability of consistency with appropriate sentencing levels and the effect of the offending in the community.

[67] As to the overall sentencing approach for offending against the RMA, *Machinery Movers Ltd v Auckland Regional Council*⁹ and *Thurston v Manawatu-Wanganui Regional Council*¹⁰ 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. There is no tariff for sentencing under the RMA.

Evaluation

[68] The offending in this case is an example of poor practice and poor management of a difficult activity that poses many risks to the quality of the environment and, in particular, to water quality. While one can appreciate the inherent complexity of the activity, operators are required by plan rules and national environmental standards, as well as the guidelines of their own association, to exercise high levels of care and attention and must be held to account for that, otherwise the benefits of the harvest will be offset, possibly to a great extent, by the damage harvesting can do to the environment.

[69] Potential effects are included in the definition of effect in s 3 of the RMA. The statutory scheme for resource consents seeks to manage not just direct effects that will happen, but also the risk of both direct and wider damage that may happen.¹¹ Proof of damage is not an element of an offence under s 338 of the RMA. Non-compliance with

⁹ *Machinery Movers Ltd v Auckland Regional Council* [1994] 1 NZLR 492 at 503 (HC).

¹⁰ *Thurston v Manawatu-Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, 27 August 2010 at [39] – [66] and [100].

¹¹ *Waslander v Southland Regional Council* [2017] NZHC 2699 at [24].

the consenting scheme or the terms and conditions of any consent is itself damaging to that scheme. Where no specific damage or lasting harm can be identified, a penalty may nonetheless be imposed on the basis that any offence contributes to the risks posed by failing to comply with plans and consents and by contributing to cumulative adverse effects of discharging contaminants generally.

[70] In this case, as with others on the East Coast, one must reflect that planting done to recover from damage caused by a significant event some 30 years ago is a potential source of damage from significant events occurring now.

[71] I acknowledge the acceptance by Mr Strijbosch of the errors that occurred, but that hindsight does not reduce the gravity of this offending or the culpability of the defendant for it.

[72] Having considered the facts carefully and made what I can of the sentencing decisions presented to me, I determine that an appropriate starting point for a fine in this case is \$105,000.

[73] I agree with the parties that a total discount of 30 per cent is appropriate, being five per cent for previous good character and 25 per cent for the early guilty pleas. That results in an overall fine of \$73,500.

[74] I agree with counsel that this should be apportioned among the three groups of charges and consider that an appropriate apportionment of that fine is:

- (a) Half, or \$36,500 for the offending in relation to the Mangaoi Stream, being the charges in CRNs 2301650391 to -397;
- (b) A quarter, or \$18,375 for the offending in relation to the earthworks which contravened the NES-PF, being the charges in CRNs 2301650398 to -399; and
- (c) A quarter, or \$18,375 for the offending in relation to the crossing of the Mangaruaki Stream, being the charges in CRNs 2301650400 to -403.

Sentence

[75] I convict Forwood Forest Management Limited and sentence it to pay a fine of \$73,500, apportioned as follows:

- (a) \$36,750 in respect of CRNs 2301650391 to -397;
- (b) \$18,375 in respect of CRNs 2301650398 to -399; and
- (c) \$18,375 in respect of CRNs 2301650400 to -403.

[76] As required under s 342 of the RMA, I direct that the fine, less a deduction of 10 per cent to be paid into a Crown bank account, be paid to the Gisborne District Council.

[77] I order the defendant to pay Court costs of \$130 and solicitor's fee of \$113 on each charge.

Judge D A Kirkpatrick
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 01/12/2023