

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIRIROA**

**CRI-2025-019-006763
[2026] NZDC 23471**

WAIKATO REGIONAL COUNCIL
Prosecutor

v

WAYNE MAURICE CLARKE
Defendant

Hearing: 29 May 2026 via VMR
Appearances: K Bucher for the prosecutor
P Lang for the defendant
Judgment: 15 October 2026

SENTENCING DECISION OF JUDGE M J L DICKEY

Introduction

[1] Wayne Maurice Clarke has pleaded guilty to one charge of discharging a contaminant, namely effluent, onto land in circumstances where it may enter water on 2 September 2025, contrary to s 15(1)(b) of the Resource Management Act 1991 (RMA).¹

[2] The maximum penalty for the offending is 18 months' imprisonment or a fine not exceeding \$1,000,000.

¹ CRN ending 2464.

[3] For the Council, Mr Bucher sought a starting point of between \$180,000 to \$200,000, while Mr Lang, for the defendant, submitted that a starting point in the vicinity of \$80,000 is appropriate.

[4] A summary of facts was agreed for the purposes of sentencing.²

[5] No application for discharge without conviction was made. The defendant is accordingly convicted on the charge.

Background

[6] Mr Clarke operates a 70-hectare dairy farm (**the farm**) situated at 153 Te Kowhai Road, Hamilton. He has farmed the property for over 50 years in various capacities, and currently as an absentee owner/operator.

[7] The property currently comprises land parcels under four different registered owners. The land that comprises the main farm infrastructure is owned in a Trust, however the Trust does not have any operational involvement in the dairy farming enterprise.

[8] Historically, the farm was owned by the Clarke family and has been farmed by them for 100 years. Part of the farm is owned by the Clarke family and the balance is leased. Under the lease, all operational decisions at the farm and any infrastructural expenditure pertaining to that enterprise are Mr Clarke's responsibility and cost.

[9] The farm supplies milk to Fonterra, with Mr Clarke and his wife (in partnership as WM & MJ Clarke) as the supplier.

[10] The partnership employs a Farm Manager and a farm assistant to run the dairy farm on a day-to-day basis, and Mr Clarke provides operational oversight of the farm and directs staff where required. He primarily manages another farm which the partnership owns.

² Summary of Facts dated 3 March 2026 (**SOF**).

[11] The two farm staff work to a two-week roster, being 12 days on duty and two days off, each of them alternating a ‘weekend off’, that is usually a Sunday and Monday. On those days off the partnership employs a relief milker.

Relevant legislation and rules

[12] Section 15(1) of the RMA states that no person may discharge any:

- (a) contaminant or water into water; or
- (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;

...

unless the discharge is expressly allowed by a national environmental standard or other regulations, ..., a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.

[13] Farm animal effluent is a contaminant pursuant to s 2 of the RMA.

[14] For effluent disposal, the farm relies on Waikato Regional Plan (**Plan**) Permitted Activity Rule 3.5.5.1. It authorises the application of farm animal effluent onto land subject to certain conditions, including condition (f):

Effluent shall not enter surface water by way of overland flow, or pond on the land surface following the application.

[15] There are no national environmental standards, other regulations, resource consents or rules in a regional plan that expressly allow for any discharges as described in this decision onto or into land in circumstances which may result in that contaminant entering water, including groundwater.

The effluent management system

[16] The Farm Manager said he is responsible for managing the effluent on the farm, and confirmed the farm assistant (Mr and Mrs Clarke’s daughter) does not involve herself in managing the effluent irrigator or the effluent system generally after prior training attempts proved unsuccessful.

[17] The primary infrastructure on the farm comprises one 22-a-side herringbone dairy shed and associated yards. All dairy shed wastewater and effluent is directed via a sand trap to an effluent sump. The effluent sump has a capacity of approximately 20 cubic metres.

[18] In 2019 a bladder with a capacity of 189,270 litres was installed at the farm to provide additional effluent storage. Prior to installing the bladder, the farm operated with a sump-only effluent system.

[19] The bladder is not specifically designed for farm animal effluent storage, and as a result its storage capacity reduces through fibrous effluent solids and sediments settling in the bladder. The Farm Manager said that the bladder provides one week's worth of effluent storage and the sump has approximately 24-hours' worth of storage. The bladder is emptied by the manual opening of a tap, enabling a gravity discharge via a discharge pipe back into the effluent sump.

[20] A travelling irrigator applies farm animal effluent to land for disposal. The irrigation area is approximately 10 hectares, with effluent drag hoses connecting the irrigator via a sub-surface pipeline and two hydrant couplings.

[21] An electric effluent pump is mounted on a floating pontoon in the effluent sump to pump effluent out to the irrigator. The sump is set up with a float switch with three settings:

- (a) a stop-switch at the bottom which turns off the effluent pump when the sump empties to a pre-determined level;
- (b) an on-switch which connects to an electronic timer which is set to operate the effluent pump at 11.00 pm; and
- (c) a high level on-switch that automatically turns on the pump if the sump fills at any time prior to 11.00 pm.

[22] As explained to Council, because a public walking/cycleway runs adjacent to the farm, the defendant irrigates effluent during the nighttime hours to avoid public complaints about odour from the irrigation.

[23] The agreed SOF sets out the Council's view of the farm effluent system. It considers the system is inadequate in terms of dairy industry best practice, and at high risk of non-compliance with the Plan's effluent rules. That is due to limited effluent storage capacity available to defer irrigation when conditions are not appropriate, the lack of formal effluent management practices and oversight on the farm, the absence of any fail-safes or remote monitoring technology to monitor sump volumes and irrigation, and the practice of irrigating effluent at night when, clearly, no one is going to be on the farm to monitor the irrigation.

Abatement Notice

[24] On 15 March 2017, an inspection by Council compliance staff found over-irrigation and ponding of farm animal effluent on the farm in breach of the Plan rules and s 15(1)(b) of the RMA. As a result, Mr Clarke was subsequently served with an Abatement Notice dated 19 May 2017, requiring him to cease, and prohibiting him from commencing, the unlawful discharge of farm animal (dairy) effluent on the farm. He was also issued with an Infringement Notice for that offence.

[25] Since then, Mr Clarke has been reminded of his responsibilities to comply with the Notice and was served with an additional copy in 2024.

Circumstances of the offending - 2 September 2025

[26] At approximately 8:45am on 2 September 2025, Council officers carried out a compliance monitoring and abatement notice inspection of the farm's effluent system.

[27] Ms Clarke was working on the farm. She met Council staff and directed them to the Farm Manager, who was in the process of milking the herd.

[28] The Farm Manager advised Council staff that the effluent sump was set up to operate automatically off the float switch, and that the irrigator was currently set up in a paddock. He said that it would have irrigated effluent overnight.

[29] The dairy shed and stock holding yard had not yet been hosed down and the effluent sump was approximately half-full. The effluent storage bladder also appeared

half-full, although its top surface had a distorted shape indicating the bladder contained a quantity of effluent solids.

[30] Council officers went to the travelling irrigator, which was approximately 300 metres from the dairy shed. They discovered farm animal effluent ponding heavily on the paddock surface because of over-irrigation onto already wet soils. The irrigator was at the end of its available run, with the stopper having disengaged the drive-mechanism (as it is designed to do). This resulted in the irrigator continuing to irrigate in one stationary position each time the effluent sump pump turned on.

[31] There was a defined ring of effluent around the irrigation radius, estimated to be approximately 20 metres in diameter, with the ponding being up to 12 centimetres in depth. There was no failsafe installed to stop irrigation should the irrigator come to the end of its run and trip out, as it had done.

[32] The ground surface outside of the irrigation area was also saturated from recent rainfall, indicating the soil conditions were unsuitable for irrigation and that irrigation should have been deferred.

[33] The ponding of farm animal effluent following application, as described above, is a breach of Plan Rule 3.5.5.1 and s 15(1)(b) of the RMA and is therefore unlawful.

[34] A sample of the ponded effluent near the irrigator was obtained. Subsequent analysis of this sample by Hill Laboratories revealed high levels of contaminants consistent with being farm animal (dairy) effluent.

Investigation

[35] The Farm Manager was interviewed. He confirmed that the effluent pump was set on a float switch and timer to irrigate at 11.00 pm each night, and that this had been the practice on the farm the entire time he had worked there. He confirmed that he answered to the defendant, Mr Clarke.

[36] He confirmed there was no effluent management plan³ on the farm for effluent irrigation and its management, and explained the effluent sump pump could be connected to either the storage bladder or the travelling irrigator, through separate pipes, and that in his experience the bladder could hold about one-weeks' worth of effluent and the sump about 24-hours' worth.

[37] He explained that he was responsible for effluent management and irrigation. He acknowledged that he set up the travelling irrigator on Friday 29 August 2025 expecting the irrigator would irrigate for about five days on that run.

[38] He said that on the day of the inspection, Tuesday 2 September 2025, it was his first day back at work from his two days off. When Council arrived he had not had the opportunity to inspect the irrigator as he had been busy with the cows and milking.

[39] He believed rainfall on his days off had resulted in the irrigator travelling further than expected, resulting in it becoming stationary at the end of its run. Rainfall data obtained from nearby weather stations at Ruakura and Waitetuna measured 30.5mm and 48.5mm of rainfall respectively for the period between 29 August through 1 September 2025.

[40] The farm assistant was also interviewed and confirmed that she had been de facto managing the farm in the absence of the Farm Manager, but had not inspected the irrigator during that time and was not aware there had been an issue with the irrigation. She explained she had no confidence in managing the effluent irrigator and left that to the Farm Manager. She confirmed there had been heavy rain over those days.

[41] Mr Clarke was interviewed and acknowledged that responsibility for the over-irrigation and ponding of farm animal effluent was with him. He confirmed he had previously received Council correspondence regarding effluent management, and that he had "not really read" this correspondence.

³ The SOF incorrectly stated at [66] that the Farm Manager confirmed "there was effluent management plan...". Counsel confirmed that was an error. There was no effluent management plan.

[42] Mr Clarke confirmed that the farm lease arrangement specified that farming-related matters, including effluent management and infrastructure, was solely his responsibility. He suggested that the position of no longer owning the farm's main infrastructure, in combination with the uncertainty as to how long he would be able to farm the property (because it is earmarked for future City development), inhibited financial investment in the farm.

[43] The investigation established that Mr Clarke had not made any provision to manage or monitor the farm effluent system in the absence of the Farm Manager.

History of non-compliance

[44] The SOF sets out an extensive history of non-compliance in relation to the discharge of farm animal effluent on the farm, which has placed this farm on Council's high-risk register for dairy farm operations – requiring more frequent monitoring and demanding more of Council's resources in an effort to bring about positive behaviour change.

[45] The history of non-compliance with environmental obligations at the farm is outlined below:⁴

- 2015 Significant non-compliance relating to the discharge of farm animal effluent from a sump to a farm drain and over-irrigation and ponding of effluent from the irrigator. Two infringement notices were issued to Mr Clarke.
- 2017 Significant non-compliance relating to the over-irrigation and ponding of effluent from the irrigator. An infringement notice and abatement notice were issued to Mr Clarke.
- 2018 Significant non-compliance relating to effluent discharges because of over-irrigation and ponding of effluent from the irrigator. Two infringement notices issued to Mr Clarke for contravening the notice and breaching Section 15(1)(b) of the RMA.
- 2019 Significant non-compliance related to the over irrigation and ponding of effluent following irrigation. Two formal warnings issued to Mr Clarke for again contravening the abatement notice and breaching Section 15(1)(b) of the RMA.
- 2020 Significant non-compliance after Council compliance staff again found evidence of effluent ponding on the surface following irrigation, in

⁴ SOF at [46].

contravention of the abatement notice and Section 15(1)(b) of the RMA. Mr Clarke was issued an infringement notice for the abatement notice offence and a formal warning for the over-application and ponding of farm animal effluent.

2024 Moderate non-compliance related to the over-application and ponding of effluent following irrigation. Mr Clarke received formal warnings for contravening the abatement notice and breaching Section 15(1)(b) of the RMA. The Farm Manager employed by Mr and Mrs Clarke also received a formal warning related to the irrigation offence.

[46] Compliance inspections were also undertaken on 5 November 2021 and 19 April 2023. Council staff determined that, on those dates, farm animal effluent was being managed appropriately.

[47] After each compliance inspection Council staff followed up with letters to Mr Clarke that highlighted the risks of non-compliance, identified the lack of adequate effluent storage as being an issue, made repeated requests for the system to be upgraded, highlighted the requirements for compliant effluent irrigation and reminded Mr Clarke that the Abatement Notice remained in force.

[48] Mr Clarke has been issued with six infringement notices, five formal warnings and an abatement notice over the past 10 years, all related to contraventions of the permitted activity rules for discharges of farm animal effluent onto land at the farm.

Approach to sentencing – Amendment Act and *Chick*

[49] The Resource Management (Consenting and Other System Changes) Amendment Act 2025 increased the maximum penalty under s 339 of the RMA for an individual to a fine not exceeding \$1 million or imprisonment for a term not exceeding 18 months. The amended penalty regime applies to this offending. The Council submitted that the increase warrants new fine ranges for dairy effluent offending. Mr Lang submitted that no such exercise is necessary in this case as the offending is at a low level. I address that issue before setting the starting point.

[50] There is no tariff case for RMA offending. However, some systemisation was undertaken by the Court in the 2007 decision of *Waikato Regional Council v GA &*

BG Chick Ltd (Chick),⁵ which provides some guidance when assessing and distinguishing between different levels of offending relating to unlawful discharges of dairy farm effluent. The Court confirmed that the severity of sentence should vary in accordance with several factors including the nature of the environment affected, the extent of the damage inflicted, the deliberateness of the offence, the attitude of the defendant and the need to consider both a specific and general deterrent.⁶

[51] The Court grouped the levels of seriousness into three broad sentencing levels: Level 1 – generally an unintentional, isolated incident with little or no environmental effect, Level 2 – generally careless or recurring discharges with little to moderate effect, and Level 3 – deliberate offending or offending involving a real want of care.⁷

[52] The levels assist in assessing seriousness. Their associated fine levels, however, date from 2007 and do not provide current starting points.⁸

The parties' submissions

[53] The Council relies on *Berkland v R (Berkland)*⁹ and *Stumpmaster v Worksafe New Zealand (Stumpmaster)*¹⁰ for the value of consistent sentencing guidance, while acknowledging that guidance cannot replace an assessment of the individual case.

[54] In *Stumpmaster*, following a significant increase in maximum penalties for health and safety offending, the High Court revised existing guidance bands and recognised that the increase had implications across levels of seriousness.¹¹ The Council submitted that the increase in the RMA maximum similarly requires reconsideration of the fine ranges associated with *Chick*.

⁵ *Waikato Regional Council v GA and BG Chick Limited* (2007) 14 ELRNZ 291.

⁶ *Chick* at [21] and [22].

⁷ *Chick* at [24]-[26].

⁸ See *Waikato Regional Council v GIB Farming Ltd* [2026] NZDC 8928 at [95]; *Taranaki Regional Council v Barrett* [2025] NZDC 29680 at [111]; *Waikato Regional Council v Crouch* [2019] NZDC 11517 at [48]; *Bay of Plenty Regional Council v Warneford Farms Ltd* [2025] NZDC 19983 at [115].

⁹ *Berkland v R* [2022] NZSC 143 at [24], citing *Moses v R* [2020] NZCA 296 at [24].

¹⁰ *Stumpmaster v Worksafe New Zealand* [2018] NZHC 2020 at [46].

¹¹ *Stumpmaster* at [49].

[55] Mr Lang distinguished *Stumpmaster* as it revised bands established in an accepted High Court guidance judgment, whereas *Chick* is a survey judgment.¹² Relying on *Sowman v Marlborough District Council*, he submitted that its bands should not be treated as current fine guidance or allowed to obscure differences between offenders and cases.¹³ He proposed assessing comparable decisions and taking the new maximum penalty into account when fixing the starting point. The Council responded that a simple mathematical uplift would not adequately address culpability.¹⁴

[56] Mr Bucher submitted that the case-law demonstrates that guideline decisions are not intended to erode a sentencing court's discretion. He submitted that where there is a relatively large spate of offending of a similar nature, a guideline decision aims to achieve greater consistency when it comes to the appropriate penalty.

[57] Mr Bucher said that guidance would be useful even in this case, which the Council places at the lower or middle part of *Chick* Level 2, because cases at that level commonly come before the Court. The Council's proposal is to retain *Chick's* descriptions of seriousness but replace the associated fine ranges for individual offenders.

[58] Mr Bucher summarised recent decisions involving effluent offending.¹⁵ He submitted that aggravating and mitigating factors of the offending beyond those identified in *Chick* are routinely identified by the Court when assessing culpability.

¹² *Thurston v Manawatu Wanganui Regional Council (Thurston)* HC Palmerston North CRI-2009-454-24, -25, -27, 27 August 2010 at [50].

¹³ *Sowman v Marlborough District Council (Sowman)* [2020] NZHC 1014 at [67] and [68].

¹⁴ See for example *Berkland* at [24]; *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [4]; *Zhang v R* [2019] 3 NZLR 648.

¹⁵ The cases he specifically referred to in the hearing are: *Waikato Regional Council v Blundell (Blundell)* [2025] NZDC 28844; *Waikato Regional Council v GIB Farming Ltd (GIB Farming Ltd)* [2026] NZDC 8928; *Waikato Regional Council v Thompson (Thompson)* [2025] NZDC 9798; *Bay of Plenty Regional Council v Nettleingham (Nettleingham)* [2023] NZDC 3031; *Waikato Regional Council v Blackler (Blackler)* [2018] NZDC 16180; *Waikato Regional Council v Trinity Lands Ltd (Trinity Lands)* [2020] NZDC 24380; *Waikato Regional Council v Graze Ltd (Graze)* [2019] NZDC 15963; *Waikato Regional Council v Cazjal Farm Ltd (Cazjal Farm)* [2023] NZDC 10973; *Waikato Regional Council v Lockwood (Lockwood)* [2020] NZDC 24932; *Manawatu-Wanganui Regional Council v Phillips (Phillips)* [2024] NZDC 28633; *Waikato Regional Council v Donald (Donald)* [2021] NZDC 5514; *Waikato Regional Council v Flint Farms Ltd (Flint Farms)* [2024] NZDC 20036; *Waikato Regional Council v Rawhiti Environmental Park Limited (Rawhiti)* [2025] NZDC 26885; *Waikato Regional Council v Hazlehurst (Hazlehurst)* [2020] NZDC 1169.

For example, the Courts regularly assess whether the defendant has gained any profit or benefit because of the offending.¹⁶

[59] The analysis of cases shows that the *Chick* and *Thurston* features are generally taken into account when assessing the defendant's level of culpability. Quite properly, the Council does not suggest that the factors are exhaustive.

[60] Mr Bucher submitted that an analysis of the case-law demonstrates that it is comparatively rare that offending will be seen as falling within Level 1. He suggested that could be a reflection of alternative enforcement actions that are often taken in cases where the offending is less serious.

[61] In terms of cases involving Level 1 offending, Mr Bucher referred me to *Blundell*,¹⁷ *GIB Farming*¹⁸ and *Thompson*.¹⁹ He submitted that an analysis of the cases demonstrates that Level 1 offending presently attracts a starting point in the range of \$40,000 to \$70,000, being between 13 and 23 per cent of the previous maximum penalty for an individual (\$300,000).

[62] In terms of cases involving Level 2 offending, Mr Bucher referred to *Graze*,²⁰ *Blackler*,²¹ and *Lockwood*.²² He also referred to the following cases involving Level 2

¹⁶ *Thurston* at [44]-[46].

¹⁷ *Blundell*: The offending was a mistake. Effects at lower end. Effluent system well developed. Starting point (SP) \$40,000 commuted to community work for Mr Blundell and discounted to \$26,000 for the company. No *Chick* level specified.

¹⁸ *Gib Farming Ltd*: Defendant less culpable party. No more than careless given limited options. Effects low to moderate. As there were several discharges, between Levels 1 and 2. SP \$60,000.

¹⁹ *Thompson*: Farm Manager careless – made a poor decision. Contaminants discharged directly to water – effects significant. *Chick* level not specified. SP \$75,000.

²⁰ *Graze*: Defendant's decision-making was highly careless. Limited capacity in effluent sump necessitated daily irrigation. Ponding of effluent from irrigation produced some discharge into a farm drain. SP \$70,000. Lower end Level 2 *Chick*.

²¹ *Blackler*: Upper end of careless for traveling irrigator offending, careless at highest end of scale for stormwater pond discharge, and reckless for further irrigator charge. Storage ponds had small capacity at the time of the offending, small area for spreading. Effluent from over-irrigation to unnamed tributary. Discharge from stormwater pond into tributary. SP \$80,000. Higher end Level 2 *Chick*.

²² *Lockwood*: Gravity of offending moderately serious. A real want of care by the defendant to address infrastructure deficiencies on a timely basis. Two offences. Overall SP \$115,000. *Chick* discussed but no level specified.

and bottom end of Level 3 offending by individual offenders: *Donald*,²³ *Cazjal Farm*²⁴ (upheld in *Walling*), *Flint Farms*, and *Phillips*.²⁵

[63] Mr Bucher submitted that starting points in the cited cases have ranged between \$70,000 and \$150,000, being between 23 and 50 per cent of the previously available maximum penalty for an individual offender.

[64] Mr Bucher submitted that an analysis of the case-law establishes that Level 3 effluent offending is rare. He said it is more common that offending falls between Levels 2 and 3, for example, in *Flint Farms*. In that case, the Court found the dairy effluent offending fell between Levels 2 and 3. A starting point of \$230,000 was adopted for Mr Flint, who was responsible for day-to-day management of the farm.²⁶

[65] Two cases involving Level 3 are *Hazlehurst*²⁷ and *Rawhiti*.²⁸ Those cases involved prolonged offending and deliberateness and/or were occasioned by a real want of care resulting in severe environmental effects. The starting points adopted were \$90,000 (*Hazlehurst*) and \$575,000 (adjusted for totality) (*Rawhiti*).

[66] Relying on the recent effluent sentencing decisions, the Council proposed starting point ranges of \$50,000-\$200,000 for Level 1, \$175,000-\$500,000 for Level 2 and \$450,000-\$1,000,000 for Level 3.

²³ *Donald*: Defendant was general manager responsible for two farms. Each had system inadequacies the defendant was aware of for years. Discharges created more than minor adverse environmental effects. Culpability higher than careless. SP \$135,000. Between Levels 2 and 3 *Chick*.

²⁴ *Cazjal Farms*: Systemic and operational failures. Reluctance by the defendant to address known infrastructure and management risks. Elevated contaminants in significant waterways used by neighbours and iwi. SP \$120,000. Upper Level 2, cusp Level 3 *Chick*.

²⁵ *Phillips*: Deliberate discharge of one milking's volume of effluent from sump to a farm drain, which would have ultimately discharged to a river. By failing to install necessary storage facilities the defendant obtained an indirect financial benefit. SP \$90,000. Between Levels 2 and 3 *Chick*.

²⁶ *Flint Farms*: Six representative charges, three defendants. Prolonged discharges. Highly careless, management failings. The defendants were on notice, yet no adequate steps were taken to address problems. Environmental effects moderately serious. SP: \$295,000 for Flint Farms, \$110,000 for B Flint and \$230,000 for G Flint for discharge offences. SP between \$20,000 - \$30,000 for abatement notice offending. Between Levels 2 and 3 *Chick*.

²⁷ *Hazlehurst*: Prolonged offending over 43 months. The defendant exhibited systemic disregard for legal obligations and demonstrated a real want of care. Raw effluent discharged to land. High level of culpability. High risk to groundwater. SP \$90,000. Level 3 *Chick*.

²⁸ *Rawhiti*: Piggery effluent discharge over 10 months. Real want of care. Infrastructural and system failures. Severe environment impact and risk. SP \$575,000 (adjusted for totality). Level 3 *Chick*.

[67] It submitted that the ranges would accommodate differences within and some overlap between the levels. It said the highest starting points would be reserved for the most serious offending, consistent with s 8(1)(d) of the Sentencing Act 2002.²⁹

[68] Mr Lang submitted that the decisions relied on do not provide a sound basis for those ranges because some do not specify a *Chick* level and others have starting points below the Council's suggested range for their stated level.³⁰

[69] He also submitted that lower-level offending should not necessarily receive an uplift proportionate to the increase in maximum penalty,³¹ particularly where liability is vicarious. He submitted that issue is relevant to the present case, where Mr Clarke had no personal involvement in the activity that led to the offending.

[70] If pressed to suggest an alternative to the Council's proposed offending levels and starting point ranges, Mr Lang suggested Level 1 – \$0-\$100,000 for low culpability, Level 2 – \$100,000-\$250,000 for medium culpability, Level 3 – \$250,000-\$500,000 for high culpability and Level 4 – \$500,000-\$1,000,000 for very high culpability.

[71] Mr Lang submitted that the offending in the present case falls at the upper end of *Chick* Level 1.

Discussion

[72] The increased maximum fine must be reflected in sentencing,³² but does not itself dictate new bands or a proportionate increase in every starting point.

²⁹ Section 8(1)(d)

(1) In sentencing or otherwise dealing with an offender the court –

...

(d) must impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and ...

³⁰ For example, *Nettleingham* (pointing to the starting point of \$40,000 which sits below the Level 2 starting points described by Mr Bucher of between \$70,000 and \$150,000) and *Trinity Lands* (two defendants within Levels 1 and 2 but starting points of between \$40,000 and \$50,000).

³¹ Relying on *Stumpmaster* at [52].

³² *R v Richardson* [2007] 2 All ER 601 at [4].

[73] The Ministry for the Environment’s Regulatory Impact Statement identified the former maximum fines as inadequate to deter non-compliance.³³ That provides context for the amended maximum and importance of deterrence. It noted, in particular, that fines for dairy effluent discharges could be substantially less than the cost of upgrading inadequate infrastructure.³⁴

[74] Observing that the most common penalties under the RMA for offences are fines, the Ministry noted that “maximum fines should not be disproportionately severe but should reflect the worst case of possible offending”.³⁵ It said that the “maximum fine must be high enough to allow the imposition of a penalty that is meaningful to the offender, whether it be an individual or a multinational corporate entity”.³⁶

[75] Speaking to the amendments, the Ministry said that “the proposal is expected to achieve immediate benefits in terms of providing proportionate penalties for environmental offences and strengthening deterrence.”³⁷

[76] *Stumpmaster* shows that increased maxima may justify revising established guideline bands. That course is not required here.

[77] As the decisions in *Waikato Regional Council v Nagra Farms Limited*³⁸ and *Sowman*³⁹ recognise, *Chick* assists the assessment of seriousness but must not displace an evaluation of the particular offending, offender (including differences between corporate and individual responsibility), the maximum penalty and relevant sentencing principles. The Court in *Sowman* also endorsed the *Thurston* considerations as potentially relevant in pollution sentencing. Comparable cases may assist with consistency without prescribing the result.

³³ *Regulatory Impact Statement: Policy analysis of compliance and enforcement proposals for inclusion in Resource Management Amendment Bill No. 2* (25 July 2024) (**Regulatory Statement**) at [39]. While not referred to in this hearing, I find the Ministry for the Environment’s Statement to provide a helpful context for considering the increase in penalties. The Council has referred to this report in another sentencing matter.

³⁴ Regulatory Statement at [42] and [47].

³⁵ Regulatory Statement at [40].

³⁶ Regulatory Statement at [41].

³⁷ Regulatory Statement at [52].

³⁸ *Waikato Regional Council v Nagra Farms Limited* [2019] NZDC 2382 at [78]-[80].

³⁹ *Sowman* at [67]-[68].

[78] When *Chick* was decided, the Court could identify a pattern from sentences already imposed. There are not yet sentencing decisions under the amended regime from which to derive equivalent new ranges. Prescribing them now would be premature and might unnecessarily restrict the Court's responses as that case-law develops.

[79] Further, it is not necessary to create new levels of culpability. *Chick's* descriptions remain flexible, while its historical fine ranges need not be followed. I therefore decline to establish the guidance sought by the Council in this case. I will determine the starting point by assessing this offending, and Mr Clarke's culpability, against the statutory maximum and the relevant sentencing principles. Fine ranges may be reconsidered when guidance under the amended regime provides a firmer basis for doing so.

Sentencing Framework

[80] The purposes and principles of the Sentencing Act 2002 are relevant.

[81] The High Court in *Thurston* provides a useful summary of the approach to be taken to sentencing.⁴⁰ This includes the offender's culpability; any infrastructural or other precautions taken to prevent discharges; the vulnerability or ecological importance of the affected environment; the extent of the environmental damage, including any lasting or irreversible harm, and whether it was of a continuing nature or occurred over an extended period of time; deterrence; the offender's capacity to pay a fine; disregard for abatement notices or Council requirements; and cooperation with enforcement authorities and guilty pleas.

[82] The approach to sentencing is as outlined in *Moses v R*.⁴¹ I must first set the adjusted starting point by considering the aggravating and mitigating features of the offence. Then I must apply all aggravating and mitigating factors personal to the offender together with any guilty plea discount, which should be calculated as a

⁴⁰ At [41].

⁴¹ *Moses v R* [2020] NZCA 296 at [46].

percentage of the adjusted starting point, to determine if the starting point should be adjusted.

Environmental effects

[83] Ponding and the saturation of soil with farm animal effluent creates hydraulic conditions that pose a high risk of a direct loss of untreated or partially treated effluent to groundwater. Ponding and irrigation onto saturated soils leads to effluent bypassing the soil matrix and flowing preferentially down macropores (cracks and worm holes in the soil). Macropore flow results in untreated effluent moving below the plant root zone in the soil without suitable treatment.

[84] The SOF records that research has shown the presence of “green water” at a depth of one metre in soil cores where dairy effluent ponded on the soil surface. Macropore flow that bypasses the soil matrix may result in pathogenic micro-organisms directly contaminating groundwater, posing a risk for groundwater drinking water quality.

[85] Mr Bucher highlighted that the Courts have accepted that any contamination that goes into the wider environment, no matter how small, adds to the overall cumulative effects on the environment. A consistent theme of sentencing decisions over the past decade is to describe the cumulative effects of effluent discharges on the environment as “insidious” and “death by a thousand cuts”.⁴²

[86] Mr Lang submitted that the level of environmental effects in this case is low. The effects set out in the SOF are agreed.

Conclusion on environmental effects

[87] I find the environmental effects of this offending are low to moderate. While the actual amount of discharge cannot be quantified, the over-application of dairy effluent can result in contaminants entering groundwater. Such contaminants,

⁴² See for example *Manawatū-Whanganui Regional Council v Manawatū District Council* [2024] NZDC 3930 at [7]; *Northland Regional Council v Roberts* DC Whangarei CRN 12088500369, 371-376, 18 September 2013 at [18]; *West Coast Regional Council v Potae and Ven Der Poel Limited* CRI-2009-009-017910 DC Greymouth 20 April 2010 at [49]; *Thurston* at [51].

particularly nutrients such as nitrogen, may eventually enter surface water. There is no doubt that such discharges contribute to adverse effects on the environment.

Culpability

[88] Mr Bucher submitted that Mr Clarke has benefitted from not expending money on upgrading the farm's effluent infrastructure or installing adequate storage. He referred to *Thurston*, where Miller J held:⁴³

[47] The offender's gains, as this case illustrates, include the avoided costs of preventing pollution. Polluters may also gamble, as Mr Thurston did, on regulators failing to identify and successfully prosecute them. In such cases deterrence may justify fines that exceed any gains that the offender hoped to make from any one incident. In an environmental context, it has been suggested, using the example of a postponed investment in water-cleaning equipment, that:

Criminal law is the only legal instrument available to force a potential polluter to make this investment, he will only do so (and thus avoid the crime) if the fine that will eventually be imposed multiplied by the probability of detection and conviction is higher than the money he can save by not investing in the equipment.

[citations omitted]

[89] The Council argued that an important aspect of sentencing is to ensure that it is economically unattractive to offend in this way. Despite being aware that storage capacity was inadequate, Mr Clarke avoided being put to the significant cost of ensuring that there was appropriate storage available. This has come at the cost of the environment. The resulting penalty must therefore have sufficient sting so that it is not simply seen as a licence fee to incentivise defendants to avoid incurring necessary effluent-related expenses.

[90] Mr Bucher submitted that the offending came about due to Mr Clarke's highly careless management of the effluent system. Despite repeated Council regulatory involvement on the farm, no steps were taken by him to increase available effluent storage. Further, there was no effluent management plan and there was no contingency for when the Manager was away or otherwise off the farm.

⁴³ *Thurston* at [47].

[91] The lack of appropriate effluent storage meant that the farm was heavily reliant on irrigation, even in adverse weather conditions. Mr Bucher submitted this was particularly problematic given that the sump pump worked off an automated float switch and would start whenever the sump reached a certain level. Moreover, the irrigator was set up to operate during the evening to avoid odour complaints. This meant that active supervision of the irrigator was not possible.

[92] The Council submitted that the poor state of the effluent infrastructure on the farm was directly causative of the offending, and that the offending was entirely foreseeable.

[93] Mr Bucher submitted that it is incumbent on farmers to ensure their effluent systems are fit-for-purpose, which includes ensuring that there is sufficient effluent storage capacity to ensure there are no unlawful effluent discharges. He submitted it is reasonable for farm owners and managers to recognise the need to actively monitor effluent and infrastructure, including the effluent storage facilities.

[94] Mr Lang submitted that this is not a case about the lack of effluent storage. While there were previous warnings about storage capacity, that was not an element of the offending – the SOF confirms that the sump and the bladder had capacity. He described the offending as being a one-off discharge in which Mr Clarke had no direct involvement, only vicarious liability.

Findings on culpability

[95] The SOF records that there were repeated attempts by the Council to get Mr Clarke to comply with his environmental obligations. Despite that, the Council's infringement notices, formal warnings and an abatement notice were largely ignored. I say largely, because in 2019 a bladder was installed at the farm to provide additional effluent storage.⁴⁴ However, the bladder is not specifically designed for farm animal effluent storage. All the infringement notices and formal warnings referred to over-irrigation and ponding. Those issues, again observed in 2020 and 2024, continued

⁴⁴ I record however that two compliance inspections undertaken at the end of 2021 and in April 2023 determined that effluent was being managed appropriately. See SOF at [47].

after the bladder's installation. On multiple occasions the Council advised Mr Clarke about the importance of upgrading the farm's effluent infrastructure and implementing adequate effluent management measures to prevent further discharges. During the Council's investigation, Mr Clarke admitted he had "not really read" that correspondence. He explained that uncertainty about what may happen with the farm (given it is earmarked for Future City development) may have impacted decisions about expenditure on infrastructure.

[96] Effluent management comprises many 'moving parts'. In order for it to function effectively, each part needs to do its job – that ranges from the provision for adequate storage, the systems by which irrigation is triggered and delivered, where it goes, for how long, who is monitoring it and, of course, failsafes to stop irrigation if there is a problem. I find that the inadequate effluent infrastructure contributed to the offending, and poor management practices caused the offending. The effluent system was critically vulnerable to human error or lack of oversight. First, there was no effluent management plan in place. Given all the education that the Council has engaged in over the years, that is an unfortunate omission with potentially serious consequences. Secondly, at the time of the offending no steps had been put in place to monitor or manage the effluent system or effluent disposal in the Farm Manager's absence. The farm assistant, who manages the farm when the Farm Manager is away, admitted that she has no confidence in managing the effluent irrigator and left that to her Manager. That meant that whenever the Farm Manager was off the farm – two days in every twelve and whenever else he may have needed to be absent, such as sick leave or a holiday – the farm's effluent system was vulnerable to mismanagement. These poor practices undoubtedly contributed to the offending, and Mr Clarke must bear responsibility for that in his role as operational overseer of the farm.

[97] Pursuant to the lease agreement, all operational decisions including infrastructural expenditure at the farm are Mr Clarke's responsibility and cost. When interviewed by the Council, Mr Clarke acknowledged that responsibility for the over-irrigation and ponding of farm effluent was with him, as well as responsibility for the farm's effluent management system and infrastructure. It was, therefore, incumbent on Mr Clarke to ensure that the effluent system was fit-for-purpose,

including that there was a clear effluent management plan outlining the responsibilities of all those involved in effluent management.

[98] In all the circumstances, I assess Mr Clarke's conduct as being highly careless. I do so in the context of his sustained failure to prevent effluent discharges at the farm, despite significant Council intervention and repeated advice that the farm's effluent system was inadequate and required upgrading. The offending was entirely foreseeable, and could have been avoided if Mr Clarke had complied with his environmental obligations in a timely manner. Mr Lang submitted that Mr Clarke had no direct involvement in the offending. That may be so, but he was responsible for the infrastructure and processes used to dispose of effluent. He may not have been 'hands on' but 'hands off' does not meet his statutory responsibilities.

Starting point

Council's submissions

[99] The Council submitted that this offending falls within Level 2 *Chick*. Although the charge relates to one instance of ponding and the environmental effects are moderate, Mr Bucher submitted that the offending should be elevated from Level 1 to Level 2 given the significant history of non-compliance.

[100] Mr Bucher referred me to the following cases as being comparable: *Waikato Regional Council v Pukeko Place Farms Limited (Pukeko Place Farms)*,⁴⁵ *Waikato*

⁴⁵ *Waikato Regional Council v Pukeko Place Farms Limited* [2026] NZDC 1265 – One charge for unlawful discharge of effluent from an irrigator. Effluent had ponded in a shallow depression in the paddock over a large area. The farm worker stated that he had to irrigate in the rain overnight to avoid the sump overflowing due to a lack of effluent storage. The Court found low level environmental effects but the defendant highly culpable. In not expending money on infrastructure upgrades the defendant derived a direct benefit. Starting point of \$75,000. Level 2 *Chick*.

Regional Council v Apex Farms Limited (Apex Farms),⁴⁶ *Cazjal Farm Ltd*,⁴⁷ *Waikato Regional Council v ANP Farms (ANP Farms)*⁴⁸ and *Waikato Regional Council v Lockwood (Lockwood)*.⁴⁹

[101] Mr Bucher submitted that this case is aggravated by the real want of care demonstrated by Mr Clarke. Despite repeated Council intervention, infrastructure improvements were not implemented. The offending was therefore highly foreseeable and was caused primarily by the poor state of the effluent infrastructure on the farm. There was insufficient effluent storage capacity and the farm was reliant on irrigation to pasture. Despite it being a one-off event, Mr Bucher submitted that these factors elevate the offending to Level 2.

⁴⁶ *Waikato Regional Council v Apex Farming Ltd* [2025] NZDC 13837 – A discharge from an overflowing effluent pond. There were two effluent storage ponds at the property, both of which were extremely full. Effluent was actively overflowing from one of the ponds, causing an overland flow of effluent for a distance of approximately 40m, discharging into a farm drain which connected to a tributary. The offending was caused by infrastructural failings, including a lack of available effluent storage facilities. Offending fell within the lower end of Level 2 *Chick*. Starting point of \$70,000.

⁴⁷ *Waikato Regional Council v Cazjal Farm & Ors* [2023] NZDC 10973 – Three dairy effluent discharges and three abatement notice breaches, encapsulated within two representative charges: Three unlawful discharges of effluent where it may enter water by discharging effluent from stationary and travelling irrigators where it may enter water, namely tributaries of the Matapara and Mangaharakeke Streams and groundwater; and breaching an abatement notice (on those three occasions). Starting points of \$100,000 for both the corporate defendant and its director, Mr Walling, the starting point was uplifted to \$120,000 for both defendants to reflect the abatement notice breaches. Level 2 *Chick* (upper end).

⁴⁸ *Waikato Regional Council v ANP Farms Limited* [2024] NZDC 13550 – Two charges of permitting the discharge of farm animal effluent onto land from an effluent irrigator, where it may enter water. There was also one charge of breaching an abatement notice. The first charge related to a large area of ponded effluent that was located adjacent to an irrigator during a routine farm inspection. An abatement notice was issued. An inspection six months later located several areas of ponding along the irrigator's run. The ground along the run was saturated underfoot and there was ponding throughout the area of application. Effects on the environment were moderately serious; defendant found to have acted carelessly as to first discharge and highly carelessly as to second. Adjusted for totality, overall starting point was \$135,000. Level 2 *Chick*.

⁴⁹ *Waikato Regional Council v Lockwood* [2020] NZDC 24932 – Two charges of discharging dairy effluent to land where it may enter water. The effluent system consisted of a sump which then flowed into a holding pond nearby. From these structures, the effluent gravity-flows to a number of ground level hydrants and is connected to the hydrant and to a travelling irrigator by a drag hose. In September 2019, one of the hydrants was broken. On 17 October 2019, Council officers found two sizeable areas of ponded effluent. A re-inspection on 7 November 2019 showed that the ponded effluent had been left to soak into the ground; no steps had been taken to remove it. On 25 August 2020, another inspection found that the travelling irrigator was detached from the drag hose with a flat tyre. An area of ponded effluent was observed. Gravity of the offending and defendant's culpability were assessed as moderately serious. While not deliberate, the Court considered that the causes of the discharges demonstrated at least a reluctance and possibly a real want of care to address the infrastructure deficiencies in a timely manner. Adjusted for totality, the Court adopted an overall starting point of \$115,000. Level 2 *Chick*.

[102] Mr Bucher submitted that this offending shares many similarities to the offending in *Pukeko Place Farms*. In both cases the offending was caused by the lack of available effluent storage, despite Mr Clarke being put squarely on notice as to the need for infrastructural upgrades. The starting point in *Pukeko Place Farms* was \$75,000, and the starting point adopted in *Apex Farming*, where the offending was similarly caused by infrastructural failings on the farm, was \$70,000.

[103] Mr Bucher considers that the offending also shares similarities to the first unlawful discharge in *Lockwood*. There, a hydrant had broken causing significant ponding. A starting point of \$75,000 was adopted for that discharge, being 25 per cent of the maximum penalty available at the time.

[104] Had the sentencing occurred prior to the Amendment Act, Mr Bucher submitted that the offending would have attracted a starting point in the vicinity of \$80,000 to \$90,000. That would reflect the lack of effluent infrastructure on the farm and, in particular, the lengthy history of non-compliance and the fact that the defendant was on notice as to the need to improve the effluent infrastructure.

[105] Given the change in the maximum penalty, Mr Bucher submitted that a starting point at the lower end of Level 2, in the range of \$180,000 to \$200,000 is appropriate. That is 18-20 per cent of the maximum available penalty. He noted that the history of poor compliance was taken into account in the proposed starting point. As such, no uplift has been sought to avoid double counting.

Defendant's submissions

[106] Mr Lang submitted that the authorities relied on by the Council involve more serious offending than in this case. In particular:

- (a) *Pukeko Place Farms* involved a forced decision to irrigate in the rain to avoid an effluent sump from overflowing. There was a lack of effluent storage capacity available, which directly led to irrigating in inappropriate conditions. Mr Lang submitted that is different from this case, given there was ample effluent storage available in both the storage bladder and the sump;

- (b) *Apex Farming* involved an overflowing effluent pond, a situation which the Court found was caused by infrastructural failings, including a lack of available effluent storage facilities. Mr Lang submitted that is different from this case, where there was adequate storage but a decision was made to irrigate rather than to use that storage. He also noted that the offending in *Apex Farming* resulted in a discharge to surface water, which did not occur in this case;
- (c) *Cazjal Farms* and *Walling* involved three unlawful discharges of effluent and breach of an abatement notice on all three occasions. All three of the discharges resulted in discharges to surface water;
- (d) *ANP Farms* involved two unlawful discharges of effluent seven months apart via irrigations and a breach of an abatement notice; and
- (e) *Lockwood* involved two separate discharges of effluent detected during two separate inspections, which is more serious in comparison to the single discharge in this case.

[107] Mr Lang referred me to the following cases for comparative purposes: *Bay of Plenty Regional Council v Nomar Farms Limited (Nomar Farms)*,⁵⁰ *Blundell*,⁵¹ and

⁵⁰ *Bay of Plenty Regional Council v Nomar Farms Limited* [2025] NZDC 5540 – This offending involved over-irrigation. One of the irrigator nozzles had been modified in a way that decreased the rate of movement of the irrigator boom. These factors contributed to the irrigator staying in one place and continuing to discharge. The discharge occurred over a period of days. There was also breach of an abatement notice and discharge of effluent to surface water through overland run off. Highly careless. A starting point of \$65,000 was adopted, reflecting the modified irrigator, a persistent discharge and discharge to surface water. Middle to higher end Level 2 *Chick*.

⁵¹ *Waikato Regional Council v Blundell* [2025] NZDC 28844 – Discharge of effluent from a travelling irrigator onto land in circumstances where it may have entered water. The charges were laid against the farm owner and the employee who operated the effluent system. The defendants decided to irrigate in adverse weather due to concern that the effluent ponds on the property were reaching their capacity and the employee thought that the weather was improving. The Court noted that this was a single offence resulting from a flawed decision about the best action to take in the circumstances and decided that the appropriate starting point for each of the defendants was \$40,000. No *Chick* level specified.

Nettleingham.⁵²

[108] Mr Lang submitted that *Nomar Farms* and *Blundell* involved more serious offending than the present case. Those cases indicate that a starting point for the present offending would have been around \$40,000 prior to the uplift in maximum fines under the Amendment Act.

[109] Mr Lang advised me that Mr Clarke is getting out of dairy farming, and this is his last season. He now farms dry stock. Mr Lang submitted that there is no need for any personal deterrence for Mr Clarke.

[110] He submitted that an uplift doubling the pre-Amendment starting point, giving a starting point in the vicinity of \$80,000, would be an appropriate response.

Conclusion on starting point

[111] The parties are well apart in terms of a starting point, in part due to their disagreement on how the Court ought to approach starting points under the amended legislation.

[112] I have considered the cases referred to me, most of which involved more serious offending than the present. *Pukeko Place Farms*, which involved one charge relating to the unlawful discharge of effluent from an irrigator, is of assistance however. The offending resulted in a ponded area that was 40 metres long, five metres wide, and had a maximum depth of 20 centimetres. The Court found the defendant to be highly culpable for its failure to ensure its effluent systems were fit-for-purpose, and accepted that there was some indirect benefit derived from avoiding expenditure on adequate infrastructure and storage. The offending sat in the middle to higher end of Level 2 of *Chick*. A starting point of \$75,000 was adopted.

⁵² *Bay of Plenty Regional Council v Nettleingham* [2023] NZDC 3031 – A small farm effluent system was misused by diverting water down through the stormwater diversion system to a gully paddock. From there, the effluent had travelled overland to enter a drain that flowed into Tauranga Harbour. The offending occurred as a result of an error in operating the system; the Court noted the small scale of the dairy farm operation and concluded that the appropriate starting point was \$40,000. Lower end Level 2 *Chick*.

[113] The offending in *Pukeko Place Farms* resulted in a larger area of ponded effluent, compared to this case which resulted in a relatively smaller area of 20m² in diameter. The extent of environmental effects is otherwise similar. There was no discharge directly to water in either case, but the effects of ponding and the saturation of soil with farm animal effluent are well-noted. Further, this case involves a long history of non-compliance, with Council enforcement action that was not present in *Pukeko Place Farms*. Mr Clarke received notices and advice over ten years warning of the consequences of over-irrigation that put him on notice about deficiencies in the way effluent was managed. Despite that – aside from the purchase of a bladder in 2019 – nothing much seemed to change with overall farm management.

[114] In all the circumstances, I assess the offending to fall well within Level 2 of *Chick*. While the charge relates to one unlawful discharge at the farm, it speaks to a concerning lack of care being taken to ensure the effluent infrastructure was being managed as it should be. While the point was made that the sump and the bladder were only half full on the day of the offending, and therefore were not the cause of the over-irrigation, Mr Clarke had been advised on many occasions that the infrastructure was lacking. A prudent operator would have taken steps to investigate the issues and address them. A glaring omission leading to this offending is the lack of an effluent management plan and development of contingency measures to come into play when the Farm Manager was away.

[115] In assessing the starting point, I pay particular regard to the date of the offending, being some 12 days after the amending legislation came into force. It would be unduly harsh to impose a starting point which, on the Council's approach, would be over twice what might have previously been imposed. Mr Lang's proposed starting point is twice that which he estimated may have been imposed.

[116] The Court needs to take care to ensure that a fair and consistent approach to sentencing occurs, and one of the means by which that can be achieved is by allowing the approach to develop. That is not to say that I ignore the new maximum penalties; rather that I find that sentencing is not a tick box exercise undertaken with maximum penalties top of mind. It is a more rounded exercise involving all the matters to which

the Court is required to have regard under the Sentencing Act and as helpfully summarised by the High Court in *Thurston*.

[117] I have considered, therefore, the timing of the offending, the attitude of the defendant, his compliance history, the environmental effects of the offending and the need for deterrence. I also take notice of deficiencies in effluent management, and the opportunities given to Mr Clarke to remedy those. Attempts to do that (for example the 2019 purchase of a bladder to provide bulk storage) were not enough to insulate the system against poor management of irrigation. In those circumstances I adopt a starting point for this offending of \$130,000. If it assists the parties, I record that if the legislation had not been amended I would have likely adopted a starting point of \$85,000.

Aggravating and mitigating factors

[118] Both parties accept that Mr Clarke entered a guilty plea at the first reasonable opportunity and is therefore entitled to a discount of 25 per cent. I agree.

[119] Mr Clarke has no prior RMA convictions. The parties agree that there are no aggravating factors warranting uplift. No uplift is sought in respect of Mr Clarke's history of poor compliance as that was taken into account in setting the Prosecutor's proposed starting point. That said, I do not consider it appropriate to allow any discount for prior good character.

[120] This results in a final penalty outcome of \$97,500.

Outcome

[121] I have convicted the defendant. I impose a fine of \$97,500.00.

[122] In terms of s 342(2) of the RMA, I order that 90 per cent of the fine be paid to the Waikato Regional Council.

[123] Issues were raised about Mr Clarke's ability to pay a fine in one lump sum. Counsel agreed that three years should be allowed for the fine to be paid in instalments. I agree, and direct the Registrar to make those arrangements with Mr Clarke.

[124] I also order that the defendant is to pay court costs of \$152 and solicitor's fee of \$113.

Judge MJL Dickey

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 15/10/2026