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**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIRIROA**

CRI-2023-072-000321

WAIKATO REGIONAL COUNCIL
Prosecutor

v

GRAY'S FORESTRY SERVICES LIMITED
HENRY HALE

Defendants

Hearing: 2 December 2024

Appearances: A McConachy for the Prosecutor
J Gurnick for Mr Hale

Judgment: 31 March 2025

SENTENCE INDICATION OF JUDGE L J SEMPLE

[1] The defendant, Mr Hale, seeks a sentence indication in respect of four charges relating to plantation forestry harvesting operations carried out on two rural Waikato properties, namely Okoko Road Forest and Van den Broek Forest.

[2] Okoko Road Forest is a 6 hectare radiata pine woodlot on a steep hillside within a 182 hectare farm. The Waitaheke Stream runs the full length of the harvest area.

[3] Van den Broek Forest comprises three woodlots totalling 16 hectares of radiata pine within a dry stock farming operation adjacent to Kawhia Road (State Highway 31).

Background

Okoko Road Forest

[4] The Agreed Summary of Facts (SOF) records that in May 2022 Gray's Forestry Services Ltd (Gray's) entered into an agreement with the landowner of 67 Okoko Road to manage the harvest of the Okoko Road Forest Block. Gray's subsequently contracted Mr Hale (or his former company G Hale Logging Limited) as the forestry contractor. It was Mr Hale's role to carry out the physical harvesting work on the site including managing staff.

[5] Gray's completed an Earthworks and Harvest plan (Harvest Plan) for this block but failed to notify activities to the Regional Council as required by reg 25 (Earthworks), reg 38 (River Crossings) and reg 64 (Harvesting) of the National Environmental Standards for Plantation Forestry (NES-PF).

[6] A failure to notify the Regional Council within the specified timeframe is a breach of the NES-PF Regulations and such activities no longer qualify as permitted activities and must obtain a resource consent. No application for a resource consent was made and the subsequent harvesting, earthworks and river crossing activities carried out by Mr Hale on the block were therefore carried out unlawfully.

[7] On 12 December 2022, Regional Council representatives conducted an inspection of the property following a complaint from a member of the public. On inspection it was discovered that a temporary river crossing had been constructed over the Waitaheke Stream. This crossing involved the placing of three large concrete culvert pipes into the bed of the Waitaheke Stream and covering the pipes with corduroy layers of pine logs and a layer of soil and aggregate to provide machinery

access to the forestry blocks. Further earthworks included forming the access track and approaches to the crossing point across the Waitaheke Stream. In breach of reg 41 no erosion or sediment control measures were observed to be in place.

[8] Other unlawful works observed by Regional Council staff included the cutting of access and haul tracks across the slope. The construction method used to form these tracks had resulted in a significant amount of uncompacted and unstabilised soil and spoil migrating downhill, some of which had discharged into the Waitaheke Stream. In places, bank cuts and batters above tracking and side-cast soil and slash below tracking had also failed to maintain stability. Tracking immediately above the stream showed significant side-cast soil, spoil and slash having been deposited right down to and into the stream.

[9] Harvested stems had been pulled down to and across the stream for processing on the landing located on a flat area adjacent to the stream and Waitaheke Road. Any stormwater controls, diversions or cutouts that had been installed at the landing initially were not maintained throughout or after the active harvest to treat or prevent sediment laden stormwater discharging off the site and into the stream.

[10] In addition, slash and logging waste had been left within the riparian zone beside the stream and in places up to the edge of the stream which created a significant risk of slash and logging waste being mobilised and discharging into the river during a flood event.

[11] The felling and extracting of trees over the entire harvest area had resulted in extensive areas of disturbed soil and whilst in some areas, slash remained in place to offer some stabilisation, for other areas of the site no stabilisation measures or water controls were installed to minimise sediment and/or slash entering the Waitaheke Stream.

[12] Slash and woody debris resulting from harvesting activities was not placed on stable ground as required by the NES-PF Regulations and in places had been deposited on to land that would be covered by water during a 5% AEP flood event.

[13] Further observations by Council staff indicated that a tracked forestry equipped machine had been operated in the bed of the Waitaheke Stream and had been driven or walked up the stream bed to remove trees felled into or over the stream during the harvesting process.

[14] Compounding these issues, the works had been carried out during the winter months on a steep site directly above the Waitaheke Stream which significantly increased the risk of sediment laden stormwater and/or slash being discharged off the site and into the Waitaheke Stream.

Van den Broek Forest

[15] In similar circumstances, the SOF records that Gray's entered into an agreement with the owner of 2019 Kawhia Road, Honikiwi to arrange for and manage the harvesting of the Van den Broek Forest and contracted the harvesting of the block to Mr Hale.

[16] In this instance Gray's notified the Regional Council of harvesting works within the specified timeframe but failed to advise the Regional Council that the activities would include a river crossing. An Earthworks and Harvesting Plan prepared by Gray's did indicate a river crossing in the southernmost end of the forest but this was not separately notified as required by the NES-PF. A copy of this Harvest Plan was supplied to Mr Hale.

[17] As with the Okoko Road Forest, the harvesting method employed on the site was ground-based, using forestry equipped excavators to shovel felled trees to stockpiles accessible to the skidder which were then dragged to the landing beside the tributary stream and Kawhia Road for processing into logs and loading out onto logging trucks.

[18] Earthworks on the block consisted of cutting new haul tracks or widening existing farm tracks to service the harvesting operations.

[19] The SOF records that a significant challenge for this harvesting operation was the location of the landing on a flat area immediately beside the tributary stream and Kawhia Road. This location offered a very restricted area in which to operate and was in close proximity to the stream. As the harvesting progressed there was a buildup of woody debris at the landing further limiting the space in which machinery had to operate.

[20] Compliance monitoring undertaken by the Regional Council on 19 December 2022 identified that forestry equipped machinery was working right down and into an unnamed tributary of the Ngutunui Stream creating a significant amount of disturbed soil, sediment, slash, and woody debris right along the stream bank margins. In some places the stream had been blocked or dammed by slash and/or logging waste and no apparent effort was being made to preserve riparian margins or prevent sediment and slash being deposited into the stream.

[21] Regional Council staff observed that sediment was being discharged into the tributary stream flowing down the tributary through the culvert pipe under Kawhia Road and into the main Ngutunui Stream some 20 metres away.

[22] Similar to events at the Okoko Road block the construction method used to form access tracks consisted of side-casting the soil, resulting in a significant amount of unstabilised soil and spoil being either deposited above or migrating down into the tributary stream. The requirement in reg 29 of the NES-PF to ensure earthworks do not occur within 10 metres of a perennial river was not adhered to. Contrary to the requirements of the NES-PF there were no suitable controls in place to treat stormwater and/or sediment on the landing or bunding to prevent log waste, sediment and woody debris being pushed into the tributary stream.

[23] A temporary river crossing installed in the tributary stream next to the landing failed to include the use of any culvert pipe to ensure stream flow and fish passage was maintained. Rather sections of logs, log offcuts and other logging waste had simply been placed into the bed of the stream, effectively damming the stream flow. No water or other controls were in place to stabilise the approaches to and from this crossing.

[24] Machinery movements resulting in significant ground and soil disturbance in close proximity to the tributary stream had been undertaken with no controls or measures put in place to manage sediment runoff. There was no evidence that harvest methodology or controls were being utilised to stabilise or contain disturbed soil to minimise sediment entering the stream. Contrary to NES-PF reg 68, trees on the eastern side of the stream had been scarfed and felled across and, in some cases, into the stream rather than being directionally felled or winched away from the stream and riparian zone. Setback areas where the NES-PF requires that harvesting machinery is not operated within 5 metres were not observed.

[25] Given the proximity of the landing to the stream, a significant amount of slash, woody debris and logging waste was deposited into the stream which carried a risk of mobilisation during a high rainfall event. The SOF records that this increased the risk of blocking the road culvert pipe which would have resulted in floodwater and slash overtopping Kawhia Road.

[26] Observations by Waikato Regional Council staff also noted that tracked machines had significantly damaged the stream banks and that soil disturbance along the banks caused by stream crossings had damaged, disturbed and destroyed aquatic plants and the habitat of aquatic plants and animals along those sections of the stream. The felling of trees into and across the stream had also contributed to damage and disturbance of the bed of the stream.

Council interviews with Mr Hale

[27] When spoken to by Council officers Mr Hale confirmed that he had been contracted by Gray's to carry out harvesting operations on both sites. Mr Hale confirmed that he was an experienced forestry operator with approximately 30 years of experience and that he understood that the NES-PF required him to protect the environment. He stated that he had been in regular contact with Mr Gray throughout the harvesting operation.

[28] The SOF records that Mr Hale described the Van den Broek harvesting operation as "the craziest job I have done in my life" due to the time of year, market conditions, multiple land boundaries, wet weather, the location between a highway

and the adjacent river and the financial difficulties he was experiencing at the time. Relevantly, Mr Hale indicated that given the wet weather on site, he should have pulled out of the harvesting until the weather improved but he had no other job to go to so he needed to carry on.

[29] Mr Hale confirmed he had constructed the temporary river crossing without a culvert and advised this was because he had not been supplied one by Gray's.

[30] With respect to the Okoko Road Forest, Mr Hale indicated that this was also a challenging operation with the location being too steep and wet for his ground based system. Again, however, he had no other work to go to at the time so he continued the harvest. He stated that at one stage one of his excavators had tipped and fallen when a haul road gave way. He confirmed that on some occasions felled trees were thrown and dragged to the edge of or sometimes into the Waitaheke Stream as there was no alternative way to access them.

Principles of sentencing

[31] The High Court in *Thurston v Manawatu-Wanganui Regional Council* provides a useful summary of the approach to be taken to sentencing which includes consideration of culpability, precautions taken to prevent discharges, the vulnerability or importance of the affected environment, extent of damage, deterrence, capacity to pay a fine, disregard for abatement notices, co-operation and guilty pleas.¹

Environmental impact

Okoko Road Forest

[32] Appendix C to the SOF provides a desktop assessment of the Waitaheke Stream compiled by Waikato Regional Council Ecologist, Dr Michael Pingram. The SOF notes that the Waitaheke Stream is classified as a fish spawning habitat class waterway for rainbow and brown trout under the NES-PF. Fish species in the vicinity of the site include lamprey, longfin eels, shortfin eels, Cran's bully and both rainbow

¹ *Thurston v Manawatu-Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, 27 August 2010.

and brown trout. Dr Pingram outlines that the effects of sediment in streams for these fish species can include reduced water clarity affecting feeding behaviour, hindering upstream migration and habitat loss where sediment degrades fish habitat and food sources.

[33] Dr Pingram's report concludes that sediment and slash entering the Waitaheke Stream would "negatively affect" all of the identified fish species and would likely have resulted in "displacement and possible fish deaths".

Van den Broek Forest

[34] Dr Pingram also provided an aquatic ecology assessment in relation to the Ngutunui Stream and its impacted tributary. This assessment involved a site visit on 27 February 2023 and an analysis of water quality data including eDNA sampling.

[35] Dr Pingram's report notes that suspended sediment remained high at the time of sampling suggesting that the known effects of sediment in waterways would also have occurred within this stream, including a reduction in the amount of periphyton growth, a reduction in fish and invertebrate habitat, the blocking of gills in fish and invertebrates and a reduction in spawning habitat and rearing for some native fish species and trout. While Dr Pingram accepted that the longevity of these impacts might be somewhat reduced by the gradient of part of the impacted reach and recent rainfall, he was of the opinion that these effects are still likely to have occurred. It was also Dr Pingram's opinion that the stream crossing would have resulted in issues with fish passage.

[36] Dr Pingram noted that forestry works appeared to have markedly disturbed the bed and banks of the watercourse for a length of approximately 250 metres and that as a result instream habitat for aquatic species had been disturbed with sediment and bank erosion effects ongoing at the time of his observation. This would likely have resulted in habitat for eels and kōura within the harvest area being directly impacted.

Analysis

[37] The Defence submits that there is no specific environmental impact or harm as a result of the alleged offending at the Okoko Road Forest and that the extent of harm is difficult to quantify at Van den Broek Forest. Despite that, the Defence accepts that the cumulative effect on the environment must be taken into account.

[38] While the effects may not be capable of absolute quantification, the evidence demonstrates that the effects of the works were readily observable to Council officers during site inspections. Elevated suspended sediment levels were noted in the Ngutunui Stream some two months later when Dr Pingram visited the site. The effects of works in and around the two streams were readily visible to Council staff and in the case of the Ngutunui Stream to Dr Pingram.

[39] This Court is particularly well acquainted with the effects of discharging sediment and slash into waterways. The generic effects are well documented and are outlined in Dr Pingram's assessment as including a reduction in the amount of periphyton growth, a reduction in fish and invertebrate habitat, the blocking of gills in fish and invertebrates and a reduction in spawning habitat and rearing.

[40] It is for this reason that the NES-PF, among other things, requires harvest areas, disturbed soil, earthworks, tracks and landings to have sediment and erosion controls installed and maintained throughout the harvest operation and for areas of disturbed soil to be stabilised as the operation progresses. It is also why works are to avoid riparian margins.

[41] Moreover, I accept as the Court did in *Auckland Council v Opal & Joe Trustee Ltd* that there "does not need to be evidence of 'actual harm' in order for the Court to be satisfied that there are adverse effects on the environment from this type of offending".²

[42] In this instance, I am satisfied on the evidence before me that there were adverse effects on the aquatic and riparian environment which fall in the moderate to high category.

² *Auckland Council v Opal & Joe Trustee Ltd* [2023] NZDC 24579 at [51].

Culpability

[43] The Prosecution submits that the offending displayed “a lack of consideration of how to complete the harvesting operation in compliance with the NES-PF” and that Mr Hale’s “conscious decision to construct and carry out non-compliant works in breach of the NES-PF can only be characterised as highly negligent”.

[44] The Defence suggests that Mr Hale’s offending is not egregious or the most serious offending of its kind and should be categorised “at its highest” as highly careless. In the submission of Defence counsel, it is not offending that demonstrates a want of care towards the environment and “[p]lainly, it was not reckless”.

[45] It is clear in this instance that works were carried out without due regard to minimising or avoiding adverse effects on the environment and that aquatic and riparian habitats were degraded as a result of the manner in which the works were undertaken. The SOF records that delaying the harvest until the weather improved or utilising cable based harvesting would have created far less soil disturbance and less risk of sediment discharge however these practices were not employed. Critically, having chosen to continue the harvest in the winter months and employ a ground based harvesting method, inadequate and/or non-existent sediment and erosion control measures were deployed.

[46] Albeit with the benefit of hindsight, Mr Hale accepted that he should have stopped the harvesting operation at Van den Broek Forest until the weather improved and similarly should have suspended operations at Okoko Road Forest when it became clear the ground was too wet and steep for his ground based system. Mr Hale was candid in explaining that he had no other work to go to so he took the risk of continuing. Given the information regarding the excavator tipping when a haul road gave way, this may have been a risk to his own safety or that of others on site. It was certainly a risk to the environment.

[47] While Gray’s had overall responsibility for the harvesting operation, Mr Hale had worked in the industry for 30 years and was the “person on the ground” as the Defence described it. He made the day-to-day decisions regarding the ongoing operations and, as his counsel accepted, “had greater caution been exercised, the harm

might not have occurred”. Specifically, although in possession of the Harvest Plans for both sites, much of what was contained therein was not complied with. While counsel submits that this conduct falls far short of recklessness I do not entirely agree. Mr Hale’s actions were certainly highly careless, bordering on reckless when it became clear that the ground based system set out in the Harvest Plan was unsuitable. It was at that point that a pause should have been taken to determine if the operation should continue using the current methods. It did not and moderate to high adverse effects on the environment ensued.

[48] In all of the circumstances I therefore consider culpability to be moderate to high.

Starting point

[49] The Prosecutor referred me to four cases as being helpful to determining the starting point. *Waikato Regional Council v Glenn Martin Ltd*, *Gisborne District Council v Forwood Forest Management Ltd*, *Marlborough District Council v Laurie Forestry Services Ltd* and *DNS Forest Products (2009) Ltd v Gisborne District Council*.³

[50] In *Glenn Martin Ltd*, the offending related to one forestry site and the effect of the offending was characterised as moderate, with the main contractor being considered the most culpable. In that instance, the contractor claimed that he felt under pressure to meet daily targets and that he had “contacted management” regarding his decisions. In that instance, Judge Dickey found that what occurred was primarily a result of management failings and that the main contractor was highly careless bordering on reckless in its management of the harvesting operation. In that instance, a starting point of \$70,000 for the main contractor was set.

[51] In *Forwood Forest Management Ltd*, Chief Judge Kirkpatrick found that the offending was an example of poor practice and poor management of a difficult activity

³ *Waikato Regional Council v Glenn Martin Ltd* [2022] NZDC 17289, *Gisborne District Council v Forwood Forest Management Ltd* [2023] NZDC 26744, *Marlborough District Council v Laurie Forestry Services Ltd* [2019] NZDC 2602 and *DNS Forest Products (2009) Ltd v Gisborne District Council* [2025] NZHC 2437.

that poses many risks to the quality of the environment and in particular to water quality. In that instance, a starting point of \$105,000 was adopted.

[52] In *Laurie Forestry Services Ltd* significant adverse environmental effects resulted from the poor management of forestry harvesting operation and while Judge Dwyer accepted that the offending was not deliberate, he considered there was a relatively high degree of carelessness and culpability on the part of the defendant. In that instance, it was found that the defendant's failures were systemic, rather than a one-off event and a starting point of \$100,000 was adopted.

[53] In *DNS Forest Products (2009) Ltd* the offending was found to be extremely careless giving rise to unlawful discharges and a starting point of \$150,000 was appropriate.

[54] The Defence submits that the comparative cases provided by the Prosecution are significantly more serious than the present case and as such the starting point sought is manifestly excessive. Moreover, it is submitted that as the Harvest Manager Gray's culpability must be greater and this should be reflected in the starting point.

[55] The Defence pointed to two further cases being *Bay of Plenty Regional Council v Whitikau Holdings Ltd* and *Gisborne District Council v Samnic Forest Management Ltd*.⁴ In the more recent of those, the forest manager was found to be culpable for its failures to manage the forestry operations as it was contracted to do and a starting point of \$50,000 was determined, against a starting point of \$130,000 for the Harvest Manager. This is consistent with the starting point advanced by counsel for the Defence.

[56] The Prosecution suggests that there is no real distinction in culpability between Mr Hale and Gray's and promotes an adjusted starting point of \$150,000 factoring in totality across both sites.

Analysis

⁴ *Bay of Plenty Regional Council v Whitikau Holdings Ltd* [2018] NZDC 3850, *Gisborne District Council v Samnic Forest Management Ltd* [2024] NZDC 18066.

[57] No two cases are entirely the same and I can only take broad direction from the cases which have gone before and those to which I was referred. In this instance, the Defendant is a very experienced forestry manager who chose to continue a forestry harvest with resultant adverse effects on the environment when it was clear that operations should have ceased. While decisions were clearly taken by the Harvest Manager in the Harvest Plan that founded the difficulties on site there can be no doubt that Mr Hale's decisions to disregard the Harvest Plan in some instances and continue on for financial reasons in other instances resulted in direct harm to the environment.

[58] I accept that culpability is somewhat greater for the Harvest Manager than Mr Hale but do not consider the distinction is as great as that in *Samnic*. Recognising that the charges relate to two separate locations, I adopt a starting position of \$50,000 in respect of the offences at Van den Broek Forest and \$25,000 in respect of the offences at Okoko Road Forest, totalling \$75,000.

Aggravating and mitigating factors

[59] The Prosecution and Defence are satisfied that there are no aggravating factors in respect of Mr Hale. There is no history of previous non-compliance or enforcement actions against Mr Hale's company and I have no information regarding any relevant convictions Mr Hale may have.

[60] The Defence submits that a guilty plea will be entered at the earliest possible date following the withdrawing of charges on which this sentence indication is based. I accept that in that case a discount of 25 per cent would be available.

[61] The Defence submits that Mr Hale's co-operative approach and the remedial work which was subsequently undertaken together with his previous good character justifies a 10 per cent discount. I would give no discount for the remedial work given it places the site where it should have been in the first place had adherence to the NES-PF been ensured. I am satisfied that a five per cent discount for prior good conduct would be appropriate in the circumstances.

[62] From a starting point of \$75,000, and applying the approach in *Moses v R*, a 30 per cent discount would result in a total fine of \$52,500.

Ability to pay a fine

[63] Mr Hale has provided evidence as to his financial position. He is no longer working and his company has been removed from the Companies Register. Mr Hale deposes that he has a home with a value of approximately \$365,000 but no other assets and no ability to service a loan.

[64] Section 40 of the Sentencing Act 2002 obliges me to take into account the financial capacity of an offender to meet a fine when imposing sentence. I have considered the financial information provided and accept that, assuming there are no changes, it would be inappropriate to impose a fine if the sentence indication is accepted.

[65] The Defence has suggested an alternative sentence of 100 hours of community work. That was based on the Defence submissions that a starting point of \$50,000 was appropriate. I have determined that the starting point would be higher than that suggested by the Defence and accordingly I determine that 150 hours of community work would be appropriate. Mr Hale's previous work within the forestry industry is something that the supervising probation officer may wish to take into account.

Outcome

[66] If Mr Hale were to plead guilty to the charges, I would sentence him to 150 hours of community work.

[67] Mr Hale would be ordered to pay court costs and solicitor's fees in accordance with the Costs in Criminal Cases Act 1967.


Judge L J Semple
Environment/ District Court Judge