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IN THE DISTRICT COURT
AT HAMILTON

I TE KŌTI-Ā-ROHE
KI KIRIKIRIROA

CRI-2024-075-000120
CRI-2024-075-000121

WAIKATO REGIONAL COUNCIL
Prosecutor

v

SEAVIEW LOGGING LIMITED (SEAVIEW)
GRAEME SAVILL
Defendants

Hearing:	2 December 2024
Appearances:	A McConachy and K Bucher for the Prosecutor M Hine for Defendants
Judgment:	31 March 2025

SENTENCING INDICATION OF JUDGE L J SEMPLE

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[1] The Defendants, Seaview Logging Ltd (Seaview) and Mr Graeme Savill, seek a sentence indication involving the following charges:

Seaview Logging Limited

One charge of contravening s 9(1)(a) of the Resource Management Act 1991 (RMA) in respect of earthworks;

One charge of contravening s 13(1)(a) and s 13(1)(d) RMA in respect of the construction of a temporary river crossing; and

One charge of contravening s 338(1)(c) RMA in respect of breaching an abatement notice.

Graeme Savill

One charge of contravening s 9(1)(a) in respect of earthworks; and

One charge of contravening s 13(1)(a) and s 13(1)(d) RMA in respect of the construction of a temporary river crossing.

[2] The sentence indication is sought on the basis of a proposed resolution to consolidate the current charges.

[3] The charges relate to harvesting operations carried out at a plantation forestry block located at 131 Thorn Road, Waihi (the site) between 23 February 2023 and 29 September 2023.

[4] The summary of facts (SOF) records that a harvest and earthworks management plan was submitted to the Waikato Regional Council (Council) on behalf of the Defendants on 7 August 2022. That plan included a detailed description of the earthworks and harvest activities that were proposed to take place at the site and along the paper road extension of Thorn Road. That plan was granted an authorisation by the Council (AUTH 204835.01.01) on 11 August 2022.

[5] On 6 October 2022 Waikato Regional Council enforcement officers attended the site for the purposes of an inspection of the harvest operation. During this inspection officers identified several breaches of the National Environmental Standard for Plantation Forestry (NES-PF).

[6] Those breaches included a lack of stormwater and water run off control, exposed areas of soil which had not been stabilised and unmaintained and ineffective erosion and sediment control measures.

[7] On the basis of the observed breaches, a Cease/Prohibit abatement notice was issued to Seaview under s 322 RMA requiring that the unlawful discharge of contaminants, namely sediment or sediment laden water to the Waitete Stream or its tributaries, immediately cease.

[8] In addition, a Directive Abatement Notice was issued (also to Seaview) directing it to install and maintain effective erosion and sediment controls to ensure compliance with the relevant regulations of the NES-PF.

[9] On 23 February 2023 Council enforcement officers visited the site to inspect compliance with the aforesaid abatement notices. Officers observed that some stormwater controls had been installed however these were not being maintained and as a result were not providing adequate treatment of sediment laden water. In addition, spoil from track work and excavations had been deposited to land in circumstances where it might enter a tributary of the Waitete Stream.

[10] Officers observed a number of other breaches including the construction of a temporary river crossing on a tributary of the Waitete Stream which breached a number of relevant NES-PF regulations including:

(a) Failing to ensure provision for fish passage; and

(b) Failing to protect against the deposition of organic matter and sediment in the bed of the stream.

[11] On 6 March 2023, the Council issued an inspection notice under the NES-PF Regulations with a '4' grading indicating significant non-compliance. A grade 4 result means "controls are absent or construction of device is so poor that it leads to failure as an efficient erosion/sediment control method leading to an uncontrolled sediment discharge, there is a high risk of adverse environmental effects".

[12] A further inspection was undertaken on 3 August 2023. On this occasion officers observed that the soak holes installed on each side of a vehicle access bridge were full and had not been maintained with the result that sediment had flowed into the Waitete Stream. Silt fences next to the soak holes were also inundated with sediment and sediment had overtopped and discharged towards the Waitete Stream. Soak holes along the fence line were similarly at capacity.

[13] In addition, officers observed that a silt fence installed adjacent to the access track had also collapsed with the result that sediment laden water had overflowed onto the banks of the stream, the limited stormwater controls that had been installed around the processing site had not been maintained and were at capacity and significant areas of exposed soil were observed which had not been stabilised. A slip was observed to have occurred on an access track leading uphill from the stream which resulted in a large amount of soil and debris being deposited into a tributary of the Waitete Stream.

[14] A fifth inspection took place on 11 September 2023. On this occasion it was observed that no stormwater or sediment control measures were in place in the load out zone, minimal efforts had been made to rectify the collapsed silt fences and soak holes remained at capacity with a build-up of sediment and scouring of the road identifying that stormwater had flowed over the track. In addition, it was observed that woody debris and a large deposit of fill and spoil was damming the stream bed and diverting its flow.

[15] A sixth inspection was undertaken on 29 September 2023. On this occasion several stormwater "cut outs" were observed on a haul track allowing stormwater to flow down the track and disperse to land downstream. The cutouts were ineffective in directing stormwater away from large areas of exposed soil and as such sediment laden water had flowed from the property and created large puddles on the paper road above the stream. A silt fence on the boundary of the site had not been adequately maintained and was observed to be at high risk of failure.

[16] As a result of these observed breaches a second '4' grade inspection notice was issued, again signifying significant non-compliance. A further Direction Notice was

issued to Mr Savill on 14 October 2023 requiring him to take appropriate action to remedy or mitigate the various non compliances.

[17] On 30 November 2023 Mr Savill was formally interviewed by the Council and stated that he had been trying to eliminate how much work he had to do around the harvest site and was waiting to remove the wood before completing any maintenance works.

[18] Mr Savill accepted that some of the soak holes were not maintained and had a buildup of sediment in them and stated this was because he had relocated his bucket excavator to Katikati during July and was therefore unable to perform the required maintenance. He indicated he was unable to maintain the stormwater controls or tracks due to the wet weather at the property over winter.

[19] On the basis of the above, the Council laid the charges against Seaview Logging Ltd and Mr Savill which are the basis of this sentencing indication.

Sentencing Principles

[20] As is often cited, the High Court in *Thurston v Manawatu-Wanganui Regional Council* provided a useful summary of the approach to be taken to sentencing, which includes consideration of:[1]

- Culpability;
- Precautions taken to prevent discharges;
- The vulnerability or importance of the affected environment;
- Extent of damage;
- Deterrence;
- Capacity to pay a fine;

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

- Disregard for abatement notices; and
- Co-operation and guilty pleas.

Effects on the Environment

[21] There is no specific evidence before the Court on the effects of the discharge of sediment which has occurred at the site.

[22] What is clear from the SOF is that council officers visited the site on six separate occasions and on each occasion observed sediment and erosion control measures that were deficient in protecting the environment from discharges.

[23] Whilst 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] Council Officers observed soil and debris deposited into a tributary of the Waitete Stream, spoil otherwise deposited in areas where it could enter a tributary, no fish passage provided where river crossings had been installed and silt fences which had overtopped and discharged sediment towards the Waitete Stream.

[24] This Court is well acquainted with the cumulative effects of sediment discharge. As Judge Dwyer observed in *R v Quality NZ Homes Ltd*:[3]

> Sediment has been described as the most pervasive and significant contaminant in New Zealand's rivers, estuaries and coastal waters. It affects the clarity of the water into which it is discharged, smothers stream beds and fish habitat.
>
> Even small discharges will cumulate with discharges of sediment from other sources (including natural sources) and be conveyed downstream into important water bodies. Accordingly, there is a certain inherent seriousness in any sediment discharge.

[25] The evidence before me is clear that some sediment discharge had occurred on each of the six inspection dates between October 2022 and the end of September 2023 and it is likely that further sedimentation occurred between those inspections. On the

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2 *Auckland Council v Opal & Joe Trustee Ltd* [2023] NZDC 24579.
3 *R v Quality NZ Homes Ltd* [2022] NZDC 25894 at [14]-[15].

basis of the above, I find that the actual and potential effects on the environment from the offending are moderate.

Culpability

[26] The Prosecutor submits that the Defendants "showed a cavalier approach towards compliance with the NES-PF". Specifically, it is submitted that Mr Savill had an active presence at the property during the period of offending and was present during the Council's site inspections. He was squarely put on notice about the significant and obvious non-compliance issues and yet did little about them across a period of more than 12 months.

[27] The Prosecutor submits that Mr Savill's disregard for the provisions of the NES-PF is squarely shown in his comment that maintenance of sediment and erosion control measures was "not a big issue as long as it gets done".

[28] Counsel for the Defence accepts that Mr Savill undertook some of the earthworks on the site and oversaw others and that what occurred on site "fell well short of what was required to be done to protect the environmental impacts of the harvesting as required by the National standards and the RMA".

[29] Against that, counsel urges the Court to take heed of the fact that remedial work was ultimately undertaken promptly but was affected by inclement weather and submits that the directions that were given to the Defendants by the Council were not "simply disregarded but were operated on albeit in a manner that was subsequently found to have been insufficient or requiring maintenance".

[30] While accepting that Mr Savill's response to Council staff might be regarded as cavalier, counsel for the Defendants submits that the Defendants' conduct was at worst reckless.

Conclusion on culpability

[31] Mr Savill is an experienced operator who knew or should have known that effective sediment and erosion control mechanisms are a fundamental component of a

forestry harvesting operations. This is made abundantly clear in the NES-PF and should be well understood by anyone working within the forestry industry.

[32] As the Prosecution points out, Council enforcement officers made six separate visits to the site and on each occasion advised the Defendants that the sediment and erosion control measures which were being deployed were unsatisfactory to prevent the discharge of sediment to waterways. Rather than work with the Council to ensure that appropriate sediment and erosion control measures were put in place and appropriately maintained, Mr Savill determined that such measures were unnecessary or could be undertaken in a perfunctory manner or at a later date.

[33] On the basis of the evidence before me, I accept the Prosecutor's submission that the offending was deliberate and sustained. I find the Defendants' actions to be highly careless bordering on reckless and the culpability in this matter to be high.

Starting point

[34] The Prosecutor referred me to the following decisions which it considered might provide an appropriate assessment of starting point:

(a) *Waikato Regional Council v Glenn Martin Ltd* [2022] NZDC 17289.

(b) *Gisborne District Council v Forwood Forest Management Ltd* [2023] NZDC 26744.

(c) *Marlborough District Council v Laurie Forestry Services Ltd* [2019] NZDC 2602.

(d) *DNS Forest Products (2009) Ltd v Gisborne District Council* [2020] NZHC 2437.

[35] *Glenn Martin* relates to breaches of ss 9, 13 and 15 RMA following a failure to comply with the NES-PF. In that case, the Court found that extensive sediment and debris contributions were made to tributaries affecting some 1460 m of flowing channel. That offending was described as moderate with the actions of the defendant

in its management of the harvesting operation being highly careless, bordering on reckless.

[36] In that instance, the starting point for the main contractor was $70,000 and the starting point for the harvest manager was $30,000.

[37] The second case of *Forwood Forest Management Ltd* related to eleven charges arising from forestry harvesting and associated earthworks activities and again involved breaches of ss 9, 13 and 15 RMA. A starting point of $105,000 was adopted in that instance.

[38] In *Laurie Forestry Services Ltd* two charges were laid relating to the discharge of contaminants (primarily sediment) onto land and water during forestry operations. In that instance, a high degree of environmental effect was evident including significant impacts on neighbouring properties. Here, Judge Dwyer accepted that the offending was not deliberate but found that there had been a relatively high degree of carelessness and culpability on the part of the defendant in similar circumstances to the case before me. Judge Dwyer found that the defendant's failures were systemic in nature rather than a one-off omission. In that instance, a starting point of $100,000 was adopted.

[39] In *DNS Forest Products (2009) Ltd* a single charge under s 15 RMA was laid relating to the discharge of contaminants onto land in circumstances where it then entered water. The offending was considered to be serious and a starting point of $150,000 was considered appropriate to reflect the level of culpability and to denounce environmental breaches in the forestry industry.

[40] Given the scale and duration of the offending and the number of breaches of the NES-PF, the Prosecutor submits that the offending in this case is more serious than the offending in *Glenn Martin* and *Laurie*. The Prosecutor further submits that there are similarities between the offending in this instance and the offending in *Forwood* given both cases involve non-compliant earthworks resulting in a significant discharge of sediment, together with the construction of stream crossings in breach of the relevant provisions of the NES-PF.

[41] Given the scale and duration of the offending, the number of breaches and the environmental impact of the offending, the Prosecution submits that a starting point in the range of $110,000 to $130,000 is appropriate in respect of each Defendant.

[42] In addition, the Prosecutor submits that a further uplift of $30,000 should be imposed for the breach of the abatement notice.

[43] The Defence does not agree that the offending in this instance was more serious than that in *Laurie,* but accepts it was more serious than that described in *Glenn Martin.* On the basis of the Defendants' review of the cases put forward by the Prosecution, it is submitted that a starting point in the range of $80,000 is appropriate with a "discrete uplift" for the breach of the abatement notice of $30,000.

Conclusion on the starting point

[44] No two cases are entirely the same and I can take only broad direction from the cases which have gone before and those to which I was referred.

[45] In this instance the Defendants are experienced forestry operators undertaking forestry harvesting work in a highly careless if not reckless manner. The site was visited repeatedly by Council officers who identified the breaches and the necessary work required to resolve those matters. Despite those repeated visits, the Defendants chose to continue forestry harvesting without adherence to appropriate environmental protections.

[46] While there is no evidence before me to indicate the exact environmental harm caused, there is sufficient evidence before the Court to demonstrate that the operation was undertaken with little to no regard as to whether sediment entered the adjacent waterways.

[47] Given the number of breaches and the protracted nature of the offending, despite repeated Council attempts to avoid further harm to the environment, I adopt a starting point for each Defendant of $120,000.

[48] It is accepted that Mr Savill is a 50 per cent shareholder in Seaview, with the remaining shares owned by Mrs Savill. As such, it is clear that any fine will effectively come from the same pool of funds. Accordingly, as a totality adjustment I halve the starting point for each Defendant.

Aggravating and mitigating factors

[49] There is no history of previous non-compliance or enforcement actions against either of the Defendants, however neither the Prosecution nor the Defence have sought a good character discount in respect of this matter. Given the prolonged nature of the offending despite Council intervention, I do not consider that a good character discount is warranted.

[50] In respect of Seaview, the offending is exacerbated by the breach of the abatement notice and accordingly an uplift of $30,000 is added to that fine. That leads me to an adjusted starting point of $90,000 for Seaview.

[51] By way of personal mitigating factors, a guilty plea might attract a 25 per cent discount given the stage of the proceedings.

[52] From the adjusted starting point of $60,000 for Mr Savill, and applying the approach in *Moses v R*, a 25 per cent discount would result in a total fine of $45,000 for Mr Savill. From a starting point of $90,000 for Seaview, a 25 per cent discount would result in a total fine of $67,500.

Outcome

[53] If the Defendants were to plead guilty to the charges, I would impose a fine for this offending of $45,000 on Mr Savill and $67,500 on Seaview.

[54] The Defendants would be ordered to pay court costs and solicitors fees in accordance with the Costs in Criminal Cases Act 1967.

[55] Ninety percent of the fine would be payable to Council in terms of s 342 of the RMA.

L J Semple
Environment/ District Court Judge