

**IN THE DISTRICT COURT  
AT HAMILTON**

**I TE KŌTI-Ā-ROHE  
KI KIRIKIRIROA**

**CRI-2023-072-000321  
[2025] NZDC 6224**

**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 Gray's Forestry Services Ltd

Judgment: 31 March 2025

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**NOTES OF JUDGE L J SEMPLE ON SENTENCING**

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[1] Gray's Forestry Services Ltd (Gray's) appears for sentencing on 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).

[4] Gray's have pleaded guilty to all four charges.

## **Background**

### Okoko Road Forest

[5] The Agreed Summary of Facts (SOF) records that in May 2022 Gray's entered into an agreement with the landowner of 67 Okoko Road to manage the harvest of the Okoko Road Forest Block.

[6] 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).

[7] 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 were carried out unlawfully.

[8] Gray's contracted the harvesting of the Okoko Block to Mr Hale, who is also charged with offences in relation to the harvesting and management of the site.

[9] 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, supplied by Gray's, 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.

[10] 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.

[11] 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.

[12] 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.

[13] 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.

[14] 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.

[15] 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.

[16] 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

[17] In similar circumstances, the SOF records that Gray's also 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.

[18] 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.

[19] Gray's once again contracted the harvesting of this block to Mr Hale and supplied him with a copy of the earthworks management and harvest plans.

[20] 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.

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

[22] 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.

[23] 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.

[24] 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.

[25] 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.

[26] 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.

[27] 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 of the stream were not observed.

[28] 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.

[29] 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 Gray's**

[30] When spoken to in relation to the breaches, Mr Gray confirmed that he had contracted Mr Hale to carry out the physical harvesting operations on each site. He indicated that he had worked with Mr Hale over the past two to three years and that he had provided him with copies of the earthworks management and harvest plans for each site.

[31] The SOF records that when spoken to Mr Gray demonstrated some understanding of the NES-PF Regulations, however confirmed that he did not realise a culvert must first be placed in the bed of a stream as part of a temporary river crossing. He indicated that in his view if a culvert was placed in a stream as part of a

river crossing, it would have been likely to just block up with slash during periods of heavy rain.

[32] In relation to the Okoko Road Forest site, Mr Gray stated that he thought he had completed the NES-PF notification to the Regional Council but realised later that it had not been done. He offered no explanation for the manner in which the block had been harvested or how it had been left post-harvest.

[33] With reference to the Van den Broek site, Mr Gray explained that felling trees into or across the stream was done so that the trees could be reached with a grapple machine on the side of the stream and then bunched and shovelled down to the landing for processing. He accepted that there were few if any working stormwater and sediment controls installed on the site and agreed that more effort could be made to prevent slash and sediment entering the stream or removing slash after it entered the stream and placing it on stable ground.

### **Principles of sentencing**

[34] 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.<sup>1</sup>

### **Environmental impact**

#### Okoko Road Forest

[35] 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 and brown trout. Dr Pingram outlines that the effects of sediment in streams for these

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

fish species can include reduced water clarity affecting feeding behaviour, hindering upstream migration and habitat loss where sediment degrades fish habitat and food sources.

[36] 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

[37] 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.

[38] 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.

[39] 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



[40] The Defence urges caution in respect of the ecological effects assessment on the basis that it comprised in part a desktop assessment and was based at least partly on erroneous information about the nature and extent of non-compliant works. Despite that, the Defence accepts that there was at least potential for some adverse impact on the waterways as a result of the unlawful works.

[41] I find that the evidence suggests more than simply that potential. The effects of the works were readily observable to Council officers and to Mr Gray during site inspections. As a result, Mr Gray arranged for remedial works to be undertaken. 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 visible to Council staff and in the case of the Ngutunui Stream to Dr Pingram.

[42] 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.

[43] It is for this reason that the NES-PF 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.

[44] 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".<sup>2</sup>

[45] 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.

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

## **Culpability**

[46] The Prosecution submits that the offending displayed a high level of negligence and “a lack of consideration of how to complete the harvesting operation in compliance with the NES-PF”. The Prosecutor characterises Gray’s involvement as carrying “a high degree of lacklustre management given its overall responsibility for the harvesting operation”.

[47] The Defence suggests that Gray’s offending is “in the realm of inadvertence through to carelessness” and while accepting that it was Gray’s responsibility to “properly plan the works and manage those contractors engaged to carry them out”, points to the fact that Gray’s had completed other jobs with Mr Hale and “had no reason to think his company was unable to complete the logging in a compliant manner”. The Defence also notes that Mr Gray was particularly unwell during a three week period of the offending and as such was not able to provide the requisite level of supervision that would normally be expected.

[48] 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.

[49] Gray’s had overall responsibility for the harvesting operation. It developed the Harvest Plan and was responsible for ensuring its contractor complied with its content. In the case of the Okoko Road Forest, it was responsible for advising the Regional Council of the activities being undertaken on site which it failed to do. While accepting that Mr Gray was unwell for a period of time it is clear that the company was highly careless bordering on negligent in its supervision of the site and that this lack of supervision enabled or permitted the environmental damage to occur. Gray’s

is in the business of forestry management and while it had worked with Mr Hale previously, it knew or should have known of its obligations under the NES-PF and its ongoing obligation to ensure compliance and supervise its contractor appropriately.

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

### **Starting point**

[51] 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*.<sup>3</sup>

[52] 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.

[53] 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 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.

[54] 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

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<sup>3</sup> *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.

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.

[55] 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.

[56] The Defence points to two additional cases *Manawatu-Whanganui Regional Council v Glenn Martin Ltd* (2022) (known as the *Glenn Martin No 2* case) and *Auckland Council v Wells Northland Ltd and Brent Wells*.<sup>4</sup> In the *Wells* case the harvest manager was not charged. In *Glenn Martin No 2* the starting point for the harvest manager was \$80,000

[57] The Defence argues that the sites of relevance here are significantly smaller than the blocks which were the subject of other prosecutions and that there were effects in more sensitive and significant environments and/or that there were multiple breaches which carried more significance.

[58] Based on the smaller area and the less significant environmental effects the Defence suggests a starting point of \$50,000 to \$60,000 for the offending in relation to the Van den Broek Forest block and a starting point of \$20,000 to \$30,000 for the Okoko Road Forest block.

[59] The Prosecution suggests that a starting point of \$100,000 in respect of the Van den Broek Forest is appropriate, noting the similarities with the offending in the *Forwood Forest Management* case and a starting point of \$80,000 in respect of the offences at the Okoko Road Forest block acknowledging that the offending was not as serious in that instance.

### Analysis

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<sup>4</sup> *Manawatu-Whanganui Regional Council v Glenn Martin Ltd* [2022] NZDC 13839, *Auckland Council v Wells Northland Ltd and Brent Wells* [2022] NZDC 1754.

[60] 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 an experienced harvest manager who neglected to supervise two sites with resultant moderate to high impacts on the environment. While decisions were clearly taken by the contractor that exacerbated the environmental effects of the offending, there can be no doubt that it was Gray's Harvest Plan that was being implemented and the lack of supervision permitted the damage to occur.

[61] I consider the situation is closely aligned to the *Glenn Martin* and *Forwood* cases and recognising that the charges relate to two separate locations, I adopt a starting position of \$75,000 in respect of the offences at Van den Broek Forest and \$50,000 in respect of the offences at Okoko Road Forest, totalling \$125,000.

#### **Aggravating and mitigating factors**

[62] The Prosecution and Defence are satisfied that there are no aggravating factors in respect of Gray's. There is no history of previous non-compliance or enforcement actions against Gray's.

[63] A guilty plea was entered at a reasonably early stage in the proceedings and accordingly a discount of 25 per cent is available.

[64] The Defence submits that Gray's co-operative approach and the remedial work which was subsequently undertaken together with its previous good character justifies a 10 per cent discount. I 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 is appropriate in the circumstances.

[65] From a starting point of \$125,000, and applying the approach in *Moses v R*, a 30 per cent discount would result in a total fine of \$87,500.<sup>5</sup>

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<sup>5</sup> *Moses v R* [2020] 3 NZLR 583 (CA).

## **Outcome**

[66] I impose a fine for this offending of \$87,500 on Gray's Forestry Services Ltd.

[67] The Defendant is ordered to pay court costs and solicitor's fees in accordance with the Costs in Criminal Cases Act 1967.

[68] Ninety per cent of the fine is payable to Council in terms of s 342 of the RMA.



Judge L J Semple  
Environment/ District Court Judge