

# Triage Report

## 201810118 – Hikurangi Forest Farms Limited & Juken New Zealand Limited – guilty pleas regarding the Tolaga Bay disaster

### Key information

<b>Incident date</b>	26 September 2019
<b>Triage date</b>	1 October 2019
<b>Incident officer</b>	Gabrielle Johnston
<b>Source of referral</b>	Existing Investigation – Watch List
<b>Confidentiality requested?</b>	
<b>Suspected breach type</b>	Other

### Brief summary of incident as alleged

1. A number of consent holders have been involved in the Tolaga Bay (North East of Gisborne) disaster in 2018 – Ernslaw One Limited, Hikurangi Forest Farms Limited, Juken New Zealand Limited and Timbergrow Limited.
2. The matter was triaged on 19 June 2018 and a decision was made that the entities are to be put on a Watch List to review further once an investigation has been completed by the local council.
3. On 12 March 2019 it was reported by Gisborne Herald that 10 companies have been charged with causing flood-borne debris damage in Tolaga Bay and surrounding areas and have all pleaded not guilty.<sup>1</sup>
4. On 17 June 2019 Gisborne Herald further reported that Hikurangi Forest Farms Limited had changed their plea to guilty and admitted that its forestry waste was among the devastating raft of debris that surged through Tolaga Bay in floodwaters in June 2018 causing millions of dollars in damages. Their sentencing was scheduled for 1 October 2019 and the rest of the companies were further remanded for another case review hearing on 23 September 2019.<sup>2</sup>
5. Juken New Zealand Limited had also changed their plea in August 2019 ahead of the scheduled hearing set for 23 September 2019 and were scheduled for sentencing in Gisborne on 25 September 2019.<sup>3</sup>
6. The rest of the companies including two consent holders being Ernslaw One Limited and Timbergrow Limited have not changed their plea and were due to appear at a hearing in Environment Court in Gisborne on 23 September 2019.<sup>4</sup>

<sup>1</sup> <http://gisborneherald.co.nz/localnews/3999776-135/east-coast-forestry-companies-plead-not>

<sup>2</sup> <http://gisborneherald.co.nz/localnews/4148031-135/guilty-pleas-to-rma-breaches>

<sup>3</sup> <http://gisborneherald.co.nz/localnews/4249279-135/guilty-plea-to-rma-breach>

<sup>4</sup> As at 26 September 2019 no open source information was available to confirm whether the hearing has taken place.

Information in and attached to this report may be legally privileged

7. As at 26 September 2019 no open source information was available on the scheduled hearing for the parties that pleaded not guilty or on Juken's guilt plea.

## Asset concerned

### Earnslaw One Limited

8. According to the Triage Report of 19 June 2018, Earnslaw One has obtained consent to acquire a number of pieces of sensitive land, which are predominantly used as productive forest. Its website indicates that it has approximately 100,000 hectares of forest.

### Hikurangi Forest Farms Limited

9. Hikurangi Forest Farms has previously obtained consent to acquire a number of pieces of sensitive land which are predominantly used as productive forest. Hikurangi has however recently sold its forest to Eastland Estate Limited (See Case Number 201900073)<sup>5</sup>

### Juken New Zealand Limited

10. Juken has previously obtained 2 consents to acquire pieces of sensitive land which are used for forestry activities.

### Timbergrow Limited

11. Timbergrow currently holds 5 consents with one of the forests located in Gisborne, Hawkes Bay.

## Person/s concerned

### Earnslaw One Limited

12. Earnslaw One is ultimately owned by the Tiong family of Malaysia.

### Hikurangi Forest Farms Limited

13. Hikurangi is part of the Samling Group of companies and is ultimately owned by the Yaw family in Malaysia. As noted above, Hikurangi has recently sold its forest to Eastland Estate Limited.

### Juken New Zealand Limited

14. Juken is 100% Japanese owned. It should be noted that Juken currently have a live application for a variation of condition regarding their consent to develop/extend their mill facility in Gisborne (See Case Number 200620045)

### Timbergrow Limited

15. Timbergrow is owned by the Tiong family of Malaysia and are related to Earnsla One Limited.

## Brief summary of information reviewed/inquiries made

16. A number of open source searches were made since the matter was last triaged in June 2018 in order to follow the progress of the Gisborne council investigation and relevant court cases.

<sup>5</sup> <http://gisborneherald.co.nz/localnews/4164655-135/hikurangi-ff-sale-goes-through>

Information in and attached to this report may be legally privileged

17. As noted above, both Hikurangi Forest Farms Limited and Juken New Zealand Limited have, along with the other prosecuted parties, initially pleaded not guilty but have recently changed their pleas.
18. Hikurangi Forest Farms Limited have a set sentencing hearing date for 1 October 2019 and Juken New Zealand Limited's hearing was set for 25 September 2019.
19. The other entities, along with Ernslaw One Limited and Timbergrow Limited were scheduled for hearings on 23 September 2019.
20. As at 26 September 2019 no further information has been published regarding the above.

## Assessment

21. On the basis of the information currently available:

Question	Y/N	Basis for answer
Does the Incident appear to fall within the OIO's regulatory remit?	Y	The incident relates to a potential breach of conditions of consent – to remain of good character.
Does there appear to have been a breach of the Rules? eg does the conduct alleged show a prima facie: breach of a condition of consent? acquisition of a sensitive asset without consent? disguise by an overseas person of his or her ownership of a sensitive asset using a deceptive mechanism?	Y	Two consent holders have pleaded guilty to breach of the Resource Management Act which may impact their good character requirements under the rules. When it comes to the other two consent holders that have pleaded not guilty, we will need to wait until further information regarding their scheduled hearings has been published in order to determine whether a breach of the rules has occurred.
Is the Incident within the limitation period?	N	
Does the Incident fall within the OIO's Enforcement Priorities		Further information will need to be obtained in order to ascertain this.
Is there another regulatory or disciplinary body that has more appropriate jurisdiction or powers than the OIO?	N	All noted consent holders are subject to court proceedings. Once the final outcomes have been determined, OIO will be the most appropriate body to deal with the matters.

## Recommendation

22. Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
The Incident progress to Assessment phase.	✓	When it comes to <b>Juken New Zealand Limited</b> further information regarding their guilty plea and sentencing is to be obtained (e.g. agreed statement of facts, sentencing notes/transcript, sentencing submissions from both sides). The Assessment should be opened as a new Case.



Information in and attached to this report may be legally privileged

Recommendation	Tick	Basis for answer
No further action be taken and the Incident be closed	✓	When it comes to <b>Hikurangi Forest Farms Limited</b> – due to them selling the relevant land to another overseas investor, Eastland Estate Limited, the good character of the new forest owners would not be impacted by the Tolaga Bay. Our enquiries regarding their involvement in the Tolaga Bay disaster should therefore cease.  <b>Earnslaw One Limited</b> and <b>Timbergrow Limited</b> should remain on surveillance until the outcome of their hearing has been published. Once we have this information, the matter should be brought back to the Screening Group to determine next steps depending on the outcome of the hearing.
An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed		

9(2)(a)

Pedro Morgan / Sarah Scott  
Principal Advisor Enforcement

Agree: ☒  
Disagree: ☐  
Amend as marked: ☐

Date: 1/10/19.

9(2)(a)

Jeremy Ford  
Manager Enforcement

Agree: ☒  
Disagree: ☐  
Amend as marked: ☐

Date: 1/10/19.

## Notes for Assessment Team

Questions	Notes
Assessment team member(s)	
Date to report back to Screening Group (20 working days)	



Information in and attached to this report may be legally privileged

Questions	Notes
Comments or guidance on areas to review	Request Julian info, <sup>for E. Government only,</sup> <del>for other purposes.</del> Julian Variations: run separately. (Note: Earnshaw App on hold until outcome of proceedings. Julian different since first Variation).





**Overseas Investment Office**

Radio New Zealand House  
155 The Terrace  
PO Box 5501  
Wellington 6145  
New Zealand  
+64 4 460 0110  
[www.linz.govt.nz](http://www.linz.govt.nz)

Our Ref: 201810118

17 October 2019

Juken New Zealand Limited  
c/- Hesketh Henry  
Level 14, PWC Tower  
188 Quay Street  
Auckland 1010

**BY EMAIL:** [erich.bachmann@heskethhenry.co.nz](mailto:erich.bachmann@heskethhenry.co.nz)

Attention: Erich Bachmann

Dear Erich

**Juken New Zealand Limited – Guilty plea to RMA breach around Tolaga Bay**

1. As you may be aware the Overseas Investment Office (**OIO**) is currently investigating the involvement of consent holders under the Overseas Investment Act 2005 (**the Act**) in the Tolaga Bay disaster.
2. The OIO has become aware that Juken New Zealand Limited (**Juken NZ**) has changed its plea to guilty in August 2019 at Environment Court for “discharging contaminants – forestry waste – on to land or water from its Waituna Forest, in Wharerata, between June 1, 2017, and July 31, 2018.”<sup>1</sup>

Request for information

3. Before we determine whether to take any enforcement action, please provide us with copies of the following documentation relating to the guilty plea hearing that took place at Environment Court in August 2019:
  - (a) Agreed statement of facts;
  - (b) Sentencing notes/transcript;
  - (c) Sentencing submissions from both Juken and the prosecution; and
  - (d) Any other information/documents you wish us to consider.
4. Please provide your response by **midday on 1 November 2019**.

Yours sincerely

**9(2)(a)**

Svetlana Malivuk  
Senior Investigator  
Overseas Investment Office

DDI: +64 4 471 6657  
Email: [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz)

<sup>1</sup> See <http://gisborneherald.co.nz/localnews/4249279-135/guilty-plea-to-rma-breach>



## Simon Pope

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**From:** Svetlana Malivuk  
**Sent:** Thursday, 17 October 2019 2:35 p.m.  
**To:** 'Erich.Bachmann@heskethhenry.co.nz'  
**Subject:** Juken New Zealand Limited  
**Attachments:** 2017-10-17 - Juken New Zealand Limited - Please Explain Letter.pdf

Dear Erich

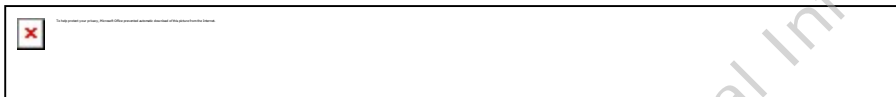
Please refer to the **attached** letter.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

**E** [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | **DDI** +64 4 471 6657 |

**A** Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace  
**PO** Box 5501, Wellington 6145, New Zealand | **T** 04 462 4490  
**W** [www.linz.govt.nz](http://www.linz.govt.nz) | [data.linz.govt.nz](http://data.linz.govt.nz)



## Simon Pope

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**From:** Svetlana Malivuk  
**Sent:** Thursday, 17 October 2019 8:22 a.m.  
**To:** Valerie Bland  
**Subject:** RE: Juken New Zealand Limited 200620045 - Notice of Decision with Varied Consent Conditions [HH-IM.FID664191]

Thank you for that, that's quite useful!

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

E [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | DDI +64 4 471 6657 |

A Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace  
PO Box 5501, Wellington 6145, New Zealand | T 04 462 4490  
W [www.linz.govt.nz](http://www.linz.govt.nz) | [data.linz.govt.nz](http://data.linz.govt.nz)



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**From:** Valerie Bland  
**Sent:** Thursday, 17 October 2019 7:27 AM  
**To:** Svetlana Malivuk <[SMalivuk@linz.govt.nz](mailto:SMalivuk@linz.govt.nz)>  
**Subject:** FW: Juken New Zealand Limited 200620045 - Notice of Decision with Varied Consent Conditions [HH-IM.FID664191]

FYI

**Valerie Bland**  
**Senior Solicitor**  
**Overseas Investment Office**

E [vbland@linz.govt.nz](mailto:vbland@linz.govt.nz) | DDI +64 4 460 2740 |

A Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace  
PO Box 5501, Wellington 6145, New Zealand | T 04 462 4490  
W [www.linz.govt.nz](http://www.linz.govt.nz) | [data.linz.govt.nz](http://data.linz.govt.nz)



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**From:** Erich Bachmann <[Erich.Bachmann@heskethhenry.co.nz](mailto:Erich.Bachmann@heskethhenry.co.nz)>  
**Sent:** Wednesday, 16 October 2019 3:09 PM  
**To:** Valerie Bland <[VBland@linz.govt.nz](mailto:VBland@linz.govt.nz)>  
**Cc:** Sarah Gibbs <[Sarah.Gibbs@heskethhenry.co.nz](mailto:Sarah.Gibbs@heskethhenry.co.nz)>  
**Subject:** Juken New Zealand Limited 200620045 - Notice of Decision with Varied Consent Conditions [HH-IM.FID664191]

Dear Valerie,

Thank you for providing the final Notice of Decision .

We note your comments on the RMA breach issue. We are not acting for JNL in this matter but have been provided with the necessary details. To clarify, this matter concerns one charge of breaching section 15(1)(b) of the Resource Management Act 1991 (rather than multiple breaches) and a sentencing hearing is scheduled for 22 November 2019 (it has not yet been held). We will advise you of the outcome.

For your further background, this charge resulted from multiple major storm and rainfall events that struck the Gisborne region in quick succession during June 2018. JNL has advised us that events of this nature are an inevitable part of forestry when extreme weather events such as the storms in question hit steep hill country, having a similar effect on both conservation land and forestry operations. JNL notes that it takes precautions to minimise potential damage and mitigate consequences in line with forestry best practice. It builds engineered structures to capture debris before concluding forestry operations in an area and takes steps to remove material likely to cause problems before there is a weather event. If a major weather event occurs, JNL promptly and proactively takes action to remedy the damage, as evidenced in this case. For completeness, we understand that the only similar incident to previously occur in the vicinity was storm debris that exited via the Kopuawhara Stream in Hawkes Bay approximately 5 years ago, however, no charges were brought against JNL in relation to this.

As to the events that unfolded in Gisborne in June 2018, these were isolated and not deliberate, having not previously occurred to such a degree in the many years that JNL has operated the Waituna Forest. JNL immediately voluntarily self-reported to the Gisborne Council and made contact with the affected neighbour to commence remedial works. JNL did not contest the Council abatement notices and instead focused on expeditiously carrying out remedial works to comply with the requirements of the abatement notices. As you know, JNL has pleaded guilty to the charge and therefore accepts full responsibility.

Please let us know if you require any further information on this matter.

Kind regards.

**Erich Bachmann | Managing Partner**

**Tel:** +64 9 375 8709 **Fax:** +64 9 365 5209 **Mobile:** +64 21 827 087  
Level 14, PwC Tower, 188 Quay Street, Auckland 1010



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**From:** Valerie Bland [<mailto:VBland@linz.govt.nz>]

**Sent:** Thursday, 10 October 2019 8:41 a.m.

**To:** Erich Bachmann

**Subject:** Juken New Zealand Limited 200620045 - Notice of Decision with Varied Consent Conditions

Hi Erich

The above application for a variation of consent conditions has been decided.

*Notice of Decision*

We attach a letter containing the **notice of decision with the varied consent conditions** for your records (please note that we don't send paper copies of decision documents).

*Statutory Declarations as to character*

Please note that the individuals with control must remain of good character. They are under an obligation to update us with any change or new information that goes to character while they own or control the investment.

*RMA Breach issue*



As you know, we are aware of Gisborne District Council's prosecution against the Applicant for breaches of the Resource Management Act 1991 arising from storm debris washing into Mangapoike River headwaters from the Applicant's Waituna Forest (the **RMA breach issue**). The Applicant has recently plead guilty and a sentencing hearing has been held. We advise that the decision made in respect of the variation to the Consent does not impact on the Overseas Investment Office's continued investigation of the RMA breach issue nor affect the ability of the Enforcement team to take any future action in respect of the RMA breach issue.

### *Reporting*

As you are aware, conditions of consent require the consent holder to report on the delivery of the benefits of the transaction. How and when to report is detailed in the consent conditions.

An administrative penalty of \$500 may be imposed if a report is provided late.

We will treat the address for service given for the purpose of this application as the address for service of any correspondence or any notices issued under the Overseas Investment Act 2005, unless otherwise advised.

### *Feedback*

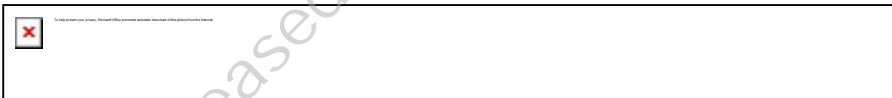
We welcome feedback from applicants and their lawyers on the assessment process and suggestions for improvement. Please provide feedback by emailing [OIOfeedback@linz.govt.nz](mailto:OIOfeedback@linz.govt.nz).

Kind regards  
Valerie Bland

**Valerie Bland**  
**Senior Solicitor**  
**Overseas Investment Office**

**E** [vbland@linz.govt.nz](mailto:vbland@linz.govt.nz) | **DDI** +64 4 460 2740 |

**A** Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace  
**PO** Box 5501, Wellington 6145, New Zealand | **T** 04 462 4490  
**W** [www.linz.govt.nz](http://www.linz.govt.nz) | [data.linz.govt.nz](http://data.linz.govt.nz)



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## CAPTION SHEET AND SUMMARY OF FACTS

PROSECUTOR

DEFENDANT

**Gisborne District  
Council**

**-v-**

**Juken New Zealand Limited**  
Level 3, AMP Centre Building  
29 Customs Street West  
Auckland 1010

### Charges

CRN	Date	Charge	Provision	Max penalty
18016501457	Between 1 June 2017 & 31 July 2018	Discharging a contaminant (namely slash, logging debris, waste logging material and/or sediment) onto or into land in circumstances where it may enter water.	Sections 338(1)(a) and 15(1)(b) Resource Management Act 1991 (RMA)	Fine not exceeding \$600,000

### Introduction

1. This prosecution relates to discharges of slash, logging debris, waste logging material and/or sediment to watercourses arising from harvesting of radiata pine trees at Waituna Forest.

### Waituna Forest

2. Waituna Forest is a 1,096 hectare plantation forest located 30 kilometres southwest of Gisborne in the Mangapoike catchment. It is owned by the Crown but is the subject of a Crown Forestry Licence that has been granted to Juken New Zealand Limited ("**Juken**") pursuant to section 14 of the Crown Forests Assets Act 1989.
3. The terrain in the forest is steep and prone to severe erosion.
4. There are various watercourses in the forest that are all tributaries of the Mangapoike River.
5. About 75% of the Waituna forest falls within the area that is identified in Council regional rules as "Land Overlay 2". The balance of the land falls

within the area identified in the regional rules as “Land Overlay 3A”. Land Overlay 3 classification is land that has been identified in the Council’s planning maps as the most susceptible to erosion, sediment generation and soil loss in the Gisborne Region. Land Overlay 3A is a subset of Land Overlay 3. It is the worst eroding land in the Gisborne District. Land Overlay 2 is land that has been identified as hill country which is moderately limited in terms of its capability for sustainable use.<sup>1</sup>

6. Streams within Waituna Forest are classified as Protected Watercourses in Schedule 7 of the Gisborne Freshwater Plan (“**Freshwater Plan**”).<sup>2</sup> Protected watercourses are areas that receive enhanced protection under the Council’s Freshwater Plan and are intended to be retired as part of vegetation clearance resource consents. The watercourses in the Waituna Forest that are specified as protected are identified in blue on the maps attached to the land use consents that Gisborne District Council (**Council**) has granted to Juken for the formation of roads and the harvesting of trees in the forest.
7. An aerial photograph of Waituna Forest is attached at **Tab 1**.

#### **Defendant**

8. Juken was incorporated in June 1990. Its directors are Michinori Aoki of Auckland, Hiroyuki Kawado of Auckland, Yusho Nakamoto of Japan, and Hitoshi Takeda of Japan. Its principal shareholder (which holds 76% of the shares) is Woodone Co. Ltd, which is a company registered in Japan.<sup>3</sup>

#### **Resource consents**

9. In early 2013 and in June 2014 Juken made applications to the Council for resource consents for the construction of some new roads, the upgrade of some existing roads, and the harvesting of radiata pine trees within Waituna Forest. In both applications Juken said that all earthworks would be done in accordance with the NZ Forest Association: NZ Environmental Code of Practice for Plantation Forestry plus JNL’s Environmental FSC Best Practices. Juken said that in areas where processing sites would not be able to safely store log debris, it would be carted away and deposited to a safe zone.

<sup>1</sup> As defined in the Gisborne District Council Combined Regional Land & District Plan and now defined in Section C7.1.5 of the Tairāwhiti Resource Management Plan.

<sup>2</sup> The Freshwater Plan is now part of the Tairāwhiti Resource Management Plan.

<sup>3</sup> A copy of an extract from the Companies Office is at **Tab 2**.



10. Resource consents were required for forestry harvesting and the associated earthworks activities at Waituna Forest in accordance with the following regional rules in the Operative Gisborne District Combined Regional Land and District Plan Rules ("**Combined Plan**"):
- (a) Rule 6.9.3.1 – Plantation forest clearance and selective scrub and tree felling in Land Overlay 3 (restricted discretionary activity);
  - (b) Rules 6.9.2.2 – Clearance of plantation forest in Land Overlay 3 (controlled activity);
  - (c) Rule 6.9.3.2 – Land disturbance in Land Overlay 3 (restricted discretionary activity);
  - (d) Rule 4.10.2.1 – Vegetation clearance in a riparian management overlay – (controlled activity).
11. The Council issued Juken two land use consents in relation to Waituna Forest. LV-2013-105662-00 (the **2013 consent**) was granted on 8 February 2013 and expires in 2023. LV-2014-106350-00 (the **2014 consent**) was granted on 21 July 2014 and expires in 2024.
12. These resource consents were issued for the upgrading of existing roads and the formation of new roads in the forest (approximately 21.5 kilometres of roads in total), the construction of 74 landings (skid sites) in total, the harvesting of exotic trees and the extraction of logs in a total area under both consents of 952 hectares.<sup>4</sup>
13. These consents were both subject to conditions, including the following:
- (a) The construction of roads and the harvesting of vegetation shall be in accordance with the maps and application lodged with the Council unless altered by specific conditions (Condition 1 of both consents);
  - (b) On slopes greater than 25 degrees, fill used in construction of road and landing formations or sidecast to waste shall be held in place by benching, compaction, armouring or a combination of these, such that it does not directly or indirectly enter a watercourse (Condition 7 of the 2014 consent);

- (c) Roading and landing fills on slopes greater than 24 degrees are to be benched and fill compacted or armoured so that fill does not progressively slump down the slope (Condition 7 of the 2013 consent);
  - (d) Cut-offs and culverts shall be spaced to avoid watertable erosion and shall not discharge directly on to fill or sidecast material (Condition 3 of the 2014 consent);
  - (e) Sidecast material shall not be deposited into any watercourse (Condition 4 of both consents);
  - (f) Runoff onto landings is to be intercepted by cut-off drains and is to discharge clear of all fill (Condition 6 of both consents);
  - (g) Cut-offs are to be installed at a maximum spacing of one every 50 metres along arterial tracks to disperse water and prevent ponding and scouring (Condition 11 of both consents);
  - (h) No unstable accumulation of slash, log ends, tree heads or waste logging material – including mixed in soil – are to be left on or beneath landing edges at the conclusion of logging (Condition 20 of 2013 Consent and Condition 21 of 2014 Consent).
14. None of the consent conditions in either the 2013 or 2014 consents authorised discharges of slash, logging debris, waste logging material and/or sediment to land or into water.

#### **History of erosion and forestry debris issues in Gisborne region**

15. From 1994 to 2015 there have been six major storm-induced slash events in the Gisborne region, being events where rainfall caused large amounts of forestry slash and sediment to be mobilised and washed downstream of forests. These included:
- (a) In 1994 when substantial erosion, landslides and slash mobilisation occurred in Wharerata Forest (south of Gisborne).
  - (b) In 2013 when slash from a forest was mobilised and ended up on the beach at Tokomaru Bay.

- (c) In 2014 when slash from forests inland of Tolaga Bay was mobilised and ended up on the beach at Tolaga Bay.
16. The 2013 and 2014 events at Tokomaru Bay and Tolaga Bay did not directly affect Juken's operations as Waituna Forest is more than 100 kilometres from these areas.
17. On 12 April 2017 ex-tropical Cyclone Cook descended on the Gisborne district and caused significant flooding in the headwaters of the Uawa and Waiapu Catchments north of Gisborne (approximately 140 kilometres north east of Juken's forestry operations). Council investigated the causes of the slash build up that had occurred. The findings of the Council investigation included the following:
- (a) There were two major debris flows during Cyclone Cook;
  - (b) There were also a number of relatively small landslides that had occurred from forestry roads in the Uawa catchment;
  - (c) The impacts of Cyclone Cook were exacerbated by Cyclone Debbie which had hit the region a week earlier;
  - (d) The practice of storing slash on flood plains needed to be discontinued;
  - (e) Roads and tracks within forests need to be designed to a standard that minimises the risk of failure, with side-casting avoided as much as practicable;
  - (f) Ridge top landings should be placed in a way to eliminate risk of landing edge failure and suitable areas should be established for storing of slash in areas where the risk of mobilising slash into gullies and flood plains is minimised through back hauling.
18. Council's draft Cyclone Cook report was circulated among all forestry companies operating in the Tairāwhiti area before it was finalised in late 2017. Juken did not provide any comments or feedback on the draft report because the affected area was approximately 140 kilometres from its own operations, and so Juken did not consider it had any relevant feedback.



### Storms in June 2018

19. Major rainfall events struck the Gisborne District on 3 and 4 June 2018 and again on 11 and 12 June 2018. The areas north of Gisborne were severely affected by the 3 and 4 June storm. There was also some heavy rain in the Mangapoike Catchment south of Gisborne (where the Waituna Forest is located) over 3 and 4 June 2018. Analysis of satellite imagery of Waituna Forest indicates that much of the landslide activity in that forest occurred during that storm.
20. A further storm with heavy rainfall that occurred over the 24 hour period on 11 to 12 June 2018 had a more significant impact on Waituna Forest. It resulted in an influx of logging waste into Mangapoike Lake.
21. Following the two rain events in the first half of June 2018 Council began investigating the causes of the large scale discharge of forestry debris in both the Tolaga Bay area and the area south of Gisborne.
22. Juken voluntarily self-reported to Council in an email on 25 June 2018 that harvesting slash and silt from Waituna Forest had discharged into a neighbouring property. Juken also contacted the affected neighbour and immediately commenced remedial work on their property.
23. The Council has no records of carrying out any compliance inspections at Waituna Forest prior to the June 2018 storm events.

### Offending

24. On 30 and 31 July 2018 two Council officers inspected Waituna Forest. They observed the following:
  - (a) Runoff from roads was being directed though cut-offs and culverts (where culverts were found) onto fill and side-cast material (breach of condition 3 of both consents);
  - (b) Water on landings was being directed onto fill and logging debris including waratah/logging waste mixed with soil on the edge of landings (breach of condition 6 of both consents);
  - (c) In a number of locations there was little or no benching, compaction or armouring of fill on landings and roads constructed

on slopes greater than 25 degrees (breach of condition 7 of both consents);

- (d) A number of cut-offs were on the outside edge of the access roads and runoff was directed into fill or side-caste material causing rilling and scouring (breach of condition 11 of both consents);
  - (e) There were no cut-offs or any form of water control on some of the tracks in the forest and scouring was noticeable at the discharge point of some cut-offs (breach of condition 11 of both consents);
  - (f) Landings where harvesting operations had been completed had unstable accumulations of logging debris, slash, and/or waste logging material mixed with soil that had been left on the edges of landings, with many landings having perched slash/slovens overhanging the landings and below the landings (breach of conditions 20 and 21 of the 2013 and 2014 consents respectively).
25. There were at least 11 major debris slides from landings (skid sites) in the Waituna Forest which have had an adverse environmental affect. The following photographs show the collapse and discharge of logging waste and slash from landings (skid sites) into watercourses below:

*Photograph 1 below: Logging debris collapse from Skid 9*





*Photograph 2 below: Logging debris from skid 9 into watercourse below*



*Photograph 3 below: Logging debris slide and road failure at skid 36*





*Photograph 4 below: Debris slide into watercourse at skid 19*



26. More photographs of the collapse and discharge of logging waste and slash from skid sites can be seen at **Tab 4**.

#### **Abatement notices – 3 August 2018**

27. The Council issued abatement notices to Juken on 3 August 2018 under notices numbered 2018/A013 and 2018/A014.<sup>5</sup> The notice 2018/A013 related to the 2013 consent (LV-2013-105662-00). The notice 2018/A014 related to the 2014 consent (LV-2014-106350-00). The notices required Juken to cease contravening the consent conditions relating to Waituna Forest (as referred to above under the heading “Resource consents”).
28. Juken did not contest or file any appeal against the issue of either abatement notice. Since the abatement notices were issued Juken has

<sup>5</sup> Copies of both abatement notices are attached at **Tab 5**.

carried out extensive remedial work in Waituna Forest and has largely complied with the requirements of both notices.

29. Following a further inspection of the forest on 14 September 2018 to monitor compliance with the abatement notices a Council officer noted that there had been a genuine effort by Juken to carry out remedial works required in an expeditious manner despite the works required on many of the skids sites being difficult due to the size and location of the landings and the constraints of the terrain.
30. The owners of the neighbouring property affected by the event have also confirmed that they were satisfied with Juken's actions and remedial work.

**NZ Forest Owners Association ("FOA") Environmental Code of Practice ("Code of Practice")**

31. The FOA Code of Practice<sup>6</sup> provides:
  - (a) Earthworks increasingly involve operations on steeper, more erosion prone terrain, because of marginal land planted in the past. This creates numerous challenges and often significant environmental risks.
  - (b) Earthworks can activate or accelerate erosion by disturbing high risk areas, eg the toe of an earth flow, gully heads or old landslide slips, or by concentrating surface flows into those areas.
  - (c) Sediment discharges to a water body can affect water quality and subsequently impact spawning fish, aquatic life, in-stream structures and downstream values such as recreation and customary food gathering. In addition to effects on water resources, excessive sediment discharges and earth flows can have an impact on land, eg native reserves. ... The visual impacts of poorly planned earthworks can give the public a poor impression of forest operations.

---

<sup>6</sup>

The FOA represents the owners of New Zealand's commercial plantation forests. It was set up in 1926 and its members own or manage around two-thirds of the country's 1.79 million hectares of plantation forests and are responsible for over 70% of the annual harvest.



32. The FOA Guides for Best Practice for forestry earthworks, slash management and harvesting provide:

Poorly managed wood debris also has the potential to cause significant adverse effects on the environment. The risks increase in cable-logging operations that involve steep, unstable terrain, and where landing sites are often small and have limited space available for slash storage. A collapsed slash pile can trigger a mass movement of soil and debris causing significant damage.

Such failures are not always immediate and can occur a considerable time after the completion of harvesting. Slash in streams can form a debris dam that can move downstream, a potentially dangerous situation that can degrade the bed and banks of a stream and potentially damaging infrastructure.

Extensive slash build-up can also obstruct fish passage and restrict fish habitat/breeding – adult trout are mostly affected. Decomposition of organic material in streams removes oxygen from water as it decays. Large amounts of material left in a waterway can harm aquatic life, especially streams with slow or low flows.

33. FOA's Code of Practice recommends that forestry harvesting companies:
- (a) Monitor slash piles to ensure that they are always stable and fully utilise the available space;
  - (b) Maintain water and sediment control structures in effective operating condition until decommissioned to prevent water building up in slash piles and adjoining landing, leading to operational difficulty and possible landing collapse;
  - (c) If available slash storage space is likely to be exceeded, then identify an alternative disposal site;
  - (d) If there is insufficient space for onsite slash disposal, plan for temporary slash storage that will allow slash to be accumulated and then taken off site.

### Environmental effects

34. On 18 October 2018 a Council ecologist carried out an inspection of streams in Waituna Forest. This inspection was to assess the effects on stream ecosystems of landings and slope failure which resulted in the discharge of slash, logging debris, waste logging material and sediment after the two June 2018 storm events.
35. The Council ecologist observed the following adverse effects on tributaries and streams in the forest:<sup>7</sup>
- (a) At all skid sites visited there had been landing and slope failure which had led to large amounts of sediment and woody debris migrating into freshwater systems. The landslides and slope failures were extensive and have had severe negative impacts on stream ecology;
  - (b) The effects from the increased amounts of sediment on the affected stream beds include;
    - (i) the smothering of interstitial space and instream habitat;
    - (ii) the smothering of invertebrates;
    - (iii) sediment binds to the rocks which directly effects the nutritional quality and the invertebrates that are grazers;
  - (c) The ephemeral streams that were inspected had no macroinvertebrate species present. The stream beds were completely covered in deposited sediment, removing the habitat available for invertebrates and fish. In the larger streams at the bottom of the gullies, in some low flow areas, more than 50% of the streams were covered in deposited sediment. This resulted in loss and degradation of instream habitat. In faster flowing areas some flushing of sediment in the streams had occurred;
  - (d) Woody debris and sediment movement had caused the scouring of the stream bed, with some areas of the stream now having a bedrock base. The stream has a cobbled bottom, but in areas of it

<sup>7</sup>

A copy of the ecologist's report is attached at **Tab 6**.

where there has been debris and large flows, the substrate has been scoured leaving bedrock. The effects of this are a decreased available habitat for macroinvertebrates and fish, and damage to stream banks causing increased erosion.

- (e) Woody logging debris has damaged stream banks and has been deposited in areas of the stream bed which has resulted in large areas of deposited sediment to build up. This will continue to impact the Mangapoike River tributary and the ephemeral streams within the forest. There is a significant area on the Mangapoike river tributary where a debris dam has blocked the stream and caused a large plume of sediment to accumulate upstream. This will have a significant negative effect on instream habitat and species.

#### **Defendant's explanations**

36. Council interviewed 9(2)(a) and 9(2)(a) who are the Gisborne Managers for Juken. They said:

- (a) Juken has engaged a number of harvesting contractors over the last five years. The current contractor is Chris Hurring Logging Limited.
- (b) Juken's primary roading contractor is Forest Road Maintenance Limited.
- (c) Juken's contractors were aware of the resource consent requirements.
- (d) They (Juken's managers) inspect the forest twice a week.
- (e) There were no notable environmental issues arising from the contractors' work.
- (f) Juken carried out harvesting in accordance with industry standards.
- (g) They create benches for skid slash. The benches are used to capture side cast material and are compacted.

- (h) Slash is not always pulled back. If they feel it is safe, they leave it there. Mr Foster agreed that some of the birds nest (slash) needed to be pulled back.
- (i) Since the June 2018 rain event Juken has pulled back 40 landings and installed drainage around those landings.
- (j) Gisborne forestry harvesting practices should not be compared to Bay of Plenty forestry harvesting practices as Bay of Plenty Regional Council is proactive but there is nothing in the Gisborne region.

#### **Previous compliance history**

37. A copy of Juken's criminal and traffic history is attached at **Tab 7**.

Released under the Official Information Act 1982



## CRIMINAL AND TRAFFIC HISTORY 21/05/2018

### Party Details

**Party ID:** 14042432 **Party Name:** Juken New Zealand Limited  
**PRN:** 60876409 **Master PRN:** Y  
**Date of Birth:** **Gender:** Company  
**Country of Birth:** **DLICNO:**

Court	Result Date	Offence Date	Offence	Outcome Detail	Charge Outcome Status	Sentence Status	Sentence Detail
Masterton District Court	25/07/2013	05/09/2012	failed/take to ensure safety of empl	Convicted and Sentenced	Stands	Stands	Fine - \$33,000.00, Court Costs - \$130.00 / Reparation - \$5,000.00



## CRIMINAL AND TRAFFIC HISTORY 21/05/2018

### Party Details

Party ID: 14289181 Party Name: Juken New Zealand Limited  
PRN: 60923155 Master PRN: Y  
Date of Birth: Gender: Company  
Country of Birth: DLICNO:

### Criminal and Traffic Conviction History

Court	Result Date	Offence Date	Offence	Outcome Detail	Charge Outcome Status	Sentence Status	Sentence Detail
Masterton District Court	30/09/2014	01/11/2013	failed to ensure safety of employee	Convicted and Sentenced	Stands	Stands	Fine - \$57,000.00 / Reparation - \$12,000.00





## CRIMINAL AND TRAFFIC HISTORY 21/05/2018

### Party Details

**Party ID:** 10402321 **Party Name:** Juken New Zealand Limited  
**PRN:** 60504066 **Master PRN:** Y  
**Date of Birth:** **Gender:** Company  
**Country of Birth:** **DLICNO:**

### Criminal and Traffic Conviction History

Court	Result Date	Offence Date	Offence	Outcome Detail	Charge Outcome Status	Sentence Status	Sentence Detail
Masterton District Court	17/05/2007	18/07/2006	Failed to ensure employee not harmed	Convicted and Sentenced	Stands	Stands	Fine - \$10,000.00, Court Costs - \$130.00, Solicitors Fees - \$250.00 / Reparation - \$35,000.00



## CRIMINAL AND TRAFFIC HISTORY 21/05/2018

### Party Details

Party ID: 5449062 Party Name: Juken Nissho Limited  
PRN: 30831927 Master PRN: Y  
Date of Birth: Gender: Company  
Country of Birth: DLICNO:

### Criminal and Traffic Conviction History

Court	Result Date	Offence Date	Offence	Outcome Detail	Charge Outcome Status	Sentence Status	Sentence Detail
Gisborne District Court	19/06/2002	27/06/2001	FAILURE TO ENSURE SAFETY	Convicted and Sentenced	Stands	Stands	Fine - \$9,000.00
Auckland District Court	26/04/2000	20/06/1999	FAILS TO ENSURE WORK SAFETY	Convicted and Sentenced	Stands	Stands	Fine - \$3,500.00
Auckland District Court	26/04/2000	20/06/1999	FAILS TO ENSURE WORK SAFETY	Convicted and Sentenced	Stands	Stands	Fine - \$6,000.00
Whangarei District Court	30/11/1998	01/04/1997	Discharge Of Contaminants Water	Convicted and Sentenced	Stands	Stands	Fine - \$3,750.00
Whangarei District Court	30/11/1998	01/01/1997	Discharge Of Contaminants Water	Convicted and Sentenced	Stands	Stands	Fine - \$3,750.00



## CRIMINAL AND TRAFFIC HISTORY 21/05/2018

### Party Details

**Party ID:** 7667628  
**PRN:** 22842920  
**Date of Birth:**  
**Country of Birth:**

**Party Name:** Juken Nissho Limited  
**Master PRN:** Y  
**Gender:** Company  
**DLICNO:**

Court	Result Date	Offence Date	Offence	Outcome Detail	Charge Outcome Status	Sentence Status	Sentence Detail
Masterton District Court	05/03/1996	13/09/1994	FAIL ADEQUATELY TRAIN EMPLOYEE	Convicted and Sentenced	Stands	Stands	Fine - \$3,750.00
Masterton District Court	05/03/1996	13/09/1994	EMPLOYEE EXPOSED TO HAZARD	Convicted and Sentenced	Stands	Stands	Fine - \$3,750.00
Wellington District Court	11/08/1995	03/10/1994	FAIL ENSURE SAFETY OF EMPLOYEE	Convicted and Sentenced	Stands	Stands	Fine - \$7,500.00
Masterton District Court	11/08/1994	23/12/1993	FAIL TO MAKE EXPOSED MACHINE SAFE	Convicted and Sentenced	Stands	Stands	Fine - \$2,000.00
Masterton District Court	11/08/1994	23/12/1993	FAIL TO ADEQUATELY TRAIN EMPLOYEE	Convicted and Sentenced	Stands	Stands	Fine - \$2,000.00
Masterton District Court	11/08/1994	23/12/1993	FAIL TO PROVIDE SAFE WORK PLACE	Convicted and Sentenced	Stands	Stands	Fine - \$2,000.00
Masterton District Court	20/10/1993	01/10/1992	Having Unguarded Machinery	Convicted and Sentenced	Stands	Stands	Fine - \$1,000.00



## CRIMINAL AND TRAFFIC HISTORY 21/05/2018

### Party Details

Party ID: 7667625 Party Name: Juken Nissho Limited  
PRN: 25937989 Master PRN: Y  
Date of Birth: Gender: Company  
Country of Birth: DLICNO:

Court	Result Date	Offence Date	Offence	Outcome Detail	Charge Outcome Status	Sentence Status	Sentence Detail
Gisborne District Court	21/08/1995	25/01/1995	FAILED TO ENSURE EMPLOYEE SAFETY	Convicted and Sentenced	Stands	Stands	Fine - \$8,000.00
Gisborne District Court	21/08/1995	31/10/1994	FAILED TO ENSURE WORKERS SAFETY	Convicted and Sentenced	Stands	Stands	Fine - \$6,000.00
Gisborne District Court	21/08/1995	02/08/1994	2 x FAILING TO ENSURE SAFETY OF EMPLOYEE	Convicted and Sentenced	Stands	Stands	FOR EACH CHARGE: Fine - \$4,000.00



## CRIMINAL AND TRAFFIC HISTORY 21/05/2018

### Party Details

**Party ID:** 8988836 **Party Name:** Juken Nissho Limited  
**PRN:** 42793109 **Master PRN:** Y  
**Date of Birth:** **Gender:** Company  
**Country of Birth:** **DLICNO:**

Court	Result Date	Offence Date	Offence	Outcome Detail	Charge Outcome Status	Sentence Status	Sentence Detail
Masterton District Court	30/01/2003	07/07/2002	FAILS TO ENSURE SAFETY	Convicted and Sentenced	Stands	Stands	Fine - \$2,000.00 / Reparation - \$8,000.00



## CRIMINAL AND TRAFFIC HISTORY 21/05/2018

### Party Details

Party ID:	7667691	Party Name:	Juken Nissho Limited
PRN:	28850040	Master PRN:	Y
Date of Birth:		Gender:	Company
Country of Birth:		DLICNO:	

### List of Aliases/Linked Case Parties

Court	Result Date	Offence Date	Offence	Outcome Detail	Charge Outcome Status	Sentence Status	Sentence Detail
Gisborne District Court	13/08/1996	15/01/1996	FAILURE ENSURE SAFETY OF EMPLOYEE	Convicted and Sentenced	Stands	Stands	Fine - \$6,000.00





## CRIMINAL AND TRAFFIC HISTORY 21/05/2018

### Party Details

Party ID: 7667721  
PRN: 40206615  
Date of Birth:  
Country of Birth:

Party Name: Juken Nissho Ltd  
Master PRN: Y  
Gender: Company  
DLICNO:

Court	Result Date	Offence Date	Offence	Outcome Detail	Charge Outcome Status	Sentence Status	Sentence Detail
Auckland District Court	12/11/2001	17/03/2001	FAILED TO ENSURE SAFETY	Convicted and Sentenced	Stands	Stands	Fine - \$6,500.00

## Simon Pope

---

**From:** Svetlana Malivuk  
**Sent:** Friday, 25 October 2019 3:15 p.m.  
**To:** 'Erich Bachmann'  
**Cc:** 'Sarah Gibbs'  
**Subject:** RE: Juken New Zealand Limited [HH-IM.FID664191]

Dear Erich

Thank you for your email below. We will let you know if we require any further information from you in due course.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

**E** [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | **DDI** +64 4 471 6657 |

**A** Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace  
**PO** Box 5501, Wellington 6145, New Zealand | **T** 04 462 4490  
**W** [www.linz.govt.nz](http://www.linz.govt.nz) | [data.linz.govt.nz](http://data.linz.govt.nz)



---

**From:** Erich Bachmann <Erich.Bachmann@heskethhenry.co.nz>  
**Sent:** Friday, 25 October 2019 2:56 PM  
**To:** Svetlana Malivuk <SMalivuk@linz.govt.nz>  
**Cc:** Sarah Gibbs <Sarah.Gibbs@heskethhenry.co.nz>  
**Subject:** Juken New Zealand Limited [HH-IM.FID664191]

Dear Svetlana,

We acknowledge receipt of your letter and respond accordingly.

As requested, we **attach** the Agreed Statement of Facts in relation to the Gisborne District Council proceedings against Juken New Zealand Limited ("**JNL**"). We also **attach** recent related correspondence with Valerie Bland of your office which we understand she has already passed on to you. As noted in our email to Valerie Bland of 16 October 2019, a sentencing hearing for the case is scheduled for 22 November 2019. Accordingly, we are unable to provide you with the requested sentencing information at this time. However, we will do so in due course once available.

To clarify, these proceedings relate to the Waituna Forest, being more than 100 kilometres south of the Tolaga Bay area. As per paragraph 20 of the Agreed Statement of Facts and the Gisborne Herald article referenced in your letter, the areas north of Gisborne (including the Tolaga Bay area) were severely affected by the major weather events on 3 and 4 June 2018. However, it was the further storm on 11 and 12 June 2018 which significantly impacted the Waituna Forest and it is the effects of this further storm that are relevant to the Gisborne District Council proceedings against JNL. Accordingly, your reference to the highly publicised Tolaga Bay disaster in relation to this matter is mistaken. The events that occurred at Tolaga Bay are separate and unrelated to the events that occurred at the Waituna Forest. It is only the Waituna Forest events that are relevant to these proceedings. JNL does not operate in or around Tolaga Bay and is therefore not involved in the events that unfolded there. For your reference, we note in particular paragraphs 16, 17, 19, 22, 23, 29 and 30 of the Agreed Statement of Facts in support of JNL's actions and position.

For completeness, we note that JNL faces only one charge to which it has pleaded guilty (for discharging a contaminant (namely slash, logging debris, waste logging material and/or sediment) onto or into land in circumstances where it may enter water in breach of section 15(1)(b) of the Resource Management Act 1991). Also, that Gisborne District Council has withdrawn a further charge that was initially made. Please also note that in our view the newspaper article you provided is somewhat misleading in that it conveys the impression that JNL has an involvement in the Tolaga Bay disaster and may even be one of the nine enterprises charged with offences in relation to that incident. As noted above, JNL has no connection to Tolaga Bay.

Please let us know any further information that you require. As above, we will provide you with the balance of the requested information once the sentencing process has taken place.

Kind regards

Erich

**Erich Bachmann | Managing Partner**

**Tel:** +64 9 375 8709 **Fax:** +64 9 365 5209 **Mobile:** +64 21 827 087  
Level 14, PwC Tower, 188 Quay Street, Auckland 1010



---

**From:** Svetlana Malivuk [<mailto:SMalivuk@linz.govt.nz>]  
**Sent:** Thursday, 17 October 2019 2:35 p.m.  
**To:** Erich Bachmann  
**Subject:** Juken New Zealand Limited

Dear Erich

Please refer to the **attached** letter.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

**E** [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | **DDI** +64 4 471 6657 |

**A** Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace  
**PO** Box 5501, Wellington 6145, New Zealand | **T** 04 462 4490  
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Released under the Official Information Act 1982

## Simon Pope

---

**From:** Svetlana Malivuk  
**Sent:** Tuesday, 26 November 2019 7:59 a.m.  
**To:** 'Erich Bachmann'  
**Subject:** RE: Juken New Zealand Limited [HH-IM.FID664191]

Dear Erich

Thank you for your update below.

We are happy to wait for further information from you regarding sentencing and will be in touch after that.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

**E** [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | **DDI** +64 4 471 6657 |

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---

**From:** Erich Bachmann <Erich.Bachmann@heskethhenry.co.nz>  
**Sent:** Monday, 25 November 2019 4:18 PM  
**To:** Svetlana Malivuk <SMalivuk@linz.govt.nz>  
**Subject:** Juken New Zealand Limited [HH-IM.FID664191]

Dear Svetlana,

We write to confirm that sentencing for the Gisborne District Council proceedings against Juken New Zealand Limited took place in the Gisborne District Court last week on 22 November 2019.

We are currently assembling the sentencing information requested by the OIO in your letter dated 17 October 2019 and will provide this as soon as it is to hand.

In the meantime, please let us know any further information or assistance you may require in relation to this matter.

Kind regards

Erich

**Erich Bachmann | Managing Partner**

**Tel:** +64 9 375 8709 **Fax:** +64 9 365 5209 **Mobile:** +64 21 827 087  
Level 14, PwC Tower, 188 Quay Street, Auckland 1010



---

**From:** Svetlana Malivuk [<mailto:SMalivuk@linz.govt.nz>]  
**Sent:** Friday, 25 October 2019 3:15 p.m.  
**To:** Erich Bachmann  
**Cc:** Sarah Gibbs  
**Subject:** RE: Juken New Zealand Limited [HH-IM.FID664191]

Dear Erich

Thank you for your email below. We will let you know if we require any further information from you in due course.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

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---

**From:** Erich Bachmann <[Erich.Bachmann@heskethhenry.co.nz](mailto:Erich.Bachmann@heskethhenry.co.nz)>  
**Sent:** Friday, 25 October 2019 2:56 PM  
**To:** Svetlana Malivuk <[SMalivuk@linz.govt.nz](mailto:SMalivuk@linz.govt.nz)>  
**Cc:** Sarah Gibbs <[Sarah.Gibbs@heskethhenry.co.nz](mailto:Sarah.Gibbs@heskethhenry.co.nz)>  
**Subject:** Juken New Zealand Limited [HH-IM.FID664191]

Dear Svetlana,

We acknowledge receipt of your letter and respond accordingly.

As requested, we **attach** the Agreed Statement of Facts in relation to the Gisborne District Council proceedings against Juken New Zealand Limited ("JNL"). We also **attach** recent related correspondence with Valerie Bland of your office which we understand she has already passed on to you. As noted in our email to Valerie Bland of 16 October 2019, a sentencing hearing for the case is scheduled for 22 November 2019. Accordingly, we are unable to provide you with the requested sentencing information at this time. However, we will do so in due course once available.

To clarify, these proceedings relate to the Waituna Forest, being more than 100 kilometres south of the Tolaga Bay area. As per paragraph 20 of the Agreed Statement of Facts and the Gisborne Herald article referenced in your letter, the areas north of Gisborne (including the Tolaga Bay area) were severely affected by the major weather events on 3 and 4 June 2018. However, it was the further storm on 11 and 12 June 2018 which significantly impacted the Waituna Forest and it is the effects of this further storm that are relevant to the Gisborne District Council proceedings against JNL. Accordingly, your reference to the highly publicised Tolaga Bay disaster in relation to this matter is mistaken. The events that occurred at Tolaga Bay are separate and unrelated to the events that occurred at the Waituna Forest. It is only the Waituna Forest events that are relevant to these proceedings. JNL does not operate in or around Tolaga Bay and is therefore not involved in the events that unfolded there. For your reference, we note in particular paragraphs 16, 17, 19, 22, 23, 29 and 30 of the Agreed Statement of Facts in support of JNL's actions and position.

For completeness, we note that JNL faces only one charge to which it has pleaded guilty (for discharging a contaminant (namely slash, logging debris, waste logging material and/or sediment) onto or into land in circumstances where it may enter water in breach of section 15(1)(b) of the Resource Management Act 1991). Also, that Gisborne District Council has withdrawn a further charge that was initially made. Please also note that in our view the newspaper article you provided is somewhat misleading in that it conveys the impression that JNL has an involvement

in the Tolaga Bay disaster and may even be one of the nine enterprises charged with offences in relation to that incident. As noted above, JNL has no connection to Tolaga Bay.

Please let us know any further information that you require. As above, we will provide you with the balance of the requested information once the sentencing process has taken place.

Kind regards

Erich

**Erich Bachmann | Managing Partner**

**Tel:** +64 9 375 8709 **Fax:** +64 9 365 5209 **Mobile:** +64 21 827 087  
Level 14, PwC Tower, 188 Quay Street, Auckland 1010



---

**From:** Svetlana Malivuk [<mailto:SMalivuk@linz.govt.nz>]

**Sent:** Thursday, 17 October 2019 2:35 p.m.

**To:** Erich Bachmann

**Subject:** Juken New Zealand Limited

Dear Erich

Please refer to the **attached** letter.

Kind regards

Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

**E** [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | **DDI** +64 4 471 6657 |

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Released under the Official Information Act 1982

**IN THE DISTRICT COURT  
AT GISBORNE**

**CRN - 18016501457**

**UNDER THE**

Resource Management Act 1991

**BETWEEN**

**GISBORNE DISTRICT COUNCIL**

Prosecutor

**AND**

**JUKEN NEW ZEALAND LIMITED**

Defendant

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**AFFIDAVIT OF DYLAN BARRIE FOSTER FOR THE  
PURPOSES OF SENTENCING  
AFFIRMED THE 20<sup>th</sup> DAY OF NOVEMBER 2019**

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**BROOKFIELDS  
LAWYERS  
S J Corlett  
Telephone No. 09 379 9350  
Fax No. 09 379 3224  
P O Box 240  
DX CP24134  
AUCKLAND**

**AFFIDAVIT OF DYLAN BARRIE FOSTER FOR THE  
PURPOSES OF SENTENCING**

I, **DYLAN BARRIE FOSTER** of Gisborne, Forest Manager, affirm:

1. I am the Forest Manager for Juken New Zealand Limited's ("Juken") East Coast Forests. I am responsible for overseeing Juken's operations in the Gisborne region, including the Waituna Forest, which is the subject of the current prosecution. I confirm that I am authorised to make this affidavit on Juken's behalf.
2. I have 25 years' experience in the forestry industry. I have Diplomas in Forest Management and Business Management. I also have a Forest Engineering Limited Harvesting qualification, B Grade Quarry Manager Certificate and a number of other industry unit standards and certificates.

**Company Background**

3. Juken is a long-standing New Zealand company that has operated throughout the North Island for almost 30 years. It has been heavily involved in the New Zealand forestry and wood processing industries for 29 years and is committed to sustainability, and environmentally sensitive forestry and manufacturing processes. Juken manufactures advanced and innovative wood products from selectively planted, managed and harvested Radiata Pine for both local and export markets.
4. While Juken is wholly owned by parent company Wood One Co. Limited, a Japanese entity, it is operated and managed locally, with New Zealand based management and staff.
5. Juken prides itself on its important economic and cultural contributions to the communities it operates in, which primarily comprise Gisborne, Kaitaia and Masterton. It employs approximately 800 New Zealanders nationally, and 280 locally in Gisborne.

6. The company makes a number of contributions towards the environment and its community both locally and throughout New Zealand. For example, among other things it:
- (a) sponsors the Gisborne District Council's Waingaki Wetland Reserve in order to preserve the indigenous estate from plant and animal pests;
  - (b) participates in the "adopt the Highway" road clean up along Awapuni Road;
  - (c) carries out an annual rubbish clean up along State Highway 2 through the Wharerata Forest;
  - (d) sponsors the Eastland Helicopter Trust;
  - (e) is the main sponsor of the Paikea Women's Hockey Team;
  - (f) sponsors the Rangiwaho Marae and has assisted it to build a driveway for its new Wharekai;
  - (g) donates materials to the Patutahi Golf Club, most recently for construction of the clubhouse verandah;
  - (h) sponsors Christy Tate, a young member of the Waikanae Surf Life Saving Club (Gisborne), in professional Surf Lifesaving competitions locally and internationally;
  - (i) is in partnership with the Police Managers' Guild Trust, supporting the work they are doing to educate New Zealanders on Drug and Alcohol Abuse;
  - (j) is in partnership with Life Flight, a charity providing emergency air medical services;
  - (k) donates materials to Makauri/Ormond School; and

- (l) sponsors an annual Autism NZ children's party, Fostering Kids New Zealand's annual Family Fun Day and the Lions Club (Gisborne) annual World Festival of Music.
7. Juken has forests that are sustainably managed and certified on the East Coast and in the Wairarapa region. Juken plants and cares for its own forests to ensure that it is being sensitive to the social needs of its communities and the ecosystems of its forests. The forests are certified and managed according to internationally recognised environmental standards, including by the Forest Stewardship Council ("FSC") (which is an international not-for-profit whose certification is recognised as the most rigorous environmental and social standard for responsible forest management, and which is supported by Greenpeace, the World Wildlife Fund and the Australian Conservation Fund), and the International Organisation for Standardisation ("ISO") 14001:2015 for effective environmental management systems. Copies of Juken's certifications are annexed and marked "A" and "B".
  8. The company conducts annual water quality sampling to monitor stream health and biodiversity. It also has a process by which it regularly monitors rare, threatened and endangered species and puts management plans in place where they are identified, with reference to the Department of Conservation and national databases. Its policies, plans, standards and procedures cover things including water quality monitoring, wilding pine management, indigenous forest management, rare, threatened and endangered species, noxious pests and plant management, best practice guidelines, forest health plans and biodiversity management plans. Juken also runs permanent water sampling points across its entire operation, including one in Mangapou Stream in Waituna.
  9. Juken's Mills are also certified and managed in accordance with international standards, including those provided for by FSC, ISO and the Engineered Wood Products Association of Australia.

#### **Relationship with Gisborne District Council and Neighbours**

10. Juken is proud of the relationship that it has established and maintained with Gisborne District Council ("the Council"). Over the nearly 30 years for which

Juken has been in the region, the relationship with Council has generally been one of trust and confidence and cooperation.

11. In the past, and prior to the June 2018 storm events, Council has told the company they believe that Juken is a very capable and good operator. On 12 November 2013, the Council's Senior Soil Conservation Officer wrote to Juken and advised he had observed good compliance with Consent conditions, good management and complimented the good working relationship between Juken and the Council, which was resulting in good environmental results. A copy of that letter is **annexed** and marked "C".
12. From what Council advised us regarding our operations, we understood that the Council and Juken both considered that our work practices in Waituna Forest were best practice. We also believed that we were in compliance with the New Zealand Forest Owner's Association's ("NZFOA") Environmental Code of Practice for Plantation Forestry.
13. I also understand that the Council was happy with Juken's response to the storms and subsequent damage. Juken self-reported to Council and immediately undertook remedial work without delay. It did this not only because it does have a genuine appreciation of its obligations towards the environment and to its neighbours and the wider community, and it was the right thing to do, but also because it values the relationship it has with the Council. Juken believes that mutual trust and respect between itself and all the regulatory authorities it works with is paramount to ensuring safe and environmentally sustainable operations.
14. Juken has also worked closely with the only land owner that was affected by the storms and debris from its operations, 9(2)(a) Juken has always endeavoured to establish and maintain relationships with those potentially affected by its activities, including 9(2)(a)
15. During the clean-up process and subsequently, I have personally kept in contact with 9(2)(a) to ensure that the company promptly remedied any issues he had as far as was/is possible. He has told me that he is very happy with how Juken has conducted itself and we remain in close contact with him.

Juken is proud that its response has been received so well, as it was important to Juken that that was the case.

16. The company hopes that its acknowledgment that it did not act entirely compliantly with its Resource Consent obligations, and its willingness to immediately remediate any and all issues possible, will contribute to ongoing positive relationships with both the Council, and its neighbours like [redacted] s21(a)

#### **Waituna Forest**

17. The forest that is the subject of this prosecution is Waituna Forest. It is 1,096 hectares in size and there are approximately 100 skid sites in the Forest. Waituna is part of "Wharerata Forest" some 6,785 hectares where Juken also operates. Combined with the Waituna operations, there are approximately 600 landings in total.
18. I confirm that the Council did not ever inspect Juken's operation for compliance with its Resource Consents for the Waituna Forest from the dates the consents were issued in 2013 and 2014 and prior to the June 2018 storm events. Nor during that period did Juken receive any notices from Council raising any issues regarding non-compliance with its consents. As a result, and given the other measures we had in place, the company understood that Council believed Juken to have been operating in a compliant manner. As such, and at all times, Juken genuinely and honestly believed that it had complied with the requirements of the Resource Consents. Council had not raised any issues with us previously, and its previous interaction with it were very positive.
19. We trusted our systems and were regularly checking the site for compliance on a weekly basis. We had contracts in place and inspected contractors' work. When Council did visit the site (albeit not for Resource Consent compliance purposes), it did not raise any issues with Juken's operations or the site and said that it was happy with the standard that Juken was working to.
20. There has been a lot of media coverage over the storm events on 3 and 4 June and 11 and 12 June 2018, as well as the prosecutions that the Council is taking against other forestry companies that operate in the Gisborne area.

The majority of those reports, which name Juken as one of the companies being prosecuted, focus on the extensive damage caused by slash and debris in the Tolaga Bay region. Copies of a sample of those reports are annexed and marked "D", "E" and "F".

21. The company agrees and accepts that the damage done in Tolaga Bay was significant, and the effects enormous on those who were affected and continue to be affected. Juken also acknowledges the harm caused by it and it takes full responsibility for that. However it is important to note that its own forest is not located in or near Tolaga Bay and it in no way caused or contributed to the damage that occurred there. Waituna Forest is located inland and close to the boarder between Gisborne and Hawkes Bay. It is approximately 30 kilometres south west of Gisborne and 75 Kilometres south west of Tolaga Bay. A copy of a satellite image showing this distance is annexed and marked "G".
22. Waituna Forest is also approximately 140 kilometres south west from the Uawa and Waiapu catchments, which were affected by ex-tropical Cyclone Cook on 12 April 2017, and was not affected by that weather system. Copies of satellite images showing those distances are annexed and marked "H" and "I".
23. While the areas north of Gisborne, including Tolaga Bay, were severely affected by the storms on 3 and 4 June 2018, and much of the damage at those locations occurred at that time, Waituna Forest while affected, was more affected by the 11 and 12 June 2018 storm.

#### **Steps Taken to Monitor Compliance**

24. The operations are largely carried out by contractors. Their contracts include a schedule which we refer to as a "prescription". That is an operational document that sets out the plan for the particular operation and all details of it, agreed steps that will be taken to mitigate risks (both environmental and health and safety related), maps of the Forest and copies of the Resource Consents. The contractors were then monitored on a weekly basis by Juken's operational staff who visit the worksite and oversee what works are being carried out.



25. As part of its operations, Juken had engaged several respectable and experienced contractors to carry out its work in the Waituna Forest being:
- (a) Forest Road Maintenance Limited (Roothing);
  - (b) Chris Hurring Logging Ltd, Mana Logging Ltd, Harvest Pro Ltd and Stubbs Contracting Ltd (Harvesting).
26. Juken is and was also externally audited annually by SGS, a professional inspection, verification, testing and certification company, against the FSC and ISO 14001 standards. We also undergo a major recertification audit every three years. Each audit is completely separate and they relate to various certifications. FSC has a strong environmental focus and ISO 14001 is an environmental standard. The company has passed all audits.

#### **The Storm Events**

27. On 3 and 4 June 2018, Waituna Forest was affected by very heavy rain. Unfortunately, we did not receive any advance warning as to the severity of the rainfall. After the main front passed, we carried out what inspections we could within the bounds provided by the ongoing bad weather, and health and safety concerns. We did this not only in Waituna, but across our other estates affected by the storm system. Where possible, we immediately started remedial work including using excavators to ensure that water table drains were open to prevent any further damage occurring.
28. On 11 and 12 June 2018, there was another severe storm. Again, we received no advance warning as to the severity of the weather system. After the storm the weather continued to be wet and stormy for approximately a further 10 days, meaning we were not able to immediately assess the totality of what was required. Again however, where it was safe for them to be doing so after the main front passed, forestry contractors were carrying out what remedial works they could and attempting to stop any further damage from occurring.

29. On 20 June 2018, despite the ongoing rain, I was able to visit Waituna Forest to assess it and to report back to management. The Forest was saturated beyond anything I had ever seen before.

### Remediation

30. Upon inspecting the Forest, it became apparent that there had been some discharges of sediment and logging slash onto surrounding land and possibly into waterways. Juken was immediately aware that significant remedial work would be required, and was concerned that its neighbours may have been affected. I could see that some of the silt and slash had unfortunately moved downstream onto 9(2)(a) property. I did consider whether we should also contact any of the other surrounding property owners, but it appeared to me (and we subsequently confirmed) that 9(2)(a) was the only owner affected.
31. Unfortunately, assessment of the totality of what had occurred and what action was needed took some time, given the size of the Forest, at 1,096 hectares, and that the poor weather was ongoing until about 23 June 2018, a proper assessment was not possible until that ceased. Notwithstanding that, Juken moved as timely and efficiently as possible to carry out those assessments.
32. As I've previously noted, Juken immediately started work on what remediation it was able to, but immediate efforts were hampered by the ongoing rain and weather conditions, and the necessity of ensuring that its employees' and contractors' health and safety were given highest priority. In this regard, Juken is acutely aware that forestry work can be dangerous, and in the weather conditions as they were, additionally so, so work had to be carried out very carefully to ensure the area and conditions were safe for our workers and subcontractors.
33. Notwithstanding the difficulties involved, Juken's immediate decision on how to proceed was to front foot the issue and the remedial work required. That was the strategy we discussed from the outset, and it was important to me that we be transparent and assist wherever possible.
34. On 21 June 2018, when the weather started to abate somewhat, I called 9(2)(a) directly and we discussed what we were going to do to tackle the issue head

on. I asked [9(2)(a)] what damage his property had suffered and he told me. We agreed to work together moving forward, and that when the weather became fine again, Juken would engage a helicopter so we could both fly the property and assess the extent of the damage. I subsequently included [9(2)(a)] in all my emails and correspondence with the Council when we self-reported the damage so he would know what was going on.

35. About this time, we deployed what machinery and workers we safely could, including maintenance crews assessing road access on an hour by hour basis, supervisors inspecting downstream of our operations and setting up removal of woody material wherever possible. This involved having machinery removing debris from the water as it moved downstream. This was only possible where the site was safe, so all operators were under strict instructions to leave the area immediately if they had safety concerns, i.e. if the creek flow ceased or decreased, which would indicate a blockage further upstream that may break. We also considered employing a full-time lookout above the debris dam catcher.
36. On 23 June 2018, when the weather finally cleared, [9(2)(a)] and I took a helicopter over his property to properly assess the damage.
37. On 25 June 2018, Juken emailed the Council and self-reported that harvesting slash and silt from Waituna Forest had discharged onto [9(2)(a)] property, and that silt and slash had migrated downstream as the result of mid-slope failures. Juken's notification assured the Council that it would be carrying out clean up activities, including on [9(2)(a)] property, and would be taking steps to ensure that the debris could not spread further. I also told the Council that Juken wished to acknowledge that the material was likely from our operation and that we wished to maintain our good relationship with [9(2)(a)]. A copy of my email to the Council, and its thread, is **annexed** and marked "J".
38. On 26 June 2018, the Council replied, seeking some photos and that we fill out an incident report. I did that and responded the same day, noting that it was currently not safe to carry out clean-up works on [9(2)(a)] property, but that we were very keen to assist with the clean-up. A copy of the incident report is **annexed** and marked "K".

39. Later that day I sent the aerial photos I had taken through to the Council. A copy of that email and its attachments are **annexed** and marked "L".
40. Clean-up work on 9(2)(a) property commenced fairly shortly after we became aware of the discharges and continued as and where possible. Some work had to be carried out at a later date in drier months due to the difficulties involved in using heavy machinery on saturated soils. The work carried out at 9(2)(a) property included transporting machinery to the location, re-installing water crossings within the farm, repairing track damage and removing woody debris from any and all waterways that Juken could access. The debris included both Radiata Pine from Waituna Forest as well as Poplar and Manuka that had originated from the farm's own operations.
41. Juken also carried out significant remedial work throughout the Forest over a period of three and a half months. During this period Juken's primary focus was fixing what had occurred and all normal road construction and engineering activity which would otherwise have been carried out was ceased, as the available machinery was deployed to assist the clean-up operation.
42. Juken employed an array of equipment to carry out the remedial works, including 50, 30 and 12 ton excavators, a 155 Komatsu bulldozer (large), and large bin trucks. The work itself included Juken correcting water drains, removing woody debris from waterways, installing water bars in historic tracks, and pulling woody debris back from landing edges. Once that work was complete, Juken re-installed water drains to direct water run-off onto naturally hard surfaces. It also reinstalled significant culverting and fluming to protect weakened soils and to transport water solely onto naturally hard surfaces. Juken also cleaned out debris traps and material from water crossings and then reinstalled the traps. Once the bulk of the work was complete, we applied grass seed by hand, broadcast application via helicopter and hydro-seeding.
43. During the course of these works, Juken was always very co-operative, maintained regular contact with Council staff, and hosted a number of trips to site so that progress could be maintained, and it could conduct further studies for hydrology assessments.

44. Juken is continuing to work with the Council on tail end remediation, including the Kereru Road log jam, which Council has recently come to the view should not be removed. Juken understands that Council's position on this is because of difficulty accessing the log jam and its concerns that any removal operations would cause more problems than they would solve. As a result, Council has requested, and Juken has agreed to and will work in concert with Council to, carry out specialist soil riparian planting to establish a strong point at least 50 metres upstream from the log jam.
45. We have discussed in detail with 9(2)(a) the possibility of removing some minor remaining debris from the lake on his property, however removal may simply not be possible given the machinery and terrain involved and the health and safety issues concerned. As such, at this stage 9(2)(a) and I have agreed removal is not practicable and I understand that the Council accepts this position. Juken remains committed to assisting 9(2)(a) further wherever possible and I will remain in contact with him.
46. The initial remediation works cost Juken approximately \$600,000 in labour and equipment costs and associated costs. Juken will continue to incur additional costs to carry out the further planting works required and further works (if required) for 9(2)(a).
47. The company acknowledges that the Council did issue it with abatement notices on 6 August 2018, which it did not contest nor file any appeal against. Juken's position in respect of these was simply that it had and was carrying out the work in any event and had every intention of reducing any further risk of debris flows as a result of the storm.
48. On 14 September 2018, the Council's enforcement officer Norm Ngapo visited Waituna Forest and inspected Juken's remedial efforts and compliance with the abatement notices. Mr Ngapo subsequently submitted his report following that visit to the Council, which provided it to us. Mr Ngapo's report confirmed that Juken's remedial works were well implemented, and it was doing all that was possible given the conditions, which included limited work room, long and narrow skid sites, sloping skid sites, and narrow ridgelines which meant there was very little room to construct skid sites on the main ridges.

49. Mr Ngapo noted that Juken was making a genuine and concerted effort to carry out the remedial works in an expeditious manner in difficult conditions. He agreed that Juken's works programme was sound and that we were progressing through it as quickly as possible and were committed to completing it. A copy of Mr Ngapo's report is **annexed** and marked "M".
50. On 3 October 2018, the Council requested that Juken's representatives agree to attend voluntary interviews regarding alleged breaches of the Resource Consents. We were more than happy to do so, and Mark Brown (Operations Manager) and I (Forest Manager for the East Coast Forests) attended those interviews on 11 October 2018.
51. On 18 October 2018, we hosted a site visit for the Council and its environmental scientist to inspect the streams in the Forest.
52. On 13 December 2018, Mr Ngapo again inspected Juken's remedial works. His report to Council indicated that remedial work had been completed insofar as it was safe and that the remedial works on roads and skid sites had been successfully completed. A copy of Mr Ngapo's report is **annexed** and marked "N".

#### **Measures Currently in Place**

53. Since the storm events, Juken has increased its focus across its entire operations on slash management. Our slash management agreements with contractors now explicitly require them to pull any unstable woody material back onto landings at completion of harvest operations and there is a heavy focus on more closely monitoring all site works.
54. Juken has also spent considerable time working with its various contractors to ensure that they are aware of the standards of workmanship and Forestry management that it requires as best practice. This has included (but is not limited to):
- (a) adapting benching techniques to ensure that all benching is compliant and benching layers are highly visible;

- (b) ensuring that water control is a focus point and in particular, putting in place culverting and fluming which carries water over the entire section of compacted material onto parent earth;
  - (c) ensuring that fill management is a focus, including ensuring that compaction is carried out suitably and that tests conducted by way of Clegg Hammer are carried out to verify this; and
  - (d) increasing levels of hydro seeding and ensuring that all fill areas have adequate grass cover.
55. Juken has also now taken steps to reduce its remaining slash piles by increasing "pulp" log sales. It now sends more slash material to companies that chip it for their own operations. In relation to this, Juken is investigating the possibility of contracting a "bin truck", which would increase the amount of slash it is able to remove off-site and send to third parties for chipping.
56. The company is also striving to identify all it can do to reduce waste issues within its forests (including Waituna). It is actively considering whether establishing its own chipping operation may be viable, and what other downstream opportunities may be available to deal with forestry waste. Juken has sent staff to Austria and Hungary to discuss these possibilities with suppliers and manufacturers of chipping and hogging plant and potential downstream users, such as bio energy and biochar products.
57. Juken is continuing to work closely with the Council regarding catchment restrictions in future harvest consents, and we have jointly agreed that Juken will delay areas of harvest for up to five years to enable portions of catchments to recover better post-harvest.

#### **Prior Convictions**

58. Juken acknowledges that it has two prior convictions for environmental offending. These offences took place in January and April 1997, almost 23 years ago, and since then, Juken has had no other instances of environmental offending across its entire New Zealand operation.



59. While Juken's Criminal History shows that both charges are for "Discharge of contaminants – water", this is in fact incorrect. Both charges related to discharges into air from Juken's then Kaitaia factory.

### Conclusion

60. Juken is committed to ensuring that its operations are safe, sustainable and compliant. The company honestly and genuinely believed it was compliant at the time. It has acknowledged its errors in pleading guilty to the current charge and has done, and will continue to do, everything within its power to remediate the damage caused. Juken has done so while maintaining good relationships with both the Council and neighbouring property owners.
61. Juken self-reported to the Council and worked with the only affected property owner as soon as possible to assess the damage and to remediate it. Both the Council and the affected homeowner have expressed their satisfaction with Juken's attitude and response to the remediation works, which is something that Juken prides itself on.
62. Juken is committed to ensuring full compliance with its Resource Consents and is, as a company, deeply remorseful for the breaches and harm and damage that resulted.

**AFFIRMED** at Gisborne  
this 20<sup>th</sup> day of November 2019  
before me:

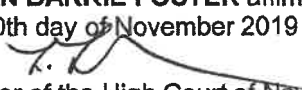
Torepe Taumaunu  
Deputy Registrar  
High Court of New Zealand  
District Court at Gisborne

  
Dylan Barrie Foster

**A Solicitor of the High Court of New Zealand**

**"A"**

The document annexed and marked "A"  
is referred to in the annexed affidavit of  
**DYLAN BARRIE FOSTER** affirmed at Gisborne  
this 20th day of November 2019 before me:

  
Solicitor of the High Court of New Zealand

Torepe Taumaunu  
Deputy Registrar  
High Court of New Zealand  
District Court at Gisborne

Released under the Official Information Act 1982

"A"

SGS-FMC/COC-004427

SGS

The management system of

**Juken New Zealand Ltd**

PO Box 629, Gisborne 4040, New Zealand

has been assessed and certified as meeting the requirements of a well managed forest

## Forest Management

The company was assessed against the following standard:  
FSC Accredited National Standard for New Zealand, version 01 of 27 September 2013  
and  
FSC-STD-50-001 V1-2 Standard Requirements for use of the FSC trademarks by  
Certificate Holders - November 2010

For the following activities

**Forest Management of plantations in the Wairarapa  
and Gisborne regions of New Zealand for the  
production of softwood and hardwood timber.**

This certificate is valid from 26 March 2018 until 25 March 2023  
Issue 2. Certified since March 2008

Authorised by



SGS South Africa (Pty) Ltd  
PO Box 90 Gallo Manor 2052, Harrowdene Office Park Building 1 Western Service Road Woodmead  
Johannesburg 2191 South Africa  
t +27 (0) 11 800-1000 f +27 (0) 11 800-1020 <http://www.sgs.com/en/Agriculture-Food/Forestry/>



The mark of  
responsible forestry

The validity of this certificate shall be verified on <http://info.fsc.org/>  
For the full list of product groups covered by the certificate see <http://info.fsc.org/>  
This certificate itself does not constitute evidence that a particular product supplied by the certificate holder is FSC-certified (or FSC Controlled Wood). Products offered, shipped or sold by the certificate holder can only be considered covered by the scope of this certificate when the required FSC claim is clearly stated on invoices and shipping documents.  
This certificate remains the property of SGS and shall be returned upon request.

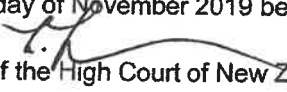
Page 1 of 1



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**"B"**

The document annexed and marked "B"  
is referred to in the annexed affidavit of  
**DYLAN BARRIE FOSTER** affirmed at Gisborne  
this 20th day of November 2019 before me:

  
Solicitor of the High Court of New Zealand

Torepe Taumaunu  
Deputy Registrar  
High Court of New Zealand  
District Court at Gisborne

Released under the Official Information Act 1982

"B"

Certificate NZ09/00320.00

SGS

The management system of

# Juken New Zealand Limited - Forests New Zealand

Norfolk Rd, Waingawa, Masterton, New Zealand



has been assessed and certified as meeting the requirements of

## ISO 14001:2015

For the following activities

**Forest Operations at East Coast and Wairarapa Forests.**

This certificate is valid from 24/02/2019 until 23/02/2022 and remains valid subject to satisfactory surveillance audits.

Re certification audit due before 24/01/2022

Issue 6. Certified since November 2000

This is a multi-site certification.

Additional site details are listed on the subsequent page.

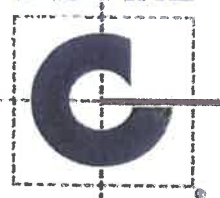
Authorised by

A handwritten signature in blue ink, likely of the authorised representative.

SGS Systems & Services Certification Australia Pty Ltd  
10/585 Blackburn Road, Notting Hill VIC 3168, Australia  
t(61-3) 9574 3200 f(61-3) 9574 3399 www.au.sgs.com

Page 1 of 2

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"C"

12 November 2013

Pete Sainsbury  
Harvest Planner  
Juken NZ Ltd  
P.O Box 1239  
GISBORNE

Dear Pete

I have carried out a few inspections while processing consents for harvesting on the Juken estate this year and it has been pleasing to see good compliance with consent conditions relating to your current consents.

The logging and roading operations have been well managed. Re-establishment of the harvested sites has improved with a more complete crop cover being achieved. I have also been involved with Juken, both for advice and the actual planting, in establishing live debris catchers both within and on the boundaries of their forests to address slash movement in waterways for future harvests.


It is pleasing to see yourself contributing to the Forestry Focus group, a group of forest companies and the Gisborne District Council, in addressing and looking at ways to improve forestry operations on the East Coast.

We have a very good working relationship between Juken and G.D.C. Good dialogue is translating to good results environmentally.

Yours sincerely

Allan Hughes  
Senior Soil Conservation Officer

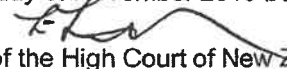
This is the exhibit marked "C" referred to in the annexed affidavit of **DYLAN BARRIE FOSTER** affirmed at Gisborne this 20th day of November 2019 before me:

  
Solicitor of the High Court of New Zealand

Torepe Taumaunu  
Deputy Registrar  
High Court of New Zealand  
District Court at Gisborne

**"D"**

The document annexed and marked "D"  
is referred to in the annexed affidavit of  
**DYLAN BARRIE FOSTER** affirmed at Gisborne  
this 20th day of November 2019 before me:

  
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Torepe Taumaunu  
Deputy Registrar  
High Court of New Zealand  
District Court at Gisborne

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“D”

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## Prosecutions over flood-triggered logging debris on East Coast

MATT STEWART • 11:49, Dec 02 2018



MARTY SHARPE/STUFF

The aftermath of the storm on Queen's Birthday weekend storm at Tolaga Bay, Gisborne.

Forestry companies are facing legal action after a wall of timber washed into the Gisborne district during bad weather in June.

Following investigations into damage to farms in the area the Gisborne District Council has started prosecutions against "a number of parties" under the Resource Management Act.

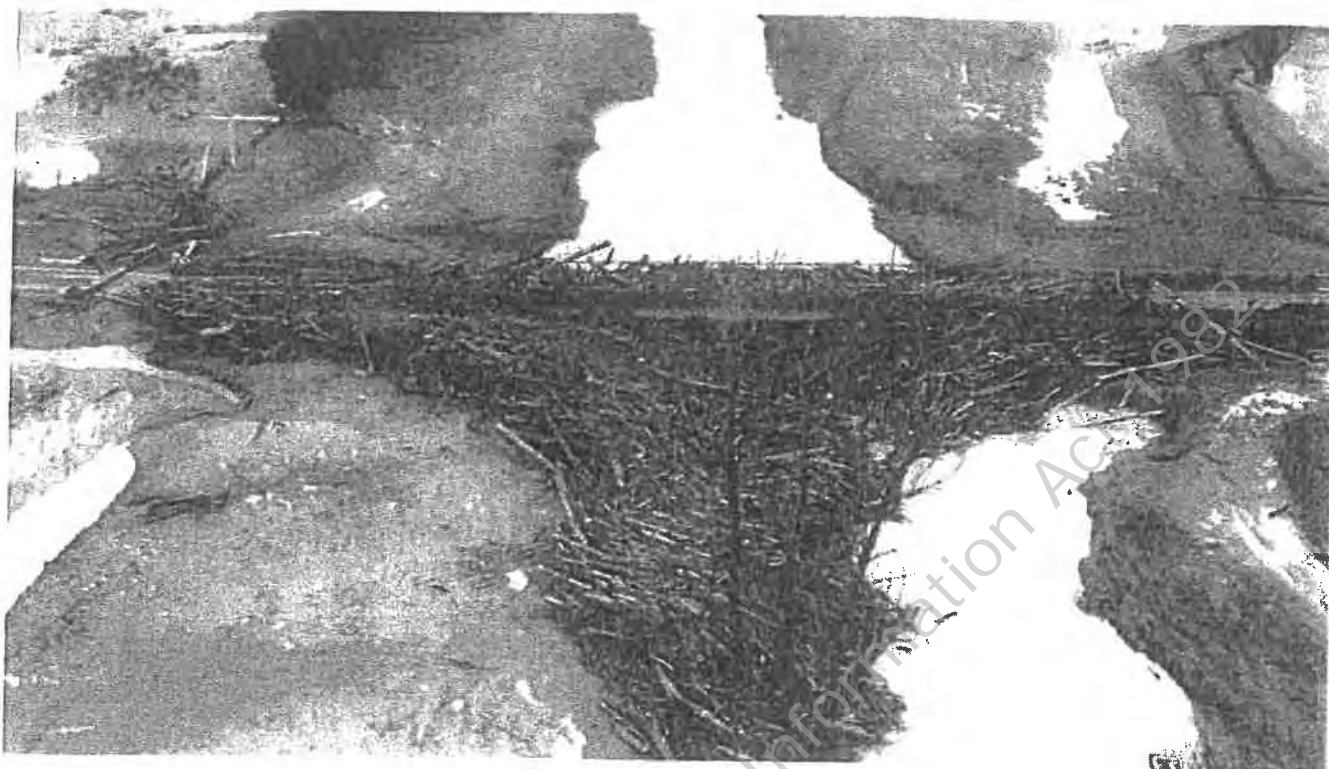
The prosecutions relate to six different forests in the Gisborne region, including three near Tolaga Bay.

The prosecutions are due to begin in the New Year, and council chief executive Nedine Thatcher Swann said there would be no comment while the matters were before the courts.

### READ MORE:

- \* [Forestry slash reminder economic boon not without problems](#)
- \* [Clear-cut forestry might make a profit, but local communities pay](#)
- \* [Family clambered on top of furniture as waist-high torrent flowed through house](#)
- \* [Tolaga Bay cleanup could cost \\$10m but who should pay?](#)

The forestry slash – scrap timber, branches and off cuts left behind in a felling area – crashed through houses near Tolaga Bay over Queen's Birthday weekend in June 2018, with an estimated 1 million tonnes of debris swept onto properties.



TAIRĀWHITI CIVIL DEFENCE/SUPPLIED

Wigan bridge at Tauwhareparae Road in Tolaga Bay was inundated with logs after the storm on Queen's Birthday weekend.

At least three houses were lost. Stock was also lost and bridges were damaged, paddocks were drowned in mud and debris and kilometres of fences were damaged.

Farmers estimate the damage runs into the millions of dollars.

In August, the council issued abatement notices to a number of the forestry companies in the Tolaga Bay catchment. Those abatement notices required companies to cease actions contravening their resource consent conditions relating to forestry debris, skid sites, erosion risk and sediment control.





Shaun Mitchell said his family lost everything in the flood.

MARTY SHARPE/STUFF

The Gisborne District was hit by two major rain events in June. The event on June 4 caused flooding and erosion and forced the evacuation of people in the Tolaga Bay area, while an event on June 11 was more widespread and closed State Highway 2 between Gisborne and Opotiki.



Logging debris on Tolaga Bay beach following the June storms.

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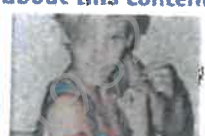
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# Slash and burn in Tolaga Bay

Andre Chumko in Tolaga Bay • 05:00, Jun 22 2019

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ANDRE CHUMKO/STUFF

Tolaga Bay's beach is still littered with slash, a year on from last June's storm.

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The fire at the Tolaga Bay inn is lit. It will be cold tonight. It's a Tuesday – the pub has probably seen better days.

It's attached to the back of a homestead, which has been fighting for historic status, to no avail, despite its 120-year-plus legacy.

The building is hard to miss on a small, slower-speed stretch of the Pacific Coast road, State Highway 35.

**READ MORE:**

- \* [Tolaga Bay clean-up could cost \\$10m, but who should pay?](#)
- \* [Forestry slash reminder economic boon not without problems](#)
- \* [Farmers call for logging halt, compensation after damage](#)

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The highway meanders through flat land, past cattle and sheep and often close to coastlines you'd see on the covers of glossy travel magazines, all the way up the East Cape and round to Ōpōtiki.

Instead of being packed with tourists – which is easy to imagine in a warmer season – there are shanty shacks, abandoned honesty boxes and the occasional surfer urinating out of direct view from passing vehicles.

It's hard to ignore the logging trucks, too – big ones. Many will be coming from Tolaga Bay, population 768, and about 40 minutes' drive north of Gisborne.

Just over one year ago, disaster stemming partly from that logging industry hit the small seaside community.





MARTY SHARPE/STUFF

The immediate aftermath of last year's flooding in Tolaga Bay.

## JUNE 4, 2018

It's 5.30am on a Monday and Taylah Mitchell and her family are sound asleep. They are about eight kilometres inland.

They're woken suddenly. Not by an alarm, but by rising floodwaters, carrying with them tonnes of logging waste, known as slash.

Her brother, not even awake, is floating around on his mattress.

The level is up to that of the house's tabletops – that's on top of the half-metre which the property is already elevated.

The property – an old villa – is later condemned, as the walls were made of hessian fabric.

All of its insides have been cleared out. Barely anything was salvageable.

A year on, the slash is still ever-present around Tolaga Bay, on its beach and all along the Uawa River.

Mitchell, who was 19 at the time, now works at one of a few local stores that sell food and drinks.

We're interrupted at least half a dozen times by customers, all of whom appear to be regulars. They buy various items, and use loose change. There's an old-fashioned cash register on the desk, next to jars of assorted lollies.

Everyone bursts into laughter.



ANDRE CHUMKO/STUFF

The Tolaga Bay Inn.

The store – the Uawa Foodmarket – is run by Dolly and Brian Mitchell, part of Taylah's whānau. While I'm speaking to Taylah, the couple are out the back eating a late lunch of cooked sausage. It's about 3pm.

Before ushering me to Taylah, Dolly jokes: "You never have set times around here ... you just take it when it happens".

Taylah now lives in town with her grandparents. Her parents are living elsewhere. It's frustrating, she says. "You just do what you have to do ... We're doing all good."

Her family lost everything. They had insurance, but their claim was denied.

"It was quite gutting, but we just had to move on."

She shows me pictures from the day on her phone. Their truck nearly went down the river, but was halted by an adjacent stopbank.

She gestures to her phone: "That was all underwater, you couldn't see any of that."



Ironically, her father came to evacuate them in his logging truck.

Wiremu Maurirere, 26, says there were three helicopters in town that day. Just one was a rescue crew, the others were from television stations.



ANDRE CHUMKO/STUFF

Taylah Mitchell, pictured, and her family were forced to evacuate their home in Tolaga Bay last year due to rising floodwaters.

One family, including a girl aged 4, were stranded on their roof for hours before being airlifted to safety.

"We had all the farmers that could get into town out with their tractors, trying to pave way through the roads for people to get out and back in," he says.

But that wasn't the only way the community came together.

Taylah Mitchell says that, in addition to monetary donations, there were food parcel deliveries.

"I feel like our community will always be strong. Even with the stuff that happens, we always just get back up and support each other."

Maurirere adds it's "not in our spirits". "You wouldn't want to carry a year of depression."

"I'll say," Mitchell replies.



MARTY SHARPE/STUFF

The belongings of the Mitchell family strewn outside their wrecked house last year.

## THE WALL OF WOOD

Stender says that, while the beach is still a mess, up the Uawa River is even worse, and she's right.

"You'll cry if you go up there. It's a graveyard of trees. It's despicable, absolutely despicable."

Forestry companies don't allow the public past a certain point any more, for health and safety reasons, instead allowing access only to logging trucks for the workers to get in and out, she says.

She reckons it's actually because locals would be "horrified" seeing the reality of the situation. "It's literally just mountains of wood, stacked."

A short drive up Tauwhareparae Rd reveals piles of debris stacked on the side of the pavement, leftover slash in mounds, and land stripped of its vitality.

Whenever there's heavy rain, more debris washes back down through the waterways. Most of it ends up on the beach.



ANDRE CHUMKO/STUFF

Slash litters Tolaga Bay's beach more than a year after heavy rainfall devastated the area.

That day, June 4, it's a miracle nobody was killed, Stender says. But she knows another big rain will come.

"The problem has not gone away. It really is a big issue. And no-one wants to pay for the solution, because it's costly. But there are ways around it."

There have been a few ideas attempted and/or thrown out – burning the slash on the beach, turning it into charcoal, burning it on-site, people bringing it down and reselling it as firewood.

Jessie Thatcher, 34, and her partner tried the firewood strategy for a while, until the companies prevented them from going further upstream, citing health and safety.

"That's an excuse. You could have a forestry crew trained up to do that. But they don't because it's [they] who's going to bear the cost," Stender says.

She reckons the burning on the beach is an ambulance-at-the-bottom-of-the-cliff way of thinking.

"It was all clear for summer, so all the tourists see beautiful Tolaga Bay – yay, tourists are happy with us. Boom – all back to firewood again."





ANDRE CHUMKO

Leftover slash and piles of logs still litter Tauwhareparae Rd in Tolaga Bay more than a year after the weather event.

John Shortland, 41, says the companies are all talk.

There was a public meeting held last year, but it "turned to sh.." because locals were "too p....d off" to have a decent conversation.

"It's not what they did say, it's what they didn't say. They weren't saying, 'Our problem, we'll fix it.' That's what everyone was waiting for."

"It won't be until a kid dies on the beach that they're really going to take notice," Stender says.

It's not out of the question – the bay has become a holding area for slash, and jumping off the Uawa River bridge has been a pastime for Tolaga Bay youth for generations.

Maurirere says you can't go out surfing, diving or swimming now without getting concussed by floating logs.

This has frustrated the community's surf lifesavers and boaties, who also have to navigate logs wedged in the sand and sticking up through the sea.

Locals try as best they can to clear it, but rain and swells mean the problem just keeps happening.



ANDRE CHUMKO/STUFF

The Uawa River as seen from the Uawa River Bridge in Tolaga Bay. There's fears a child will be killed by a log after jumping in the water.

### "SWALLOWING POISON"

Uawa's marine life – crayfish, mussels, whitebait, eels – has faced "phenomenal destruction" since last year, Stender says.

"We're worried about our food ... The toxins that those pine trees are putting into our kai."

She scrunches up her face: "We're going to be 10 years later and look like this."

Last season, there was no whitebait in the river, possibly because they couldn't spawn on the riverbanks strewn with slash.

Thatcher says even the barnacles on the rocks, and pāua, have been affected.

"We're still eating it, but the logging ain't making it any healthier. We had healthy seafood before that happened.

"We don't really know what we're eating, but we're still eating it because that's what we've been doing for years."



ANDRE CHUMKO/STUFF

Lily Stender runs the Tolaga Bay Inn and has started an innovation programme out of it to get the community into employment opportunities that aren't from the forestry industry.

### HOPE BEYOND FORESTRY

The number of logs going through Gisborne's Eastland Port is predicted to double to five million tonnes a year by 2024.

Forestry accounts for the greatest share of regional GDP in the Gisborne region, at more than 5 per cent, and one in four households has a member whose job is dependent on the industry.

Tolaga Bay is intrinsically linked to forestry. The locals know it, and are keen to get away.

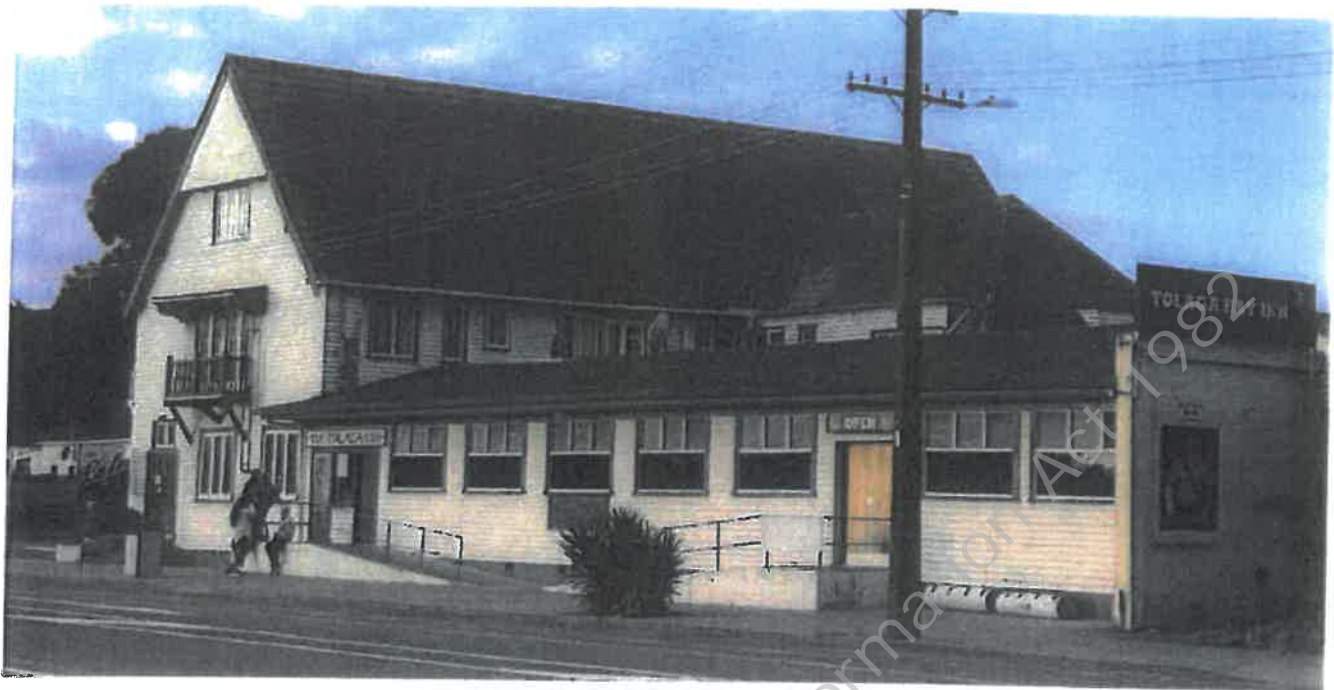
In addition to being physically taxing work, it's extremely dangerous: a 28-year-old man died in a [workplace logging accident in Tolaga Bay in February](#).

People have also died in logging accidents at Gisborne Port [in April](#) and [October](#), and another in a [crash with a logging truck on SH35](#) in November.

"We cannot rely on them any more ... It's killing our lands and killing our people. We're sick of it," Stender says.

But in a sparsely populated coastal community, employment opportunities are few. That's precisely what the Tolaga Bay Inn Charitable Trust hopes to change.





ANDRE CHUMKO/STUFF

Locals hanging out at the Tolaga Bay Inn.

As part of its goal to build grassroots businesses to get locals away from the forestry/fishing industries, an innovation hub is run out of the inn to help people take the lead on self-employment, and tackle the cycle of benefit dependence.

The project provides wraparound support in partnership with the Ministry of Social Development, from everything including business design to financial management, through to marketing the end product.

Each client is paired with a mentor to help develop their idea into a viable income stream.

Thatcher's business, Jessie's Charters, is looking at the issue of boating in waters where there are logs everywhere.

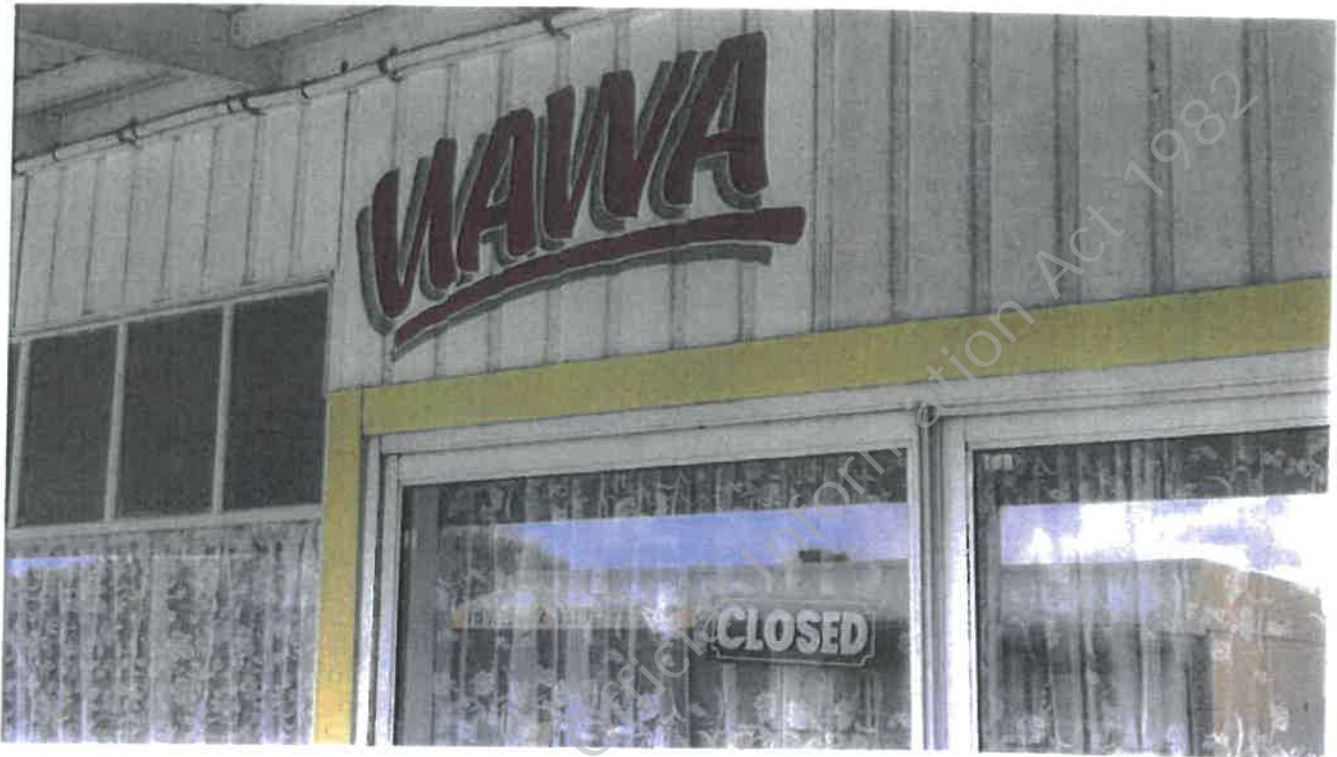
With the four businesses that launched in April, each has achieved its first milestone agreed at the outset – these are different for each client, but could include completing a business plan, market research, a first confirmed customer, or product design/development.

One more business has joined the first four, with more on the way.

There's still another year to go in the programme, but already, positive signs are beginning to show, Employment Minister Willie Jackson says.

The Government has contributed \$84,500 to date on the project.

"There are challenges around whether there is enough infrastructure to support an increase in volumes of tourists, but if the will is there for that to happen, then I'm sure that can be addressed in a sustainable way."



ANDRE CHUMKO/STUFF

A closed store in Tolaga Bay.

One arm the programme is exploring is the hemp and medicinal marijuana sector, which has already found success north of Tolaga Bay in Ruatoria with Hikurangi Cannabis Company.

Stender says the crop "rejuvenates" land – as opposed to pine – and the company is trying to get licences.

"They [Ruatoria] need the Coast to help grow to provide the volumes required. If we're going to compete against the global outfits, we have to do it collaboratively. That's the name of the game."

It's hard to imagine Tolaga Bay without forestry, though.

Alison Waru is the project co-ordinator for Uawanui Te Mana O Te Wai, the organisation tasked with working with various parties over the cleanup.

She says it's about seeking "opportunity out of adversity".

"Forestry is here. It's in our blood. I understand both sides ... They're investing money in our community, they've got forest in our community, why not capitalise



## national

Log in

but it's equally important teaching youth that, as another rotation of pines are planted, forestry doesn't just involve being at the bottom of the hill, she says.

Hikurangi Forest Farms has agreed to section off some of its land to test out native plantings – particularly tarata/lemonwood – with deeper and stronger roots, to see if they will fare any better than pine in a similar storm event.

That work with natives extends to the classroom at Tolaga Bay Area School, where planting is part of the curriculum.

Over the past three years, students have planted more than 36,000 native species. "That's pretty cool for a town of 800," Waru says.



Tolaga Bay – population 760.

ANDRE CHUMKO/STUFF

## LESSONS LEARNED

On a forecasting level, MetService says it was "very likely impossible" to have predicted the storm, which was "incredibly localised".

"While rare for an event like this to go undetected by the models, it can and does happen."

Forecasts MetService used indicated significant rainfall north of Tokomaru Bay, further up the coast, for which it issued a severe weather watch about 30 hours before the Tolaga Bay event.

declined claims.

Gisborne Mayor Meng Foon says the Gisborne council has stepped up in terms of better monitoring its resource consents, and making more frequent in-person visits to forestry sites across the district.

"The lessons that have come out of this is action, action, action. ... Council's always in the gun for all sorts of things, but in this case we need to do our job better."



ANDRE CHUMKO/STUFF

Slash lines waterways, still, in Tolaga Bay.

Foon says there are hopes that French President Emmanuel Macron will visit Tolaga Bay in October to launch a "big project" as part of the [Te Hā Sestercentennial celebrations](#), marking 250 years since Captain Cook landed in New Zealand.

"Tolaga Bay is a very resilient community, it is an innovative community and they like to celebrate, so I would say that the future bodes well for Tolaga Bay."

Russell Dale, the research and development manager for the New Zealand Forestry Owners' Association, says in the wake of Tolaga Bay, the industry has initiated a range of projects to mitigate future events.

"We recognised what we had to deal with there was a pretty extreme event ... What exacerbated the situation up there was all of those forests were planted



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The projects included debris traps in waterways, planning harvesting areas more carefully, looking at different methods of felling to reduce breakage, airlifting slash from vulnerable areas, and commercial opportunities to utilise slash – bio-energy, power generation.

However, Dale says, "the answer is, there's no single solution".

He rejects criticism the industry is putting money into defending its case in court, rather than investing in solutions.

"The industry is taking this issue very seriously.

"It happened, all we would say was it was a combination of some pretty extreme weather conditions, and I don't think people appreciate just how extreme that storm event was.

"If all of that forest had been in one ownership, it would have been easier for there to be a response."



ANDRE CHUMKO/STUFF

A lone Nikau palm sits in a field of barren land on Tauwharepare Road.

Forestry Minister Shane Jones says he expects the industry to take responsibility for its activities.

"Tolaga Bay was a wakeup call for many. I am hearing stories of areas of highly erosion-prone land, that are difficult to harvest, being retired.

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would pose downstream risks in the long term."

### ONGOING LEGAL PROCEEDINGS

In December, Gisborne District Council announced it was prosecuting 10 forestry companies over the damage. It wouldn't comment while the case was before the courts.

It charged them with breaching the Resource Management Act, alleging they discharged contaminants (forestry waste) on to land/water.

The companies are A and R Logging, DNS Forest Products 2009, Ernslaw One, Hikurangi Forest Farms, Juken New Zealand, Logic Forest Solutions, Permanent Forests, PF Olsen, South Pacific Forestry Holdings, and Timbergrow.

All originally pleaded not guilty. However, at an Environment Court hearing this week, Hikurangi Forest Farms changed its pleas to guilty.

The company will be sentenced in Gisborne on October 1. The others have been remanded for another hearing on September 23.

Stender says the great thing with Hikurangi Forest Farms' guilty plea is "that's the start of recognising it".



ANDRE CHUMKO/STUFF

Tolaga Bay has become a bit of a holding area for slash.

But Waru doesn't think the other companies will have a similar change of heart.

**"E"**

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Solicitor of the High Court of New Zealand

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Deputy Registrar  
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## Not guilty pleas to breaches of RMA

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Ten forestry companies charged



Slash on the beaches after the storms in June last year. 2018 file picture by Liam Clayton

Forestry companies blamed for millions of dollars of damage when floodwaters carrying a vast raft of wood debris inundated land around Tolaga Bay last June have pleaded not guilty to charges

THE DEBTS CHOKED, BUT MAY BE SHED TO MAKE WAY FOR A NEW START, SAYS THE HERALD. 4 and 11.

gisborneherald.co.nz

People had to be evacuated, roads were blocked, fences were ruined and property and stock were lost.

In December, Gisborne District Council charged 10 forestry companies with breaches of the Resource Management Act – by discharging contaminants into water or on to land and failing to comply with regional land use rules. Each of those offences carry fines of up to \$600,000.

The companies' legal representatives assembled for the first time publicly at a short hearing in Gisborne District Court yesterday.

Facing prosecution are – A and R Logging Ltd, DNS Forest Products 2009 Ltd, Ernslaw One Limited, Hikurangi Forest Farms, Juken New Zealand, Logic Forest Solutions, Permanent Forests Limited, PF Olsen Ltd, South Pacific Forestry Holdings Ltd and Timbergrow Ltd.

Hikurangi Forest Farms faces two counts of each charge in relation to two forests.

Counsel for nine of the companies entered not guilty pleas to the charges.

Juken NZ was granted an adjournment for a legal matter but only on the basis it would enter a not guilty plea at the next court appearance – a case review hearing on August 6.

Judge Warren Cathcart said while that delay (nearly six months) was unfortunate, the cases must next be heard by an Environment Court judge, who is not scheduled to be in Gisborne before then.

Counsel for each of the companies yesterday tried to have their cases adjourned without plea, mainly on the grounds that there were thousands of pages of disclosure documentation to be considered.

Imogen Allen, counsel for Permanent, said it had received 4800 files, nearly all of which were photographs taken by council inspectors since the events last June.

Many of the images were insufficiently labelled, making it difficult to identify exactly where they were taken, Ms Allen said.

Prosecutor Adam Hopkinson urged the court to proceed, submitting all parties had received the bulk of the disclosure in early February and should now be able to enter pleas.

Judge Cathcart agreed, declining all but Juken NZ's application to adjourn.

Counsels Karen Price, for Hikurangi Forests Limited, and Tim Conder, for Ernslaw and Timbergrow, elected trial by jury for those companies.

On charges where individuals can elect trial by jury, companies are eligible to do the same.

The remaining companies did not make the election and will automatically head towards judge-alone trials.

Judge Cathcart said any of the companies that might later decide on a jury trial would have to make special application and risk "running the gauntlet" as to whether it would be granted.

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One couple suffered a harrowing ordeal when they were forced to take refuge with their four-year-old granddaughter at 4am on the roof of their Mangatokerau Road house in northern Tolaga Bay.

Floodwaters laden with heavy logs battered the house beneath them and washed away a nearby woolshed.

The trio was airlifted to safety several hours later.

Mike and Bridget Parker, who farm another of the hardest-hit properties, were in the public gallery during yesterday's court hearing.

Mr Parker told The Gisborne Herald he was pleased the council had finally got the companies to court but was "very unhappy" about the delay until the next court hearing.

"It's way too long. Everyone wants closure," he said. "The beaches are still shocking. They made a half-pie effort to burn the slash but it's still there."

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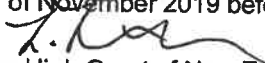
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**Gisborne Cycling Club events**



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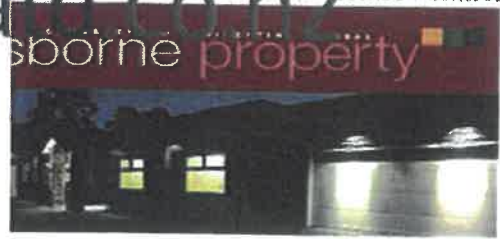
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## Guilty pleas to RMA breaches

Hikurangi Forest Farms admits charges following devastating Tolaga Bay floods.



The aftermath of the Tolaga Bay storm last June, which Dame Anne Salmond says highlighted New Zealand's poor forestry practices. File picture by Liam Clayton

that surged through the area, causing significant damage.

The company and nine other companies subsequently charged by Gisborne District Council with breaching the Resource Management Act were represented at an Environment Court hearing in Auckland district courthouse this morning.

Hikurangi Forest Farms vacated not-guilty pleas from March and its trial by jury election to plead guilty to two breaches of the RMA – that it discharged contaminants, specifically forestry waste, on to land or into water.

The charges relate to the company's Wakaroa and Te Marunga forests, with the offending said to have occurred between June 2017 and July 2018.

Council prosecutor Adam Hopkinson withdrew two further charges alleging breaches of another part of the Act – that the company used land in a manner that contravened RMA regulations.

Judge Melanie Harland scheduled sentencing for October 1.

She also referred the case for restorative justice, which Mr Hopkinson said would be convened either by the court's service provider or by a council-assigned provider.

The other companies charged in relation to the alleged offending have maintained not guilty pleas and have each been further remanded for another case review hearing on September 23.

Those companies are A and R Logging Ltd, DNS Forest Products 2009 Ltd, Earnslaw One Ltd, Juken New Zealand, Logic Forest Solutions, Permanent Forests Ltd, PF Olsen Ltd, South Pacific Forestry Holdings Ltd, and Timbergrow Ltd.

Earnslaw and Timbergrow have elected trial by jury; the others have elected judge-alone fixtures.

The trials, which will involve numerous witnesses and thousands of photographs, are expected to take at least three weeks.

Judge Harland told counsel she was aware parties affected by the events had expressed concern over the time being taken for these cases to progress through the court process, and that those parties had a right to see matters dealt with in a timely way.

She expected counsel to move diligently and quickly towards final hearings, at least some of which she hoped could be scheduled for December this year. All matters will be heard in Gisborne.

Each of the offences the companies face carries a fine of up to \$600,000.

Many thousands of tonnes of logs and smaller forestry detritus entered waterways, flooded on to land, and accumulated on Tolaga Bay and other beaches during weather events on June 4 and 11 last year.

One couple suffered a harrowing ordeal when they were forced to take refuge with their four-year-old granddaughter at 4am on the roof of their Mangatokerau Road house in northern Tolaga Bay.

Floodwaters laden with heavy logs battered the house beneath them and washed away a nearby woolshed.

**"G"**

The document annexed and marked "G"  
is referred to in the annexed affidavit of  
**DYLAN BARRIE FOSTER** affirmed at Gisborne  
this 20th day of November 2019 before me:

  
Solicitor of the High Court of New Zealand

Torepe Taumaunu  
Deputy Registrar  
High Court of New Zealand  
District Court at Gisborne

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**"H"**

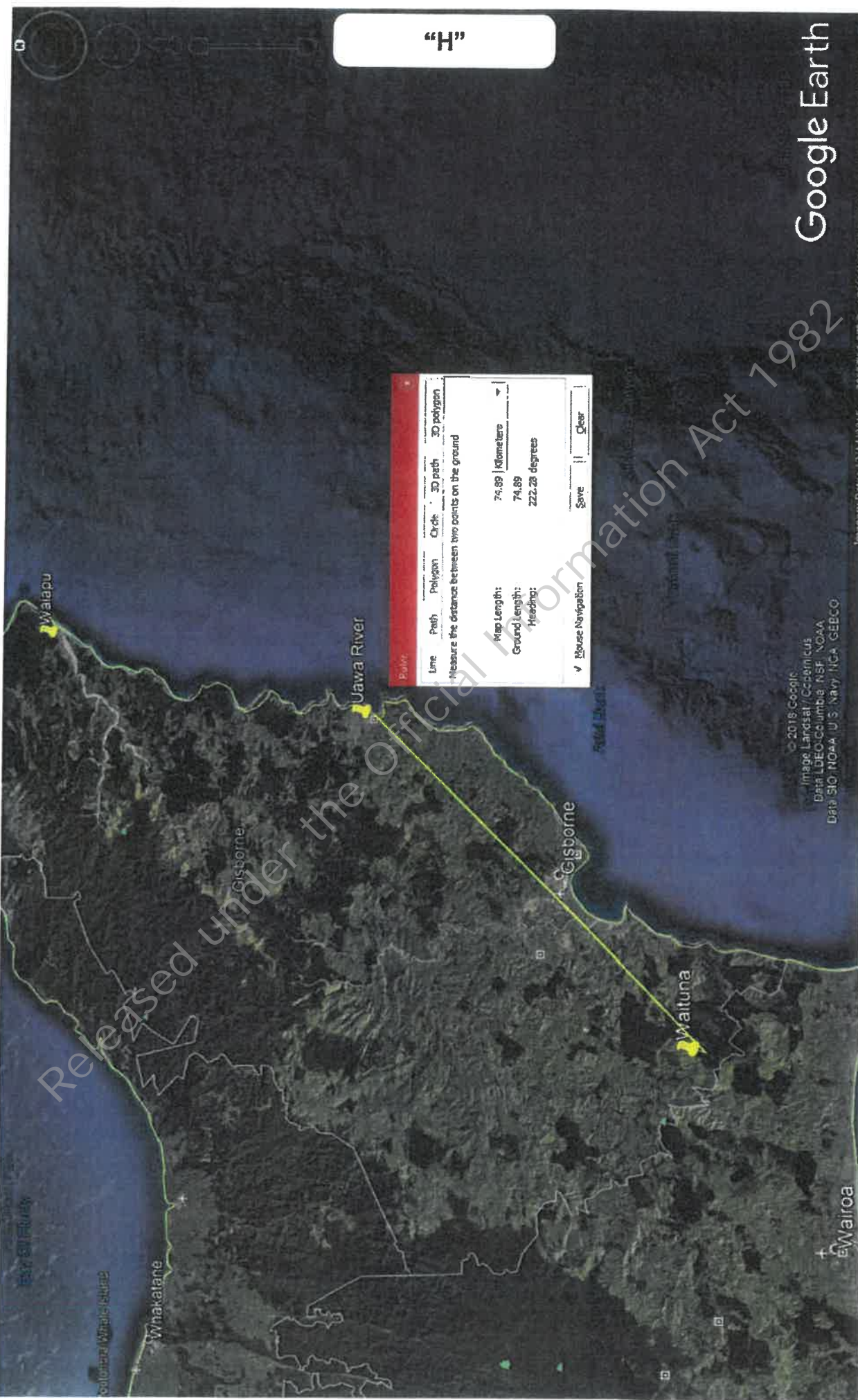
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**DYLAN BARRIE FOSTER** affirmed at Gisborne  
this 20th day of November 2019 before me:

  
Solicitor of the High Court of New Zealand

Torepe Taumaunu  
Deputy Registrar  
High Court of New Zealand  
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"H"

Point

Line	Path	Polygon	Circle	3D path	3D polygon
Measure the distance between two points on the ground					
Map Length: 74.89 Kilometers					
Ground Length: 74.89					
Heading: 222.28 degrees					
✓ Mouse Navigation					
Save    Clear					

Google Earth

© 2018 Google  
Image Landsat / Copernicus  
Data LDEO/Columbia / NSF / NOAA  
Data SIO / NOAA / U.S. Navy / NGA / GEBCO

Imagery Date: 12/14/2015 30°27'50.97" S 176°19'13.13" E 65m 49m eye at 184.06 km

"I"

The document annexed and marked "I"  
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Solicitor of the High Court of New Zealand

Torepe Taumaunu  
Deputy Registrar  
High Court of New Zealand  
District Court at Gisborne

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"1"

Google Earth

39°42'22.07" S 177°49'26.00" E elev: 11.40 m - eye alt: 104.00 km

© 2018 Google  
Image Landsat / Copernicus  
Data LDEO, Columbia, NSF, NOAA  
Data SIO, NOAA, U.S. Navy, NGA, GEBCO

**"J"**

This is the exhibit marked "J" referred to in the annexed affidavit of **DYLAN BARRIE FOSTER** affirmed at Gisborne this 20th day of November 2019 before me:

  
Solicitor of the High Court of New Zealand

Torepe Taumaunu  
Deputy Registrar  
High Court of New Zealand  
District Court at Gisborne

**From:** dylan foster [mailto:dylan.foster@jnl.co.nz]  
**Sent:** Tuesday, 26 June 2018 2:24 PM  
**To:** Lois Easton <Lois.Easton@gdc.govt.nz>  
**Cc:** 9(2)(a)  
**Subject:** RE: Juken New Zealand Ltd - Harvesting

Hi Lois,

Cc 9(2)(a)

We can appreciate the you guys are busy!, please let us know when you would like to send a council representative up as we will need to escort them into our forest site as we have logging trucks exiting the forest. The Papratu Road of course is a public road with no logging trucks, so that is no problem.

As requested a Tier one report.

The photos attached to this email are from a ground inspection completed yesterday on 9(2)(a) property. We have noted the slash has stopped in the entrance to the newly formed Mangapoike lake along with other woody debris and rubbish. We are unable to conduct any clean-up of this at this stage as we think the silt and water level is too wet to allow safe excavator access.

The material along the road way and next to the Papratu bridge, we are very keen to assist in removal and clean up, however there is already an excavator on site (Decosta Enterprises) and we understand it is their intention of cleaning it up. I estimate this would take two days in a machine so it is not much. Please let me know if we can assist. I expect that the accessible material will be cleaned up before your staff are able to visit the site, however the material within the lake entrance will certainly still be there.

I plan to visit the site within the Mangaragiroa stm, with 9(2)(a) in the near future as it is our intention to request access if possible to remove any log debris to high ground to enable JNL to burn at a later date.

In conclusion, there is not much that we are able to repair and I think there is not much required by the council apart from the small excavator already on site.  
I will send a second email with photos from our aerial survey.

Regards

**Dylan Foster**  
Forest Manager  
East Coast Forests

**From:** Lois Easton [<mailto:Lois.Easton@gdc.govt.nz>]  
**Sent:** Monday, 25 June 2018 12:40 PM  
**To:** dylan foster <[dylan.foster@jnl.co.nz](mailto:dylan.foster@jnl.co.nz)>  
**Subject:** RE: Juken New Zealand Ltd - Harvesting

Hi Dylan

Thanks for the email and voice mail message.

It would be really helpful if you could provide some photos to assist getting some understanding of what has gone on – including your aerial survey and some information about which compartments of the forest this has occurred in.

We will need to send a staff member up to assess the situation from a monitoring and compliance perspective, but this is not likely to be this week, as our resources are already very tied up.

If you are able to send through some photos and that will give us an idea of what might be required on our part.

You may be aware of the Storm Event Reporting protocol that the Eastland Wood Council worked with the GDC and Landcare Research to develop. (report attached).

I would appreciate it if you could please fill out an incident report (the Tier 1 assessment on page 15 of the report – form in Appendix 1) and undertake information collection to inform the tier 2 assessment as you are able.

Thanks very much

Lois

**Lois Easton** | Environmental and Science Manager | Gisborne District Council  
email [Lois.Easton@gdc.govt.nz](mailto:Lois.Easton@gdc.govt.nz) | ph +64 6 867 2049 | dd 06 869 2429 | mob 021 137 6489  
address 15 Fitzherbert Street, PO Box 747, Gisborne 4010 | url [www.gdc.govt.nz](http://www.gdc.govt.nz)



**From:** dylan foster [<mailto:dylan.foster@jnl.co.nz>]  
**Sent:** Monday, 25 June 2018 12:13 p.m.  
**To:** Lois Easton <[Lois.Easton@gdc.govt.nz](mailto:Lois.Easton@gdc.govt.nz)>  
**Subject:** Juken New Zealand Ltd - Harvesting

Hi Lois,

I am the Forestry Manager for Juken New Zealand Ltd, we have been carrying out harvesting operations in our Waituna Forest for the last 5 odd years. The Waituna Forest is situated behind the Gisborne Water supply. Last week we suspected that material being silt and harvesting slash had left our forest and migrated to our neighbours property, being 9(2)(a) Due to the poor weather we had to wait until Saturday (23/06/2018) morning until we could fully access the level of damage with a helicopter.

Within the forest we have had wide spread slipping and high river levels. There has been significant silt and some slash that has migrated downstream as a result of mid-slope failures, Whilst JNL has a very high standard of harvesting and slash removal including debris dams, the amount of rain and saturation has unfortunately resulted in failure of mid slopes within our forest.



Within the neighbours property there is a lot of silt and mud plus minor amounts of slash on Papratu road and there is also material in the Mangapoike River.

JNL have under taken an aerial survey of the damage on Saturday and will be carrying out clean up of the log slash on Papratu road and on our neighbours farm. This is to prevent the slash from migrating further downstream to any other affected parties.

Can you please contact me in this regard as we have had a very good reputation in the past and we wish to acknowledge that we suspect the material is from our operation and that we are completing the clean-up, we are working closely with our neighbour as we have a good relationship and wish to maintain that going forward.

I am visiting the site by vehicle this afternoon to co-ordinate clean-up activities.

My details are as below within the signature, Cell phone best.

Regards

**Dylan Foster**

Forest Manager  
East coast Forests



t +64 6 8691180  
m +64 274 485 583  
e [dylan.foster@jnl.co.nz](mailto:dylan.foster@jnl.co.nz)  
w [www.jnl.co.nz](http://www.jnl.co.nz)  
f [www.facebook.com/JukenNZ](https://www.facebook.com/JukenNZ)

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74 McDonalds Rd, Matawhero. P.O Box 629 Gisborne 4010

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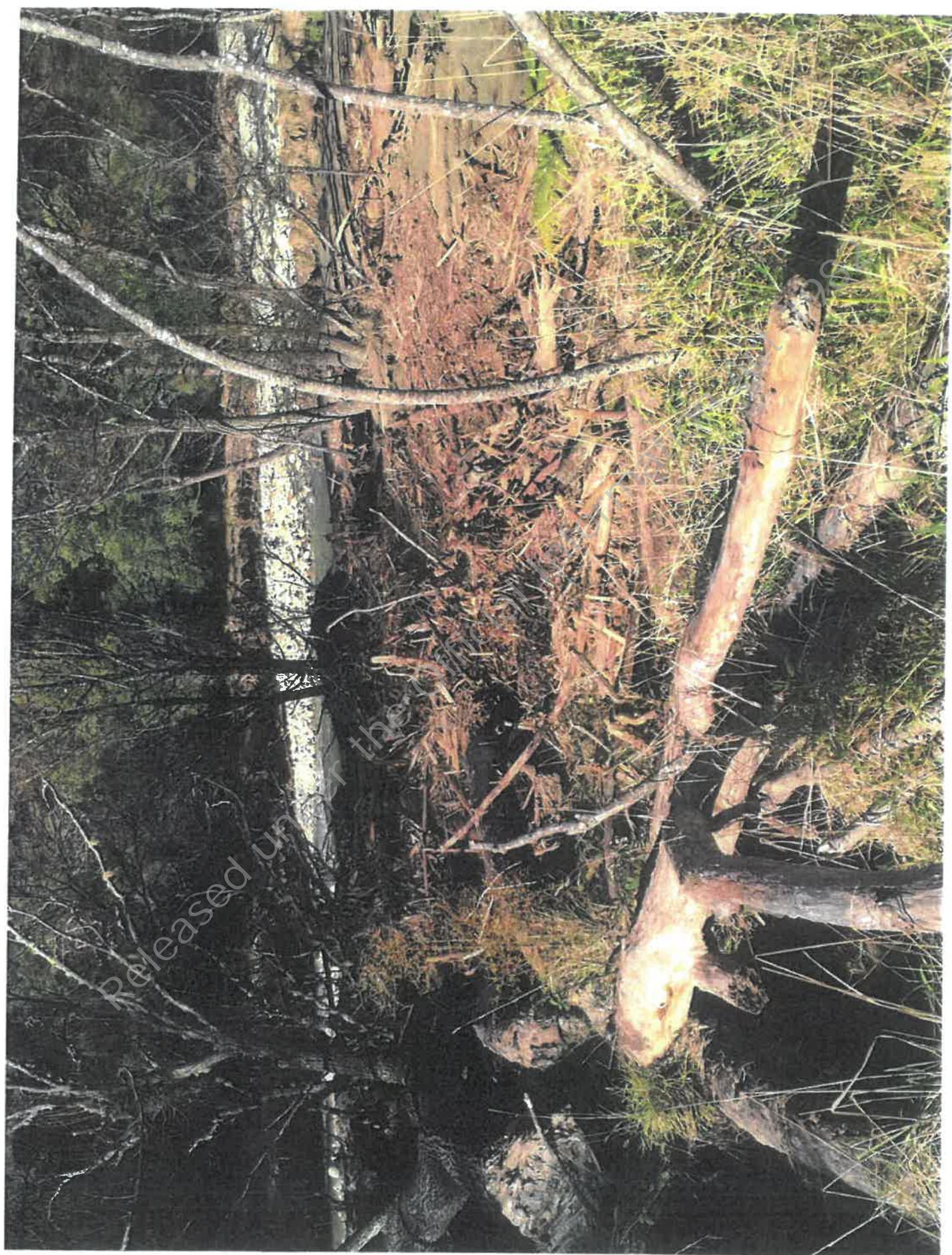
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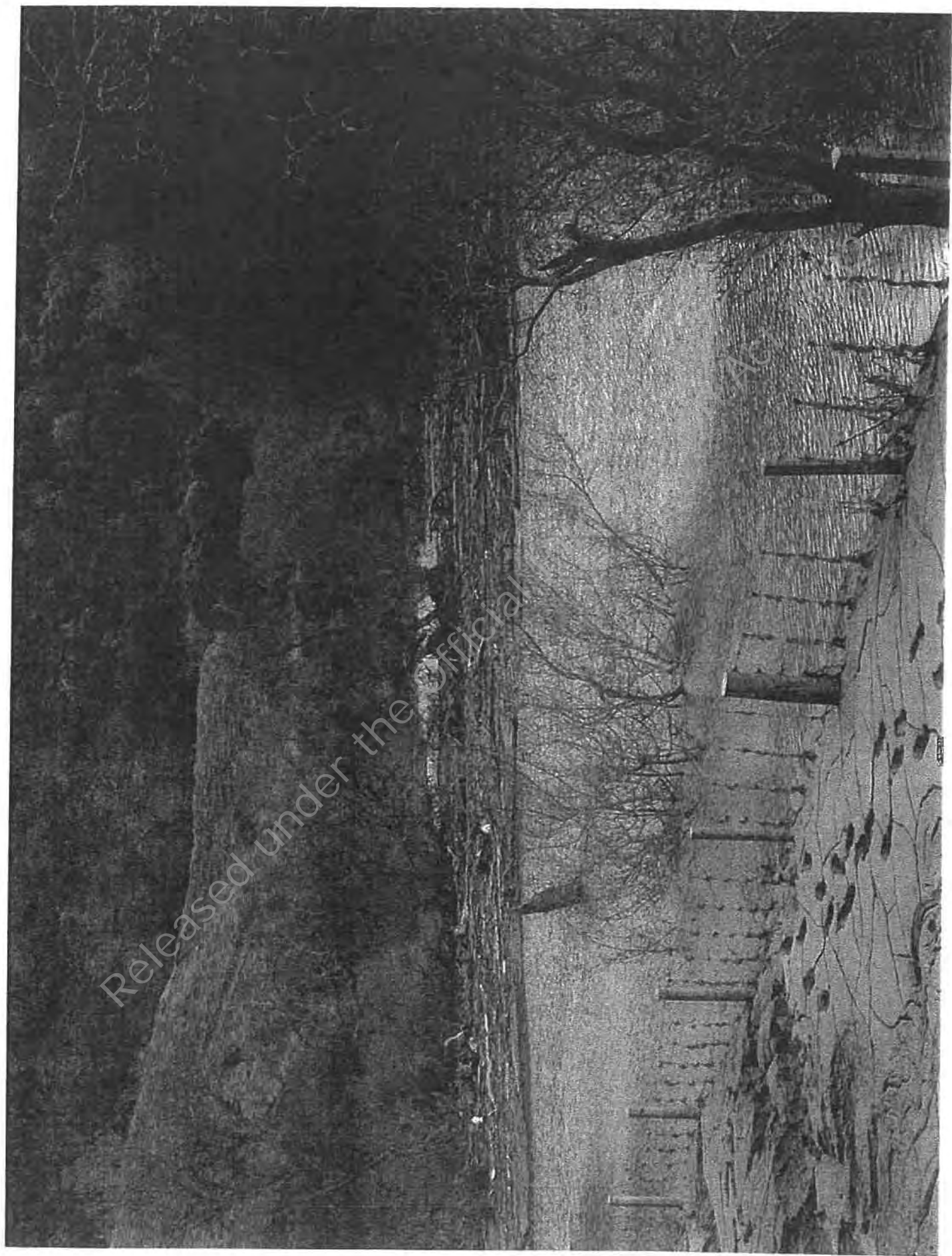
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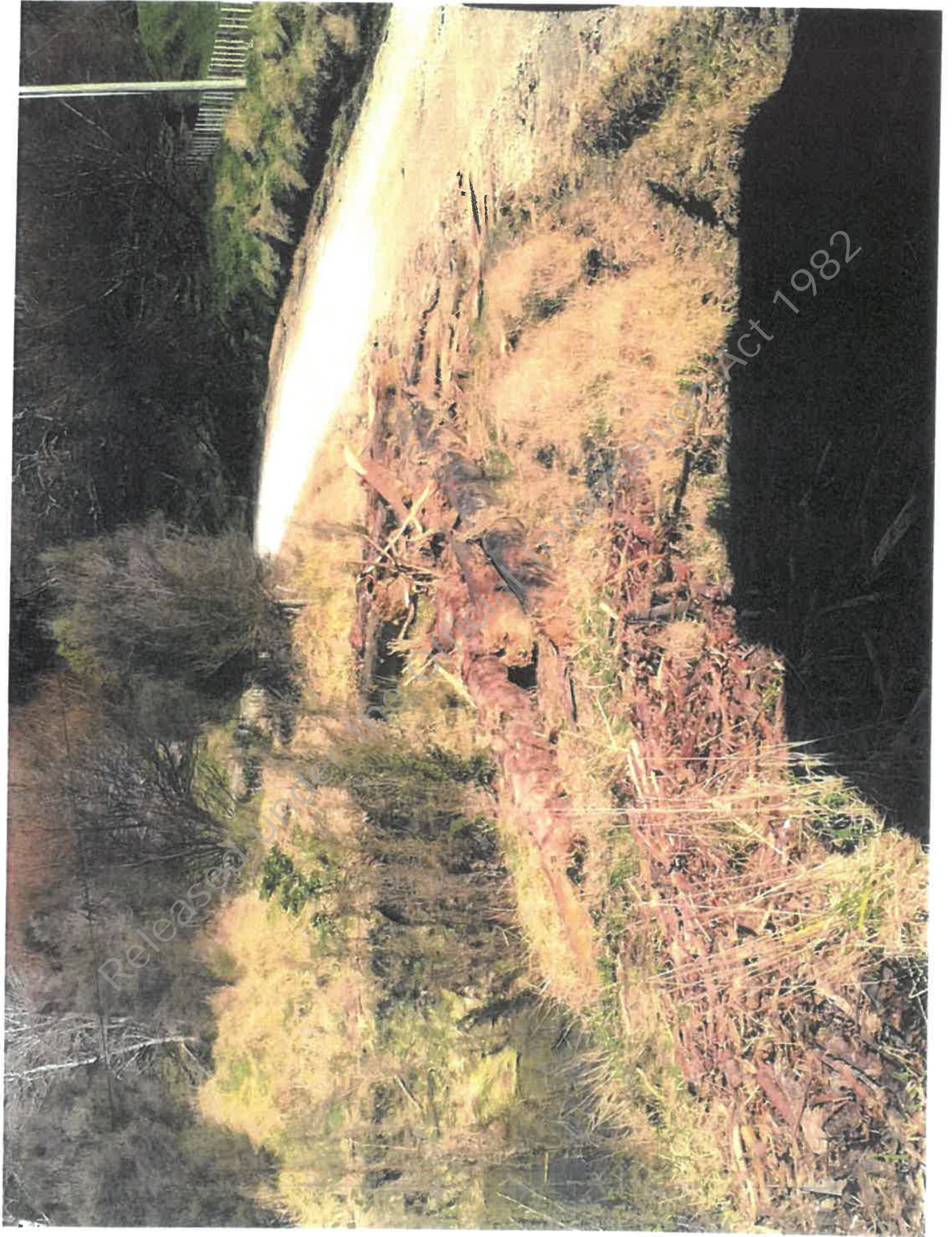


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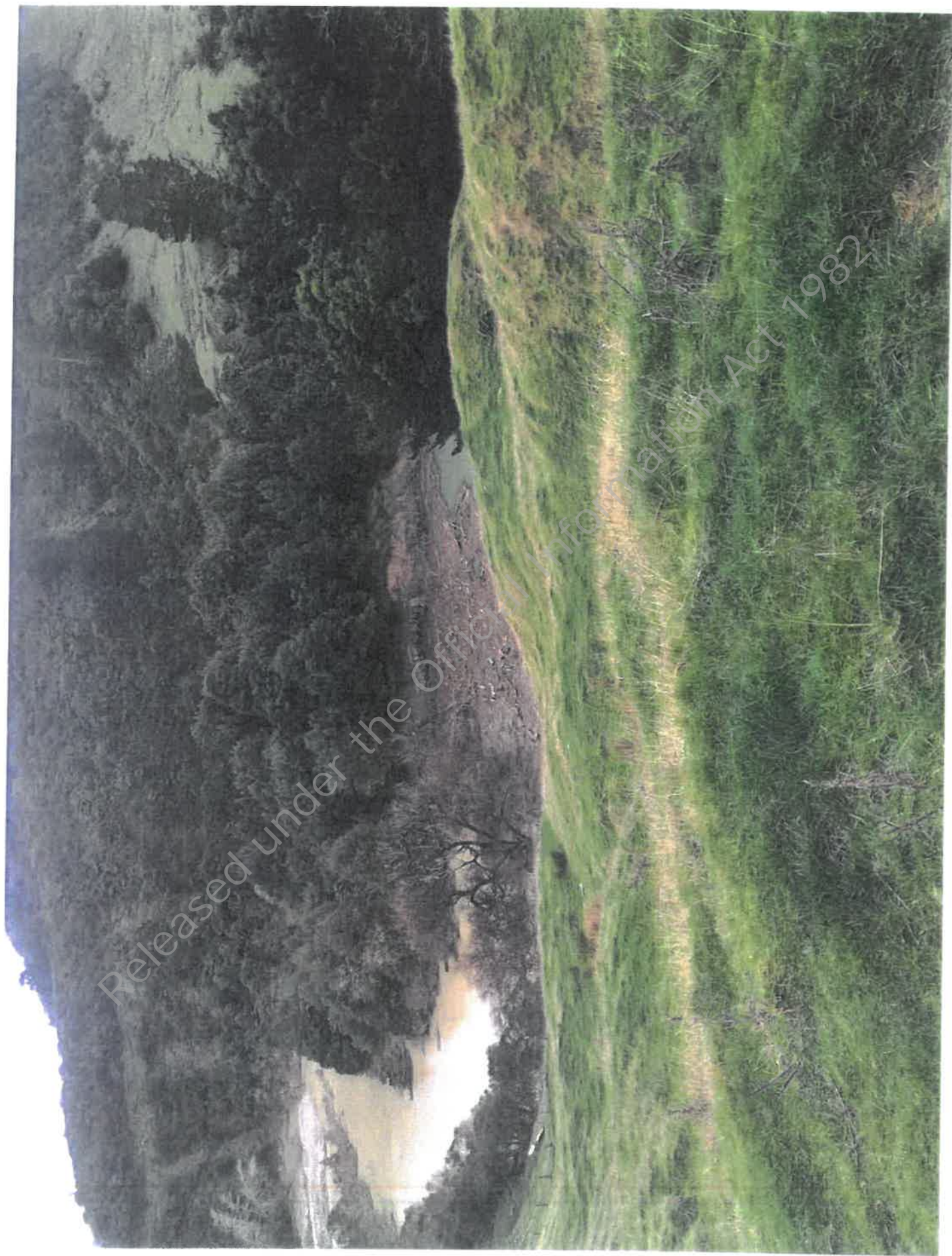




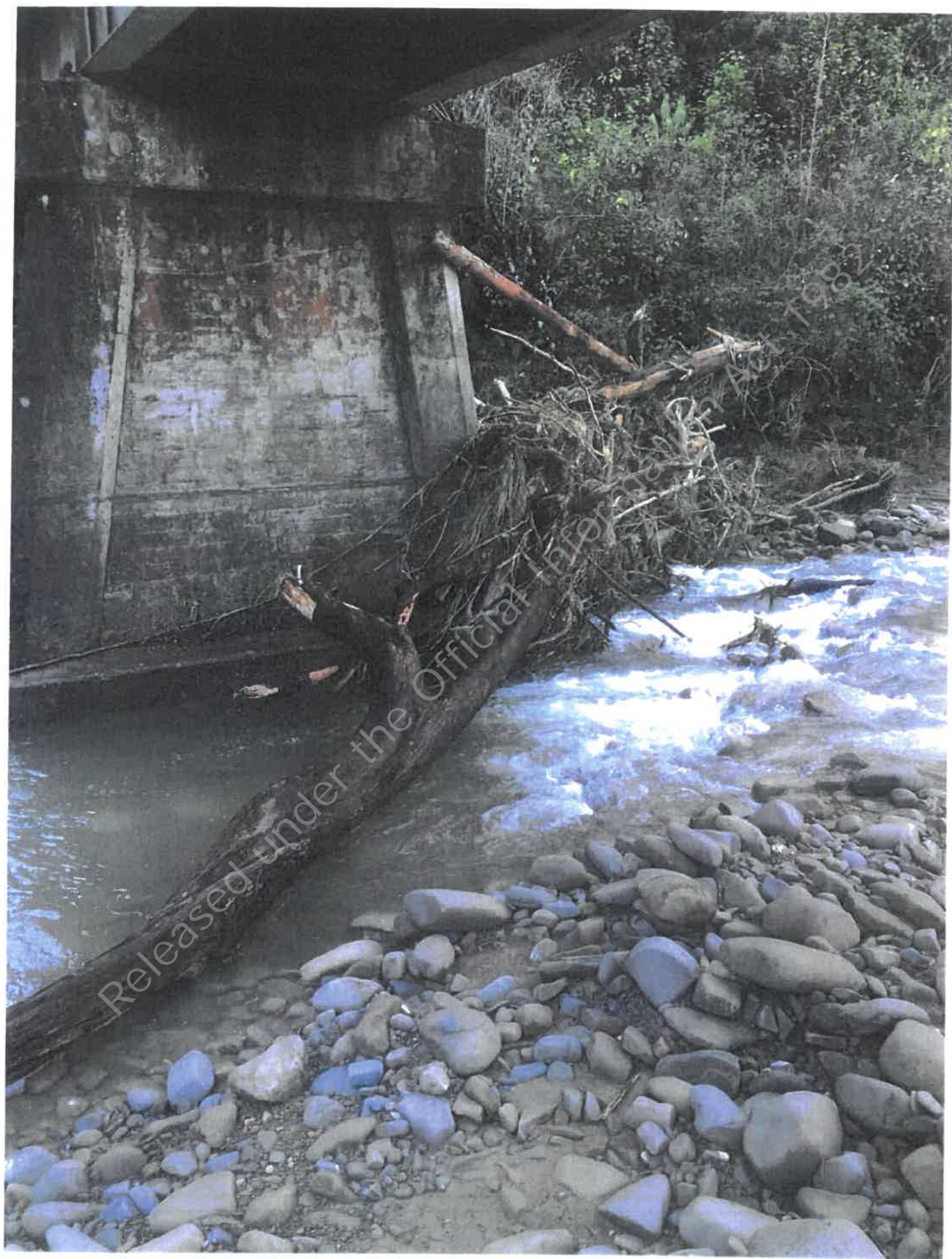


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**"K"**

The document annexed and marked "K"  
is referred to in the annexed affidavit of  
**DYLAN BARRIE FOSTER** affirmed at Gisborne  
this 20th day of November 2019 before me:

  
Solicitor of the High Court of New Zealand

Torepe Taumaunu  
Deputy Registrar  
High Court of New Zealand  
District Court at Gisborne

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"K"

**Appendix 1 – Tier 1 assessment – field example form**

<b>Storm damage assessment form</b>		
Observer: Dylan Foster	Date: 26/06/2018	Forest: Waituna Forest
Catchment:	Mangapoike River/Mangaragiroa stm	
Observations within forest:	<p>Waituna Forest has suffered intense rainfall for the previous 4 weeks, some 720mm recorded at Papratu station since mid-May.</p> <p>Mid-slope failures of old and new cutover with silt and logging slash migrating into the creeks and small volumes exiting forest to reside within neighbor's property</p>	
Observations external to forest:	<p>In the Mangapoike river there are 4 piles of harvesting slash mixed with poplar's and Manuka. Some underneath the Papratu bridge and along the road. There is two piles of debris at the entrance to the newly formed lake.</p> <p>A farm bridge has been destroyed (estimated value of \$20k) estimated that slash and silt has destroyed the asset.</p> <p>In the Mangaragiroa Stm there is minor logging debris being only a number of singular pieces which is scatter downstream from the forest edge.</p>	
Supporting photographs:	As attached	
Other Comments:	<p>Debris is Minor but Juken New Zealand ltd wish to flag that the small volumes have come from our operation. JNL staff have undertaken aerial inspection and ground inspection. At this stage there is not a lot that can be done due to the location of the small piles of debris.</p> <p>JNL are working within the forest to remove debris from slash catchers and remove any material that may migrate downstream.</p>	

	<p>There is already a 12 ton excavator working along the road cleaning up fallen trees and silt and massive slips. The operators informed us that they were going to clean up the pile of slash that is accessible.</p> <p>No one would be able to remove anything from the entrance to the newly formed lake as it is too deep. Expect that some retrieval of material may be possible if lake level reduces in summer.</p> <p>JNL have been in contact with Affected Neighbor 9(2)(a) and will be ongoing as JNL seek to clean up what damage they can, and work together in regard to insurance claims.</p>
File reference:	

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**"L"**

This is the exhibit marked "L" referred to in the annexed affidavit of **DYLAN BARRIE FOSTER** affirmed at Gisborne this 20th day of November 2019 before me:

  
Solicitor of the High Court of New Zealand

Torepe Taumaunu  
Deputy Registrar  
High Court of New Zealand  
District Court at Gisborne

From: dylan foster [mailto:dylan.foster@jnl.co.nz]  
Sent: Tuesday, 26 June 2018 2:35 PM  
To: Lois Easton <Lois.Easton@gdc.govt.nz>  
Cc: 9(2)(a) [REDACTED]  
Subject: Additional photos

Hi Lois,

Attached are photos from our aerial inspection on Saturday,

There are two areas of debris, one is behind the cattle yards and the other is a matt of debris floating , we suspect held up by trees etc. There is no strong river flow in this area as the river approaches the new lake it slows down. Please note the amount of silt that has come down from the rivers.

The lake is discoloured from all of the silt

Regards

**Dylan Foster**

Forest Manager  
East coast Forests



t +64 6 8691180  
m +64 274 485 583  
e [dylan.foster@jnl.co.nz](mailto:dylan.foster@jnl.co.nz)  
w [www.jnl.co.nz](http://www.jnl.co.nz)  
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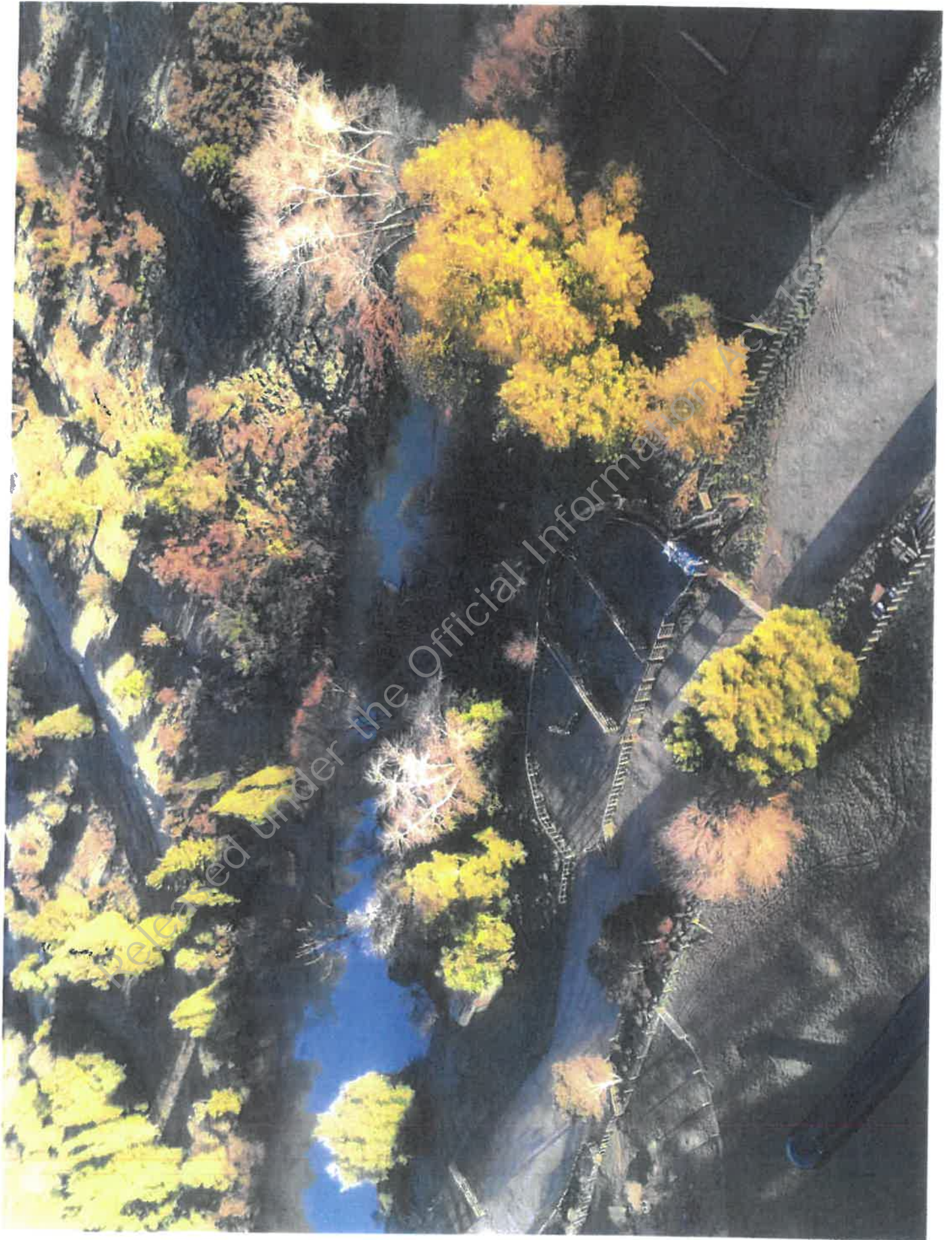
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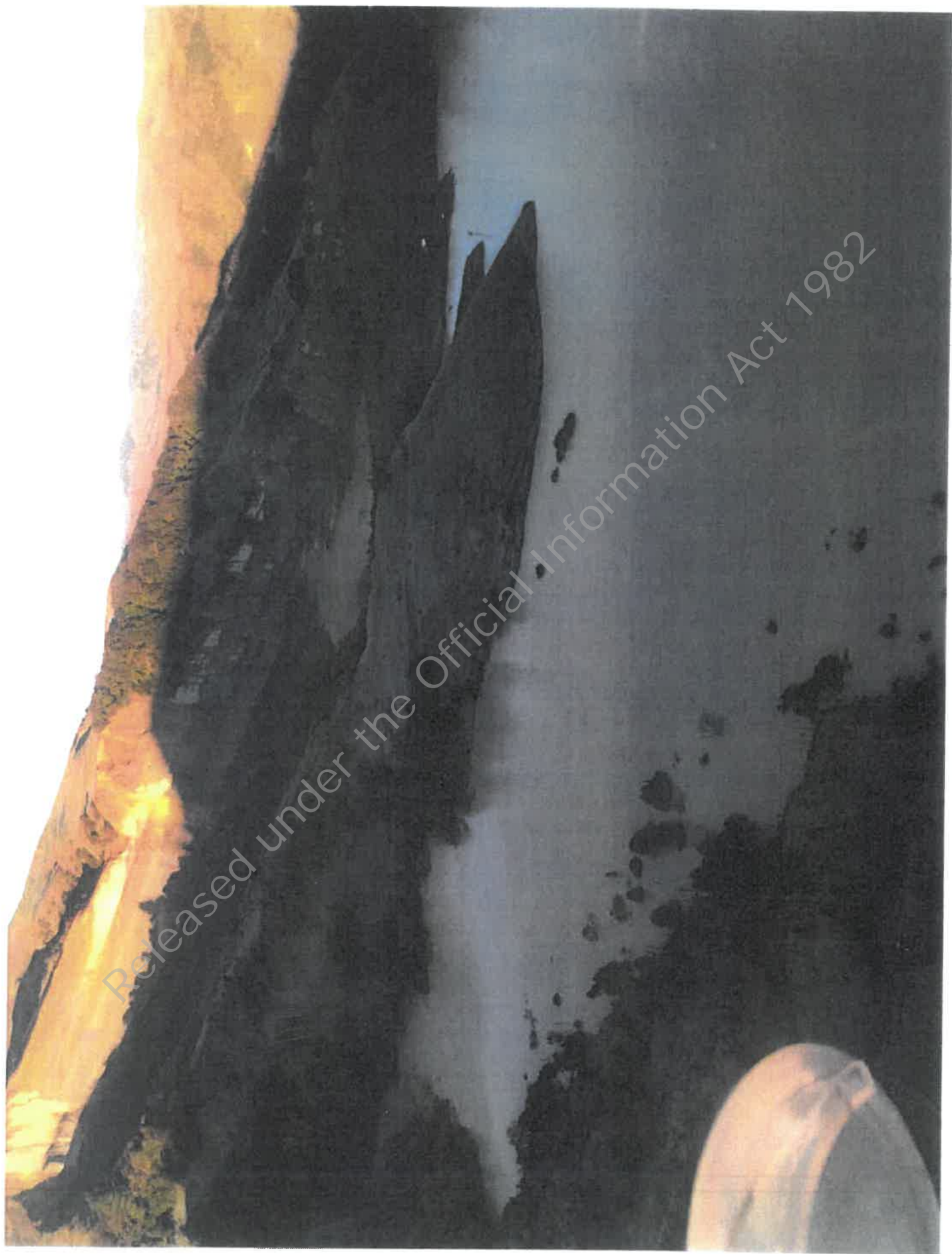
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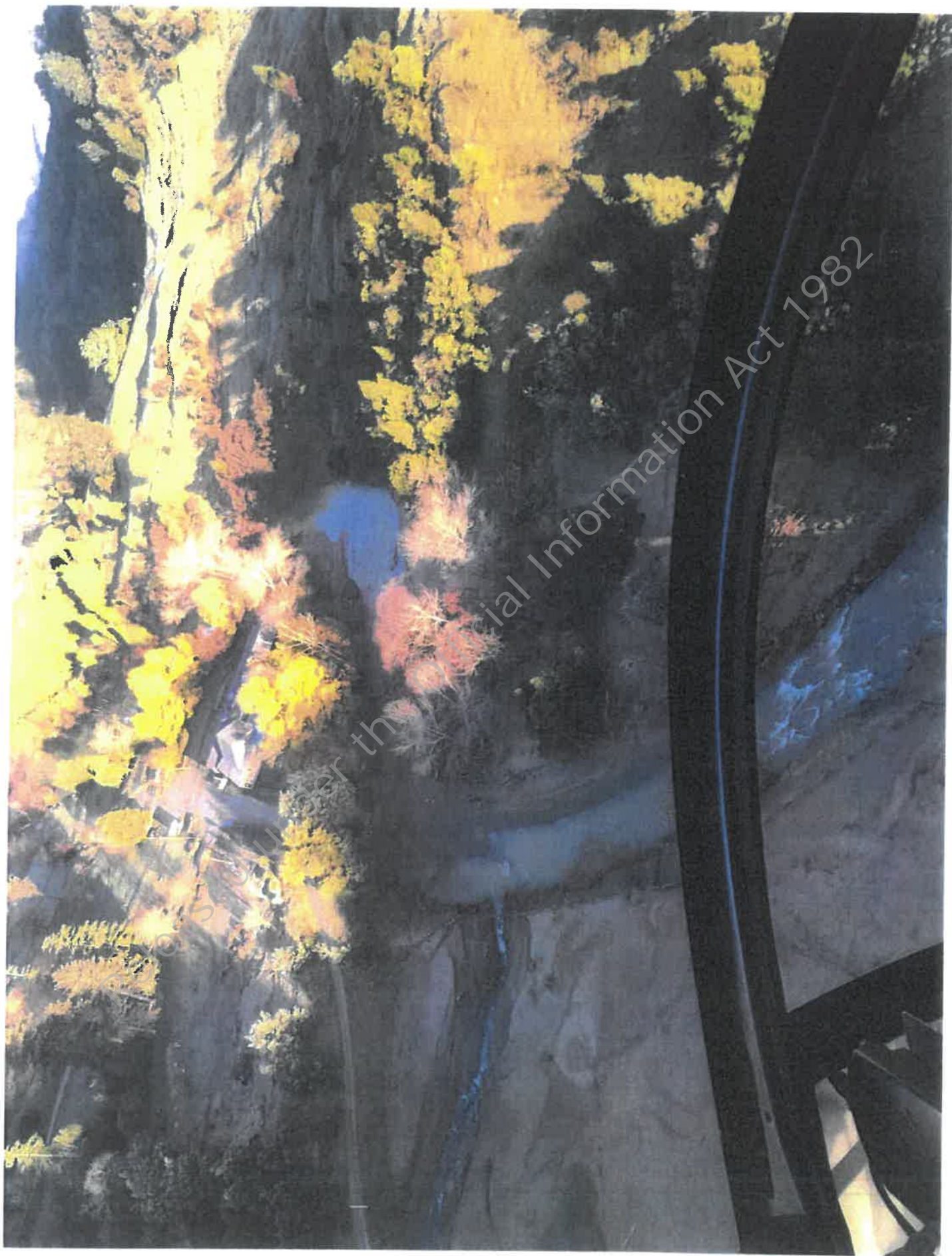


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"M"

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Solicitor of the High Court of New Zealand

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High Court of New Zealand  
District Court at Gisborne

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## **“M”**

Forest Inspection – Juken New Zealand Ltd (JNL) – Waituna Forest 14 September 2018

Inspection was undertaken by Norm Ngapo (Enforcement Officer - GDC) and Scott Dobbie (GDC)

Met at 0900 with Patrick Bethell (JNL) at Maraenui SH2 intersection. Drove into Waituna Forest, where we met with Dan Drummond (Earthmoving contractor for JNL) prior to commencing on-site inspection.

1. Skid site 20. This skid site has had birds nest material pulled back onto the skid. This skid had also been used for stockpiling end haul material from road works. Perimeter drainage around the outer edge of the skid has been installed directing stormwater to discharge points. The discharge of stormwater is onto original hard ground and then directed to ridge lines for dispersal of the stormwater. The stormwater V-drains discharge into sumps / sediment traps prior to discharge off the skid site. The exposed areas of earthworks are due for grass seeding by helicopter on Saturday 15 September. *Comment: The works have been reasonably well implemented. The birds nest material has been pulled back and deposited into the stockpile on site. The pulling back was undertaken by excavator as far as it could reach, and the overhanging perched material has been removed. The work undertaken removing the logging slash from the batter slope below the edge has substantially reduced the risk of collapse. I do not consider that any more material could be pulled back using the excavator, and would be comfortable with leaving the remainder of the material in situ. As the discharge points are in original ground and directed onto ridge lines, I do not consider that piping and fluming is necessary. The skid site is a difficult one as the stockpile is reasonably large. This has left limited room for working. There has been substantial deposition of end haul material (excess soil material from roading operations/slips), and there are also layers of organic matter on some of the undulating surface of the skid site. Extra excavation to try and remove all of the organic matter from the skid itself is unwise, as it would compromise the drainage system to stable outlets. Discussion with Dan Drummond confirmed that on some skid sites, they have had to excavate up to 2 metres through bark and fine woody organic matter to reach the original ground surface. The possible option of burning the remaining waste when conditions are more favourable is not one that I would recommend. I consider that it should be left to the forest manager to decide whether they are comfortable with carrying out burning, as it may be difficult to control, and burning carries a degree of risk that must be accepted by the forest manager. Further comments on burning are made at the end of this report.*
2. The stream immediately below skid 20 had logging debris in the channel as a result of the June storm event. This logging debris has now been cleaned out and placed on the berm areas out of the stream channel. *Comment: JNL has carried out the necessary work required to deal with the removal of forest debris from the stream channel at this site. I do not consider that further work is necessary.*
3. Un-named skid site at Waituna Road 3.2 km. This is a long narrow skid on a slope. Perched birds nest material has been pulled back into a stockpile onto the skid, and perimeter drainage systems installed to direct stormwater onto stable ridges at discharge points. This skid is also programmed for seeding by helicopter on Saturday 15 September. *Comment: The works undertaken have successfully managed to pull back the perched birds nest material on the edge of the skid site. The drainage system installed comprises shallow V-*

drains directing stormwater runoff to stable outlets onto ridges. The long narrow nature of the skid site has resulted in quite long perimeter drains that will always have a risk of rilling. I neglected to measure the slope of this skid site, but estimate it would be around 10% slope (about 6°). The option of installing check dams in the drains to slow down velocities is not an option as the V-drains are too shallow. However, there is no alternative, so these drainage systems will need to be monitored to ensure they do not fail. Any stormwater coming into the site from the road leading into the skid should be diverted so that the skid site perimeter drains only have to deal with on-site runoff. The proposed seeding of all bare areas by helicopter is a good option, and will help with surface stabilisation.

4. Skid site at end of Kaka Road. This skid site was inspected as an indication of works being carried out. Remedial works are still ongoing. At the time of inspection, a large excavator was on site pulling back perched birds nest material from the batters and edge of the skid site. There was a very large volume of material being stockpiled on the skid site, comprising soil, logging debris, slash, stumps, slovens, bark and wood waste material from logging operations. The plan is to carry out similar operations as at the other two skid sites visited; pull back as much perched birds nest material as can be reached, install perimeter controls with discharge to stable outlet points, and seed exposed areas following completion of earthworks. Below this skid site is a road and another skid on an easier benched area. While the high risk perched material will be removed, any collapse of further material will end up on the road or skid below. *Comment: The inspection to this site was a good demonstration of the difficulty of removing perched birds nest material from a skid site where the material has just been pushed over the edge as the skid is being used. The perched birds nest material has been removed so there is a substantial amount of weight that has been taken off the upper edge of the batter slope below the skid. What was pleasing to see, is that on one side of the skid, where pulling back had been completed, the V-drains had been installed for that section. This means that each part of the skid was isolated and treated accordingly. See comments at the end of this report regarding the skid sites in this forest, and the principles that should be followed in remedial clean-up operations.*
5. Kereru Road Log Jam. This log jam was viewed from the skid site at the end of Kereru Road. Although water is flowing slowly through the log jam, the water level is still high around the logs and Patrick Bethell confirmed that there is about a 3 metre drop at the downstream end of the log jam. Fine bedload material is being caught up in the log jam. Patrick also commented that there is still a small amount of movement within the log jam itself. The surrounding riparian margin on the valley floor is very wet. JNL has developed a plan to access the site and remove the log jam material to a safe disposal area near the problem site. However, they consider that it is too wet to access the site to enable clean up works to be undertaken. Also, they consider that the wet ground conditions mean there is currently a very high health and safety risk for the work plan. *Comment: I agree with the proposed remedial plan. I also consider that the work should be delayed until ground conditions are dry enough to undertake the work safely and efficiently. Even gaining access down to the site will be difficult in the current conditions. It is likely that this will end up being a job that should be left until January or February. The key issue is to have a well-planned methodology of works in place for when conditions are suitable to carry out the works plan. Attempting to undertake the work before the area dries out properly, would result in severe adverse on site and downstream impacts.*



## Discussion

During the visit, I noted that some new roads and skids have recently been constructed. These have excellent drainage controls installed and all bare surfaces that have been exposed by earthworks (batters, berms etc.) have been recently hydroseeded.

In my opinion, there has been a genuine concerted effort by JNL to carry out remedial works required by the Abatement Notice in an expeditious manner. The works required on these skid sites are not easy. The skid sites are often long and narrow. Some are constructed on a slope. Given the constraints of the terrain, I questioned whether JNL use benched skid sites in this forest. Patrick Bethell confirmed they have used them on occasion, but they require careful management during logging operations. From his comments, my understanding is that when crews are not used to working on benched skid sites, the logging operations do not proceed smoothly. This may be a matter for follow up under a different forum.

I consider that JNL's works programme for remedial works to address the Abatement Notice is sound, and they are progressing through that plan as quickly as they can. In my opinion, they have sufficient plant on site dedicated to remedial work to complete the programme effectively. Some skid sites are taking longer than expected to complete, due to the nature of the material they are dealing with, and the limited room to work. They will probably require extra time to complete the remedial clean-up programme, even with leaving Kereru Road Log Jam to summer. However, they have a planned programme of remedial works, and are committed to following that plan. I recommend that if further time is required for completion of works to satisfy the Abatement Notice, then an extension should be given. I also recommend that the clearing of the Kereru Road log jam be left for implementation until ground conditions are suitable. However, as a condition of postponing clearing of the log jam, it would be prudent to have JNL submit a simple proposed Methodology of Works. This will enable GDC to be satisfied that the proposed works will be ready to proceed, with necessary plant and resources available on site, as soon as ground conditions are deemed suitable.

The landscape in this forest appears somewhat different from the other forests inspected earlier this week. The main ridge systems are quite narrow. This means that there is very little room for constructing skid sites on the main ridges. The side ridges leading off the main ridge systems are more rounded, but are on slopes that are generally quite steep for skid construction. The skids are therefore often quite narrow and/or constructed on a slope.

Given the problems with the skids visited in this forest, the principles for remedial work on skid sites are as follows:

- Divert all stormwater prior to entrance into skid site. This will ensure that perimeter drainage controls on the skid only have to deal with local runoff from the skid surface.
- Pull back perched birds nest material and stockpile on skid site leaving sufficient room for perimeter drainage to be installed and maintained.
- Ensure the discharge points have outlets on stable original ground and onto ridge systems to help spread the discharge. Use sumps or excavated sediment traps prior to the outlet point if they can be safely installed.
- Any discharge over fill material should be via pipe / flume systems to discharge to stable point below / away from fill material.

- Stabilise exposed ground by seeding / mulching. (Mulch should not be placed on flow paths, as it will be mobilised)
- Monitor the perimeter drainage controls on a regular schedule.

Clearly, for all future harvesting operations, the management of slash and logging debris (including all logging waste at the skid site) needs to be planned prior to harvest operations commencing. All unwanted logging waste material needs to be carted away from the skid site operations and placed in designated stockpile areas that pose no risk of being carried off site by erosion, floodwater or debris flow.

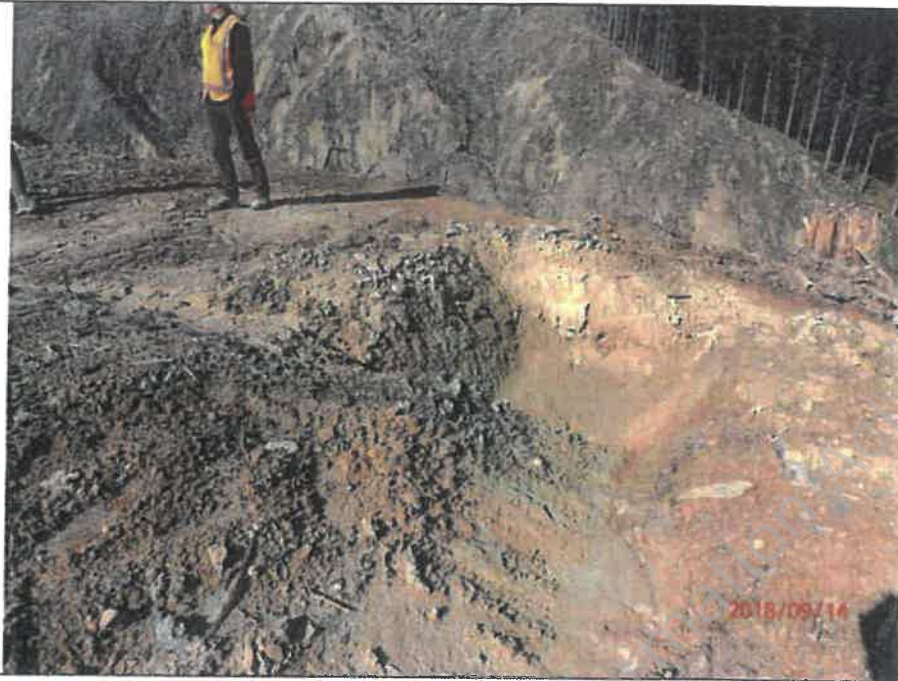
In point 1 above, I have briefly discussed the option of burning any remaining logging material after perched birds nest debris has been pulled back. I consider burning to be a last resort, as it is a high risk operation. I would not recommend burning to a forest manager, but would note that it is an option they may wish to use, if they are prepared to carry the risk of having to control the burn. Certainly, I consider that it is too late this season to initiate any more burning operations. If burning is specifically required as a control option, one could argue that there is a degree of culpability if the burning goes wrong.

Norm Ngapo

15 September 2018



Skid site 20. Perched birds nest material has been pulled back from edge of skid and placed in stockpile. Perimeter V-drain installed to stable outlet onto ridge. Exposed ground is due for seeding by helicopter.



Perimeter V-drain discharging via sediment trap onto stable outlet over ridge.



Forest and logging debris in stream channel below skid 20 has been cleaned out of the channel.



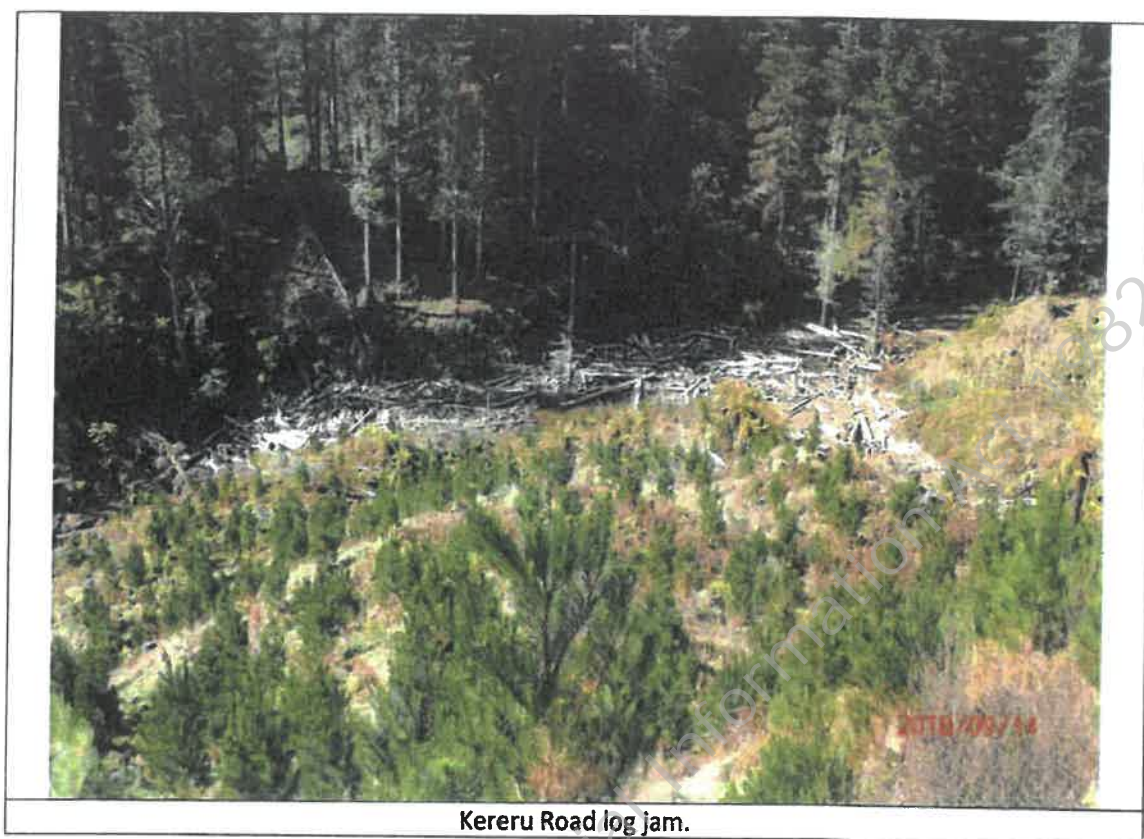


Un-named skid (Waituna Road 3.2 km). Birds nest material pulled back from edge of skid and stockpiled on skid. Perimeter V-drain installed to divert stormwater on skid to stable outlet on ridge system. Note slope of long narrow skid site.



Remedial work in progress on skid site at end of Kaka Road. Very large debris stockpile and slow progress due to the type of material being shifted.





Kereru Road log jam.

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**“N”**

The document annexed and marked "N"  
is referred to in the annexed affidavit of  
**DYLAN BARRIE FOSTER** affirmed at Gisborne  
this 20th day of November 2019 before me:

  
Solicitor of the High Court of New Zealand

Torepe Taumaunu  
Deputy Registrar  
High Court of New Zealand  
District Court at Gisborne

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Forest Inspection – Juken New Zealand Ltd (JNL) – Waituna Forest 13 December 2018

Inspection was undertaken by Norm Ngapo (Enforcement Officer - GDC) and Scott Dobbie (GDC)

Met at 0700 with Patrick Bethell (JNL) at Gisborne. Travelled to Waituna Forest for on-site inspection. During the site inspection, we drove up Waituna Road, stopping to check on remedial works on a range of skid sites and roads throughout the forest.

1. Skid site 7.2 Kaka Road. This skid site was also inspected on the September inspection while the remedial works were underway (identified in that report as "skid site at end of Kaka road"). Drainage from Kaka Road has now been diverted and discharged at the entrance to the skid so that the skid is effectively isolated from all stormwater runoff entering the site. Logging material and fill has been pulled back from the outside edges of the skid, and stockpiled onto the working area of the skid. There is a very large volume of material stockpiled, as this skid covered a 270 degree working span. Perimeter controls comprising V-drains have been installed and discharge to a number of suitable discharge points on hard ground around the outside edge of the skid. One discharge point is through some logging slash material, but is not considered to be a risk, as there is a short drop to a road below, which acts as a bench to trap any possible movement of material.

*Comment: The large volume of material at this site has posed problems for remediation, but the risk of birds nest failure has been reduced to an acceptable level.*

2. Skid 2 Kiwi Road. The skid site has been isolated from stormwater entering from off site. Logging material has been pulled back from the edges of the skid and stockpiled on the skid floor. The perimeter drains have been installed and discharge to the best available discharge points. There is a volume of logging slash on the slope below the skid site that is in an area that is currently too wet to access. This area will need to be dry before any further work is undertaken. Logging material in the dry valley further downstream is not considered at risk of moving because the gradient of the valley is only undulating (4 to 7 degrees slope).

*Comment: When the wet area has dried out to allow for access, any work undertaken to pull back logging slash to a safe stockpile area should be minimal. The key issues are to reduce the risk of this material moving downslope, and to provide for unimpeded stormwater flow. The rest of the works are satisfactory.*

3. Roadside drainage and stabilisation of batter slopes. Roadside drainage was viewed at a number of sites during the inspection, as well as stabilisation of batter slopes below the roads. Roadside drainage included use of berms, discharge pipes and flumes, as well as cross culvert pipes (under roads) discharging via flume systems to stable outlets downslope. JNL has also carried out aerial seeding and hydromulching of bare areas since last inspection. Both systems have worked well, with the hydromulching being particularly successful.

*Comment: The success of surface protection of exposed areas by aerial seeding and /or hydromulching is clearly evident.*

4. End of Falcon Road. Skid 80/9. Falcon Road is on very steep country with some hard rock as well as siltstone and jointed mudstone. The road has been constructed by end hauling with all excavated material taken off site for stockpiling. Skid 80/9 is located on a steep ridge on

an outside bend of Falcon Road. The first part of the skid has been placed on compacted fill to provide for sufficient turning circle for vehicles around the bend. Runoff is controlled so that the skid site is effectively isolated. Logging slash over the edge of the skid has been pulled back as much as possible and stockpiled on site. Perimeter controls comprise installation of V-drains between the stockpile and the outside edge of the skid. The V-drains discharge via an excavated sediment trap (to slow water down) and then spill over hard natural ground onto the ridge system.

*Comment: The logs have been pulled back as much as possible, and the drainage systems are suited to the site. While it would have been ideal to pull back more logs, any further work would not be safe. The final result is satisfactory and it is recognised that this is a difficult site to remediate.*

5. Skid 82/3 and 82/4. 7 (Off 7km Waituna Road). Skid 82/3 is isolated with water controls. Logging debris that can be reached has been pulled back onto skid. Perimeter controls have been installed and are working well. Drainage is to good discharge points. Some perimeter controls involve installing outside camber to shed stormwater evenly along length of skid site. Benches installed below skid on both sides. Lots of exposed ground. Remedial works are satisfactory. Looked across valley to skid 82/4. There is a substantial area of exposed ground (disturbed ground from earthworks and erosion scars) in this vicinity. Some logging debris is present in the dry valley system between the two skid sites, but is not considered to be of sufficient risk to downstream protected waterways to be worth removing.
6. The last stop was below skid 20 to view new road construction and new temporary crossing. This work is not part of the Abatement Notice, but Patrick Bethell wanted me to check that their construction methodology was satisfactory. The works have been well implemented with removal of stumps, stripping topsoil, formation of bench to key in and compact road formation as construction progresses. Removed stumps have been placed on the bench below the road formation.

#### Discussion

Patrick Bethell noted that all remedial works on skids and roads have been completed. Drainage controls and perimeter controls on skid sites should be monitored over the summer months to ensure that they continue to operate in accordance with their designed function.

The skid sites that we visited were chosen at random and were scattered throughout the forest. I also made note of the remedial works on roads and skid sites as we drove to the sites where we stopped.

I am satisfied that the remedial works on the roads and skid sites have been successfully completed as required.

The main outstanding requirement is to remove the Kereru Road log jam as discussed in the previous report dated 15 September 2018.

Norm Ngapo

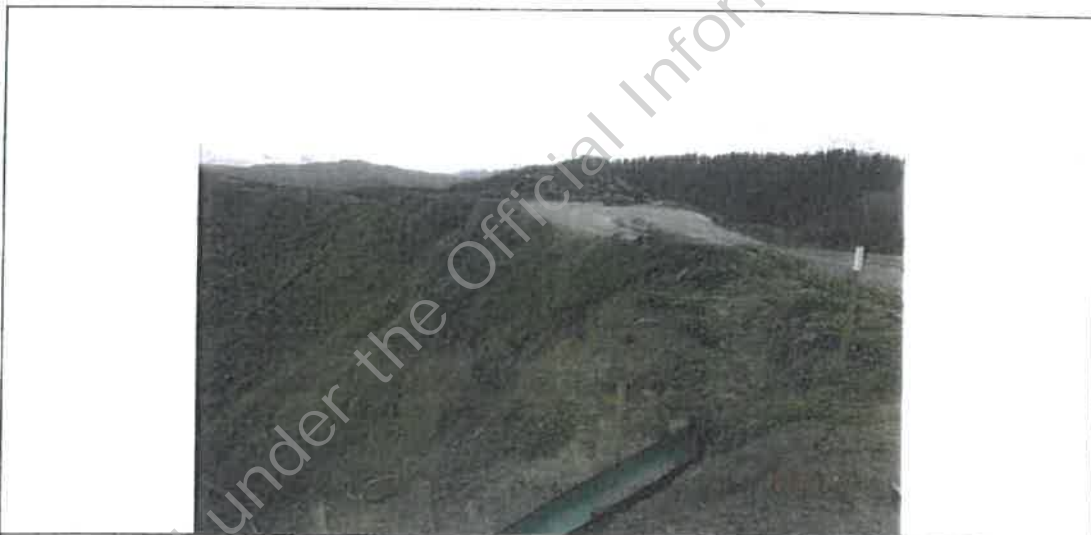
14 December 2018



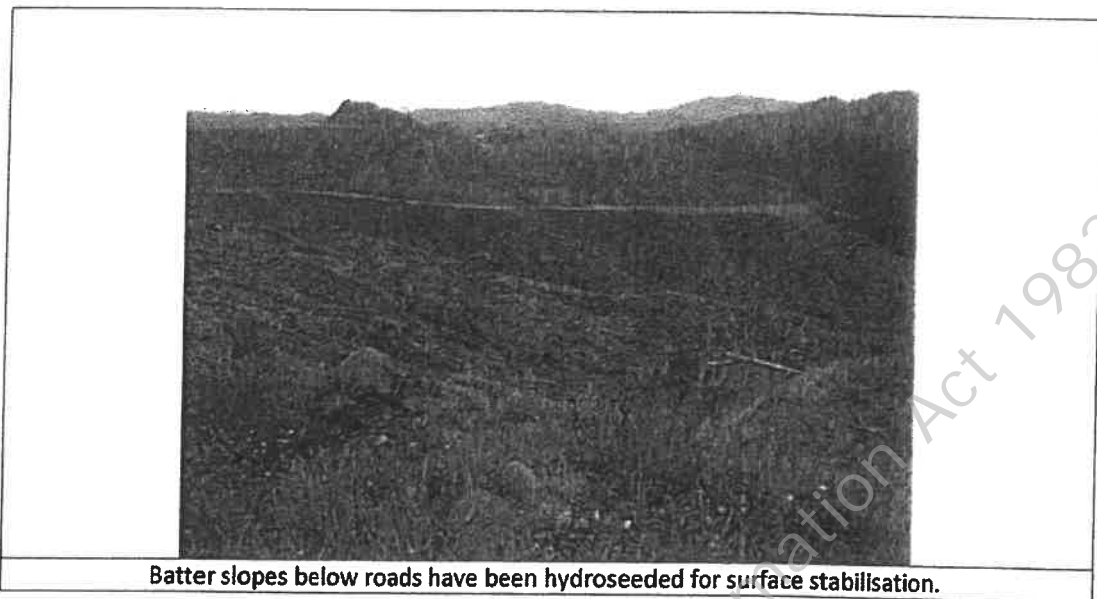




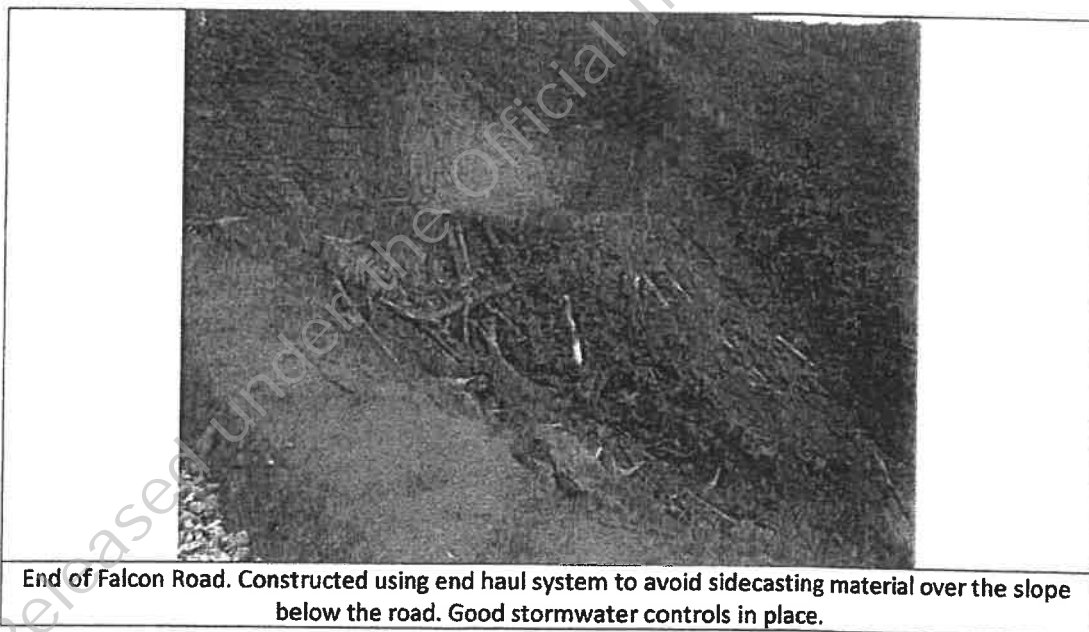
Logging debris below skid 2 is in an area that is currently too wet to access.



Looking down Kiwi Road towards skid 2. Note rise in levels onto skid to prevent stormwater from road entering skid site. In the foreground, the roadside drainage (cross culvert under road) is discharging via pipe into flume system to stable outlet. Some revegetation of exposed berms and batter slopes following aerial seeding.



Batter slopes below roads have been hydroseeded for surface stabilisation.



End of Falcon Road. Constructed using end haul system to avoid sidecasting material over the slope below the road. Good stormwater controls in place.



Skid 80/9 at end of Falcon Road. Logging material pulled back and stockpiled on skid. V-drain installed draining via sediment trap to slow runoff prior to discharge onto hard ground over ridge.



Perimeter controls on skid 82/3 installed after logging slash pulled back from edge and stockpiled on skid.

Released Under the Official Information Act 1982



**IN THE DISTRICT COURT  
AT GISBORNE**

**CRN - 18016501457**

**UNDER THE**

Resource Management Act 1991

**BETWEEN**

**GISBORNE DISTRICT COUNCIL**

Prosecutor

**AND**

**JUKEN NEW ZEALAND LIMITED**

Defendant

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**DEFENDANT'S SUBMISSIONS ON SENTENCING  
DATED THE 19<sup>th</sup> DAY OF NOVEMBER 2019**

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NEXT EVENT: Sentencing, 22 November 2019 at 9.30am  
JUDICIAL OFFICER: Judge Dwyer  
CASE OFFICER: Rachell Staunton

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**BROOKFIELDS  
LAWYERS**  
S J Corlett  
Telephone No. 09 379 9350  
Fax No. 09 379 3224  
P O Box 240  
DX CP24134  
**AUCKLAND**

**DEFENDANTS SUBMISSIONS ON SENTENCING****MAY IT PLEASE THE COURT****Summary**

1. Juken New Zealand Limited has pled guilty to one charge under the Resource Management Act 1991 ("the Act"), being that it contravened or permitted a contravention of section 15(1)(b) of the Act by discharging a contaminant, namely slash, logging debris, waste logging material and/or sediment, onto or into land in circumstances which may result in that contaminant entering water.
2. The discharges occurred following major rainfall events on 3 and 4 and 11 and 12 June 2018 in Waituna Forest ("Forest"), 30 kilometres southwest of Gisborne.
3. In addition to the Forest, one neighbouring property was affected. As soon as the weather abated and it was safe for an assessment to be carried out, Juken self-reported the discharge to the Gisborne District Council ("Council") and started remedial works in the Forest and at the neighbouring property. The work on 9(2)(a)'s farm included removing not only Radiata Pine from the Forest, but also some debris from his own property.<sup>1</sup>
4. While the Council inspected the Forest on 30 and 31 July 2018, and issued abatement notices on 6 August 2018 (dated 3 August 2018 and sent 6 August 2018), the remedial works at both locations were well underway. Juken has expended approximately \$600,000 in undertaking the remedial work and has done so to both Council's and 9(2)(a)'s satisfaction.<sup>2</sup>
5. Juken is committed to ensuring complete compliance with all Resource Consent conditions moving forward and to relationships of trust and confidence with the Council and all of its neighbours.
6. The company has acknowledged liability by pleading guilty and it has access to the means to pay a fine. Juken acknowledges that it has two previous

<sup>1</sup> Affidavit of Dylan Barrie Foster affirmed 20 November 2019 ("Foster Affidavit") [27] to [29] and [40]  
<sup>2</sup> Foster Affidavit [30] to [46]

convictions for environmental offending that occurred almost 23 years ago, and despite the size and extent of its operations, has not offended against the Act since, save for on this occasion.<sup>3</sup>

7. Given the comparable cases, Juken submits the starting point for a fine should be **\$75,000**.
8. Juken was at all times cooperative with Council. It submits it is entitled to discounts for its cooperation, remorse and proactive remedial work, and its guilty plea.
9. The company respectfully submits that the final fine imposed should be **\$54,000**.

### **Material Background**

10. Juken holds two Resource Consents for work carried out in the Forest. The Council alleges, and Juken admits, that it was responsible for discharging slash, logging debris, sediment and logging material in the Forest.<sup>4</sup>
11. Prior to the June 2018 storm events, Council did not carry out any Resource Consent inspections at the Forest. Nor prior to this time had Juken received any notices or indications from Council raising non-compliance concerns. In November 2013, a Council representative who had undertaken several inspections while processing consents on Juken estates in Gisborne advised, amongst other things, that its operation was well managed and it had exhibited good consent compliance.<sup>5</sup>
12. There were 11 debris slides from landings across 1,096 hectares, 952 hectares of which were subject to the Resource Consents, in which there are approximately 100 skid sites. Juken oversees approximately 600 landings in the Wharerata Forest in total.<sup>6</sup>

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<sup>3</sup> Foster Affidavit [58] to [59]

<sup>4</sup> Agreed Summary of Facts [1] and [24] to [26]

<sup>5</sup> Foster Affidavit [11] and [18]

<sup>6</sup> Foster Affidavit [17]

13. As soon as Juken became aware of the discharges, it contacted 9(2)(a) and made arrangements to inspect and remediate the debris on his property, as well as in the Forest. It was not possible to do this safely until 20 June 2018 due to ongoing bad weather.<sup>7</sup>
14. On 25 June 2018, Juken self-reported the matter to the Council. Juken immediately commenced remediation, and did so well in advance of the Council visiting site on 30 and 31 July 2018 and issuing abatement notices on 6 August 2018. Juken subsequently complied with all of the Council's directions and it has fully remediated the site to Council's satisfaction, save for some planting which it was recently asked to carry out, and which it has agreed to do.<sup>8</sup>
15. 9(2)(a) is also satisfied with Juken's response and its remediation work. Juken remains on good terms with him. He has advised that he suffered no emotional harm, did not want to provide a victim impact statement nor participate in restorative justice, which Juken was at all times willing to attend.<sup>9</sup>
16. To date, Juken has spent approximately \$600,000 remediating the damage caused, including removing some debris from 9(2)(a)'s farm that came from that property, and not Juken's operations.<sup>10</sup>
17. Juken entered a guilty plea on 22 August 2019, prior to the second case review hearing and a trial date being allocated, and after review of Council's full disclosure and following discussions with its lawyers.

### **Sentencing Purposes and Principles**

18. Juken agrees that the Court must undertake a three-step approach to sentencing by fixing a starting point, making adjustments for aggravating and/or mitigating factors and applying a discount for a guilty plea.<sup>11</sup>

<sup>7</sup> Foster Affidavit [27] to [30]

<sup>8</sup> Foster Affidavit [37] to [49]

<sup>9</sup> Agreed Summary of Facts [30]

<sup>10</sup> Foster Affidavit [40] and [46]

<sup>11</sup> R v Clifford [2012] 1 NZLR 23 (CA) at [60]. Tab 1 of the prosecutor's case bundle



19. Juken accepts that the Sentencing Act 2002 also applies and that the relevant principles are those set out at paragraphs 7, 10 and 11 of the prosecutor's submissions.

### **Assessment of Starting Point**

#### ***Culpability***

20. Juken's offending arose out of a genuine belief that its operations were compliant at the time, including with the New Zealand Forest Owners Association's ("NZFOA") Environmental Code of Practice for Plantation Forestry. This belief was based on:
- (a) Council's positive feedback in 2013;
  - (b) Council not having carried out any Consent inspections, indicating it had no compliance concerns;
  - (c) Council not having issued any compliance notices nor having raised any Consent concerns;
  - (d) it having engaged a number of reputable and experienced contractors and having consulted with each as to Juken's expectations and the Consents' conditions and requirements;
  - (e) its regular monitoring of contractors; and
  - (f) it having had extensive policies and procedures in place and undergoing regular third party compliance audits.<sup>12</sup>

#### ***Precautions Taken***

21. The forestry operations are largely carried out by contractors. Juken engaged experienced contractors and consulted with them over the requirements of the Resource Consents. Their contracts included a schedule which set out the

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<sup>12</sup> Foster Affidavit [7] to [8], [11], [12], [18], [19] and [25]

plan for the particular operation in the Forest, agreed steps that would be taken to mitigate risks (both environmental and health and safety related), maps of the Forest and copies of the Resource Consents.<sup>13</sup>

22. Juken's operational staff then oversaw the contractors and carried out weekly inspections of their work on site.<sup>14</sup>
23. The company also undertook other precautions as a part of normal operations that included removing log waste from site, and having debris dams erected to protect waterways and neighbouring properties where possible.<sup>15</sup>
24. The company conducts annual water quality sampling to monitor stream health and biodiversity and has processes in place to monitor and manage rare, threatened and endangered fauna and flora. Juken also has environmental policies covering water forestry management, endangered fauna and biodiversity, and it also runs permanent water testing including in Mangapou Stream in Waituna.<sup>16</sup>
25. Juken is also (and was at the time) externally audited annually by SGS, a professional inspection, verification, testing and certification company, against the FSC and ISO 14001 standards. It also undergoes recertification audits every three years. The company passed all its audits.<sup>17</sup>

***Disregard for Abatement Notices or Council requirements***

26. At no time did Juken disregard any abatement notices. The company accepts it breached the terms of the Resource Consents, but did so with the belief that its operations were compliant.
27. While accepting that primary responsibility for compliance lies with Juken, there were no prior notices issued or concerns raised by Council regarding non-compliance. This is unlike a number of other similar forestry sentencing

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<sup>13</sup> Foster Affidavit [24] to [26]

<sup>14</sup> Foster Affidavit [24]

<sup>15</sup> Foster Affidavit [8], [12] and [55]

<sup>16</sup> Foster Affidavit [8]

<sup>17</sup> Foster Affidavit [26]

cases where there was/were prior notice(s) given by Council (including issuing abatement notices) and those notices were ignored.

28. Where there has been disregard for Council's concerns, the Court has considered the defendants' culpability as high due to their conduct being deemed reckless and/or bordering on deliberate.<sup>18</sup>
29. In *PF Olsen* there were regular Council inspections undertaken and areas of concern noted and recommendations made. Four compliance field sheets were issued on separate occasions which the company failed to adequately comply with. In *Forest Owner Marketing Services* a contractor had previously raised concerns, three separate compliance field sheets were issued raising non-compliance issues and an abatement notice was also issued. In *Whitikau*, four field compliance sheets and an abatement notice were issued, which the defendant breached. Accordingly, it is submitted that Juken's culpability is not the same as those companies'.

### ***Environmental Damage***

30. 11 of its approximately 100 skid sites discharged logging waste and slash during major rain events which occurred within a week of each other.
31. Juken accepts that its offending caused adverse effects to tributaries and streams in the Forest and to 9(2)(a)'s property.<sup>19</sup> It also accepts that the environment includes protected watercourses and that debris entered the water.
32. Whilst acknowledging the adverse effects, it is submitted that those effects in this case are not necessarily as significant as in a number of the cases referred to by the parties, including in that it was not a habitat for threatened indigenous species (*Whitikau Holdings*)<sup>20</sup> or "at risk-declining" species (*Forest Owners Marketing Services*),<sup>21</sup> a location of customary and national

<sup>18</sup> Corboy and Whitikau at Tabs 1 and 2 of the defendant's case bundle respectively

<sup>19</sup> Agreed summary of facts, paragraph 35

<sup>20</sup> whio and other indigenous species

<sup>21</sup> Forest Owners Marketing Services Limited (long-fin eel and potentially Hochstetters frogs)

importance (*Corboy*),<sup>22</sup> and the offending has not permanently destroyed fish populations (*PF Olsen*).<sup>23</sup>

33. Juken also acted quickly and efficiently to remediate both the Forest and 9(2)(a)'s property. Remediation works were extensive and undertaken to the Council's and 9(2)(a)'s satisfaction.

### ***Deterrence***

34. Juken acknowledges that deterrence is a valid purpose of sentencing, however it submits that deterrence has limited value in this case. Juken was unaware that it was in breach of its Consent conditions and genuinely believed that it was not. Juken has incurred costs of approximately \$600,000, being equivalent to the maximum fine available. It has also worked collaboratively with the Council and the affected land owner and increased its control and monitoring measures. It is therefore not a company at high risk of re-offending.
35. In terms of general deterrence, while Juken accepts that its sentence will have deterrence value for other forestry companies, Council is in fact prosecuting a number of these companies. It is submitted that their own prosecutions will have a far greater deterrent effect on them than Juken's sentencing.

### ***Financial Means***

36. Juken has access to the means to pay a fine in the range anticipated.

### ***Sentencing Levels in Similar Cases***

#### ***Bay of Plenty Regional Council v Whitikau Holdings Limited, Paturakau Limited & Neville Walker***<sup>24</sup>

37. Whitikau Holdings pled guilty to five charges and Paturakau and Mr Walker each pled guilty to four. One charge against each was filed pursuant to section

<sup>22</sup> Waitomo Caves

<sup>23</sup> PF Olsen at Tab 6 of the prosecutor's sentencing casebook

<sup>24</sup> [2018] NZDC 3850, at Tab 1 of the defendant's casebook



15(1)(b) of the Act, and Whitikau faced one charge for breach of an abatement notice.

38. The Council received two separate complaints about the defendants' operations, raised issues with it informally at least once and issued two field compliance sheets prior to the offending. After the offending commenced, the Council advised the defendants at site inspections on two separate occasions that they were in breach of sections 13(1)(b), 13(1)(d), 15(1)(a) and 15(1)(b) of the Act, it issued two further field compliance notices and an abatement notice, which the defendants subsequently breached.
39. The defendants' conduct was reported by way of third-party complaints to the Council, both with regards to how its operations would affect threatened indigenous species present (whio and eels).
40. The streams within the forest were classified as aquatic ecosystems and were habitats and migratory pathways for indigenous fish species, including short-jawed kokopu, and the habitat for threatened indigenous species, the blue duck (whio). The Court noted it was likely other indigenous species were also present in the area. Non-compliance was ongoing from at least 23 June 2015 until 9 December 2016 and affected a large part of the defendants' operations. The offending would have killed any aquatic life in the stream bed or forced it to retreat, and the aquatic ecosystem was unlikely to recover from the damage for an estimated 5 to 10 years. The adverse environmental affects were considered to fall within the mid to upper range.
41. Whitikau's conduct was considered to be extremely reckless and very reckless, bordering on deliberate, and as such, its culpability was high. Paturakau's and Mr Walker's conduct was considered reckless and moderately high.
42. The starting point adopted for Whitikau was \$80,000 (for five charges) and for Paturakau and Mr Walker, \$30,000 and \$20,000 respectively. All defendants received discounts for previous good character (5%) and their guilty pleas (25%), and 3% for remediation for Paturakau and Mr Walker. Overall fines imposed were \$57,000, \$20,700 and \$13,800 respectively.

***Waikato Regional Council v Corboy Forest Management Limited & Corboy Earthmovers Limited***<sup>25</sup>

43. Corboy Forest Management Limited ("CFML") pled guilty to five charges and Corboy Earthmovers Limited ("CEL") to two charges. At least one of the charges related to unlawful discharge of a contaminant.
44. The Council identified the potential breaches when it carried out an aerial inspection, followed by an inspection of the property. No sediment or erosion controls had been installed and there had been uncontrolled discharges of sediment-laden water into the Waitomo Stream in numerous locations and no site remediation had occurred post-harvest. Large logs were also left in the stream.
45. Once it became aware of the issues, Council issued an abatement notice on 15 September 2014 but remedial work did not commence until 8 December 2014.
46. The property is located in the Waitomo Caves catchment and is an area containing High Risk Erosion Areas. The Waitomo Caves are considered to have customary significance for local iwi and of national importance due to their ecological and eco-tourism value. Also of national importance was Maori relationships with their culture, traditions, ancestral lands, water, sites, waahi tapu and other taonga, as well as protection of historical heritage from improper use. The environmental effects were that streams were heavily impacted by debris and fine sediment, access to a stream bed was severely compromised, one stream was almost entirely obscured by slash, and unconsolidated soil would continue to add sediment to the stream. The effects were not temporary.
47. Two victims were impacted by the offending, the landowner whose property was damaged, business impacted and personally embarrassed. The NZ Native Forests Restoration Trust claimed trustees, the reserve manager and possibly the public were distressed by the offending.

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<sup>25</sup>

[2015] NZDC 21655, at Tab 2 of the defendant's casebook

48. Both defendants were found reckless to the highest degree.
49. The Court adopted starting points for CFML and CEL of \$70,000 (for five charges) and \$30,000 respectively. They received discounts of 5% and 3% respectively for previous good character and 25% for their guilty pleas. The fines imposed were therefore \$49,875 and \$21,825 respectively. Both were reduced slightly for financial capacity.

***PF Olsen Limited v Bay of Plenty Regional Council*<sup>26</sup>**

50. PF Olsen pled guilty to two charges, including one pursuant to section 15(1)(b) of the Act, and another for breach of section 9(3)(a) of the Act.
51. The Council issued four separate field compliance sheets prior to the end of harvesting. PF Olsen failed to adequately address the issues raised.
52. Following a significant rain event, 8,000 to 10,000 m<sup>3</sup> of forest slash and debris was discharged into the surrounding environment, and despite significant remedial work, some of the slash and sediment was expected to take some decades to dislodge. The streams the discharge entered were habitats for banded kokopu and red fin bully and the prosecution's freshwater ecologist observed it was difficult to see how fish populations could continue to exist.
53. The High Court considered that PF Olsen had knowledge of the risk being run and ran that risk.
54. The company had two prior convictions from 15-16 years prior that did not specifically relate to erosion or instability so no uplift was imposed. It spent \$250,000 on remediation, the total financial impact of which was \$331,616, and which was voluntary and the High Court considered that deterrence had therefore been achieved and no uplift in this respect was warranted.
55. The High Court set the global starting point at \$130,000, \$80,000 of which was attributable to the section 15(1)(b) charge. The company was entitled to a 30% discount for remediation work and 20% for its guilty plea, resulting in

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<sup>26</sup>

[2012] NZHC 2392, at Tab 6 of the prosecutor's sentencing casebook

finest of \$28,000 for the regional plan breach charge and \$44,800 for the section 15(1)(b) charge.

***Marlborough District Council v Laurie Forestry Services Limited***<sup>27</sup>

56. Laurie faced two charges, one for breach of section 15(1)(b) of the Act and one for breach of section 9(2) of the Act.
57. The Council became aware of this offending via a third-party complaint that their water supply was full of sediment as a result of Laurie's forestry works. The following day it received a further complaint that there was significant sediment coming off the forestry property and a neighbouring bach was surrounded by mud from a slip.
58. A large plume of sediment was visible in South East Bay, Pelorus Sound, and overland flow paths of mud, sediment and forestry debris was readily apparent. A creek running into the Bay was also full of large logs, wooden debris and sediment. Visible sediment extended for 400m into the Bay and the bach was almost completely surrounded by mud which was around both sides and underneath it. Other properties' fences were damaged, and silt and rock was deposited on third party properties.
59. The environmental offending affected the forestry site itself, the creek running through the forest, various residential properties, the coastal marine environment of the Bay and the wider area of Pelorus Sound, and a number of mussel farms. The Court considered that aquatic life in the creek must have been detrimentally affected, there was a real impact on people's enjoyment of their properties, the effects on the Bay included smothering habitats, which would be long-term and cumulative, and contributed to degradation of the Sounds' ecosystem.
60. Laurie assisted with some of the remedial work but other work had to be carried out by the affected property owners themselves.

<sup>27</sup>

[2019] NZDC 2602, at Tab 10 of the prosecutor's sentencing casebook



61. The Court considered that Laurie had a relatively high degree of carelessness of a systemic nature and a similar level of culpability.
62. The Court adopted a starting point of \$100,000, being \$50,000 in respect of each charge. It awarded a 5% discount for previous good character and a 25% discount for its guilty pleas. Overall the fine imposed for each charge was \$35,500.

***R v Forest Owner Marketing Services Limited*<sup>28</sup>**

63. FOMS pled guilty to one charge for breaching section 15(1)(b) of the Act.
64. When constructing forestry tracks the defendants left a large amount of insecure sediment and side-cast material on the edge of the tracks which had steep faces. When later hauling logs down the tracks that material was pushed over embankments into gullies and eventually into streams in the forest. A contractor raised that concern with FOMS, but the issue was not fixed. It also failed to install water controls on a track. Following a major rainfall event the offending was reported to Council by a member of the public who observed sediment in the stream almost a month after the rain event.
65. The Council issued two field compliance sheets to FOMS. It repeatedly failed to carry out all remedial works as required and disagreed with Council that the work was required, and misled Council as to the extent of the works completed. Subsequently, a further severe rainfall event occurred. The Council issued a further field compliance notice requiring the previously stipulated works to be completed, and an abatement notice.
66. There was subsequently a large landslide at the forest and the debris was material that the Council had required FOMS to remediate in its three compliance notices and the abatement notice. It and another landslide at the property caused debris to enter the main tributary to Tirohanga Stream. The Council eventually arranged for a third party to carry out the remedial work at a cost of \$16,800 plus GST which FOMS agreed to pay, when FOMS failed to do the work.

<sup>28</sup>

[2016] NZDC 20673, at Tab 11 of the prosecutor's sentencing casebook

67. The streams affected had moderate to high ecological value, being a habitat for aquatic invertebrates, long-fin eels (At Risk-Declining) and potential habitat for Hochstetters frogs (At Risk-Declining), as well as potentially threatened nationally-vulnerable birds and At Risk-Declining fish. They were adversely affected. There was also a high risk of slope failure and long-term issues from major landslides and sedimentation. The overall effect on the environment was moderate to high. Remedial work was “urgent” in July 2015 but had not been undertaken at the date of sentencing (17 October 2016).
68. The Court considered that FOMS was reckless, it failed to appreciate the extent of the problem and was unwilling to accept Council’s expertise. The steps taken to remediate the discharge were also clearly not sufficient.
69. The Court imposed a starting point of \$50,000. FOMS was entitled to a 10% discount for good character (solely because its co-defendants had received that discount), 3% for remedial work, a 5% deduction for remorse and 20% for a guilty plea indicated less than two weeks before commencement of a jury trial. The resulting fine was \$50,000.

### **Assessment of Starting Point**

70. In summary:
- (a) Juken had a genuine belief its operations were compliant. The offending was not deliberate. Previous cases indicate that a “high” level of culpability is associated with recklessness of the highest degree,<sup>29</sup> and conduct that is extremely reckless<sup>30</sup> and very reckless bordering on deliberate.<sup>31</sup> Laurie’s offending was categorised as a moderately high level of carelessness where significantly more homeowners and property were affected by its breaches. It is submitted that Juken’s culpability is in the moderate range;

<sup>29</sup> Corboy at Tab 2 of the defendant’s casebook

<sup>30</sup> Whitikau Holdings at Tab 1 of the defendant’s casebook

<sup>31</sup> Whitikau Holdings at Tab 1 of the defendant’s casebook

- (b) Juken accepts that there was adverse environmental damage and the environment included protected watercourses. The subject storms were major weather events. While Juken does not dispute that Waituna Forest has ecological importance, it is not in the same category as some previous cases. The company also immediately commenced clean up operations without any prompting or requirement from the Council and has remediated the damage in as far as possible;
  - (c) starting points for a contaminant offence in cases relied upon have been within the range of \$50,000 to \$80,000. However, almost all those cases involved multiple charges, unlike the current prosecution, which involves a single offence. In the majority of those cases the offending company was on notice that it was in breach of its Consent conditions and there were issues that needed to be rectified. Juken also self-reported the offending in this case;
  - (d) Juken submits that the need for deterrence is limited given the risk of reoffending is low and the Council is directly prosecuting a number of the other operators.
71. The Council seeks a starting point of \$150,000, well in excess of the majority of the other starting points for this type of offending and primarily on the basis of the extent of the damage and number of skid sites involved. While it is accepted that these factors warrant an increase in the starting point, as they are two of a number of factors to be assessed, they do not in themselves justify an almost two to three times increase on starting points previously imposed.
72. In the circumstances, it is respectfully submitted that an appropriate starting point should be **\$75,000**.

## **Personal Aggravating and Mitigating Factors**

### ***Aggravating Factors***

73. It is accepted that Juken's prior history for health and safety offending has no direct relevance to the current sentencing.
74. Juken also accepts Council's position that its previous convictions under the Act are historic given they relate to offending from early 1997, and as such, do not warrant any uplift.

### ***Mitigating Factors***

75. Juken self-reported the discharge and immediately commenced remediation work, including before abatement notices were issued.
76. The only affected land owner is satisfied with Juken's remedial efforts and the Council has also previously noted its satisfaction with Juken's attitude towards the remedial works and their completion.
77. Juken has expended approximately \$600,000 in carrying out the remedial work. It also removed some debris from its neighbour's property that originated from that property rather than its own.
78. Juken at all times co-operated with the Council and its officers, including by attending voluntary interviews regarding its offending and hosting Council visits to its site to enable the Council to carry out testing and inspection works.
79. The company is extremely remorseful for its offending and the damage caused and has exhibited this through its actions and interactions with its neighbour and Council.
80. As a result it is submitted that a discount of 10% for its cooperation, remorse and proactive remedial work is appropriate.


### **Guilty Plea**

81. Juken accepts Council's position that it is entitled to a 20% discount in respect of its guilty plea.

### **End Point**

82. The defendant's position is:
- (a) it faces one charge pursuant to section 15(1)(b) of the Act for which a starting point of **\$75,000** is appropriate;
  - (b) there should be no uplift for aggravating factors;
  - (c) there should be a total discount of 10% in respect of mitigating factors;
  - (d) a discount of 20% for Juken's guilty plea is appropriate;
  - (e) the end point fine should be **\$54,000**.

**DATED** this 20th day of November 2019



S J Corlett/P Couldwell

Counsel for the defendant



IN THE DISTRICT COURT  
AT GISBORNE

CRN18016501457

I TE KŌTI-Ā-ROHE  
KI TŪRANGA-NUI-A-KIWA

BETWEEN

GISBORNE DISTRICT COUNCIL

Prosecutor

A N D

JUKEN NEW ZEALAND LIMITED

Defendant

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**PROSECUTOR'S SENTENCING SUBMISSIONS**

**DATE: 13 November 2019**

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Next event date: Sentencing hearing, 22 November 2019 at 2.15pm

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**CooneyLeesMorgan**  
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Level 3, 247 Cameron Road  
PO Box 143  
Tauranga 3140  
Tel: 07 578 2099  
Partner: Adam Hopkinson  
ahopkinson@clmlaw.co.nz

## MAY IT PLEASE THE COURT

1. The defendant, Juken New Zealand Limited (**Juken**), has pleaded guilty to one charge of discharging a contaminant (namely slash, logging debris, waste logging material and/or sediment), onto land in circumstances where it may enter water, in contravention of s 15(1)(b) of the Resource Management Act 1991 (**RMA**). A contravention of s 15(1)(b) is an offence under s 338(1)(a) of the RMA for which the maximum penalty is a fine of \$600,000.
2. The charge relates to offending at Waituna Forest between 1 June 2017 and 31 July 2018. The circumstances of the offending are set out in the prosecutor's summary of facts. In short:
  - (a) Juken is the holder of a Crown forestry licence for Waituna Forest and is the holder of the resource consents that authorise forestry harvesting and associated earthworks at that forest.
  - (b) As the consent holder and licensee, Juken was responsible for ensuring that its commercial forestry harvesting activities were being undertaken in compliance with the conditions of its resource consents and in a manner that avoided causing environmental harm to nearby watercourses.
  - (c) As a result of contraventions by Juken of conditions 3, 6, 7, 11 and 20/21 of Juken's resource consents for Waituna Forest, at least 11 major debris slides occurred from landings (skid sites) in the forest, discharging slash, logging debris, waste logging material and/or sediment to watercourses below.
  - (d) The discharges had severe impacts on the stream ecology of affected watercourses at Waituna Forest and on a watercourse at a downstream neighbouring property.
3. For the reasons that follow, the prosecutor submits that the appropriate starting point for the fine to be imposed on Juken would be **\$150,000**.
4. The owner of the affected downstream property has confirmed to Gisborne District Council (**GDC**) that he does not want to provide a victim impact statement nor participate in restorative justice. Accordingly, the prosecutor does not seek an order for reparation.

## SENTENCING PROCESS

5. It is submitted that the Court should sentence the defendant using the three stage approach confirmed by the Court of Appeal, namely:
  - (a) Set a starting point for the offending;
  - (b) Make adjustments for personal aggravating or mitigating factors; and
  - (c) Apply a discount for a guilty plea.<sup>1</sup>

## RELEVANT SENTENCING PRINCIPLES AND PURPOSES

6. The Sentencing Act 2002 (**Sentencing Act**) applies to RMA offences. All of the purposes and principles of sentencing under the Sentencing Act are relevant to the extent a particular case engages them.<sup>2</sup>
7. The following purposes of sentencing are relevant in this case:
  - (a) To hold the offender accountable for harm done to the community by the offending: s 7(1)(a). For discharge offences under the RMA, the “harm” in s 7(1)(a) relates not just to any injury to the immediate environment but the risk created of wider damage to it.<sup>3</sup>
  - (b) To promote in the offender a sense of responsibility for, and an acknowledgment of, that harm: s 7(1)(b).
  - (c) To denounce the offender’s conduct: s 7(1)(e).
  - (d) To deter the offender or other persons from committing the same or a similar offence: s 7(1)(f).
8. Of these purposes, it is submitted the most important is deterrence, both specific and general.

<sup>1</sup> *R v Clifford* [2012] 1 NZLR 23 (CA) at [60]. **Tab 1**

<sup>2</sup> *Thurston v Manawatu-Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, 27 August 2010 at [40]. **Tab 2**

<sup>3</sup> *Waslander v Southland Regional Council* [2017] NZHC 2699 at [24]. **Tab 3**

9. In *Hawke's Bay Regional Council v Stockade Pastoral Farms Ltd* Judge Thompson made the following point about deterrence in this context:<sup>4</sup>

[A] fine has to be a penalty with enough sting in it to be really felt on the offender's financial bottom line, and thus to be a deterrent to the offender and, more importantly still, I think, to be a general deterrent to others who follow the same occupation. The message has to be clear that if they get caught doing the same thing, their financial bottom line will be hurt also. If a fine is not at that level, it simply becomes a fee for a de facto licence to pollute and an absorbable item in the costs of doing business.

10. The following principles of sentencing from the Sentencing Act are relevant in this case:

- (a) The gravity of the offending in the particular case, including the degree of culpability of the offender: s 8(a).
- (b) The seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalty prescribed for the offence: s 8(b). As stated, the maximum penalty for the offence in this case is a fine of \$600,000.
- (c) The general desirability of consistency with appropriate sentencing levels: s 8(e).

11. In addition to the foregoing sentencing purposes and principles, it is submitted that when sentencing for offences under the RMA:

- (a) The Court must recognise that the purpose of the RMA is to promote the sustainable management of natural and physical resources. (Sustainable management means using natural resources while avoiding, remedying or mitigating adverse environmental effects: s 5(2) of the RMA.)<sup>5</sup>
- (b) The sentence imposed should foster the principle of environmentally responsible corporate citizenship.<sup>6</sup>
- (c) A purpose of sentencing is to impose financial costs or penalties that cause the polluter to internalise the environmental cost.<sup>7</sup>

<sup>4</sup> DC Napier CRI-2008-081-96, 20 March 2009 at [16]. **Tab 4**  
<sup>5</sup> *Thurston* at [40]. **Tab 2**  
<sup>6</sup> At [44].  
<sup>7</sup> At [44] and [45].

12. The importance of the “polluter pays” principle in RMA prosecutions was explained in *Machinery Movers Ltd v Auckland Regional Council*:<sup>8</sup>

As to the economic aspect, the economic reason why society may not in the absence of regulation strike a proper balance between economic output and environmental quality is that the costs of pollution are not borne by polluters but by somebody else. As a result, these “external” costs will not, in general, be taken fully into account by those who cause pollution. Insofar as pollution costs are not borne by those who cause pollution, or by the purchasers of their products, some part of the total benefits resulting from economic activity in the community is wrongly redistributed away from the victims of pollution to other groups in society. In order to correct this market failure, the government must intervene to impose financial costs or penalties which bring the external costs back to the polluter.

13. Economic considerations are also relevant to deterrence in RMA sentencing. In addition to Judge Thompson’s comment from *Stockade Pastoral Farms* in this regard cited above, in *PF Olsen Ltd v Bay of Plenty Regional Council* Brewer J held:<sup>9</sup>

Penalties should be set to ensure that it is unattractive to take the risk of offending on economic grounds. Consequently, if there is any profit to be derived from the risk-taking activity, then a penalty needs to be imposed to make that an unattractive course of conduct.

#### STAGE 1 – ASSESSMENT OF STARTING POINT

14. Some factors that are commonly highlighted as relevant to the assessment of a starting point in RMA cases are:<sup>10</sup>
- (a) The offender’s culpability. Deliberate or reckless conduct is an important aggravating feature of the offence. Inadvertence may earn leniency if appropriate efforts have been made to comply.
  - (b) Any infrastructural or other precautions taken to prevent discharges.
  - (c) Disregard for abatement notices or council requirements.
  - (d) The ecological importance of the affected environment and the extent of the environmental damage, including any lasting or

<sup>8</sup> *Machinery Movers Ltd v Auckland Regional Council* [1994] 1 NZLR 492 (HC) at page 502. **Tab 5**  
<sup>9</sup> *PF Olsen Ltd v Bay of Plenty Regional Council* [2012] NZHC 2392 at [62]. **Tab 6**  
<sup>10</sup> *Thurston* at [41].



irreversible harm, and whether it was of a continuing nature or occurred over an extended period of time. Where no specific lasting harm can be identified, an allowance for harm may be made on the assumption that any given offence contributes to the cumulative effect of pollution generally.

- (e) Deterrence - penalties should ensure that it is unattractive to take the risk of offending on economic grounds.
- (f) The size and wealth of the defendant and its capacity to pay a fine.<sup>11</sup>

**Defendant's culpability, lack of precautions and disregard for council requirements**

- 15. The prosecutor proposes to deal with these three factors together, as it submits they are inter-related in this case.
- 16. As the consent holder and holder of the Crown forestry licence, it is submitted that Juken carried the primary responsibility for ensuring that its commercial forestry harvesting activities at Waituna Forest were being undertaken in compliance with the conditions of its resource consent and in a manner that avoided causing environmental harm to nearby watercourses.
- 17. It is submitted that the offending in Waituna Forest arose from the following systemic failures:
  - (a) Juken's management of logging slash on many of the skid sites on steep ridges in the forest was very poor. Juken allowed unstable accumulations of logging debris, slash and/or waste logging material to be left on, overhanging, or just below, the edge of skid sites in areas where harvesting operations had been completed. Large amounts of this precariously perched forestry waste material, woody debris and sediment collapsed from at least 11 skid sites during the June 2018 rain events and slid down hill faces into watercourses in the valleys below. After the offending, Juken pulled back slash at 40 skid sites at the forest and ended its practice of leaving slash at the edge of skid sites.

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<sup>11</sup> Which is also a factor that must be considered under s 40(1) of the Sentencing Act.

- (b) Water controls at the forest were poor or non-existent, meaning stormwater run-off during the June 2018 rain events caused or exacerbated large-scale erosion of skid sites, forestry roads and tracks. Water runoff from roads was being directed through cut-offs and culverts (where culverts existed) onto fill and side cast material. Water on skid sites was being directed onto fill and logging debris on the edges of the skid sites. Following the offending, Juken installed drainage at 40 skid sites at the forest.
- (c) Despite the obvious risks of erosion and sediment loss posed by the forest's terrain, Juken failed to ensure that the roads and landings were constructed to the necessary standards. The earthworks on roads and landings within the forest on slopes greater than 25 degrees lacked benching, compaction and armouring of fill.
18. In its resource consent applications Juken had said it would follow the New Zealand Forest Owners Association's (**NZFOA**) Environmental Code of Practice for Plantation Forestry. However, Juken's offending at Waituna Forest was the result of departures from the standards set by that Code of Practice.
19. NZFOA Code of Practice requirements Juken departed from included:
- (a) The Code of Practice requirement to monitor slash piles to ensure that they are always stable.
- (b) The Code of Practice requirement to maintain water and sediment control structures in effective operating condition to prevent water building up in slash piles and adjoining landings to avoid possible landing collapse.
- (c) The Code of Practice requirement to remove slash offsite where onsite slash storage sites are insufficient.
- (d) The Code of Practice requirement to make every reasonable effort to avoid damage to restricted areas. (The offending in this case resulted in damage to protected watercourses.)

20. The offending has occurred in the context of Juken's forestry harvesting operation, from which it derives significant commercial benefits. Juken could not carry out harvesting at Waituna Forest without the resource consents it was granted. However, the rights granted to Juken under its resource consents for the forest were subject to important conditions that were intended to minimise the adverse effects of Juken's activities. The offending involved direct contraventions by Juken of the following conditions of its resource consents for Waituna Forest: condition 3 (relating to drainage), condition 6 (relating to water controls at skid sites), condition 7 (relating to fill from road and landing construction), condition 11 (relating to water cut-offs) and condition 20 / 21 (relating to slash and debris management at skid sites).
21. The seriousness of contravening resource consent conditions has been highlighted by the Court in *Waikato Regional Council v Remediation (NZ) Limited*<sup>12</sup>, where Judge Harland held:

I agree with Judge Dwyer that the breach of resource consent conditions of itself is generally a serious matter, because conditions are intended to avoid, remedy or mitigate adverse effects arising from the activity that has been authorised by the consent. As Judge Dwyer noted:

*"Those who obtain and operate under resource consents must accept an obligation to comply with the conditions which are integral to those consents. ... If the neighbours of activities allowed by resource consent cannot be assured that conditions of consent will be adhered to they can have no faith in the resource consent system."*<sup>13</sup>

22. Juken was aware of the risks its forestry harvesting activities posed to the environment. For example:
- (a) In its resource consent application Juken referred to the NZFOA's Environmental Code of Practice which highlighted the risks associated with the collapse of poorly managed slash piles, the risks that forestry earthworks can activate or accelerate erosion, the risks associated with sediment discharges from forestry harvesting and the environmental risks associated with forestry earthworks on steep, erosion prone land.

<sup>12</sup>

*Waikato Regional Council v Remediation (NZ) Limited* [2017] NZDC 23508 at [43]. **Tab 7**

<sup>13</sup>

*Taranaki Regional Council v Remediation (NZ) Limited*, DC New Plymouth, CRI-2010-043-002334.

- (b) In its consent application Juken said it would cart away any logging debris from processing sites where it was not safe to store that debris.
- (c) Juken was aware of GDC's findings regarding landing edge failures that occurred in commercial forests in the Gisborne region during Cyclone Cook in April 2017. Given the Gisborne region's history of storm-induced slash events, the risk of further major rainfall-events (such as those that occurred in June 2018) was readily foreseeable.
23. In light of the foregoing factors, it is submitted that the defendant's culpability for the offending was at the higher end of the scale. The offending was not deliberate. However, given the defendant was aware of the risks of forestry debris and sediment collapsing from skid sites and roads into watercourses in its forests, it is submitted that the defendant's failure to properly manage those risks at Waituna Forest involved a high degree of carelessness. The standard of environmental risk management at the forest was extremely poor – particularly given that the defendant is a large scale commercial forestry company and should be aware of its responsibilities and the minimum standards it is required to meet.
24. The RMA is designed to promote self-regulation and acceptance of responsibility.<sup>14</sup> Accordingly, it is submitted Juken's culpability is not lessened by any lack of compliance inspections by Gisborne District Council (**GDC**) or a perception that Gisborne is subject to lesser enforcement action than elsewhere in New Zealand. Many forestry companies operating in Gisborne (such as Juken) also operate elsewhere in New Zealand, but in any case, should be aware of what environmental standards are required to be met, eg through the conditions of their consent, through their own expertise and through publications such as the NZFOA guidelines and Environmental Code of Practice.

<sup>14</sup>

*URS New Zealand Ltd & Anor v Auckland Regional & Anor* HC Auckland CIV-2009-404-3054, 10 June 2009 at [55]. **Tab 8**

## **The effect of the offending on the environment**

25. The effects of the offending at Waituna Forest were significant.
26. The offending involved at least 11 major debris slides from skid sites at Waituna Forest, where large amounts of sediment and forestry debris collapsed and slid down steep hill faces and into the watercourses below. Some of the debris and sediment discharged onto a neighbouring property and into Mangapoike Lake.
27. The debris and sediment slides from skid site failures were extensive and had severe negative impacts on the watercourses within Waituna Forest, including:<sup>15</sup>
- (a) Sediment smothering stream beds, instream habitat and invertebrates. The affected ephemeral streams that were inspected by the Council's ecologist in October 2018 had no macroinvertebrate species present. The stream beds were completely covered in deposited sediment, removing the habitat available for invertebrates and fish. In the larger streams at the bottom of the gullies, in some low flow areas, more than 50% of the streams were covered in deposited sediment.
  - (b) Woody debris and sediment movement had scoured the stream bed resulting in some areas of the stream now having a bedrock base. The effects of this were to decrease the available habitat for macroinvertebrates and fish.
  - (c) Woody logging debris had also damaged stream banks and had been deposited in areas of the stream bed causing large areas of deposited sediment to build up. This will continue to impact the Mangapoike River tributary and the ephemeral streams within the forest.
  - (d) A large debris dam from the collapse of skid 35 resulted in severe upstream sedimentation and a blockage of woody debris within the stream. This will have a significant negative effect on instream habitat and species. (The Council has subsequently determined that removal of this debris dam will cause more

<sup>15</sup>

These effects are set out in detail in the report of Harriet Roil which is annexed to the summary of facts at Tab 6.



environmental harm than good and has recommended to Juken that it carry out riparian planting upstream of the debris jam. Juken has agreed to carry out that riparian planting.)

28. The damage to the neighbouring property was remediated by Juken in 2018. Juken and the neighbouring property owner have agreed that the removal of residual debris from Lake Mangapoike is not practicable.

*Nature of affected environment*

29. The watercourses affected by the discharges of forestry slash and sediment in Waituna Forest were tributaries of the Mangapoike River and were specified as protected watercourses on the consent maps for the forest and in Schedule G21 of Gisborne District Council's Tairāwhiti Resource Management Plan.<sup>16</sup>
30. The Mangapoike River and its tributaries are identified in Schedule G15E of the Tairāwhiti Resource Management Plan as an important habitat of trout, providing trout spawning habitat in upper reaches and tributaries. The protection of trout habitats is one of the particular matters identified in section 7(h) of the RMA.
31. It is submitted that when a contaminant has actually entered water, as occurred in this case, this aggravates the offending above those cases where the contaminant only had the potential to enter surface water.<sup>17</sup>

**Sentencing levels in similar cases**

32. Section 8(e) of the Sentencing Act requires the Court to take into account the general desirability of consistency with appropriate sentencing levels in respect of similar offending. However, the high degree of variation in the facts, individual culpability and environmental effects in prosecutions under the RMA makes it difficult for direct comparisons between cases.
33. It is submitted that the following sentencing decisions provide some general guidance in terms of the Court's approach to sentencing for forestry-related offending.

<sup>16</sup> Protected watercourses are watercourses that receive enhanced protection under Gisborne District Council's Tairāwhiti Resource Management Plan and are intended to be retired as part of vegetation clearance resource consents.

<sup>17</sup> See for example Judge Dwyer's comment in *Southland Regional Council v MacPherson* [2017] NZDC 27751 at [16]. **Tab 9**

34. In the *Laurie Forestry* case the defendant pleaded guilty to one charge of contravening s 15(1)(b) of the RMA by discharging contaminants (primarily sediment) onto land and water during forestry harvesting operations and one charge of contravening s 9(2) of the RMA.
35. Laurie Forestry was a forestry consultant responsible for managing forestry harvesting operations on a 111 hectare pine forest situated in South East Bay, Pelorus Sound.
36. In May 2017, Marlborough District Council (**MDC**) received a complaint from a resident of South East Bay that his water supply was full of sediment from the forestry works. The following day the same person advised MDC that a lot of sediment was coming off the hills and had surrounded a neighbouring bach.
37. When MDC officers investigated the complaint, they found a large plume of sediment in the bay at Pelorus Sound. There were overland flow paths of mud, sediment and forestry debris from the forestry block. A bach had been almost completely surrounded by mud from the forest. Large logs and wooden debris were littering the bed of a creek within the forest and there was a heavy concentration of sediment at the point where the creek met the sea. The plume of sediment extended about 400 metres into the bay. This was two days after the complaint to MDC.
38. The primary cause of the offending was land disturbance and slips from a skid site on the forestry block known as skid site 7. That skid site was at the top of a steep hill face about 350 metres from South East Bay.
39. In sentencing Laurie Forestry, His Honour Judge Dwyer held that the environmental effects fell into the following four categories:<sup>19</sup>
- (a) The deposition of sediment and forestry debris into the creek in the forest.
  - (b) Substantial deposition of mud, rocks and forestry debris onto two neighbouring residential properties.
  - (c) Discharge of sediment to South East Bay.

<sup>18</sup>

<sup>19</sup>

*Marlborough District Council v Laurie Forestry Services Limited* [2019] NZDC 2602. **Tab 10**  
At [8] to [16].

- (d) The more general impact of sediment discharges on the Marlborough Sounds, which His Honour referred to as *“adding to the insidious effect of the myriad of other sediment discharges ... which cumulatively lead to the degradation of Sounds ecosystems”*.
40. Judge Dwyer held that Laurie Forestry’s culpability involved a relatively high degree of carelessness, commenting that:<sup>20</sup>
- (a) The issue of culpability is often difficult in RMA offending due to its strict liability nature.
- (b) The offending involved systemic failures rather than a one-off slip up.
- (c) Skid site 7 was situated in a difficult position on a slope which was steep in places and vulnerable to instability for a number of reasons. It was clear that the defendant was aware of potential problems with the formation and use of the site.
- (d) There were two significant rain events in the relevant area in May 2017. Surface water from rainfall near the skid site was directed onto the skid site and into fill adjacent to the skid site, which led to its failure. This contravened the resource consent condition for the forest which required that storm water was to be diverted away from fill and slash piles.
- (e) Poor drainage controls and poor construction of the skid site caused it to be vulnerable to surface flow during rain events.
- (f) *“I appreciate that it is always easy to be wise in hindsight, however the difficulties with this site were readily apparent and called for a high quality of management control of the site from the get-go. The need to keep storm water flows off the skid site and fill areas to the greatest degree possible was not only a proposal of the resource consent application and condition 3, but was simple common sense and good management practice.”*<sup>21</sup>

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<sup>20</sup> At [20] to [32].  
<sup>21</sup> At [31].

41. In addition to the significant adverse effects and relatively high level of culpability, Judge Dwyer held that the starting point needed to address the issue of deterrence. The deterrence element involved consideration of the following points:<sup>22</sup>

- (a) The offending was committed by a company undertaking its core business and that company can reasonably be expected to know the rules and to comply with them – in particular the terms of the resource consent authorising its activities.
- (b) Fines must be set at a level that do not simply constitute a licensing fee as part of the cost of doing business.
- (c) Section 6(a) of the RMA (relating to the preservation of the natural character of the coastal environment) was directly engaged in this case.
- (d) Section 7(f) of the Sentencing Act specified deterrence as a purpose of sentencing and there was a need for general deterrence in relation to poor management of land activities which contribute to degradation of the Sounds ecosystem.

42. Judge Dwyer adopted a total starting point of \$100,000 for the offences (dealing with both charges on a global basis).

43. In addition to the foregoing points regarding culpability, adverse environmental effects, deterrence and comparable cases, Judge Dwyer held as follows:

- (a) The maximum penalty for the two offences was \$1.2 million but he would effectively treat it as one offence with a maximum fine of \$600,000.<sup>23</sup>
- (b) A starting point of \$100,000 was 16% of the maximum available penalties when the offending was viewed on a global basis.<sup>24</sup>
- (c) The starting point of \$100,000 fit in broadly with comparative cases, although application of the consistency principle in RMA offences can be difficult.

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<sup>22</sup> At [33].

<sup>23</sup> At [18].

<sup>24</sup> At [41].

44. Judge Dwyer allowed a 5% discount for previous good character given the defendant had no previous convictions but declined to allow a further 10% deduction for remedial work (notwithstanding the prosecutor and defendant agreed on this figure). His Honour held that Laurie Forestry had done little more than it should have done to comply with its obligations as a responsible forester to act in accordance with the terms of the resource consents and to put things right which had occurred as a result of its non-compliance.<sup>25</sup> A discount of 25% was allowed for early guilty pleas resulting in total fines of \$71,000 which were divided equally between the two charges.<sup>26</sup>
45. Judge Dwyer also imposed an enforcement order requiring Laurie Forestry to take steps to ensure the failed skid site would be managed to avoid further discharges.
46. There are similarities between the offending in the *Laurie Forestry* case and the offending in the present case, given that both cases involve discharges of forestry debris and sediment from a forestry harvesting operation, that the underlying causes of those discharges related to poor skid site management and poor water controls and given that extensive damage was caused within and outside of the forest.
47. However, the *Laurie Forestry* case only involved the collapse of one skid site in a 111 hectare commercial pine forest, whereas the offending in Waituna Forest involves the collapse of at least 11 skid sites affecting watercourses in a 1,096 hectare commercial pine forest.
48. It is submitted that the following points in Judge Dwyer's sentencing decision relating to Laurie Forestry are particularly relevant in relation to Juken's offending in the present case:
- (a) The failures were of a similar nature, ie poor water controls or water controls that directed water *onto* vulnerable skid sites, skid sites that were poorly designed and maintained and often constructed on uncompacted fill, and there were large amounts of forestry debris left where there was a high risk of collapse.

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<sup>25</sup>

At [43].

<sup>26</sup>

At [92].



- (b) The issues that led to the discharges were expressly referred to in the resource consent conditions.
- (c) The importance of deterrence. There is a history of poor environmental risk management in the forestry industry in the Gisborne district resulting in significant damage to watercourses within and downstream of commercial pine forests and to the receiving coastal environment. The offending at Waituna Forest exemplifies this poor approach to environmental management and compliance. It is therefore important that the Court sets the starting points for the fines at a level that will provide a strong incentive for those involved in the forestry industry in the Gisborne district (and throughout New Zealand) to comply with their legal obligations under the RMA.

*R v Forest Owner Marketing Services Limited, Gaddum Construction Limited and Chance Brown*<sup>27</sup>

- 49. Forest Owner Marketing Services Limited (**FOMS**) was a forestry harvesting and marketing company that carried out forestry harvesting in a 9 hectare radiata pine forest in 2014 and 2015. FOMS engaged Gaddum Construction Limited (**GCL**) to carry out the necessary roading and skid site earthworks for the operation and engaged Chance Brown's company to carry out the forestry harvesting.
- 50. FOMS pleaded guilty to an offence of discharging contaminant (soil, sediment, wood debris and slash) into two streams in the forest in contravention of s 15(1)(b) of the RMA.
- 51. GCL and Chance Brown pleaded guilty to two offences each – an offence under s 15(1)(b) and an offence under s 9(2) of contravening a regional rule.
- 52. FOMS was sentenced separately from the other two defendants due to FOMS' later guilty plea.
- 53. All of the offences arose from the fact that large amounts of insecure sediment and side-cast material had been left on the edge of the forestry

<sup>27</sup>

*R v Forest Owner Marketing Services Limited* [2016] NZDC 20673, 21 October 2016; *R v Gaddum Construction Limited & Chance Brown* DC Tauranga CRI-2015-047-258, 29 August 2016. **Tab 11**

tracks above steep faces when forestry tracks were constructed. When harvested logs were later dragged down those forestry tracks to the main processing site, the insecure sediment and side-cast material was pushed from the side of the tracks into the gullies below.

54. The offending was aggravated because after these issues were initially identified, the Council gave verbal and written directions on several occasions to FOMS to stabilise the side-cast material and sediment on the track edges to avoid further discharges to the streams below. However, FOMS disputed the need to do this and insisted that the work it had done in this regard would suffice. A large rain event then occurred which resulted in landslides of the insecure side-cast material and sediment in two locations, where further material collapsed from the track edges and fell down into two streams in the gullies below.
55. The Court found the affected streams had moderate to high ecological value and that the environmental effects of the offending on those streams were moderate to high.
56. In sentencing FOMS Her Honour Judge Harland held:<sup>28</sup>

I place little weight on the submission that the sediment released was natural or that the negative effects on the stream were exacerbated by natural erosion. The key point is that the resource consent conditions were designed to prevent adding to that which may occur naturally by man-made activity. The concern here is the cumulative effect man-made activity might have on that which naturally occurs. ...

... given the difficult topography, more on-site management was required by the defendant company.

57. The Court found that while the FOMS' offending was not deliberate, FOMS' approach to supervision of its subcontractors and its approach to the Council's requirements were sufficient to categorise FOMS' behaviour as reckless.
58. In sentencing GCL and Chance Brown, His Honour Judge Thompson held their culpability was lower than that of FOMS, involving insufficient attention and care being paid to work on the construction of the tracks.

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<sup>28</sup>

At [63] and [65].

59. The Court adopted a starting point of \$50,000 for FOMS. The Court in the *GCL* and *Chance Brown* case adopted a starting point of \$25,000 for GCL and a starting point of \$17,500 for Mr Brown.
60. Deductions were allowed for previous good character and guilty pleas in relation to all defendants. Judge Harland commented that she considered she was bound to allow the same discounts for FOMS as were allowed when FOMS' co-defendants (GCL and Chance Brown) were sentenced earlier, although the level of discounts was higher than she would normally allow.
61. No discount was allowed in relation to the amount (\$15,000) FOMS had spent on remedial work, but a 3% discount was allowed in recognition of FOMS' undertaking to reimburse the Council for further remedial work at a cost of \$16,800 plus GST.
62. It is submitted that like the *FOMS* case, the offending at Waituna Forest involves Juken failing to take the necessary steps to avoid environmental harm and breaches of the consent conditions when carrying out forestry harvesting in a steep and high risk context. However, the scale and effects of the offending at Waituna Forest are greater given that the *FOMS* case only involved the collapse of sediment at two sites in a 9 hectare forest.

*PF Olsen Limited v Bay of Plenty Regional Council*<sup>29</sup>

63. PF Olsen Limited pleaded guilty to two offences, namely breaching s 9(3)(a) by failing to comply with conditions of its resource consent and breaching s 15(1)(b) by discharging contaminants (forestry slash and sediment) where they may enter water.
64. PF Olsen was a forestry contractor that was involved in a commercial logging operation covering 691 hectares. The offending occurred in April 2008 when five large piles of logging debris from PF Olsen's skid sites on ridge lines in Waioatahe Forest collapsed, sliding down hill faces and into streams and valleys below. This caused extensive, permanent damage to streams and riparian areas, as well as large-scale erosion on hill-sides.

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<sup>29</sup> *PF Olsen Ltd v Bay of Plenty Regional Council* [2012] NZHC 2392. **Tab 6**

65. On appeal, Brewer J held:

- (a) The appropriate starting point for the offending was \$130,000 when viewed on a global basis, apportioned as to \$80,000 for the s 15(1)(b) offence and \$50,000 for the s 9(3)(a) offence.
- (b) There should be no uplift for the previous conviction of a related entity because the connection between the two entities was too remote and the previous offending was too long ago.
- (c) While credit should be given for the \$331,000 spent by PF Olsen on remedial work, an offender cannot be seen to extinguish or greatly reduce obligations by spending money after the offending occurred. The discount of 60% allowed by the District Court for PF Olsen's expenditure on remedial work was too generous. A discount of 30% was appropriate for this factor.
- (d) The discount of 20% for early guilty pleas allowed by the District Court was overly generous but would not be reduced on appeal.
- (e) An appropriate end point for the fines was \$72,800, (i.e. \$44,800 for the s 15(1)(b) offence and \$28,000 for the s 9 offence).

66. The nature of the failures and environmental effects in the *PF Olsen* case are very similar to the present case. On the one hand, PF Olsen's culpability was higher than Juken's culpability in the present case, given council officers had put PF Olsen on express written notice of the risks posed by the specific skid sites that later collapsed. However, there were only five collapsed skid sites in the *PF Olsen* case, in contrast to the 11 collapsed skid sites in Waituna Forest.

67. It is important to note that the sentencing of PF Olsen occurred when the maximum penalty for each of the offences was \$200,000 as opposed to \$600,000 for the offence to which Juken has pleaded guilty in the present context. Also, the High Court's approach to discounts for personal mitigating factors has been modified since *PF Olsen*.

*General comment regarding previous cases*

68. It is a common theme in forestry prosecutions that defendants refer to heavy rainfall as a factor that mitigates their culpability.

69. While it is acknowledged that the rainfall events that occurred in the Gisborne district in June 2018 were significant, it is submitted that Her Honour Judge Harland's comments from *Bay of Plenty Regional Council v IMF Backstop Limited* are relevant in this regard.<sup>30</sup>

All too often the Court hears that heavy rainfall events that are thought to be unseasonable cause the sorts of problems that are apparent in this case. ...

There have now been a number of cases dealing with the unlawful discharge of sediment to waterways by those involved in commercial developments. In the future, such offending may well attract a sterner response, and not just because the level of fine has increased. If significant profits are to be drawn from an activity, then it is reasonable to expect that the level of environmental management will be high. ...

70. Given the history of significant rain events triggering debris slides in commercial pine forests in the Gisborne region in 1994, 2013, 2014 and particularly in 2017, it is submitted that the defendant in this case should have taken far more care to manage the risks of skid sites collapsing during significant rain events at Waituna Forest.

#### **Assessment of starting point**

71. Based on the foregoing points, it is submitted that an appropriate starting point for the fine to be imposed on Juken for the offending at Waituna Forest would be **\$150,000**.

72. In summary, this is because:

- (a) Juken's culpability is high. It was well aware of the risks posed by poor skid site management and water controls in the context of steep and highly erodible land, but its practices in the forest fell far below acceptable industry standards and contravened the conditions of its resource consents.
- (b) The offending caused significant environmental damage. The collapse of large amounts of forestry debris, slash and sediment from 11 skid sites at Waituna Forest has severely impacted streams within Waituna Forest, which are tributaries of the

<sup>30</sup>

*Bay of Plenty Regional Council v IMF Backstop Limited* DC Tauranga, CRN-9070501999 & 2000, 18 March 2011 at [52] and [53]. **Tab 12**



Mangapoike River and habitats of trout. The debris and sediment discharged as a result of the offending also impacted on the Mangapoike River downstream of the forest where that river forms a lake.

- (c) Section 6(a) of the RMA is engaged in this case. Section 6(a) requires the Court to recognise and provide for the preservation and protection of the natural character of rivers and their margins. Section 7(h) of the RMA is also relevant. It requires the Court to have regard to the protection of the habitat of trout.
- (d) The suggested starting point is 25% of the maximum penalty.
- (e) In terms of the size and wealth of Juken and its capacity to pay a fine, it is submitted that it is a company with significant financial resources. According to Juken's website it has 54,000 hectares of forest estates located in Gisborne and in the Wairarapa along with four processing mills in New Zealand and approximately 900 employees.
- (f) A starting point at this level will:
  - (i) Denounce the defendant company's contraventions of its obligation under s 15(1)(b) and the contraventions of its resource consent conditions that led to the discharges.
  - (ii) Ensure that others in the forestry industry in New Zealand (and particularly in the Gisborne region) are deterred from following poor practices that result in significant environmental damage.
  - (iii) Reinforce to consent holders that consents are not open licences to carry out an activity and compliance with consent conditions is of fundamental importance.

## STAGE 2 - PERSONAL AGGRAVATING AND MITIGATING FACTORS

73. The following matters are relevant at the second stage of the sentencing exercise:

- (a) Personal aggravating features, which include a defendant's previous history;<sup>31</sup> and
- (b) Personal mitigating features, which include exceptional remorse and an unblemished compliance record.<sup>32</sup>

### Personal aggravating factors

74. The defendant has 19 convictions for health and safety offences from 1993 to 2019 and two convictions for RMA offending in 1997. Given the historic nature of the RMA convictions and the lack of relevance of the health and safety convictions to the present offending, the prosecutor does not seek an uplift from the starting point. However, it is submitted that the defendant's criminal history is relevant to the issue of a potential discount for previous good character, as discussed below.

### Personal mitigating factors

75. In considering discounts for personal mitigating factors, it is submitted the Court should be mindful of the High Court's recent concerns in *Stumpmaster v Worksafe New Zealand* that discounts of 25% to 30% being routinely allowed for mitigating factors (eg reparation, cooperation and previous good character) in the District Court can distort the sentencing process and result in outcomes that are too low.<sup>33</sup>

76. It is submitted there are three potentially relevant matters in relation to personal mitigating factors in this case - previous good character, remedial work/cooperation and remorse.

#### *Previous good character*

77. The prosecutor submits that the defendant is not entitled to a discount for previous good character.

<sup>31</sup> Sentencing Act 2002, section 9(1)(j).

<sup>32</sup> Sentencing Act 2002, section 9(2).

<sup>33</sup> *Stumpmaster v Worksafe New Zealand* [2018] NZHC 2020 at [64] to [67]. **Tab 13**

78. As stated, the defendant has 19 previous convictions for health and safety offences, the most recent of which was entered in February 2019 for offending in July 2017.<sup>34</sup>
79. The defendant also has two convictions for offences of contravening section 15(1)(c) of the RMA in January and April 1997.<sup>35</sup>
80. In light of this history of offending, it is submitted the defendant is not entitled to a discount for previous good character.

*Remedial work and cooperation*

81. In *Thurston*, Miller J made the following comment regarding discounts for remedial work in RMA prosecutions.<sup>36</sup>

The Court must begin with the proposition that the defendant must comply with his environmental obligations and gets no credit for having belatedly done so. Credit has been given in some cases, notably those where culpability was low and the expenditure both remedied environmental harm and evidenced full acceptance of responsibility. This case falls into a different category, of those where culpability was high and the expenditure did not make good environmental harm but was merely a compliance cost that the defendant had tried to avoid. Detection and conviction having forced the expenditure on the defendant, it is not a mitigating factor.

82. Shortly after the collapse of the skid sites in Waituna Forest in June 2018 rain events, Juken contacted the owner of the affected neighbouring property and immediately carried out remedial work on that property. Juken self-reported the collapses to the Council in June 2018 and carried out remedial work directed by the Council promptly.
83. The owner of the affected neighbouring property has indicated to the prosecutor that he considers that the steps Juken has taken to address the damage to his property have been good. He has confirmed that he did not suffer emotional harm as a result of the offending, did not want to provide a victim impact statement and did not want to participate in restorative justice.

<sup>34</sup> An updated criminal history for the defendant that includes convictions when it was named "Juken Nissho Limited" is attached at **Tab 14**.

<sup>35</sup> *Northland Regional Council v Juken Nissho Ltd* DC Whangarei CRN7029003709 & CRN7029003884, 30 November 1998, which was subsequently upheld by the High Court and Court of Appeal. **Tab 15**

<sup>36</sup> *Thurston*, above n2, at [67]. **Tab 2**

84. Accordingly, it is submitted that Juken is entitled to a discount for its proactive remedial work and interactions with the Council and neighbouring property owner in this regard. Having regard to Miller J's comments in *Thurston*, it is submitted that this discount should be no more than 5%.

#### *Remorse*

85. There is no evidence in this case of exceptional remorse that would warrant an additional discount in this regard.

#### **STAGE 3 - GUILTY PLEA**

86. The final step is to apply a discount for a guilty plea of up to 25%, depending on when the plea was entered.<sup>37</sup>
87. The prosecutor submits that the defendant is entitled to a 20% discount for its guilty plea. It entered a guilty plea after initially defending the charge and after the prosecutor had begun preparing its evidence. However, the guilty plea meant the prosecutor (and therefore its ratepayers) was able to avoid the full cost of preparing evidence for the trial and to avoid the cost of a trial itself.

#### **END POINTS**

88. To summarise, the prosecutor's position is:
- (a) A total starting point in the region of \$150,000 would be appropriate.
  - (b) There should be no uplift for personal aggravating factors.
  - (c) There should be a total discount of 5% in relation to personal mitigating factors.
  - (d) A discount of up to 20% for the guilty plea would be appropriate.
  - (e) This would leave an **end point of \$114,000**.
89. It is submitted that when viewed in totality, the fine suggested by the prosecutor is a reasonable and appropriate penalty.

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<sup>37</sup> *Hessell v R* [2011] 1 NZLR 607 (SC) at [75].

90. The prosecutor understands that the defendant is able to pay a fine at the level suggested by the prosecutor.
91. The prosecutor seeks that 90% of the fine be paid to it pursuant to section 342 of the RMA, and that the defendant be ordered to pay court costs of \$130 and solicitor's costs of \$113 on the charge.

**DATE** 13 November 2019



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**A Hopkinson**  
Counsel for the prosecutor

Released under the Official Information Act 1982



## **Juken Fined for RMA Breach**

Juken was sentenced today in Gisborne District Court for discharges of slash, logging debris, waste logging material and/or sediment to watercourses arising from harvesting of radiata pine trees at Waituna Forest.

The discharges occurred following major rainfall events on 3 and 4 and 11 and 12 June 2018 at Waituna Forest, 30 kilometres southwest of Gisborne.

Juken was sentenced under Sections 338(1)(a) and 15(1)(b) of the Resource Management Act 1991 (RMA).

The company was fined \$152,000. The Judge also awarded Court costs of \$130, and that the Council's legal costs be set by the Registrar.

During sentencing, the Judge adopted a starting point of \$200,000. From that, the Judge ordered a 5% reduction as a result of remedial actions taken post the event, and a 20% reduction for the company's early guilty plea.

Juken expresses sincere regret for its failure to comply with the law in this instance, and for the damage caused.

Juken self-reported the discharge and cooperated with the Council at all times. Genuine efforts were also taken to carry out remedial works required in an expeditious manner.

To date, Juken has expended approximately \$600,000 remediating the damage caused and the only affected land owner is satisfied with Juken's actions and efforts.

Juken is committed to ensuring complete compliance with all Resource Consent conditions moving forward and to relationships of trust and confidence with the Council and all of its neighbours.

Juken continues to work hard in and for the community and is one of the leaders in forestry in terms of the action and investment it has made to prevent damage from forest slash.

The company has no forestry plantations related to any of the damage that Tolaga Bay suffered in June last year.

Juken is conducting a detailed review of the judgment released earlier today, in conjunction with its legal advisers.

## Simon Pope

---

**From:** Erich Bachmann <Erich.Bachmann@heskethhenry.co.nz>  
**Sent:** Wednesday, 27 November 2019 11:59 a.m.  
**To:** Svetlana Malivuk  
**Cc:** Sarah Gibbs  
**Subject:** Juken New Zealand Limited [HH-IM.FID664191]  
**Attachments:** Defendant's submissions.pdf; Affidavit of 9(2)(a) .pdf; Defendant's bundle of authorities.pdf; Defendant's submissions.pdf; Affidavit of 9(2)(a) .pdf; Defendant's bundle of authorities.pdf; Juken Statement 22112019.pdf; GDC v Juken NZ Ltd - prosecutor's sentencing submissions.pdf

Dear Svetlana,

We refer to previous correspondence in relation to the Gisborne District Council's ("**Council**") proceedings against Juken New Zealand Limited ("**JNL**"), please see **attached**:

- JNL's sentencing submissions;
- Affidavit of 9(2)(a) in support of JNL;
- JNL's bundle of authorities;
- JNL's media release on the judgement; and
- Council's sentencing submissions.

Please note that there is not yet a written sentencing judgement. If and when either a written judgement or sentencing notes/transcript are made available, we will provide these to you.

In relation to JNL's sentencing submissions, we summarise the following key aspects:

- In accordance with JNL's media release, JNL expresses sincere regret for its failure to comply with the law in this instance, and for the damage caused.
- The Judge applied a 20% discount for JNL's early guilty plea and a 5% discount for JNL's subsequent remedial actions (having expended approximately \$600,000 in this regard as at the sentencing date).
- As soon as practically possible, JNL self-reported to the Council and commenced remedial works in the forest and on the sole affected neighbouring property (which were completed to both Council's and the neighbour's satisfaction);
- JNL fully complied with abatement notices issued by the Council and co-operated with the Council at all times;
- JNL's offending was not deliberate and occurred over a duration of a week and a half between major weather events;
- JNL genuinely believed its operations were compliant and in line with best practice, with regular external third party auditing procedures in place and having not previously received any notices or indications from the Council or otherwise regarding non-compliance.
- JNL's previous environmental offending occurred some 23 years ago despite the size and extent of its operations;
- JNL employs 800 New Zealander's and 280 in the Gisborne region;
- JNL makes contributions to the environment and its community at both local and national levels, reflecting that corporate social responsibility efforts are standard business practice for JNL (see paragraph 6 of 9(2)(a) s Affidavit for further detail);
- These proceedings are to be distinguished from the Tologa Bay incident; JNL has no forestry plantations that related to the damage that occurred there in June 2018.
- Since the weather events relevant to these proceedings, JNL has explicitly focussed on and improved its slash management and waste operations and is working closely with the Council regarding catchment restrictions in future harvest consents.

With respect to the sentencing, the Judge took a very firm approach in the opinion of Counsel for JNL. The Judge accepted that JNL's offending was not deliberate but still took the view that JNL's culpability was high. During his sentencing decision, we are advised that the Judge made the following key points:

- The Council's lack of inspections at the forest were disgraceful and reprehensible to the extent that he seriously considered not awarding the Council any of the imposed fine (he ultimately directed that 90% of the fine be paid to the Council but only because withholding it would be unfair on ratepayers);
- While not particular to the forest in this case, there had previously been major storms in the region so the risk of major rainfall events was known;
- There had been multiple skid failures throughout the forest and the environment was steep and vulnerable;
- A primary concern (aside from the damage caused) was that the judgement make an example of JNL and provide deterrence for other forestry companies in the area.

Given that JNL is the first of several forestry companies to face penalties for damage after the weather events of 3 and 4 June and 11 and 12 June last year, the \$152,000 fine imposed on JNL is essentially a benchmark for similar cases. For perspective, it would need to be viewed in the context of other judgements that are yet to be delivered. We understand that Hikurangi Forest Farms (which we understand is now trading as Aratu Forests Limited) is scheduled to be sentenced in February 2020, for example.

To be clear, JNL accepts the Judge's decision and the damage caused. However, JNL emphasises that only 11 of its approximately 100 skid sites across some 1,096 hectares (952 hectares of which were subject to the Resource Consents) discharged waste during the two major rain events that occurred in quick succession. JNL genuinely believed that its operations, including the skid structures, landings and engineering works in the forest were compliant. This was on the basis of: regular annual third party external auditing by SGS (a professional inspection, verification, testing and certification company) against the FSC and ISO 14001 standards; extensive recertification audits every three years; engagement of experienced contractors who were fully consulted over the requirements of the Resource Consents and were contracted to undertake agreed environmental and health and safety mitigation measures; weekly site inspections of contractor works by JNL; and least of all, no compliance issues having been raised with JNL at all in the midst of these compliance measures, including by the Council.

Accordingly, JNL submits that, while there were indeed failures that caused damage and JNL accepts the penalty associated with this, those failures were not due to JNL's carelessness, non-compliance or deficient skid structures. Rather, the storm events and level of rainfall were so severe and in such quick succession, that even best practice skid structures and engineering works were simply unable to withstand the load in 11 out of approximately 100 cases. JNL considers that this is an important distinction and requests that the OIO views the judgement in this context.

As per JNL's media release, JNL is conducting a detailed review of the judgement alongside its legal advisers in the proceedings.

Please let us know any further information or assistance you may require in relation to this matter.

Kind regards

Erich

**Erich Bachmann | Managing Partner**

**Tel:** +64 9 375 8709 **Fax:** +64 9 365 5209 **Mobile:** +64 21 827 087  
Level 14, PwC Tower, 188 Quay Street, Auckland 1010




---

**From:** Svetlana Malivuk [mailto:SMalivuk@linz.govt.nz]  
**Sent:** Friday, 25 October 2019 3:15 p.m.  
**To:** Erich Bachmann  
**Cc:** Sarah Gibbs  
**Subject:** RE: Juken New Zealand Limited [HH-IM.FID664191]

Dear Erich

Thank you for your email below. We will let you know if we require any further information from you in due course.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

**E** [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | **DDI** +64 4 471 6657 |

**A** **Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace**  
**PO Box 5501, Wellington 6145, New Zealand | T 04 462 4490**  
**W** [www.linz.govt.nz](http://www.linz.govt.nz) | [data.linz.govt.nz](http://data.linz.govt.nz)

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**From:** Erich Bachmann <Erich.Bachmann@heskethhenry.co.nz>  
**Sent:** Friday, 25 October 2019 2:56 PM  
**To:** Svetlana Malivuk <SMalivuk@linz.govt.nz>  
**Cc:** Sarah Gibbs <Sarah.Gibbs@heskethhenry.co.nz>  
**Subject:** Juken New Zealand Limited [HH-IM.FID664191]

Dear Svetlana,

We acknowledge receipt of your letter and respond accordingly.

As requested, we **attach** the Agreed Statement of Facts in relation to the Gisborne District Council proceedings against Juken New Zealand Limited ("JNL"). We also **attach** recent related correspondence with Valerie Bland of your office which we understand she has already passed on to you. As noted in our email to Valerie Bland of 16 October 2019, a sentencing hearing for the case is scheduled for 22 November 2019. Accordingly, we are unable to provide you with the requested sentencing information at this time. However, we will do so in due course once available.

To clarify, these proceedings relate to the Waituna Forest, being more than 100 kilometres south of the Tolaga Bay area. As per paragraph 20 of the Agreed Statement of Facts and the Gisborne Herald article referenced in your letter, the areas north of Gisborne (including the Tolaga Bay area) were severely affected by the major weather events on 3 and 4 June 2018. However, it was the further storm on 11 and 12 June 2018 which significantly impacted the Waituna Forest and it is the effects of this further storm that are relevant to the Gisborne District Council proceedings against JNL. Accordingly, your reference to the highly publicised Tolaga Bay disaster in relation to this matter is mistaken. The events that occurred at Tolaga Bay are separate and unrelated to the events that occurred at the Waituna Forest. It is only the Waituna Forest events that are relevant to these proceedings. JNL does not operate in or around Tolaga Bay and is therefore not involved in the events that unfolded there. For your reference, we note in particular paragraphs 16, 17, 19, 22, 23, 29 and 30 of the Agreed Statement of Facts in support of JNL's actions and position.

For completeness, we note that JNL faces only one charge to which it has pleaded guilty (for discharging a contaminant (namely slash, logging debris, waste logging material and/or sediment) onto or into land in circumstances where it may enter water in breach of section 15(1)(b) of the Resource Management Act 1991). Also, that Gisborne District Council has withdrawn a further charge that was initially made. Please also note that in our view the newspaper article you provided is somewhat misleading in that it conveys the impression that JNL has an involvement in the Tolaga Bay disaster and may even be one of the nine enterprises charged with offences in relation to that incident. As noted above, JNL has no connection to Tolaga Bay.

Please let us know any further information that you require. As above, we will provide you with the balance of the requested information once the sentencing process has taken place.

Kind regards

Erich

**Erich Bachmann | Managing Partner**

**Tel:** +64 9 375 8709 **Fax:** +64 9 365 5209 **Mobile:** +64 21 827 087  
Level 14, PwC Tower, 188 Quay Street, Auckland 1010



---

**From:** Svetlana Malivuk [<mailto:SMalivuk@linz.govt.nz>]  
**Sent:** Thursday, 17 October 2019 2:35 p.m.  
**To:** Erich Bachmann  
**Subject:** Juken New Zealand Limited

Dear Erich

Please refer to the **attached** letter.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

**E** [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | **DDI** +64 4 471 6657 |

**A** Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace  
**PO** Box 5501, Wellington 6145, New Zealand | **T** 04 462 4490  
**W** [www.linz.govt.nz](http://www.linz.govt.nz) | [data.linz.govt.nz](http://data.linz.govt.nz)

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**IN THE DISTRICT COURT  
AT GISBORNE**

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

**CRI-2018-016-002404  
[2019] NZDC 24075**

**GISBORNE CITY COUNCIL**  
Prosecutor

v

**JUKEN NEW ZEALAND LIMITED**  
Defendant

Hearing: 22 November 2019  
Appearances: A Hopkinson for the Prosecutor  
S Corlett for the Defendant  
Judgment: 22 November 2019

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**SENTENCING NOTES OF JUDGE B P DWYER**

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[1] Juken New Zealand Limited (Juken/the Defendant) appears for sentence on one charge brought against it by Gisborne District Council (the Council) for breach of s 15(1)(b) Resource Management Act 1991 by discharging a contaminant (slash logging debris, waste logging material and sediment) onto land between 3 June 2018 and 12 June 2018 in circumstances where it may enter water. In this case, the contaminant did enter water, namely various tributaries of the Mangapoike River.

[2] Juken has pleaded guilty to the charge. I understand that enquiry was made as to whether reference of these proceedings to a restorative justice process was appropriate in the circumstances, but no such reference was made. That was because

the victim of part of the discharge was satisfied with remedial actions undertaken by Juken relating to his adjoining property. No suggestion has been made that Juken should be discharged without conviction. It is hereby convicted accordingly.

[3] The offending took place on a 1096 hectare plantation forest known as the Waituna Forest situated about 30 kilometres south-west of Gisborne. Juken carries out the forestry operation under Crown licence and holds resource consents granted in 2013 and 2014 allowing the formation of forestry roads and skid sites as well as the harvesting and extraction of logs. The consents contain a range of conditions which are described in paragraph 13 of the agreed summary:

13. These consents were both subject to conditions, including the following:
  - (a) The construction of roads and the harvesting of vegetation shall be in accordance with the maps and application lodged with the Council unless altered by specific conditions (Condition 1 of both consents);
  - (b) On slopes greater than 25 degrees, fill used in construction of road and landing formations or sidecast to waste shall be held in place by benching, compaction, armouring or a combination of these, such that it does not directly or indirectly enter a watercourse (Condition 7 of the 2014 consent);
  - (c) Roading and landing fills on slopes greater than 24 degrees are to be benched and fill compacted or armoured so that fill does not progressively slump down the slope (Condition 7 of the 2013 consent);
  - (d) Cut-offs and culverts shall be spaced to avoid watertable erosion and shall not discharge directly on to fill or sidecast material (Condition 3 of the 2014 consent);
  - (e) Sidecast material shall not be deposited into any watercourse (Condition 4 of both consents);
  - (f) Runoff onto landings is to be intercepted by cut-off drains and is to discharge clear of all fill (Condition 6 of both consents);
  - (g) Cut-offs are to be installed at a maximum spacing of one every 50 metres along arterial tracks to disperse water and prevent ponding and scouring (Condition 11 of both consents);
  - (h) No unstable accumulation of slash, log ends, tree heads or waste logging material - including mixed in soil - are to be left on or beneath landing edges at the conclusion of logging (Condition 20 of 2013 Consent and Condition 21 of 2014 Consent).

I observe that (unsurprisingly) none of the conditions allows discharge of slash, logging debris, waste logging material or sediment into water.

[4] The Gisborne District (including the Waituna Forest) was subject to two rainfall events on 3 and 4 June and 11 and 12 June 2018. These events led, among other things, to major landslides in the Waituna Forest together with a number of discharges from the forest of harvesting slash and silt into a neighbouring property and into various water bodies contained within the forest itself.

[5] Juken self-reported these incidents to the Council on 25 June 2018. Council officers went and inspected the forest on 30 and 31 July 2018. The officers observed as least 11 major sediment and debris slides from skid sites in the forest which flowed or proceeded into water bodies contained in the lower parts of the forest. The summary of facts sets out the officers' observations in these terms:

24. On 30 and 31 July 2018 two Council officers inspected Waituna Forest. They observed the following:
- (a) Runoff from roads was being directed through cut-offs and culverts (where culverts were found) onto fill and side-cast material (breach of condition 3 of both consents);
  - (b) Water on landings was being directed onto fill and logging debris including waratah/logging waste mixed with soil on the edge of landings (breach of condition 6 of both consents);
  - (c) In a number of locations there was little or no benching, compaction or armouring of fill on landings and roads constructed on slopes greater than 25 degrees (breach of condition 7 of both consents);
  - (d) A number of cut-offs were on the outside edge of the access roads and runoff was directed into fill or side-caste material causing rilling and scouring (breach of condition 11 of both consents);
  - (e) There were no cut-offs or any form of water control on some of the tracks in the forest and scouring was noticeable at the discharge point of some cut-offs (breach of condition 11 of both consents);
  - (f) Landings where harvesting operations had been completed had unstable accumulations of logging debris, slash, and/or waste logging material mixed with soil that had been left on the edges of landings, with many landings having perched slash/slovens overhanging the landings and below the landings (breach of conditions 20 and 21 of the 2013 and 2014 consents respectively).

[6] The Council issued abatement notices requiring compliance with the terms of Juken's resource consents. Juken has largely complied with these notices and has undertaken extensive remedial work in Waituna Forest and on the neighbour's property.

[7] The environment affected by these incidents (excluding the neighbour's property where I was given no details of effects and whose owner has accepted Juken's remediation works) comprises watercourses within the forest catchment. These watercourses are tributaries of the Mangapoike River.

[8] The adverse effects on this environment occasioned by the offending were summarised in these terms in a Council ecological report contained in the summary of facts:

#### Ecological effects

The ecological effects resulting from harvest practice in Waituna forest have been extensive throughout the forest visited. There have been multiple areas where there have been landing and slope failures that have resulted in large amounts of sediment and woody debris to migrate into freshwater systems. All the skid sites that were visited on inspection had some form of landing failure or sediment migration down to a stream, as well as woody debris migration down slopes and into waterways. Wood material has been used to build landings and as this material starts to rot, water erodes the soil and there is risk of further slope failures. Any side cast material that is on the slope can be undermined by water and will move down the slope as the water loosens the soil.

The Waituna forest has been harvested 3-5 years ago, and the trees have been cut down right to the edge of the tributaries of the Mangapoike River and the ephemeral streams that drain the steep slopes. No riparian buffer has resulted in the direct input of sediment and woody material into the freshwater systems. The resulting effects of this are that there is no stream shading, water temperatures increase and direct inputs of sediment and woody debris into the stream as there is no vegetation buffer. The effects from the increased amounts of sediment on the stream bed include; the smothering of interstitial space and instream habitat, directly smothering invertebrates, and the sediment binds to the periphyton on rocks that directly effects the nutritional quality and the invertebrates that are grazers.

There were high (>50%) deposited sediment loads in all of the streams that were observed. The fine weather on the day of inspection and the days leading up to the inspection meant that the streams were at ambient flow and were not discoloured or turbid. In rain events however, it was observed that the amount of bare sediment leading down towards streams, that there would be an increase in turbidity levels following rainfall.

Increased deposited and suspended sediment levels can have dramatic effects on stream ecosystems, and this was observed within Waituna forest. The ephemeral streams that were inspected had no macroinvertebrate species present, and the stream bed was completely covered in deposited sediment, removing the habitat available for invertebrates and fish. In the larger streams at the bottom of the gullies, there was in some areas where there was low flow >50% deposited sediment cover resulting in loss and degradation of instream habitat. The larger flow capacity of these streams has allowed some flushing of sediment in faster flowing areas of the stream and the presence of macroinvertebrate species indicates this.

The damage caused by woody debris and sediment movement from the flood has caused the scouring of the stream bed, with some areas of the stream now having a bedrock base. The stream has a cobbled bottom, but in areas of the stream where there

has been debris and large flows, the substrate has been scoured leaving bedrock. The effects of this are that there is a decreased available habitat for macroinvertebrates and fish, and a damage to stream banks causing increased erosion.

Woody logging debris has damaged stream banks and has been deposited in areas of the stream bed which has resulted in large areas of deposited sediment to build up and will continue to impact the Mangapoike River tributary and the ephemeral streams within the forest. There is a significant area on the Mangapoike river tributary where a debris dam has blocked the stream and caused a large plume of sediment to accumulate upstream. This will have a significant negative effects on instream habitat and species.

#### Potential ongoing ecological effects

The landslides and slope failures within the Waituna forest are extensive, and have had severe negative impacts on stream ecology. Large areas of sediment and wood migration are still occurring down the steep slopes, and this will eventually lead into the streams and waterways below, resulting in the continuation of damage to the freshwater ecosystems. The harvest practice in the Waituna forest has resulted in severe amounts of sediment migration that continue to pose a high risk to freshwater systems. Further migration of wood and sediment into tributaries and then the main Mangapoike River is at risk, and this will potentially continue to occur following the use of wood to build roads and landings, and the incorrect practice in construction of roads and landings.

The migration of wood down the steep slopes poses a further risk to more debris entering the stream system. The debris catcher located at site 9, was full following the storm event and there is a significant debris dam below skid 35. Further risk of wood migration means that there is potential for this to occur again, and repeating the negative environmental effects that have already occurred.

#### Conclusions

A site visit of Waituna forest was undertaken in October 2018 to evaluate the effects of landslides that have occurred as a result of forest harvesting. The site comprises of harvested areas of radiata pine, mature areas of radiata pine, road lines landings and side cast material.

Multiple landing failures through the forest have resulted in the migration of sediment and woody debris into streams. Invertebrate species observed on site indicate the Mangapoike River tributaries and the ephemeral streams within the forest have been negatively impacted by the activities within the forest resulting from harvest practice. The ephemeral streams show severe degradation and the Mangapoike river tributaries show some degradation.

A large debris dam below skid 35 has resulted in severe upstream sedimentation and a blockage of woody debris within the stream. All debris has originated from the harvested forest and includes cut radiata logs and stumps. Woody debris and flood flows have damaged stream banks causing erosion and further in stream sedimentation. Woody debris and sediment has been deposited on the stream bed and on stream banks and flood plain areas within the forest, reducing and destroying instream habitat and effecting ecosystem processes and species present.

Remediation is needed to address the issues resulting from the landslides and potential ongoing sedimentation and erosion. The future harvesting of Waituna forest needs to follow best practice erosion control methods including drainage, bunding, benching and monitoring.



[9] The above statement is a summary only. The ecological report contains detailed assessments of nine slip sites out of the 11 slips which occurred. Photographs attached to the report graphically illustrate the extent of actual damage at the nine identified sites. I am satisfied from the ecologist's report that the adverse effects of the discharges of sediment and debris on the stream ecosystems within the forest were substantial and widespread.

[10] I record that the information provided to the Court does not identify effects on any specific fish populations, plant varieties, populations or species. The effects which are described to me in the report are sometimes referred to as generic effects, typically arising from the discharge of sediment and other material into streams. That, undoubtedly happened here. Had there been evidence of direct effect on significant fish populations or the like, for example, that would have considerably increased the seriousness of the offending.

[11] The information before me also establishes that there was deposition of logs and sediment into what is described as "a lake" on an adjoining property, but I am given no further information regarding that matter because the owner of that property was satisfied with remediation. Accordingly I have not taken into account any effects on that water body in my assessment. Had I done so that may have elevated my assessed starting point for penalty. My assessment of effects of this offending relates only to the water bodies described in the ecologist's report.

[12] There is a further effect not mentioned in the summary of facts which has been the source of regular comment from Environment Judges sentencing pollution offences in the District Court over a period of many years. That is the cumulative effect of the myriad of discharges which arise from human activities on land and affect our waterways and marine environment.

[13] The Mangapoike River flows into the Wairoa River, which discharges to the coast at Wairoa. Sediment discharge to waters in the Mangapoike catchment will make a real but undefinable contribution to the levels of contaminant in the rivers and the sea where it ultimately ends up. The relationship between human activity on land and marine degradation is well recognised. I refer in that regard to examples given by

the Court in the recent *Laurie Forestry*<sup>1</sup> case and in the Ministry for the Environment publication “*Our Marine Environment 2019*.”

[14] In the *Laurie Forestry* case I noted the insidious effect of a myriad of discharges. That was referring to the fact that it is usually impossible to attribute the recognised diminution of the quality of our rivers and marine environment to any one incident or source but the effect of land activities on our rivers and marine environment is real. That means it is incumbent on those undertaking activities which might pollute our waters to act responsibly in accordance with “best practice” and, where those activities are authorised by resource consent, to abide by the terms of consent conditions imposed to prevent the discharge of sediment into water bodies.

[15] The maximum penalty for this offending is the sum of \$600,000. Mr Hopkinson for the Prosecutor has identified an appropriate penalty starting point of \$150,000. Mr Corlett for Juken has submitted that an appropriate starting point is \$75,000.

[16] In fixing a starting point I have had regard to the various matters identified in paragraphs 5 to 13 of the Prosecutor’s submissions. I highlight what I see as being the important issues for my consideration in this case, namely:

- The vulnerability of the affected environment and the extent of damage to it;
- The breach of conditions of resource consent;
- The business activity aspect of the offending;
- The need for deterrence;
- The Defendant’s culpability for the offending;
- Comparable cases.

I am going to address all of those issues in that order.

[17] Turning first to the vulnerability of the affected environment, the summary of agreed facts records that approximately 25 percent of the Waituna Forest is on land

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<sup>1</sup> *Marlborough District Council v Laurie Forestry Services Ltd* [2019] NZDC 2602.

identified in the Council's planning maps as Land Classification 3A, which is described in the summary as "the worst eroding land in the Gisborne District." The remaining 75 percent is hill country. The Forest Owners Association Environmental Guide and Code of Practice (the Code of Practice) notes the numerous challenges and often significant environmental risks involved in earthworks on steeper erosion prone land.

[18] Further to that, the possibility of the East Coast area being exposed to extreme weather events is well recognised. Between 1994 and 2015 there were six major storm and extreme weather events in the Gisborne region where large amounts of forestry slash and sediment were mobilised and washed downstream. Although I understand that previous events had not impacted on the Waituna Forest, the potential for that to happen should have been obvious.

[19] Under those circumstances a forest owning entity such as Juken might reasonably be expected to be aware of the need for rigorous management of its activities in this environment as well as compliance with the Code of Practice and with the conditions of its resource consent. Juken clearly failed to meet such expectation.

[20] Paragraph 19 of the Council's submissions identifies the following departures from the Code of Practice:

19. NZFOA Code of Practice requirements Juken departed from included:
  - (a) The Code of Practice requirement to monitor slash piles to ensure that they are always stable.
  - (b) The Code of Practice requirement to maintain water and sediment control structures in effective operating condition to prevent water building up in slash piles and adjoining landings to avoid possible landing collapse.
  - (c) The Code of Practice requirement to remove slash offsite where onsite slash storage sites are insufficient.
  - (d) The Code of Practice requirement to make every reasonable effort to avoid damage to restricted areas. (The offending in this case resulted in damage to protected watercourses.)

I note that in Juken's resource consent application it stated that it would comply with the Code of Practice. In other words, compliance with the Code of Practice was part

of the proposal which Juken put to the Council when seeking consent to allow it to undertake earthworks and harvesting activities in the forest.

[21] I refer to my earlier quotation from the Council ecologist's report as to the adverse effects brought about by the discharges. There were 11 significant slip sites extending over a wide area resulting in large amounts of sediment and woody debris entering freshwater systems many of which are classified as "protected watercourses" in the Gisborne Fresh Water Plan. This case involved seriously adverse impact on a vulnerable environment which the Code of Practice recognises as requiring a high degree of management..

[22] That brings me to the matter of breach of resource consent conditions on Juken's part. I have previously noted the breach of a number of the conditions of Juken's consents observed by Council officers, when they inspected the forest in July 2018. Not only do these breaches point to very poor management on Juken's part, but the breaches are inherently serious matters in themselves – a point which I cannot stress enough.

[23] Resource consents granted by consent authorities commonly incorporate conditions intended to avoid, remedy or mitigate adverse effects of activities. Persons operating under resource consents have an obligation to comply with conditions integral to the grant of such consents. The breach of conditions of consent undermines the very basis on which consents have been granted. That proposition is demonstrated by the Council decision on Juken's resource consent application granted in July 2014, which records that the effects of Juken's activities will be minor or less than minor... "with appropriate consent conditions in place and being adhered to." (my emphasis). In short, the consent formally recorded and noted the necessity for the conditions to be adhered to if adverse effects of the consented activities were to be avoided.

[24] Notwithstanding Juken's claims as to the manner in which it managed the Waituna Forest, it is apparent from the material before the Court that there were significant failures on its part in compliance with its conditions of consent as these related to the management of logging slash, landings and water.

[25] Juken raised in its submissions the fact that prior to these incidents the Council had not undertaken any inspections of the forest to ensure that Juken was complying with the terms of its consents over the five or six years that the consents have been in place. As it recognises, that does not excuse its compliance failures. However, I record the Court's real concern as to the Council's failure in that regard. Section 35(2)(d) RMA requires that every local authority shall (my emphasis - the word "shall" is used in s 35(2)(d)) monitor the exercise of resource consents that have effect in their regions or districts.

[26] The erosion prone nature of the land in the forest and the vulnerability of the region to extreme weather events to which I have referred earlier, make the failure of the Council to monitor exercise of Juken's resource consents reprehensible and irresponsible, to say the least. The Council contended that the failure to comply with conditions must have extended over a period of one year prior to this offending. It is only possible to speculate as to whether or not appropriate inspection by the Council would have discovered the failures and prevented this offending. I can take that matter no further.

[27] The next matter is the fact that this offending involved a substantial commercial forest entity undertaking its core business. In those circumstances, it might reasonably be expected to be aware of the rules under which it must operate, to ensure that its employees and contractors are similarly aware of the rules and to supervise their compliance with them. Juken submitted that it had systems in place to ensure that happened. I can only observe that those systems failed badly. Again, I note that Juken advised the Council as part of the resource consent process that it would undertake its activities in accordance with the Code of Practice and it failed to comply with the Code (being a forest industry document) in a number of respects.

[28] Finally on this topic, I note the principle that penalties imposed on commercial entities should be pitched at a level where they have some bite and do not simply constitute a cost of doing business.



[29] Turning to the matter of deterrence, I note that the purposes of sentencing include deterring defendants and others from further offending. That is relevant in two respects in this case.

[30] The first relates directly to the Defendant itself. Juken's counsel submits that deterrence has limited value in its case because it did not intend to offend, has worked collaboratively with the Council and is at low-risk of re-offending. I disagree with that proposition and refer to my earlier comments regarding the obligations of commercial entities undertaking activities, particularly in vulnerable environments such as this. Juken is a large scale forestry operator with over 40,000 hectares of forest under management in New Zealand. Its failures in this case were multiple and significant. Penalty must be pitched at a level which deters any repetition across its substantial operations.

[31] Secondly, there is a need to deter the wider forest industry from similar failures. Forestry is a major activity in the Gisborne region, often undertaken on difficult country vulnerable to weather events. There is a history of slash and sediment discharges in the region going back a number of years which demonstrate the need for best management practice and compliance with consent conditions. Penalties should be set at a level which drives compliance and deters poor practice.

[32] Next, there is the matter of the Defendant's culpability for the offending. Mr Corlett characterises Juken's culpability as being in the moderate category. Mr Hopkinson contends it is at the higher end of the scale. I concur with Mr Hopkinson's view in that regard.

[33] In this case, where there were multiple failures in best management practice together with multiple breaches of consent conditions, it is impossible to describe Juken's management of the Waituna Forest as anything other than "careless in the extreme." A correspondingly high degree of culpability for the offending must attach to it. Juken did not deliberately offend but its poor management practices contributed directly to the offending.

[34] I have had regard to all of the various cases referred to by counsel for the purpose of s 8(e) Sentencing Act. Comparisons are difficult in this case as there is a wide range of starting points adopted in the cases referred to. It is correct, as Mr Corlett noted, that some of the cases referred to involve multiple charges rather than one as in this case. However, it is apparent when reading the multiple charge cases that they were usually sentenced on a global or an overall basis where one sentence was imposed on all of the charges, because they were treated as continuing aspects of a single offending event or incident.

[35] That is certainly what happened in the *Laurie Forestry* case where the Court adopted an all up starting point of \$100,000 rather than two separate starting points of \$50,000 as suggested by counsel (although the final fine was divided equally between the two charges). I observe that Laurie's management failures involved one slip and were considerably less extensive than was the case here. This offending is much more serious than that by many degrees of magnitude.

[36] I note that in the *Olsen* case where both the District Court and High Court assessed starting points separately, a starting point of \$80,000 for a s 15(1)(b) offense was adopted by the High Court for offending which predated the 2009 penalty uplifts, where penalty levels were doubled.<sup>2</sup> I find that offending to be less serious than this, again by a significant margin.

[37] I have had regard to all of these matters in reaching a penalty starting point. I consider that the number of skid site failures in this case which greatly exceeds the number of failures in any of the other cases referred to and the consequent extent of damage to waterways at Waituna over a substantial area (shown in figure 2 of the ecologist's report) are significant factors in this case. Those factors must be combined with a high degree of culpability on the part of Juken for poor management of its forestry operation on what it knew, or must have known, to be a vulnerable site and a particular need for deterrence of poor forestry management practices in this region in light of past history.

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<sup>2</sup> *P F Olsen Ltd v Bay of Plenty Regional Council* [2012] NZHC 2392, *Bay of Plenty Regional Council v P F Olsen Ltd* DC Tauranga CRN08063501466, 16 March 2010.

[38] I am aware that Juken is a significant corporate entity. It has massive forest interests in New Zealand. I am advised that it has the capacity to pay a fine of the amount being debated by counsel (between \$75,000 and \$150,000). I consider that for the deterrent aspect of this sentencing to be meaningful the penalty must be commensurate in some way with Juken's financial capacity, which I have assumed to be substantial.

[39] Having regard to all of those matters I determine that a starting point for penalty in this case should be the sum of \$200,000. I note that is one-third of maximum penalty.

[40] I record that the adverse effects of these discharges have fallen into what I have called the generic effects of contaminant discharge. I was given no information as to direct effects on any populations of fish or other aquatic species, although there would have been such effects on those species that were present in the waterways. I have no knowledge of those. I note that the river itself is apparently a trout breeding river, but again I had no evidence of effect on trout breeding. I can say that had there been evidence of effects on specific fish populations that would have elevated the seriousness of the offending and I would have adopted a higher penalty than I have.

[41] I do not propose making any reduction from the starting point on account of Juken's past good character. It has two past convictions for RMA offending in 1997. I do not propose any uplift in penalty relating to those due to the lapse of time.

[42] I have disregarded amounts spent by Juken on remediating its neighbour's property in my considerations. As I have noted, I have been given no details of effects of those incidents on the neighbour nor if the remediation work related to contamination of water bodies on the adjoining property or related to other land type improvements or remediation. The charge with which I am dealing relates to the discharge of a contaminant to water and it must be work to remediate that for which any credit should be given and I have no evidence in that regard.

[43] I accept that Juken has undertaken an extensive clean-up on its own land in accordance with abatement notices issued by the Council. It says this was underway

before Council intervention. It is apparently putting in place processes to manage slash on the forest better than those in place previously. Those processes are described in paragraphs 53 to 58 of the Council's submissions. The question might be reasonably asked as to why these processes were not in place previously in light of the Code of Practice and known vulnerability of parts of the forest.

[44] The Council agrees that there has been a high degree of willing co-operation between Juken and itself and says that Juken has gone beyond what was required to simply achieve remediation and compliance and that there has been an improvement in its management and supervisory processes which should be given some recognition. I will allow a deduction from the starting point of five percent to reflect that factor.

[45] The Defendant entered a not guilty plea on this matter on 12 March 2018. On 13 August 2019 it filed a memorandum seeking to vacate the plea and a guilty plea was formally entered on 22 August 2019, at which stage the Prosecutor advises, preparation for trial was underway. On that basis I concur with the Prosecutor's submission that a 20 percent discount from the reduced starting point be given for guilty plea.

[46] Accordingly, I determine as follows:

- Juken New Zealand Limited is fined the sum of \$152,000.
- It will pay solicitor costs in accordance with the Costs in Criminal Cases Regulations (to be fixed by the Registrar if need be) and Court costs \$130.
- Pursuant to s 342 Resource Management Act 1991 I direct that the fine less 10 percent Crown deduction is to be paid to the Gisborne District Council.



B P Dwyer  
Environment/District Court Judge

## Simon Pope

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**From:** Erich Bachmann <Erich.Bachmann@heskethhenry.co.nz>  
**Sent:** Tuesday, 17 December 2019 5:21 p.m.  
**To:** Svetlana Malivuk  
**Cc:** Sarah Gibbs  
**Subject:** Juken New Zealand Limited [HH-IM.FID664191]  
**Attachments:** [2019] NZDC 24075 Gisborne City Council v Juken New Zealand Ltd.pdf

Dear Svetlana,

We refer to the below correspondence. The Judge's sentencing notes in relation to the Gisborne District Council's ("**Council**") proceedings against Juken New Zealand Limited ("**JNL**") have now been made available to us and are **attached** as requested.

JNL gave considerable thought to filing an appeal on a number of grounds. In particular, it is JNL's view that insufficient weight was given to the extreme nature of the dual weather events that occurred in June 2018 which even best practice infrastructure and engineering (that JNL believed was in place) could not have been capable of withstanding. JNL explains that it relied heavily on external contractors to perform much of the relevant compliance work. As such, JNL generally engaged highly experienced contractors to undertake the work necessary to meet JNL's compliance obligations. JNL carried out its own regular inspections of the compliance works being undertaken by the contractors. There were no adverse compliance reports from the Council or otherwise. On this basis, JNL was satisfied that its compliance obligations were being dutifully discharged.

JNL also wishes to emphasise that, as indicated in the judgment, the sentencing has a high deterrence component (for both JNL's operations and the forestry industry generally). In JNL's view, this has been heavily influenced by the well-publicised events in Tologa Bay which have been conflated with the events in Waituna Forest, even though these two events were completely separate and in different geographical and ecological regions. To this end, the fine imposed on JNL is likely a benchmark for the more serious cases yet to be heard or sentenced (as the case may be) and should be viewed in the context of other judgments relating to similar events, the first of which we understand is scheduled to be delivered in February next year.

As referenced in the judgment, JNL took immediate and pro-active action, without prompting from the Council, to assess and commence remedial works. As at the sentencing date, JNL had expended approximately \$600,000 in this regard. The judgment also makes reference to the owner of the one affected neighbouring property who was satisfied with the remedial actions already undertaken by JNL at the time of sentencing. The Judge stated that these efforts on the part of JNL were not taken into account in sentencing.

As noted above, JNL seriously considered filing an appeal but ultimately opted to apply its efforts and resources to moving forward in a productive and co-operative fashion with a focus on the key learnings from these events and how these can be applied to its operations. One of those key learnings is to prepare for even more damaging events in the future. For some years JNL has been removing the bulk of forest debris from its logging sites at a high cost, leaving only material that is necessary to protect the land from erosion and to shade exposed waterways. Not all companies do this. JNL is also funding its own international research into alternative methodologies to remove or treat unsaleable residual forest debris. That research was ongoing when the storms hit the region. Subsequent to this judgment, JNL will be reviewing the research results to determine a resolution to the increased standards demanded.

As JNL's guilty plea and initial and subsequent action demonstrates, it has taken full and complete responsibility for these events and acted swiftly and fully to make amends. This evidences that JNL is a socially responsible company with respect for the law and property. As JNL endeavours to be a best practice forest operator and industry leader, it is extremely disappointed by these events. JNL has operated in New Zealand for a long time and wishes to continue to do so.

Please let us know any further information that you may require.

Kind regards

Erich

**Erich Bachmann | Managing Partner**



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**From:** Svetlana Malivuk [<mailto:SMalivuk@linz.govt.nz>]  
**Sent:** Wednesday, 27 November 2019 12:04 p.m.  
**To:** Erich Bachmann  
**Cc:** Sarah Gibbs  
**Subject:** RE: Juken New Zealand Limited [HH-IM.FID664191]

Dear Erich

Thank you for your email below.

We will be in touch with you in due course regarding the below.

If you have any queries in the meantime, do not hesitate to contact us.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

E [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | DDI +64 4 471 6657 |

A Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace  
PO Box 5501, Wellington 6145, New Zealand | T 04 462 4490  
W [www.linz.govt.nz](http://www.linz.govt.nz) | [data.linz.govt.nz](http://data.linz.govt.nz)

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**From:** Erich Bachmann <[Erich.Bachmann@heskethhenry.co.nz](mailto:Erich.Bachmann@heskethhenry.co.nz)>  
**Sent:** Wednesday, 27 November 2019 11:59 AM  
**To:** Svetlana Malivuk <[SMalivuk@linz.govt.nz](mailto:SMalivuk@linz.govt.nz)>  
**Cc:** Sarah Gibbs <[Sarah.Gibbs@heskethhenry.co.nz](mailto:Sarah.Gibbs@heskethhenry.co.nz)>  
**Subject:** Juken New Zealand Limited [HH-IM.FID664191]

Dear Svetlana,

We refer to previous correspondence in relation to the Gisborne District Council's ("Council") proceedings against Juken New Zealand Limited ("JNL"), please see **attached**:

- JNL's sentencing submissions;
- Affidavit of 9(2)(a) in support of JNL;
- JNL's bundle of authorities;
- JNL's media release on the judgement; and
- Council's sentencing submissions.

Please note that there is not yet a written sentencing judgement. If and when either a written judgement or sentencing notes/transcript are made available, we will provide these to you.

In relation to JNL's sentencing submissions, we summarise the following key aspects:



- In accordance with JNL's media release, JNL expresses sincere regret for its failure to comply with the law in this instance, and for the damage caused.
- The Judge applied a 20% discount for JNL's early guilty plea and a 5% discount for JNL's subsequent remedial actions (having expended approximately \$600,000 in this regard as at the sentencing date).
- As soon as practically possible, JNL self-reported to the Council and commenced remedial works in the forest and on the sole affected neighbouring property (which were completed to both Council's and the neighbour's satisfaction);
- JNL fully complied with abatement notices issued by the Council and co-operated with the Council at all times;
- JNL's offending was not deliberate and occurred over a duration of a week and a half between major weather events;
- JNL genuinely believed its operations were compliant and in line with best practice, with regular external third party auditing procedures in place and having not previously received any notices or indications from the Council or otherwise regarding non-compliance.
- JNL's previous environmental offending occurred some 23 years ago despite the size and extent of its operations;
- JNL employs 800 New Zealander's and 280 in the Gisborne region;
- JNL makes contributions to the environment and its community at both local and national levels, reflecting that corporate social responsibility efforts are standard business practice for JNL (see paragraph 6 of [redacted] 9(2)(a) [redacted]'s Affidavit for further detail);
- These proceedings are to be distinguished from the Tologa Bay incident; JNL has no forestry plantations that related to the damage that occurred there in June 2018.
- Since the weather events relevant to these proceedings, JNL has explicitly focussed on and improved its slash management and waste operations and is working closely with the Council regarding catchment restrictions in future harvest consents.

With respect to the sentencing, the Judge took a very firm approach in the opinion of Counsel for JNL. The Judge accepted that JNL's offending was not deliberate but still took the view that JNL's culpability was high. During his sentencing decision, we are advised that the Judge made the following key points:

- The Council's lack of inspections at the forest were disgraceful and reprehensible to the extent that he seriously considered not awarding the Council any of the imposed fine (he ultimately directed that 90% of the fine be paid to the Council but only because withholding it would be unfair on ratepayers);
- While not particular to the forest in this case, there had previously been major storms in the region so the risk of major rainfall events was known;
- There had been multiple skid failures throughout the forest and the environment was steep and vulnerable;
- A primary concern (aside from the damage caused) was that the judgement make an example of JNL and provide deterrence for other forestry companies in the area.

Given that JNL is the first of several forestry companies to face penalties for damage after the weather events of 3 and 4 June and 11 and 12 June last year, the \$152,000 fine imposed on JNL is essentially a benchmark for similar cases. For perspective, it would need to be viewed in the context of other judgements that are yet to be delivered. We understand that Hikurangi Forest Farms (which we understand is now trading as Aratu Forests Limited) is scheduled to be sentenced in February 2020, for example.

To be clear, JNL accepts the Judge's decision and the damage caused. However, JNL emphasises that only 11 of its approximately 100 skid sites across some 1,096 hectares (952 hectares of which were subject to the Resource Consents) discharged waste during the two major rain events that occurred in quick succession. JNL genuinely believed that its operations, including the skid structures, landings and engineering works in the forest were compliant. This was on the basis of: regular annual third party external auditing by SGS (a professional inspection, verification, testing and certification company) against the FSC and ISO 14001 standards; extensive recertification audits every three years; engagement of experienced contractors who were fully consulted over the requirements of the Resource Consents and were contracted to undertake agreed environmental and health and safety mitigation measures; weekly site inspections of contractor works by JNL; and least of all, no compliance issues having been raised with JNL at all in the midst of these compliance measures, including by the Council.

Accordingly, JNL submits that, while there were indeed failures that caused damage and JNL accepts the penalty associated with this, those failures were not due to JNL's carelessness, non-compliance or deficient skid structures. Rather, the storm events and level of rainfall were so severe and in such quick succession, that even best practice skid structures and engineering works were simply unable to withstand the load in 11 out of approximately 100 cases. JNL considers that this is an important distinction and requests that the OIO views the judgement in this context.

As per JNL's media release, JNL is conducting a detailed review of the judgement alongside its legal advisers in the proceedings.

Please let us know any further information or assistance you may require in relation to this matter.

Kind regards

Erich

**Erich Bachmann | Managing Partner**

**Tel:** +64 9 375 8709 **Fax:** +64 9 365 5209 **Mobile:** +64 21 827 087  
Level 14, PwC Tower, 188 Quay Street, Auckland 1010



---

**From:** Svetlana Malivuk [<mailto:SMalivuk@linz.govt.nz>]  
**Sent:** Friday, 25 October 2019 3:15 p.m.  
**To:** Erich Bachmann  
**Cc:** Sarah Gibbs  
**Subject:** RE: Juken New Zealand Limited [HH-IM.FID664191]

Dear Erich

Thank you for your email below. We will let you know if we require any further information from you in due course.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

**E** [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | **DDI** +64 4 471 6657 |

**A** Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace  
**PO** Box 5501, Wellington 6145, New Zealand | **T** 04 462 4490  
**W** [www.linz.govt.nz](http://www.linz.govt.nz) | [data.linz.govt.nz](http://data.linz.govt.nz)

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**From:** Erich Bachmann <[Erich.Bachmann@heskethhenry.co.nz](mailto:Erich.Bachmann@heskethhenry.co.nz)>  
**Sent:** Friday, 25 October 2019 2:56 PM  
**To:** Svetlana Malivuk <[SMalivuk@linz.govt.nz](mailto:SMalivuk@linz.govt.nz)>  
**Cc:** Sarah Gibbs <[Sarah.Gibbs@heskethhenry.co.nz](mailto:Sarah.Gibbs@heskethhenry.co.nz)>  
**Subject:** Juken New Zealand Limited [HH-IM.FID664191]

Dear Svetlana,

We acknowledge receipt of your letter and respond accordingly.

As requested, we **attach** the Agreed Statement of Facts in relation to the Gisborne District Council proceedings against Juken New Zealand Limited ("JNL"). We also **attach** recent related correspondence with Valerie Bland of your office which we understand she has already passed on to you. As noted in our email to Valerie Bland of 16 October 2019, a sentencing hearing for the case is scheduled for 22 November 2019. Accordingly, we are unable to provide you with the requested sentencing information at this time. However, we will do so in due course once available.

To clarify, these proceedings relate to the Waituna Forest, being more than 100 kilometres south of the Tolaga Bay area. As per paragraph 20 of the Agreed Statement of Facts and the Gisborne Herald article referenced in your letter, the areas north of Gisborne (including the Tolaga Bay area) were severely affected by the major weather events on 3 and 4 June 2018. However, it was the further storm on 11 and 12 June 2018 which significantly impacted the Waituna Forest and it is the effects of this further storm that are relevant to the Gisborne District Council proceedings against JNL. Accordingly, your reference to the highly publicised Tolaga Bay disaster in relation to this matter is mistaken. The events that occurred at Tolaga Bay are separate and unrelated to the events that occurred at the Waituna Forest. It is only the Waituna Forest events that are relevant to these proceedings. JNL does not operate in or around Tolaga Bay and is therefore not involved in the events that unfolded there. For your reference, we note in particular paragraphs 16, 17, 19, 22, 23, 29 and 30 of the Agreed Statement of Facts in support of JNL's actions and position.

For completeness, we note that JNL faces only one charge to which it has pleaded guilty (for discharging a contaminant (namely slash, logging debris, waste logging material and/or sediment) onto or into land in circumstances where it may enter water in breach of section 15(1)(b) of the Resource Management Act 1991). Also, that Gisborne District Council has withdrawn a further charge that was initially made. Please also note that in our view the newspaper article you provided is somewhat misleading in that it conveys the impression that JNL has an involvement in the Tolaga Bay disaster and may even be one of the nine enterprises charged with offences in relation to that incident. As noted above, JNL has no connection to Tolaga Bay.

Please let us know any further information that you require. As above, we will provide you with the balance of the requested information once the sentencing process has taken place.

Kind regards

Erich

**Erich Bachmann | Managing Partner**

**Tel:** +64 9 375 8709 **Fax:** +64 9 365 5209 **Mobile:** +64 21 827 087  
Level 14, PwC Tower, 188 Quay Street, Auckland 1010



---

**From:** Svetlana Malivuk [<mailto:SMalivuk@linz.govt.nz>]  
**Sent:** Thursday, 17 October 2019 2:35 p.m.  
**To:** Erich Bachmann  
**Subject:** Juken New Zealand Limited

Dear Erich

Please refer to the **attached** letter.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

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## Simon Pope

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**From:** Svetlana Malivuk  
**Sent:** Wednesday, 18 December 2019 8:13 a.m.  
**To:** 'Erich Bachmann'  
**Cc:** 'Sarah Gibbs'  
**Subject:** RE: Juken New Zealand Limited [HH-IM.FID664191]

Dear Erich

Thank you for your email below.

We will be in touch in due course if we require any further information from you.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

**E** [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | **DDI** +64 4 471 6657 |

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**From:** Erich Bachmann <Erich.Bachmann@heskethhenry.co.nz>  
**Sent:** Tuesday, 17 December 2019 5:21 PM  
**To:** Svetlana Malivuk <SMalivuk@linz.govt.nz>  
**Cc:** Sarah Gibbs <Sarah.Gibbs@heskethhenry.co.nz>  
**Subject:** Juken New Zealand Limited [HH-IM.FID664191]

Dear Svetlana,

We refer to the below correspondence. The Judge's sentencing notes in relation to the Gisborne District Council's ("**Council**") proceedings against Juken New Zealand Limited ("**JNL**") have now been made available to us and are **attached** as requested.

JNL gave considerable thought to filing an appeal on a number of grounds. In particular, it is JNL's view that insufficient weight was given to the extreme nature of the dual weather events that occurred in June 2018 which even best practice infrastructure and engineering (that JNL believed was in place) could not have been capable of withstanding. JNL explains that it relied heavily on external contractors to perform much of the relevant compliance work. As such, JNL generally engaged highly experienced contractors to undertake the work necessary to meet JNL's compliance obligations. JNL carried out its own regular inspections of the compliance works being undertaken by the contractors. There were no adverse compliance reports from the Council or otherwise. On this basis, JNL was satisfied that its compliance obligations were being dutifully discharged.

JNL also wishes to emphasise that, as indicated in the judgment, the sentencing has a high deterrence component (for both JNL's operations and the forestry industry generally). In JNL's view, this has been heavily influenced by the well-publicised events in Tologa Bay which have been conflated with the events in Waituna Forest, even though these two events were completely separate and in different geographical and ecological regions. To this end, the fine imposed on JNL is likely a benchmark for the more serious cases yet to be heard or sentenced (as the case may be) and should be viewed in the context of other judgments relating to similar events, the first of which we understand is scheduled to be delivered in February next year.

As referenced in the judgment, JNL took immediate and pro-active action, without prompting from the Council, to assess and commence remedial works. As at the sentencing date, JNL had expended approximately \$600,000 in this regard. The judgment also makes reference to the owner of the one affected neighbouring property who was satisfied with the remedial actions already undertaken by JNL at the time of sentencing. The Judge stated that these efforts on the part of JNL were not taken into account in sentencing.

As noted above, JNL seriously considered filing an appeal but ultimately opted to apply its efforts and resources to moving forward in a productive and co-operative fashion with a focus on the key learnings from these events and how these can be applied to its operations. One of those key learnings is to prepare for even more damaging events in the future. For some years JNL has been removing the bulk of forest debris from its logging sites at a high cost, leaving only material that is necessary to protect the land from erosion and to shade exposed waterways. Not all companies do this. JNL is also funding its own international research into alternative methodologies to remove or treat unsaleable residual forest debris. That research was ongoing when the storms hit the region. Subsequent to this judgment, JNL will be reviewing the research results to determine a resolution to the increased standards demanded.

As JNL's guilty plea and initial and subsequent action demonstrates, it has taken full and complete responsibility for these events and acted swiftly and fully to make amends. This evidences that JNL is a socially responsible company with respect for the law and property. As JNL endeavours to be a best practice forest operator and industry leader, it is extremely disappointed by these events. JNL has operated in New Zealand for a long time and wishes to continue to do so.

Please let us know any further information that you may require.

Kind regards

Erich

**Erich Bachmann | Managing Partner**

**Tel:** +64 9 375 8709 **Fax:** +64 9 365 5209 **Mobile:** +64 21 827 087  
Level 14, PwC Tower, 188 Quay Street, Auckland 1010



---

**From:** Svetlana Malivuk [<mailto:SMalivuk@linz.govt.nz>]  
**Sent:** Wednesday, 27 November 2019 12:04 p.m.  
**To:** Erich Bachmann  
**Cc:** Sarah Gibbs  
**Subject:** RE: Juken New Zealand Limited [HH-IM.FID664191]

Dear Erich

Thank you for your email below.

We will be in touch with you in due course regarding the below.

If you have any queries in the meantime, do not hesitate to contact us.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

**E** [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | **DDI** +64 4 471 6657 |



**From:** Erich Bachmann <[Erich.Bachmann@heskethhenry.co.nz](mailto:Erich.Bachmann@heskethhenry.co.nz)>

**Sent:** Wednesday, 27 November 2019 11:59 AM

**To:** Svetlana Malivuk <[SMalivuk@linz.govt.nz](mailto:SMalivuk@linz.govt.nz)>

**Cc:** Sarah Gibbs <[Sarah.Gibbs@heskethhenry.co.nz](mailto:Sarah.Gibbs@heskethhenry.co.nz)>

**Subject:** Juken New Zealand Limited [HH-IM.FID664191]

Dear Svetlana,

We refer to previous correspondence in relation to the Gisborne District Council's ("**Council**") proceedings against Juken New Zealand Limited ("**JNL**"), please see **attached**:

- JNL's sentencing submissions;
- Affidavit of 9(2)(a) in support of JNL;
- JNL's bundle of authorities;
- JNL's media release on the judgement; and
- Council's sentencing submissions.

Please note that there is not yet a written sentencing judgement. If and when either a written judgement or sentencing notes/transcript are made available, we will provide these to you.

In relation to JNL's sentencing submissions, we summarise the following key aspects:

- In accordance with JNL's media release, JNL expresses sincere regret for its failure to comply with the law in this instance, and for the damage caused.
- The Judge applied a 20% discount for JNL's early guilty plea and a 5% discount for JNL's subsequent remedial actions (having expended approximately \$600,000 in this regard as at the sentencing date).
- As soon as practically possible, JNL self-reported to the Council and commenced remedial works in the forest and on the sole affected neighbouring property (which were completed to both Council's and the neighbour's satisfaction);
- JNL fully complied with abatement notices issued by the Council and co-operated with the Council at all times;
- JNL's offending was not deliberate and occurred over a duration of a week and a half between major weather events;
- JNL genuinely believed its operations were compliant and in line with best practice, with regular external third party auditing procedures in place and having not previously received any notices or indications from the Council or otherwise regarding non-compliance.
- JNL's previous environmental offending occurred some 23 years ago despite the size and extent of its operations;
- JNL employs 800 New Zealander's and 280 in the Gisborne region;
- JNL makes contributions to the environment and its community at both local and national levels, reflecting that corporate social responsibility efforts are standard business practice for JNL (see paragraph 6 of 9(2)(a)'s Affidavit for further detail);
- These proceedings are to be distinguished from the Tologa Bay incident; JNL has no forestry plantations that related to the damage that occurred there in June 2018.
- Since the weather events relevant to these proceedings, JNL has explicitly focussed on and improved its slash management and waste operations and is working closely with the Council regarding catchment restrictions in future harvest consents.

With respect to the sentencing, the Judge took a very firm approach in the opinion of Counsel for JNL. The Judge accepted that JNL's offending was not deliberate but still took the view that JNL's culpability was high. During his sentencing decision, we are advised that the Judge made the following key points:

- The Council's lack of inspections at the forest were disgraceful and reprehensible to the extent that he seriously considered not awarding the Council any of the imposed fine (he ultimately directed that 90% of the fine be paid to the Council but only because withholding it would be unfair on ratepayers);
- While not particular to the forest in this case, there had previously been major storms in the region so the risk of major rainfall events was known;

- There had been multiple skid failures throughout the forest and the environment was steep and vulnerable;
- A primary concern (aside from the damage caused) was that the judgement make an example of JNL and provide deterrence for other forestry companies in the area.

Given that JNL is the first of several forestry companies to face penalties for damage after the weather events of 3 and 4 June and 11 and 12 June last year, the \$152,000 fine imposed on JNL is essentially a benchmark for similar cases. For perspective, it would need to be viewed in the context of other judgements that are yet to be delivered. We understand that Hikurangi Forest Farms (which we understand is now trading as Aratu Forests Limited) is scheduled to be sentenced in February 2020, for example.

To be clear, JNL accepts the Judge's decision and the damage caused. However, JNL emphasises that only 11 of its approximately 100 skid sites across some 1,096 hectares (952 hectares of which were subject to the Resource Consents) discharged waste during the two major rain events that occurred in quick succession. JNL genuinely believed that its operations, including the skid structures, landings and engineering works in the forest were compliant. This was on the basis of: regular annual third party external auditing by SGS (a professional inspection, verification, testing and certification company) against the FSC and ISO 14001 standards; extensive recertification audits every three years; engagement of experienced contractors who were fully consulted over the requirements of the Resource Consents and were contracted to undertake agreed environmental and health and safety mitigation measures; weekly site inspections of contractor works by JNL; and least of all, no compliance issues having been raised with JNL at all in the midst of these compliance measures, including by the Council.

Accordingly, JNL submits that, while there were indeed failures that caused damage and JNL accepts the penalty associated with this, those failures were not due to JNL's carelessness, non-compliance or deficient skid structures. Rather, the storm events and level of rainfall were so severe and in such quick succession, that even best practice skid structures and engineering works were simply unable to withstand the load in 11 out of approximately 100 cases. JNL considers that this is an important distinction and requests that the OIO views the judgement in this context.

As per JNL's media release, JNL is conducting a detailed review of the judgement alongside its legal advisers in the proceedings.

Please let us know any further information or assistance you may require in relation to this matter.

Kind regards

Erich

**Erich Bachmann | Managing Partner**

**Tel:** +64 9 375 8709 **Fax:** +64 9 365 5209 **Mobile:** +64 21 827 087  
Level 14, PwC Tower, 188 Quay Street, Auckland 1010




---

**From:** Svetlana Malivuk [<mailto:SMalivuk@linz.govt.nz>]  
**Sent:** Friday, 25 October 2019 3:15 p.m.  
**To:** Erich Bachmann  
**Cc:** Sarah Gibbs  
**Subject:** RE: Juken New Zealand Limited [HH-IM.FID664191]

Dear Erich

Thank you for your email below. We will let you know if we require any further information from you in due course.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

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**From:** Erich Bachmann <[Erich.Bachmann@heskethhenry.co.nz](mailto:Erich.Bachmann@heskethhenry.co.nz)>  
**Sent:** Friday, 25 October 2019 2:56 PM  
**To:** Svetlana Malivuk <[SMalivuk@linz.govt.nz](mailto:SMalivuk@linz.govt.nz)>  
**Cc:** Sarah Gibbs <[Sarah.Gibbs@heskethhenry.co.nz](mailto:Sarah.Gibbs@heskethhenry.co.nz)>  
**Subject:** Juken New Zealand Limited [HH-IM.FID664191]

Dear Svetlana,

We acknowledge receipt of your letter and respond accordingly.

As requested, we **attach** the Agreed Statement of Facts in relation to the Gisborne District Council proceedings against Juken New Zealand Limited ("JNL"). We also **attach** recent related correspondence with Valerie Bland of your office which we understand she has already passed on to you. As noted in our email to Valerie Bland of 16 October 2019, a sentencing hearing for the case is scheduled for 22 November 2019. Accordingly, we are unable to provide you with the requested sentencing information at this time. However, we will do so in due course once available.

To clarify, these proceedings relate to the Waituna Forest, being more than 100 kilometres south of the Tolaga Bay area. As per paragraph 20 of the Agreed Statement of Facts and the Gisborne Herald article referenced in your letter, the areas north of Gisborne (including the Tolaga Bay area) were severely affected by the major weather events on 3 and 4 June 2018. However, it was the further storm on 11 and 12 June 2018 which significantly impacted the Waituna Forest and it is the effects of this further storm that are relevant to the Gisborne District Council proceedings against JNL. Accordingly, your reference to the highly publicised Tolaga Bay disaster in relation to this matter is mistaken. The events that occurred at Tolaga Bay are separate and unrelated to the events that occurred at the Waituna Forest. It is only the Waituna Forest events that are relevant to these proceedings. JNL does not operate in or around Tolaga Bay and is therefore not involved in the events that unfolded there. For your reference, we note in particular paragraphs 16, 17, 19, 22, 23, 29 and 30 of the Agreed Statement of Facts in support of JNL's actions and position.

For completeness, we note that JNL faces only one charge to which it has pleaded guilty (for discharging a contaminant (namely slash, logging debris, waste logging material and/or sediment) onto or into land in circumstances where it may enter water in breach of section 15(1)(b) of the Resource Management Act 1991). Also, that Gisborne District Council has withdrawn a further charge that was initially made. Please also note that in our view the newspaper article you provided is somewhat misleading in that it conveys the impression that JNL has an involvement in the Tolaga Bay disaster and may even be one of the nine enterprises charged with offences in relation to that incident. As noted above, JNL has no connection to Tolaga Bay.

Please let us know any further information that you require. As above, we will provide you with the balance of the requested information once the sentencing process has taken place.

Kind regards

Erich

**Erich Bachmann | Managing Partner**

Tel: +64 9 375 8709 Fax: +64 9 365 5209 Mobile: +64 21 827 087  
Level 14, PwC Tower, 188 Quay Street, Auckland 1010





---

**From:** Svetlana Malivuk [<mailto:SMalivuk@linz.govt.nz>]  
**Sent:** Thursday, 17 October 2019 2:35 p.m.  
**To:** Erich Bachmann  
**Subject:** Juken New Zealand Limited

Dear Erich

Please refer to the **attached** letter.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

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# Assessment Report

## 201810118 – Juken New Zealand Limited

### Key information

<b>Incident date</b>	26 September 2019
<b>Triage date</b>	1 October 2019
<b>Assessment date</b>	14 January 2020
<b>Incident officer</b>	Gabrielle Johnston
<b>Assessment team</b>	Svetlana Malivuk

### Brief summary of Incident as alleged

1. Juken New Zealand Limited (**Juken**) has pleaded guilty in August 2019 to a charge brought against it by Gisborne District Council for breach of the Resource Management Act 19914 by discharging a contaminant (slash logging debris, waste logging material and sediment) between 3 June 2018 and 12 June 2019 where it may enter water.
2. This charge related to Juken's Waituna Forest located around 100km south of the Tolaga Bay area. While the Tolaga Bay disaster was severely affected by the major weather events on 3 and 4 June 2018, it was the further storm on 11 and 12 June 2018 which significantly impacted the Waituna Forest.<sup>1</sup>
3. Juken was sentenced at Gisborne District Court on 22 November 2019 and was:
  - (a) fined a sum of \$152,000 (out of a maximum of \$600,000);
  - (b) ordered to pay solicitors costs and Court costs of \$130.
4. In addition to the above, the Judge also directed that the fine less 10% Crown deduction is to be paid to the Gisborne District Council.

**Recommendation:** After considering the judgment and the specific circumstances that have occurred, I recommend that no further action is taken and the matter to be closed.

### Asset concerned

5. Juken holds numerous consents with OIO. Juken's website indicates (at <https://www.jnl.co.nz/our-forests/>) that they currently own 23 forests at East Coast and Wairarapa including the Waituna Forest.

### Person/s concerned

6. Juken is 100% overseas owned with 22.32% of its shares being owned by Wood One Internal Limited (a Hong Kong based company) and the rest by Japanese based owners being Woodone Co Ltd (76.1%) and Yusho Nakamoto (1.51%).

<sup>1</sup> See email from Erich Bachmann of Hesketh Henry Lawyers of 25 October 2019.



## Brief summary of information reviewed/inquiries made since triage

7. Since the incident was first triaged we have been regularly in contact with Hesketh Henry Lawyers who have updated us on the progress of the legal proceedings.
8. As part of the correspondence we were provided with a copy of the written judgment which was released sometime after the sentencing hearing. Relevant parts of the judgment are as follows:
  - (a) Juken self-reported the incidents to the Gisborne District Council (**the Council**) on 25 June 2018;<sup>2</sup>
  - (b) Following Council's inspection of the forest on 30 and 31 July 2018, the Council issued abatement notices requiring compliance with the terms of Juken's resource consents. Juken has largely complied with those notices and has undertaken extensive remedial work in Waituna Forest and on the neighbour's property.<sup>3</sup>
  - (c) While the maximum penalty for this type of offending is the sum of \$600,000, the Prosecutor identified that an appropriate penalty starting point is \$150,000. Juken submitted that an appropriate starting point is \$75,000.<sup>4</sup>
  - (d) The Judge acknowledged the breaches of resource consent conditions by Juken which were identified by Council and noted that these point to "very poor management" by Juken and are inherently serious.<sup>5</sup> The Judge also noted that while Juken submitted that it had systems in place to ensure that its employees and contractors are similarly aware of the rules and to supervise their compliance with them, those systems had failed badly.<sup>6</sup>
  - (e) However the Judge also noted the Council's failure to monitor exercise of Juken's resource consents and noted that this was 'reprehensible and irresponsible, to say the least.'<sup>7</sup>
  - (f) In addition to the above, the Judge also commented on the principle that penalties imposed on commercial entities should be pitched at a level where they have some bite and do not simply constitute a cost of doing business.<sup>8</sup> Specifically when it comes to deterrence, the Judge has commented that:
    - (i) While Juken's Counsel commented that as Juken did not intend to offend and that therefore deterrence has limited value, the Judge disagreed with this proposition and noted that Juken is a large scale forestry operator with over 40,000 hectares in forest under management in New Zealand. The Judge said that its failures in this case were multiple and significant. Penalty must be pitched at a level which deters any repetition across its substantial operations.<sup>9</sup>

<sup>2</sup> See paragraph 5 of the judgment

<sup>3</sup> See paragraphs 5 and 6 of the judgment

<sup>4</sup> See paragraph 15 of the judgment

<sup>5</sup> See paragraph 22 of the judgment

<sup>6</sup> See paragraph 27 of the judgment

<sup>7</sup> See paragraph 26 of the judgment

<sup>8</sup> See paragraph 28 of the judgment

<sup>9</sup> See paragraph 30 of the judgment

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- (ii) The judge also noted that there is a need to deter the wider forest industry from similar failures and that penalties should be set at a level which drives compliance and deters poor practice.<sup>10</sup>
- (g) The judge also described Juken's management of the Waituna Forest as anything other than "careless in the extreme". The judge noted that while Juken did not offend deliberately, its poor management practices contributed directly to the offending.<sup>11</sup>
- (h) The judge imposed a penalty of \$152,000 on Juken and made the following comments regarding the same:<sup>12</sup>
  - (i) He did not make any reduction on Juken's past good character. Juken had two past conviction for RMA offending in 1997.
  - (ii) The judge disregarded amounts spent by Juken on remediating the neighbours property.
  - (iii) Juken had undertaken an extensive clean-up on its own land in accordance with the Council's abatement notices.
  - (iv) There has been a high degree of co-operation by Juken who have also gone beyond what was required to simply achieve remediation and compliance.
  - (v) Juken changed its plea from not guilty to guilty.
- 9. Juken's legal representatives have also expressed its client's views on the situation as well as the judgment:<sup>13</sup>
  - (a) Juken has considered appealing the sentence on a number of grounds including the fact that it is Juken's view that insufficient weight was given to the extreme nature of the dual weather events that occurred in June 2018 which even best practice infrastructure and engineering (that Juken believed was in place) could not have been capable of withstanding.
  - (b) Juken generally engaged highly experienced contractors to undertake the work necessary to meet Juken's compliance obligations. It carried out its own regular inspections of the compliance works being undertaken by the contractors. As there were no adverse compliance reports from the Council of otherwise, Juken was satisfied that its compliance obligations were being dutifully discharged.
  - (c) The sentencing had a high deterrence component.
  - (d) Juken took immediate and pro-active action, without prompting from the Council, to assess and commence remedial works. As at the sentencing date, Juken expended approximately \$600,000.
  - (e) The Judge did not take into account remedial action undertaken by Juken at the neighbouring property.
  - (f) Instead of filing an appeal Juken has now opted to apply its efforts to moving forward with a focus on the key learnings from these events including preparing for more damaging events.
  - (g) Juken is already engaged in the following:

<sup>10</sup> See paragraph 31 of the judgment

<sup>11</sup> See paragraph 33 of the judgment

<sup>12</sup> See paragraphs 41 to 45 of the judgment

<sup>13</sup> See email dated 17 December 2019 from Hesketh Henry Lawyers.



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- (i) Juken has for some years been removing the bulk of forest debris from its logging sites at a high cost, leaving only material that is necessary to protect the land from erosion and to shade exposed waterways;
- (ii) Juken is also funding its own international research into alternative methodologies to remove or treat unsaleable residual forest debris – this research was ongoing when the storms hit the region
- (iii) Juken will also be reviewing the research results to determine a resolution to the increased standards demanded.

## Assessment

10. On the basis of the information currently available:

Question	Y/N	Basis for answer
Does there appear to have been a breach of the Rules?	N	While Juken has pleaded guilty for the charges brought against them by the Council and have been fined a sum of \$152,000, they have taken responsibility for their actions and have remedied the damage, it appears, to the best of their abilities.  The breach of RMA has not been conducted on purpose. Juken was of the opinion prior to the weather events in question that their infrastructure and engineering were following best practice.
Does the Incident fall within the OIO's Enforcement Criteria?	N	According to the written judgment, both Juken and the Council have failed in their obligations under the Resource Management Act.  Juken has been forthcoming regarding the incident that has occurred in June 2018, they have complied with abatement notices issued by the Council and have and continue to remedy other issues caused by the weather events.
Is there any reason to qualify, amend or add to the answer to Triage questions?	N	

## Recommendation

Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
You decide you have reason to suspect that there has been a breach of the Act or an offence under the Act has been committed		
The Incident progress to Investigation Stage 1		
No further action be taken and the	✓	No breach has occurred and I do not

Information in and attached to this report may be legally privileged

Recommendation	Tick	Basis for answer
Incident be closed		consider that Juken's good character has been impacted by the events that occurred or the judgment to the point where it would be warranted for the OIO to take any enforcement action.
An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed		

**9(2)(a)**

Pedro Morgan / Sarah Scott  
Principal Advisor Enforcement

Agree: ☒ But see comment  
Disagree: ☐  
Amend as marked: ☐

Date: 14-1-20.

**9(2)(a)**

Jeremy Ford *Clare Needham*  
Acting Manager Enforcement

Agree: ☒ But see comment  
Disagree: ☐  
Amend as marked: ☐

Date: 14/1/20

### Notes/guidance for Investigation Team

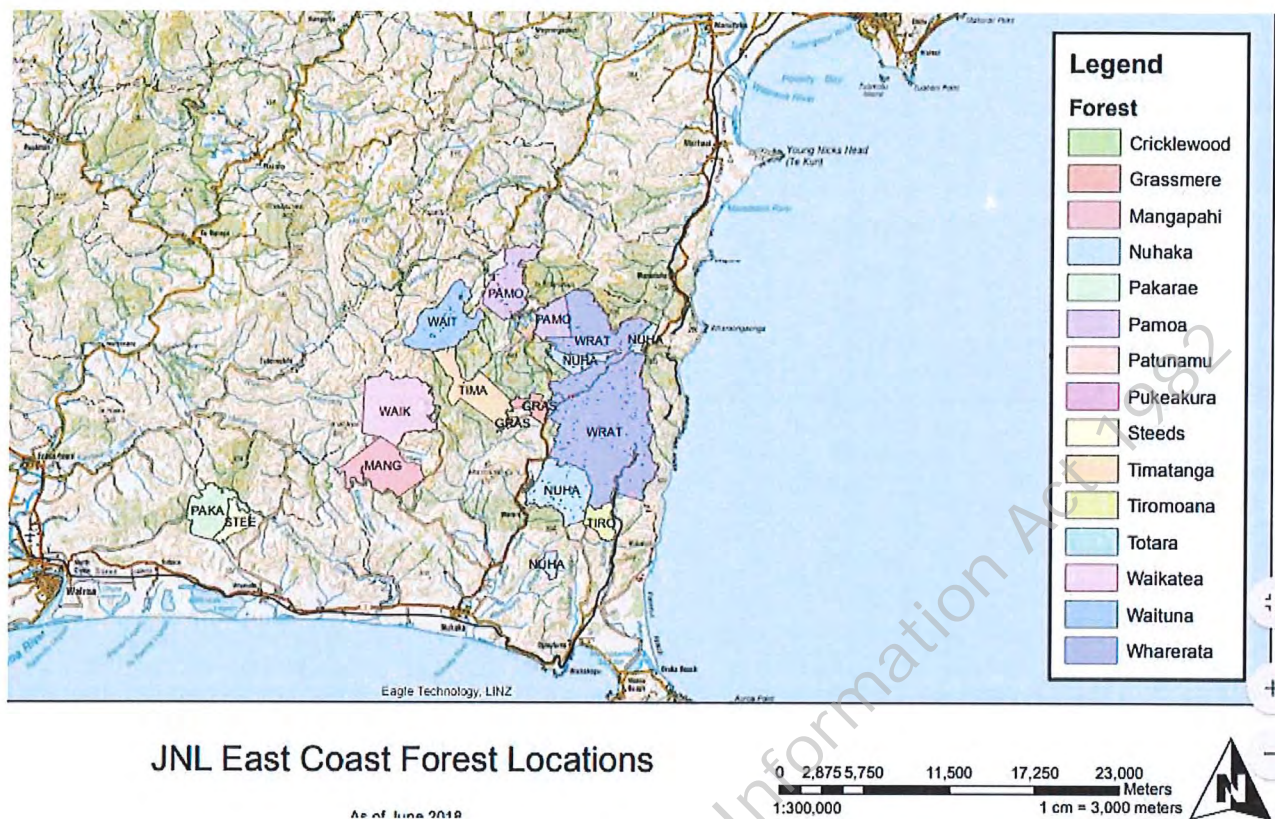
Matters to be considered	Notes
Enforcement tool to be deployed and Implementation person or matter to be closed?	
<b>Otherwise</b>	
Investigation team members	
Lead Investigator (note responsible for setting strategy meeting and devising Investigation Plan)	
Track I or Track II Investigation	
Date of First Advisory Group (note ordinarily 30 working days for Track II and 20 working days for Track I Investigation)	

Comments/Guidance on Investigation	<p>Write to company &amp; ask for 6 monthly updates for 2 years.</p> <p>Suggest they are added to site visit schedule</p> <p>(Talk to Pedro)</p>
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## Appendix A – Location of Waituna Forest<sup>14</sup>



<sup>14</sup> <https://www.jnl.co.nz/wp-content/uploads/BaseMapECwLabels.pdf>





## Simon Pope

---

**From:** Erich Bachmann <Erich.Bachmann@heskethhenry.co.nz>  
**Sent:** Friday, 17 January 2020 2:09 p.m.  
**To:** Svetlana Malivuk  
**Subject:** RE: OIO - Juken New Zealand Limited [HH-IM.FID664191]

Dear Svetlana,

As requested, I acknowledge receipt of your letter.

Kind regards.  
Erich

**Erich Bachmann | Managing Partner**

**Tel:** +64 9 375 8709 **Fax:** +64 9 365 5209 **Mobile:** +64 21 827 087  
Level 14, PwC Tower, 188 Quay Street, Auckland 1010



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**From:** Svetlana Malivuk [mailto:SMalivuk@linz.govt.nz]  
**Sent:** Friday, 17 January 2020 1:48 p.m.  
**To:** Erich Bachmann  
**Subject:** OIO - Juken New Zealand Limited

Dear Erich

Please refer to the **attached** correspondence.

We would also appreciate it if you could acknowledge the receipt of this email.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

**E** [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz) | **DDI** +64 4 471 6657 |

**A** Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace  
**PO** Box 5501, Wellington 6145, New Zealand | **T** 04 462 4490  
**W** [www.linz.govt.nz](http://www.linz.govt.nz) | [data.linz.govt.nz](http://data.linz.govt.nz)



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Overseas Investment Office  
Radio New Zealand House  
155 The Terrace  
PO Box 5501  
Wellington 6145  
New Zealand  
+64 4 460 0110  
[www.linz.govt.nz](http://www.linz.govt.nz)

Our Ref: 201810118

17 January 2020

Juken New Zealand Limited  
c/- Hesketh Henry  
Level 14, PWC Tower  
188 Quay Street  
Auckland 1010

**BY EMAIL:** [erich.bachmann@heskethhenry.co.nz](mailto:erich.bachmann@heskethhenry.co.nz)

Attention: Erich Bachmann

Dear Erich

**Juken New Zealand Limited – [2019] NZDC 24075 Gisborne City Council v Juken New Zealand Limited**

1. We refer to your email of 17 December 2019 and to Juken New Zealand Limited's (**Juken**) involvement in contributing to damage of its Waituna Forest following a weather event in June 2018.
2. We have now reviewed the sentencing notes provided with your email and your comments regarding the same, and will not be taking any enforcement action in respect of Juken's guilty plea or penalties imposed by the Gisborne District Court.
3. We have taken the following matters into account when reaching our decision:
  - (a) Juken has self-reported the incident to the Gisborne City Council (**GCC**) and complied with the abatement notices issued by the GCC;
  - (b) Juken also took other remedial action including at the neighbouring property;
  - (c) Juken pleaded guilty to the breach of the Resource Management Act 1991;
  - (d) Juken received an adequate sentence on 22 December 2019.
4. While we will not be taking any enforcement action, we do require that Juken provide us with regular updates on the progress of removing forest debris from its forests and any other works it undertakes to prevent any similar disaster happening in the future.
5. We therefore require that Juken provide us with a detailed report on a six monthly basis for the next 2 years, with the first report being due on **31 July 2020**. The report should outline the progress of:
  - (a) Any further remedial works at and around Waituna Forest that Juken has undertaken since the sentencing date;
  - (b) Any works undertaken at any of Juken's other forests in order to prevent similar disasters happening in the future;
  - (c) The international research into alternative methodologies to remove or treat unsalable residual forest debris and steps taken by Juken in order to implement any results.
6. The six monthly reports should be sent to [OIOMonitoring@linz.govt.nz](mailto:OIOMonitoring@linz.govt.nz).

7. If you have any questions regarding this letter please contact Svetlana Malivuk at [Smalivuk@linz.govt.nz](mailto:Smalivuk@linz.govt.nz) or on 04 471 6657.

Yours sincerely

9(2)(a)

Svetlana Malivuk  
Senior Investigator  
Overseas Investment Office

DDI: +64 4 471 6657  
Email: [smalivuk@linz.govt.nz](mailto:smalivuk@linz.govt.nz)

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## Simon Pope

---

**From:** Svetlana Malivuk  
**Sent:** Friday, 17 January 2020 1:48 p.m.  
**To:** 'Erich Bachmann'  
**Subject:** OIO - Juken New Zealand Limited  
**Attachments:** 2020-01-17 - Letter to Hesketh Henry.pdf

Dear Erich

Please refer to the **attached** correspondence.

We would also appreciate it if you could acknowledge the receipt of this email.

Kind regards  
Svetlana

**Svetlana Malivuk**  
**Senior Investigator**  
**Overseas Investment Office**

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**A** [Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace](#)  
[PO Box 5501, Wellington 6145, New Zealand](#) | **T** 04 462 4490  
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