

Recent Prosecutions of Forestry Companies

Flooding in some regions of New Zealand over the past few years has highlighted the need for careful environmental management and monitoring of forestry estates, particularly in areas where there is a high risk of erosion due to the underlying terrain.

Several forestry companies have recently been prosecuted and considerable fines imposed after heavy rainfall events caused significant runoff and substantial downstream effects.

In the 2019 case *Gisborne City Council v Juken New Zealand Ltd*¹ adverse weather triggered landslides in the Waituna Forest, leading to various landing failures and substantial discharges of sediment, slash and logging debris into waterways. The Court noted multiple failures in best practice and breaches of consent conditions. Juken was fined \$152,000.

Similarly in *Marlborough District Council v Laurie Forestry Services Ltd*² high rainfall caused land disturbance and slips from a skid site that had been largely completed, but not fully commissioned. Laurie was fined \$72,000 for allowing logging debris, waste material and sediment to run off their land into a waterway causing downstream effects.

Both instances occurred after significant rainfall events exposed inadequate erosion protection practices. When assessing the extent of the sentence the District Judge considered:

¹ *Gisborne City Council v Juken New Zealand Ltd* [2019] NZDC 24075

² *Marlborough District Council v Laurie Forestry Services Ltd* [2019] NZDC

- The vulnerability of the particular environment, and the extent of damage caused;
- Any breach of resource consent conditions, in one case the breaches were described as undermining the very basis on which the consent were granted;
- The fact that commercial forest entities undertaking its core business are reasonably expected to understand and comply with all applicable rules and good environmental management practices;
- The need to drive compliance and deter poor practice in the wider forestry industry.

In the Juken case, parts of the forest estate were described as being on some of the most erosion prone land in the Gisborne District. Combined with the frequency of adverse weather in the area, the company was expected to be aware of the need for rigorous management of its activities, and compliance with its resource consent conditions. Similarly in Laurie, the site was described as being steep and known to be vulnerable to instability.

Many in the forestry industry are well aware of the National Environmental Standard for Plantation Forestry (NES-PF) which identifies critical red and orange zones where erosion risks are highest and environmental measures are critical. Council enforcement staff also need to be aware of these locations within their own districts in order to properly monitor consents and permitted activities.

Juken also highlights the need for local authorities to proactively ensure forestry activities are complying with consent conditions, any other plan rules and the NES-PF. In that case the Court considered that the failure by Council to undertake compliance inspections over the five years the consent had been in place was 'reprehensible and irresponsible, to say the least'.

Recent Prosecutions of Forestry Companies (Continued)

Finally we note that many forestry estates are owned by international entities who may be subject to ongoing requirements by the Overseas Investment Office (OIO). The OIO's good character obligations could be frustrated by convictions for regulatory offending. The District Court has recently denied an application made by an international entity seeking a discharge without conviction partly on the basis of the likely impact of a conviction on their obligations to the OIO³. Overseas based stakeholders in primary industry therefore need to be particularly mindful of ensuring good environmental management practices are in place.

Want to know more?

If you have any questions regarding compliance with or monitoring of the National Environmental Standards for plantation forestry, please contact one of our [resource management](#) specialists, Shelley Chadwick or Michael Garbett.

³ *Canterbury Regional Council v Bathurst Coal Ltd* [2019] NZDC 14416