



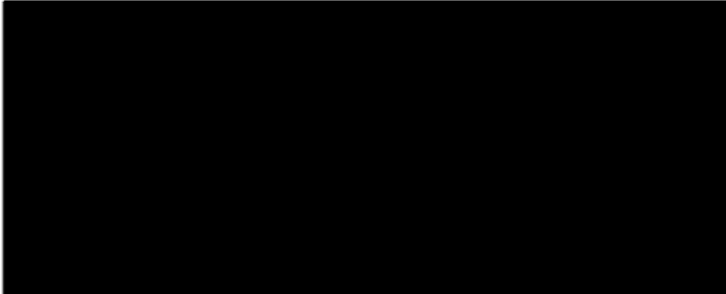
Ref: [REDACTED]

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7 October 2024



OFFICIAL INFORMATION REQUEST FOR RESOURCE MANAGEMENT ACT PROSECUTION AND FINE INFORMATION FOR NELSON CITY COUNCIL

I refer to your official information request dated 9 September 2024 for details of prosecutions and associated fines under the Resource Management Act (RMA) 1991 concluded since July 1 2014, for Nelson City Council (NCC)

- **The 10 largest unpaid fines**
We have no current unpaid fines.
- **The total number of prosecutions, including type and convictions**
We have one prosecution within the specified timeframe. This judgment was made on 31 May 2018 against KB Quarries Ltd and KB Contracting and Quarries Ltd for unauthorised discharge of sediment-laden run-off to a stream from earthworks activity for a subdivision development. The total fine of \$90,000 has been paid. A copy of this judgment is attached.
- **The total number and range of fines**
One fine has been charged within this timeframe as above.
- **Process for unpaid fines**
NCC would follow a similar process to that outlined by Waikato Regional Council in your attachment to this request.

You have the right to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at www.ombudsman.parliament.nz or Freephone 0800 802 602.

If you wish to discuss this decision with us, please feel free to contact Chris Miles, Manager Consents and Compliance at chris.miles@ncc.govt.nz.

Internal Document ID: [REDACTED]

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. Appleton', with a stylized flourish at the end.

Clive Appleton

Acting Group Manager Environment

Encl: NCC Vs KB Contracting and KB Quarries Ltd NZDC 11153

SCANNED

**IN THE DISTRICT COURT
AT NELSON**

**CRI-2017-042-001848
CRI-2017-042-001847
[2018] NZDC 11153**

NELSON CITY COUNCIL
Prosecutor

v

**KB CONTRACTING AND QUARRIES LTD
KB QUARRIES LTD**
Defendants

Hearing: 31 May 2018
Appearances: A C Besier for the Prosecutor
B M Nathan for the Defendants
Judgment: 31 May 2018

NOTES OF JUDGE B P DWYER ON SENTENCING

[1] KB Quarries Limited (KB Quarries) and KB Contracting and Quarries Limited (KB Contracting) each appear for sentence on a number of charges of breach of various provisions of the Resource Management Act 1991. The charges are that:

- On or around 21 to 22 April 2017, at Tasman Heights, Nelson, KB Quarries Limited discharged a contaminant, namely sediment-laden run-off from sediment treatment ponds utilised as part of the earthworks undertaken for a residential development at Tasman Heights onto land and circumstances which may have resulted in that run-off entering water, namely Maire Stream, when the discharge was not expressly allowed by a national environmental standard or other regulations, a rule in a regional plan, or a resource consent (Charge ending 0427);

- On or around 27 March 2017, at Tasman Heights, Nelson, KB Quarries Limited discharged a contaminant, namely sediment-laden run-off from sediment treatment ponds utilised as part of the earthworks undertaken for a residential development at Tasman Heights onto land and circumstances which may have resulted in that run-off entering water, namely Maire Stream, when the discharge was not expressly allowed by a national environmental standard or other regulations, a rule in a regional plan, or a resource consent (Charge ending 0428);
- On or around 21 to 22 April 2017, at Tasman Heights, Nelson, KB Contracting and Quarries Limited discharged a contaminant, namely sediment-laden run-off from sediment treatment ponds utilised as part of the earthworks undertaken for a residential development at Tasman Heights onto land and circumstances which may have resulted in that run-off entering water, namely Maire Stream, when the discharge was not expressly allowed by a national environmental standard or other regulations, a rule in a regional plan, or a resource consent (Charge ending 0430);
- On or around 27 March 2017, at Tasman Heights, Nelson, KB Contracting and Quarries Limited discharged a contaminant, namely sediment-laden run-off from sediment treatment ponds utilised as part of the earthworks undertaken for a residential development at Tasman Heights onto land and circumstances which may have resulted in that run-off entering water, namely Maire Stream, when the discharge was not expressly allowed by a national environmental standard or other regulations, a rule in a regional plan, or a resource consent (Charge ending 0431);
- On or around 22 March 2017, at Tasman Heights, Nelson, KB Contracting and Quarries Limited discharged a contaminant, namely sediment-laden run-off from sediment treatment ponds utilised as part of the earthworks undertaken for a residential development at Tasman Heights onto land and circumstances which may have resulted in that run-off entering water, namely Maire Stream, when the discharge was not expressly allowed by a national environmental standard or other regulations, a rule in a regional plan, or a resource consent (Charge ending 0432);

[2] I note that the charges arising on 27 March and 21, 22 April 2017 are identical charges against each Defendant, relating to the same offending. The charge contained in charging document ending 0432 on 22 March 2017 is against KB Contracting only.

[3] The Defendants have pleaded guilty to these charges. Counsel agree that s 24A Sentencing Act 2002 is not applicable in this case. There is no suggestion that the Defendants should be discharged without conviction and both are hereby convicted accordingly.

[4] The offending arises out of discharges of sediment-laden runoff into Maire Stream as a result of earthworks undertaken as part of a large-scale development and subdivision at Tasman Heights in Nelson. KB Quarries was the owner of the site (either directly or through a subsidiary) at the time of the offending. KB Contracting was the contractor responsible for undertaking the earthworks which are the subject of these charges.

[5] As is suggested by their names, the Defendant companies are related. The two directors of KB Quarries are also directors of KB Contracting which has a total of five directors. The companies share a common registered office.

[6] The site where the offending occurred is situated on steep slopes. The Defendants were developing some 15.9 hectares for residential use, involving earthworks extending over a total of about 26.5 hectares. Earthworks involved somewhere in the order of 500,000 cubic metres, with cuts up to 16 metres and fill up to 24 metres in depth and were to be staged over a two year period. The well-known engineering firm, Tonkin + Taylor, had prepared an earthworks and sediment control plan (ESCP) which formed part of the application for land use consent authorising the earthworks.

[7] No application was made for consent to discharge sediment or stormwater, but the ESCP provided for construction of two sediment treatment ponds designed to capture and treat sediment-laden runoff, which was to be discharged to land before ultimately making its way to Maire Stream.

[8] Conditions of land use consent sought to impose controls on the amount and quality of sediment which might get into Maire Stream. The two sediment ponds were located near the source and headwaters of Maire Stream.

[9] It is apparent from the summary of facts and the submissions of the parties, that there were problems with managing earthworks and sediment on the site from early on in the development. Appendix C of the summary of facts identifies what are, by my calculations, some 10 incidents of non-authorised discharges as well as the issue of an abatement notice and infringement notices prior to this offending. It is sufficient to say at this point that the issues of proper management, the need to keep the sediment ponds cleaned out and effectively operating and to keep sediment from the ponds out of Maire Stream, were longstanding issues on this site.

[10] The first of the offences occurred on 22 March 2017 when the Council received a complaint from a member of the public that Maire Stream was contaminated with sediment-laden water. Council officers inspected the stream and the site. They confirmed that sediment-laden water had been discharged from both ponds and entered Maire Stream. Water had been pumped out of one of the ponds which had reached capacity, apparently because of failure to keep it cleaned out properly. The charge relating to this incident is laid against KB Contracting solely, as the Council says that the actions of its employees, including the pumping out and the failure to clean out the pond, were the cause of the incident.

[11] The second offending incident took place on 27 March 2017 when a Council officer in the course of a monitoring inspection observed that sediment-laden water was being discharged to land and was again entering Maire Stream. There had been reasonably significant rain during the preceding three days. The apparent cause of the discharge was the ineffectiveness of treatment methods in the ponds, namely insufficient use of flocculants combined with the large volume of runoff due to rapid development of the site in combination with rainfall. Both Defendants are charged with this offending as both were aware of the issues on the site and had apparently failed to address them.

[12] The third offence took place on 21 April 2017 when, once again, the Council received a complaint about pollution of Maire Stream by sediment. Council compliance officers went to the site and found that the stream was discoloured with sediment from the site. Again, one of the ponds had been discharged to the stream. This discharge followed a period of particularly heavy rain associated with Cyclone Cook between 11 and 18 April. Both Defendants are charged with this incident.

[13] The environment affected by this offending was the water systems of Maire Stream and the Waimea Estuary into which it flows. The perennially flowing reach of Maire Stream runs for a distance of 1.6 kilometres or thereabouts. The last 1.2 kilometres into the estuary is piped but the stream is passable by fish. The Defendants' land is in the upper catchment of the stream and, as I have noted, the ponds in question are situated in close proximity to the source of the stream. Although the stream is highly modified, it was identified by surveys in 2012 and 2014 as a regionally significant fishery for banded kokopu and low numbers of longfin eel were also found in the stream. In the spring banded kokopu inanga enter the upper reaches of the stream via the culvert. The importance of the stream as habitat for banded kokopu was common ground between the Defendants and the Council.

[14] Waimea Estuary is the largest semi-enclosed estuary in the South Island. It is recognised as an important habitat for threatened plant and bird species. The estuary is the subject of a number of community restoration and improvement schemes. Sedimentation is a recognised threat to estuaries throughout New Zealand. A 2015 Department of Conservation publication recognised the threat to the estuary from land development and subdivision works in the catchments leading into it.

[15] The extent of damage to Maire Stream from these discharges can be adequately identified, that to the estuary less so.

[16] Dealing first with Maire Stream, the agreed effects on the stream are set out in a summary of effects provided to the Court by counsel. The statement of effects says:

3. Effects of Offending on Maire Stream

a. Water quality analysis on 10 April 2017 by Fish & Wildlife Services showed that Maire Stream was grossly polluted with both suspended and deposited sediment. The sediment load was highest at the top of the catchment.

b. The sediment flow path was confirmed in a further assessment by FWS on 23 July 2017.

c. Fine sediment is a significant stressor of fresh water environments in New Zealand and has multiple mechanisms of effect, both when deposited and when still suspended. Fine sediment can also interact strongly with other stressors such as nutrients and elevated temperatures.

d. Elevated suspended sediment concentrations may have direct or indirect effects on fish. Direct effects might be caused by the scouring and abrasive action of suspended particles, which damage gill tissues or reduce respiration by clogging gills, leading to susceptibility infection or disease, reduced growth rate, or mortality. Younger fish are typically more sensitive than adults.

e. Indirectly, fish may be affected by suspended sediments through decreases in water clarity, which can influence migration patterns, feeding success and habitat quantity and quality, leading to decreased growth rates and changes in community structure and population size.

f. The sediment effects change from suspended sediment issues close to the source to effects associated with sediment deposition further downstream. The rate of deposition will depend on the physical characteristics of the sediment, and water velocity and turbulence.

g. Suspended sediment is ultimately deposited at some point in the system and this can also have adverse effects. The effects of deposited sediments on fish have been shown to be mostly related to habitat degradation and loss – mainly through declines in the quantity and quality of spawning areas, and reduced food supply. High or continuous levels of sedimentation on streambeds can lead to alterations in fish presence and community structure, reduced reproductive success, and increased rates of mortality, particularly of eggs and larvae.

h. The New Zealand native fish most sensitive to visual clarity is the banded kokopu. A wide range of laboratory and field assessment in New Zealand have considered the thresholds that banded kokopu can tolerate.

i. The high turbidity and elevated suspended sediment results identified in Maire Stream on 10 April 2017 testing results show that Maire Stream was grossly polluted with both suspended and deposited sediment. These levels would have had immediate significant adverse effects on

the banded kokopu population and these effects may continue for as long as there increased sediment levels in the Stream

j. This was reflected in the survey undertaken in April 2017 which showed that the numbers of banded kokopu captured had sharply declined from earlier sampling. Only 4 juvenile and 13 adult banded kokopu were observed.

k. It is expected that a large spring migration of thousands of juvenile banded kokopu would still be evident later in the season, regardless of the survey methodology employed (electric fishing or by pass pumping /salvage), however can also be influenced by catchment factors.

5. Conclusions

a. The release of sediment laden water has had the effect of creating a number of stressors which have impacted the banded kokopu population. However, the long-term impact once earth works has been completed is not known.

b. The works have degraded Maire Stream fish habitat values and the increased sedimentation levels in the stream have impacted the values of the stream as a water way, observed by its altered appearance.

[17] Briefly, what the written summary of effects establishes is that this important and/or regionally significant habitat of a native fish species has been grossly polluted by both suspended and deposited sediment. Banded kokopu are highly sensitive to degradation of water clarity which is amply demonstrated in photographs attached to the summary of facts. Numbers of fish in the stream have sharply declined. There are ongoing adverse effects on water quality from sedimentation and consequently on the habit and population of the banded kokopu. The population had not recovered at the time of the summary of effects and it is not known if it will or not.

[18] Turning to the estuary, the Court is faced with a situation which is typical in offending of this type, where direct effect of these incidents on the estuary cannot be established. It is common ground that sediment in the stream ultimately goes into the estuary. A photo in the agreed summary of facts shows very highly sedimented water at a point in the stream close to the estuary.

[19] Considered in isolation, these particular incidents may have had only minor effects on the estuary to the extent that they can be individually identified at all. As has been noted with somewhat monotonous regularity in this Court, its concern is with the cumulative effect which such individually minor discharges have on our water bodies. The term which is sometimes used is “death by a thousand cuts”.

[20] The summary of facts contains a perfect example of this process. In addition to the three discharge incidents subject to prosecution, appendix C identifies numerous incidents of discharges of sediment into Maire Stream commencing on 1 April 2016, within six or seven weeks of resource consent having been granted. In total, it seems that there were about 10 such incidents identified up until October 2016. The Defendants say that it is not sufficiently established that the identified incidents contributed to all of the sedimentation in the stream. I disagree.

[21] The Defendants accept that some of the incidents involved sediment from the ponds but not others. It is suggested that there may be some source other than the Defendants’ ponds which have contributed to sedimentation. Nothing in the material put in front of me establishes with any degree of credibility, on the balance of probability or otherwise, that there is some source of the sediment which has got into Maire Stream other than the Defendants’ ponds.

[22] In short, I find that the discharges involved in the offences now before the Court are the tip of the iceberg insofar as sediment discharges to the stream (and ultimately to the estuary) from the site are concerned. It is not possible to identify the individual effects of any of the preceding discharges nor to say whether it was the discharges which are subject to these charges which led to the degradation of the stream or the earlier discharges or a combination of both. What we do know is this - a stream which was found to be important habitat for banded kokopu in 2012 and 2014 is no longer (and may or may not recover) and that sediment-laden water was observed well down the stream in close proximity to the estuary.

[23] In light of those observations, I now consider the issue of appropriate penalty. The basis on which I am to undertake this sentencing and the principles which I am to apply in doing so are set out in detail in Ms Besier’s submissions for the Council. I

do not understand Mr Nathan to dispute the general principles and approach identified by her and neither do I.

[24] In considering a starting point for penalty considerations, I note that the maximum penalty for each offence is \$600,000 or a total of \$3 million for the five. No one is suggesting that a penalty in that order is appropriate. Ms Besier suggests a starting point for penalty considerations of \$150,000 all up for all of the offending. Mr Nathan suggests the figure of \$80,000. Before I address that issue I make two general observations about the approach I will take to this sentencing.

[25] Firstly that (as both counsel have done) I will take a global approach to penalty, identifying a single starting point for all of the offending. Although the period between start and finish of the charges is about a month and the offending involves three separate instances of discharges I consider that they were, in reality, manifestations of the same ongoing site management failures with similar causes and effects involving similar charges. Accordingly it is appropriate to treat them on a global or joint basis.

[26] Secondly I will take a global approach as between the Defendants as, again, both counsel have done. It is a basic principle of sentencing that generally a sentence should not be divided between defendants. The *Calford*¹ decision is very clear on that. However, what regularly occurs in resource management prosecutions is a situation where the affairs of multiple defendants are intermingled and that defendants are effectively each other's alter egos, so that a fine against one comes out of the pocket of the other as well. In that situation, the Court has accepted that it may be appropriate to take a global starting point as between such related defendants. The High Court has accepted that approach. I note that there are occasions where it is not appropriate to take that approach for any number of reasons but I accept that in this case it is appropriate to do so because of the agreed commonality between the two Defendants.

¹ *Calford Holdings Ltd v Waikato Regional Council* (2009) 15 ELRNZ 212, [2009] NZRMA 563 (HC)

[27] In fixing a starting point I commence my considerations by noting that I consider the offending in this case is serious offending. There are a number of reasons for that:

- The matter of protecting the life-supporting capacity of our waters and ecosystems lies at the heart of sustainable management which is the purpose of the Resource Management Act;
- The protection of the natural character of our estuaries and significant habitats of indigenous fauna (as Maire Stream was) are matters of national importance and I am obliged to recognise that in exercising my sentencing function;
- It is common ground that this offending involved gross pollution of an important habitat of the banded kokopu leading to a sharp decline in its numbers from which the population has not recovered and may or may not do so;
- Sediment would ultimately make its way to the Waimea Estuary which is vulnerable to the effects of sedimentation and is an important habitat for various fauna and plant species;
- The offending was the culmination of an ongoing situation of appalling management of sediment discharges by the Defendants which commenced within only weeks of resource consent being granted and persisted for a period of a year up until the offending. As Mander J noted in *Waslander v Southland Regional Council*², I am entitled to take this into account as it represented a “state of affairs” on this site. Mr Nathan contends that the offending was not deliberate on the part of the Defendants and that over the course of works as the Council brought matters to their attention, they tried to address them. Appendix C shows that on occasions there were improvements made but it is obvious that fundamental problems with sediment management persisted on the site;

² *Waslander v Southland Regional Council* [2017] NZHC 2699

- I accept, as Mr Nathan urged on me, that this offending was not deliberate in the sense that the Defendants set out with the intention of discharging sediment. However, I have previously described their management of this site as appalling and I repeat that. The degree of carelessness in management of sediment discharge is so high as to make the distinction between accidental discharge and deliberate discharge almost meaningless;
- Significantly, the Defendants have acknowledged that development of the site occurred at a pace which exceeded the capacity of stormwater controls and that is something for which they were responsible;
- There was a high degree of culpability on the Defendants' part for this offending. I refer again to the Defendants' record of management failures and the number of unprosecuted, possibly minor discharges which preceded these offences. I do not propose treating these incidents as the equivalent of previous convictions or offences justifying a penalty uplift of themselves, but I do consider they are indicative of a poor attitude to the Defendant's management obligations. Again, in the *Waslander* decision, Mander J referred to, "continuation of an entrenched pattern," of breaches and that is precisely what we have in this instance;
- It is apparent from the information before the Court that this was a large development on a challenging site. That meant that the developers had to take particular care to see that things were done properly. They failed to meet that obligation. I am told that at least some of the developers have 40 years' experience. They could reasonably be expected to have done better;
- Finally, I record that these offences were committed by developers undertaking work as part of their commercial activities. It is to be assumed that such persons are aware of their responsibilities and the standards to which they have to work. The issue of deterrence is of particular importance in this situation. It is axiomatic that profits should not come at the expense of the environment.

It is for all of these reasons that I have determined that this was serious offending.

[28] Counsel have drawn a number of cases to my attention by way of comparison. I am aware of the need for consistency in sentencing. I make the general observation that, other than a broad basis, it is often difficult to draw comparison between cases of resource management offending as a myriad of different factors can come into play. The very broad bands of penalty applicable to each of the *Waikato Regional Council v GA & BG Chick Ltd*³ levels of seriousness are good examples of this.

[29] I make the comment that I do not see in any of the cases to which I was referred, the combination of factors which I have identified in this instance. By way of example, I refer to the *Bay of Plenty Regional Council v Comanche Holdings Ltd*⁴ decision referred to by both counsel which involved the highest of the starting points at \$100,000. I note that prior to the offending in that case the level of compliance at the relevant site was assessed as being high and there was no evidence of direct impact on a specific fish population as we have in this case. I consider that this offending is more serious than *Comanche*.

[30] The starting point of \$150,000 suggested by Ms Besier represents 25 percent of the maximum penalty available for a single offence. Arguably, considered in that light, the starting point is reasonable having regard to the various factors which I have identified. However, I have determined not to start at that figure. It represents an increase of 50 percent over *Comanche* and even having regard to my assessment that this is more serious offending, I think that it goes too far in terms of consistency.

[31] I have determined that the appropriate starting point is the sum of \$120,000 which I note is 20 percent of the maximum penalty for a single offence. I consider that amount adequately reflects the seriousness of the offending which I have identified. It is sufficiently substantial to mark the Court's disapproval of the offending and to act as a deterrence to the Defendants and other developers who breach their obligations.

³ *Waikato Regional Council v GA & BG Chick Ltd* (2007) 14 ELRNZ 291 (DC)

⁴ *Bay of Plenty Regional Council v Comanche Holdings Ltd* DC Hamilton CRN-1407050063, 11 December 2014

[32] I note that there was some merit in Ms Besier's submissions seeking a higher starting point. I have ultimately disagreed with her figure but can say that it was a close-run thing. I consider that the figure which I have identified sends a strong signal to developers as to the need to meet their obligations and I observe that it is not unreasonable to expect that penalties might increase if incidents such as these continue.

[33] I have considered three matters in terms of mitigating factors advanced by Mr Nathan which might lead to reductions from the starting point.

[34] The first is that the Defendants have no previous convictions. They contended that they should receive a discount of five percent on account of that. The Council contends that the absence of previous convictions is counterbalanced by their failures on this site prior to the offending and the enforcement actions necessary to remedy them. Mr Nathan submits that this amounts to "double-counting" as the Defendants' previous mismanagement is already reflected in the penalty starting point and should not disqualify them from credit for the absence of previous convictions.

[35] I disagree with the Defendants on both counts. I have regarded the Defendants' acknowledged history of mismanagement of the site and unauthorised discharges in the context of their culpability. That is entirely appropriate. The allowance for the absence of previous convictions which is commonly made in sentencing arises under s 9(2)(g) Sentencing Act as evidence of "previous good character." These Defendants may have no previous convictions but their history of mismanagement of sediment from the site and unauthorised discharges preceding this offending belie any claim they may have for past good character. That is not double-counting in my view. By way of analogy, if a defendant has past convictions, he or she may be subject to both an uplift in penalty on account of that and disentitled to a good character reduction. That is simply a consequence of poor past history and is comparable with this situation. I make no allowance for past good character.

[36] The second mitigating factor claimed is that the Defendants agreed to the making of an enforcement order as part of separate enforcement proceedings. Mr Nathan submits that there should be a 10 percent reduction from the starting point

to reflect that agreement. He quotes from the *Waslander* decision to support that proposition. I note that the 10 percent deduction allowed in *Waslander* included an allowance to reflect the contribution of Mr Waslander's medical condition to his offending as well as his agreement to an enforcement order. If I was to allow a deduction for agreeing to the enforcement order, it would be five percent.

[37] However, it is apparent that the key aspect in giving credit for the enforcement order in *Waslander* was that the defendant in that case agreed to take steps which went beyond the expenditure of resources to remediate the particular faults subject to the charges. I have no evidence that is the case here. It is correct that the enforcement order required the Defendants to obtain reports, plans and advice. Enforcement orders commonly do. Nothing in the information provided to me by the Defendants established that what they were required to do under the enforcement order went beyond what was necessary to make good the damage which they had done and prevent further illegal discharges.

[38] It should be noted that in the *Thurston v Manawatu-Wanganui Regional Council*⁵ case both the District and High Courts declined to give any credit for expenditure in excess of \$1 million which was necessary to put things right. I give no credit for the Defendants consenting to the enforcement order.

[39] Finally, it is common ground that the Defendants are entitled to a 25 percent reduction from starting point on account of their relatively prompt guilty pleas, giving an overall end penalty outcome of \$90,000. I will not apportion levels of responsibility between these related defendants as Ms Besier has endeavoured to do. The information before the Court does not enable me to do that.

[40] I will therefore impose fines of \$18,000 on each Defendant on each charge and they are fined those amounts accordingly. The Defendants will pay solicitors costs in accordance with the Costs in Criminal Cases Regulations 1987 (to be fixed by the Registrar if need be) and process server costs of \$629.74 which I will divide equally between the two Defendants on the first numbered charge in each instance.

⁵ *Thurston v Manawatu-Wanganui Regional Council* HC Palmerston North, CRI-2009-454-24 27 August 2010.

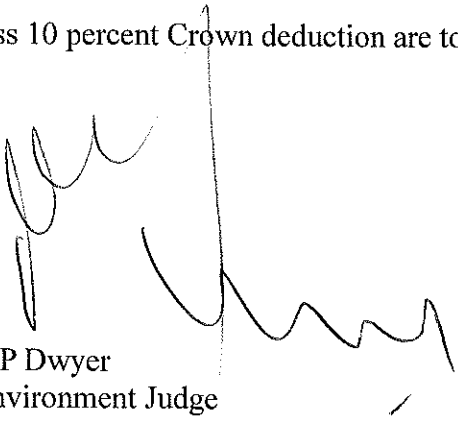
[41] The Defendants dispute the contribution to ecologist's costs of \$8400 which the Council seeks. They contend that the ecologist's report obtained by the Council made "bold assertions" without adequate data to back-up the assertions.

[42] I consider that it was necessary for the Council to obtain an ecologist's report to determine the effects of sedimentation on Maire Stream. Although there may have been disagreement between the ecologists as to aspects of the Council report, the common findings which I have set out previously as to effects of the sedimentation unequivocally establish gross pollution of the stream and significant adverse effect on the banded kokopu population as a result of ecological investigation which, as I have said, the Council was obliged to undertake. On that basis, it is entirely appropriate that the Defendants make a contribution to the Council ecologist's costs. Had the Council not provided ecological evidence or a report, it doubtless would have been severely criticised for its failure to do so.

[43] I order that the Defendants pay the sum of \$5000 as a contribution to those costs. I will divide that equally between the two Defendants on the first numbered charge in each case.

[44] Additionally, the Defendants will pay Court costs of \$130 on each charge.

[45] Finally, pursuant to s 342 Resource Management Act, I direct that the fines, less 10 percent Crown deduction are to be paid to Nelson City Council.



B P Dwyer
Environment Judge