



Westland District Council RMA Compliance & Enforcement Policy

Endorsed by Council October 2017
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Planning & Customer Service Manager

Introduction

Initial development of this policy was to be undertaken in collaboration with West Coast Regional Council (WCRC). It has therefore drawn heavily on WCRC's current enforcement policy both in the interests of aligning our processes and in recognition of the policy being reflective of WDC's preferred education based approach.

Under the Resource Management Act 1991 (RMA), The Westland District Council has statutory obligations for enforcing some provisions of this Act, commonly Section 9. The enforcement mechanisms available to the Council under the RMA are concerned with three related outcomes:

- To avoid, remedy or mitigate any adverse effects on the environment.
- To gain compliance with the RMA, resource consent conditions, Westland District Plan and policies.
- To deter individuals or companies from undertaking activities that may result in major adverse effects on the environment.

There are a number of enforcement options open to Council under the RMA, these options can be divided into two categories; Punitive or Directive:

Punitive	Directive
Formal written warning Infringement Notice Prosecution	Abatement Notice Enforcement Order

This enforcement policy presents guidelines to be followed by staff exercising these roles, and also outlines mechanisms that the Council will adopt to ensure that its enforcement powers are exercised appropriately.

The purpose of this policy is to:

1. Provide consistency in the Council's approach to enforcement decisions.
2. Provide assistance on the selection of the appropriate enforcement tools.
3. Ensure the appropriate procedures are followed by staff when they are undertaking enforcement work in order to be confident that the enforcement action has been carried out correctly.

Council Objectives for Enforcement

The Council has a responsibility to enforce the principal sections of the RMA, particularly S9.

The Council's objective in fulfilling these responsibilities is to achieve compliance with the RMA.

While a target of total compliance is desirable, it is recognised that this is sometimes an unrealistic ideal.

Council has considerable discretion over how it enforces the RMA. The Council, through its elected representatives, is accountable to the community for the manner in which it exercises this discretion.

A number of principles guide the exercise of this discretion. The four main principles to be used in guiding enforcement action are as follows.

Proportionality

The need to take action will depend on the severity of the event and the effects of that event on the environment. The enforcement action taken should be in proportion with the environmental effects.

The environmental effect of breaches of the RMA can vary markedly from minor breaches with minimal environmental effects, to those that have very serious effects. The seriousness of the breach should be reflected in the seriousness of the measures adopted by the Council in response.

Certainty

The Council will endeavour to provide certainty and clarity about what is, and what is not, acceptable compliance with the RMA and, in instances of non-compliance, the likely course of action that will be taken.

Although ignorance of the law is no excuse for breaching its provisions, the RMA can be difficult for the layperson to determine. While recognising that the Council is not the only or final arbiter of the requirements of the RMA, there is a community expectation that we will provide clear answers on the requirements of the RMA, particularly those provisions that the Council will enforce.

Impartiality

All persons will be impartially and fairly treated using the same process of enforcement regardless of the type and extent of resource use.

It is important for the Council's public accountability, credibility, and for the principles of natural justice, that all persons are dealt with fairly when considering which enforcement tool to use.

Clear and Speedy Resolution

The Council will endeavour to undertake its duties in a clear and speedy manner that gives effect to the purpose and principles of the RMA while minimizing costs to the ratepayer.

The Council intends to fulfil its enforcement duties in a clear and timely manner.

In order to ensure this principle is not compromised through a lack of funds, the Council intends to recover the costs associated with enforcement where possible.

Cost Recovery

Where monitoring costs are incurred in relation to a specific consent, these costs will be recovered from the consent holder in accordance with the Westland District Council's general charging policy and the provisions of the RMA.

Council Approach to Enforcement

In general, the Westland District Council advocates a policy of education and co-operation towards compliance where an offence causes only minor environmental effects. However, the Council recognises that there are times when the use of punitive measures is necessary.

The Council will use formal warnings, abatement notices, infringement notices, and prosecutions in situations where such measures are considered to be necessary. It is not anticipated that enforcement orders will be used regularly, as they may require significant investment of ratepayer funds in terms of preparing legally robust documentation prior to seeking an Order from the Environment Court.

It is the responsibility of the Council to ensure that any adverse effects are appropriately avoided, remedied or mitigated against, therefore it will depend on the nature of each specific incident as to what form of enforcement action will be undertaken. For minor, one off incidents it is likely that a formal letter will be issued requesting that the issue be rectified, however if the incident is of an ongoing nature or has been repeated a number of times it is likely abatement and infringement notices will be used. If it is deemed the incident has caused major adverse effects and lighter approaches have not changed the situation it would be likely that staff recommend prosecution.

In some instances it may be that abatement and infringement notices are issued in unison.

Context: Enforcement Action Undertaken by Council in 2016/17 and 2017/18 YTD

In recent years, due to staff resourcing issues and the lack of a clear Policy, the Council has taken little formal enforcement action on RMA issues. The table below shows this in relation to other regulatory areas of Council. Infringement notices are common in the Dog Control area, and Notices to Fix are also common in the Building Control area.

Activity Area	Abatement Notices (RMA) or Notices to Fix (Bldg Act)	Infringements	Prosecution
Resource Mgmt (RMA)	2016/17: 1 2017/18 YTD: 0	2016/17: 0 2017/18 YTD: 0	2016/17: 0 2017/18 YTD: 0
Building Control	2016/17: 14 2017/18 YTD: 1	2016/17: 0 2017/18 YTD: 0	2016/17: 0 2017/18 YTD: 0
Environmental Health	n/a	2016/17: 0 2017/18 YTD: 0	2016/17: 0 2017/18 YTD: 0
Dog Control	n/a	2016/17: 127 2017/18 YTD: 12	2016/17: 0 2017/18 YTD: 1

In the RMA area, some proactive monitoring has taken place, and response to complaints has occurred, with a focus on encouraging compliance through informal measures as well as occasional formal warning letters. It is likely that informal measures (e.g. encouragement to apply for resource consent) will continue to be used if the situation does not warrant more serious action. Formal warning letters may be issued more frequently than in the past, especially if no action is taken in response to informal communication, to ensure clear documentation in the event that further action becomes necessary.

Factors to Consider when undertaking Enforcement Action

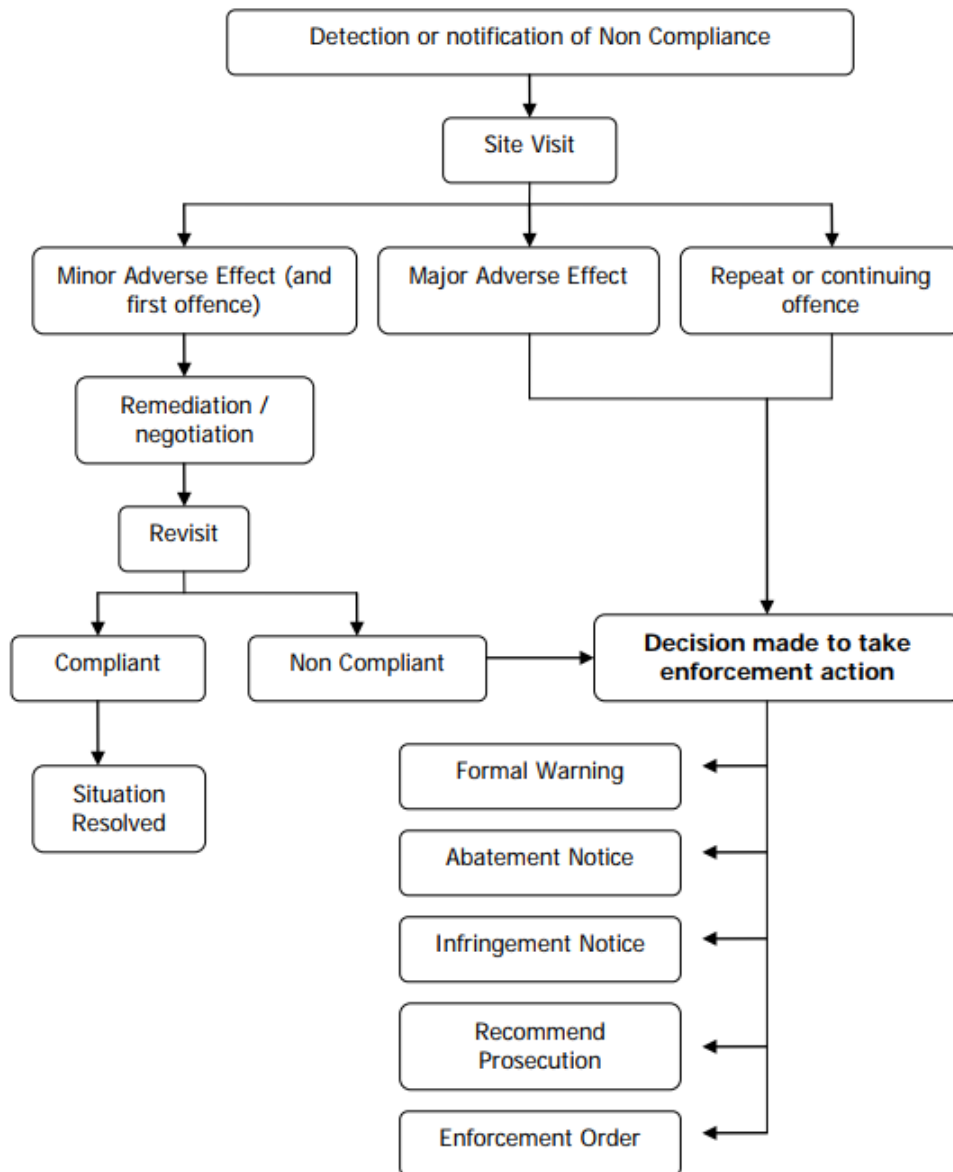
When deciding to take enforcement action there are a number of criteria that need to be considered in every case. These are listed below:

• The actual adverse effects (effects that have occurred)	• Any effort made to remedy or mitigate the adverse effects
• Any likely adverse effects (potential effects).	• The effectiveness of any remediation or mitigation undertaken.
• Whether it was a deliberate or an accidental action.	• Any failure to act on prior instructions, advice or notice.
• The degree of due care taken / foreseeability of incident.	• Any profit or benefit gained by alleged offender.
• The value or sensitivity of the area affected.	• The degree of deterrence required in relation to the party involved.
• The attitude of the offender toward the offence.	• Any degree of general deterrence required.
• Whether it was a repeat non-compliance or if previous enforcement action was needed for a similar situation.	• Any relevant special circumstances – eg extreme weather event or other event outside the control of the party involved.

When considering enforcement action in relation to a breach of the RMA, District rules or resource consent conditions the above factors must be considered before deciding on the most appropriate course of action.

The investigating officer will discuss these matters with the Planning & Customer Service Manager.

Enforcement Action Decision Process



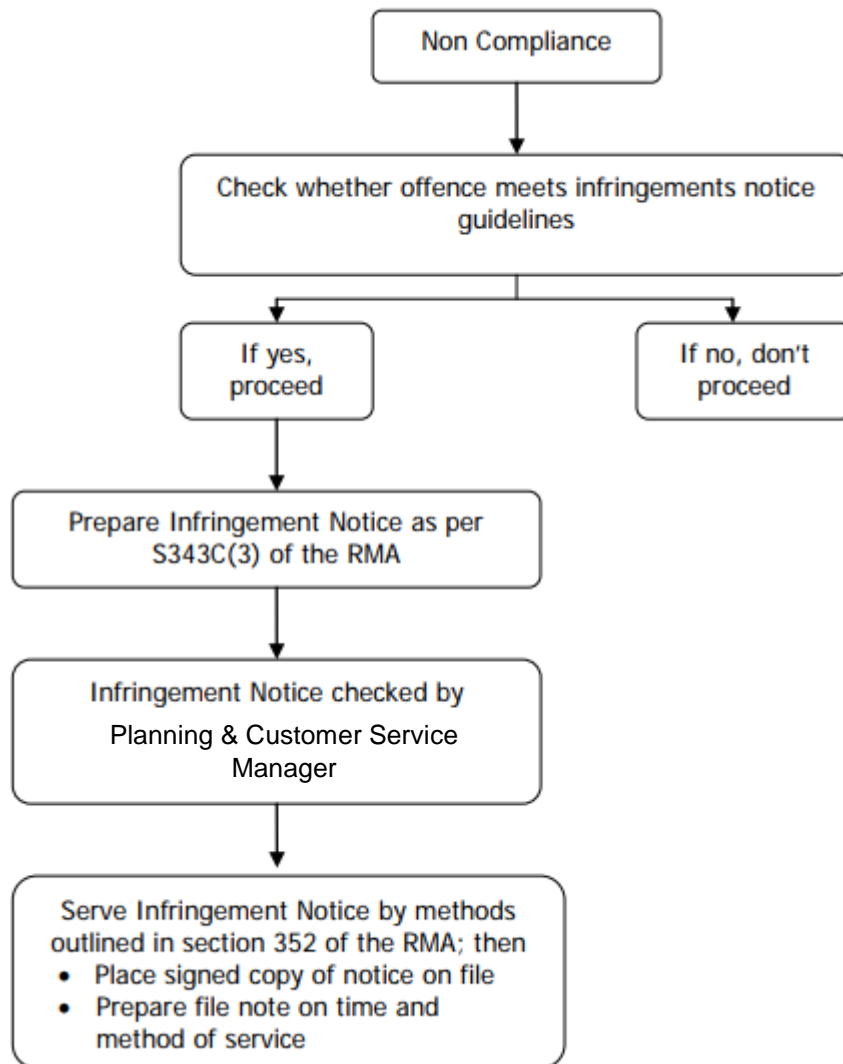
Infringement Notices

Where there has been a direct contravention of a resource consent or a rule in the District Plan; the Westland District Council can issue an infringement notice. The basic requirements are as follows:

1. The infringement notice is issued by a warranted officer of the Council; and
2. The notice is issued to:
 - a person; or
 - a company; or
 - an incorporated body; or
 - a public authority.
3. The infringement notice is issued in the prescribed form – as detailed in Section 343C(3) of the RMA.

See appendix two for a template of a correct infringement notice.

Infringement Notice Procedure



Abatement Notices

An abatement notice can only be served where the Enforcement Officer has reasonable grounds for believing that any of the circumstances specified in S322(1) and (2) exist. A notice may be served on any person only by a warranted Enforcement Officer of the Council.

There are two types of abatement notices, both are issued under S322.

1. The first type of notice is issued under S322(1)(a) of the RMA, this is the most commonly used abatement notice and requires the person or persons to cease and / or not undertake an activity.
2. The second type of notice is issued under S322(1)(b) of the RMA. This type of notice requiring that person to do something that, in the opinion of the enforcement officer, is necessary to ensure compliance by or on behalf of that person with this Act, any regulations, a rule in a plan or a proposed plan, or a resource consent, and also necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment—
 - caused by or on behalf of the person; or
 - relating to any land of which the person is the owner or occupier.

Abatement Notice Procedure

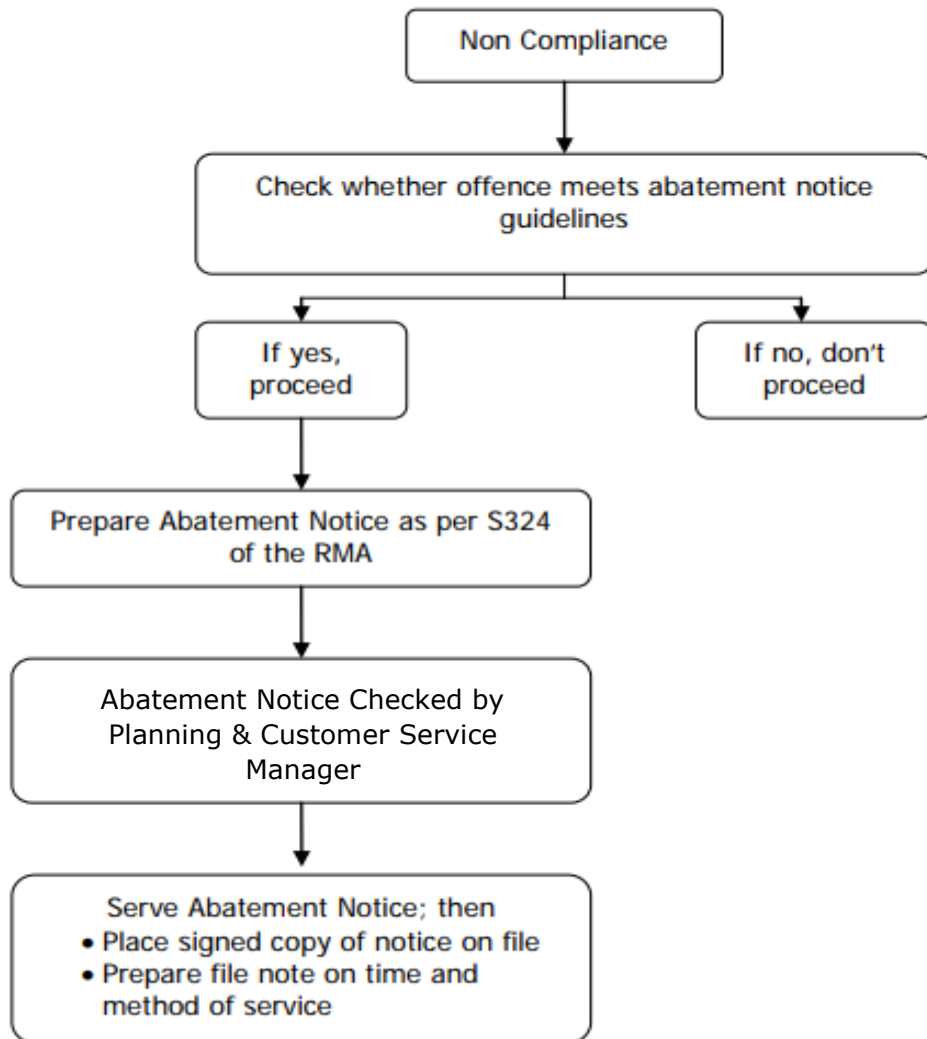
Once an Enforcement Officer is satisfied that the abatement notice criteria have been met, the matter will be reviewed by the Planning & Customer Service Manager. This will assist in ensuring that the issuing of an abatement notice is appropriate, or if other enforcement tools should be considered.

Preparation of the Abatement Notice

The abatement notice must be prepared in accordance with the requirements listed in s324 of the RMA and the template provided.

Once the abatement notice has been prepared, it must be checked by Planning & Customer Service Manager, who will confirm that it meets the legal requirements. The abatement notice can then be mailed out or delivered to the recipient. A hard copy of the notice must be kept for council records (place a signed copy in the abatement notice file in the Planning Office), and a file note should be made by the enforcement officer that outlines how and when the abatement notice was delivered.

Abatement Notice Procedure



Prosecutions

The Westland District Council has considerable discretion in deciding when to prosecute and when not to prosecute. A decision will be made by CEO and relevant manager after a report and recommendation is presented to them by the investigating officer. The decision made by the CEO and relevant manager must be unanimous, and be in writing, and will be reported to Council.

Prosecution Policy

There are three factors that need to be considered when deciding whether to proceed with a prosecution.

These are:

1. The effect on the environment.
2. The degree of culpability of the alleged offender:
 - The culpability of the defendant;
 - The steps taken to remediate; and
 - The defendant's compliance history.
3. Any other circumstances:
 - The public interest;
 - The need for a deterrent; and
 - The likelihood the defendant will be discharged without conviction.

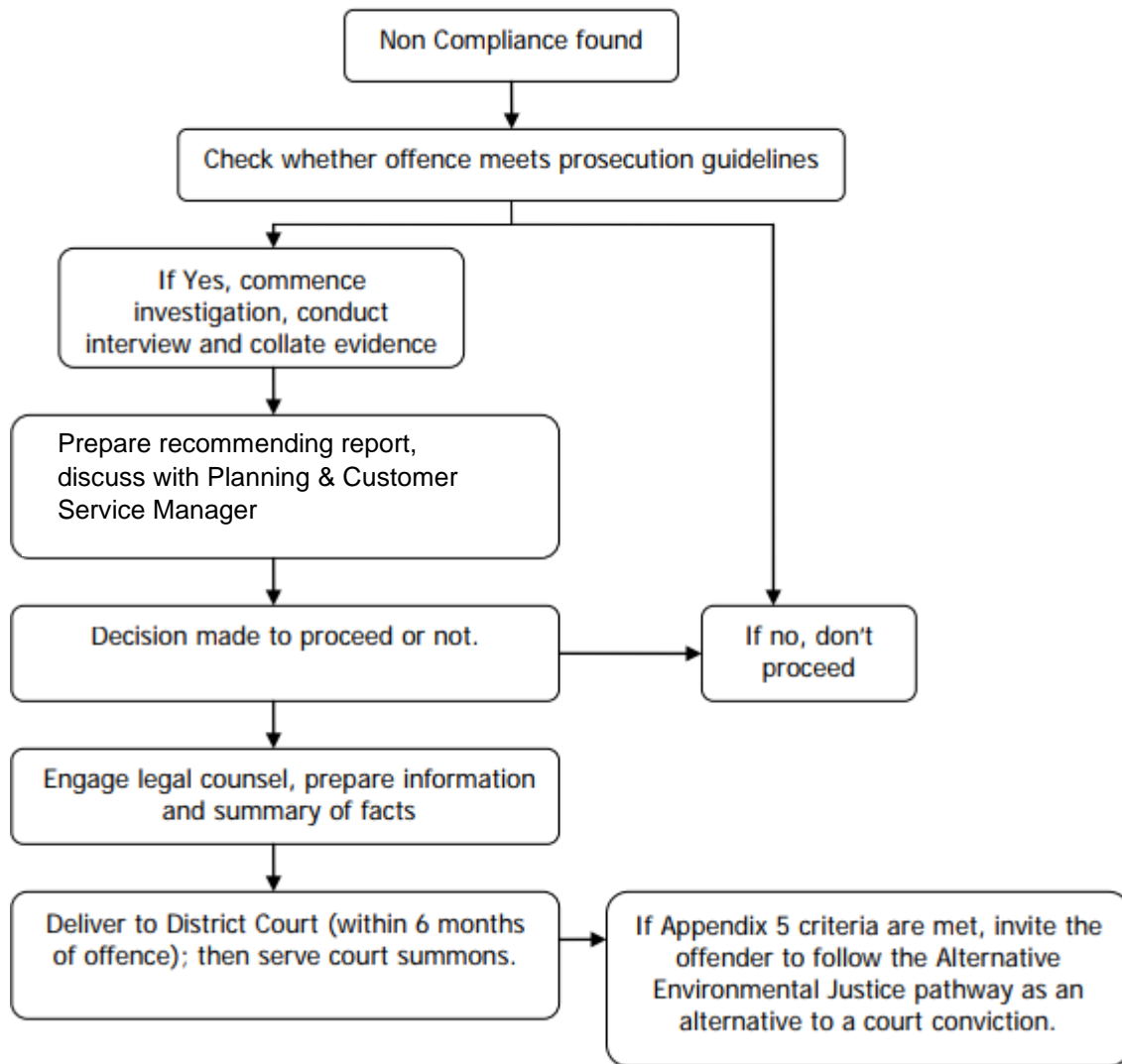
The Solicitor General's guidelines on factors to be considered before a prosecution must also be considered.

The Prosecution Process

The Prosecution Process follows the following steps:

1. A Compliance Officer discovers the offending and an investigation is carried out.
2. An enforcement discussion is held between the investigating officer and the Planning & Customer Service Manager, and a staff Enforcement Decision is made.
3. If the decision in (2) above is to recommend prosecution, a recommending report is prepared.
4. A decision is made whether to prosecute or not.

The Prosecution Procedure



Appendix One: Infringement Notice Checklist

CHECKLIST - INFRINGEMENTS

Site Name: _____

Address: _____

Location Reference: _____

Site Contact: _____

Person: _____ **Phone:** _____

File/Incident: _____ **WDC:** _____

Reference: _____ **Officer:** _____

Nature of Offence/Contravention:

Offence Date: _____ **Time:** _____

Assessment of whether Infringement Notice Appropriate:

State infringement offence from Schedule 1 (Offence must appear in Schedule 1)

Relevant subsection of S338	Section of the Act breached	Level of fine

Tick Applicable Box: (Only proceed if one box can be ticked)

Repeat offence where effects no more than minor.

First offence where potential effects more than minor.

First offence where actual effects more than minor, but capable of being remedied.

First-time offence where effects irreversible and no more than minor.

Abatement notice breaches where effects no more than minor.

Failure to provide certain information to an enforcement officer.

Notice can only be issued if all Four Boxes Below Ticked:

Capable of proving beyond reasonable doubt that an offence was committed.

Capable of proving beyond a reasonable doubt that the person on whom the notice is to be served is responsible for the offence.

No prosecution required for breach in question.

Infringement notice is likely to be an effective deterrent/fine sufficiently severe for offence.

Comments: _____

Infringement notice to be Issued: _____ Yes / No / Decision Deferred

Signed: _____

Date: _____

Appendix Two: Infringement Notice Template

INFRINGEMENT NOTICE

Notice Number: 167

(Issued under the authority of section 343C of the Resource Management Act 1991)

ENFORCEMENT AUTHORITY:

Westland District Council

ENFORCEMENT OFFICER

IDENTIFICATION: XXX

TO: ABC Contractors Ltd, PO Box 123, Greymouth.

You are alleged to have committed an infringement offence against the Resource Management Act 1991, as follows:

Details of Alleged Infringement Offence

Section of Resource Management Act 1991 contravened:

Contravention of section 15(1)(b) (Discharge of contaminants to land where it may enter water) being an offence under section 338(1)(a).

Nature of infringement:

You have discharged a contaminant, namely sediment, from your mining operation at Imaginary Creek, Timbuktu, onto land where it has entered water, namely Imaginary Creek; when that discharge was not expressly allowed by a national environmental standard or other regulations, a rule in a regional plan, any proposed regional plan, or a resource consent.

Location: Imaginary Creek, at or about E2357736 N5830678

Date: 6 February 2010 ***Approximate time:*** 1950 hrs

THE FEE FOR THIS INFRINGEMENT IS: \$750.00

Payment of Infringement Fee

The infringement fee is payable to the enforcement authority within 28 days after: **25 February 2010**

The infringement fee is payable to the enforcement authority at: **36 Weld Street, Private Bag 704, Hokitika**

Payments by cheque should be crossed "Not Transferable".

Signature of Enforcement Officer

(IMPORTANT PLEASE READ SUMMARY OF RIGHTS PRINTED OVERLEAF)

Westland District Council RMA Compliance and Enforcement Policy

SUMMARY OF RIGHTS

Note: **If, after reading this summary, you do not understand anything in it, you should consult a lawyer immediately.**

Payment

1. If you pay the infringement fee within 28 days after the service of this notice, no further action will be taken against you in respect of this infringement offence. Payments should be made to the enforcement authority at the address shown on the front of this notice.

Note: If, under section 21 (3A) or (3C) (a) of the Summary Proceedings Act 1957, you enter or have entered into a time to pay arrangement with an informant in respect of an infringement fee payable by you, paragraphs 3 and 4 below do not apply and you are not entitled either to request a hearing to deny liability or to ask the Court to consider any submissions (as to penalty or otherwise) in respect of the infringement.

Further Action

2. If you wish to raise any matter relating to circumstances of the alleged offence, you should do so by writing to the enforcement authority at the address shown on the front of this notice within 28 days after the service of this notice.
3. If you deny liability and wish to request a hearing in the District Court in respect of the alleged offence, you must, within 28 days after the service of this notice, write to the enforcement authority at the address shown on the front page of this notice requesting a Court hearing in respect of the offence. The enforcement authority will then, if it decides to commence court proceedings in respect of the offence, serve you with a notice of hearing setting out the place and time at which the matter will be heard by the Court.
Note: If the Court finds you guilty of the offence, costs will be imposed in addition to any penalty.
4. If you admit liability in respect of the alleged offence but wish to have the Court consider submissions as to penalty or otherwise, you must, within 28 days after the service of this notice, write to the enforcement authority at the address shown on the front page of this notice requesting a hearing in respect of the offence AND in the same letter admit liability in respect of the offence AND set out the submissions that you would wish to be considered by the Court. The enforcement authority will then, if it decides to commence court proceedings in respect of the offence, file your letter with the Court. There is no provision for an oral hearing before the Court if you follow this course of action.
Note: Costs will be imposed in addition to any penalty.

1 Non-Payment of Fee

5. If you do not pay the infringement fee and do not request a hearing within 28 days after the issue of this notice, you will be served with a reminder notice (unless the enforcement authority decides otherwise).
6. If you do not pay the infringement fee and do not request a hearing in respect of the alleged infringement offence within 28 days after the service of the reminder notice, you will become liable to pay COSTS IN ADDITION TO THE INFRINGEMENT FEE (unless the enforcement authority decides not to commence court proceedings against you).

2 Defence

7. You will have a complete defence against proceedings relating to the alleged offence if the infringement fee is paid to the enforcement authority at the address shown on the front page of this notice within 28 days after the date of service of this notice on you. Late payment or payment made to any other address will not constitute a defence to proceedings in respect of the alleged offence.

Note: The following paragraph relates to defences available where a person is charged with an infringement offence against any of sections 9, 11, 12, 13, 14, and 15 of the Resource Management Act 1991.

8. (1) You will have a further defence (in addition to that indicated in paragraph 7 above) if you can prove -
 - (a) That -
 - (i) The action or event to which the infringement notice relates was necessary for the purposes of saving or protecting life or health, or preventing serious damage to property or avoiding an actual or likely adverse effect on the environment; AND
 - (ii) Your conduct was reasonable in the circumstances; AND
 - (iii) The effects of the action or event were adequately mitigated or remedied by you after it occurred; OR
 - (b) That the action or event to which the infringement notice relates was due to an event beyond your control, including natural disaster, mechanical failure, or sabotage, and in each case -
 - (i) The action or event could not reasonably have been foreseen or provided against by you; and
 - (ii) The effects of the action or event were adequately mitigated by you after it occurred
- (2) Subparagraph (1) does not apply unless you deliver a written notice to the enforcement agency within 7 days after you receive the infringement notice -
 - (a) Stating that you intend to rely on the matters in subparagraph (1); and
 - (b) Specifying the facts that support your reliance on subparagraph (1).
- (3) If you are a principal, employer, or the owner of a ship and you may be liable for an alleged offence committed by your agent, employer, or the person in charge of your ship, you will have a good defence (in addition to that indicated in paragraph 7 above) if -
 - (a) You are a natural person (including a partner in a firm) and you can prove that -
 - (i) You did not know nor could reasonably be expected to have known that the offence was to be or was being committed; OR
 - (ii) You took all reasonable steps to remedy any effects of the act or omission giving rise to the offence
 - (b) You are a body corporate and can prove that -
 - (i) Neither the directors nor any person concerned in the management of the body corporate could reasonably be expected to have known that the offence was to be or was being committed; OR
 - (ii) You took all reasonable steps to prevent the commission of the offence

2.1.1.1 Queries/Correspondence

9. When writing or making payment of an infringement fee, please indicate -
 - (a) The date of the infringement offence; AND
 - (b) The infringement notice number; AND
 - (c) The identifying number of each alleged offence and the course of action you are taking in respect of it (if this notice sets out more than 1 offence and you are not paying all the infringement fees for all the alleged offences); AND
 - (d) Your address for replies (if you are not paying all the infringement fees for all the alleged offences).

FULL DETAILS OF YOUR RIGHTS AND OBLIGATIONS ARE SET OUT IN SECTIONS 341 TO 343D OF THE RESOURCE MANAGEMENT ACT 1991 AND SECTION 21 OF THE SUMMARY PROCEEDINGS ACT 1957.

NOTE: ALL PAYMENTS, ALL QUERIES, AND ALL CORRESPONDENCE REGARDING THIS INFRINGEMENT MUST BE DIRECTED TO THE ENFORCEMENT AUTHORITY AT THE ADDRESS SHOWN.

Westland District Council RMA Compliance and Enforcement Policy

**Appendix Three: Abatement Notice Checklist
CHECKLIST - ABATEMENT NOTICE**

Site Name: _____
Address: _____
Location Reference: _____
Site Contact: _____
Person: _____ **Phone:** _____
File/Incident: _____ **WDC:** _____
Reference: _____ **Officer:** _____

Nature of Offence/Contravention:

Type of Abatement Notice:

<u>Abatement Notice Category</u>	<u>Section of the Act breached</u>	<u>Time Frame for Action</u>

Offence Date: _____ **Time:** _____

Notice can only be issued if all four boxes below ticked:

- Incident occurring or likely to occur, but given the facts of the case a prosecution unlikely to proceed
- Enforcement Officer has reasonable grounds for believing conditions any of the circumstances specified in s322(1) and (2) exist
- Infringement notice not a more appropriate method of dealing with issue
- If notice is to correct an action that has been previously undertaken, is the WDC capable of proving beyond doubt that original was committed by the person on whom notice is to be served

Abatement notice to be Issued: _____ Yes / No / Decision Deferred

Comments: _____

Signed: _____

Date: _____

Appendix Four: Form and Content of Abatement Notice

ABATEMENT NOTICE

Section 324, Resource Management Act 1991

TO: ABC Contractors Ltd, PO Box 123, Greymouth 7840.

The Westland District Council gives notice that you must cease the following action:

The location to which this Abatement Notice applies:

Forest District – Imaginary Creek at or about NZMS 260 J33: 585 – 301

You must comply with this Abatement Notice within the following period:

30 October 2009

This Notice is issued under:

Section 322(1)(a)(i) of the Resource Management Act 1991.

The reasons for this Abatement Notice are:

On 23 September 2009 a Compliance Officer of Westland District Council inspected the operation at Imaginary Creek and found the following:

If you do not comply with this notice you may be prosecuted under section 338 of the Resource Management Act 1991 (unless you appeal and the notice is stated as explained below).

You have the right to appeal to the Environment Court against the whole or any part of this Notice. If you wish to appeal, you must lodge a Notice of Appeal in form 49 with the Environment Court within 15 working days of being served with this Notice.

An appeal does not automatically stay the Notice and so you must continue to comply with it unless you also apply for a stay from an Environment Judge under section 325(3A) of the Resource Management Act 1991 (see Form 50). To obtain a stay, you must lodge both an appeal and a stay with the Environment Court.

You also have the right to apply in writing to the Westland District Council to change or cancel this Notice in accordance with Section 325A of the Resource Management Act 1991.

The Westland District Council authorised the enforcement officer who issued this Notice. Its address is: The Westland District Council, 36 Weld Street, Private Bag 704, Hokitika, phone 03 756 9010 or 0800 474 834, fax 03 756 9045

The Enforcement Officer is acting under the following authorisation:

A warrant of authority issued by the Westland District Council, pursuant to section 38 of the Resource Management Act 1991, authorising the officer to carry out all or any of the functions and powers of an enforcement officer under the Resource Management Act 1991.

Signature of Enforcement Officer: _____

Date: _____

Appendix Five Alternative Justice Policy

Background

Similar to the Restorative Justice process, the Alternative Environmental Justice approach is designed to allow the Westland District Council to exercise prosecutorial discretion to resolve environmental offending without the offender gaining a conviction and a criminal record, while still ensuring timely remediation of the harm they have caused to the environment.

Applicability of the Alternative Justice Policy

Experience has shown that, in some cases, environmental offending is the result of ignorance of the rules or lack of care rather than outright deceptiveness or deliberate actions. Sometime in these cases the environmental impact is deemed to be more serious than what would warrant an infringement or abatement notice. However, exposing the offender to the full prosecution process may be too harsh. It is in these 'grey areas' where the Alternative Environmental Justice method could come into play.

The Alternative Environmental Justice Process

The current prosecution process follows the following steps:

1. A Compliance Officer discovers the offending and an investigation is carried out.
2. An enforcement discussion is held between the investigating officer and the Planning & Customer Service Manager, and a staff Enforcement Decision is made.
3. If the decision in (2) above is to prosecute, then a recommendation report is prepared.
4. A decision is made whether to prosecute or not.

Following step 4 above, the Alternative Environmental Justice Policy would come into play:

5. At the same time as charges are laid with the Court; an Alternative Environmental Justice offer may be made to the defendant, and if accepted by the defendant, the Council would apply to the Court for an adjournment to court proceedings. The CEO together with the relevant Manager will decide whether an offender meets the eligibility criteria.
6. An Alternative Environmental Justice conference would then be undertaken, facilitated by an independent agency.
7. The conference would result in an agreement on the remedial actions and timeframes for completion. If the conference fails to reach agreement, the court process resumes.
8. Once all agreed actions are completed, Council applies to the Court to withdraw all charges.

Eligibility Criteria for Alternative Environmental Justice pathway

The defendant must intimate a guilty plea before being offered the opportunity to follow the Alternative Environmental Justice pathway. The scale of the environmental impact is important but more important is the attitude of the defendant towards the offending and their compliance history. If an offender has a history of offences they may not be offered the opportunity to follow the Alternative Environmental Justice pathway.

Other criteria include:

- Culpability, the level of intent involved in commissioning of the offence;
- Degree and type of deterrence required;
- The defendant's personal factors. For example age and health may be taken into consideration;
- The views of any victim directly affected by the offending are also important (if there is a victim)

- All Council investigation costs must be met by the offender.

The Solicitor General's guidelines for prosecution decisions also contain relevant criteria that will apply in some cases.

Offering Alternative Environmental Justice

There are a range of complexities around RMA prosecution cases, including offences that have been carried out by more than one offender. Offender's culpabilities may be different so it may be that one person can be eligible for Alternative Environmental Justice, whereas another offender may not.

The offer of Alternative Environmental Justice will be made in writing at the time of service of the court summons. Acceptance must also be made in writing to Council by the defendant. Both parties retain the right to remove themselves from process for any reason, hence the need for charges to be laid at the outset. Likely reasons for withdrawal from the Alternative Environmental Justice process include:

- The defendant may believe the requirements of Alternative Environmental Justice are too onerous and may consider that a hearing in court is their best option.
- The defendant may wish to reverse their intimation of guilt.
- Council may wish to withdraw if the defendant is not acting in good faith.

The Alternative Environmental Justice Conference

Similar to the Restorative Justice conference, this would be facilitated by an independent agency that is listed as a provider of Restorative Justice conferences with the Ministry of Justice. This will maintain transparency and impartiality for all parties involved in the process. The conference participants will include:

1. Conference facilitator
2. Council representatives (Investigating officer plus Consents & Compliance Manager)
3. Defendant, and support person if desired
4. Victim (if any)

The purpose of the Alternative Environmental Justice process is to facilitate the resolution of the offending to the standard where it is no longer in the public interest to proceed with a prosecution. It is up to the defendant to offer measures to address the impact of their offending. The appropriateness of the measures agreed to will be evaluated against the following:

- The proposed remediation measures must be in proportion to the offence.
 - The defendant must show remorse.
 - Remediation of harm caused should be undertaken by the defendant. It may be appropriate for Council to seek an enforcement order to ensure agreed remediation is fully completed.
 - The remediation measures must be able to be completed within a suitable timeframe.
 - The defendant must demonstrate an improved understanding of the rules relating to their activities (they may be able to show this by applying for resource consent or installing best practice systems).
 - At the conclusion of this process the defendant should understand why their action was an offence and how to avoid similar incidents occurring in the future.
 - General deterrence – the process is public and transparent and the publicity of the process and the remediation undertaken helps to educate the general public about environmental accountability.
 - It may be appropriate for the defendant to compensate victims affected by the offending and nonfinancial reparation should be considered. If a community is affected then a donation to that community may be appropriate, but again this process needs to be transparent.
 - The remediation measures must not provide any direct benefit to Council
-

Meeting the Council's Costs

The defendant will be liable for all the costs associated with the process. This includes the investigation and legal costs leading to the decision to undertake Alternative Environmental Justice and the costs associated with the Council attending the Conference (including the independent facilitator costs).

If one of the parties withdraws from the process then the defendant cannot be held liable for costs. However if this was to occur then Council would incorporate these costs into any sentencing submissions during the court process that follows.