Wellington Regional Council Internal Procedures for Resource Management Infringement Notices

The following procedures for the use of Resource Management Infringement Notices have been developed for the Wellington Regional Council (WRC). They incorporate the legal requirements of the Resource Management (Infringement Notice) Regulations 1999 and the internal procedural requirements of the WRC.

Objectives

These procedures have been developed to ensure that:

- 1. infringement notices are only used where they are considered to be the most appropriate form of action for a non-compliance incident; and
- 2. there is consistency in the way that infringement notices are used throughout the Wellington Region.

General Procedures

When implementing Infringement Notices the general procedures outlined in the Infringement Offences section of the Local Government New Zealand Resource Management Enforcement Manual will be followed.

Officers should note that since an infringement notice can end in hearings before the Court, incidents of non-compliance need to be investigated in accordance with the normal WRC investigation procedures. This involves gathering and recording sufficient evidence and information to determine the case beyond reasonable doubt.

Internal Procedure for Issuing an Infringement Notice

An infringement notice can only be issued by a person who is a warranted enforcement officer under s38 RMA. Existing warrants need to be amended to recognise this role.

Infringement notices will only be issued after the incident and when the circumstances leading to its occurrence have been fully investigated and assessed.

The decision about whether to issue a RMIN will be made by an officer with Delegation A Authority (e.g., a Department or Divisional Manager) following discussion with the officer who investigated the non-compliance incident and other staff as deemed necessary. The attached guidelines for issuing infringement notices should be used in this decision making process.

Once a decision has been made to proceed with this course of action, the investigating officer will prepare and serve the infringement notice. The infringement notice must be checked by an officer with a Delegation A authority before it is served.

Preparing an Infringement Notice.

The infringement notice must be issued to the person responsible for causing the incident. In this context a person is considered to include the following:

- A person
- A company
- An incorporated body
- A public authority

An infringement notice cannot be issued against the Crown or a Trust unless the Trust is an incorporated body.

The infringement notice must be prepared using the WRC Infringement Notice template which is based on Schedule 2 of the Resource Management (Infringement Notice) Regulations 1999.

This notice must be fully completed: it must include correct details about:

- i. the offence that has occurred and the section of the RMA which it applies to;
- ii. the nature, date, time and location of the incident; and
- iii. the address for service of the notice.

Serving the Infringement Notice

Section 343c of the RMA specifies that service is to take place by either delivery of the infringement notice (or a copy of it) to the person alleged to have committed the offence personally or by post addressed to that person's last known place of residence or business.

Any enforcement officer (not necessarily the officer who issued the notice) may deliver the infringement notice.

Because serving an infringement notice is a potentially confrontational situation, it is advisable that the officer serving the notice be accompanied by a colleague. The details of how, where and when the infringement notice was issued should be recorded. A copy of the infringement notice issued and details about the nature of its service should also be kept on file. Files will be set up in both the Wairarapa and Wellington Offices of the WRC for this purpose.

When an infringement notice is served personally the issuing officer should:

- Show their warrant:
- Describe what the infringement notice is; and
- Draw the person's attention to their rights, which are included in the infringement notice.

If the infringement notice is served by mail, then a covering letter should be enclosed that outlines these points.

Requests for Hearings

All request for hearings in relation to infringement notices issued by the Council will be considered by an officer with Delegation A Authority (i.e., Departmental or Divisional Managers).

Administrative Arrangements

All infringement notices, reminder notices and notices of hearings must be prepared using the WRC templates which are based on Schedule 2 of the Resource Management (Infringement Notice) Regulations 1999 and

Copies of all infringement notices, reminder notices, notices of hearings and all correspondence relevant to infringement notices shall be retained on WRC files established for this purpose.

Guidelines to Officers for Issuing a Resource Management Infringement Notices

The decision to issue an infringement notice is delegated to an Officer with Delegation A Authority (i.e., a Departmental or Divisional Manager). In deciding whether or not to use an infringement notice to address an issue of non-compliance the following matters should be considered:

An infringement notice may be appropriate where the incident is:

- a first offence where the effects are irreversible and no more than minor;
- a first offence where the actual effects are more than minor, but capable of being remedied;
- a breach of an abatement notice where the effects are no more than minor.

An infringement notice may be appropriate where:

- you are confident that the case would stand up in Court, (i.e., the case can be proven beyond reasonable doubt);
- you are certain that you will not want to prosecute for the offence at a later stage;
- you consider that the use of an infringement notice is likely to be a viable deterrent;
- you believe that the fine incurred from the infringement notice is sufficient for the severity of the offence committed;
- an instant penalty is considered to be desirable.
- you believe that none of the applicable defences outlined in the Infringement Notice Regulations 1999 are likely to apply.

An infringement notice may <u>not</u> be appropriate where:

- the non-compliance is ongoing and not within the alleged offender's capacity to remedy quickly;
- you consider the penalty prescribed on the notice would be inadequate for the severity of the offence;
- the extent of the effect on the environment cannot be assessed immediately;
- the evidence collected is insufficient or not robust, so that if it were to go to a court hearing would be unlikely to succeed;
- negotiations are being conducted, and the WRC is satisfied that substantial progress has been made towards resolution of the non-compliance;
- a direction via correspondence has been issued by the WRC to perform specified work within a time frame and the time limit for this has not expired;
- multiple non-compliance has occurred;
- in the case of non-compliance with a resource consent it is not appropriate to issue an infringement notice for each consent condition non-compliance. One infringement notice should be issued for carrying out an activity that requires a resource consent while not complying with consent conditions.
- any of the defences outlined in the Resource Management (Infringement Notice) Regulations 1999 apply.

Defences

The Resource Management (Infringement Notice) Regulations 1999 outline the following defences where a person is charged with an infringement offence against any of sections 9,11,12,13,14 and 15 of the RMA.

These defences need to be taken into account when considering whether an infringement notice is the appropriate course of action.

A defence exists if the defendant can prove 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) Their conduct was reasonable in the circumstances; and
- (iii) The effects of the action or event were adequately mitigated or remedied by their action after it occurred.

OR

The action or event to which the infringement notice relates was due to an event beyond the control of the defendant, 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; and
- (ii) The effects of the action or event were adequately mitigated after it occurred.

These defences do not apply unless the defendant delivers a written notice to the WRC within 7 days after receiving the infringement notice. This notice must state that they intend to rely on the matters outlined above as a defence and specify the facts that support this defence.

Where the defendant is the principal, employer, or owner of a ship and they may be liable for an alleged offence committed by their agent, employer, or the person in charge of the ship, they will have a good defence (in addition to those outlined above) if:

- (a) they are a natural person (including a partner in a firm) and they can prove that:
 - (i) they did not know nor could be reasonably be expected to have known that the offence was to be or was being committed; **or**
 - (ii) they took all reasonable steps to prevent the commission of the offence;

- (b) they 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) they took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.