



# West Coast Regional Council

## Enforcement Policy

Reviewed *February 2013*  
Chris Ingle, Chief Executive

## Introduction

Under the Resource Management Act 1991 (RMA), The West Coast Regional Council has statutory obligations for enforcing some provisions of this Act, commonly Section 9, and Sections 12 – 15. 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, regional plans 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	Abatement Notice
Infringement Notice	Enforcement Order
Prosecution	

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 policy should be read and used in conjunction with the *Basic Investigative Skills for Local Government 2010 Update Handbook*.

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 and S12-15. 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 and classes of consent holders/resource users 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 endeavor 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 fulfill its enforcement duties in a clear and timely manner. This means that Council must often make decisions associated with the allocation of finite resources to areas of highest priority.

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 West Coast Regional Council's general charging policy and the provisions of the RMA.

Where the Council incurs costs in avoiding, remedying, or mitigating adverse effects caused by or on behalf of any person, or in relation to land owned by such a person, from contravention of the RMA, that person will be invoiced to recover any costs incurred by The West Coast Regional Council.

### **Council Approach to Enforcement**

In general, the West Coast Regional 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 warning will be issued, 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 it would be likely that staff recommend prosecution.

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

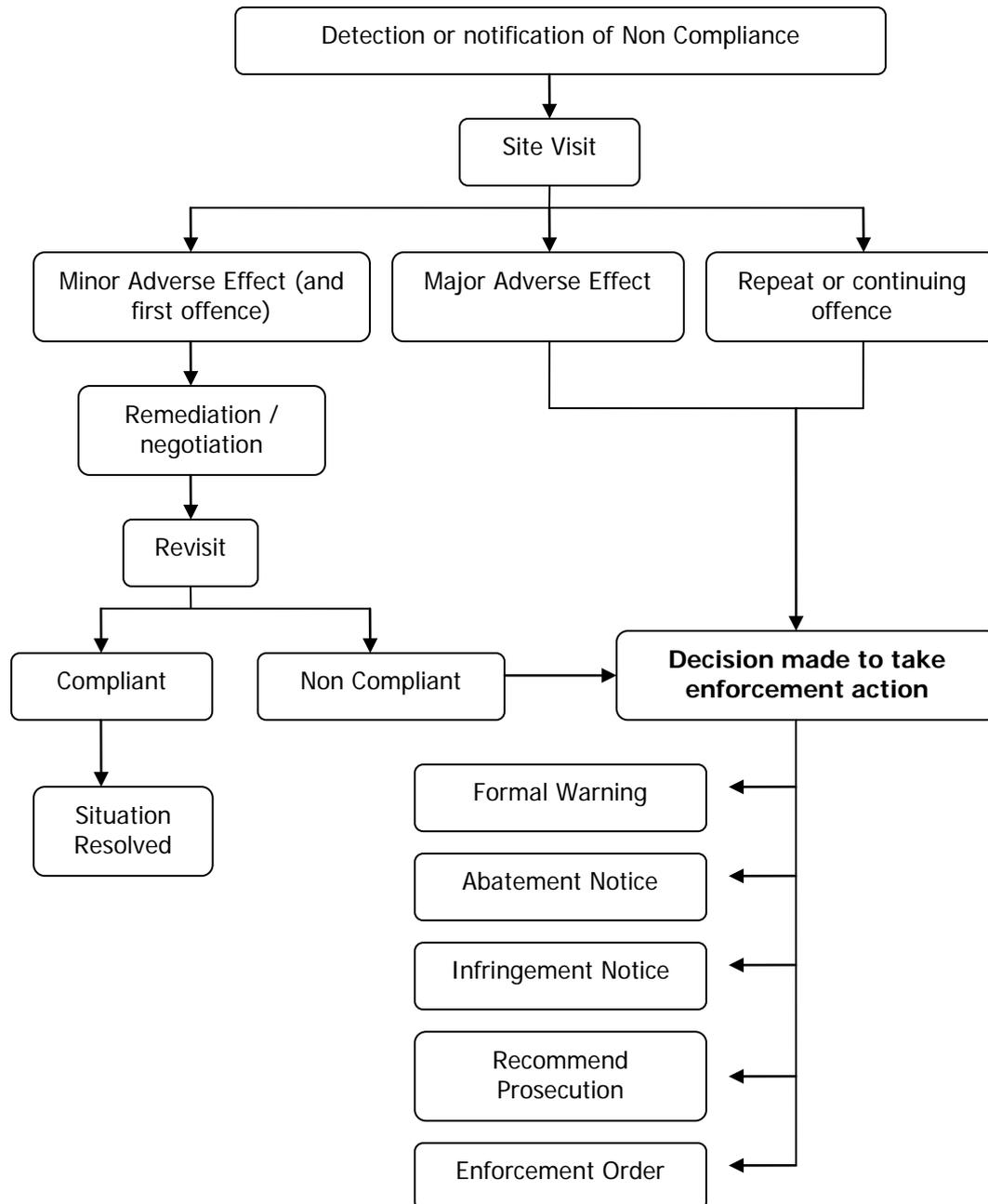
### **Factors to Consider when undertaking Enforcement Action**

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 likely adverse effects (potential effects)
- Whether it was a deliberate or an accidental action
- The degree of due care taken / foreseeability of incident
- The value or sensitivity of the area affected
- The attitude of the offender toward the offence.
- Whether it was a repeat non compliance or if previous enforcement action was needed for a similar situation
- Any effort made to remedy or mitigate the adverse effects
- The effectiveness of any remediation or mitigation undertaken
- Any failure to act on prior instructions, advice or notice
- Any profit or benefit gained by alleged offender
- The degree of deterrence required in relation to the party involved
- Any degree of general deterrence required
- 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, regional 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 and Environmental Manager or the Consents and Compliance Manager.

### Enforcement Action Decision Process



## **Infringement Notices**

Where there has been a direct contravention of a resource consent or a rule in a regional plan, or a national environmental standard or other regulations; the West Coast Regional 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 Guidelines**

Below are situations where the issuing of an Infringement Notice is considered appropriate.

- A repeat offence where the effects are no more than minor.
- A first offence where:
  - The effects are more than minor, but capable of being remedied; or
  - The effects are unable to be remedied, but are no more than minor;
  - Breach of an abatement notice where effects are no more than minor.
- Failure to provide certain information to an Enforcement Officer of the Council.

This is not to be considered a hard and fast rule and officers may choose to use discretion in instances where they deem that an Infringement Notice is not warranted, alternatively it may be considered that an Infringement Notice is not considered a strong enough deterrent and further enforcement options may be more applicable.

Discussions on what is the most appropriate form of action will be undertaken between the investigating officer, Consents and Compliance Manager and/or the Planning and Environmental Manager.

### **A notice should only be issued where:**

- If the matter goes to Court, it can be proven beyond a reasonable doubt that the offence was committed by the person on whom the notice is being served (S340 and 341).
- The Council will not want to prosecute for that particular offence at a later stage.
- The fine under the infringement notice is sufficient for the severity of the offence committed.
- An infringement notice is likely to be a viable deterrent.

When the Investigating Officer is satisfied that the incident has met the criteria needed to warrant an Infringement Notice being issued, a discussion needs to be held with the Consents and Compliance Manager or the Planning and Environmental Manager who have delegation for the approval of Infringement Notices.

Enforcement Officers cannot issue an Infringement Notice without the prior approval of either of these two.

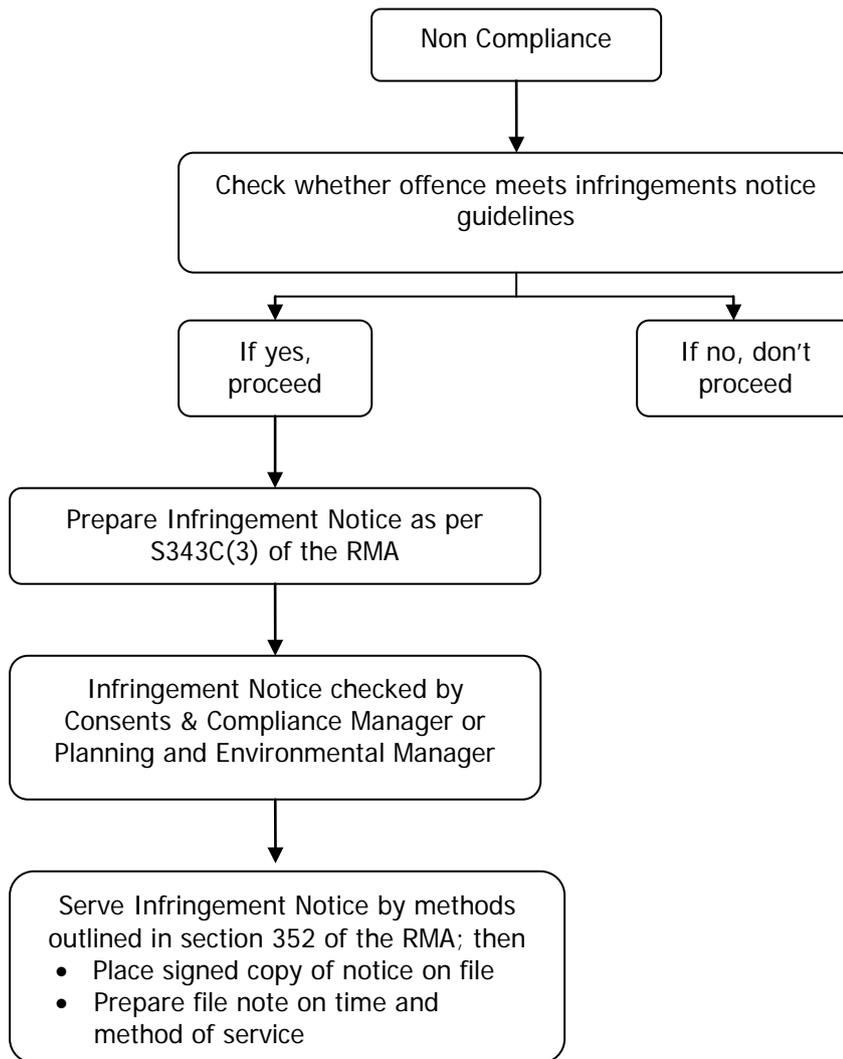
### **Serving the Infringement Notice**

Once the infringement notice has been prepared it must be checked by either the Consents and Compliance Manager or Planning and Environmental Manager. Section 343C(2) of the RMA outlines the options for serving of Infringement Notices. The notice can be considered served when it has been served as per Section 352 of the RMA.

A copy of the notice must be kept for Council records. There is a specific file for hard copies of served Infringement Notices that is kept in the Consents & Compliance room. It is important that a signed copy is placed in this file for future reference. A file note should be prepared to accompany it that describes how and when the infringement notice was delivered.

Once the notice has been served, the offender has 28 days within which to pay. In order to keep track of this, the details need to be entered into the responsible officer's electronic or paper diary.

## Infringement Notice Procedure



### Submissions on Infringement Notices

The alleged offender has the right to make a submission explaining why they believe the infringement notice is inappropriate in the circumstances. Negotiations regarding settlement will be undertaken by the Consents and Compliance Manager or Planning and Environmental Manager.

### Request for a Hearing

Any person who has received an infringement notice may request a hearing in court under S21(6) of the Summary Proceedings Act 1957. If this occurs, the Council then has the discretion to decide whether to proceed to Court. If the Council decides not to proceed, it will inform the person who has received the infringement notice in writing outlining the reasons for this decision and advising that the Council will not pursue the matter. If a decision is made to proceed the Council will file notice in Court in accordance with S21(8) of the Summary Proceeding Act. Such decisions are normally made by the Consents and Compliance Manager or the Planning and Environmental Manager together with the Chief Executive.

### Non-Payment

If, after 28 days from receipt of the notice by the alleged offender, the Council has not yet received payment, a submission, or a formal request for a hearing a **reminder notice** needs to be issued. This notice needs to contain the same details regarding the offence as the infringement notice. This reminder notice then needs to be served on the offender, who then has a further 28 days within which to pay, make a submission requesting the withdrawal of the notice, or to request a Court hearing.

If, on the expiry of the second period of 28 days, the Council has not yet received payment and has not received a formal request for a hearing the Council may file a copy of the Reminder Notice in Court within

6 months of the time when the offence is alleged to have been committed. In these circumstances S21(5) of the Summary Proceedings Act applies, and the Court is deemed to have made an order that the defendant pay a fine equal to the amount of the infringement notice plus costs of the prescribed amount.

### **Abatement Notices**

For more detailed information refer to the *Basic Investigative Skills for Local Government 2010 Update handbook* and the RMA.

An abatement notice is a formal written notice that may do one or more of the following:

- (a) Require the person on which it is served to cease, or prohibit from commencing, anything done or to be done by or on behalf of that person that, in the opinion of an Enforcement Officer:
  - Contravenes or is likely to contravene the RMA, any regulations, a rule in a plan, or a resource consent; or
  - is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment; and
- (b) Require a person to take action to ensure compliance with the provisions of the RMA, or to *avoid, remedy or mitigate* adverse effects on the environment.

An abatement notice should be issued where an incident is occurring or is likely to occur, and the activity is causing or has potential to cause more than minor adverse effects. The key requirements are as follows:

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 that may, in the opinion of the enforcement officer:
  - contravenes or is likely to contravene this Act, any regulations, a rule in a plan, or a resource consent; or
  - (ii) is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment
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 either the Consents and Compliance Manager or Planning and Environmental Manager. This will assist in ensuring that the issuing of an abatement notice is appropriate, or if other enforcement tools should be considered.

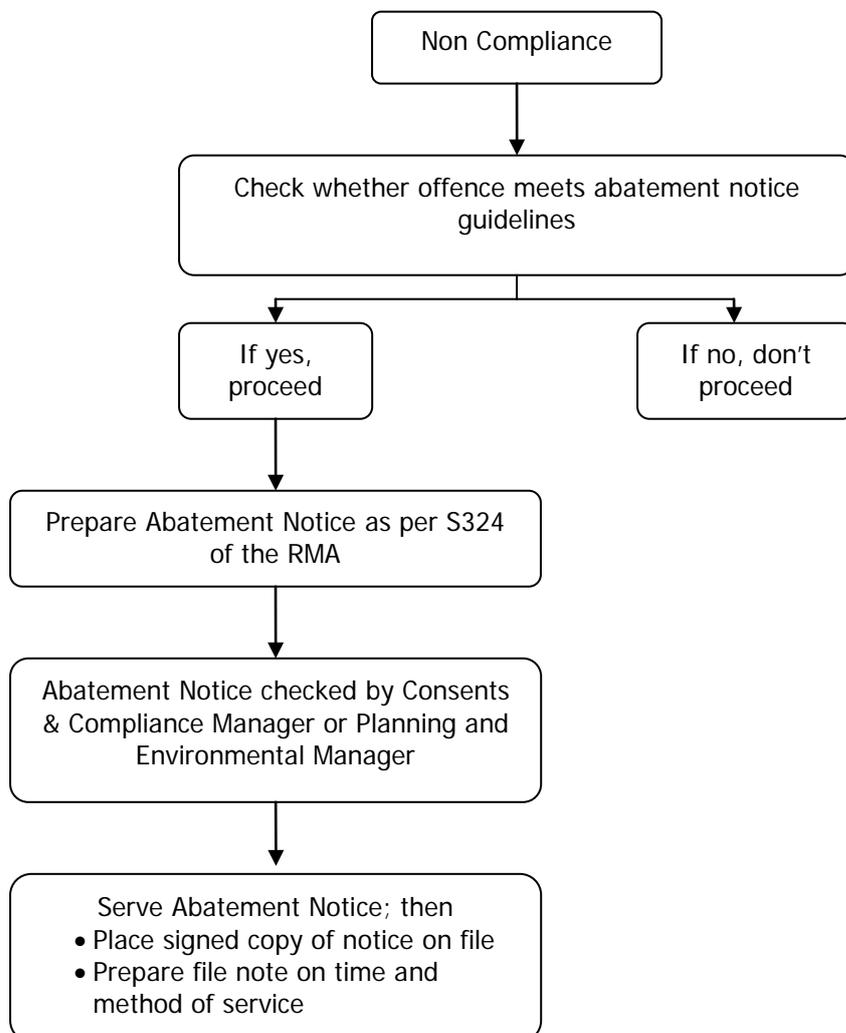
### **Preparation of the Abatement Notice**

The abatement notice must be prepared in accordance with the requirements listed in s324 of the RMA and the template provided in the *Basic Investigative Skills for Local Government 2010 Update*.

Once the abatement notice has been prepared, it must be checked by either the Consents and Compliance Manager or Planning and Environmental 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 Consents & Compliance room), and a file note should be made by the enforcement officer that outlines how and when the abatement notice was delivered.

### Abatement Notice Procedure



#### Abatement Notice Appealed under s325(1)

Under S325(1) an abatement notice may be appealed in the Environment Court. An appeal notice will be reviewed by the Consents and Compliance Manager or Planning and Environmental Manager.

#### Application to Change or Cancel Abatement Notice under s325A(4)

An application made under S325A(4) will be considered by the Consents and Compliance Manager or Planning and Environmental Manager.

- such applications be considered as soon as practicable (S325A(5)); and
- the applicant is informed in writing of the outcome of the application (S325A(6)).

#### Change or Cancellation of Abatement Notices under s325A(2)

Where an Enforcement Officer believes an abatement notice is no longer required (either as the result of a site inspection or a request by the person on whom the notice is served) the matter will be considered by either the Consents and Compliance Manager or Planning and Environmental Manager. If a change or cancellation occurs, written notice of change or cancellation must be given.

The Consents and Compliance Manager or Planning and Environmental Manager have delegation to change or cancel abatement notices. Any change or cancellation of an abatement notice must be approved by them.

## Prosecutions

The West Coast Regional 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 Consents & Compliance Manager or Planning and Environmental 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.

Following step 4 above, the Alternative Environmental Justice Policy may come into play (see appendix 5):

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.
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.

The tables below provide further information regarding culpability, environmental effect, and previous compliance history of the offender when considering a prosecution

#### *Guidance on the Degree of culpability and intention:*

Unintentional breach	A breach involving a principal where an agent (contractor) fails to follow adequate instructions and this failure causes the breach.
Careless breach	A breach that occurs where a principal fails to give adequate instructions to an agent but is not reckless as to whether a breach occurs.
Failure to give due regard	An accidental discharge that occurred after warnings were given about the potential for such a spill or that was the result of inadequate safety systems.
Reckless breach	A breach where the alleged offender is reckless as to whether the action that caused the breach was in contravention of the RMA.
Intentional breach	A breach made in the knowledge that it is a breach.

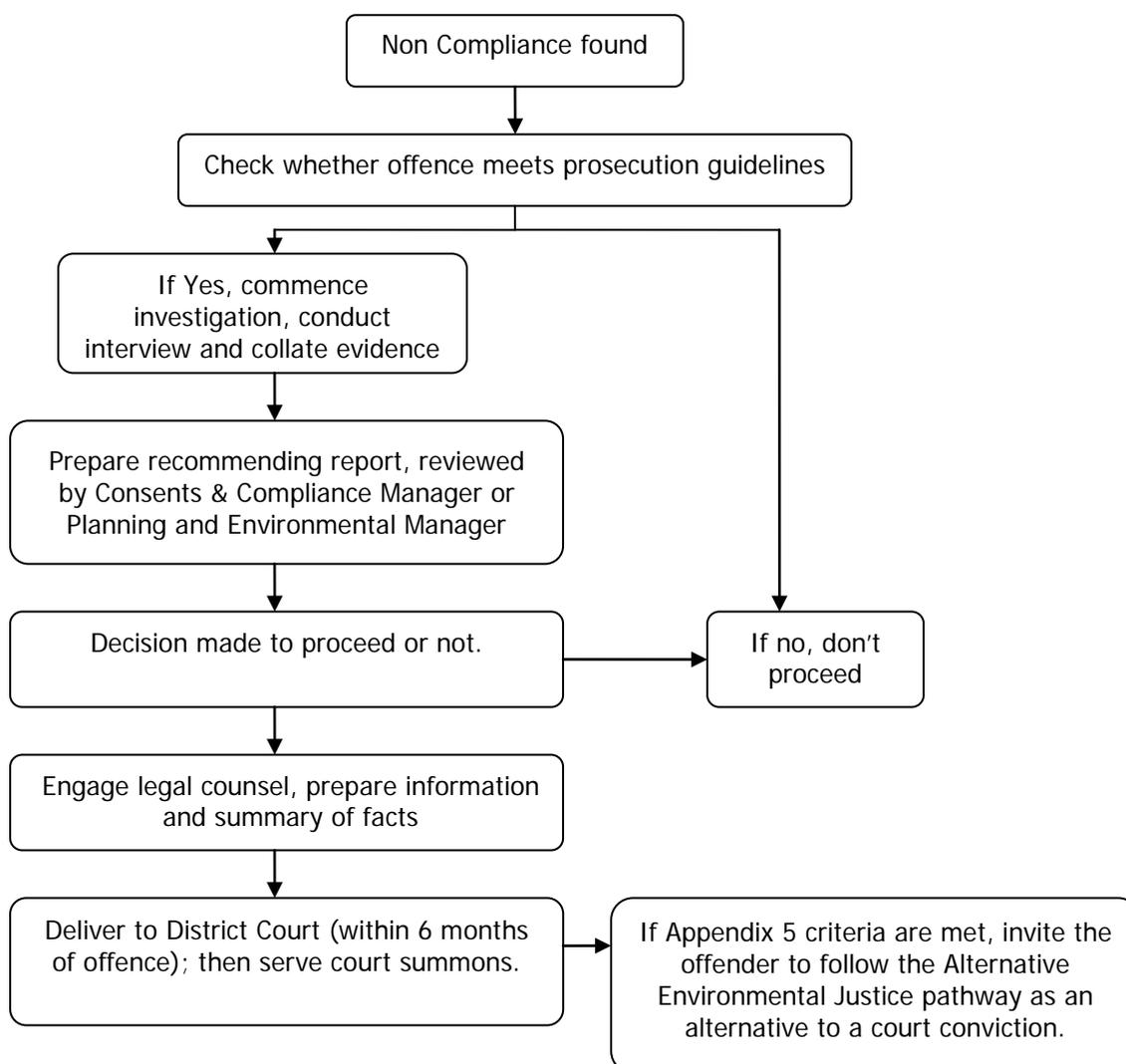
*Guidance on the Previous Record of Offender:*

Good	Good record of compliance with no non-compliances and no enforcement action taken by council previously
Unsatisfactory	Some non-compliances but of a minor effect; or Some non-compliances of moderate effect but remedied quickly, and not repeated
Poor	Record of non-compliance of a moderate nature but not remedied quickly - or of a major nature
Unacceptable	Repeated record of non-compliance with more than minor effect with previous enforcement action taken and little effort to improve

*Guidance on Efforts to Remedy:*

Outstanding	All effort possible to remediate the effects taken as soon as became aware of the problem
Good	Good effort to remediate taken immediately or all effort possible taken after a short delay
Average	Average efforts to remediate taken immediately or good efforts taken after a short delay
Below average	Average efforts to remediate taken after a delay
No effort	No effort to remediate effects on the environment even when offender was made aware

**The Prosecution Procedure**



**Appendix One: Infringement Notice Checklist**

**CHECKLIST - INFRINGEMENTS**

<b>Site Name and Address</b>		
<b>Location Reference</b>		
<b>Site Contact Person File/Incident Reference</b>		<b>Phone WCRC Officer</b>

**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:**  
West Coast Regional Council

**ENFORCEMENT OFFICER**  
**IDENTIFICATION:** No 044

**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:  
388 Main South Road, PO Box 66, Greymouth

Payments by cheque should be crossed "Not Transferable".

.....  
Signature of Enforcement Officer

**(IMPORTANT PLEASE READ SUMMARY OF RIGHTS PRINTED OVERLEAF)**

## 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.**

Marie Shroff  
Clerk of the Executive Council

**Appendix Three: Abatement Notice Checklist**

**CHECKLIST - ABATEMENT NOTICE**

<b>Site Name and Address Location</b>	

<b>Site Contact Person File/Incident Reference</b>		<b>Phone WCRC Officer</b>	

**Nature of Offence/Contravention:**

**Offence Date** \_\_\_\_\_ **Time** \_\_\_\_\_


**Type of Abatement Notice:**

Abatement Notice Category	Section of the Act breached	Time Frame for Action

**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 WCRC capable of proving beyond a reasonable doubt that original action 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 West Coast Regional Council gives notice that you must cease the following action:**

The discharge of contaminants to land where it may enter water, where this discharge is not expressly allowed by a rule in a regional plan, a rule in a proposed regional plan or a resource consent.

#### **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 the West Coast Regional Council inspected the Gold Mining operation at Imaginary Creek and found the following:

- A new screen had been set up at the eastern of the permit. This screen was operating without adequate sediment controls in place. This resulted in a discharge to land where it entered Imaginary Creek. As a result of this discharge Imaginary Creek was discoloured.
- This new area was not covered by the work programme that had been submitted to the West Coast Regional Council.
- Condition 4.3 of Resource Consent RC00000 requires "*the Consent Holder to exercise the consent in accordance with the Annual Work Programme, except that the Consent Holder may, at any time, submit to the Consent Authority an amended work programme provided it complies with all other condition of the consents.*"

Therefore the discharge of contaminants to land where it may enter water was not expressly allowed by a rule in a plan, any proposed regional plan, or resource consent

#### **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 West Coast Regional Council to change or cancel this Notice in accordance with Section 325A of the Resource Management Act 1991.

The West Coast Regional Council authorised the enforcement officer who issued this Notice. Its address is: The West Coast Regional Council, 388 Main South Rd, PO Box 66 Greymouth. Phone (03) 768 0466, Facsimile (03) 768 7133

**The Enforcement Officer is acting under the following authorisation:**

A warrant of authority issued by the West Coast Regional 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.

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Signature of Enforcement Officer

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Date:

## **Appendix Five: Alternative Justice Policy**

### **Background**

Similar to the Restorative Justice process, the Alternative Environmental Justice approach is designed to allow the West Coast Regional 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 Consents & Compliance Manager or Planning and Environmental 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 non-financial 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.