

**Enforcement Provisions
and Procedures**

Resource Management Act

Taranaki Regional Council
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Preface

In July 1993, the Taranaki Regional Council produced its first version of enforcement provisions and procedures under the Resource Management Act 1991.

When carrying out its statutory responsibilities for managing the use, development and protection of land, air or water resources in the Taranaki region, the Taranaki Regional Council will be required to make use of the enforcement provisions contained within Part XII of the Resource Management Act.

This operational document serves to set out as far as is practicable, the manner in which the Taranaki Regional Council and its officers will act when implementing the Resource Management Act's enforcement provisions. It is, however, more than just a reiteration of field practice. It provides detailed guidance for staff conduct and procedures when using those provisions and has been developed within a general 'enforcement' policy framework.

It is recognised that the way in which we conduct our 'business' of compliance monitoring and enforcement will change over time. This could be due to changing legislative requirements, case law and/or the desire to improve upon existing systems and processes. To ensure the continued relevance and usefulness of this document it is proposed that this document continues to be reviewed on a five-yearly basis, or sooner, should circumstances necessitate change. This document has been reviewed three times so far.

At the end of the day, effective and efficient resource management is a responsibility we (the Council and the wider community) all share. We look forward to the community's continued co-operation.

David Walter
Chairperson
Taranaki Regional Council

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1. Introduction

This document, entitled *Enforcement Provisions and Procedures - Resource Management Act*, presents the Taranaki Regional Council's guidelines in instances when the Council is required to make use of the enforcement options contained within the Resource Management Act 1991.

1.1 Purpose and scope

The purpose of this document is:

"...to set out the Taranaki Regional Council's policy and operational procedures relating to its enforcement responsibilities under the Resource Management Act and its amendments, in order to facilitate the achievement of efficient and effective resource management."

The Taranaki Regional Council ('the Council') has many duties and responsibilities pertaining to the enforcement of laws which are necessary in order to carry out its functions effectively and efficiently. These duties and responsibilities are contained in a number of statutes including the Resource Management Act 1991, Soil Conservation and Rivers Control Act 1941, Biosecurity Act 1993, Maritime Transport Act 1994, among others. However, for the purpose of this document, only the Council's duties and responsibilities for implementing and enforcing the provisions of the Resource Management Act ('the Act') are addressed.

This document addresses those matters that relate to enforcement under the Resource Management Act including the Council's policy, detailed guidance on staff conduct, field procedures and prosecutions, and so on. In so doing, it is envisaged that:

- (a) The Council's staff, particularly its enforcement officers, will have detailed guidance in instances where they are required to make use of the enforcement provisions of the Act. These guidelines are designed to **assist** these officers to carry out their enforcement duties and responsibilities in an efficient, effective and legally correct manner; and
- (b) The wider public will be better **informed** and therefore will have a better understanding of the Council's duties and functions. The guidelines will clearly identify the 'limits' within which the Council expects its officers to act. As a matter of general policy, the Council conducts its 'business' in an open, comprehensive and accountable manner. This promotes the Council's accountability, enhances respect for the law and promotes good regional government.

1.2 Background

1.2.1 Enforcement and compliance

Enforcement is a necessary, albeit often regrettable, part of the administration and implementation of the law. Whilst in the minds of the general public, an enforcement role is more closely associated with the police and law courts, other organisations, including the Taranaki Regional Council, have statutory roles and responsibilities with regard to the enforcement of specific laws.

The strategic framework under which the Council works is shown in Figure 1. The principal components of successful resource management are outlined. In broad terms RMA policies and plans are developed, consents are issued (on a notified and non notified basis) and monitoring (compliance and state of the environment), enforcement and policy effectiveness reviews, are undertaken. The success with which the Council is able to address its resource management responsibilities is dependent very much upon the efficiency and effectiveness in which it implements, and indeed, enforces its policies and rules. If the Council's policies and rules are not enforced in an appropriate, professional, consistent and comprehensive manner, then their relevance, integrity and worth are undermined.

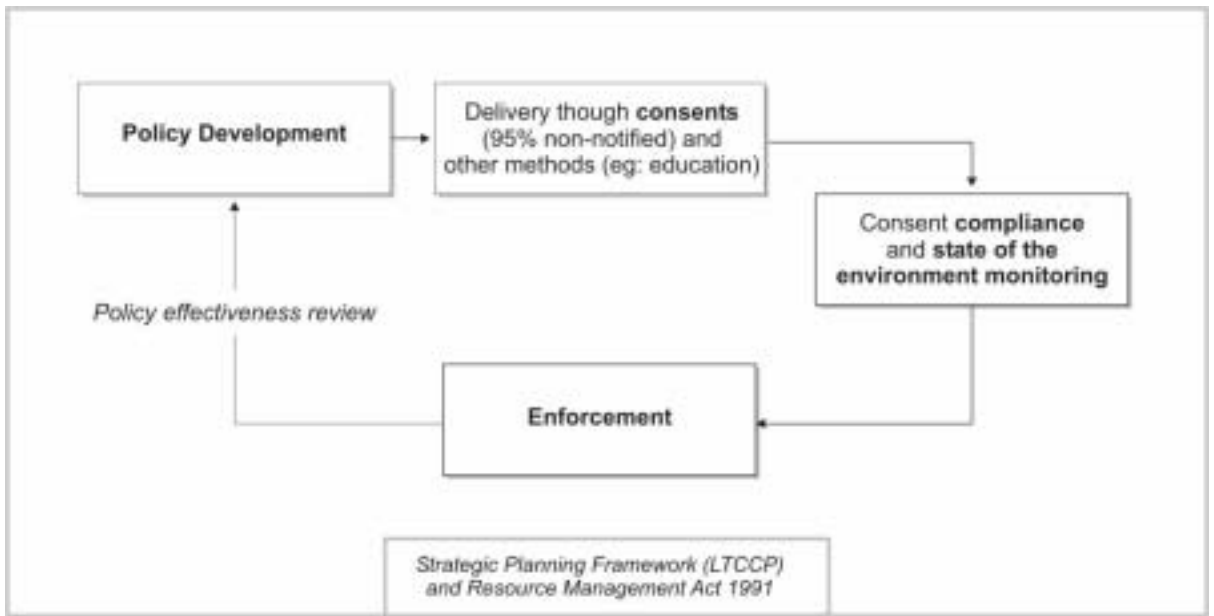


Figure 1 Principal components of resource management

In July 1993, the Council produced the first version of this document. The Resource Management Act has been amended since July 1993 and there is now a significant body of case law and it is therefore necessary to ensure that this document remains up-to-date. This document, as with the earlier versions, provides clear written guidelines for Council's officers and looks to build on the information and experience gathered to date and to develop a general policy framework that clearly signals the Council's intent relating to enforcement. It also provides detailed guidance on staff conduct and procedures when using the Act's enforcement provisions.

For resource management to be effective, it is essential that there are adequate statutory enforcement mechanisms. First there must be ways of ensuring compliance with the Act, resource consents, plans, regulations and orders. Secondly, enforcement tools must be available to enable direct intervention where natural resources are threatened by adverse environmental impacts. Thirdly, it is important for there to be adequate penalties and remedies available, if the Act is contravened or environmental damage caused.

Enforcement mechanisms under the Act can be broadly categorised as being concerned with three interrelated outcomes. These are:

- avoidance, mitigation or remedying of adverse effects;
- compliance¹; and
- deterrence and compensation.

The monitoring of compliance is carried out primarily through the Council's monitoring and investigation programmes. Through monitoring, particularly compliance monitoring of consents, the Council is able to assess the achievement of its objectives, policies and stated environmental outcomes. The nett workload of the Council's Inspectorate Section is in the order of 5,000 inspections per year. Each inspection is recorded on an Inspection Advice Notice issued to the occupant. In addition to investigating officers, technical services staff may also be involved in the monitoring and enforcement process, as and when appropriate. On occasion 'authorised officers' may determine that remedial or enforcement action is necessary. The process of enforcement is a staged one of assistance, warnings, use of enforcement tools and, in extreme cases, prosecution. The Council carries out prosecutions where the significance of the effect, or the actions of a person, warrant such action. Every incident in which prosecution is considered necessary is essentially the end of the line of the enforcement process.

This document is very much an operational one to be used by Council officers, as appropriate, to give effect to the Council's objectives, policies and rules. Emphasis is on a legally correct and effective implementation of Council policy when using the enforcement provisions of the Act. The Council recognises that there are alternatives to using the enforcement provisions of the Act to ensure compliance. In particular, the provision of information and advice is often sufficient or indeed more effective than direct enforcement action in achieving long term remedies. While discussion of these alternatives lies outside the scope of this document they will be used as and when appropriate.

1.2.2 Purpose and principles of the Resource Management Act

The single overriding purpose of the Resource Management Act is **to promote the sustainable management of natural and physical resources** (Section 5(1) of the Resource Management Act). In the exercise of its functions and powers under the Resource Management Act, the Council must be consistent with the Act's purpose.

(2) *In this Act, 'sustainable management' means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while:*

- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable need of future generations; and*
- (b) *Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*

1 Cheryl Wasserman, the USEPA Associate Director for Policy Analysis in a paper on the theory and practice of enforcement in the United States, defines compliance and enforcement as "Compliance is the ultimate goal of any enforcement programme. Compliance is essentially a state of being, when a regulated source is achieving required environmental standards, regulations, or permit conditions by meeting expected behaviours in processes and practices. Enforcement is defined as a set of legal tools, both informal and formal, designed to compel compliance". Wasserman C, 'Federal Enforcement : Theory and Practice' in TH Tietenberg (ed) Innovation in Environmental Policy (1992).

- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

Pursuant to Section 30 of the Act, the Council has authority to regulate and control the use and development of resources (for the purpose of giving effect to the Act). The focus of the Act is on the effects or impacts of activities on the environment rather than a concern with the activities themselves.

1.2.3 Offences under the Resource Management Act

For the purposes of enforcement the important section is Section 338 of the Resource Management Act, which contains the offence provisions in the Act. Of note in Section 338 of the Act is that any action relating to an offence **must be taken within six months** of the contravention, or when the contravention should have come to the notice of the Regional Council. The maximum penalties under the Act are discussed in Section 10.6 of this document.

Offences under the Resource Management Act can be grouped as follows:

- (a) Offences under the principal sections of the Act (ie, non-compliance with any duties or restrictions contained in Sections 9, 12, 13, 14 and 15);
- (b) Offences relating to breaching or not complying with notices or orders made under the Act; or
- (c) Offences involving obstructing enforcement officers in the exercise of their duties.

Breach of principal sections of the Act

All persons must comply with those matters identified in Part III [Duties and Restrictions] of the Resource Management Act. The Council is authorised to give effect to Sections 9, 12, 13, 14 and 15 of the Act in instances where non-compliance occurs (refer Table 1).

Table 1 Offences under the duties and restrictions sections of the Resource Management Act

Section	Resource use*	Offence
9	Land	To contravene a rule in a regional plan or proposed regional plan.
12	Coastal Marine Area	Unless authorised by a rule in a plan or proposed regional plan, or a resource consent, no person may carry out any of the activities listed in subsection (1) to (3).
13	River and lake beds	To contravene a rule in a regional plan or proposed regional plan, or no resource consent.
14	Water (including geothermal)	To take, use, dam, divert unless allowed by a rule in a plan or proposed regional plan, or a resource consent, unless the activity is authorised by one of the provisions of subsection (3)(b) to (f).
15	Water, air, land	To discharge contaminants into environment without a resource consent or unless expressly allowed by a rule in a regional plan or proposed regional plan.

* Note that the Council's duties pertaining to noise in the coastal marine area (Section 16) have been transferred to territorial authorities and therefore are not addressed in this document.

Also included in the duties and restrictions section of the Act is the overriding duty to avoid, remedy or mitigate adverse effects (Section 17 of the Resource Management Act). Unlike the other sections identified in Table 1 above, a breach of this duty is not a

direct offence. Abatement notices and enforcement orders may be used to enforce the duty in Section 17. The Council has regional plans and it should only be necessary to rely on Section 17 in limited circumstances such as where someone is acting in accordance with the plan but where there is an adverse effect which has not been expressly recognised in the plan.

Breach of a Notice or Order made under the Act

If the following orders, notices or directions are not complied with, then an offence is also committed:

- (a) An Enforcement Order or an Interim Enforcement Order;
- (b) An Abatement Notice;
- (c) A Water Shortage Direction; or
- (d) An order made by the Environment Court.

Obstructing officers in the execution of their duties

An offence is committed if:

- (a) A person fails to provide an enforcement officer with information under Section 22 of the Resource Management Act relating to names and addresses; and
- (b) A person wilfully obstructs, hinders, resists or deceives an enforcement officer in the execution of powers conferred on enforcement officers under the Act.

Duty to give information (Section 22)

Where an enforcement officer believes, on reasonable grounds, that a person is breaching or has breached provisions in Part III of the Act, the officer has powers to direct that person:

- (a) To give his or her name and address; and
- (b) To give the name and address and whereabouts of any person or whose behalf the person is breaching or has breached the obligations under Part III of the Resource Management Act.

Enforcement officers can seek additional information to that mentioned above, but there is no obligation on the person being asked, to answer. Enforcement officers do not have powers of arrest if information requested is not forthcoming.

1.3 Structure

This document is divided into twelve sections.

Section 1 introduces the document and its purpose, scope and background.

Section 2 presents the Council's objective and policy in respect to the use of enforcement provisions across its resource management functions. This section also outlines some principles to be used when the Council exercises its discretionary powers for enforcement.

Section 3 outlines the field procedure for Council staff when 'policing' the Resource Management Act including the requirement to ensure enforcement officers are properly warranted and act in a legal manner whilst inspecting properties.

Section 4 outlines the reporting procedures that generally follow any inspection and identifies the recording of information pertaining to enforcement ie, the Unauthorised Incidents Register, the Register of Delegations and the Warrant Schedule.

Sections 5 to 9 sets out advice and procedure pertaining to enforcement mechanisms available to Council staff (ie, where they have the delegated powers) to enforce non-compliance. These being, Abatement Notices (Section 5), Infringement Notices (Section 6), Emergency Works (Section 7), Enforcement Orders (Section 8) and Interim Enforcement Orders (Section 9) – and include a description of who, when and how to enforce.

Section 10 sets out the advice and procedure relating to prosecutions – the enforcement mechanism not delegated to staff.

Section 11 outlines two other mechanisms of relevance to enforcement – these being Water Shortage Directions and Declarations to the Environment Court.

Section 12 notes the regime in place to ensure officers are appropriately trained.

2. Policy framework

2.1 Issue

Issue

Non-compliance with the Resource Management Act, policies, plans or resource consent conditions.

The Resource Management Act provides clear instructions as to the procedures to be followed by regional councils and the community when using the enforcement provisions of the Act. However, there is considerable scope as to how, when and where various enforcement 'tools' may be used. Through the preparation of this document, the Council has taken this opportunity to provide greater certainty to resource users and the community by stating, as a matter of record, the objective, policy and particular methods of implementation it will adopt in democratically implementing the provisions of the Act.

The Council is of the view that regulation based policies, associated regional plans and consent processing will remain a core part of its responsibilities. Compliance monitoring and enforcement follow as being essential cornerstone activities designed to reinforce the integrity and value of the policies.

2.2 Objective, policy and environmental outcomes

Objective

To achieve an optimal level of compliance with the Resource Management Act and with policies, plans and resource consents prepared or granted under the Act.

Policy

The Taranaki Regional Council will ensure that the duties and restrictions contained in Part III of the Resource Management Act and the provisions of plans and resource consents are adhered to. Where non-compliance is noted, the Council will:

- (a) Identify and advise the person responsible of the non-compliance and any remedial action required; and
- (b) Follow up the initial visit to confirm what remedial action has been taken or identify outstanding requirements; and/or
- (c) In circumstances where an act or omission has resulted in an adverse environmental effect or in circumstances of continued non-compliance, the Council may use the punitive provisions of the Act.

Explanation

The Taranaki Regional Council has a responsibility to enforce the principal sections of the Resource Management Act. With regards to its functions the Council has particular responsibilities to enforce sections 9, 12, 13, 14 and 15 of the Act.

An objective is a statement describing what the Council is trying to do and the end to be achieved. The above objective refers to achieving an 'optimal' level of compliance, which means the best achievable result. In theory the 'ideal' level of compliance would be a level whereby there is full compliance, all of the time, by resource users. While this is a very worthwhile goal, it is nevertheless recognised that this ideal state will very rarely be achieved. The optimal level is therefore a more realistic target.

Enforcement is a necessary but last resort in the administration and implementation of the law. The intent and effect of the objective and policy is to ensure, firstly that the Council is clear about the issue, process and outcome being sought. It is implicitly recognised in the policy that other means in addition to, or in place of, the use of the Act's enforcement provisions need to be considered.

There are a variety of 'tools' available to implement the policy and achieve the objective. These include monitoring, which is integrally linked with enforcement, and the provision of information and advice in conjunction with, or separate to, the Council making use of the Act's enforcement provisions (Figure 1).

A policy is a statement of a course of action to achieve an objective. A policy provides guidance and direction for specific methods of implementation in addressing the issues, in this case, non-compliance. Policy does not specify the precise actions to be taken, but indicates the commitment to a general course of action. With regards to the policy, the general course of action to be undertaken by the Council depends very much upon the 'circumstances' resulting in non-compliance.

Where non-compliance occurs, a three-staged approach to enforcement is available. Council officers will, in normal circumstances, provide the opportunity for an offending party to correct the situation. In many cases, resource users may not be aware that they have breached the Council's, and indeed the Act's requirements, therefore provision is made for these persons to rectify the situation, prior to formal enforcement action being taken. On occasion however, implementation of policy (a) and (b) may not suffice, and further enforcement action is required. In circumstances where a negligent or deliberate act has resulted in an adverse environmental effect, or in circumstances where there is continued non-compliance, the elected representatives of the Council may decide to use the punitive provisions of the Act.

The Resource Management Act allows the Council discretion over how, when, and where to use the enforcement provisions of the Act. To assist in any assessment, some guiding principles are required. Consequently, the Council has developed a set of principles to act as decision-making guidelines. The Council and its officers will have regard to these when evaluating the use of enforcement provisions and/or other alternatives. These principles are set out below with a brief explanation.

- ***Certainty and Clarity:*** The Council will endeavour to provide certainty and clarity as to that which is not acceptable and, in instances of non-compliance, the likely course of enforcement action (ie, as outlined in this document).
- ***Efficient:*** The Council will endeavour to undertake its duties in a prompt, clear and speedy manner that gives effect to the purpose and principles of the Act whilst keeping the costs to the ratepayer to the most practical minimum.

- *Equitable*: All classes of consent holders/resource users may expect to be impartially and fairly treated via the same process of enforcement regardless of the type and size of resource use.
- *Fair*: The Council will endeavour to administer the enforcement provisions on a fair basis. Council will be guided by what is appropriate, practicable, and indeed deserved, in the specific circumstances.
- *Simplicity*: It is not appropriate to put in place a system that is unduly bureaucratic or that is unduly costly to administer. To that end, simplicity of the system, while remaining legally defensible and effecting the Council's responsibilities, should be aimed for.

Summarised in Figure 2 is the policy framework including the enforcement provisions available to the Council to:

- Address the issues;
- Implement the objective and policy; and
- To achieve the environmental result anticipated.

Alternatives

Enforcement is a necessary part of resource management practice, however, the means to achieve the Council's objective and policy does not always necessitate the use of the enforcement provisions of the Act. There are alternative methods to achieve the objective and implement the policy.

The principal alternative is the provision of information and advice. The Council has a duty to make the public better informed about the limits within which resource management activities should be undertaken.

The provision of information and advice lies outside the scope of this document but will be adopted, as appropriate, separate to, or alongside the use of the enforcement provisions. Education is often a necessary pre-requisite to the adoption of enforcement and may therefore be a more effective tool in achieving long term remedies.

Environmental results anticipated from implementation of this policy:

- Achievement of high levels of compliance with the Act, regional plans and resource consents.
- The maintenance and enhancement of the quality of the environment.
- The avoidance, remedying or mitigation of adverse environmental effects.

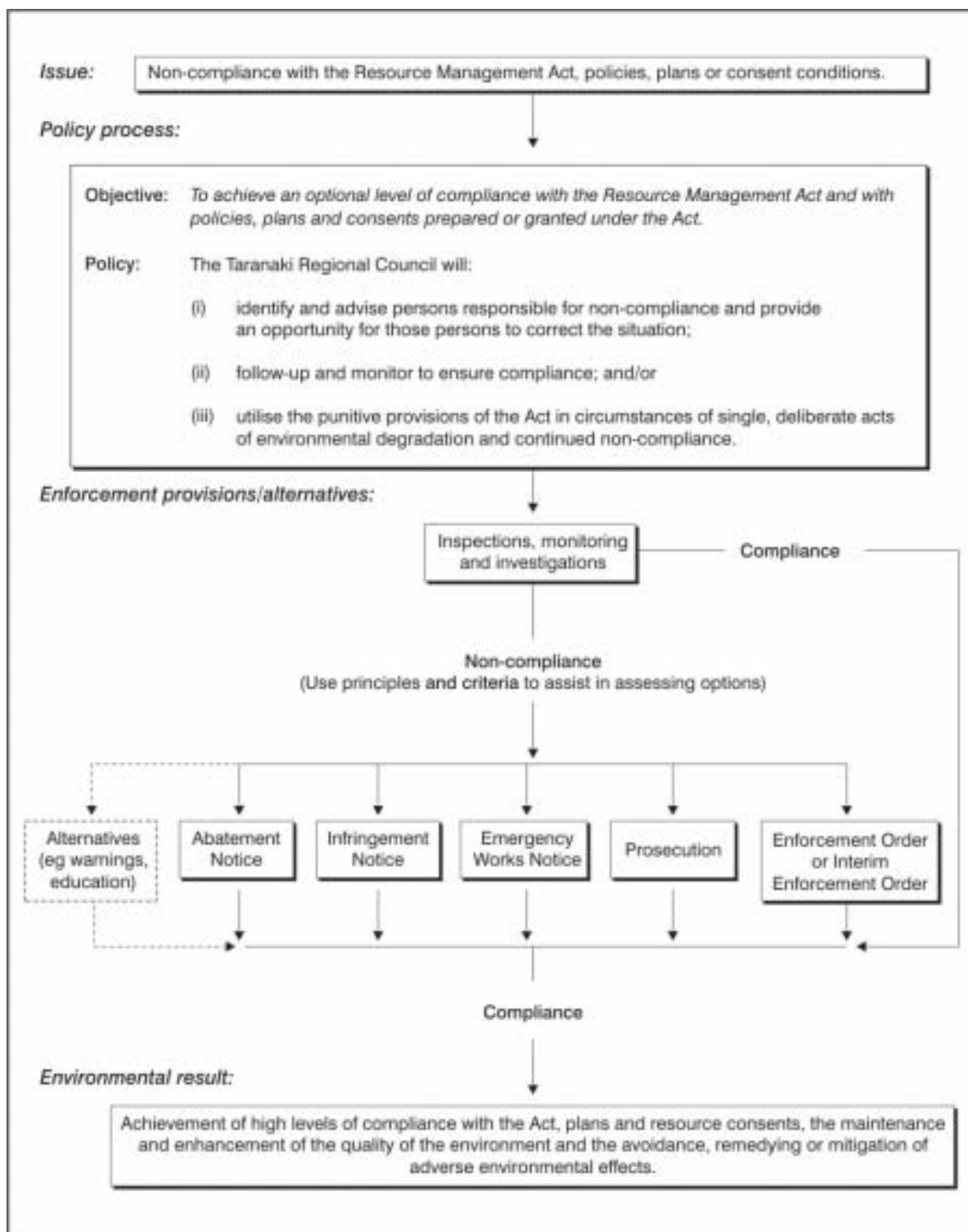


Figure 2 Framework for the implementation of the enforcement policy

3. Inspection, monitoring, investigations

3.1 Enforcement officers

The Council has appointed enforcement officers to police its statutory functions and responsibilities.

Section 38(1)(a) of the Resource Management Act states that the Council may authorise any of its officers to carry out all, or any, of the functions and powers of an enforcement officer. Staff of the Inspectorate Section of the Council are clearly the first line response to most complaints, spills and investigations. Nevertheless, such authorisations have also been delegated to technical and monitoring staff, and the like, who will on occasion be engaged in monitoring, sampling or survey work.

It is important that enforcement officers are conversant with their legal rights and obligations, hence this document. If an officer acts outside his or her authority, then his or her actions can be challenged as being unlawful. Consequently, evidence obtained by that officer may become inadmissible.

Note

The Delegations Manual identifies **what** powers and functions the Council has delegated to staff. The *Warrant Schedule* identifies **who** has been appointed as an enforcement officer and with what powers.

3.2 Warrants of appointment

An enforcement officer is to ensure that the Council supplies him or her with a warrant of appointment. This warrant will be carried at all times by the officer.

This warrant will be produced upon initial entry to any property, whether requested or not, and upon any later reasonable request. The warrant serves as the officer's written authorisation and as evidence of identification. It clearly states the function and powers that the relevant officer has been authorised to exercise under the Resource Management Act.

Section 38(7) of the Resource Management Act requires every enforcement officer to surrender his or her warrant on termination of employment.

3.3 Entry for inspection (section 332)

An enforcement officer may, at all reasonable times, enter any place for the purposes of inspection or survey, pursuant to Section 332 of the Resource Management Act.

This power of entry for inspection is subject to the following conditions:

- (a) The enforcement officer must hold a warrant under section 38 of the Act recording that the officer has authority to undertake inspections under section 332 ;
- (b) The officer cannot enter a dwelling house;
- (c) The officer can only enter at reasonable times;

- (d) At the commencement of the inspection, the officer must endeavour to locate and inform the owner/occupier of the inspection;
- (e) The officer must produce to the owner or occupier the officer's warrant of appointment and written authorisation upon initial entry and in response to any later request².

If the owner or occupier of a place subject to inspection is present at the time of the inspection, the enforcement officer at the conclusion of the inspection shall hand to the owner or occupier an Inspection Advice Notice. A copy of the Inspection Advice Notice should be kept by the officer for the Council's records. If the officer is not able at the conclusion of the inspection (for whatever reason) to prepare an Inspection Advice Notice then the officer is to obtain the contact details of the owner or occupier and the officer is to prepare the Inspection Advice Notice as soon as possible after the inspection and is to post and or fax the Inspection Advice Notice to the owner or occupier.

If the owner or occupier of a place subject to inspection is not present at the time of the inspection, the enforcement officer at the conclusion of the inspection shall leave in a prominent position at the place, an Inspection Advice Notice. If the officer is not able at the conclusion of the inspection (for whatever reason) to prepare an Inspection Advice Notice then the officer is to leave in a prominent position at the place a Notice showing the date and time of the inspection and the name of the officer carrying out the inspection³. A copy of the Notice will be kept by the officer for the Council's records and a simple template is given below.

Notice of Inspection under section 332 of the Resource Management Act 1991

This property was inspected by an Enforcement Officer
[names of Officer] of the Taranaki Regional Council
 on.....at.....a.m./p.m.

The template may be stamped on to the back of an officer's business card and left as an inspection notice under the Act.

The officer, during inspection, may take samples of water, air, soil or organic matter. He/she can use any assistance as is reasonably necessary. In the gathering of samples etc the officer will follow the reporting and sampling procedures outlined in Section 4 and Appendix I of this document.

In the event that an inspection identifies non-compliance issues, enforcement mechanisms will be considered (refer Sections 5 to 9 below).

² If more than one officer inspects then each officer must produce warrant of appointment and written authorisation.

³ It is a statutory requirement for the enforcement officer to give written notice to the owner/occupier that their property has been subject to inspection under section 332(4) of the Resource Management Act.

- (e) If, the enforcement officer already has reasonable grounds to consider that an offence (punishable by imprisonment) has been committed then the enforcement officer cannot rely on section 332 to authorise inspection of the property if the purpose of the visit is to obtain evidence to support a prosecution.
- (f) In such a case where there are reasonable grounds for believing an offence punishable by imprisonment has been or is being committed (either as a result of evidence obtained on an earlier inspection or as a result of other evidence independently before the enforcement officer) and the purpose of the visit is not to determine compliance but obtain further evidence then in that the case an application for a search warrant under section 334 is required.

A template for an application for search warrant and the search warrant is in Appendix II.

3.4 Entry for survey (section 333)

While not strictly an enforcement matter, the power of entry for survey is used in relation to the preparation, change or review of a policy statement or plan. When the enforcement officer enters for these purposes he/she can also take samples of water, air, soil or vegetation.

This power of entry for survey is subject to the following conditions:

- (a) The enforcement officer must hold a warrant under section 38 of the Act recording that the officer has authority to undertake inspections under section 333;
- (b) The officer cannot enter a dwelling house;
- (c) The officer can only enter at reasonable times;
- (d) The officer must prior to the inspection give written notice to the occupier stating the following matters:-
 - (i) That entry is authorised under Section 333;
 - (ii) State the purpose for which entry is required; and
 - (iii) State how and when the entry is to be made.
- (e) The officer must produce for inspection his/her warrant of appointment and written authorisation upon initial entry and in response to any later request.

3.5 Service of documents

The mode of service of documents under the Resource Management Act is detailed in Section 352 of the Resource Management Act. When the person is present the officer shall:

- (a) Deliver it personally to the person. Service on a body (whether incorporated or not) can be carried out by service on an officer of the board of the body, or on the registered office of the body. Where a person is known personally to the officer, personal service is usually preferable.

If no one is present, the officer shall:

- (b) Deliver it at the usual or last known place of residence or business of the person including by facsimile or left in the letter box;
- (c) Send it by prepaid post addressed to the person at the usual or last known place of residence or business of the person; or
- (d) Send it in such other manner as the Environment Court may, on application to it, direct.

Pursuant to Section 352(5) of the Resource Management Act, where a notice or other document is sent by post to a person it shall be deemed, in the absence of proof to the contrary, to be received by the person at the time at which the letter would have been delivered in the ordinary course of the post. Note, if serving a notice or an order on someone by post, extra time must be provided for them to comply/appeal such notice eg, at least an additional two days is recommended.

4. The recording of information

Under Section 35 of the Resource Management Act, the Council has “...a duty to gather information, monitor and *keep records*.” The keeping of information and the reporting of information obtained from investigations are vital components for efficient, effective and open enforcement. The reporting of information gathered in the field ensures there is an accurate version of events and it is important for all parties concerned that such information be recorded.

Pursuant to Section 35(5)(i) of the Resource Management Act, the Council shall keep information including a summary of all written complaints received by it during the preceding five years concerning alleged breaches of the Act, or a plan, and information on how the Council dealt with each such complaint. These complaints are generally summarised and included in the Unauthorised Incident Register presented every six weeks to the Consents and Regulatory Committee.

Presented below are guidelines for the recording of information including an identification of ancillary information necessary to facilitate effective enforcement.

4.1 Diaries and field notes

The field diaries of all staff are considered to be legal documents and should be treated as such when taking notes in the field. Under the Local Government Official Information and Meetings Act 1987, all notes and diaries can be requested to be made available and may be used in Court.⁵

An officer, whilst carrying out any enforcement duties and functions under the Resource Management Act, will keep a diary and enter all daily visits and inspections on the day of the undertaking. The following will be noted in the diary and/or any other relevant field notes:

- (a) The time of entry to inspect a property, the reason(s) for doing so, and the duration of the inspection;
- (b) A record that a Notice was left as required by section 332(4)⁶ in the event that the owner/occupier was not present at the time of inspection;
- (c) The names of all persons spoken to. Any explanation or reasons given by persons (explanations should be obtained wherever possible. Any explanations provided should be considered carefully. Follow up interviews may be required);
- (d) The enforcement officer's observations particularly regarding the nature of any offence;
- (e) The action taken in regard to any breach of the Act;

⁵ The Council must show good reason for withholding any official information. Refusal of requests is subject to Section 17 of the Local Government Official Information and Meetings Act.

- (f) The weather on the day of investigation. This is important in respect of discharges of contaminants into water and air; and
- (g) Matters pertaining to the taking of samples and photographs.

4.2 Samples and photographs

In addition to written evidence, samples and photographs etc may be taken to record investigations. In such cases the officer should:

- (a) Take samples as outlined in the procedure for enforcement officers (see Appendix I). Samples should be collected upstream, at the point of discharge into the waterway and downstream. The downstream samples establish the adverse impact on the waterway and the length of the waterway affected. Downstream samples should be collected at intervals for the full area that officers suspect has been affected. Samples should be collected of any dead fish or other dead flora and fauna where the death is suspected to have been caused by the contaminant discharged.
- (b) It is important that the investigating officer who took the samples ensures that the samples are taken personally to the laboratory. The investigating officer must ensure that the sample is logged correctly by the laboratory staff. Once this has been done, the officer will make a record in his/her diary of the time the samples were handed in and also the name of the person to whom the sample was handed. For evidential purposes it is crucial that a 'chain of custody', able to be proven by documentary evidence (countersigned etc), be established from the initial taking of the sample, to handing it over to the laboratory staff, and the eventual testing. There must be no doubt that the sample taken from a certain property was the sample that was tested and analysed by the laboratory staff; and
- (c) Take photographs of the discharge including from the point of entry to receiving waters if appropriate and take photographs of the areas where the samples were taken. Take photographs of any dead fish or other dead flora and fauna where the death is suspected to have been caused by the contaminant discharged. Make notes in the diary of the number of photographs that were taken and a general description e.g., photograph taken of milking shed, effluent pond, of paddock near point of entry of effluent into receiving water, etc; or
- (d) If a video camera is available, and the pollution is significant, take a video tape of the effects and all other relevant evidence at the site.
- (e) Consider the value of an ecological survey. It is important that any survey is undertaken promptly by the appropriate officers. In many cases there will be no point in undertaking an ecological survey.

If two or more officers are on site, it is recommended that a photograph be taken of one of the staff taking the sample. For enforcement purposes, taking photographs etc is a very useful record in that it enables one (or more) officers to collaborate the record of events and sampling.

4.3 R2D2 and memorandums

On coming back to the office, after a day in the field, a record of all inspections, consent investigations, advisory visits and other relevant information shall be entered into the **Inspection History Section of the Consents database (R2D2)**. Computerised field tablets allow this task to be quickly and accurately completed.

In instances where it may be necessary to take further action, the investigating officer, once all relevant investigations etc have been completed, will prepare a memorandum to the Compliance Manager which can then be used as a basis for preparing briefs of evidence. The memorandum should include all details regarding the investigation and will be recorded in the Unauthorised Incidents Register (see below). An example of a Memorandum is presented in Appendix III of this document.

4.4 Other information

4.4.1 Unauthorised Incidents Register

The Council maintains the *Unauthorised Incidents Register* (UIR) to record unauthorised incidents and actions taken on them.

Council officers have responded to approximately 400 incidents in each of the last two years. There is a growing trend in public and self notification of incidents. The Council has, through its Long Term Community Plan, undertaken to respond to all events within three hours of receiving notice. Response and action in any such event is vital for the Council's credibility in the region.

All alleged incidents are reported in open meeting to the Council's Consents and Regulatory Committee. The report notes the source of the incident, its effect(s), action taken and recommendations for further action, if appropriate.

Where appropriate, unauthorised discharges may also be addressed via the annual compliance monitoring report for a site. Recommendations in the annual report can address site or management controls or note that should a trend continue the Council would have to take further action.

UIRs are stored in the **'Incidents Module' of the Council's database system**. The contact details of the incident are stored in the **'Contacts Module' of the database** to complete an entry.

The system automatically transfers the history of a UIR to resource consents where applicable.

4.4.2 Register of Delegations

Under the Resource Management Act, a number of enforcement tools are available to the Regional Council. The necessary powers and the appropriate 'level' of delegation to decide upon and use those tools has been reviewed by Council and delegated to Committee or officer level. These, and other delegations, are identified in a document known as the *Delegations Manual for the Taranaki Regional Council (2005)*.

Such delegations are an essential operational requirement, necessary because of the very tight time constraints often associated with statutory action and the administrative delays and ineffectiveness that would otherwise arise in reporting all matters to the Council for the Councillors' collective consideration and action.

The Manual identifies the delegate, the operational policy in exercising a delegation, and the appropriate reporting mechanisms necessary for performance monitoring purposes. Interested persons can at any time ask to see the Manual.

4.4.3 Warrant Schedule

The responsibilities and powers of enforcement officers are quite considerable and have assumed greater significance under the Resource Management Act because of the penalties available under the Act eg, imprisonment.

As noted, all enforcement officers must be issued with a warrant. For the purposes of identification a list of Council officers who have received warrants is included in a document entitled the *Warrant Schedule*. The *Warrant Schedule* also identifies who has what powers.

4.4.4 Information requests

In addition to the above documents, the Council may, on request, make other information available pursuant to the Local Government Official Information and Meetings Act 1987.

4.4.5 Enforcement notices and orders

The enforcement provisions of the Resource Management Act represent a shift towards judicial expertise in resource management matters, and a consolidation of the various enforcement procedures that existed under previous legislation.

On the Council's behalf, various enforcement mechanisms are available to specified delegated staff (ie, management and/or enforcement officers) to use as and when appropriate (Table 2). Sections 5 to 9 deal in detail with who and under what circumstances various enforcement mechanisms will be used. Appendix IV outlines the advantages and disadvantages of the various enforcement mechanisms.

Table 2 The enforcement provisions of the Resource Management Act and the delegated authority to use those provisions

Enforcement provisions*	Sections of the Act	Delegation of enforcement and ancillary powers
Abatement Notices	Sections 322 to 325A	To appropriate enforcement officers.
Infringement Notices	Section 343A to 343 D	To the Chief Executive, Director – Resource Management and Compliance Manager.
Emergency Works	Sections 330 to 331	To appropriate managerial and enforcement officers.
Interim Enforcement Orders	Section 320	To the Chief Executive, Director – Resource Management and Compliance Manager.
Enforcement Order	Sections 314 to 321	To the Chief Executive, Director – Resource Management and Compliance Manager.
Water Shortage Directions**	Section 329	To the Chief Executive and Director – Resource Management.
Declarations**	Section 310/311	To the Chief Executive only.
Prosecutions	Sections 338 to 342	To the Consents and Regulatory Committee.

* Pursuant to Section 4(5) of the Resource Management Act no Abatement Notice, Enforcement Order or information (ie, prosecution) can be issued against the Crown.

** The use of these 'planning' tools will be on an intermittent and infrequent basis, refer to miscellaneous section.

5. Abatement Notices (Sections 322-325A)

An Abatement Notice is a lower level enforcement procedure and is essentially a warning to the recipient and gives the recipient an opportunity to comply with the Resource Management Act.

5.1 Delegation

The Chief Executive, Director–Resource Management, Director–Operations, Compliance Manager and other appropriate enforcement officers (as identified in their individual warrants) have the power to issue an Abatement Notice. **Check that your warrant has Section 322 identified before using this power.**

5.2 Pre-requisite for a Notice

The Abatement Notice (Figure 4) serves as an instruction to the owner, or occupier to:

- Cease, or prohibit a person from commencing or continuing, any activity that contravenes or is likely to contravene provisions of the Act, any regulations, a rule in a plan or a resource consent (Section 322(1)(a)(i) of the Act).
- Cease, or prohibit a person from commencing or continuing, any activity that 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 (Section 322(1)(a)(ii) of the Act).
- Require a person to take positive action to comply with the Act, any regulations, a rule in a plan or proposed plan, or a resource consent and also 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 that person is the owner or occupier (Section 322(1)(b)(i) and (ii) of the Act).
- Cease or prohibit a person from action, which contravenes or is likely to contravene proposed plan

The form is titled "ABATEMENT NOTICE (Under section 322 of the Resource Management Act 1991)". It includes the following fields and sections:

- No** and **File No** (FC2/10)
- ABATEMENT NOTICE (Under section 322 of the Resource Management Act 1991)**
- Name** _____
- Address** _____
- Location in respect of notice** _____
- Catchment** _____ **Type of system** _____
- Discharge permit number** _____
- Your property at the above address was inspected by an officer of the Taranaki Regional Council at the following time _____ on the _____ (date)**
- The reason for this notice is** _____
- The following action is required to be taken:** _____
- Such action must be completed on or before _____ . A reinspection will take place after that date.**
- Enforcement Officer** _____ **Date** _____
- Costs and expenses in complying with the notice may be charged to you. The inspector was made in the presence of the occupier.** YES/NO
- This notice was delivered to:**
 - The Occupier
 - Other _____
 - Owner/occupier
 - Number of household _____
 - Other _____
- IF YOU WISH TO COMMENT ON THIS INSPECTION, PLEASE CONTACT THE INSPECTOR'S MANAGER OF THE COUNCIL AT THE ABOVE ADDRESS WITHIN ONE WEEK OF RECEIPT OF THIS DOCUMENT**
- Working with people, caring for our environment**

Figure 4 Abatement Notice

or requiring a person to take action to comply with a proposed plan (Section 322(2) of the Act).

The owner or occupier must take the described action to avoid further or significant adverse effects and secondly, further action by the Council.

The enforcement officer serving an Abatement Notice has to have reasonable grounds for believing that the circumstances in Sections 322(1) or 322(2) of the Resource Management Act exist and may be made subject to such conditions as the enforcement officer serving it thinks fit.

The scope of Abatement Notices as set out in Section 322 of the Resource Management Act is closely linked to the scope of Enforcement Orders (refer Sections 8 and 9 below).

5.3 Appeals and stay of Abatement Notices

The length of time in which a recipient has to comply with an Abatement Notice can be more or less than seven days – depending upon the circumstances and the particular section of the Resource Management Act that the Notice is issued under. The circumstances and the particular section of the Resource Management Act that the Notice is issued under also determine whether or not an appeal acts as a stay of the Notice.

The two types of Abatement Notices and the two circumstances to be considered are as follows:

Category 1

The period within which the action must be taken or cease must be a reasonable period but can be **less than seven days**. If an appeal is filed, **the appeal does not act as a stay of the Abatement Notice**. The recipient can apply to the Court for a stay. This type of Notice must be issued within the scope of the following sections:

- **322(1)(a)(i)** to require the person to cease or prohibit that person from commencing anything that in the opinion of the enforcement officer contravenes or is likely to contravene the Resource Management Act, regulations, a rule in a plan or a resource consent;
- **322(1)(a)(ii)** to require the person to cease or prohibit that person from commencing anything that in the opinion of the enforcement officer 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;
- **322(1)(b)(i)** to require the person to do something that in the opinion of the enforcement officer is necessary to ensure compliance with the Act, regulations, a rule in a plan or proposed plan or a resource consent or mitigate adverse effects on the environment caused by or on behalf of the person;
- **322(1)(b)(ii)** to require the person to do something that in the opinion of the enforcement officer is necessary to ensure compliance with the Act, regulations, a rule in a plan or proposed plan or a resource consent or mitigate adverse effects on the environment relating to any land of which the person is owner or occupier;

- **322(1)(c)(i)** to require an occupier of land who is contravening Section 16 (which relates to unreasonable noise) to adopt the best practicable option of ensuring that the emission of noise does not exceed a reasonable level;
- **322(1)(c)(ii)** to require a person carrying out activities within the coastal marine area who is contravening Section 16 (which relates to unreasonable noise) to adopt the best practicable option of ensuring that the emission of noise does not exceed a reasonable level;
- **322(2)(a)** to require a person to cease or prohibit that person from commencing anything that in the opinion of the enforcement officer contravenes or is likely to contravene a rule in a proposed plan under Sections 9, 12(3), 14(2), or 15(2) of the Act;
- **322(2)(b)** to require a person to do something that in the opinion of the enforcement officer is necessary to ensure compliance with a rule in a proposed plan under Sections 9, 12(3), 14(2) or 15(2) of the Act.

Category 2

The period within which the action must be taken or cease must be **at least seven days** to comply. The recipient may file an appeal and that **appeal will act as a stay of the Notice** (refer to Sections 324 and 325 of the Resource Management Act) so long as:

- The Notice is within the scope of Section 322(1)(a)(ii) ie, in the opinion of the enforcement officer 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**
- The recipient is complying with the Resource Management Act, or any regulations made under that Act, a rule in a plan, or a resource consent.

Note

There are two circumstances under Section 322(1)(a)(ii) for issuing an Abatement Notice – the difference relating to whether there is compliance with the Act, regulations under the Act, regional rules or a resource consent. Accordingly, the Council will seek legal advice when using this section.

5.4 Content of Abatement Notice

The form and content of an Abatement Notice are stipulated in Section 324 of the Resource Management Act.

The enforcement officer issuing the Abatement Notice must:

- Specify the breach alleged by reference to a section in the Act, or a rule in a plan or identify the resource consent if it is being alleged that the conditions of such consent are not being complied with;
- Specify the grounds he/she is relying on under Section 322. Either describe in detail the activity required to be ceased or describe the activity that is to be prohibited or not to be commenced – make sure the word “***ceased***” or the words “***prohibited from commencing***” are used as appropriate in the circumstances.

- Give the recipient a reasonable period to comply. This will depend on the circumstances. If the Notice falls in category (2) the recipient must be given at least 7 days to comply.
- Address and serve the Notice on the recipient. Refer Section 3.5 above for the procedure for service.

5.5 Change or cancellation of Abatement Notice

Only enforcement officers who have the ability to issue an Abatement Notice, can change or cancel an Abatement Notice if he/she considers that the Notice is no longer required. Written notice of change or cancellation must be given.

Section 325A of the Resource Management Act provides that:

- Any person directly affected by the Abatement Notice may apply in writing to the local authority to change or cancel the notice. The Council must give written notice of its decision.
- If the officer, after considering an application to change or cancel the Abatement Notice, confirms the Notice or changes it in a way other than that sought, the person who applied for the cancellation or change may appeal to the Court in accordance with Section 325(2) of the Act.

5.6 Appeal

The recipient has the right to appeal an Abatement Notice, or parts of it, within 15 working days of service of the Notice.

Once a notice of appeal has been lodged with the Environment Court, if the Abatement Notice is in category 2 the Notice is stayed and the recipient does not have to comply with it until a decision is made by the Environment Court. If the notice is in category 1 the appeal does not act as a stay unless a stay is granted by an Environment Court Judge.

5.7 Costs

In cases where Abatement Notices are issued for non-compliance with resource consent conditions, costs can be recovered in line with the Council's **Charging Policy under Section 36 of the Resource Management Act**.

In the event of an Abatement Notice being held not to conform with the Act, an award of costs may be made by the Court against the Council, so it is very important that the form of the Notice is completed properly. Costs against Council are only likely to be awarded by the Court if the Notice is appealed and the appeal is dealt with at a hearing and the appeal is successful. Legal advice on whether to proceed to a hearing of an appeal should be sought whenever an appeal against an Abatement Notice is made.

5.8 Non-compliance

In most cases, an Abatement Notice or emergency action should suffice when enforcement officers are enforcing the provisions of the Resource Management Act. Instead of, or in addition to these, the Council may also:

- (a) Issue an Infringement Notice (the Notice is issued by an enforcement officer);
- (b) Make an application to the Environment Court for an Enforcement Order; or
- (c) Make an application to the Environment Court or District Court for an Interim Enforcement Order.

Such circumstances will usually occur when, after seven days or such time as the Abatement Notice specified, a Notice has not been complied with. If an Interim/Enforcement Order is applied for, the Court will make a decision as to whether there are grounds to make an order.

If the person served with an Abatement Notice fails to comply with the Notice, the Council can issue an Infringement Notice or prosecute under the Resource Management Act and/or seek an Interim/Enforcement Order to force compliance.

Note:

The Taranaki Regional Council has issued more than 2,500 Abatement Notices and the tool is considered very successful. Only five Abatement Notices have been appealed and all the appeals were resolved without a hearing. At the date this document was written, no recipient had filed an application for stay of a Notice issued by a Taranaki Regional Council enforcement officer.

6. Infringement Notices (Sections 343A – 343D)

An Infringement Notice is the second lowest level enforcement mechanism – it imposes a fine on the recipient but does not result in conviction.

6.1 Delegation

The Chief Executive, Director – Resource Management, Compliance Manager (as identified in their individual warrants) have the power to issue an Infringement Notice. **Check that your warrant has Section 343C identified before using this power.**

Note:

The Taranaki Regional Council has issued more than 55 Infringement Notices since 2000 and the tool is considered very successful. No Infringement Notices have been appealed.

6.2 Pre-requisite for an Infringement Notice

Under Section 343C of the Resource Management Act, where an enforcement officer observes a person committing an infringement offence, or the enforcement officer has reasonable cause to believe such an infringement offence is being or has been committed by that person, then an Infringement Notice (Figure 5) may be served on that person.

If an Infringement Notice is issued to a person/company for an offence, the Council can not prosecute the person/company for the same offence.

Circumstances where an Infringement Notice may be appropriate include:

- Repeat offence where the effects are no more than minor.
- First offence where the potential effects are more than minor.
- First offence where the actual effects are more than minor, but capable of being remedied.
- First offence where the effects are irreversible and no more than minor.
- Abatement Notice non-compliance where the effects are no more than minor.
- Deliberate non-compliance where the effects are no more than minor.

In addition to the above, an Infringement Notice should only be issued if:

Figure 6 Infringement Notice

- Prosecution for that offence at a later stage is not to be undertaken;
- There are no changes or mitigating circumstances (section 340 to 341);
- The fine of the Infringement Notice is sufficient for the severity of the offence committed;
- The issue of the Infringement Notice is likely to be a viable deterrent; and
- The enforcement officer is confident that should the matter go to Court, then it can be proven that the offence was committed by the person on whom you are serving the Infringement Notice.

The criteria to be considered when assessing whether to use an infringement notice or recommend a prosecution (see Section 10) are:

1. Likely actual adverse effects (i.e. effects that have occurred)
2. Likely adverse effects (i.e. potential effects)
3. Value or sensitivity of area affected
4. Deliberate or accidental action
5. Degree of due care taken/foreseeability of incident
6. Effort to remedy/mitigate effects
7. Effectiveness of remedy/mitigation
8. Profit or benefit gained by alleged offender
9. Repeat non-compliance or previous enforcement action for the same or similar situation
10. Failure to action prior instructions, advice or notice
11. Degree of deterrence required in relation to the party (i.e. specific deterrence and not the wider effect)
12. Degree of general deterrence.

All decisions to initiate enforcement action are made on a case-by-case basis and the above criteria help guide officers.

Generally officers will be primarily guided by the degree of environmental effect, mitigation, history and deliberateness criteria.

6.3 Issuing and service of Infringement Notices

Any enforcement officer (as identified in their individual warrants) may issue an Infringement Notice to the person who committed the infringement offence. The Infringement Notice (or a copy of it) must then be served upon the person who committed the infringement offence. The Infringement Notice does not have to be served by the enforcement officer who issued the Notice.

The delivery of the Infringement Notice may be personally, or by post to that person's last known place of residence or business. If the Infringement Notice is posted, then the Notice (or the copy of it) is deemed to have been served on that person when it was posted (pursuant to the Summary Proceedings Act 1957).

The infringement notice should be issued within 4 months of the date of the offence to allow for the timeframes for the other steps in the infringement notice process (see sections 6.6 and 6.7).

Since the alleged offender has the right to request a Hearing, which will then be treated like a normal prosecution, you have to be sure before issuing the Notice, that you can obtain evidence which is sufficient to prove the offence beyond reasonable doubt.

Accordingly, before issuing the Infringement Notice, you will consider the Investigating Officer's report with particular reference to the following checklist in Table 3.

Table 3 Checklist for issuing an Infringement Notice

Checklist	Tick
1. The person has committed an offence listed in Schedule 1 of the Regulations (refer Table 4 below).	<input type="checkbox"/>
2. The alleged offender is: a person; a company; an incorporated body; or a public authority (with the exception of the Crown).	<input type="checkbox"/>
3. Name alleged offender. If appropriate do a company search in the New Zealand Business Directory or on www.companies.govt.nz/search/cad or are full names verified on Valuation New Zealand.	<input type="checkbox"/>
4. Check the Officer's Report (Yes/No): are photographs of the offence included? have samples been taken and do their results verify the offence? can chain of custody of samples be proved? have Inspection Notices been issued and are they in the report? has a letter of explanation been received? has an offence been admitted in the correspondence?	<input type="checkbox"/>
5. You have referred to the Officer's Report and are satisfied, in your opinion, that there is sufficient evidence to prove beyond reasonable doubt: where the offence was committed; when the offence was committed; and that the person committed the offence.	<input type="checkbox"/>
6. The notice is issued within 4 months of the date of the offence.	<input type="checkbox"/>
7. The information on the Notice has been correctly filled in.	<input type="checkbox"/>
8. You have the delegated authority to issue a Notice (check Delegations Manual).	<input type="checkbox"/>

So long as there is a tick in all the boxes above, you may proceed to authorise the issue of an Infringement Notice.

6.4 Form of the Infringement Notice

The form and content of an infringement notice is stipulated in Section 343C of the Resource Management Act and a standard infringement notice form has been produced for the Council which is contained in Figure 5 above. All sections in the infringement notice must be completed.

The enforcement officer must correctly identify the section of the Resource Management Act that has been contravened. If more than one section of the Resource Management Act has been contravened, a separate infringement notice can be issued for each infringement.

If a number of people are responsible for the illegal activity, a separate Infringement Notice can be issued to each person responsible.

6.5 Infringement fees

Table 4 lists all the offence provisions for which an Infringement Notice may be issued under specific sections of the Resource Management Act. Alongside each offence provision is a short description of the offence and the amount of penalty.⁷

Table 4 Infringement offences and fees

Offence specified as infringement offence	General description of offence	Infringement fee for offence
Section 338(1)(a)	Contravention of Section 9 [restrictions on use of land]	\$300
	Contravention of Section 12 [restrictions on use of coastal marine area]	\$500
	Contravention of Section 13 [restriction on certain uses of beds of lakes and rivers]	\$500
	Contravention of Section 14 [restrictions relating to water]	\$500
	Contravention of Section 15(1)(a) and (b) [discharge of contaminants or water into water or onto or into land where contaminant is likely to enter water]	\$750
	Contravention of Section 15(1)(c) and (d) [discharge of contaminants into environment from industrial or trade premises]	\$1,000
	Contravention of Section 15(2) [discharge of contaminant into air or onto or into land]	\$300
Section 338(1)(c)	Contravention of an Abatement Notice (other than a Notice under Section 322(1)(c))	\$750
Section 338(1)(d)	Contravention of a Water Shortage Direction under Section 329	\$500
Section 338(2)(a)	Contravention of Section 22 [failure to provide certain information to an enforcement officer]	\$300

6.6 The payment/non-payment of infringement fee

Under Section 343D of the Resource Management Act, the Council is entitled to retain infringement fees received for notices issued by Council enforcement officers. There may be an opportunity to recover further costs if the activity is covered by a monitoring programme.

The recipient has **28 days** to pay the infringement fee from the date of service of the Infringement Notice. Following the service of an Infringement Notice, the **Administration Officer (Inspectorate)** will:

- (a) Ensure all relevant correspondence, including copies of the Infringement Notice has been filed in the Infringement Notice File, in the document management system (FRODO), which is maintained by the Inspectorate Section; and
- (b) Forward a copy of the Infringement Notice, a Reminder Notice and a report setting out key dates (eg, deadline for payment of fines, any need to send out reminder notices etc) to the **Accounts Receivable Officer (Corporate Services)**.

⁷ Based on Schedule 1 of the Resource Management [Infringement Offences] Regulations 1999.

In relation to the payment of the Infringement Notice fee, there are four possible scenarios:

- (a) **The offender pays the fine:** in this case the matter goes no further, the Council can no longer prosecute for that offence. The Accounts Receivable Officer provides written advice to the Compliance Manager informing him or her of that fact.
- (b) **The offender makes a submission to the Council:** in this case, the Compliance Manager reports to the Director – Resource Management informing him or her of the fact.
- (c) **The offender requests a Court hearing:** in this case, it gets treated like a prosecution. The Compliance Manager reports to the Director – Resource Management informing him or her of the fact.
- (d) **The offender fails to pay the fine in 28 days:** in this case, the Council will implement the procedure below:

6.6.1 Step one: Reminder Notice

The recipient has 28 days to pay the Infringement Fee from the date of service of the Notice. If the recipient has not paid the fee, in full, by that deadline, the **Accounts Receivable Officer** will send out the Reminder Notice (refer Figure 6). As stated on the Reminder Notice, the recipient has a further 28 days to pay the Infringement Notice.

6.6.2 Step two: Further non-payment

If the recipient has not paid the fee, in full, within the second day 28-day period, and has not requested a hearing, the **Accounts Receivable Officer** will provide a written report to the **Compliance Manager** to consider the options.

The Compliance Manager, in consultation with the Chief Executive or the Director – Resource Management, will refer the matter to the **Consents and Regulatory Committee**, which will decide whether or not to instigate District Court proceedings. If Court proceedings are not approved, the Council needs to decide on alternative action.

6.6.3 Step three: Instigate District Court proceedings

On receiving the approval for District Court proceedings from the Consents and Regulatory Committee, the **Compliance Manager** will file a copy of the Reminder

Figure 6 Infringement Notice Reminder Form

Notice in the District Court with record of date and method of service of the Infringement Notice.

If the Council files a copy of the Reminder Notice with the District Court, an order is “deemed to have been made” that the defender (recipient of the Infringement Notice) pays a fine equal to the Infringement Notice fee and costs.

6.7 Request for a District Court hearing

The request from the recipient of an Infringement Notice for a District Court hearing is to be made in writing, signed by the recipient and delivered to the Council at the address specified in the Infringement Notice. The recipient can either admit liability or not admit liability.

If the recipient requests a District Court hearing but admits liability the Council has two options. These are:

1. Commence proceedings by filing notice of hearing (Figure 7) in the District Court together with the notice from the defendant admitting liability. The Council **does not** serve a copy of the notice of hearing on the defendant where the defendant has admitted liability; or
2. Take no further action.

If the defendant **does not admit liability**, then the Council again has two options. These are:

1. Commence proceedings by filing a notice of hearing in the District Court on a date set by the District Court and serving on the defendant a copy of the notice of hearing; or
2. Take no further action.

The enforcement officer concerned would then attend the District Court hearing with the evidence of the incident.

CR No:

NOTICE OF HEARING IN RESPECT OF INFRINGEMENT OFFENCE
Section 233B (7), 2002, Summary Proceedings Act 1993

INFORMANT:
[Name] England Council
47 Church Lane, Stratford
Private Bag 713
Stratford

DEFENDANT:

Name:	Date of Birth:
Address:	Sex:
	Occupation:
	Driver's License No:

A(n) infringement notice (Number of notice) was issued on [Date of issue of notice] by [Name or number, if any, of officer who issued notice] and served on the Defendant on [Date of service of notice] by [Method of service].

The infringement notice alleges that on the [Date] day of [Month and year] at [Place] the Defendant committed an offence against section 238(1)(a) with section of 114(a) of the Resource Management Act 1991 in that the Defendant [Describe an act or omission of the offence].

*The Informant served a reminder notice (Number of reminder notice) in respect of the alleged offence on the Defendant on [Date of service of reminder notice] by [Method of service].

The Defendant by notice in writing signed by the Defendant and delivered to the Informant on [Date on which notice received by Informant] requested a hearing in respect of the alleged offence.

*The Defendant did not in that notice admit liability in respect of the alleged offence and accordingly the alleged offence will be heard by the District Court at [Place] on the [Date] day of [Month and year] at [Time] a.m. /p.m.

***THE DEFENDANT SHOULD ATTEND THAT COURT AT THAT TIME.**

*The Defendant did in that notice admit liability in respect of the alleged offence and accordingly the Defendant's notice is filed with this Notice of Hearing.

*Delete if applicable.

Figure 7 Notice of Hearing

7. Emergency works (Sections 330-331)

7.1 Delegation

The authority to invoke emergency works under Section 330 of the Act is delegated to the Chief Executive, Director–Resource Management, Consents Manager, Director–Operations, the Compliance Manager and some investigating officers (as identified in their warrant).

Note:

The Taranaki Regional Council has invoked emergency works on average once per year.

7.2 Appropriate circumstances

There will be occasions when urgent action will need to be taken to avoid environmental degradation of land, air and water resources eg, where a resource user is causing significant damage to a watercourse or where unauthorised and harmful contamination of water is occurring. A checklist for deciding whether it is appropriate to take action under Section 330 is set out in Section 7.4 below.

The 2005 Resource Management Act 1991 amendment noted that emergency works could be undertaken for activities that had been foreseen.

7.3 Procedure

In circumstances where there is a **need to take immediate action**, enforcement officers, without prior notice, may enter any place and:

- (a) Instruct the occupier to take such action, as is immediately necessary to remove the cause of the emergency; or
- (b) Advise the occupier that the Council is taking such action.

If the occupier is present at the time, the officer shall give him or her an Inspection Advice Notice (see Section 3.3 above) directing that pursuant to Section 330(2)(b) of the Resource Management Act, emergency works be undertaken. If an occupier is not present, as soon as practicable afterwards, he/she must be advised of entry and the reasons for it.

Immediately after an officer has exercised emergency works the officer shall as soon as practicable notify the Chief Executive, Director – Resource Management, Director – Operations or Compliance Manger of his/her action. The decision to invoke the emergency works will be reported back to the next available Consents and Regulatory Meeting through the UIR process.

Local authorities and network utility operators can take steps under Section 330 of the Resource Management Act in the appropriate circumstances.

Where an activity is undertaken under Section 330(1) of the Resource Management Act, by some other person, authority, or network utility operator, who/which

undertook the activity, that person, authority or network utility operator must advise the appropriate consent authority, in this case the Taranaki Regional Council within 7 working days, that the activity has been undertaken.

7.4 Checklist

Action under Section 330 of the Resource Management Act should only be taken after very careful consideration. Officers in their consideration as to whether it is appropriate to take emergency works action under Section 330 shall have regard to the following checklist (note the checklist is not a substitute for legal advice).

Is it appropriate to take action pursuant to Section 330?

1. Does the Council have jurisdiction for the natural and physical resource/area, which is affected/ likely to be affected?	<input type="checkbox"/> _____
2. Is there an adverse effect on the environment, which requires immediate preventive measures?	<input type="checkbox"/> _____
<u>Or</u>	
Is there an adverse effect on the environment, which requires immediate remedial measures?	<input type="checkbox"/> _____
<u>Or</u>	
Is there any sudden event causing or likely to cause loss of life, injury, or serious damage to property?	<input type="checkbox"/> _____
3. Will the relevant adverse effect/sudden event affect (or be likely to affect) a public work, natural and physical resource or area over which the Council has jurisdiction? (judgement must be objective and that of a reasonable local authority acting in the particular circumstances).	<input type="checkbox"/> _____
4. What action should be undertaken?	
Should the cause of the emergency be removed?	<input type="checkbox"/> _____
<u>Or</u>	
Should action be taken to mitigate any actual or likely adverse effect of the emergency?	<input type="checkbox"/> _____
5. Is the action to be taken " <i>immediately necessary and sufficient</i> " or does it go further than this?	<input type="checkbox"/> _____

7.5 Reimbursement of costs

Pursuant to Section 331(1) of the Resource Management Act, where the Council takes action it may require reimbursement of costs incurred from the person/s responsible. Where such costs are not paid within 20 working days of being required, the Council

may seek to recover such costs via an enforcement order under Section 314(1)(d) of the Act.

If the emergency work contravenes sections 9, 12, 13, 14 or 15 of the Resource Management Act and the adverse effects of the activity continue then a resource consent must be applied for. The work can continue until the consent application is determined.

7.6 Compensation for damages

The Council whilst undertaking emergency works under Section 330 is protected from prosecution under the Act. Nevertheless, every person having an interest in land that is injuriously affected by that exercise, and every person suffering any damage as a result of the exercise, shall be entitled to compensation from the Council in respect of any damage which did not arise from any failure of that person to abide by his or her duties under the Act.

8. Enforcement Order

8.1 Delegation

The Council makes an application to the Environment Court on a prescribed form for an Enforcement Order. The power to apply for an enforcement order has been delegated by the Council to key management staff. These are the Chief Executive, Director – Resource Management, or the Compliance Manager.

Note:

The Taranaki Regional Council has applied to the Environmental Court on two occasions.

The Council's legal counsel would normally file, on behalf of the Council, any application for an Enforcement Order.

8.2 Scope

The Enforcement Order can require a person to:

- (a) Cease, or prohibit a person from commencing anything which, contravenes or is likely to contravene the Resource Management Act, any regulations, a rule in a plan, or proposed plan, a requirement for a designation or for a heritage order, or a resource consent or sections 10 and 20 of the Act.
- (b) Cease, or prohibit a person from commencing anything that 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.
- (c) Do something necessary to comply with the Act, any regulations, a rule in a plan, a rule in proposed plan, a requirement for a designation or for a heritage order, or a resource consent.
- (d) Do something necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment.
- (e) Pay money to or reimburse the Council for actual and reasonable costs and expenses incurred or likely to be incurred in avoiding, remedying, or mitigating any adverse effect on the environment, where the respondent fails to comply with an Enforcement Order, an Abatement Notice, a rule in a plan or proposed plan or resource consent or any of the respondent's other obligations under the Resource Management Act (the application for an Enforcement Order must include application for Council's costs).
- (f) An Enforcement Order may change or cancel a resource consent if the information the applicant produced to the Council was inaccurate and this influenced the decision to grant consent.

An Enforcement Order also has the ability to bring the 'weight' of the Environment Court on an enforcement situation (particularly relevant in situations where non-compliance has been occurring over a long period of time). If an Enforcement Order is made by the consent of both parties (ie, the Council and the alleged offender) – and

terms, timeframes and measures agreed to, a **consent memorandum** can be filed requesting urgent consideration by an Environment Judge together with the application, affidavits from both parties in support, and the draft order. The Environment Court will then likely make the order and at the most a brief hearing will be necessary.

Note

Pursuant to Section 314 of the Resource Management Act, a third party can apply to the Environment Court for an Enforcement Order requiring the a regional council to implement its policies.

8.3 Procedure

The Council must give *"notice of the application"* to every person directly affected by the application within five working days of applying for the Enforcement Order.

8.4 Determination

The Environment Court before deciding will hear the applicant, and anyone else who wishes to be heard. It will then either:

- (a) Make an appropriate order; or
- (b) Refuse the application.

The Environment Court cannot make an Enforcement Order against a person who is acting in accordance with a rule in a plan or a resource consent if the adverse effects for which the order is sought were expressly recognised at the time of approval, unless the Court considers it appropriate to do so because of time elapsed since approval of plan or granting of consent and any change in circumstances.

8.5 Non-compliance

If a person fails to comply with an Enforcement Order, the Council may with the consent of the Court (application to Environment Court under Section 315(2) of the Resource Management Act) go on to the property and do the work and recover the costs as a debt due from that person. Failure by any person to comply with an Enforcement Order is an offence.

9. Interim Enforcement Order

9.1 Delegation

The Chief Executive, Director–Resource Management or the Compliance Manager may also apply for an Interim Enforcement Order if they considers other mechanisms to be too slow or an emergency works notice inappropriate and where the sanction and protection of a court order is required.

Note:

The Taranaki Regional Council has to date not used this enforcement tool, preferring to use the others that are available.

The Council’s legal counsel will prepare the application for an Interim Enforcement Order.

9.2 Scope

The scope of an Interim Enforcement Order is the same as that for an Enforcement Order and is prescribed by Section 314 of the Resource Management Act.

The Interim Enforcement Order is a quicker method of obtaining an Enforcement Order. It is time-saving in that a Judge should be readily available to hear such an application and make a decision without having to hear from the other side. It is a form of injunction and takes effect when it has been served or on such later date as the Order directs.

9.3 Determination

An Interim Enforcement Order can be made by an Environment Court Judge or a District Court Judge without service of notice to affected parties and without a hearing. Section 320(3) of the Resource Management Act provides that before making an Interim Enforcement Order, the Judge shall consider the following factors:-

- (a) What the effect of not making the Order would be on the environment.
- (b) Whether the applicant has given an appropriate undertaking as to damages.
- (c) Whether the Judge should hear the applicant or any person against whom the Order is sought.
- (d) Such other matters as the Judge thinks fit.

If an Interim Enforcement Order is made, the Court will direct the applicant to serve a copy on the respondent.

If the Judge did not hear from the respondent before the Order was made, the respondent can apply pursuant to Section 320 for change or cancellation of the order.

9.4 Duration

An Interim Enforcement Order stays in force until an application for a full enforcement order is determined, or until cancelled by the Court under Section 320(5) or Section 321 of the Resource Management Act.

10. Prosecutions

Prosecution is the highest order enforcement mechanism and its principal purpose is deterrence.

Prosecution is an enforcement tool that although used infrequently, is nevertheless very important for serious and/or persistent offences. Offences under the Resource Management Act were identified earlier, in Section 1.2.3 above. As per Taranaki Regional Council policy, the process of enforcement is a staged one of assistance and warnings in the form of inspections, annual reports and Abatement Notices, leading only if necessary, to prosecution (see Section 2 above).

Note:

The Taranaki Regional Council has completed 49 prosecutions under the Resource Management Act 1991 which is an average of about 3 per year. This tool is used as a last resort and criteria are used to determine whether this or other enforcement tool are employed.

10.1 Delegation

The authority to use the enforcement mechanisms identified in Sections 3 to 9 above has been delegated by the Council to specific staff. The one enforcement mechanism not available to staff to decide upon is prosecution. The criteria used by senior staff to determine whether to issue an Infringement Notice or to recommend a prosecution, are set out earlier in section 6.2. The criteria for an Infringement Notice are the same as a prosecutions the only difference is the degree. Staff can only recommend a prosecution and, where appropriate, then present evidence in support of the recommendation.

Such decision-making powers have been delegated by the Council to the Consents and Regulatory Committee. This recognises that there is a 'political element' in the decision to prosecute and it is considered appropriate that such decisions be made by the elected representatives of the region.

10.2 Decision-making procedure

Each offence and the officer's recommendation to prosecute is reported confidentially in detail to the Consents and Regulatory Committee for its deliberation. The Council will make its decision in the 'public excluded' part of the meeting in order not to prejudice the maintenance of law and in order to deliberate in private on its decisions or recommendations. On completion of the meeting the release of a statement to the press may be authorised by the Chief Executive.

If, after its deliberation the Consents and Regulatory Committee decides to prosecute for offences pursuant to Section 338 of the Resource Management Act, the following procedure will be followed by the Council's representatives at the District Court hearing. The penalties and defences under the Act will be duly addressed by the Court in its decision.

Note

Pursuant to Section 338(4) of the Resource Management Act, the time limit for laying a prosecution is **six months** from the time when the contravention was first known or should have become known to the Council.

Matters to be considered in the Council's deliberations to prosecute under the Resource Management Act are discussed in more detail in the Council's *PROSECUTIONS UNDER THE RESOURCE MANAGEMENT ACT AND THE BIOSECURITY ACT*. Refer to this document for further information.

10.3 Procedure at District Court Hearing

The District Court procedures in relation to a prosecution are governed by the provisions of the Summary Proceedings Act 1957.

Proceedings are commenced by laying an information. Pursuant to Section 17 of the Summary Proceedings Act, every information shall contain such particulars as will fairly inform the defendant of the substance of the offence with which he/she is charged. The prosecution is bound by the particulars given in the information and the evidence must relate to those particulars and indeed prove them fully.

If the prosecution is for an offence that includes a maximum penalty of imprisonment and if the defendant pleads not guilty then the defendant has the option of election of trial by jury. If the defendant elects trial by jury then a preliminary hearing called a "depositions" hearing is held. The Council has to prove at the depositions hearing that it has a "prima facie" case (sufficiently strong for the defendant to be called on to answer it). The defendant may concede that there is a prima facie case and the evidence is then filed in Court and there is no need for Council to call witnesses to give evidence at the depositions hearing.

If the Court finds at depositions that there is a prima facie case or if this is conceded by the defendant then the next step is a jury trial. The local Crown prosecutor will act for Council at the jury trial.

If the defendant does **not** plead guilty and does not elect trial by jury, the hearing is before an Environment Judge. The procedure at the hearing is that the Court hears from the informant first i.e., the Council, and such evidence that it and its representatives, may call as proof.

The Court shall then hear the defendant and his/her evidence.

Unless the Court otherwise directs, neither party may sum up ie, there is no right of reply.

10.3.1 Opening Address

The obligation on the Court to hear the informant first, gives the Council the right to an opening address. The exercise of that right is very important. It enables Council to set the scene, to indicate to the Judge the essential features of the case and what the Judge has to look for in the evidence.

In the opening address the Council's representative should refer to:

- (a) The circumstances which gave rise to the prosecution;
- (b) The purpose and principles of the Resource Management Act;

- (c) The main points of the offence;
- (d) Reference to any statutory definitions (eg, contaminant) and Court interpretation(s) which are of relevance; and
- (e) If appropriate, refer to the gravity of the offence (eg, recently increased penalties although this may be better **after** conviction but before the Judge considers the question of penalty).

It will be appropriate in opening to remind the Judge that if the defendant is to rely on any defence under the Act (Section 10.3 below), the onus is on the defendant to prove that defence. By virtue of Section 67(8) of the Summary Proceedings Act the prosecution is not obliged to negate every possible exception or excuse. On occasion it may also be appropriate to anticipate possible defences available in cases of strict liability and to say that the defendant did not take all reasonable steps to avoid, remedy or mitigate the action or event leading to this prosecution.

The use of diaries, field notes and relevant samples and photographs (see Section 4 above) may be introduced as evidence (but not Taranaki Regional Council reports written after the inspection etc).

In the event the Judge wishes to know in advance, if possible, what the main contested issues will be, the Council's representative must still endeavour to prove **every** essential element of the offence.

In the event the defendant is prepared to **admit** some of the facts, that should be mentioned in the opening address, and the defendant's confirmation of the admission obtained at that stage

10.3.2 Evidence

The onus is on the Council to prove **by evidence** every necessary element of the offence **beyond reasonable doubt**. The Council must prove:

- What happened?
- When did it happen?
- Where did it happen?
- How did it happen?
- Who was involved?
- That there was an offence.
- A connection between the defendant and the incident giving rise to the offence.

The Court must not be left in uncertainty on any essential point. The Judge will not ask any questions, to fill in any gaps in the Council's case (though he/she may ask for further explanation of evidence), nor does he/she perform a balancing act between the cases of the parties. The Judge's function is to decide whether the prosecution has proved its case beyond reasonable doubt.

In a prosecution, the object is to prove historic fact. Therefore the best evidence will be that of eyewitnesses - those who saw the action or event that brought about the prosecution, or indeed the effects of that action or event.

The Council is entitled to draw inferences from the facts described by eyewitnesses (circumstantial evidence), although inferences must be logical inferences from proven facts, not mere speculation or guess work.

In a prosecution it may also be necessary for witnesses to give technical evidence concerning the taking and analysis of samples. This technical evidence will cover, as far as possible, every essential detail. Such witnesses may also be asked for their opinion as to events, causes, effects etc. These are expert witnesses, whose status in Courts is based on their acknowledged expertise and experience.

10.3.3 Expert witness

With most prosecution cases, the Council's legal counsel will be accompanied by relevant staff who may testify as expert witnesses. An expert witness is a person who by virtue of his/her professional training and/or experience is entitled to:

- (a) Inform the Court about the necessary scientific or technical facts involved in the case; and/or
- (b) Draw scientific or technical inferences from the facts and inform the Court accordingly; and/or
- (c) Express opinions in evidence.

Council officers testifying to the Court can have a dual role - as an ordinary witness as to what happened, and as an expert witness as to what those facts mean. As and when appropriate, he/she can take the facts as described by others and interpret them for the Court.

There is very little place for the Council's representatives to express opinions in evidence in support of a prosecution. His/her role will usually be (a) or (b) above. However, for example, on a prosecution which asserts a breach of the conditions of a discharge permit, he/she may have to express an opinion as to what is, and what is not, "*substantially free of suspended solids*".

10.4 Defences

When considering whether or not a prosecution is justified, it is not necessary to prove that a person intended to commit the offence. There are, however, defences available to a defendant under Section 341(2) of the Resource Management Act. These defences are:

- (a) If the defendant can prove the following three grounds:
 - (i) the action or event to which the prosecution relates was necessary for the purpose of saving or protecting life or health, or preventing serious damage to property or avoiding an actual likely adverse effect on the environment; and
 - (ii) the defendant's conduct was reasonable under the circumstances; and

- (iii) the effects of the action or events were adequately mitigated or remedied by the defendant after it occurred.
- (b) If it can be proved that the event was 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 have been provided against by the defendant; and
 - (ii) the effects of the action or event were adequately mitigated or remedied by the defendant after it occurred.

Note

The defendant must, within seven (7) days after the service of the summons (or such further time as the Court may allow), forward to the prosecutor a written notice stating his/her intention to rely on Section 341 of the Resource Management Act, and also specify the facts that support his/her reliance on the section. The defendant has to establish the defence on the balance of probabilities, which is a lower standard than beyond reasonable doubt.

Defendants prosecuted under Section 338(1) of the Act may elect trial by jury as a conviction may incur an imprisonment term of two years.

10.5 Liability of principal

Section 340 of the Resource Management Act provides that a principal is liable for the acts of its employees and agents, including any contractor. In summary a defence is available under Section 340(2) if the defendant can prove that he/she:

- (a) Did not know nor could reasonably be expected to have known, and in the case of a company, the directors and management did not know nor could reasonably be expected to have known (about the offence); **or**
- (b) Took all reasonable steps to prevent the commission of the offence; **and**
- (c) Took all reasonable steps to remedy any effects of the offence.

To obtain a conviction against a director or a manager of a company convicted of an offence, section 340(3) provides that the Council must prove:

- (a) That the act that constituted the offence took place with the director/ manager's authority, permission or consent; and
- (b) That the director/manager knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

In many cases it will be very difficult to obtain a conviction against a director or a manager because the Council will not be able to prove the elements of Section 340(3)(a) and (b) of the Resource Management Act.

10.6 Penalties under the Resource Management Act

Under Section 339 of the Resource Management Act if a person is convicted for an offence which relates to sections 9, 11, 12, 13, 14 and 15 (the principal offence sections) he/she is liable to imprisonment for a term not exceeding 2 years, or a fine not exceeding \$200,000 and if the offence is a continuing one, to a further fine not exceeding \$10,000 for each day the offence continues.

If a person is convicted of an offence of failing to provide information to an officer, he/she is liable to a fine of up to \$10,000 and if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day or part day the offence continues.

If a person is convicted of obstructing or hindering etc any person in the execution of their duties under the Act he/she is liable to a fine not exceeding \$1,500.

In addition to a fine or imprisonment, the Judge can make an enforcement order, or, sentence a person to community service (40 to 400 hours).

The continued existence of anything, or the intermittent repetition of any actions shall be deemed a continuing offence.

11. Other matters

In addition to the enforcement mechanisms available under the Resource Management Act, there are a number of other sections of the Act of relevance to the Regional Council's enforcement functions.

11.1 Water shortage events (Section 329)

11.1.1 Roles and responsibilities

The power to issue a Water Shortage Direction, pursuant to Section 329, is delegated by Council to the Chief Executive and Director-Resource Management. The power to issue a water shortage direction is unlikely to be exercised with any frequency in Taranaki. Nevertheless, as appropriate, and usually on the advice of the Water Shortage Event Manager (usually the Consents Manager) such directions can be issued quickly by the Chief Executive or Director-Resource Management.

The pivotal position with respect to managing a water shortage event is the **Water Shortage Event Manager**, who is responsible for:

- Co-ordinating the flow of information between the various sections of the Council involved in managing a water shortage event;
- Raising and lowering the status of a particular water shortage event;
- Contacting media and other outside organisations;
- Co-ordinating compliance monitoring of restrictions to the use of water resources when restricted; and
- Advising the Chief Executive and/or the Director-Resource Management.

Other staff involvement include the Hydrological Section (monitoring and forecasting of the event); Consents Section (identification of resource consents with low streamflow restrictions); and Inspectorate Section (compliance monitoring).

11.1.2 Operating procedure during water shortage events

A water shortage event is a period of low rainfall that results in a reduction in streamflow and groundwater levels to the extent that the use and ability of a water resource to support aquatic ecosystems is compromised.

The primary functions of the Council during a water shortage event are to:

- (a) Measure and record rainfall, stream flows, and groundwater levels to maintain hydrological records;
- (b) Monitor the recession of the region's water resources during water shortage events;
- (c) Issue warnings and information to resource consent holders, water resource users, and the general public if necessary, of predictions of likely stream flows;

- (d) Liaise with, and advise, resource consent holders, territorial authorities, and other water resource users of restrictions to water resource use either specified by resource consent conditions or, if the Council considers it necessary, by the issue of water shortage direction under Section 329 of the Resource Management Act;
- (e) To monitor for compliance of any restrictions that may be in place; and
- (f) To advise users when normal use of water resources can resume.

During a water shortage event it may become necessary for the Council to apportion, restrict, or suspend both abstraction of water and the discharge of contaminants to water depending on the extent and magnitude of a particular water shortage event.

As a water shortage event intensifies over a period of time there will be a progression in the Council's response. A progression of response has been formalised in this operating procedure under four steps from Status 1 through to Status 4:

- **Status One:** Stream flows are adequate and normal water use occurs.
- **Status Two:** Monitoring confirms that stream flows are receding and, in the absence of a significant rainfall event, stream flows will reach the trigger level.
- **Status Three:** The trigger level is reached whereby stream flows have receded to a point that water resource users with a resource consent with specific low streamflow conditions are required to restrict their use.
- **Status Four:** There is a serious temporary shortage of water and a Water Shortage Direction is issued.

Figure 8 shows a flow diagram of the response procedures.

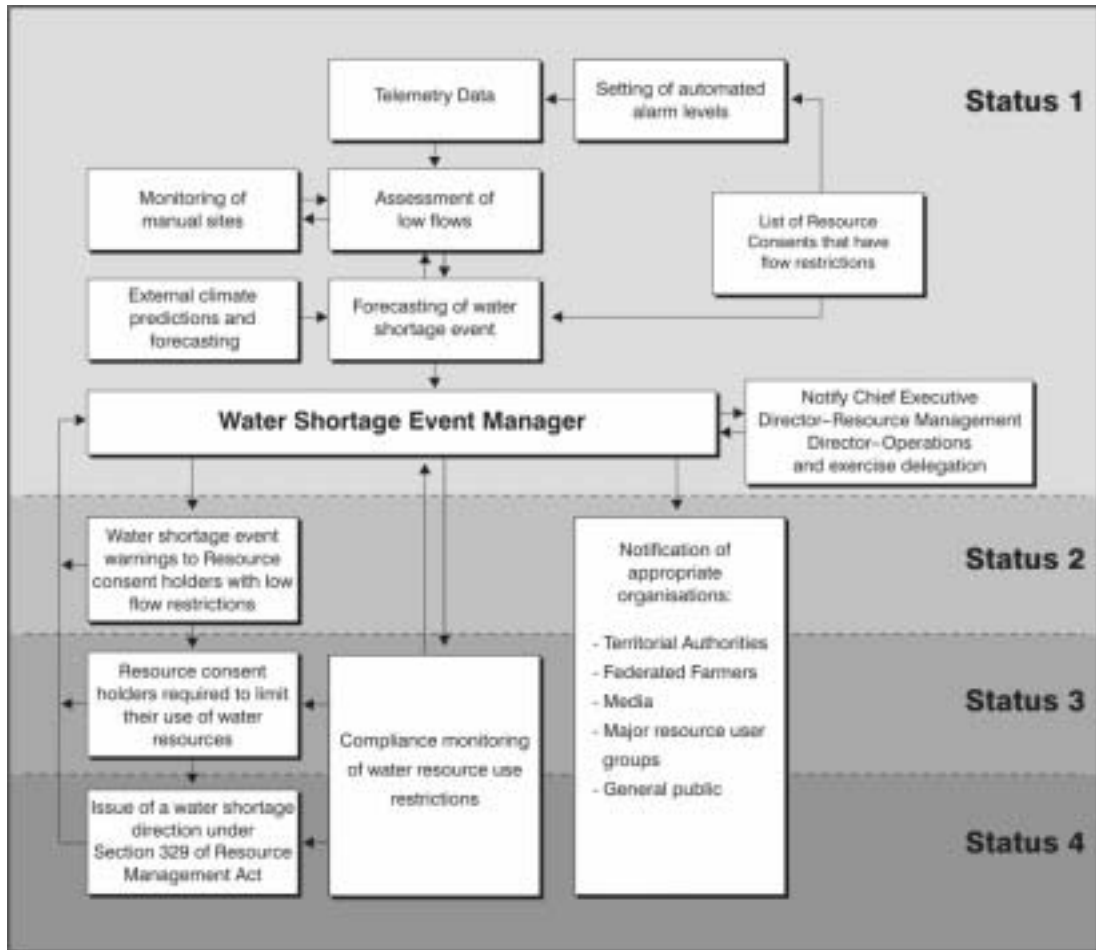


Figure 8 Council response to a water shortage event

11.1.3 Water Shortage Direction

As detailed in Section 11.1.4 above, a Water Shortage Direction under Section 329 of the Resource Management Act may only be issued by the Chief Executive or the Director-Resource Management.

The Council may issue a Water Shortage Direction that relates to any specified water, to water in any specified area, or to water in any specified water body. A Direction lasts no more than **14 days** but may be amended, revoked or renewed by the issue of a subsequent Direction.

The Water Shortage Direction will set out the nature of the restrictions required. Restrictions may vary between different types of water use, the area that they apply, and/or the users affected (resource consent holders and/or uses allowed as permitted activity such as stock and domestic takes). Under such a Direction the Council may require water resource users to reduce their use by either:

- Apportioning their use, ie, allocating use amongst a collective of users of a particular water resource to ensure that adverse effects do not occur to the resource;
- Restricting the amount of use of a particular user, ie, limiting the take to a percentage of the consented use; or
- Suspend the use of the water resource completely during the water shortage event.

Notice of the particulars of the Water Shortage Direction may be given by:

Note

Restrictions may take the form of:

- Implementation of 'no use days' where water resource use is limited to prescribed days;
- Rationing of water resource use; or
- Total restrictions to water resource use.

When issuing a Water Shortage Direction, the Council will give priority of water resource use (in decreasing order) to:

- Public water supplies;
- Domestic and stock water supplies;
- Industrial; and
- Irrigation and other uses.

No.	File No. F024						
WATER SHORTAGE DIRECTION (under Section 329 of the Resource Management Act 1991)							
Name: _____							
Address: _____ _____							
Catchment: _____	River/Stream: _____						
<p>1. The Taranaki Regional Council considers that there is a serious temporary shortage of water in the _____ catchment from Mount Taranaki to the Tasman Sea in the Taranaki region and the taking/ase or diversion of water is to be suspended.</p> <p>2. The Taranaki Regional Council directs, by this Water Shortage Direction, persons taking/using water for pasture irrigation from the _____ catchment to suspend the taking of water under Section 325 of the Resource Management Act 1991.</p> <p>3. You are therefore directed to suspend taking/using water for pasture irrigation.</p> <p>4. The suspension takes place from _____ and will continue for 14 days or until the water direction is renewed.</p>							
_____	_____						
Chief Executive	Date						
<p>This notice was delivered to:</p> <table border="1"> <tr> <td>The Council</td> <td>Checked/signed:</td> <td>By Whānau</td> </tr> <tr> <td>The address</td> <td>Member of Household</td> <td>Other</td> </tr> </table> <p>Delivered by _____ Investigating Officer</p>		The Council	Checked/signed:	By Whānau	The address	Member of Household	Other
The Council	Checked/signed:	By Whānau					
The address	Member of Household	Other					
<p><small>IF YOU WISH TO COMMENT ON THIS INSPECTION PLEASE CONTACT THE INSPECTOR/KEY MANAGER OF THE COUNCIL AT THE ABOVE ADDRESS WITHIN ONE WEEK OF RECEIPT OF THIS DOCUMENT</small></p>							

Figure 9 Water Shortage Direction

- (a) Publishing it in one or more daily newspapers circulating in the area where the person takes, uses, dams or diverts the water, or discharges a contaminant into water; and/or
- (b) Personally delivering copies of the Direction to affected households, industries and resource users (refer Figure 9).

The exercise of this power shall be reported to the next available Consents and Regulatory Committee or full Council Meeting.

Water shortage directions are discussed in more detail in the Council's *WATER SHORTAGE EVENTS STANDARD OPERATING PROCEDURES* and the *LOCAL GOVERNMENT RESOURCE MANAGEMENT ENFORCEMENT MANUAL*. Refer to these documents for further information.

11.2 Declarations (Section 310)

A declaration pursuant to Section 310 of the Resource Management Act is essentially a planning tool, rather than a day-to-day enforcement measure.

It is important to note that the aforementioned enforcement tools cannot be used against the Crown. However, the Council could, if it considers it appropriate, apply for a declaration. If the declaration records that the Crown (or indeed anyone else) is not acting in compliance with the Act then they should reform their behaviour.

Recognising the possibly significant operational and administrative implications inherent in applying to the Environment Court for a declaration, the power to seek a declaration is delegated by Council to the Chief Executive only. Advice that the Council is to seek a declaration will be reported to full Council as soon as possible for its information and consideration.

Declarations are made on Form 41 of the Resource Management Forms as set out in the Resource Management (Forms) Regulations 2003.

Refer to LOCAL GOVERNMENT RESOURCE MANAGEMENT ENFORCEMENT MANUAL for further information.

12. Training

Council Officers involved in enforcement activities will receive regular and appropriate training. For new staff this will be part of their induction. Each staff member's individual development programme will identify training needs and a joint programme for a number of staff may be organized as appropriate.

Glossary of terms

"Abatement Notice" means a notice served under Section 322 [of the Resource Management Act].

"Effect" - In this Act [Resource Management Act] unless the context otherwise requires, the term "effect" includes:

- (a) Any positive or adverse effect; and
- (b) Any temporary or permanent effect; and
- (c) Any past, present, or future effect; and
- (d) Any cumulative effect which arises over time or in combination with other effects - regardless of the scale, intensity, duration, or frequency of the effect and also includes:
 - (e) Any potential effect of high probability; and
 - (f) Any potential effect of low probability which has a high potential impact.

"Enforcement Officer" means any person authorised under Section 38 of the Resource Management Act.

"Enforcement Order" means an order made under Section 319 for any of the purposes set out in Section 314; may also include an interim enforcement order made under Section 320 of the Resource Management Act.

"Industrial or trade premises" means -

- (a) Any premises used for any industrial or trade purposes; or
- (b) Any premises used for the storage, transfer, treatment, or disposal of waste materials or for other waste-management purposes, or used for composting organic materials; or
- (c) Any other premises from which a contaminant is discharged in connection with any industrial or trade process -

but does not include any production land.

"Industrial or trade process" includes every part of a process from the receipt of raw material to the dispatch or use in another process or disposal of any product or waste material, and any intervening storage of the raw material, partly processed matter or product.

"Information" means a charge or complaint lodged with a Court. Every information must contain such particulars as will fairly inform the defendant of the substance of the offence with which he/she is charged.

"Interim enforcement order" means an order made under Section 320 [of the Resource Management Act].

"Investigating Officer" means any person employed by the Taranaki Regional Council, as an enforcement officer, specifically for the purpose of investigating, monitoring and reporting compliance with the Council's statutory responsibilities.

"Occupier" means -

- (a) The inhabitant occupier of any property; and
- (b) For the purposes of Section 16, in relation to any land (including any premises and any coastal marine area), includes any agent, employee, or other person acting or apparently acting in the general management or control of the land, or any plant or machinery on that land.

"Owner",

- (a) In relation to any land, means the person who is for the time being entitled to the rack rent of the land or who would be so entitled if the land were let to a tenant at a rack rent; and includes—
 - (i) The owner of the fee simple of the land; and
 - (ii) Any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, while the agreement remains in force; and
- (b) In relation to any ship or offshore installation or oil transfer site, has the same meaning as in section [222\(2\)](#) of the Maritime Transport Act 1994:

"Person" includes the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporate.

"Environment Court" previously known as **"Planning Tribunal"**

"Working Day" means any day except -

- (a) a Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (b) a day in the period beginning on 20 December in any year and ending with 10 January in the following year.

Appendix I

Field procedure: Sample collection methods and procedures

1.0 At the office

Before going into the field ensure that:

- you have the right containers (see "Sample Bottles", Section 2.0) and that they are appropriately numbered;
- you are certain as to the site to be sampled ie. ensure you have checked QUALARC site description and photo (see technical services section for site cards (copy if necessary), **do not** rely on memory); and
- you have checked the Special Order Monitoring Programme (SOMP) for location and sampling requirements. Some samples must be collected at certain times of the day or under specific flow or weather conditions; check with your job manager.

A test result is only as good as the sample. A sample poorly collected, preserved or transported, inaccurately recorded or sited is of little value. The objective of sampling is therefore for you to collect sufficient volume to be transported conveniently and handled in the laboratory, whilst still accurately representing the material being sampled.

2.0 Sample collection

Sample Bottles

- Check that you have the correct bottle for the appropriate sample (refer Table 1). Sample bottles used include:
 - (a) natural high density polyethylene bottles, for general chemistry purposes (these are in 500 ml, 1 L and 2 L sizes);
 - (b) 500 ml and 1 L boro-silicate glass bottles, used for hydrocarbon and oil and grease samples; and
 - (c) 250 ml sterile boro-silicate glass bottles, for bacteriological samples.
- Check that each bottle has a unique number for identification purposes. This number must be recorded on the field data sheet.

Determination	Type of container	Preservation and transport	Maximum hold time before receipt by lab ⁽¹⁾
Physical Examination			
Colour	Polyethylene	Cool	Overnight
Conductivity	Polyethylene	Cool	Overnight
pH	Polyethylene	Test ASAP	Same day
Salinity	Polyethylene	Cool	Overnight
Suspended Solids	Polyethylene	Cool	Overnight
Turbidity	Polyethylene	Cool	Overnight
Organic Constituents/Properties			
BOD	Polyethylene	Cool	Same day
COD	Polyethylene	*	Overnight
Hydrocarbons/Oil & Grease	Glass	Cool/dark*	Overnight
Methanol	Polyethylene	Test ASAP	Same day
Formaldehyde	Polyethylene	Test ASAP	Overnight
Total grease	Glass	Cool/dark*	Overnight
Inorganic Constituents/Properties			
Alkalinity	Polyethylene	Cool	Overnight
Chloride	Polyethylene	Cool	Overnight
Chlorine	Polyethylene	Test ASAP (dark)	Same day
Cyanide	Polyethylene	Cool/dark*	Overnight
Fluoride	Polyethylene	Cool	Overnight
Silica	Polyethylene	Cool	Overnight
Sulphate	Polyethylene	*	Overnight
Sulphide	Polyethylene	Cool	Overnight
Hardness	Glass	Fix/Acidify, test ASAP*	Same day
Dissolved Oxygen			
Bacteria			
Faecal Coliforms etc	Glass	Cool, test ASAP*	Same day

Figure 1 Sample identification, collection and receipt

Note: (1) All samples should be transported to the laboratory as soon as possible (ASAP). However, it is recognised that on occasion, it will be necessary for staff to keep the samples overnight.

* Chemical preservation needed, check with laboratory staff.

Field Data Sheet

- Ensure samples are collected by a Council officer and/or with a Council officer as a witness. You will record the following details (see example attached) on a field data sheet:
 - date and time;
 - person sampling (signature);
 - witness (signature);
 - reason (possible prosecution and/or other);
 - sampling location (fully described, including QUALARC site reference if possible);
 - type and volume of sample (water, waste; grab, composite);
 - bottle number (label);
 - field measurements/observations/photos;
 - identification of field instrument (eg. thermometer number);

- laboratory tests required; and
- sample transport details (by and how).

Grab Sampling Technique

By far the most common method of collecting samples by field officers is the Grab Sampling Technique. This gives an instantaneous representation of the source sampled but does not take into account any variations in composition in time and/or space.

In collecting a sample via the Grab Sampling Technique, you shall:

- plunge the bottle neck downwards, below the surface;
- tilt the bottle until the neck points slightly upwards (beneath the surface). The mouth should be directed toward the current, or, if no current exists, the bottle should be pushed **horizontally** forward upstream.

Note:

- (1) Do not rinse bottles for bacteriological samples.
- (2) Do not sample the surface or scrape the bottom (unless specifically instructed to by the programme manager).
- (3) Do not disturb or walk in the stream above where the samples are to be collected.
- (4) If it is not possible to collect samples by hand, a weighted bottle holder, or bucket attached to a cord may be used, preferably from off a boat or bridge rather than a stream bank (record this fact on the field sheet).
- (5) Do be aware of any discharges, inflowing tributaries, and other factors which may affect the water quality upstream. This includes consideration of stream mixing characteristics.
- (6) Where required (eg. when sampling effluent and trade waste), personal protective equipment should be used, such as disposable gloves. A disinfectant such as 70% ethanol should be available for immediate use. Wipe down surfaces such as car door handles, steering wheel etc if there is any possibility of contamination.

Temperature

- Measure accurately in the water body/waste (not afterwards in the sample container), unless a bucket sample is collected.

Dissolved Oxygen Sampling

- Collect samples very carefully. **Do not** let the sample remain in contact with air, or be agitated, as either condition causes changes to its gaseous content. Special precautions may be required to eliminate changes in pressure and temperature when sampling from any great depth, or from a source that is heated under any

pressure eg. boiler water. It is good practice to record the temperature of the sample immediately after sampling.

- Lower the dissolved oxygen sampling bucket just below the surface, pointing upstream so that the water runs into the bucket slowly avoiding turbulence and bubbling. Avoid bubbling the sample into the bottle via the inlet tube, as this introduces atmospheric oxygen into the sample, and fill the bottle allowing two to three times the bottle volume to overtop.
- Then replace the stopper so that no air bubbles are trapped. Avoid sampling any floating material.

Ground Water Sampling

- Collect sample/s from as close as possible to the pump.
- Run the water until such time as stagnant water in the plumbing is flushed out and only fresh ground water is being pumped. The time required will depend on the particular pump/plumbing system and the distance from the well head. If a thermometer is available, run the water until a constant temperature is reached.

Surface Water Sampling

When collecting surface water samples ie. rivers or lakes, you shall:

- Ensure that you are standing downstream from the sample bottle when sampling, and that the sample is taken approximately 15 cm below the surface. **Do not** sample from the surface of the water, as this allows floating material to fall into the bottle causing possible contamination of the sample.
- Hold the appropriate bottle (refer Table 1) by its bottom and plunge it downwards, below the surface.
- Tilt the bottle until the neck points slightly upwards, at the required depth.

Tap Water Sampling

- Ensure there is no contamination from any external or internal material. Washing the tap down with water before sampling should minimise any external contamination. Running the water for a sufficient length of time ensures all stagnant water in the plumbing is flushed out, and any loose particles dislodged, are washed away.

3.0 Preservation and transport of samples

Samples are transported to the laboratory in insulated containers (eg. chilly bins), using slicker pads or equivalent for cooling. It is desirable to minimise delays between sample collection time and analysis (refer Table 1 for details), preferably less than 4 to 6 hours for determinants such as pH, hydrocarbons, organics, BOD, chlorine, dissolved oxygen, microbiology etc.

The sample is **your** responsibility, at all times, until formally received by laboratory staff. In the event a third person is involved in the transport of the sample to the laboratory, the following additional details are to be recorded on the field data sheet accompanying the samples:

RELINQUISHED BY: (signature)
(collector/witness)

RECEIVED BY: (signature)
(third person)

DATE/TIME:

4.0 Sample receipt at laboratory

As noted, a laboratory staff member **must** be present to receive the sample, if not, the sample must remain in the **secure custody** of the person bringing it until relinquished to a laboratory staff member.

On receipt at the laboratory, the laboratory technician should check with the sample collector that **all** necessary data/comments have been recorded on the field sheet, **including accurate identification of the site(s)** sampled. Then details may be recorded in the laboratory sample receipt book.

Appendix II

Application for Search Warrant

IN THE DISTRICT COURT

HELD AT [*Name of District Court e.g. "Hawera"*]

IN THE MATTER of Section 334 and 335 of the Resource Management Act 1991

AND

IN THE MATTER of an application for a search warrant in respect of any place or vehicle situated at [*Describe by street address or by legal or other description the property*]

TARANAKI REGIONAL COUNCIL

Applicant

APPLICATION FOR SEARCH WARRANT

TO:

of XX[place of District Court e.g. Hawera]

District Court Judge, Justice, Community Magistrate, Registrar

I, [Name of Enforcement Officer applying], Enforcement Officer, of
.....[e.g. Stratford], swear/affirm:

1. THAT my full name is [Name of Enforcement Officer applying]. I am a
..... [job title] employed by the Taranaki Regional Council, with the
designation of Investigating Officer.

Continue in numbered paragraphs:

- *the background to the offence*
- *what it is you are searching for*
- *why this property*
- *who is linked to the property*
- *enquiries to link suspect (if known) to this property etc.*

You need to give the person who you are applying to all of the relevant information he/she needs to make his/her own decision as to whether a search warrant is justified. Remember this application is a discoverable document and that the content may be challenged in Court. You are the author of the document; use the first person to put across what you believe. The following is an example only

Start by outlining the likely offence being investigated. e.g.

2. THAT Section 15(1)(b) of the Resource Management Act 1991 prohibits the discharge of any contaminant into [note this may be "onto"] land in circumstances which may result in that contaminant entering water, unless the discharge is expressly allowed by a rule in a regional plan and in any relevant proposed regional plan, a resource consent or regulations.
3. THAT on [date] the Taranaki Regional Council received information in respect of ...

If a complainant is referred to here give consideration as to whether the complainant has given this information in confidence. You can refer to a confidential complainant but it is important to qualify the complainant as to how they came by the information and what their motivation is for passing on the information. The need to qualify the complainant has been clearly outlined in case law. If the information is anonymous, say so. However significant background enquiries should have been done to corroborate what the informant has said. Credibility is important, has this person previously given information that has proven to be accurate?

4. THAT the background to the information is that ...
5. The site is in the Taranaki Region as defined in Schedule 2 of the Local Government Act 2002.
6. THAT *[name of contaminant]* comes within the definition of "contaminant" in section 2 of the RMA.
7. THAT expert opinion from *[name the person, qualifications etc of the person you are relying on for this expert opinion]* indicates that such a contaminant may enter groundwater and may enter the nearby surface waterway....
8. THAT the discharge of *[name of contaminant]* into land in circumstances which may result in that contaminant entering water is not expressly allowed by any rules in the Taranaki Regional Council regional plan(s) and proposed regional plan(s), resource consent or regulations. *[Refer to any relevant permitted, discretionary or prohibited activity. Note there may be no reference in Plans to the contaminant discharged and the offence may still come within section 15]*
9. THAT the following enquiries have established.....*[Go into full detail here as to what enquiries have been completed to support this application. It may be that inspections under section 332 have already been done at this site. Those inspections have provided reasonable grounds to believe the offence has been committed so you are now seeking a search warrant. Very good guidelines for deciding between 332 (inspections) and 334 (search warrants) are detailed in a Judgment by Justice Venning (copy attached) - recommend that you read this.]*
10. THAT the Taranaki Regional Council is currently investigating these allegations. I believe that by searching the premises of , situated at , I will locate
11. THAT contravention of section 15(1)(b) is an offence under section 338(1)(a) of the RMA which under section 339 of the RMA is punishable by 2 years imprisonment or a fine of \$200,000. *[Note - Must be an offence punishable by imprisonment to obtain a search warrant].*
12. Section 334 of the RMA requires any person applying for a search warrant to provide details of every other application made in the previous 20 days in respect to this site. In the previous 20 days, the Taranaki Regional Council has not made any other applications in respect to *[Describe by street address or by legal or other description the property]*
13. The items I wish to seize if located in the search are:
 - a. *List items being searched for*
 - b. to seize any other thing that is believed on reasonable grounds to be evidence in respect of which a warrant could have been obtained under section 334. (RMA section 335(2)(c))

I THEREFORE APPLY for a search warrant to be issued in respect of any place or vehicle situated at *[Describe by street address or by legal or other description the property]*

Sworn/affirmed at XX

This day of 200

before me:

(District Court Judge, Justice of the Peace, Community Magistrate,
Registrar)

Completed by Council and attached to application

DRAFT SEARCH WARRANT ATTACHED TO APPLICATION

Sections 334 and 335 Resource Management Act 1991

CRN

To Every enforcement officer when accompanied by a constable;

I am satisfied on an application (in writing made on oath)

THAT there are reasonable grounds for believing that there is in any place or vehicle situated at *[Describe by street address or by legal or other description the property]* the following things:

[List items being searched for]

In respect of which an offence of *e.g. unlawful discharge of contaminant onto land in circumstances which may result in that contaminant entering water has been or is suspected of having been committed being an offence punishable by imprisonment*

or which there is reasonable grounds to believe will be evidence of an offence of*e.g. unlawful discharge of contaminant onto land in circumstances which may result in that contaminant entering water being an offence that is punishable by imprisonment*

THIS IS TO AUTHORISE YOU when accompanied by a Constable, on one occasion only, within 14 days from the date of this warrant, to enter and search any place or vehicle situated at *[Describe by street address or by legal or other description the property]*

with such assistance as may be necessary in the circumstances, and if necessary to use such force for making entry, and for breaking open anything in, on, under, or over the place or vehicle as is reasonable in the circumstances;

and also to search for and seize *[List items being searched for]* and to seize any other thing that is believed on reasonable grounds to be evidence in respect of which a warrant could have been obtained under Section 334.

THIS WARRANT IS ISSUED subject to the following further conditions;

DATED at XX this day of 200

District Court Judge/Justice of the Peace/Community Magistrate/Registrar

Appendix III: Example of memorandum

To: Inspectorate Manger
From: Investigating Officer
File:
Date:

I went to the property of Mr _____. I went there because we had received a complaint regarding a discharge of dairy effluent into the _____ River. I arrived at the property at 9.00 am on 1 July 2006. I walked to the dairy shed and was met by Mr _____. I told Mr _____ that the Taranaki Regional Council had received a pollution complain regarding discharge to the _____ River. Mr _____ asked me to show him my identification. I showed him my warrant. Mr _____ then said I could inspect the holding ponds if I liked. Mr _____ also told me that he used a honey wagon system. I noticed that milking had just been completed and Mr _____ was putting the hoses away presumably after clean up. I asked him if he had just cleaned up, he said "Yes" I then walked over to the holding ponds which are about 100 metres from the shed. Mr _____ came with me. Mr _____ said to me while we were walking to the holding ponds, that he had been having trouble with the sump pump at the holding ponds. We arrived at the holding ponds and I noticed that the sump pump was not working. When I pointed this out to Mr _____ he told me that he was not surprised because it had been playing up for quite some time. I noticed the effluent was overflowing from the ponds. I followed the flow of the effluent from the ponds down a steep bank to the _____ River. The distance from the ponds to the _____ River would be about 80 metres. I showed Mr _____ the point where the discharge was entering the river. Mr _____ did not make any comment. I asked Mr _____ why he had not done anything about the pollution. He told me that he had been very busy lately and was trying to get around to doing it. I asked Mr _____ if he personally had been milking that morning and he told me he had been milking. I asked him who owned the farm and he told me he owned the farm. I asked him if he employed any workers, he said "No". I then took a sample of the water where the discharge was entering the river. This was labelled as "Discharge Point Sample of _____ River - _____ property". I then took a sample from above the discharge point some 50 metres and labelled this sample "Upstream _____ River - _____ property". I then took a sample downstream and labelled it "Downstream Sample - _____ property". I took photos of the three areas where the samples were taken. I then took a photo of the discharge entering the river. I also took photos of; discharge running down bank, holding pond, and the dairys shed.

I then made notes in my diary recording the above and headed back to our office to hand in the samples to the laboratory staff.

I arrived at the laboratory at 11.00 am. I handed the samples to Mr _____ and watched him log the samples in the Log Book.

Scenario 1

I went back to the property the following day on 2 July 2006. I arrived about 9.00 am. I was met by Mr _____ once again. Mr _____ told me that the pump was all fixed up and the system was working pretty well. I noticed a new pump had been installed and the system was working well. I walked down to the river and noticed that no further pollution was occurring. Mr _____ did not accompany me on this visit. I went back to the shed and told Mr _____ that everything was working okay. I asked Mr _____ why he had not installed a new pump in the first place. Mr _____ told me that he should have but he had not got around to it.

Scenario 2

I went back to the property the following day on 2 July 2006. I arrived at about 9.00 am. I was met by Mr _____ once again. Mr _____ told me that he had not fixed the pump. I saw that the effluent was overflowing from the ponds down the steep bank and into the River as it had been when I inspected on 1 July. I asked Mr _____ if I could collect samples. Mr _____ swore at me, waved his arms around in an aggressive manner and he told me to get off his property. I immediately left the property at 9.15 am.

I contacted the Director – Resource Management and informed him of the situation. A decision was made to apply to the District Court for a search warrant.

_____(Name)

_____(Signature)

_____(Date)

Appendix IV - Analysis of enforcement mechanisms

	Direct & Rapid Intervention	Punishment	Deterrence	Interpretative Guidance	Standard of Proof	Cost of Mechanism	Reimbursement of costs and expenses	Scope	Advantages	Disadvantages
Abatement Notice except for notices issued under s322(1)(c).	Yes, reasonable period to comply can be less than 7 days unless notice is within scope of s322(1)(a)(ii) and the recipient is not complying with Act etc.	No	Yes.	Yes, if there is a hearing.	The council has the onus of establishing the grounds to support its abatement notice. The standard of proof is the balance of probabilities but weight should be given to the fact that an appeal against abatement notice is an enforcement proceeding and if the notice is upheld, this can have serious consequences for the appellant.	Cheap if recipient complies. If an appeal is filed and proceeds to a hearing, can be expensive. Relatively few abatement notices are appealed and of the few that are appealed, most do not proceed to a hearing because negotiation between the Council and the appellant resolves problem.	No provision for reimbursement - unless appeal filed and then costs may be awarded if Council is successful.	The Court's power on appeal is to confirm or cancel the notice. Court does not have flexibility it has on an application for enforcement order. Scope of abatement notice is not as wide as scope of an enforcement order.	- Cheap. - If abatement notice falls in "first" category appeal does not act as stay, and recipient can be given less than 7 days to comply. To avoid disadvantages, notice can be cancelled (Court's leave required if appeal filed) and another enforcement mechanism can be used.	- Hearing of an appeal can be expensive. - Court lacks flexibility. - Scope is not as wide as enforcement order.
Abatement Notice issued under 322(1)(c) -unreasonable level of noise.	Yes, reasonable period to comply, can be less than 7 days. Failure to comply, enforcement officer can take steps to reduce noise.	No	Yes.	Yes, if there is a hearing.	The council has the onus of establishing the grounds to support its abatement notice. The standard of proof is the balance of probabilities but weight should be given to the fact that an appeal against abatement notice is an enforcement proceeding and if the notice is upheld, this can have serious consequences for the appellant.	Cheap if recipient complies. If an appeal is filed and proceeds to a hearing can be expensive. Relatively few abatement notices are appealed and of the few that are appealed, most do not proceed to a hearing because negotiation between the Council and the appellant resolves problem.	No provision for reimbursement - unless appeal filed and then costs may be awarded if Council is successful.	The Court's power on appeal is to confirm or cancel the notice. Court does not have flexibility it has on an application for enforcement order. Scope of abatement notice is not as wide as scope of an enforcement order.	- Cheap. Appeal does not act as stay, and recipient can be given less than 7 days to comply. - Failure to comply - enforcement officer can take steps to reduce noise.	- Hearing of an appeal can be expensive. - Court lacks flexibility. - Scope is not as wide as enforcement order.

	Direct & Rapid Intervention	Punishment	Deterrence	Interpretative Guidance	Standard of Proof	Cost of Mechanism	Reimbursement of costs and expenses	Scope	Advantages	Disadvantages
Excessive Noise Directions	Yes Recipient is required to comply immediately for up to 72 hours no more. If direction is not complied with enforcement officer can remove instrument producing noise.	No	Yes	No	Not applicable.	Cheap.	No provision for reimbursement of costs and expenses.	Excessive noise only.	- Cheap. - Good mechanism for immediate reduction of excessive noise. - Immediate compliance required.	Duration of direction is up to 72 hours and therefore may not be effective for on going industrial or commercial activities.
Application for Enforcement Order	No	No	Yes.	Yes. Each decision is a precedent.	On the balance of probabilities but regard must be had to the seriousness of the consequences of making an enforcement order. If there is cause for doubt the benefit should be given to those against whom orders are sought.	Can be expensive.	s314(1)(d) enforcement order can be made requiring reimbursement of local authority's costs. If the application for enforcement order is successful, costs may be awarded against the respondent.	Wide scope.	- Wide scope. - Standard of proof is lower than standard required for prosecution.	Can be expensive - depends on evidence
Application for Interim Enforcement Order	Yes	No	Yes.	No	On the balance of probabilities but regard must be had to the seriousness of the consequences of making an interim enforcement order. If there is cause for doubt the benefit should be given to those against whom orders are sought.	Can be expensive.	s314(1)(d) interim enforcement order can be made requiring reimbursement of local authority's costs.	Wide scope.	- Protection and sanction of a Court Order. - Wide scope. - Most applications for interim enforcement orders do not proceed to full enforcement orders because settlement is reached.	Can be expensive because affidavits filed in support of application should be as detailed as possible.

	Direct & Rapid Intervention	Punishment	Deterrence	Interpretative Guidance	Standard of Proof	Cost of Mechanism	Reimbursement of costs and expenses	Scope	Advantages	Disadvantages
Prosecution	No. Time frame of 12 months usually from date of filing charges to date of hearing.	Yes	Yes	Yes - each decision is a precedent.	Beyond reasonable doubt.	Most cases are not defended. If defended can be expensive.	If prosecution is successful costs can be awarded. Council receives 90% of fine.	Offences - s338 breach of: sections 9, 11-15, 15A, 15B, 15C enforcement order abatement notice water shortage direction section 22, 42 excessive noise direction wilfully obstruct, hinder etc Section 283, 41, 237c	Very effective deterrent.	<ul style="list-style-type: none"> - Time frame of approx. 12 months from date charges filed. - Expensive because charges must be proved beyond reasonable doubt. - Requires a lot of preparation.