

# Dunedin City Council RMA Infringement Notice Policy

## ***Introduction:***

All consideration shall be given to alternative enforcement tools before the issuing of an infringement notice, in accordance with Development Services' Resource Consent Monitoring and Enforcement Strategy. This strategy endorsed by the Executive Management Team in September 1998 addresses issues that relate to monitoring and enforcement under the Resource Management Act 1991 as well as identifying departmental monitoring and enforcement policy, standard operational procedures and providing guidance to staff.

## ***1. Who may issue Infringement Notices and for what offences?***

RMA infringement notices can only be issued by a warranted enforcement officer under Section 38 of the RMA. Schedule 1 of the Resource Management (Infringement Offences) Regulations 1999 lists all the offence provisions for which an infringement notice may be issued. Alongside each offence is;

- A short description of the offence.
- The amount of the penalty. (See page 2 of this report – Background).

## ***2. Infringement Notices may be appropriate in the following circumstances;***

- Repeat offences where effects are minor.
- First offence where potential effects are more than minor.
- First offence where actual effects are more than minor but capable of being remedied.
- First time offence where effects are irreversible but minor.
- Breach of an abatement notice where effects are minor.

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

- You are confident that should the matter go to Court, you can prove beyond reasonable doubt that the person on whom you are serving the notice committed the offence.
- You clearly will not want to prosecute for that particular offence.
- The issue of a notice is likely to be a viable deterrent.
- The fine is sufficient for the severity of the offence.
- The evidence collected is sufficient to prove the offence beyond reasonable doubt.

## ***3. Infringement Notices may not be appropriate in the following circumstances;***

- Where non-compliance is on-going and not with the offender's capacity to remedy quickly.
- Where the penalty would be inadequate for the severity of the offence.
- Where the extent of harm to the environment cannot be assessed immediately.
- Where the evidence collected is controversial or insufficient.
- Where a period of more than 6 months has elapsed since the alleged non-compliance.
- Where negotiations are under way and you are satisfied that progress has been made.
- Where a direction has been issued specifying a timeframe which has not expired.
- Where multiple non-compliance has occurred.

- In the case of non-compliance with resource consent conditions it is not appropriate to issue a notice for each consent condition breached. One notice shall be issued for the overall activity requiring the resource consent.

#### ***4. To whom can you issue an Infringement Notice?***

An infringement notice may be issued to any of the following;

- A person.
- A company.
- An incorporated body.
- A public authority (except the Crown or Trust unless the Trust is an incorporated body).

#### ***5. What information or evidence do you need?***

Before issuing an infringement notice the following evidence needs to be substantiated;

- The particular offence which was committed.
- The person responsible for committing the offence.
- The person's address (or registered office if a company).
- Where the offence took place.
- When the offence took place.
- Any other relevant information necessary to succeed in a Court case.

#### ***Points to Note:***

Since the offender has a 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 obtain evidence which is sufficient to prove the offence beyond reasonable doubt.

The issuing (with payment) of a notice removes the ability to undertake a prosecution against a party responsible for the offence in question.

Serving a notice does not in itself institute criminal proceedings. It constitutes an Infringement Offence. It only leads to criminal proceedings at the defendant's election or on default of payment.