

**From:** official information  
**Sent:** Wednesday, 22 September 2021 12:55 pm  
**To:** [REDACTED]  
**Cc:** official information  
**Subject:** FINAL RESPONSE: LGOIMA 21274 - [REDACTED] - S 35(2)(d) of the RMA / Monitoring the Exercise of Resource Consents  
**Attachments:** Monitoring Strategy - Copy.PDF

Kia Ora,

I refer to your **information request below**, Hamilton City Council is able to provide the following response.

**Your Request:**

1. Has the Council delegated its duty under Section 35(2)(d) of the RMA [as provided for under Sections 34 and 34(A) of the RMA].
2. If the Council has done so, to which council committee, hearings commissioner, and/or council employer (as the case maybe) has that duty been delegated. *(Note: in the case of council employees, position titles only are required, not staff personal identifiers.)*
3. Has the Council transferred the duty under Section 35(2)(d) of the RMA [as provided for under Section 33 of the RMA].
4. If the Council has done so, to which public authority (or authorities) has that duty been transferred.
5. Where the Council has delegated and/or transferred the duty under Section 35(2)(d) of the RMA, a copy of the relevant document that officially records the delegation/transfer as the case maybe. *(Note: this can be provided with a link to an appropriate council website if this is available.)*
6. Where the Council has not delegated the duty under Section 35(2)(d) of the RMA, why has the Council not done so.
7. Where the Council has not delegated the duty under Section 35(2)(d) of the RMA, by what process does the Council fulfil its duty under Section 35(2)(d) of the RMA.
8. Does the Council have a RMA monitoring strategy that addresses the duty imposed under Section 35(2)(d) of the RMA.
9. If the Council has such as strategy, a copy of that document *(Note: this can be provided with a link to an appropriate council website if this is available)*, as well as relevant citations to sections/pages that reference to Section 35(2)(d) of the RMA .

**Our Responses:**

1. Yes
2. The Council has delegated its responsibilities, duties and powers under the Resource Management Act 1991 (except for the Exclusions specified) to the Chief Executive as set out in Schedule 2 of the Delegations to Positions Policy.
3. No.
4. As per our response to Q 3, we are refusing this request in accordance with [S 17\(e\) of LGOIMA](#) – this information does not exist.
5. [Final - Delegations to Positions Policy - June 2021.PDF \(hamilton.govt.nz\)](#)
6. As per our response to Q 3, we are refusing this request in accordance with [S 17\(e\) of LGOIMA](#) – this information does not exist.
7. As per our response to Q 3, we are refusing this request in accordance with [S 17\(e\) of LGOIMA](#) – this information does not exist.
8. The Council does not have any current publications recording its monitoring strategy under Section 35(2)(d) of the RMA.

The Council's current monitoring strategy under Section 35(2)(d) of the RMA includes:

- Maintaining records of consents granted;
- Monitoring compliance with consents;
- Recording outcomes of monitoring; and
- Compiling a monthly report of actions.

The Council has a historical publication recording an earlier version of its monitoring strategy dated 2009.

9. The Planning Guidance Unit: Resource Management Monitoring, Compliance and Enforcement Strategy dated 2009 is attached.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

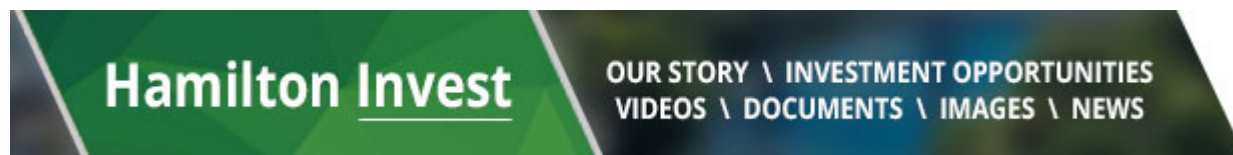
Kind Regards,

**Tatiyana** | Official Information & Legal Support Advisor  
Legal Services & Risk | People and Organisational Performance  
Email: [officialinformation@hcc.govt.nz](mailto:officialinformation@hcc.govt.nz)



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**From:** official information <[officialinformation@hcc.govt.nz](mailto:officialinformation@hcc.govt.nz)>

**Sent:** Monday, 6 September 2021 4:12 pm

**To:** [REDACTED]

**Cc:** official information <[officialinformation@hcc.govt.nz](mailto:officialinformation@hcc.govt.nz)>

**Subject:** LGOIMA 21274 - [REDACTED] - S 35(2)(d) of the RMA / Monitoring the Exercise of Resource Consents

Kia Ora,

I write to acknowledge your information request of Sunday 5 September 2021 as below.

Please be advised that your request has been passed on to the relevant team within Council and you will be informed of the outcome.

The Local Government Official Information and Meetings Act 1987 requires that we advise you of our decision on whether the Council will provide the requested information as soon as reasonably practicable, and no later than 20 working days after the day we received your request. We will respond to you no later than Friday 1 October 2021.

In light of the recent announcement regarding COVID-19 and New Zealand's Alert level 4, the safety of our employees is paramount. We've made necessary changes to our working environment and operations that may result in limited availability of some of our staff members. We appreciate your patience during this time. Please allow some extra time for a response to your request as we are all doing our best to accommodate the new circumstances.

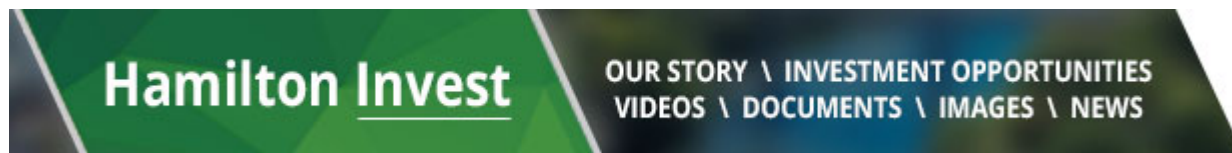
Kind Regards,

**Tatiyana** | Official Information & Legal Support Advisor  
Legal Services & Risk | People and Organisational Performance  
Email: [officialinformation@hcc.govt.nz](mailto:officialinformation@hcc.govt.nz)



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-----Original Message-----

From: [REDACTED]

Sent: Sunday, 5 September 2021 3:57:07 pm

To: [info@hcc.govt.nz](mailto:info@hcc.govt.nz)

CC: [REDACTED]

Subject: FW: Section 35(2)(d) of the RMA - Monitoring the Exercise of Resource Consents

Hello

For your records and by way of notification:

Section 35(2)(d) of the RMA says [under the heading of 'DUTY to GATHER INFORMATION, MONITOR, and KEEP RECORDS']

- ***"Every local authority shall monitor— the exercise of the resource consents that have effect in its region or district, as the case may be;"***

**PURSUANT to the PROVISIONS of the LGOIMA the FOLLOWING INFORMATION is REQUESTED.**

- Has the Council delegated its duty under Section 35(2)(d) of the RMA [as provided for under Sections 34 and 34(A) of the RMA].
- If the Council has done so, to which council committee, hearings commissioner, and/or council employer (as the case maybe) has that duty been delegated. *(Note: in the case of council employees, position titles only are required, not staff personal identifiers.)*
- Has the Council transferred the duty under Section 35(2)(d) of the RMA [as provided for under Section 33 of the RMA].
- If the Council has done so, to which public authority (or authorities) has that duty been transferred.

- Where the Council has delegated and/or transferred the duty under Section 35(2)(d) of the RMA, a copy of the relevant document that officially records the delegation/transfer as the case maybe. *(Note: this can be provided with a link to an appropriate council website if this is available.)*
- Where the Council has not delegated the duty under Section 35(2)(d) of the RMA, why has the Council not done so.
- Where the Council has not delegated the duty under Section 35(2)(d) of the RMA, by what process does the Council fulfil its duty under Section 35(2)(d) of the RMA.
- Does the Council have a RMA monitoring strategy that addresses the duty imposed under Section 35(2)(d) of the RMA.
- If the Council has such as strategy, a copy of that document *(Note: this can be provided with a link to an appropriate council website if this is available)*, as well as relevant citations to sections/pages that reference to Section 35(2)(d) of the RMA .

Planning Guidance Unit

Resource Management  
Monitoring, Compliance and Enforcement  
Strategy

Hamilton City Council

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## **1.0 INTRODUCTION**

The Hamilton City Council Proposed District Plan plays a significant role in managing the natural and physical resources in the city, and is largely responsible for regulating the form and style of the district. The wide-ranging effects of the District Plan can have positive and negative impacts on the social, economic and cultural well being of the community.

Effective monitoring of significant resource management issues in the city and the outcomes of the planning process provide an audit of a local authority's resource management programme and its ability to achieve the purpose of the Resource Management Act 1991 (RMA or the Act).

### **1.1 STATUTORY OBLIGATIONS**

The RMA requires all local authorities to establish, implement and review objectives, policies and methods, in order to sustainably manage the effects of the use, development, or protection of land and associated natural and physical resources within its district.

Section 35 of the Act requires local authorities to undertake various monitoring functions and to make the information obtained available to the public. Monitoring is to include an analysis of the objectives, policies and methods of the District Plan in order to evaluate the overall suitability and effectiveness of the Plan. The Act provides for discretion as to the nature and extent of the monitoring and how frequently it is undertaken.

The Act requires local authorities to use the results from monitoring activities to take appropriate action where deemed to be necessary. The monitoring data collected and information determined from analysis is required to be made 'reasonably available' to enable the public to be better informed of their responsibilities under the Act and to allow the community to participate effectively.

The primary focus of District Plan monitoring is to establish that the plan provisions are necessary to achieve the purpose of the Act and that they are the most suitable means having regard to effectiveness and efficiency.

Monitoring is an important stage in the 'resource management process' as it completes the policy cycle (between policy development and implementation) and provides many additional benefits beyond fulfilling Councils statutory requirements. These benefits include providing data to facilitate improved policies and methods, better informed decision making, increased awareness of environmental issues within the district, and the establishment of comprehensive baseline and trend information systems, in addition, analysis of monitoring information provides an opportunity for Council to act and make improvements concerning the District Plan and other planning tools.

(Ref: District Plan Policy 8.0)

### **1.2 BACKGROUND**

In 2002 the Planning Guidance Unit (PGU) responded to the requirement to fulfill the statutory obligations, and measure the ability of the Proposed District Plan to achieve the desired resource management outcomes by preparing the Resource Management Monitoring Programme (RMMP) for Hamilton City Council. The RMMP was developed to provide information which fills a gap in the knowledge resource to allow for better strategic planning of the city's sustainable future and address some of the principal issues regarding monitoring in Hamilton.

The RMMP has been reviewed, updated and renamed (September 2009) to bring it into line with the current context and operations of PGU. The new programme is now known as the Resource Management Monitoring, Compliance and Enforcement Strategy (RMMCES).

The development and full implementation of the RMMCES will meet the statutory obligations imposed on Council under Section 35 of the Act. The strategy is designed to monitor aspects pertaining to the execution of functions delegated to Council under the Act. The RMMCES will also satisfy the requirement to make monitoring information available to the public.

Outputs from the RMMCES can feed directly into other Council processes such as the Annual and Strategic Plan processes, Asset Management and Business Plans. Although these documents are not specifically mentioned in the District Plan, their influence is imposed on local environment through other mechanisms. Furthermore, some methods listed in the District Plan rely on decisions made by other Council processes.

The intent of the RMMCES is to provide an integrated, useful and cost effective system to monitor certain key resource management issues within the city. To monitor and report on all aspects of the local environment is neither cost-effective nor useful in terms of the information it provides. The concept of a strategic programme where key issues are identified and reported on is likely to provide more relevant information on planning issues within Hamilton City. The strategic approach can be further extended to encompass broader issues that may be identified as relevant in the future.

Section 35 of the Act does not specify the nature, quantity or timeframe for monitoring to occur, and merely states that the information shall be 'collected as is necessary to carry out effectively its functions under the Act'. This strategy has been designed to provide some guidance with regards to information type, quantity, and reporting timeframes.

### **1.3 MONITORING CURRENTLY UNDERTAKEN BY PLANNING GUIDANCE**

Hamilton City Council began monitoring land use resource consent conditions in 1995. This work is currently carried out by two staff - a Senior Compliance Officer and a District Plan Compliance Officer. Additional resource is provided by one of the Senior Planners as and when required.

The District Plan Compliance Officers position was created in August 2007 in response to expressed concerns that home occupation activities were occurring in residential areas in what was perceived to be an uncontrolled fashion with subsequent adverse effects on residential amenity.

Briefly, the Compliance Team has responsibility for two key Activities. These are identified in the Units Management Plan as follows:

Activity 3: Monitor and report on the effects of activities on the environment for which resource consent has been granted or complaints made in order to meet the community objectives of the Resource Management Act 1991 (RMA), the District Plan and the Prostitution Bylaw.

Activity 4: Take enforcement action as necessary to remedy, mitigate or penalize any adverse environmental effects or non-compliance with resource consent conditions, the District Plan, the RMA or the Prostitution Bylaw.



The Compliance Team also carries monitoring of Designations and Consent Notices.

Various Council departments perform monitoring relevant to their particular department. Although this information is currently gathered in an *ad hoc* manner, much of this information could be useful for feeding into the RMMCES in conjunction with other monitoring activities if so desired.

Furthermore, much of the information currently collected by various Council departments is not summarised and made available to the general public. There is potential for this information to be analysed in such a manner that will provide an important information source for the wider community.

## **2.0 MONITORING REQUIREMENTS**

Section 35 of the Act requires every local authority to perform the following types of monitoring. These include;

- the state of the whole or any part of the environment of its region or district to the extent that is appropriate to enable the local authority to effectively carry out its functions under this Act; and
- the efficiency and effectiveness of policies, rules, or other methods in its policy statement or its plan; and
- the exercise of any functions, powers, or duties delegated or transferred by it; and
- the exercise of the resource consents that have effect in its region or district.

Monitoring the exercise of resource consents granted by the Council is undertaken not only to ensure ongoing compliance with consent conditions but is also an aid in assessing the effect of District Plan rules. This is appropriate since the District Plan effectively establishes the framework within which resource consent requirements are set.

Monitoring compliance with resource consent conditions is undertaken on an ongoing basis, and the summarised results of this compliance monitoring is analysed and reported annually and able to be fed directly into the District Plan monitoring programme in order to facilitate the review of the District Plan. The effects on the environment of the exercise of resource consents throughout the City can be identified via the monitoring component of the RMMCES.

### **2.1 DISTRICT PLAN MONITORING**

District Plan monitoring is based largely on the data gathered in the other elements of the RMMCES. Information collated can be used to assist in identifying any inconsistencies that exist between the District Plan and policy documents with which the District Plan must be consistent.

### **2.2 MONITORING COMPONENTS**

In order to fulfill monitoring requirements and perform effective resource management monitoring, three monitoring components are to be employed to gather information relating to the different aspects of the resource management framework.

#### *a) Indicator monitoring*

The establishment of a core set of indicators, which are monitored over time to identify trends, which may be occurring in the local environment. The indicator

monitoring programme will contribute to both the District Plan performance analysis and the state of the environment report.

*b) Process monitoring*

The analysis of all resource consents granted, complaints received and compliance monitoring outcomes provide valuable information demonstrating developmental trends and attitudes in the community. Process monitoring can also include information about the nature of plan changes and the number and type of submissions made against the Proposed District Plan. Process monitoring contributes to District Plan analysis. Process monitoring will also examine the transfer of power and the exercise of delegations where necessary.

*c) Targeted monitoring*

Employed for the investigation of specific issues, which are causing concern. Targeted monitoring activities can be used to investigate specific issues to provide information to planners and committees or to support existing plan policies and methods. Each type of monitoring addresses a resource management function.

### **3.0 PROCESS MONITORING**

The process monitoring section can be divided into three parts, each feeding into both District Plan analysis and state of the environment reporting components. Where suitable, an independent report can be produced for certain process monitoring activities.

#### **3.1 RESOURCE CONSENT PROCESSING ANALYSIS**

Resource consent processing analysis reviews the resource consents granted within the previous financial year and reports on the following:

- Numbers and types of resource consents granted/declined
- Number of appeals to the Environment Court
- Suitability and functionality of consent conditions
- Patterns in resource consent applications
- Types and locations of activities authorised by the resource consents granted
- Degree of non-compliance for certain District Plan breaches
- Patterns of impact on the environment and the cumulative effects of activities granted consent
- Problems with interpretation of parts of the District Plan that may need to be addressed
- Identification of typical or significant examples of environmental effects that may require further investigation.

#### **3.2 COMPLIANCE MONITORING AND COMPLAINTS REPORTING**

Compliance monitoring is another subset of District Plan monitoring required by the RMA. Hamilton City Council has been monitoring compliance with resource consent conditions since June 1995 and already has in place a monitoring and enforcement strategy.

The compliance monitoring programme aims to:

- Ensure compliance of an activity with conditions of consent
- Ensure compliance of activities with the District Plan

- Provide analysis of whether the consent conditions imposed are achieving their desired purpose
- Provide feedback on compliance or non-compliance with consent conditions into District Plan objectives, policies and rules.

The Annual compliance monitoring and complaints report reviews compliance monitoring and complaints investigation activities within the previous financial year and reports on the following:

- Whether conditions of resource consents are complied with
- Whether conditions imposed on resource consents granted are effective in mitigating adverse effects
- Whether activities occurring in Hamilton are in compliance with the plan
- Patterns and trends in complaints received in terms of activity types and locations
- Action taken to resolve complaints received including the number of abatement notices and enforcement orders served.

This report satisfies the requirements of section 35(5)(i) which requires Council to maintain a summary of all written complaints received by it during the preceding 5 years concerning alleged breaches of the Act or a District Plan, and information on how it dealt with each complaint.

### **3.3 POLICY ISSUES**

Information pertaining to District Plan submissions and matters that relate to plan changes can be assessed by the monitoring programme. The following matters can be used to address the nature and extent of policy issues in Hamilton:

- The number of plan changes/variations
- Type of plan changes
- Analysis of changes to referenced documents (eg noise standards)
- Analysis of integration with neighbouring district plans and regional plans and regional policy statements.
- Analysis of changes in implementation practice.

### **3.4 Targeted Monitoring**

Planning Guidance designed a targeted monitoring strategy to create a more proactive community profile and to lessen the incidence of some of the more frequent types of non-compliance. It was decided that home occupations and related signage, signage in residential zones generally, and satellite dishes would be targeted first. This particular strategy was run very successfully for a period from August 2008 to December 2008.

## **4.0 RESOURCE CONSENT MONITORING STRATEGY**

### **4.1 INTRODUCTION**

The current strategy seeks to:

- address and outline matters that relate to monitoring and enforcement under the RMA; *and*
- identify Hamilton City Council's monitoring and enforcement policy; *and*
- detail standard operational procedures; *and*
- provide guidance to staff.

## **4.2 OBJECTIVE**

*To achieve the highest, reasonable level of compliance as possible.*

Step one: Staff will carry out a site inspection of the property to check on compliance with a resource consent.

Step two: In the event of non-compliance being confirmed a site visit and further investigation, the officer shall issue written notice advising the consent holder of the areas of non-compliance and timetable for achieving compliance.

Step three: If non-compliance continues, staff may then decide to initiate the appropriate form of enforcement action i.e. abatement notice, enforcement order, infringement fine, etc.

The Act provides Council with the discretion of how, when and where to use the enforcement provisions of the Act and therefore prosecution is seen as the '*last course of action*' once verbal and written communication, seeking to correct non-compliance, has failed.

## **4.3 PROTOCOL FOR COMPLIANCE MONITORING**

*Compliance Officers:*

- shall monitor resource consents granted where conditions require compliance monitoring.
- shall investigate complaints regarding activities which may require a resource consent or do not meet existing resource consents conditions and/or District Plan requirements.
- shall carry out periodic monitoring of designations and consent notices
- shall carry out specific targeted (proactive) monitoring as required.
- Shall consult with Planning Guidance Manager - where:
  - enforcement may initiate prosecution proceedings
  - the degree of compliance for conditions on a resource consent is unclear
  - a degree of discretion and/or flexibility is necessary
  - issues relate back to the granting of the resource consent or where conditions are unenforceable or difficult to monitor

*Monitoring Procedure:*

- The Compliance Team shall review on a monthly basis all those consents falling due for monitoring.
- shall report monthly to the Planning Guidance Manager on the outcomes of consent monitoring, complaint investigation, any target monitoring carried out and enforcement action taken.

## **4.4 MONITORING PROCEDURE**

### **A. Identification of Monitoring:**

The Senior Compliance Officer shall print out monthly reports of consents falling due for monitoring for the current month. This report will be the monitoring programme and target for the month.

### **B. Process:**

- Compliance staff will visit the site to determine the degree of compliance with the approved consent and conditions placed on the decision. In the event no one is home a business card or site visit advice can be left. The results of the site inspection are entered on the Monitoring Inspection Sheet (ref: PG E2).
- Compliance staff will send written advice to the owner advising the outcome of the inspections
- Details of the inspection date and outcomes are entered into the two Planning Databases (currently Access and PCR).
- Where a site visit confirms that compliance with the consent has not been achieved, the officer will verbally advise the consent holder of the areas of non-compliance, and confirm in writing the problem areas and timeframe to carry out the necessary works as previously discussed. The officer will issue the consent holder with the leaflet "Compliance and Enforcement Measures". In the case of a complaint, the officer will also issue the complainant with the same leaflet.
- The officer will take photographic evidence of the works that are not in accordance with the consent conditions.
- The officer will re-visit the site at an agreed later date to determine the new (if any) state of compliance.
- If compliance is subsequently achieved, a 'signing-off' form will be completed as above and written confirmation of compliance will be sent to the owner.
- If compliance at this stage cannot be achieved the officer will consult with Planning Guidance Manager to determine whether a new consent is required or alternatively consider enforcement action e.g. serving an abatement notice and following enforcement procedures.
- Further photographic evidence will be taken.
- *All abatement notices prior to being served must be approved by the Planning Guidance Manager.*

Where the timeframe for a consent has lapsed the officer will complete a 'signing-off' form such that the consent is cancelled and advise the consent holder in writing.

Where partial compliance is achieved and the required degree of compliance is unclear, the officer will liaise with Team Leader - Consents.

All enforcement action will have regard to the Local Government of New Zealand's Resource Management Enforcement Manual and internal practice notes.

## **5.0 COMPLAINTS PROCEDURE**

### **5.1 COMPLAINT INVESTIGATION**

- Determine if Council investigation is warranted and appropriate Unit to action identified. (See Guideline to Complaint Management [PG P61](#)).
- Carry out a site visit to the property.
- Discuss complainants concerns with alleged offender and corrective actions required if any. A record of the site observations, breaches of the District Plan or RMA and discussions can be recorded on 'Record of Enforcement Site Inspection' [PG E19](#)).
- If the occupier is not present when the site inspection occurs, leave a notice of the visit from the 'Site Visit' book at the premises/land. See 'Site Visit' [PG E18](#). Note: These are held in triplicate. Original version left at property. Second copy placed in file and third copy stays in book.

### Good practice

- *The Guideline to Complaint Management contains useful information on how to identify the appropriate Council Unit for actioning the complaint and any appropriate legislation, policy or Bylaws that might be relevant.*
- *The alleged offender has right to know the nature of the complaint, but details regarding who complained must remain confidential.*
- *Section 332(4) of the Resource Management Act 1991 requires that a notice be left informing them that the property has been visited by an enforcement officer.*
- *Investigating officer should ensure they taken with them their warrant card, business cards, inspection notices, camera, tape measure, etc.*
- *Take any photographs necessary at the initial visit, as the evidence or approval to do so may not be possible or permitted at a later date.*
- *Forewarn the offender if more enforcement action is likely e.g. infringement notice, prosecution.*

## **5.2 Complaint Resolution**

- Determine level of action to be taken. Refer to ‘Compliance and Enforcement Measures’ **PG N11**
- Advise complainant and alleged offender about the outcome of the investigation, desired actions and timeframe for compliance.
- Update complaint files records and database with action taken.

## **5.3 Recording Information**

- All inspecting officers must keep detailed notes of their visits and investigations in their notebook.
- Copies of all correspondence, notices and ‘signing off’ forms must be placed on the relevant files.
- All visits and file notes must be entered into the system against the relevant resource consent number.

If enforcement action proceeds to the stage of prosecution, then inspection notes and all correspondence including notices and photographs will be used as evidence. Consequently, true and accurate records are vital to a successful prosecution.

Notebooks of all staff are considered to be legal documents.

*During an inspection the following should be noted;*

- the date and time of entry to inspect the property,
- the purpose of the inspection,
- the names of all persons present,
- the observations made,
- any comments or advice given,
- other matters regarding gathering evidence e.g. photographs, any cautioning etc.

## **6.0 ENFORCEMENT PROCEDURE**

### **6.1 GENERAL**

The Council and in certain circumstances any person, may initiate formal enforcement proceedings under the RMA. Before this happens however, we aim to use more informal/non-statutory and cooperative methods. Education, awareness, warnings and verbal and written instructions are useful tools in this area to encourage the person/s concerned to comply and voluntarily resolve the situation. Where this is inappropriate or unsuccessful, as a final option, Council will then seek formal methods to remedy the situation and needs to be satisfied that the non-compliance issue has been addressed with consideration given to all the enforcement tools available to it.

#### Good practice

*In considering the type of formal enforcement action Council should consider the following, called the 'Threshold Test' (See SOLGM – Legal Compliance Module on Enforcement).*

- *Actual or potential impact which has occurred to the environment*
- *Degree of deliberateness/negligence*
- *If the incident is a repeat event – including the existence of any incident pre-warnings or otherwise*
- *If Council policy dictates the action to be taken resulting from a particular incident.*

Several formal statutory enforcement options ranging from punitive to directive are available and these are described below.

## **6.2 INFRINGEMENT NOTICES (FORMAL STATUTORY – PUNITIVE)**

All consideration will be given to alternative enforcement tools before the issuing of an infringement notice, in accordance with the RMMCES. This strategy endorsed by the addresses issues that relate to monitoring and enforcement under the RMA as well as identifying departmental monitoring and enforcement policy, standard operational procedures and providing guidance to staff.

Where minor offences occur, officers will consider serving an infringement notice in accordance with the internal Guidelines on Infringement Notices (PG P8) and the Local Government of New Zealand's Resource Management Enforcement Manual. If an infringement notice is served for an offence and the fee paid, no further action can be taken regarding that particular offence.

### **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.

### **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:***

- Staff are confident that should the matter go to Court, and can prove beyond reasonable doubt that the person on whom are serving the notice committed the offence
- Staff 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.

**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.

**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).

**What information or evidence is needed?**

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, staff to be sure before issuing the notice that sufficient evidence is obtained 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.

### **6.3 ABATEMENT NOTICES (FORMAL STATUTORY - DIRECTIVE)**

An abatement notice is written notice issued by *Council or appointed persons*. It can require any person to:

- Cease doing, or prohibit from starting, something which may contravene the RMA, any regulations, a rule in the Transitional or Proposed District Plan or a
- resource consent, or is likely to be so noxious, dangerous, offensive or objectionable that it has or is likely to have an adverse effect on the environment
- Do something which is necessary to ensure compliance with the RMA, any regulations, a rule in the Transitional or Proposed District Plan, or a resource consent, and also necessary to avoid, remedy or mitigate any actual or likely
- Adverse effect on the environment caused by or on behalf of that person, or relating to any land of which the person is the sole owner or occupier
- Adopt the best practical option to ensure that the emission of noise does not exceed a reasonable level

An abatement notice, which may include conditions, will be issued if the enforcement officer has reasonable grounds to believe that any of the above circumstances exist. Once the abatement notice has been served, it must be complied with, usually within 15 days unless another period of time has been specified. *An appeal against the abatement notice may be made to the Environment Court.* Appeals do not act as a stay on abatement notices, unless the person is already complying, or a judge orders a stay.

Where the abatement notice relates to the emission of noise exceeding a reasonable level, an enforcement officer may enter the place where the noise is situated. If this place is a dwelling, the officer will be accompanied by a police officer. The enforcement officer may take all reasonable steps to reduce noise to a reasonable level and, when accompanied by a police officer, seize and impound the noise source.

If no appeal to the Environment Court is lodged, an abatement notice continues in force until cancelled by the Environmental Health Unit. Failure to comply with an abatement notice is an offence under the RMA.

### **6.4 INTERIM ENFORCEMENT ORDERS (FORMAL STATUTORY – DIRECTIVE)**

*Any person* can apply to the Environment court for an interim enforcement order to deal with an emergency. Because of the urgency, no hearing is necessary. An interim enforcement order is effective as soon as it has been served or at a later date specified in the order. Failure to comply with an interim enforcement order is an offence. The order remains in effect until an enforcement order has been determined, or until it is cancelled by an Environment Court or District Court judge as a result of a hearing or an appeal.

## **6.5 ENFORCEMENT ORDERS (FORMAL STATUTORY – DIRECTIVE)**

*Any person* can apply to the Environment Court for an enforcement order to require another person to:

- Cease doing, or prohibit from starting something, which may contravene the RMA, any regulations, a rule in the Transitional or Proposed District Plan, a requirement for a designation or heritage order or resource consent
- Do something to ensure compliance with the RMA, any regulations, a rule in the Transitional or Proposed District Plan, a requirement for a designation or heritage order or resource consent
- Avoid remedy or mitigate any actual or likely adverse effect on the environment caused by or on behalf of that person
- Pay or reimburse any other party for action undertaken because of the failure of that person to comply with an enforcement order, abatement notice, a rule or resource consent or any of that person's other obligations under the RMA.

If the abatement notice is not complied with in the specified time the Environment Court will hold a hearing and the applicant and the person against whom the order is sought may attend. After the hearing, the judge may make an appropriate enforcement order or refuse the application. Once an enforcement order is served, it must be complied with. Failure to comply is an offence under the RMA.

## **6.6 RETURN OF PROPERTY SEIZED**

Property seized in connection with an abatement notice concerning noise, or an excessive noise direction, will be returned only when the council is satisfied it will not lead to a resumption of the noise nuisance and after payment is received for costs incurred in seizing the equipment.

### *Good practice*

- Use 'Record of Items Seized' form [PG E23](#) for recording purposes.

## **6.7 PROSECUTION (FORMAL STATUTORY –PUNITIVE)**

Council will seek to prosecute liable parties where it considers this appropriate. Prosecution can be sought for a wide range of activities, including contravention of the requirements of the RMA, regulations, plan requirements, resource consents, enforcement order, interim enforcement order or abatement notice, any request for certain information by an enforcement officer, any orders of the Environment Court,.

Any request for attendance or cooperation by the Environment Court, any summons or order to give evidence at a hearing, any order protecting sensitive information. It is an

offence to wilfully obstruct, hinder, resist or deceive any person lawfully executing powers under the RMA.

The maximum fine under the RMA is \$200,000 or imprisonment for up to 2 years. If the offence continues, a fine of \$10,000 per day may be imposed for every day or part of a day during which the offence continues. The courts could impose a sentence for community service. In addition, Council may impose Infringement Notice Fines of \$300 or \$750 as described earlier.

## **7.0 STATEMENT OF COMMITMENT**

The Hamilton City Council seeks to undertake its regulatory functions in a non-bureaucratic manner and with a high level of customer service. Officers aim to work alongside developers to encourage compliance in the first instance, resorting to enforcement action only when other avenues have been unsuccessful.

For resource management to be effective, it is essential that there are adequate statutory enforcement mechanisms in place. There must be ways of ensuring compliance with resource consent conditions and enforcement 'tools' must be available to direct compliance. It is also important that there are adequate penalties and remedies available where contraventions occur.

*As well as fulfilling obligations under the RMA, this strategy will:*

- lessen the threat of action that may have liability consequences;
- encourage sustainable management and public safety;
- reinforce the integrity and value of environmental policies within the District Plan;
- ensure credibility as a regulatory authority;
- encourage resource users to take responsibility once the consent has been granted.


This strategy represents an operational guide to be used by staff to achieve Council's objectives, policies and rules and to ensure consistency in its approach to enforcement. The Hamilton City Council recognises that there are alternatives to using enforcement action to ensure compliance.

*These include:*

- public education
- provision of advice and information
- negotiation.

*This Strategy should be read in conjunction with;*

1. Planning Guidance Unit's (PGU) Compliance and Enforcement Measures (Ref: PG N11)
2. PGU Guidelines on Infringement Notices (Ref: PG P8)
3. PGU Guide to Complaint Management (Ref: PG P61)

  
Compliance Officer  
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