

RESOURCE MANAGEMENT INFRINGEMENT OFFENCES POLICY

Effective from 28 October 2015

Purpose

The purpose of this policy is to:

- Propose a policy framework for the implementation of the Resource Management (Infringement Offences) Regulations 1999.
- Provide guidance to staff warranted to issue infringement notices under the Regulations.

Establish standard operating procedures for issuing infringement notices under the Regulations.

Scope

This policy applies to all Council staff who are warranted to issue infringement notices under the Resource Management Act and its Regulations.

Definitions

Council	means the Invercargill City Council.
Enforcement Officer	means a Council employee or an employee of a Contractor to whom a warrant of appointment has been issued by the Council.
Infringement Offence	means those offences under the Act, listed in Schedule 1 of the Regulations.
The Act	means the Resource Management Act 1991.
The Regulations	means the Resource Management (Infringement Offences) Regulations 1999.

Introduction

The Resource Management (Infringement Offences) Regulations 1999 (the Regulations) came into force on 1 February 2000. Under these regulations a Council can issue infringement offence notices in regard to breaches under the Resource Management Act 1991 (the Act) and/or rules in Planning documents created under the Act.

Where an offence occurs an Enforcement Officer of the Council can issue an infringement notice, and in doing so require payment of an infringement fee. Infringement notices can only be issued by a warranted Enforcement Officer under section 38 of the Act.

Schedule 1 of the Regulations details the range of offences and fees. Schedule 1 of the Regulations, as it relates to a Territorial Authority, has been attached as Appendix One to this Policy.

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

Contravention of Section 9 of the Act-Restrictions on Use of Land

When there is found to be contravention of Section 9 of the Act the following will apply:

- An infringement notice is issued for the offence.
- The procedures and defences in Schedule 2 of the Regulations will apply.

An additional defence is available provided that:

- A written notice is delivered to Council within seven days after receipt of an Infringement notice, establishing a case that:
- This is a first offence under the Regulations; and
- No adverse environmental effects were generated; and
- Progress has been made to obtain a resource consent (i.e. lodgement of preliminary documents has occurred) or all activities have or will cease in respect of those activities for which an infringement notice is issued.

Rationale:

For activities that have not adversely impacted on the environment, and where it is a first offence, it is considered that further leniency should be given beyond the defences in the Regulations. It is possible for Council to broaden the defences as the agency implementing and giving effect to the Regulations.

Contravention of Sections 322 or 327 of the Act-Contravention of an Abetment Notice or Contravention of an Excessive Noise Direction

When there is found to be contravention of Sections 322 or 327 of the Act the following will apply:

- An infringement notice is issued for the offence.
- The procedures and defences in Schedule 2 of the Regulations will apply.

Rationale:

In these circumstances written notice has previously been given of what is required of a person or entity. If this is not adhered to an infringement notice should be issued with a limited range of defences available. In such instances the infringement notice would be an incentive to promote compliance.

Contravention of Section 22 of the Act- Failure to Provide Certain Information to an Enforcement Officer

Where a verbal or written request for information is declined the following will apply:

- A following warning will be issued either verbally or in writing, advising that failure to supply such information is an offence pursuant to the Act and Regulations which could result in an infringement notice being issued. If the request is still declined then;
- An infringement notice is issued for the offence.
- The procedures and defences in Schedule 2 of the Regulations will apply.

Rationale:

Where information requested is withheld despite a warning that an infringement notice could be issued it is appropriate that a limited range of defences be available.

Appropriateness of Infringement Notice

Since the offender has a right to request a hearing, an Enforcement Officer has to be sure prior to issuing the notice that the evidence obtained is sufficient to prove the offence beyond reasonable doubt.

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

An infringement notice should only be issued where:

- The Enforcement Officer is confident that should the matter go to Court, it can be proven beyond reasonable doubt that the person or entity on whom the notice is being served committed the offence.
- Council would not want to prosecute for that particular offence.
- The issuing of an infringement notice is likely to be a viable deterrent.
- The fine imposed is sufficient for the severity of the offence.
- The evidence collected is sufficient to prove the offence beyond reasonable doubt.
- Authorisation to issue the infringement notice has been obtained from the Director of Environmental and Planning Services.

An infringement notice would not be appropriate in the following circumstances:

- Where non-compliance is ongoing and not within the offender's capability 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 immediately assessed.
- Where the evidence collected is controversial or insufficient.
- Where a period of 6 months has elapsed since the alleged non-compliance.
- Where negotiations are underway and the Enforcement Officer is satisfied that progress is being made.
- Where a direction has been issued specifying a timeframe which has not expired.

Information on Evidence Required Prior to Issuing Infringement Notice

Before issuing an infringement notice the following evidence shall be substantiated:

- The particular offence that was committed.
- The person or entity responsible for committing the offence.
- The person's address (or registered office if it is a company).

- Where the offence took place.
- When the offence took place.
- Any other relevant information necessary to succeed in a Court Hearing.

Revision History:	2010 version – Revised in September 2015.
Effective Date:	28 October 2015
Review Period:	This policy will be reviewed every three (3) years unless earlier review is required due to legislative change, or is warranted by another reason requested by Council.
New Review Date:	October 2018
Associated Documents / References:	Resource Management Act 1991. Resource Management (Infringement Offences) Regulations 1999
Supersedes:	2010 Resource Management Infringement Offences Policy
Reference Number:	A1444689
Policy Owner:	Director of Environmental and Planning Services

Appendix 1

Subheading

Best Practices & Supporting Action

BEST PRACTICE	SUPPORTING ACTION