



## A Guide To Your Options When You Are Issued With An Abatement Notice

### What is an Abatement Notice?

An abatement notice is a notice served by an enforcement officer under section 322 of the Resource Management Act 1991 (the RM Act). The person/organisation that receives the abatement notice is required to immediately comply with the RM Act. The abatement notice should specify what actions are required.

### Why have I Been Issued With An Abatement Notice?

A staff member from the Council has previously contacted you and requested that you take action and/or cease an action within a certain time frame. This may relate to an action such as the creation of a nuisance (such as noise or a bad smell), or an offence under the RM Act.

As the Council is not satisfied that this has been done, you have now been formally requested to take a particular action by a specific date.

### What Are My Options Now?

Your options are:

1. To Comply with the abatement notice by the date specified.
2. To Appeal the abatement notice by advising the Environment Court and the Council of your intention, using Form 49 within 15 working days of service of the abatement notice. Form 49 is supplied when an abatement notice is issued.

You may wish to consult a lawyer to discuss whether or not to appeal the abatement notice.

### What Happens If I Appeal?

If you appeal the abatement notice you will be advised of a date and time when you will be required to appear in the Environment Court. At the Environment Court you may be represented by your lawyer to argue your case. The lodgement of an appeal does not automatically put a stay (i.e. a temporary halt) on the abatement notice. Any stay will come into effect if it is granted by the Environment Court.

The Council will be represented by a lawyer and you or your lawyer will be questioned by him/her. The Judge will consider all the facts and give a decision, either immediately or at a later date.

### What Happens If I Ignore The Notice?

The Council will hand all the information to its solicitor for prosecution under the RM Act,. This will occur when the activity has not ceased by the date specified on the abatement notice.

If the abatement notice specifies a time period within which the activity must cease or change, this time period is not an opportunity to continue to operate. The Environment Court has stated that to continue the action after an abatement notice has been issued is to flaunt the law. (refer Hutt City Council v Dendra Investment Ltd, W106/97).

You may also incur an instant fine of up to \$1,000 if a RM Act Infringement Notice is issued to you.

### What Could It Cost Me If The Matter Goes To Court And I Am Found Guilty, Either After Appealing The Abatement Notice Or Ignoring It?

The maximum fine under the RM Act is \$200,000 or two (2) years imprisonment. If the offence is a continuing one, you could be fined for every day or part of a day during which the offence continues.

You could also be required to pay costs (the Council's legal costs and other expenses incurred by the Council).

The Judge could also direct you to take a specific action by a certain date, for example to comply with the abatement notice, or do other such things as the Judge considers necessary to remedy the situation.

Failure to do as directed by the Judge would leave you in contempt of Court, and any further action would be in the hands of the Court.

If you are unsure, you are advised to contact:

- your lawyer;
- the Citizens Advice Bureau; and/or
- the Council's Field Services Section (Resource Management)

as soon as possible to discuss the best course of action for you.

### **Citizens Advice Bureau**

**Glen Eden** 818 8634  
26 Glendale Road

**Henderson** 836 4118  
5 Ratanui Street

**Massey** 833 5775  
372 Don Buck Road

**New Lynn** 827 4731  
45 Totara Avenue

**This brochure is only a guide to assist you to understand abatement notices. It is provided on a without prejudice basis. Council suggests that you refer to the Resource Management Act 1991 or consult your legal advisors if you have any detailed queries. If you require other general information, please ask the Civic Centre Counter Staff or telephone the Council Call Centre on (09) 839 0400.**