

ABATEMENT NOTICE UNDER SECTION 324 OF THE RESOURCE MANAGEMENT ACT 1991

TO: Russell Roads Limited
14 Senamor Place, Flaxmere, Hastings 4120

C.C.
Russell Roads Limited

1. Hawke's Bay Regional Council gives notice that you must cease the following action:

The Extraction of Gravel from the Ngaruroro River, NG54, Maraekakaho, Hawkes Bay

2. Location to which this abatement notice applies is:

At Ngaruroro River Maraekakaho. (Referred to as 'the property').



3. You must comply with this abatement notice within the following period:

Immediately

You must also continue to comply with this notice after 21/01/22.

4. This notice is issued under section(s) 322(1)(a) of the Resource Management Act 1991.

322 Scope of abatement notice

- (1) An abatement notice may be served on any person by an enforcement officer—
- (a) requiring that person to cease, or prohibiting that person from commencing, anything done or to be done by or on behalf of that person that, in the opinion of the enforcement officer,—
 - (i) contravenes or is likely to contravene this Act, any regulations, a rule in a plan, or a resource consent; or
 - (ii) 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;

5. The reasons for this notice are:

- i) Section 13(1)(b) of the Resource Management Act 1991 (the Act) states:-

13 Restriction on certain uses of beds of lakes and rivers

- (1) No person may, in relation to the bed of any lake or river,—
- (a) use, erect, reconstruct, place, alter, extend, remove, or demolish any structure or part of any structure in, on, under, or over the bed; or
 - (b) excavate, drill, tunnel, or otherwise disturb the bed; or
 - (c) introduce or plant any plant or any part of any plant (whether exotic or indigenous) in, on, or under the bed; or
 - (d) deposit any substance in, on, or under the bed; or
 - (e) reclaim or drain the bed—
- unless expressly allowed by a national environmental standard, a rule in a regional plan as well as a rule in a particular regional plan for the same region (if there is one), or a resource consent.

- ii) Rules 73 and 74 of the Hawke's Bay Regional Resource management Plan (Operative 2006) states:-

6.8.5 RIVER BED GRAVEL EXTRACTION

| Rule | Activity | Classification | Conditions/Standards/Terms | Matters for Control/Discretion | Non-notification |
|---|--|---------------------------------|---|--|------------------|
| 73 Small scale river bed gravel extraction Refer POL 79 | The extraction of sand, gravel or other material from the bed of a river using a hand-held, non-mechanical device (e.g. a shovel), and any associated disturbance of the bed. | Permitted | a. The quantity of bed material extracted by any person at any one time shall not exceed 0.25 m ³ . b. The total quantity of bed material extracted by any person shall not exceed 1 m ³ per year. c. The material shall be extracted from an area of river bed that is not covered by water at the time of extraction. d. The area from which material is extracted shall be recontoured so that no mounds or depressions remain. e. There shall be no discharge of any contaminant directly into water. | | |
| 74 Large scale river bed gravel extraction Refer POL 53, 79 | The extraction of sand, gravel or other material from the bed of any river or lake, and: <ul style="list-style-type: none"> any associated disturbance of the bed, and any associated discharge of sediment, and any associated diversion of water that is not provided for by Rule 73. | Restricted discretionary | | a. Location of extraction sites and stockpile areas. b. Volume of gravel extracted. c. Rate of removal of gravel. d. Period of extraction. e. End use of the gravel. f. Dust management. g. Other matters set out in Policy 53. h. Financial contributions. i. Duration of consent. j. Review of consent conditions. k. Compliance monitoring. | |

- iii) Resource consent 0802103 was granted to Russell Roads, on 8th September 2021. This consent authorised the extraction and stockpiling of Gravel from the Ngaruroro River subject to conditions.

- iv) Of particular relevance to this notice is conditions 7 and 27 of resource consent number 0802103 which states:-

Condition 7

The consent holder shall maintain an accurate and accessible daily record of the volume of material taken, the site of extraction and the date it was taken. All quantities are to be based on loose measure and rounded to the nearest cubic metre. Such records are to be provided monthly to the HB Regional Council on the Statutory Declaration forms provided.

Condition 27

Extraction shall be carried out in accordance with the Ngaruroro River Ecological Management and Enhancement Plan. Specific rules apply to commercial extraction activities at new or recently inactive extraction sites, to protect breeding riverbed birds, including the following:

f) Before any mechanical extraction works being carried out in the river reaches, an inspection of the proposed area of works by a suitably qualified ecologist is required within ten working days prior to any works being carried out, in the following areas;

i. Between Chesterhope Road Bridge (NG15) and Fernhill Road Bridge (NG38) during the period 1st September to 27th February, or;

ii. between Fernhill Road Bridge (NG38) and the downstream boundary of the Black-Billed Gull/South Island Oystercatcher management zone (NG57) during the period 1st August and the 27th February.

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|--------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| a) I. | | | | | | | | | | | | |
| a) II. | | | | | | | | | | | | |

g) During the period 1st August to 27th February inclusive, no extraction or associated activities shall be carried out within the "Black-Billed Gull/South Island Oystercatcher management zone".

h) A suitably qualified ecologist will prepare a written report that identifies all the located bird breeding or nesting sites and provide copies of that report to the HBRC and the extraction operator.

i) Any person carrying out physical works in the area should be informed of any bird breeding or nesting site locations.

j) No physical works or machinery movements should be undertaken within 50m for banded dotterel and 75m for all other shorebirds which are nesting or rearing their young in the bed of the river.

k) Where gravel work ceases for more than 10 days, the site will be re-inspected for bird breeding or nesting sites in accordance with 'a' to 'f' above.

- v) On the 20/01/22 Luke Davies from the Hawkes Bay Regional council gave a direction to Russell Roads Ltd to cease their gravel extraction from the Ngaruroro River Maraekakaho due to not meeting the conditions of their consent.

Russell Roads Ltd had not sort a bird survey prior to recommencing Gravel extraction after a break of 10 days or more.

Later on the 20th January 2022 an email was received from "Robbie"(Robert Gale – Director) at Russell Roads by Hawkes Bay Regional Council Staff stating the following:

Luke

I wanted to put my conversation into an email so there is no confusion about our river extraction at Maraekakaho

You were given 1 months notice prior to returning to site regarding the bird survey.

You phoned me back and confirmed that you would survey our site with other contractors as they were already booked in and there was plenty of time.

You have tried to shut our operation down without any consultation and this is not the behaviour of a collaborative approach.

We have been extracting on site since late December and are in The same location.

Please deal with Stu and Rowan about this, I have instructed the river operation to carry on as there are contractors there at a cost of \$10,000 a day and I am not paying these costs if you have forgotten my approval

Regards

Robbie

- vi) The email was sent to a number of staff including the Hawkes Bay Regional Council (HBRC) Staff member responsible for the monitoring of Gravel Extraction Consents, Luke Davis.

According to Luke Davis no start date has ever been given to him around the recommencing of Gravel Extraction by Russell Roads. He has no recollection of any call made to him by "Robbie" to arrange for a Bird Survey as per clause K under condition 27 of Russell Roads Gravel Extraction as listed above.

- vii) Russell Roads is in breach of its Resource Consent for failing to submit a gravel return for the month of December and for failing to arrange a bird Survey prior to recommencing extraction activity after a 10 day break or more – conditions 7 and 27
- viii) Russell Roads has stated in writing that it is going to continue to breach the conditions of its Resource Consent despite being told to cease operations by Luke Davis from the Hawkes Bay Regional Council in person on the 20/01/22.
- ix) Russell Roads has stated in their email that they are going to continue extracting regardless of the bird survey not being done due to the cost of the machinery placed on the river.
- x) The following are the occupier of the property.
- Russell Roads
- xi) The following are the company responsible for the Gravel Extraction associated with the activity on the property: Russell Roads

xii) In the opinion of the enforcement officer the Gravel Extraction at the property was contrary to section 13(1)(b) of the Resource Management Act 1991 in that the extraction has been undertaken in breach of your resource consent.

xiii) In the opinion of the enforcement officer the actions required in part 1 of this abatement notice are necessary to prevent further contraventions of section 13(1)(b) of the Act.

6. If you do not comply with this notice, you may be prosecuted under section 338 of the Resource Management Act 1991 (unless you appeal and the notice is stayed as explained below).

7. You have the right to appeal to the Environment Court against the whole or any part of this notice. If you wish to appeal, you must lodge a notice of appeal in form 49 with the Environment Court within 15 working days of being served with this notice.

An appeal does not automatically stay the notice and so you must continue to comply with it unless you also apply for a stay from an Environment Judge under section 325(3A) of the Resource Management Act 1991 (see form 50). To obtain a stay, you must lodge both an appeal and a stay with the Environment Court.

(Form 49 and 50 are contained in the Resource Management (Forms, Fees and Procedure) Regulations 2003).

8. You also have the right to apply in writing to the Hawke's Bay Regional Council to change or cancel this notice in accordance with section 325A of the Resource Management Act 1991.

9. Hawke's Bay Regional Council authorised the enforcement officer who issued this notice. Its address is:

Private Bag 6006
159 Dalton Street
Napier

10. The enforcement officer is acting under the following authorisation:

The officer has been appointed under Section 38(1)(a) of the Resource Management Act 1991 (RMA) by the Principal Officer of the Hawke's Bay Regional Council as an enforcement officer to exercise functions and powers under the RMA, as detailed below, within the Hawke's Bay Region:

- S. 22 Duty to give certain information
- S. 322 Serve an abatement notice
- S. 327 Issue and effect of excessive noise direction
- S. 328 Compliance with an excessive noise direction
- S. 332 Power of entry for inspection
- S. 333 Power of entry for survey
- S. 343(c) Issue an infringement notice

Signature of enforcement officer

MIKE SIGNAL
TEAM LEADER POLLUTION RESPONSE AND ENFORCEMENT

Date: 21/01/2022

INFRINGEMENT NOTICE

Issued under Section 343C(3) - Resource Management Act 1991

Date: 19 July 2022

Notice Number: R0187

Enforcement Authority: Hastings District Council
 207 Lyndon Road East
 Hastings 4122

Enforcement Officer: Scott Cuttriss

To

| | | |
|------------|----------------|-----------|
| First Name | Middle Name(s) | Last Name |
| Robert | William | Gale |

| | |
|---|----------------|
| Postal Address: C/- 14 Senamor Place, Frimley | |
| Hastings | Postcode: 4102 |
| Other identifying details if known (e.g. date of birth): 15 th of September 1983 | |

You are alleged to have committed an infringement offence against the Resource Management Act 1991 as follows:

Details of Alleged Infringement Offence

| | | | |
|--|--|-------------------|---------|
| Section of Resource Management Act 1991 contravened: | Section 9(3), being an offence under section 338(1)(a) of the Resource Management Act 1991 | | |
| Nature of infringement: | Failing to comply with Condition 19,20 & 21 of RMA20210119. • Landscape planting not completed/maintained (Condition 19,20) • Stockpiling outside of designated area. (Condition 21) | | |
| Location: | Kereru Road MARAEKAKAHO HAWKES BAY 4171 | | |
| Legal Description: | 4 DP 463659 CT 614100 | | |
| Date: | Monday 11 th of July 2022 | Approximate time: | Ongoing |


| | |
|---|---------------|
| THE FEE FOR THIS INFRINGEMENT IS | \$ 300 |
|---|---------------|

Payment of Infringement Fee

| | |
|--|---------------------------------|
| The infringement fee is payable to the enforcement authority within 28 days after the date of service of notice which was: | 19 th of July 2022 |
| Payment is due by: | 16 th of August 2022 |

The infringement fee is payable to the enforcement authority at the address stated under enforcement authority contact details above.

Payments by cheque should be crossed "Not Transferable".

Signed: 
 Signature of Enforcement Officer

Service Details

(To be provided for filing in court)

Infringement Notice served by
 Registered Mail & emailed on 19th of July 2022.

IMPORTANT

Please read summary of rights printed overleaf

Summary of rights

Note: If, after reading this summary, you do not understand anything in it, you should consult a lawyer immediately

Payment

- 1 If you pay the infringement fee within 28 days after the service of this notice, no further action will be taken against you in respect of this infringement offence. Payments should be made to the enforcement authority at the address shown on the front of this notice.

Note: If, under section 21(3A) or (3C)(a) of the Summary Proceedings Act 1957, you enter or have entered into a time to pay arrangement with an informant in respect of an infringement fee payable by you, paragraphs 3 and 4 below do not apply and you are not entitled either to request a hearing to deny liability or to ask the court to consider any submissions (as to penalty or otherwise) in respect of the infringement.

Further action

- 2 If you wish to raise any matter relating to circumstances of the alleged offence, you should do so by writing a letter and delivering it to the enforcement authority at the address shown on the front of this notice within 28 days after the service of a reminder notice in respect of the offence.
- 3 If you deny liability and wish to request a hearing in the District Court in respect of the alleged offence, you must, within 28 days after the service of a reminder notice in respect of the offence, deliver to the enforcement authority at the address shown on the front page of this notice a letter requesting a court hearing in respect of the offence. The enforcement authority will then, if it decides to commence court proceedings in respect of the offence, serve you with a notice of hearing setting out the place and time at which the matter will be heard by the court.
- Note:** If the court finds you guilty of the offence, costs will be imposed in addition to any penalty.
- 4 If you admit liability in respect of the alleged offence but wish to have the court consider submissions as to penalty or otherwise, you must, within 28 days after the service of a reminder notice in respect of the offence, deliver to the enforcement authority at the address shown on the front page of this notice a letter requesting a hearing in respect of the offence **and** in the same letter admit liability in respect of the offence **and** set out the submissions that you would wish to be considered by the court. The enforcement authority will then, if it decides to commence court proceedings in respect of the offence, file your letter with the court. There is no provision for an oral hearing before the court if you follow this course of action.
- Note:** Costs will be imposed in addition to any penalty.

Non-payment of fee

- 5 If you do not pay the infringement fee and do not deliver a letter requesting a hearing within 28 days after the service of this notice, you will be served with a reminder notice (unless the enforcement authority decides otherwise).
- 6 If you do not pay the infringement fee and do not deliver a letter requesting a hearing in respect of the alleged infringement offence within 28 days after the service of the reminder notice, you will become liable to pay **costs in addition to the infringement fee** (unless the enforcement authority decides not to commence court proceedings against you).

Defence

- 7 You will have a complete defence against proceedings relating to the alleged offence if the infringement fee is paid to the enforcement authority at the address shown on the front page of this notice within 28 days after the service of a reminder notice in respect of the offence. Late payment or payment made to any other address will not constitute a defence to proceedings in respect of the alleged offence.
- 8 (1) This paragraph describes a defence additional to the one described in paragraph 7. This defence is available if you are charged with an infringement offence against any of sections 9, 12, 13, 14, and 15 of the Resource Management Act 1991.
- (2) You must prove either of the following to have the defence:
- (a) that—
- (i) the action or event to which the infringement notice relates was necessary for the purposes of saving or protecting life or health, or preventing serious damage to property, or avoiding an actual or likely adverse effect on the environment; and
- (ii) your conduct was reasonable in the circumstances; and
- (iii) you adequately mitigated or remedied the effects of the action or event after it occurred; or
- (b) that—
- (i) the action or event to which the infringement notice relates was due to an event beyond your control, including natural disaster, mechanical failure, or sabotage; and
- (ii) you could not reasonably have foreseen or provided against the action or event; and
- (iii) you adequately mitigated or remedied the effects of the action or event after it occurred.
- (3) Subparagraph (2) does not apply unless—
- (a) you deliver a written notice to the enforcement agency; and
- (b) in the notice, you—
- (i) state that you intend to rely on subparagraph (2)(a) or (b); and
- (ii) specify the facts that support your reliance on subparagraph (2)(a) or (b); and
- (c) you deliver the notice—
- (i) within 7 days after you receive the infringement notice; or
- (ii) within a longer period allowed by a District Court.
- (4) If you do not comply with subparagraph (3), you may ask the District Court to give you leave to rely on subparagraph (2)(a) or (b).
- 8A (1) This paragraph describes a defence additional to those described in paragraphs 7 and 8. This defence is available if—
- (a) you are—
- (i) a principal; or
- (ii) an employer; or
- (iii) the owner of a ship; and
- (b) you may be liable for an offence alleged to have been committed by—
- (i) your agent; or
- (ii) your employee; or
- (iii) the person in charge of your ship.
- (2) If you are a natural person, including a partner in a firm, you must prove either of the following to have the defence:
- (a) that you—
- (i) did not know, and could not reasonably be expected to have known, that the offence was to be, or was being, committed; and
- (ii) took all reasonable steps to remedy any effects of the act or omission giving rise to the offence; or
- (b) that you took all reasonable steps to—
- (i) prevent the commission of the offence; and
- (ii) remedy any effects of the act or omission giving rise to the offence.
- (3) If you are not a natural person (for example, you are a body corporate), you must prove either of the following to have the defence:
- (a) that—
- (i) neither the directors (if any) nor any person involved in your management knew, or could reasonably be expected to have known, that the offence was to be, or was being, committed; and
- (ii) you took all reasonable steps to remedy any effects of the act or omission giving rise to the offence; or
- (b) that you took all reasonable steps to—
- (i) prevent the commission of the offence; and
- (ii) remedy any effects of the act or omission giving rise to the offence.
- 8B (1) This paragraph describes a defence additional to the defences described in paragraphs 7, 8, and 8A. This defence is available if you are charged with an infringement offence against section 15A(1)(a) of the Resource Management Act 1991 (relating to dumping waste or other matter in the coastal marine area from a ship, aircraft, or offshore installation).
- (2) In order to have the defence, you must prove all of the following in relation to the act or omission that is alleged to constitute the offence:
- (a) that the act or omission was necessary—
- (i) to save or prevent danger to human life; or
- (ii) to avert a serious threat to any ship, aircraft, or offshore installation; or
- (iii) in the case of *force majeure* caused by stress of weather, to secure the safety of any ship, aircraft, or offshore installation; and
- (b) that the act or omission was a reasonable step to take in all the circumstances; and
- (c) that the act or omission was likely to result in less damage than would otherwise have occurred; and
- (d) that the act or omission was taken or omitted in such a way that the likelihood of damage to human or marine life was minimised.
- 8C (1) This paragraph describes a defence additional to the defences described in paragraphs 7, 8, 8A, and 8B. This defence is available if you are charged with an infringement offence against section 15B(1) or (2) of the Resource Management Act 1991 (relating to certain discharges of a harmful substance, a contaminant, or water in the coastal marine area from a ship or offshore installation).
- (2) You must prove either of the following to have the defence:
- (a) that the harmful substance, contaminant, or water was discharged for the purpose of securing the safety of a ship or an offshore installation, or for the purpose of saving life and that the discharge was a reasonable step to effect that purpose; or
- (b) that the harmful substance, contaminant, or water escaped as a consequence of damage to a ship or its equipment or to an offshore installation or its equipment, and—
- (i) such damage occurred without your negligence or deliberate act; and
- (ii) as soon as practicable after that damage occurred, all reasonable steps were taken to prevent the escape of the harmful substance, contaminant, or water or, if any such escape could not be prevented, to minimise any escape.

Queries/correspondence

- 9 When writing or making payment of an infringement fee, please indicate—
- (a) the date of the infringement offence; **and**
- (b) the infringement notice number; **and**
- (c) the identifying number of each alleged offence and the course of action you are taking in respect of it (if this notice sets out more than 1 offence and you are not paying all the infringement fees for all the alleged offences); **and**
- (d) Your full address for replies (if you are not paying all the infringement fees for all the alleged offences).

Full details of your rights and obligations are set out in sections 340 to 343D of the Resource Management Act 1991 and section 21 of the Summary Proceedings Act 1957.

Note: All payments, all queries, and all correspondence regarding this infringement must be directed to the enforcement authority at the address shown.

If calling ask for Scott Cuttriss

File Ref 103419#001#0091

14 July 2022

Robbie Gale
Russell Roads Ltd
14 Senamor Place
Frimley
Hastings -

Dear Mr Gale

Infringement Notice R0187

Please find enclosed an infringement notice issued under section 343C of the Resource Management Act 1991. The amount of the infringement fee is \$300.

The infringement notice has been issued for:

Failing to comply with Condition 19,20 & 21 of RMA20210119.

- Landscape planting not completed/maintained (Condition 19,20)
- Stockpiling outside of designated area. (Condition 21)

Payment for the attached infringement notice is due by 16TH of August 2022 .

If you have any queries please contact the undersigned via the details provided below.

Yours sincerely



Scott Cuttriss
Enforcement Officer
s 9(2)(a)