

Abatement Notice



Section 324
Resource Management Act 1991

TO: **CUT 2 FL Limited**
c/o KPMG
247 Cameron Road
Tauranga 3110

1. Western Bay of Plenty District Council gives notice that you must cease the following action:

Contravening condition 12 of resource consent P/1247/6/2 (which was issued on 12 March 2004 and varied on 7 December 2005).

2. The location to which this abatement notice applies is:

The property at Te Puna Station Road, Te Puna with the legal description Lot 1 Deposited Plan 317426 (as shown in the aerial photograph attached at Appendix 1).

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

By 31 May 2022 and continue to comply with this notice thereafter.

4. This notice imposes the following further conditions:

Western Bay of Plenty District Council (**Council**) compliance officers will, from time to time, undertake inspections to check whether you are complying with this abatement notice.

5. This notice is issued under:

Section 322(1)(a)(i) of the Resource Management Act 1991 (the **RMA**).

6. The reasons for this notice are:

Background

CUT 2 FL Limited (**CFL**) is the registered owner of the property at Te Puna Station Road, Te Puna, which has the legal description Lot 1 Deposited Plan 317426 (the **property**).

The property is identified in the maps of the Western Bay of Plenty District Plan (the **District Plan**) as being in a rural zone.

The property is currently used by Jason Mather Construction Limited (**JMC**) for storing and servicing earthmoving machinery. Jason Mather is the sole director of both CFL and JMC.

In 2003 V Boothby Contractors Limited (which was the owner of the property at that time) applied for a resource consent to establish and operate a general contractors depot at the property (as a non-complying activity). That application was granted by the Council on 12 March 2004 and a land use consent was issued to V Boothby Contractors Limited with the reference number P/1247/6/2 (the **consent**). The consent was issued subject to a number of conditions, including condition 12 which provided as follows:

- That the depot shall be limited and not be used for more than those items specified below:
- 5 trucks
 - 3 diggers/excavators
 - 1 bulldozer
 - 1 roller
 - 1 loader

The consent holder later applied for a variation to the consent. The application was granted on 7 December 2005 and included varying condition 12 to provide as follows:

That the depot shall be limited to a maximum of 10 items of machinery.

On 27 June 2012 JMC applied to vary condition 12 of the consent further, to allow for 40 machines to be stored at the property. However, the variation application was not granted because JMC failed to provide the information requested by the Council in August 2012 in relation to the application.

Contravention of consent

On 21 January 2022 I, Mark Keaney, a Western Bay of Plenty District Council (**Council**) enforcement officer, carried out a compliance inspection at the property. During that inspection I observed that there were at least 30 machines stored at the property. Some of the photographs I took of these machines at the property on 21 January 2022 are at Appendix 2 of this notice.

Given that the consent specifies a maximum number of 10 items of machinery at the Property and I found more than 30 machines there on 21 January 2022, I have reasonable grounds to believe, and am of the opinion, that CFL (as the owner of the Property), JMC (as the occupier of the Property) and Jason Mather (as the sole director of those companies) are contravening consent condition 12.

IMPORTANT NOTES – PLEASE READ

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).

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.

You also have the right to apply in writing to Western Bay of Plenty District Council to change or cancel this notice in accordance with section 325A of the Resource Management Act 1991.

Western Bay of Plenty authorised the enforcement officer who issued this notice. Its address is:

**Western Bay of Plenty District Council, Barks Corner, Cameron Road, Tauranga
Private Bag 12803, Tauranga; Telephone: (07) 571 8008**

The enforcement officer is acting under the following authorisation:

A warrant issued on 20 May 2018 by Western Bay of Plenty District Council pursuant to section 38 of the Resource Management Act 1991.


Signature of enforcement officer – Mark Keaney

Date: 13 April 2022

Appendix 1 – The property (Lot 1 Deposited Plan 317426)



Appendix 2 – Photographs of machinery at the property on 21 January 2022





