

RESOURCE MANAGEMENT ACT: DON'T CONVICT YOURSELF

**Ali Undorf-Lay and Matt Harcombe, Federated Farmers
FEDERATED FARMERS OF NEW ZEALAND INC.**

The council rings you because someone has complained, or your annual resource consent check finds a problem – what should you do?

Always consider that a complaint and an investigation may lead to prosecution – there is no such thing as a ‘casual chat’. The key to keeping yourself safe is to think carefully before you talk and try and buy time. If you are being investigated, regardless of how minor the complaint, make sure you are prepared.

There is a small window to make things better

If something has gone wrong, do not panic. Walk around the site and identify if there are any noticeable adverse effects. Take immediate action to try to fix the obvious effects. Respond in ways that show you are responsible and genuine, but take care about accepting liability. How you react becomes a crucial factor in what penalty (if any) a council or court may determine. A Council has six months to take action once it hears a complaint.

Know your facts

What the complaint is

Which rule you allegedly breached

Why the council thinks that you have breached the rule

What evidence they have to prove it.

Often councils are reluctant to provide you with this information, but you need to know at least as much as they do before you agree to meet with them. If the allegation stems from a complaint, they may be reluctant to tell you the name of the person who complained. Often complaints arise from other disputes.

The ‘golden rule’ is: **do not panic – negotiate time.** Do not agree to meet immediately. You will need time to prepare your response, inform your insurance company or lawyer (if you feel the situation could get tricky) and get some advice from people like FFNZ staff. Never respond under pressure and do not show/tell more than you absolutely have to. Quick responses are seldom strategic responses.

Before the interview

Prepare by making some notes about what happened and take some photographs (before and after). Do not show these to the council.

Ask for a list of questions in writing prior to a meeting so you can give considered and informed answers rather than on the spot responses. If you can, respond in writing.

When possible, meet on neutral grounds and have someone with you in support to stop you saying things you could later regret.

Remember enforcement staff have been trained on how to conduct interviews so that events and things you may discuss can be used against you later and, if necessary, in court.

Always ask that the meeting be recorded in writing and that you receive a copy of the minutes.

What action can the council take against me?

1. Up to \$3000 for minor breach 'on the spot fines'. While this may be quick and easy for you, remember if you pay you are admitting liability. Agreeing to pay may complicate any insurance claim – refusal to pay will bump the issue to the Environment Court. We advise you to discuss the situation with your insurance company.
2. Abatement Notices and Enforcement Orders through the Environment Court will force you to stop the action immediately, repair any environmental damage, and probably carry a hefty fine.

In an RMA prosecution (sections 9-15, excluding 10), if you want to plead not-guilty you have seven days to give notice of your intention to argue your case; your defence is limited to actions that were necessary to save life or prevent serious damage to property or the environment, there are also limited arguments when there has been serious mechanical failure or an adverse event. Not knowing a rule can not be offered in defence, nor does a council need to prove that you intended to commit the offence. The *'cards are stacked against you'* and the consequences are serious. An RMA conviction is a criminal prosecution – which you carry for the rest of your life.

Keep copies and records of everything you send and receive from the council. Be polite but always think twice and seek advice before you agree to any liability.