

ON THE ROAD TO PROSPERITY – DON'T TAKE THE SHORTCUT TO RMA PROSECUTION



AMANDA DOUGLAS
Partner
Wynn Williams & Co

RMA PROSECUTIONS



Developer



Contractor



Sub-Contractor



Engineer



RMA PROSECUTIONS



EG: Sediment discharge

Project



EG: Unauthorised waterway works



RMA PROSECUTIONS

- OFFENCES UNDER THE RMA
- PENALTIES
- WHO CAN BE PROSECUTED
- DEFENCES
- EXAMPLES
- WHAT CAN YOU DO?



OFFENCES

- S 338
- CONTRAVENE / PERMIT CONTRAVENTION OF...



OFFENCES

- S 338
- CONTRAVENE / PERMIT CONTRAVENTION OF
 - SECTION 9 – use land contrary to district/ regional plan
 - SECTION 11 – subdivide land not allowed by r.c. / district plan
 - SECTION 12 – using CMA if not allowed by regional plan
 - SECTION 13 – using bed of lake/river not allowed by regional plan
 - SECTION 14 – taking water not allowed by regional plan
 - SECTION 15 – discharge contaminants to water not allowed by regional plan



OFFENCES

- CONTRAVENE / PERMIT CONTRAVENTION OF
 - ENFORCEMENT ORDERS
 - ABATEMENT NOTICE
 - WATER SHORTAGE DIRECTION – S329
 - SECTION 15A OR 15C



OFFENCES

- ELEMENTS OF PROOF:
 - STRICT LIABILITY
 - ACT / OMISSION IS SUFFICIENT
 - NO INTENT NECESSARY



PENALTIES

- INDIVIDUALS
 - 2 YR PRISON / \$300,000 FINE
- NON-NATURAL PERSONS
 - \$600,000 FINE
- CONTINUING OFFENCES:
 - \$10,000 PER DAY
- COMMUNITY WORK
- REPAYMENT OF EXPENSES
- CONSENT REVIEW



WHO CAN BE PROSECUTED

- PERSON DIRECTLY COMMITTING OFFENCE
- PRINCIPAL RESPONSIBLE FOR ACTIONS OF AGENT
 - CONTRACTOR
 - EMPLOYEE
 - AS IF COMMITTED IT PERSONALLY
- DIRECTOR / MANAGEMENT FOR COMPANY ACT
 - GAVE PERMISSION / AUTHORITY
 - KNEW / REASONABLY KNEW OFFENCE COMMITTED & FAILED TO PREVENT



ENGINEERS

- COMMITTING OFFENCE DIRECTLY
- PERMITTING SOMEONE ELSE TO COMMIT OFFENCE
- AGENT COMMITS OFFENCE
- EMPLOYEE COMMITS OFFENCE
- DIRECTOR/MANAGEMENT OF ENTITY COMMITTING OFFENCE



DEFENCES



- ONLY LIMITED OFFENCES UNDER RMA
- SECTION 341(2)
 - NECESSARY TO SAVE/PROTECT LIFE/ SAFETY
 - REASONABLE IN CIRCUMSTANCES
 - EFFECTS OF ACTION MITIGATED AFTERWARDS
- SECTION 341(2)(b) – EVENT BEYOND CONTROL OF DEFENDANT
 - COULD NOT REASONABLE BE FORESEEN
 - EFFECTS ADEQUATELY MITIGATED AFTERWARDS
- SHORT NOTICE PERIOD
- DIFFICULT TO QUALIFY

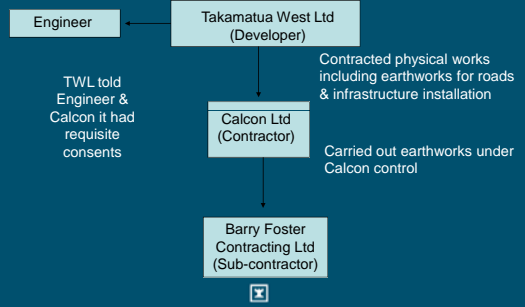


EXAMPLES: TAKAMATUA WEST

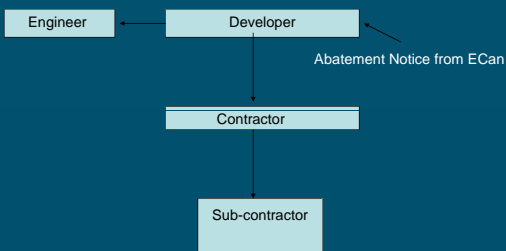
- CANTERBURY REGIONAL COUNCIL v TAKAMATUA WEST LTD & TISCH & CALCON LTD



EXAMPLES – TAKAMATUA WEST



EXAMPLES – TAKAMATUA WEST

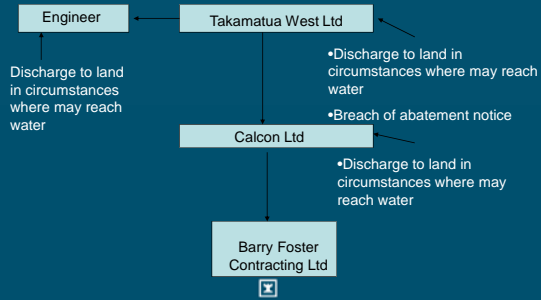


EXAMPLES: TAKAMATUA WEST

- RAINFALL EVENT – 37mm
- SEDIMENT DISCHARGE
 - 3 GULLIES
 - BAY
- PROSECUTION
 - BREACH OF ABATEMENT NOTICE
 - BREACH OF RMA



PROSECUTION



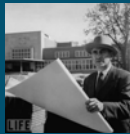
RMA PROVISIONS

- Section 338: Commit offence if contravene, or permit a contravention of, any of the following:
 - Section 15(1)(b)
 - An abatement notice:
- Section 15(1)(b)
 - person may discharge contaminants onto land in circumstances where it may enter water
 - Absolute statement
 - Entry to water not necessary



DEVELOPER

- IN CONTROL OF SITE
- RESPONSIBLE FOR CONSENTS
- ATTITUDE
- AWARE OF SOIL STORAGE
- \$10,000 FINE, \$10,000 TO RESIDENTS, \$2000 INVESTIGATION COSTS (DISCHARGE)
- \$20,000 FINE (ABATEMENT NOTICE)



MAIN CONTRACTOR

- RELIED ON SUBDIVIDER HAVING CONSENTS
- UNAWARE OF ONGOING DISPUTE WITH REGIONAL COUNCIL
- SOIL STORAGE ON SITE
- \$10,000 FINE, \$6000 TO RESIDENTS, \$2000 INVESTIGATION COSTS



ENGINEER



- AWARE OF CONSENT ISSUES
- SHOULD HAVE KNOWN SOIL STORAGE = DIFFICULT TO CONTROL DISCHARGE
- DISCHARGE WITHOUT CONVICTION (LUCKY!)
- \$10,000 TO RESIDENTS, \$6,000 INVESTIGATION COSTS



“MORAL” OF EXAMPLE

- ENGINEERS ARE RESPONSIBLE
- NEED TO KNOW ABOUT CONSENTS
- OTHER EXAMPLES IN PAPER



WHAT CAN YOU DO?

- INQUIRE INTO CONSENTS / COC:
 - REQUIRED?
 - OBTAINED?
 - CONDITIONS?
 - FOR ALL WORKS?
- DON'T RELY ON OTHERS
- CHECK COMPLIANCE THROUGH PROJECT
 - IF ISSUES – STOP AND GET COMPLIANT



- REMEMBER: PROFESSIONAL RAMIFICATIONS!!



OTHER KINDS OF LIABILITY

- NEGLIGENCE
 - DUTY OF CARE
 - BREACH OF DUTY
 - CAUSATION
 - LOSS



CONCLUSION

