



Ministry for the
Environment
Manatū Mō Te Taiao

**A Study into
the use of Prosecutions
under the
Resource Management Act 1991**

1 May 2005–30 June 2008

Based on a report by Karenza de Silva, Environmental Lawyer

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Section 1: Executive Summary

This report relates to the judgments and sentencing outcomes of 260 prosecutions during the period 1 May 2005 to 30 June 2008 (the 'third period') under the Resource Management Act 1991 (RMA). This third period comprises three years and two months.

This report compares the analyses of prosecutions undertaken during the third period with analyses of prosecutions undertaken during the period 1 July 2001 to 30 April 2005 (the 'second period') and 1 October 1991 to 30 June 2001 (the 'first period').

Table 1: Analyses of prosecutions

	First period	Second period	Third period
Timeframe	October 1991–30 June 2001 (9 years, 8 months)	1 July 2001–30 April 2005 (3 years, 10 months)	1 May 2005–30 June 2008 (3 years, 2 months)
Number of prosecutions analysed	375 prosecutions	171 prosecutions	260 prosecutions
Average number of prosecutions per year	39	45	82

Activity category

The largest general RMA activity category of prosecutions in the third period was 42% for discharge of contaminants into water either directly or indirectly under section 15(1)(a) and 15(1)(b) of the RMA. In both the first and second periods, this was also the largest general category of prosecutions, 47% for the first period and 43% for the second period.

Table 2: Largest activity category

	First period	Second period	Third period
Discharge to water, or onto land where may enter water	47%	43%	42%

Sector

The largest sector of prosecutions in the third period was agriculture at 43% (110) and the second largest sector was commercial 36% (94). In the second period, the largest sector of prosecutions was agriculture at 37% (64) and the second largest sector was commercial at 31% (53). For the first period, commercial was the largest sector at 41%, the second largest sector was industrial at 22% and agriculture was third at 18%.

In both the second and third periods, 43% of the 30 highest fines were imposed in the commercial sector. In the first period, 74% of the 30 highest fines were imposed in the commercial sector.

Table 3: Largest sector of prosecutions

	First period	Second period	Third period
All prosecutions within period	Commercial sector 41%	Agriculture sector 37%	Agriculture sector 43%
Highest 30 fines within period	Commercial sector 74%	Commercial sector 43%	Commercial sector 43%

Prosecuting bodies

For all three periods, regional councils undertook the majority of prosecutions. In the third period, Waikato undertook 17.4% of prosecutions (45), Canterbury and Otago each undertook 9.7% (25), Southland undertook 7.7% (20) and Auckland undertook 2.7% (7). For the second period, Auckland, Waikato and Southland undertook 43% of prosecutions (60) whereas for the first period the same councils undertook 49% of all prosecutions (184).

Table 4: Prosecuting bodies that have undertaken the majority of prosecutions

	First period	Second period	Third period
All prosecutions within period	Auckland, Waikato and Southland regional councils 49%	Auckland, Waikato and Southland regional councils 43%	Auckland, Waikato and Southland regional councils 27.8%

Outcome of prosecutions

Table 5: Outcome of prosecutions

Outcome	First period	Second period	Third period
Prosecutions where a guilty plea was entered	80%	82%	91%
Convictions were obtained against the defendant	87%	90%	93%
Defendants who were convicted and discharged	14	4	6
Defendants who were discharged without conviction	None	5	16 ¹
Prosecutions that were dismissed	None	6	2
Defendants who received suspended sentences	2	2	1
Prosecutions where an enforcement order was made	36	21	38
Sentences where imprisonment was imposed	None	2	2
Sentences where periodic detention/community work was imposed	11	4	12
Highest fine imposed	\$50,000	\$55,000	\$86,500
Average individual fine imposed	\$4,400	\$5,631	\$7,221
Average total fine imposed	\$6,500	\$8,167	\$12,463 ²

¹ Details of the 14 cases in which the Court discharged defendants without conviction are listed in Appendix 2. Sixteen defendants were discharged without conviction in the third period in these 14 cases. In one case *Canterbury Regional Council v Kerry Rush Earthmoving Ltd, Kerry Francis Rush, Ian Robin Rush, Rakanui Station Ltd and Timothy Wilding*, three of the five defendants were discharged without conviction.

Sentencing factors

Financial position of defendants

Section 40 of the Sentencing Act 2002 requires the Court to have regard to the financial position of an offender.

The study of prosecutions in the third period includes an analysis of the financial position of the defendant. This analysis was not undertaken in the first and second periods.

Table 6: Financial position of the defendant for the third period

Outcome	Highest fine imposed	Average individual fine imposed	Average total fine imposed
Defendants with a good or very good financial position	\$86,500	\$7,574	\$13,322
Defendants with a poor financial position	\$13,500	\$2,798	\$3,918

Appeals

In the third period, there were nine appeals on sentence. It was found that in two cases the fines were reduced, in one case sentences of community work were vacated and fines imposed, and in four cases the Court upheld the penalty. Further to this, in one case the Court upheld the penalty and increased the reparation and in another case, where the defendants appealed both conviction and sentence, the Court held the fine was not manifestly excessive but directed that the information should be reheard in the District Court.

In the second period there were five appeals on sentence. The outcome was that two of the sentences were reduced and three upheld by the Court. In the first period there were 18 appeals on sentence. The outcome was that 10 of the sentences were reduced and eight upheld by the Court.

Restorative justice process

In the third period, the restorative justice process was used in 13 prosecutions and in the second period it was used in six prosecutions. The restorative justice process was not available under the RMA in the first period; the opportunity to use restorative justice was made possible by the introduction of the Sentencing Act in 2002.

Restorative justice involves community-based processes to help empower victims to ask questions of the offender and where an offender can take responsibility for their offending as an alternative to fines or loss of freedom.

² The average was calculated for the third period by dividing the total number of fines (\$2,729,350) by 219 (total number of prosecutions in third period where a fine was imposed).

Section 2: Introduction

Purpose

The Ministry for the Environment commissioned this report to monitor prosecutions under the RMA. The report provides an analysis of the use, level and outcomes of prosecutions under the RMA for the period 1 May 2005 to 30 June 2008.

Scope of report

This report analyses 260 of the prosecutions undertaken during the period 1 May 2005 to 30 June 2008 (ie, cases that were heard and finalised during this period). Some of these prosecutions arose from one incident but resulted in sentences being imposed against a number of different defendants.

The report also compares the analysis of prosecutions undertaken between 1 May 2005 to 30 June 2008 with analysis of prosecutions undertaken between 1 July 2001 and 30 April 2005³ and 1 October 1991 and 30 June 2001.⁴

The report analyses the prosecutions in terms of:

- sectors and general activities
- individual local authority prosecution rates
- the outcomes of prosecutions including the number of unsuccessful prosecutions
- fine level in relation to financial position of defendants
- culpability of defendants (ie, the deliberateness of the offence)
- the use of sentencing options
- the average cost of fines
- awarding of costs
- appeals on sentences.

A number of factors influence sentencing levels. Some of these factors are considered in this report.

³ Ministry for the Environment. 2006. *A Study into the use of Prosecutions under the Resource Management Act 1991 (1 July 2001–30 June 2005)*. Wellington: Ministry for the Environment.

⁴ Ministry for the Environment. 2002. *A Study into the use of Prosecutions under the Resource Management Act 1991*. Wellington: Ministry for the Environment.

Offences and penalties

The 260 prosecutions analysed are all prosecutions for offences where the maximum penalty is a fine of \$200,000 or two years imprisonment. Prosecutions that have lower penalties have not been included as the inclusion of these could distort the main picture of prosecution activity.

Sections 338 and 339 of the RMA prescribe offences and penalties under the RMA. A more detailed description is provided in Table 7 below.

Table 7: Provisions and penalties for offences

Section	Offence Contravention of / permit a contravention of	Maximum penalty (section 339)
338(1), 338(1A) 338(1B)	Sections 9 and 11–15 which impose duties and restrictions in relation to land, subdivision, coastal marine area, beds of rivers and lakes, water, discharge of contaminants. Any enforcement order. Any abatement notice (other than a notice for unreasonable noise). Any water shortage direction. Sections 15A, 15B, 15C for discharges from ships and offshore installations.	Two years imprisonment or \$200,000 fine and \$10,000 further fine for a continuing offence ⁵ per day / part of day during which the offence continues.
338(2)	Section 22, failure to provide name and address to enforcement officer. Section 42, protection of sensitive information. Any excessive noise direction. Any abatement notice for unreasonable noise. Any order (other than an enforcement order) made by the Environment Court.	\$10,000 fine and \$1,000 further fine for continuing offence per day / part of day during which the offence continues.
338(3)	Obstruction of person in the execution of powers under the Act. Section 283 – non-attendance or refusal to co-operate with the Environment Court. Any summons or order to give evidence pursuant to s 41. Any provision specified in an instrument for creation of an esplanade strip or in an easement for access strip or entry of a strip which is closed.	\$1,500 fine
338(1), (1A), (1B) 338(2) 338(3)	As above.	Section 339(4) provides that a sentence of community service may be imposed. Section 339(5) provides that the Court instead of, or in addition to, imposing a fine or a term of imprisonment may make any or all of the orders specified in s 314 (enforcement orders).

⁵ Section 339(6): The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Act shall be deemed to be a continuing offence.

Subsection (4) of section 338 of the RMA provides that information for a prosecution may be laid up to six months from the time when the contravention first became known, or should have become known to the local authority. Subsection (1) and (2) of section 342 provides that where a local authority lays information, if there is a conviction and the court imposes a fine, the fine, less a deduction of 10% which is credited to the Crown bank account, is paid to the local authority.

Section 3: Results

Methodology

The methodology for this report involved obtaining and analysing the judgements and sentencing outcomes⁶ of 260 prosecutions under the RMA for the period from 1 May 2005 to 30 June 2008.⁷ A two-stage process was used to obtain this information. A similar process was undertaken to collect prosecution data for the first and second periods.

- The first stage involved a search on two different case law databases which located 198 prosecutions.
- The second stage was contacting 30 of the 85 local authorities⁸ to locate further prosecutions. These 30 local authorities included all regional councils, the unitary authorities and most of the territorial authorities that had prosecuted in the first and second periods. It was not practical to contact all local authorities. The second stage was undertaken because it was apparent from the search of the databases that a number of prosecutions were not recorded on these databases. The second stage located a further 62 prosecutions.

An effort has been made to obtain the judgements, sentencing notes or details of all prosecutions for the third period. However, details have not been obtained for a small number of prosecutions for various reasons which include: records have not been kept by some local authorities; or the records could not be located easily; or the local authorities contacted were too busy to find the records.

The data for this report was inputted into an Excel spreadsheet using a separate row for each defendant unless two or more defendants were related and where the Court took this into consideration when sentencing (eg, a company and the director of the company). The number of prosecutions is based on this analysis of individual prosecutions and not the actual number of decisions which is a smaller number.

⁶ Sentencing 'outcomes' are from the sentencing notes or from details provided by local authorities for cases where sentencing notes were not available or could not be located.

⁷ Prosecutions were included where they were completed within the period between 1 May 2005 to 30 June 2008. Where cases had further court proceedings they were included in the period that those further proceedings were finalised, eg, *Waimakariri District Council v Palmer* – the date of the District Court decision is 27/04/2005 but the case is included in the third period because the appeal date is 17/10/2005.

⁸ Regional councils and unitary authorities: Auckland, Bay of Plenty, Canterbury, Hawkes Bay, Manawatu-Wanganui, Northland, Otago, Southland, Waikato, Wellington, West Coast, Marlborough, Gisborne, Tasman, Nelson City, Taranaki. Territorial authorities: Auckland City, Christchurch City, Hutt City, Manukau City, Waitakere City, Wellington City, North Shore, Rodney District, Thames Coromandel, Waikato District, Waimakiriri District, Selwyn District, Invercargill City, Far North District.

Data presented by general activity and sector

This report analyses the prosecutions by general activity and by sector. The data includes both successful and unsuccessful prosecutions.

General activity

The offences are categorised based on the sections under which a conviction was entered if successful and the sections under which the prosecution was brought if unsuccessful. It is not uncommon for local authorities to lay charges under a number of different subsections of the RMA (eg, 15(1)(a) and 15(1)(b)) but the Court will often only convict on one charge for any given act/incident. In some cases prosecutions resulted in convictions for breach of a number of different sections and in these cases all the sections are identified, eg, breach of section 9(3) for illegal earthworks and breach of section 15(1)(b) for discharge of sediment to water.

The sections of the RMA that correspond to each of the general activity categories are listed in Table 8. In the third period there were no prosecutions for breach of section 11 for restrictions on the subdivision of land.

The prosecutions analysed for the three periods are all prosecutions for offences where the maximum penalty is a fine of \$200,000 or two years imprisonment. Prosecutions brought under section 338(2) and section 338(3) are minor offences and have lower maximum penalties, eg, obstruction of an enforcement officer and contravention of an excessive noise direction. The prosecutions for these minor offences have not been included in the analyses because their inclusion, could distort the main picture of prosecution activity. In the third period there were in fact no prosecutions brought under section 338(2) and section 338(3). In the first and second periods there were a few prosecutions brought under section 338(2) and section 338(3).

Table 8: Prosecutions by RMA general activity for the third period

General activity categories	RMA section	Number	Percentage
Restrictions on use of land – territorial authority	9(1)	73	25.3
Restrictions on use of land – regional council / unitary authority	9(3)	11	3.8
Restrictions on subdivision of land	11	0	0
Restrictions on use of coastal marine area	12	4	1.4
Restrictions relating to beds of lakes and rivers	13	14	4.9
Restrictions relating to water (taking, using, damning or diverting)	14	15	5.2
Discharge to water, or onto land where may enter water	15(1)(a), 15(1)(b)	121	42
Discharge to air	15(1)(c), 15(2)	18	6.3
Discharge to land from industrial or trade premises	15(1)(d)	5	1.7
Discharge from ships	15B	6	2.1
Breach of enforcement order	338(1)(b)	0	0
Breach of abatement notice	338(1)(c)	24	8
Total		291	

Note: The 'actual figures' do not add up to 260 because for some prosecutions there was more than one category as explained in the first paragraph under the heading 'General activity'.

The graph below shows the different activities of prosecutions over the third period as a percentage of the total number of prosecutions.

The largest general category of prosecutions for the third period is 42% for discharge of contaminants into water either directly or indirectly under section 15(1)(a) and section 15(1)(b) of the RMA. In both the first and second periods this was also the largest general category of prosecutions, 47% in the first period and 43% in the second period.

Sectors

Those prosecuted (defendants) have been grouped into six sectors: agricultural;⁹ industrial;¹⁰ commercial;¹¹ residential; local authority; and other.

The largest sector of prosecutions for the third period is agriculture (43%) and the second largest sector is commercial (36%). In the second period the largest sector of prosecutions was also agriculture (37%) and the second largest sector was commercial (31%). However in the first period the agriculture sector was only the third largest sector accounting for 18% of prosecutions and it was commercial that was the largest sector (41%) with industrial the second largest sector (22%).

Table 9: Prosecutions by sector

Sector	First period	Second period	Third period
Agriculture	18	64	110
Commercial	41	53	94
Industrial	22	34	20
Local authority	3	4	3
Residential	12	12	31
Other	4	1	2

⁹ The cases in the 'agriculture' sector include one case involving a consultant, *Waikato Regional Council v Ross*, 12/10/2005, Judge Bollard, DC Hamilton. The farm management consultant, Ross pleaded guilty and was convicted on a s 15(1)(a) charge for a continuing offence for a period of approximately one month. The sharemilker asked Mr Ross to provide an irrigator. Ross failed to arrange for an irrigator and was aware that milking would continue without a treatment system though he did not know that the sharemilker had pumped effluent via a pipe into a tributary. The sharemilker, Bishop, was also prosecuted; he pleaded guilty and was convicted.

¹⁰ Industrial includes factories, plants and landfills and all activities that come within the definition in the RMA of 'industrial or trade premises' and 'industrial or trade process'.

¹¹ Commercial includes contractors and consultants.

Table 10: Prosecutions by sector for third period

Sector	Numbers	Percentage
Agriculture	110	43
Commercial	94	36
Industrial	20	8
Local authority	3	1
Residential	31	12
Other	2	1
Total	260	

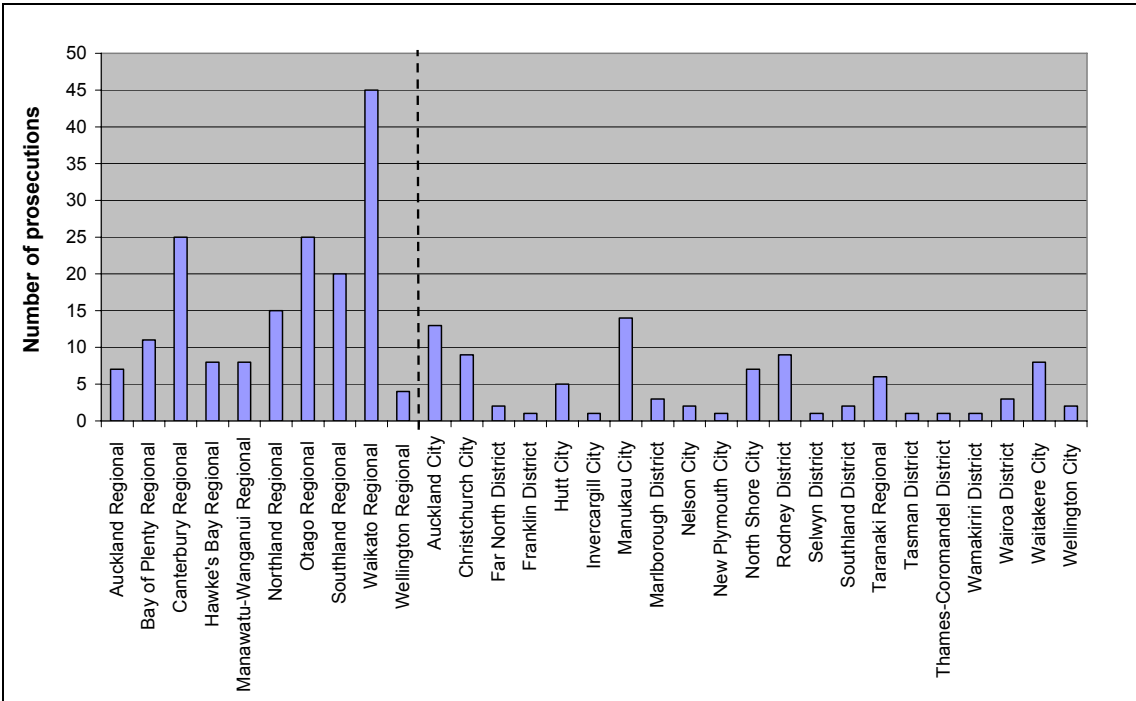
Figure 2: Prosecutions by sector for third period

Who is prosecuting?

All of the prosecutions in the third period have been brought by local authorities. The numbers of prosecutions brought by each local authority for the third period are listed in Appendix 1.

In all three periods, the regional councils have undertaken the majority of prosecutions although there has been some variation in the councils taking the most prosecutions. In the third period, Waikato brought 17.4% of prosecutions (45), Canterbury and Otago each brought 9.7% of prosecutions (25), Southland brought 7.7% of prosecutions (20) and Auckland brought 2.7% of prosecutions (7). In the second period, Auckland, Waikato and Southland brought 43% of prosecutions (60) whereas in the first period the same councils undertook 49% of all prosecutions.

Figure 1: Prosecuting bodies for third period



Outcome of prosecutions

In the third period:

- in 91% of the prosecutions a guilty plea was entered (237 cases)
- convictions were obtained against the defendants in 93% of the prosecutions (242 cases)
- six defendants were convicted and discharged
- 16 defendants were discharged without conviction
- two prosecutions were dismissed
- one defendant received a suspended sentence.

In the second period:

- in 82% of the prosecutions a guilty plea was entered (140 cases)
- convictions were obtained against the defendants in 90% of the prosecutions (154 cases)
- four defendants were convicted and discharged
- five defendants were discharged without conviction
- six prosecutions were dismissed
- two defendants received suspended sentences.

In the first period:

- in 80% of the prosecutions a guilty plea was entered (300 cases)
- convictions were obtained against the defendants in 87% of the prosecutions (326 cases)
- no defendants were convicted and discharged
- 14 defendants were discharged without conviction
- no prosecutions were dismissed
- two defendants received suspended sentences.

Table 11: Outcome of prosecutions

	First period	Second period	Third period
Guilty plea	300 (80%)	140 (82%)	237 (91%)
Convictions	326 (87%)	154 (90%)	242 (93%)
Conviction and discharge	0	4	6
Discharge without conviction	14	5	16
Prosecutions dismissed	0	6	2
Suspended sentences	2	2	1

In all three periods, the data analysed does not include any prosecutions where the charges were withdrawn because in this situation there is usually no written decision available.

In all three periods there were a number of cases where defendants were convicted and discharged where there were related defendants, eg, husband and wife or a company and its director. This has not been included in the analysis because the Court took an overall approach to sentencing, eg, *Bay of Plenty Regional Council v Kelnic Farms Ltd and Kelvin Wallace*¹²

¹² 27/09/2005, Judge Smith, DC Whakatane, CRN 05087500372 and 365.

prosecution for discharge of dairy effluent against the farm owner, Kelnic Farms Ltd and its director, Mr Wallace. Kelnic Farms Ltd was convicted and fined \$3,500 plus Council expenses of \$360 and Wallace was convicted and discharged.

Sentencing

Sentencing is the process whereby a Court arrives at an appropriate penalty for offences.

The leading case on sentencing principles under the RMA is *Machinery Movers Ltd v Auckland Regional Council*.¹³ In that case the Court noted the legislative regime under the RMA with its higher scale of penalties in comparison to the Water and Soil Conservation Act 1967 and commented:¹⁴

“In combination, these changes constitute a clear legislative direction to the Courts to ensure that higher penalties are imposed which will have a significant deterrent quality. If fines are too low, they will be regarded as a minor licence fee for offending.”

The deterrent aspect of penalty was noted in the Court of Appeal judgment in *R v Kiwi Drilling Company Ltd and Smith*¹⁵ where the Court recognised the need for a sentence which is both specifically and generally deterrent. The Court held:

“However, the nature of the offending, giving rise as it does to a real and extant risk of water pollution, coupled with Mr Smith’s attitude to the offending, calls for a sentence which is specifically deterrent as well as generally deterrent. Such a sentence must be set at a level which will create a real disincentive to him and his company to ever endanger the environment again and will also affect the attitude of the public in relation to such matters.”

The principles of sentencing endorsed in *Machinery Movers* are generally stated as:

- (a) the nature of the environment affected
- (b) the extent of the damage
- (c) the deliberateness of the offence, and
- (d) the attitude of the defendant.

In addition to these factors, when sentencing corporations convicted of environmental offences the Court should consider the following matters:

- (a) the size, wealth, nature of operations and power of the corporation
- (b) the extent of attempts to comply
- (c) remorse
- (d) profits realised by the offence
- (e) criminal record or other evidence of good character.

¹³ [1994] 1 NZLR 492.

¹⁴ At page 500.

¹⁵ (1997) 4 ELRNZ 23.

Judge McElrea in *Waitakere City Council v Gionis*¹⁶ quoted the factors from the *Machinery Movers* case and noted:¹⁷

“The only gloss that I would add is that even where the defendants are individuals or partnerships and not corporations, the second list of factors of the two lists is still relevant – with the exception of the first item (size, wealth, nature of operations and power of the corporation); instead, the more general question must be dealt with of the defendant’s ability to pay a fine having regard to their net asset and income position.”

Sentencing Act 2002

The High Court in *Selwyn Mews Ltd v Auckland City Council*¹⁸ held that the sentencing principles established in *Machinery Movers* continue to have application but must now be read in light of the provisions of the Sentencing Act 2002. The High Court noted that:

“many of the purposes of sentencing in s 7 will usually be relevant in environmental cases including holding the offender accountable for harm done; promoting a sense of responsibility for the harm; denunciation and deterrence (both personally and generally).”

In summary, the Court said that the principles under section 8 will also be relevant particularly:

- (a) Section 8(a) – Gravity of the offending and the degree of culpability involved and that will include the extent of any damage or adverse effects caused to the environment and the extent to which there was deliberate or reckless conduct.
- (b) Section 8(b), (c) and (d) – Seriousness of the offence and penalties.
- (c) Section 8(e) – Consistency in sentencing levels.
- (d) Section 8(f) – Effect on victims where applicable.
- (e) Section 8(h) and (i) – Particular circumstances of the offender.
- (f) Section 8(j) – Outcomes of restorative justice processes – entirely new principle. Not relevant to this case.
- (g) Section 8(j) and 10 are relevant where there are issues about mitigating any adverse effects on the environment such as repairing damage or clean-up work.

The High Court held that:

“aggravating and mitigating factors under s9 are to be considered. Although a number of these do not have particular relevance in environmental cases, the matters to be considered are not exclusive: s9(4).”

Under section 9(2) of the Sentencing Act 2002, an early guilty plea, remorse and good character are also relevant. These factors are principles enunciated in *Machinery Movers*.

The High Court in the *Selwyn Mews* case held that in environmental cases, fines will most often be the appropriate penalty.

¹⁶ 17/12/2002, Judge McElrea, DC Auckland, CRN 1090034293.

¹⁷ At paragraph 37.

¹⁸ High Court, Auckland, CRI-2003-404-159, 30 April 2004, Randerson J.

Financial position of defendants

Section 40 of the Sentencing Act 2002 requires the Court to have regard to the financial position of an offender.

The analysis of the prosecutions for the third period includes the financial position of the defendant. This analysis was not undertaken for the first and second periods.

In the third period, the prosecutions were divided into three categories: very good, good and poor. The category 'good' has been applied where the Court held that the defendant was in a position to pay a fine. In some cases the Court has referred to this as a 'neutral' position.

In *Auckland City Council v North Power Ltd*¹⁹ a prosecution for clearance of indigenous vegetation in contravention of section 9(1), his Honour Judge McElrea in sentencing the defendant held that:

“Section 40 of the Sentencing Act requires the Court to have regard to the financial position of an offender whether that has the result of increasing or decreasing the amount of any fine. The statute clearly envisages that fines should be fixed at a level which is both fair and meaningful to the particular defendant having regard to its particular financial position.”

In *Waikato Regional Council v Plateau Farms Ltd*,²⁰ the defendant appealed the sentence imposed in the District Court of \$35,000 for discharge of dairy effluent. The High Court dismissed the appeal. One factor considered by both the District and High Courts was the financial position of the defendant.

The High Court considered the appellant’s argument that there was disparity between the fine imposed on the sharemilker of \$500, who was in a poor financial position and the fine imposed on the appellant, a corporate dairy farm owner. The High Court held that in determining the amount of the fine, the financial capacity of the appellant is relevant:

“Corporate landowners will generally have a far greater financial capacity than sharemilkers. Such factors are plainly relevant in ensuring any fine is meaningful. If a fine is to provide a real deterrence, consistent with the principles of accountability, promoting a sense of responsibility and deterrence as set out in s 7(1) of the Sentencing Act, this may require the Court to make a significant distinction between defendants depending on their particular circumstances. When all relevant circumstances are considered, a disparity may be appropriate and justified. There is a risk that, if the Court did not make an appropriate distinction, either sharemilkers would be financially crippled by heavy fines, or corporate landowners would view fines as a modest tax for environmental pollution.”

¹⁹ 27/05/04, Judge McElrea, DC Auckland, CRN 3004510188 and 0191.

²⁰ 25/01/2007, Judge Thompson, DC Rotorua, CRI – 2005-069-2345. Appeal – 17/09/07, Stevens J, HC Rotorua, CRI2007-463-000016.

Table 12: Financial position of defendants in the third period

Outcome	Highest fine imposed	Average single fine imposed	Average total fine imposed
Defendants with a good or very good financial position	\$86,500	\$7,574	\$13,322
Defendants with a poor financial position	\$13,500	\$2,798	\$3,918

Table 13: Financial position of defendants in each sector

Sector	Very good	Good	Poor
Agriculture	3	95	12
Commercial	0	77	16
Industrial	5	14	1
Local authority	0	3	0
Residential	0	23	7
Other	0	2	0

Culpability

The deliberateness of the offence is one of the sentencing factors identified in the *Machinery Movers* case.

The analysis of the prosecutions in the third period includes the Court's assessment of the culpability of the defendant. This analysis was not undertaken for the first and second periods.

The prosecutions were divided into seven categories as set out in Table 14. In cases where there is more than one defendant, the Court often apportions responsibility. In some cases assessment of culpability for each defendant is quite different. One example is *Rodney District Council v Turley Earthmoving Ltd & Brown*,²¹ a prosecution for a cleanfill activity in breach of section 9(1). The earthworks contractor, Turley Earthmoving, was instructed by the property owner, Christopher Brown, to deposit fill on Brown's property. Brown's land and also his neighbour's land was damaged because the work was done without proper engineering works. Judge McElrea held that culpability of Turley Earthmoving was at the top end of scale and was "serious environmental offending of a deliberate nature on a grand scale". Turley Earthmoving was fined \$35,000 and ordered to pay costs of \$15,000 to Council for a report on the earthworks and reparation of \$40,000 to Brown and to a neighbour. The Court held that Brown had no expertise in earthmoving and was reliant on Turley Earthmoving and had been misled by its Director. Brown was fined \$7,500 and ordered to pay costs of \$1,380.

²¹ 25/10/2007, Judge McElrea, DC Auckland, CRI-2007-004-018443. See Appendix 3 for more details.

Table 14: Culpability of prosecutions for the third period

	Agriculture	Commercial	Industrial	Local authority	Residential	Percentages
Deliberate	29	30	2	–	10	28
Element of deliberateness	26	30	3	1	6	26
High level of carelessness/negligence	8	9	1	–	5	9
Lowest end of scale of deliberateness	1	1	2	–	1	1
Careless	21	14	7	–	4	19
Accidental	17	3	4	–	2	10
No finding	6	6	1	2	2	7

Penalties other than fine

In addition to or instead of imposing a fine or term of imprisonment, the Court can make an enforcement order, a sentence of community service or periodic detention.²²

Table 15: Penalties other than fine

	First period	Second period	Third period
Enforcement order	36	21	38
Imprisonment	0	2	2
Community work / periodic detention	11	4	12

Average fine

The average fines are categorised into individual fine and total fine. That is because a prosecution may consist of more than one fine. For example, in *Northland Regional Council v McBreen Jenkins Construction Ltd*²³ there were two charges and a fine of \$22,500 was imposed for each charge and the total fine was \$45,000.

In the third period:

- the average individual fine imposed was \$7,221. The average total fine imposed under the RMA (per prosecution) was \$12,463.

In the second period:

- the average individual fine imposed was \$5,631
- the average total fine imposed under the RMA (per prosecution) was \$8,167.

²² Details of the cases where sentences of imprisonment and community work were imposed are in Appendix 2.

²³ 12/09/06, Judges Newhook and Dwyer, DC Whangarei, CRN 5084500347, 349, 366, 368, 355, 357, 387 and 389.

In the first period:

- the average individual fine imposed was \$4,400
- the average total fine imposed under the RMA (per prosecution) was \$6,500.

Table 16: Average fine

	First period	Second period	Third period
Average individual fine imposed ²⁴	\$4,400	\$5,631	\$7,221
Average total fine imposed	\$6,500	\$8,167	\$12,463

Table 17: Prosecutions by sector for third period – average, maximum and minimum total fines²⁵

Sector	Average	Maximum	Minimum
Agriculture	\$10,763	\$40,000	\$150
Commercial	\$14,708	\$86,500	\$500
Industrial	\$20,500	\$55,000	\$1,000
Local authority	\$10,000	\$10,000	\$10,000
Residential	\$7,043	\$30,000	\$1,500

Costs

The Court can award costs to the successful party in a prosecution under section 13(3) of the Costs in Criminal Cases Act 1967. There is a maximum scale of costs that can be awarded in the schedule to the Costs in Criminal Cases Regulations 1987. The scale for a defended hearing is a maximum of \$226 for each half-day and a maximum of \$113 for each half-day if the defendant pleads guilty.

The High Court in *Interclean Industrial Services Ltd v Auckland Regional Council*²⁶ considered the issue of costs and held that the Court on a prosecution under the RMA does not have power to order the defendant to pay the legal costs of bringing the prosecution. The High Court considered paragraph (d) of section 314(1) of the RMA and held that its purpose, as clarified by section 314(2), is the recovery of the direct costs of avoiding, remedying or mitigating the adverse effects as well as the indirect costs of investigation, supervision and monitoring those effects. The Court also held that the costs of prosecution could be taken into account in assessing the amount of the fine.

²⁴ Note this is based on the primary individual fine for each prosecution not only all the fines.

²⁵ These figures are based on the total fines for each prosecution and not the individual fines imposed.

²⁶ HC Auckland, A 198/99, 18/04/00, Randerson J.

In *Auckland City Council v Brian Hudson and BH Property Investment Ltd*,²⁷ Judge McElrea in sentencing the defendants said he would take the Council costs of \$7,000 into account by acknowledging that approximately half of the penalty appropriate for Mr Hudson could be attributed to this element of costs. In that case the Council at the sentencing hearing had initially proposed that it wanted a separate award of costs. The Judge asked if the Council really wanted a separate award of costs and pointed out that there would be a greater deterrent value in the costs being paid as a fine rather than reducing the fine by offsetting an allowance for costs. The Council agreed with this.

In the majority of prosecutions across the three periods costs have been awarded according to the scale. For the first period, large costs awards were more frequently made and this was usually done by agreement between the prosecution and the defence. For example in the *Bay of Plenty Regional Council v Tasman Pulp & Paper Company Ltd*²⁸ case, Tasman Pulp was prosecuted for the discharge of sulphur compounds into the air on three dates. The defendant was convicted and fined \$23,000 and by agreement was ordered to pay solicitors costs of \$17,206. In the second and third periods large costs awards have only been imposed in a few cases.

In the third period, the costs awarded include the sum of \$23,800 payable by each of the two defendants in *Waikato Regional Council v Hydro Energy (Waipa) Ltd and Neal*²⁹ and \$20,000 from the *Auckland Regional Council v PVL Proteins Ltd*³⁰ case.

In *PVL Proteins* Judge McElrea said when making the \$20,000 award that this was a contribution to costs actually and reasonably incurred. His Honour for the jurisdiction to make the order quoted the following paragraph from *Interclean*:

“In my view, each case must be considered on its own facts. I do not accept the appellant’s submission that it is necessary for the prosecutor to demonstrate the case is one of the special difficulty, complexity, or importance when compared with other prosecutions of the same type. The question is whether, having regard to the general run of criminal cases, the particular case is one of the special difficulty, complexity or importance. Just as murder trials are not necessarily complex or difficult, summary cases are not always straightforward and may give rise to unusual complexity. Prosecutions under s 338 may often be of some difficulty or complexity but will not always be so.”

Judge McElrea then said:

“That is very helpful comment. Prosecutions under s 338 in my view are often of some difficulty and complexity, and this case is one of them. Compared to the general run of criminal cases there is much more work, much more complexity and sometimes importance to the community, in this sort of prosecution work. I think it is appropriate that some allowance be made for that.”

²⁷ 1/04/2008, Judge McElrea, DC Auckland, CRI-2007-004–011655 and 003898, at paragraphs 84 to 86.

²⁸ 25/02/1994, Judge Bollard, DC Tauranga CRN 3087008507-10.

²⁹ 12/10/2007, Judge Smith, DC Hamilton, CRI 2007-019-3364, 2006-073-450 and 2006-073-447.

³⁰ 13/08/2007, Judge McElrea, DC Auckland, CRI-2006-069-001093.

Identification of sector for the 30 highest fines

In the third period:

- the highest fine imposed was \$86,500 in *Waikato Regional Council v Hydro Energy (Waipa) Ltd and Neal*³¹
- identification of sector and details of the four highest fines are listed in Table 19; the next 26 highest fines are listed in Appendix 3
- the total of the 30 highest fines was \$1,114,250; the average of the 30 highest fines was \$37,142.

In the second period:

- the highest fine imposed was \$55,000 in *Auckland Regional Council v Nuplex Industries Ltd*³²
- the total of the 30 highest fines was \$609,200; the average of the 30 highest fines was \$20,307.

In the first period:

- the highest fine imposed was \$50,000 in *Taranaki Regional Council v Petrocorp Exploration Ltd*³³
- the total of the 30 highest fines was \$611,000; the average of the 30 highest fines was \$20,367.

Table 18: Thirty highest fines

	First period	Second period	Third period
Highest fine imposed	\$50,000	\$55,000	\$86,500
Total of 30 highest fines	\$611,000	\$609,200	\$1,114,250
Average of the 30 highest fines	\$20,367	\$20,307	\$37,142

³¹ 12/10/2007, Judge Smith, DC Hamilton, CRI 2007-019-3364, 2006-073-450 and 2006-073-447.

³² DC Auckland, CRN 2004066321, 18/03/2003, Judge McElrea.

³³ DC New Plymouth, CRN 5043008689, 22/10/96, Judge Bollard.

Table 19: The four highest fines categorised by sector for the third period

Case	Fine	Sector	Details
1 Waikato Regional Council v Hydro Energy (Waipa) Ltd ³⁴	\$86,500	Commercial (hydro-electric power scheme)	<p>Late guilty plea. Work to build a hydro-electric power scheme.</p> <p>Hydro Energy (Waipa) Ltd (HEWL) total of nine charges covering – excavating Waipa river bed, soil disturbance, roading and tracking in the Waiharakia stream, soil disturbance, roading and tracking in the Waipa River Gorge and six charges of breaches of abatement notices (breaches for period of 80 days).</p> <p>Consents provided that no construction was to begin without a Construction Management Plan (“CMP”), approved by the Council.</p> <p>HEWL proceeded without CMP and breached other conditions of consents. Undertook works in the river bed. A 40 m diversion channel was excavated in a stream, a 500 m track down the Waipa Gorge, clearing eight times the area specified in the consents, pushing debris and rocks down the gorge to the river. Abatement notice offences related to sediment and erosion control mechanisms not being installed in both the gorge track and the Waiharakai Stream works.</p> <p>Fined \$2,000 for river offences, \$5,000 for stream offences, \$60,000 for the Waipa Gorge offences and \$19,500 for breach of abatement notices plus legal costs of \$20,000 and investigation and monitoring costs of \$23,800 and enforcement orders for remedial works to be undertaken (estimated cost of \$100,000).</p> <p>The earthworks contractor was also convicted and fined, see No 16 of Appendix 3.</p>
2 Auckland City Council v B & C Shaw Ltd and Shaw ³⁵	\$80,000	Commercial (subdivision)	<p>Breach of section 9(1). Felling of large pohutukawa tree without consent. Tree listed as 'notable'. Defendant is developer of substantial means, work was undertaken to make site easier to develop and thereby increase profit. Defendants were aware of Council rules. Previous conviction in 1997 (fined \$15,000 plus costs of \$3,000, enforcement order for planting) Restorative justice process – described by Judge as worthwhile and meaningful.</p> <p>Fined \$80,000 plus voluntary donation of \$20,000 and work for local community and enforcement order for replacement tree. If Shaw failed to pay donation then company would be fined \$25,000.</p>
3 Waikato Regional Council v Open Cheese Company Ltd ³⁶	\$55,000	Industrial	<p>Guilty plea. Eleven charges, discharges to air, land and water. Offences over 46 days. Over-irrigation of paddocks with wastewater and by-products, spill of dairy factory waste water, discharge from salt whey holding tank, storage and irrigation of wastewater on factory farm without resource consent, disposal of 250,000 litres of spoiled milk into pit on factory farm – milk deteriorated and discharged objectionable odours which neighbours complained about, significant objectionable odours from wastewater pond.</p> <p>Fines imposed of \$5,000, \$10,000, \$7,500, \$7,500, \$15,000, \$5,000, \$5,000 and convicted and discharged on four charges.</p>
4 Waikato Regional Council v Wallace Corporation Ltd ³⁷	\$47,000	Industrial	<p>Guilty plea. One charge for breach of section 15(1)(c) continuing offence over 12 days objectionable odour. Defendant had four previous convictions under the RMA (1998 and 2001) for breach of section 15(1)(a) and (b).</p> <p>District Court imposed fine of \$80,000. Defendant appealed. High Court reduced fine to \$47,000, held offending not deliberate and first prosecution for this type of offending.</p>

³⁴ 12/10/2007, Judge Smith, DC Hamilton, CRI 2007-019-3364, 2006-073-450 and 2006-073-447.

³⁵ 2/03/2006, Judge McElrea, DC Auckland CRN 5004502435 and 436.

³⁶ 4/10/07, Judge Whiting, DC Morrinsville, CRI 2007-039-000158.

³⁷ 8/06/06, France J, HC Auckland, CRI 2006-404-26.

In the third period, the largest proportion of high fine prosecutions occurred in the commercial sector, where 43% of the highest 30 fines were imposed. In the second period, the largest proportion of prosecutions occurred in the commercial sector, where 43% of the highest 30 fines were imposed. In the first period, the largest proportion of prosecutions occurred in the commercial sector, where 74% of the highest 30 fines were imposed.

Table 20: Prosecutions for the 30 highest fines by sector for the third period

Sector	Numbers	Percentage
Agriculture	7	23
Commercial	13	43
Industrial	9	30
Local authority	–	–
Residential	1	3
Other	–	–
Total	30	100

Appeals to the High Court and Court of Appeal against penalties and the outcome of the appeals

In the third period there were 10 appeals (refer to Appendix 4):

- In four cases defendants appealed conviction and sentence. In five cases defendants appealed sentence only. In one case Canterbury Regional Council appealed the sentence –the first time a Council has appealed a sentence under the RMA.³⁸
- In two of the appeals, the fines were reduced, in one case the High Court vacated sentences of community work and imposed fines, in four cases penalties were upheld, in one case the Court upheld the penalty and increased the reparation and in one case where the defendants appealed both conviction and sentence the Court held the fine was not manifestly excessive but directed the information should be reheard in the District Court.

In the second period there were five appeals:

- In one case the defendant appealed both conviction and sentence. In four cases defendants appealed sentence only.
- In two of the appeals, the penalties were reduced, and in three of the appeals penalties were upheld.

In the first period there were 18 appeals:

- In all 18 cases defendants appealed sentence.
- In 10 of the appeals, the penalties were reduced, and in eight of the appeals the penalties were upheld.

³⁸ In the first period, *Waitakere City Council v Hertzke* [1997] NZRMA 222, the Waitakere City Council applied for leave to appeal a decision of the High Court to reduce fines from a total of \$80,000 for two defendants to a total of \$5,000. The Court of Appeal refused leave to appeal.

Restorative justice

Restorative justice involves community-based processes to help empower victims to ask questions of the offender and where an offender can take responsibility for their offending, as an alternative to fines or loss of freedom. In the third period the restorative justice process³⁹ was used in 13 prosecutions. Details of these cases are in Appendix 5. In the second period, the restorative justice process was used in six prosecutions.

The restorative justice process was not available under the RMA for the first period (October 1991 to 30 June 2001) as the opportunity to use restorative justice was made possible by the introduction of the Sentencing Act in 2002.

In *Auckland City Council v Paul Edward McArthur*,⁴⁰ a prosecution for construction of a building in breach of section 9 of the RMA, the defendant claimed that it had used a restorative justice process. Judge McElrea said that a restorative justice process had not been used and explained why:

“Counsel have suggested that there has been restorative justice processes followed here, but in discussion with the Bench it is agreed that what happened cannot be said to be a restorative justice process. That process involves a meeting of parties and is described in a number of publications including the Salmon Lecture 2004 published by the Resource Management Law Association. No such meeting or process occurred here, in part because the Council officer involved could not see how it would be easy to define the parties that might attend such meeting. I have said to counsel that in future if such a process is considered and the Court is advised, the Court can assist in appointing a restorative justice facilitator with appropriate training and that person would help bring together the relevant parties.

The other benefit of the restorative justice process when it is followed is that the Court receives an authenticated report from an independent person rather than having to rely on what is said by the parties to the case about what happened.”

In *Manukau City Council v Claxton Tree Services Ltd*,⁴¹ Judge McElrea criticised the Council for the dominant part that its officer had taken at the restorative justice conference. The Judge said:

“(i) It is not up to the informant to run a restorative justice conference or try and dictate the agenda. Any informant that does that fails to understand the participatory nature of restorative justice. (ii) One of the real benefits of restorative justice in the RMA context is that it enables the parties directly affected by offending ... to attend a meeting and to express their views and participate in a discussion about the nature of the wrongdoing and what is required to put it right. Those, in my view, are the people whose views are most important, not the views of a Council officer.”

³⁹ The Role of Restorative Justice in RMA Prosecutions, Judge FWM McElrea, 27 July 2004, *Resource Management Journal*, Issue 3, Volume XII, November 2004.

⁴⁰ 31/03/2008, Judge McElrea, DC Auckland, CRI-2007-004-014372.

⁴¹ 3/09/2007, Judge McElrea, DC Auckland, CRI -2006-092-012322. See Appendices 2 and 5.

Increase in penalties

In *Waikato Regional Council v Wallace Corporation Ltd*,⁴² Justice France noted that it is apparent that there has been an upward shift in the level of some fines. Justice France referred to *Auckland City Council v North Power Ltd*,⁴³ a prosecution for clearance of indigenous vegetation in contravention of section 9(1), where his Honour Judge McElrea in sentencing the defendant disagreed with the submission by counsel for the defendant that the *Waitakere City Council v Hertzke*⁴⁴ case was a more serious case. His Honour referred to the increase in the level of fines:⁴⁵

“There is, however, a further point to be made. That decision is now nearly eight years old. The Court of Appeal had before it a list of offenders which included obvious industrial users and noted that, at that time, the fine in Machinery Movers of \$25,000 ‘was about the highest yet imposed’.

Matters have moved on since 1996 when fines appear not to have exceeded 12.5% of the statutory maximum (\$200,000) – ie, only the lowest one-eighth of the available range was being used. There have been, in more recent years, a considerable number of fines in excess of the Machinery Movers figure. In Auckland Regional Council v Westgate (Auckland District Court, 30 June 2000, Whiting DCJ) fines and costs amounting to \$103,800 were imposed on three defendants in relation to earthworks offences. And I am aware of at least seven occasions in the last two years when fines between \$25,000 and \$55,000 have been imposed. On most occasions there were also other elements of penalty that were part of the sentence, including financial elements. Those fines have covered a diverse range of activities from the felling of gum trees in a subdivision area, Waitakere City Council v Adams (\$35,500 and \$9,962 other costs); illegal earthworks, Waitakere City Council v Gionis (total fines \$38,000 plus other penalties of \$3,650); the escape of industrial odours, ARC v Nuplex Industries Limited (\$55,000 fine plus other penalties \$10,872); another industrial odours case, ARC v United Environmental Limited (\$38,000 fine, plus \$2,048 other penalties); earthworks subsidence, Auckland City Council v Selwyn Mews Limited (\$36,500 fines, confirmed on appeal); industrial odours, ARC v United Environmental Limited (\$29,000 fines plus \$1,374 in other financial penalties); and dairy farm effluent, Hawke’s Bay Regional Council v BHE Farms Ltd (fines \$35,000).

Even fines at these levels are (except for two) in the lowest quarter of the available range. The combined influence of ss 8 and 40(2) of the Sentencing Act 2002 may mean that further upward movement in the level of fines can be expected. Certainly earlier levels of fines cannot be taken as a reliable guide.”

⁴² 8/06/06, France J, HC Auckland, CRI 2006-404-26.

⁴³ 27/04/04, Judge McElrea, DC Auckland, CRN 3004510188 and 0191.

⁴⁴ CA243/96, 5 December 1996, Keith, Blanchard and Barker JJ.

⁴⁵ At paragraphs 65 to 67.

During the third period, a number of judges when sentencing defendants have referred to the need to raise penalties, within the current range of tariffs, to achieve deterrence, for example, in *Waikato Regional Council v Plateau Farms Ltd*⁴⁶ his Honour Judge Thompson in sentencing the defendant said:

“I have mentioned the issue of deterrence more than once before. What can be said with certainty in terms of sentencing levels is that of recent times, the Court has been expressing concern that the messages about environmentally responsible farming, and dairy farming in particular, do not seem to be being universally heard.

The Court is well aware that there are substantial efforts at education of farmers to their responsibilities and the major dairy companies have been very much involved in that.

The Court’s response, particularly over the last two to three years I think it is fair to say, has been an attempt to drive that message across by increasing the general level of fines imposed for significant offences, particularly where they are committed by substantial farmers.”

In *Manukau City Council v Russell Lesley Heenan*⁴⁷ Judge McElrea said:

“The cases referred to by both counsel are numerous and I do not intend to cite them all. However, I note that some of the cases referred to are quite old, and by that I say cases last century which is not all that long ago, but it is true that the level of fines has increased quite noticeably within Resource Management Act sentencing in different parts of the country over recent years, and some of the old cases are now quite unreliable as a guide. ... The Court has responded to a clearly expressed public concern about ongoing offending of this type and the level of fines imposed has increased considerably in recent years.”

In *Auckland City Council v Rakesh Kumar Sharma and AVR Enterprises Ltd*⁴⁸ Judge McElrea said:

“The cases that are canvassed by counsel point in different directions. This is partly due to the fact that the cases relied upon by defence counsel tend to be older cases, often 10 years older or more, and several Environment Judges have commented, as have a number of High Court Judges, that the overall level of fines to be expected under the Resource Management Act has increased significantly in recent years.”

⁴⁶ 25/01/2007, Judge Thompson, DC Rotorua, CRI – 2005-069-2345. Appeal – 17/09/07, Stevens J, DC Rotorua, CRI2007-463-000016.

⁴⁷ 13/02/2006, Judge McElrea, DC Auckland, CRN 5092501702, at paragraph 16.

⁴⁸ 12/03/2008, Judge McElrea, DC Auckland, CRI-2008-004-006154, at paragraph 38.

Appendix 1: Numbers of Prosecutions brought by Each Local Authority for the Third Period⁴⁹

Local authority	Number of prosecutions	Percentage
Auckland City Council	13	5.0
Auckland Regional Council	7	2.7
Bay of Plenty Regional Council	11	4.2
Canterbury Regional Council	25	9.7
Christchurch City Council	9	3.5
Far North District Council	2	0.8
Franklin District Council	1	0.4
Hawke's Bay Regional Council	8	3.1
Hutt City Council	5	1.9
Invercargill City Council	1	0.4
Manawatu-Wanganui Regional Council	8	3.1
Manukau City Council	14	5.4
Marlborough District Council	3	1.2
Nelson City Council	2	0.8
New Plymouth District Council	1	0.4
North Shore City Council	7	2.7
Northland Regional Council	15	5.8
Otago Regional Council	25	9.7
Rodney District Council	9	3.5
Selwyn District Council	1	0.4
Southland District Council	2	0.8
Southland Regional Council	20	7.7
Taranaki Regional Council	6	2.3
Tasman District Council	1	0.4
Thames-Coromandel District Council	1	0.4
Waikato Regional Council	45	17.4
Waimakariri District Council	1	0.4
Wairoa District Council	3	1.2
Waitakere City Council	8	3.1
Wellington City Council	2	0.8
Wellington Regional Council	4	1.5
Total	260	

⁴⁹ Councils with no prosecutions are not included in this table.

Appendix 2: Sentencing Options

Sentences of community work imposed for the third period

Case	Brief details	Period of community work
1 <i>North Shore City Council v Lolesio Keli</i> ⁵⁰	Two charges for destruction of trees in breach of section 9(1). Defendant was not able to pay a fine. This case was dealt with at the same time as the next one. All of the defendants were connected in that one of the defendants is the company and the other two are directors and/or employees of the company. There were three incidents.	250 hours community work.
2 <i>Auckland City Council v Premier Tree and Lawn Services Ltd and Charlie Salelea Laulu & Lolesio Keli</i> ⁵¹	One charge each against Keli and Laulu for destruction of trees in breach of section 9(1). Keli took part in restorative justice programme. Both defendants were unable to pay a fine. Company was convicted and discharged and enforcement order made requiring that the company and its directors, employees, agents and any person working on its behalf cease breaching tree protection rules in Council Plan.	Keli – 100 hours community work. Laulu – 250 hours community work.
3 <i>Manukau City Council v Vincent Desmond Allan</i> ⁵²	Guilty plea. One charge of contravention of an abatement notice requiring defendant to stop using a residential property for business purposes. Defendant was not able to pay a fine.	175 hours community work.
4 <i>Waitakere City Council v A Mackinnon</i> ⁵³	Guilty plea. Restorative justice conference held. Outcomes of conference – defendant agreed to planting and maintenance programme for five years but after conference decided that she wanted a different planting programme. Court had indicated that defendant would be discharged without conviction but decided to convict defendant because she had failed to abide by original agreement.	180 hours community work and enforcement order requiring implementation of original planting and maintenance programme.
5 <i>Manukau City Council v Lois Patricia Lenaghan and Joseph Lenaghan</i> ⁵⁴	Not guilty plea. One charge of operating recycling business without consent in breach of section 9(1). Mother and son. Mother was convicted and fined \$17,500. Son was unable to pay a fine. Enforcement order against both defendants requiring removal of material and cessation of operation.	350 hours community work.
6 <i>Christchurch City Council v Bret Prangnell</i> ⁵⁵	Guilty plea. Two charges of excavation and filling work to form a track and skid pad. Defendant was not able to pay a fine. Court imposed fine of \$2,000 on one charge and sentence of community work on the other charge.	200 hours community work.

⁵⁰ 7/06/2005, Judge McElrea, DC Auckland, CRN 04004502284 and 0500500029.

⁵¹ 7/06/2005, Judge McElrea, DC Auckland, CRN 04004502289 and 2253.

⁵² 13/03/2006, Judge McElrea, DC Auckland, CRN 06004500372.

⁵³ 13/10/2006, Judge McElrea, DC Auckland. Written sentencing notes not available. Details provided by Waitakere City Council.

⁵⁴ 2/04/2007, Judge Dwyer, DC Auckland, CRI-2006-092-003441.

⁵⁵ 22/08/2007, Judge Smith, DC Christchurch, CRN 7009502066 and 2067.

Case	Brief details	Period of community work
7 <i>Southland Regional Council v Marinus Frederik Antonisse</i> ⁵⁶	Guilty plea. One charge of discharge of dairy effluent in breach of section 15(1)(b). Defendant was not able to pay a fine.	100 hours community work.
8 <i>Auckland City Council v Paul Edward McArthur</i> ⁵⁷	Guilty plea. One charge of construction of a building in breach of section 9. Defendant was able to pay fine – but to honour commitment defendant had made was ordered to do community work.	40 hours community work and fine of \$4,500.
9 <i>Waitakere City Council v Kenneth Brooks Poulton</i> ⁵⁸	Guilty plea. One charge of tree clearance on defendant's property – 18 native trees, 10 of which were over 3 m, and several of which were over 50 years old in Protected Natural Heritage Area of Waitakere City. Clearance resulted in daylight entering area and extensive weed growth. Defendant was remorseful and co-operative, and he was prepared to carry out the necessary remedial work. Defendant was not able to pay a fine.	175 hours community work, Council costs of \$4,000 and enforcement order requiring remedial work.
10 <i>Manukau City Council v Niko</i> ⁵⁹	Guilty plea. One charge of undertaking vehicle repair activity in residential zone.	300 hours community work.
11 <i>Waitakere City Council v Alice Shepherd</i> ⁶⁰	Guilty plea. One charge of contravention of abatement notice requiring removal of junk (scrap metal, car parts and tyres) at property. Defendant was not able to pay a fine and had planned to set up business at home to earn money for her family, husband was sick.	80 hours community work, Council costs of \$500 and enforcement order requiring removal of junk.

Sentences of imprisonment imposed for the third period

Case	Brief details	Period of imprisonment
1 <i>Waikato Regional Council v Michael Thomas Feeney</i> ⁶¹	Guilty plea. Three charges of contravening an abatement notice and three charges of unlawful discharge of contaminants to air. At the time of sentencing, the defendant was serving a term of imprisonment on other charges.	Six weeks imprisonment.
2 <i>Thames-Coromandel District Council v Cameron Claude May</i> ⁶²	Guilty plea. One charge of illegal use of land by putting eight buildings on land in contravention of plan. Defendant was not able to pay a fine. At the time of sentencing, the defendant was serving a term of imprisonment on other charges.	Eight weeks imprisonment.

⁵⁶ 21/02/2008, Judge Newhook, DC Invercargill, CRI-2007-025-00850.

⁵⁷ 31/03/2008, Judge McElrea, DC Auckland, CRI-2007-004-014372.

⁵⁸ 4/04/2008, Judge McElrea, DC Auckland, CRI-2007-090-9589.

⁵⁹ 5/05/2008, DC Auckland. Written sentencing notes not available. Details provided by Manukau City Council.

⁶⁰ 16/06/2008, Judge McElrea, DC Auckland, CRI-2007-090-012008.

⁶¹ 7/04/2008, Judge Harland, DC Hamilton, CRI – 2006-019-6265.

⁶² 5/06/2008, Judge Newhook, DC Auckland, CRI-2008-004-007940.

Discharge without conviction for the third period

Case	Brief details	Decision
1 <i>Northland Regional Council v Hepetema Hemi</i> ⁶³	<p>Guilty plea. Two charges of contravention of section 12(1)(c) and (d) RMA – disturbing the foreshore and seabed of Coastal Management Area, depositing spoil and dredgings on foreshore and seabed. Defendant had been asked by representative of a group of residents to clear channels through mangroves in the estuary in order to clear flood channels. The representative, who had faced similar charges, had died in the interim.</p> <p>The Court held situation where community took action on its own behalf, knowing consents were required, area affected was relatively small, no permanent damage, work was not done for personal advantage, shared responsibility which defendant alone was now carrying, and defendant had no previous convictions.</p>	Discharged without conviction on both charges.
2 <i>Waikato Regional Council v Joyce and Leigh</i> ⁶⁴	<p>Guilty plea to section 15(1)(b) charge against sharemilker (Joyce) and employee of sharemilker (Leigh). Continuing offences on dates between 26/12/04 and 19/01/2005 for Leigh and 1/12/2004 and 19/01/2005 for Joyce. History of problems with system before defendants began working at farm. Defendants asked owners to fix system. No response.</p> <p>Joyce – Convicted and fined \$500.</p>	Leigh discharged without conviction.
3 <i>Christchurch City Council v Thomas Christopher Lewis</i> ⁶⁵	<p>Guilty plea to section 9(1)(a) charge, earthworks which caused subsidence to neighbouring properties. Defendant reinstated right of way that earthworks had been undertaken on. Restorative justice conference outcomes – defendant apologised and confirmed he would complete work to reinstate right of way and other work.</p>	Discharged without conviction and ordered to pay costs to Council of \$8,000.
4 <i>Manukau City Council v Sanjay Ramnlal Madhav</i> ⁶⁶	<p>Guilty plea. Two charges of contravention of section 9(1), earthworks on residential property. Contractor – without authority from the defendant who was the owner of the property – undertook earthworks much more extensive than permitted by resource consent and notified defendant after work had been done. Defendant took steps to try and stabilise land and contacted Council and obtained retrospective consent. Court said unfortunate that Council prosecuted only the owner and not contractor. Court held defendant had low level of culpability. Defendant agreed to pay \$30,000 towards costs incurred by Council and had spent \$178,000 on remedial work.</p>	Discharged without conviction on both charges and ordered to pay \$30,000 towards Council costs under section 106(3) Sentencing Act.
5 <i>Canterbury Regional Council v Keith Bruce Townshend, and Warren Justin Bent</i> ⁶⁷	<p>Guilty plea by both defendants to section 14 charge. Townshend charged with permitting the taking of groundwater from a bore and allowing Bent to actually take the water. Bent charged with a single offence of taking water from the same bore for spray irrigation. Court found Townshend's actions showed deliberateness. Bent's actions were less culpable. Townshend was convicted and fined \$12,000.</p>	Bent discharged without conviction and ordered to pay costs to Council of \$2,500.

⁶³ 22/11/2005, Judge Thompson; DC Kaikohe, CRN05027500229 and 0230.

⁶⁴ 13/03/2006, Judge Thompson; DC Taupo, CRN 2005-069-1589.

⁶⁵ 24/05/2006, Judge Smith, DC Christchurch, CRN 05009504494.

⁶⁶ 13/10/2006, Judge McElrea, DC Auckland, CRI-2005-092-014415.

⁶⁷ 1/11/2006, Judge Smith, DC Christchurch, CRN 06003500115 to 117.

Case	Brief details	Decision
6 <i>Auckland City Council v A1 Tree Ltd and Gittos</i> ⁶⁸	Guilty plea to section 9(1) charge by both defendants for removal of one tree and pruning of another. Gittos is director of A1 Tree Ltd. A1 Tree Ltd is in business of tree management. Successful restorative justice conference.	Gittos discharged without conviction and ordered to pay costs of \$2,500 jointly. A1 Tree Ltd convicted and fined \$2,500. Costs ordered jointly against Mr Gittos and company by way of enforcement order of \$2,500.
7 <i>Hutt City Council v Ray Hickey</i> ⁶⁹	Guilty plea to section 9(1)(a) charge, destroying a protected kowhai tree. Defendant was project manager of a company that had been convicted and fined \$14,000 for same offence.	Discharged without conviction and ordered to pay costs to Council of \$2,000.
8 <i>Wairoa District Council v Peter Clennell Fenwicke Boogie S Cape Ltd and Angus Thompson</i> ⁷⁰	Guilty plea by three defendants to section 9(1)(a) charge, earthmoving work undertaken at two adjoining sections. Three defendants were two employees of the company which carried out the works and the company itself. Thompson and <i>Boogie S Cape Ltd</i> convicted and each fined \$4,000.	Fenwicke discharged without conviction and ordered to pay costs to Council of \$3,500.
9 <i>Rodney District Council v Christopher Lloyd Pedersen</i> ⁷¹	Guilty plea to two section 9(1)(a) charges, removal of vegetation and soil excavation. Work undertaken during formation of driveway. Two houses on property. Defendant held a resource consent dated 2002 enabling him to build right of way to second dwelling, and requiring him to build retaining wall, he had paid \$10,000 bond to Council to ensure that wall was built. As a result of variation to the District Plan, the minimum lot size on the property was reduced which enabled defendant to further subdivide. He applied for consent for a six-lot subdivision, hoping to do the work on wall at the same time as driveway for new subdivision. Council however would not wait for subdivision consent to be granted and insisted defendant build retaining wall first or forfeit bond. Defendant decided to build the authorised driveway and wall. While the machinery was on the property, he decided to clear the subdivision driveway as well, even though he had no consent for this. Property covered in regenerating bush, but Court held damage inflicted to be seen in context of the zoning and fact that Council had, subsequent to offences, granted consent to the further subdivision. Defendant under personal and financial stress at time of offences.	Discharged without conviction and ordered to pay costs to Council of \$7,000 to be deducted from bond.
10 <i>Manukau City Council v Claxton Tree Services Ltd</i> ⁷²	Guilty plea to section 9(1) charge, pruning two oak trees without resource consent. Property owners had not been prosecuted for incident but Council applied to amend other charges laid against owners. Application to amend was declined. One of property owners instructed contractor to push over tall pine tree, pine tree fell into two oak trees on neighbour's land and caused significant damage to trees. Property owner then called defendant (arborist) to prune the trees. Restorative justice conference held.	Discharge without conviction.

⁶⁸ 22/01/2007, Judge McElrea, DC Auckland, CRI-2006-004-018850 and 021361.

⁶⁹ 2/04/2007, Judge Thompson, DC Wellington, C06176.

⁷⁰ 5/04/2007, Judge Thompson, DC Napier, CRN06082500038 to 041.

⁷¹ 21/08/2007, Judge Whiting, DC Auckland, CRI-2006-044-8202.

Case	Brief details	Decision
11 <i>Canterbury Regional Council v Kerry Rush Earthmoving Ltd, Kerry Francis Rush, Ian Robin Rush, Rakanui Station Ltd and Timothy Wilding</i> ⁷³	Late guilty plea to section 9(3) charges by four defendants for earthworks on large scale. Prosecution did not oppose discharge without conviction. Defendant companies convicted, Rakanui Station Ltd fined \$22,500 + solicitor's fees of \$1,456 and Kerry Rush Earthmoving Ltd fined \$7,500 + solicitor's fees of \$1,456.	The three individuals – KF Rush, IR Rush and T Wilding were discharged without conviction but ordered to pay Council's costs plus solicitor's fees. Wilding – \$4,940 + \$1,456, KF Rush \$2470 + \$728, IR Rush \$2470 + \$728.
12 <i>Canterbury Regional Council v Takamatua West Ltd, Andrew James Tisch and Calcon Ltd</i> ⁷⁴	Three defendants, guilty plea to charge for discharge of sediment in breach of section 15(1)(b) from earthworks for subdivision and company also charged with breach of abatement notice, see Appendix 3.	Tisch discharged without conviction, ordered to pay \$10,000 to residents' association and \$6,000 towards Council costs.
13 <i>Otago Regional Council v Wiseman</i> ⁷⁵	One charge for discharge of dairy effluent in breach of section 15(1)(b). Poor financial position.	Discharged without conviction and ordered to pay \$4,000 towards Council's costs.
14 <i>Canterbury Regional Council v Carter Holt Harvey Ltd</i> ⁷⁶	Guilty plea to charge of discharge of factory waste water from fibreboard (MDF) plant in breach of section 15(1)(a). Partially treated waste is irrigated onto farm. Waste discharged from broken portion of irrigation system into creek, maximum of 200 m ³ discharged. Short term damage, lowest end of scale of deliberateness – held that defendant should have installed isolation valve and regularly inspected irrigation line, defendant co-operated, immediately took steps to rectify position, undertook full review of operation and steps to ensure no repetition.	Discharged without conviction and ordered to pay \$8,000 to Council resource care section towards environmental enhancement of area and Council investigation costs of \$2,643.

⁷² 3/09/2007, Judge McElrea, DC Auckland, CRI -2006-092-012322.

⁷³ 17/03/2008, Judge Moore, DC Rangiora, CRI – 2006-028-000074 to 78.

⁷⁴ 4/04/2008, Judge Smith, DC Christchurch, CRI-2007-009-004858-60-66.

⁷⁵ 10/04/2008, Judge Smith – sentencing notes not available. Details provided by Otago Regional Council.

⁷⁶ 18/06/2008, Judge Smith, DC Auckland, CRI-2008-061-000319.

Conviction and discharge for the third period⁷⁷

Case	Brief details	Decision
1 <i>Waikato Regional Council v Paul James Thomson</i> ⁷⁸	Guilty plea by farm manager to charge of discharge of dairy effluent. Court held systemic failure, even if the pipes had been connected to pot spreader, this would have made little difference as area available for irrigation too small. Defendant was retired and had no assets.	Conviction and discharge
2 <i>Hawke's Bay Regional Council v Hastings District Council</i> ⁷⁹	Guilty plea to charge of discharge of sewage to water. District Council took prompt action to mitigate damage, damage not significant. District Council agreed to pay all costs of Regional Council.	Conviction and discharge
3 <i>Hutt City Council v Wayne Sproston</i> ⁸⁰	Restorative justice conference held – see Appendix 5 for details.	Conviction and discharge
4 <i>Manukau City Council v Lisa Cai</i> ⁸¹	Restorative justice conference held – see Appendix 5 for details.	Conviction and discharge
5 <i>Northland Regional Council v Whangarei District Council</i> ⁸²	Guilty plea to charge of discharge of sewage into harbour. Agreement reached – District Council would pay \$10,000 to Regional Council for assisting community groups in shellfish re-seeding projects in the harbour.	Conviction and discharge
6 <i>Wellington Regional Council v Cardno TCB Ltd</i> ⁸³	Guilty plea to charge of permitting the placing of pipe in the bed of tributary in course of its operations as supervising engineer of subdivision work. Cardno had agreed to pay Council \$6,000 to undertake compensatory work and \$4,000 as contribution to the Council's costs.	Conviction and discharge

⁷⁷ This table does not include cases where related defendants were both sentenced and where Court took global approach and one defendant was fined and another was convicted and discharged, eg, *Taranaki Regional Council v Bruce Gordon Cudby & HG Cudby Ltd*, see Appendix 3.

⁷⁸ 29/09/2005, Judge Smith, DC Hamilton, CRN.

⁷⁹ 4/05/2006, Judge Thompson; DC Hastings, CRN 05020500421.

⁸⁰ 17/05/2007, Judge Whiting, DC Wellington, CRI-2006-032-000564.

⁸¹ 25/07/2007, Judge McElrea, DC Auckland, CRI -2006-092-016504.

⁸² 19/11/2007, Judge Newhook, DC Auckland, CRN06088500911.

⁸³ 11/04/2008, Judge Thompson; DC Wellington, CRI-2007-085-7324.

Appendix 3: Identification of Sector for the Highest Fines 5–30 for the Third Period

Case	Fine	Sector	Subsector	Details
5 <i>Northland Regional Council v McBreen Jenkins Construction Ltd</i> ⁸⁴	\$45,000	Commercial	Earthworks contractor	<p>Guilty plea. Illegal earthworks at a subdivision. Two charges for breach of sections 9(1) and 15(1)(b). Continuing offences. 15,000 cubic metres of earthworks, most of the land was erosion prone. Almost no sediment and erosion control measures. Actual damage to the environment was no more than minor. Court held potential adverse effects were relevant and the potential was clearly there for more serious adverse effects if there had been heavier rainfall.</p> <p>Court held offending was deliberate. McBreen had three previous convictions and seven infringement notices.</p> <p>(R Wilson – employee of McBreen was also convicted and fined \$2,500.)</p> <p>The project manager was also convicted and fined see case No 17 of Appendix 3.</p>
6 <i>Taranaki Regional Council v Bruce Gordon Cudby and HG Cudby Ltd</i> ⁸⁵	\$40,000	Commercial	Cleanfill	<p>Not guilty plea. Jury trial, defendant convicted and fined \$20,000 on two charges, continuing offences. Defendant and company had previous convictions. Company convicted and discharged.</p>
7 <i>Auckland Regional Council v Fletcher Building Ltd</i> ⁸⁶	\$40,000	Industrial	Board manufacturing plant	<p>Guilty plea to four charges for breach of section 15(1)(c) – four incidents. Relevant factors included – prior history of problems, low level of impact, large company. Convicted and fined \$10,000 on each charge.</p>

⁸⁴ 12/09/06, Judges Newhook and Dwyer, DC Whangarei, CRN 5084500347, 349, 366, 368, 355, 357, 387 and 389.

⁸⁵ 1/03/2007, Judge Whiting, DC New Plymouth, CRI-2005-021-001442,1444.

⁸⁶ 16/11/2006, Judge McElrea, DC Auckland, CRI-2006-004-010308 and 015372.

Case	Fine	Sector	Subsector	Details
8 <i>Southland Regional Council v Sandstone Dairy Ltd</i> ⁸⁷	\$40,000	Agriculture	Dairy	<p>Not guilty plea. Discharge of dairy effluent in breach of section 15(1)(b) on three dates. Effluent was discharged from travelling irrigator over areas of tile drains, allowing ponding and entry into waterways. Defendant owned farm and was holder of resource consent. 440 hectare dairy farm, dairy conversion by defendant. 1,600 cows. History of warnings. Defendant argued it was not responsible for discharges because it had handed management of farm to farm manager and the discharges were the manager's responsibility. Defendant had previous conviction for discharge of dairy effluent (November 2004, fined \$3,000). BOD₅, ammonia and <i>E. coli</i> levels were high as a result of discharge.</p> <p>Defendant appealed, appeal granted, fines reduced from \$60,000 to \$40,000 (\$10,000, \$10,000 and \$20,000).</p> <p>Farm manager pleaded guilty to one charge, convicted and fined \$3,500.</p>
9 <i>Otago Regional Council v Invernia Holdings Ltd</i> ⁸⁸	\$37,000	Agriculture	Dairy	<p>Guilty plea by farm owner to three charges for discharge of dairy effluent in breach of section 15(1)(b). Court held – high level of carelessness/negligence, responsible for allowing young manager to run farm without proper training and supervision.</p> <p>Manager (Blake Row) was also convicted and fined \$150.</p>
10 <i>Hawkes Bay Regional Council v Ravensdown Fertiliser Co-operative Ltd</i> ⁸⁹	\$37,000	Industrial	Fertiliser plant	<p>Guilty plea. Two charges of emission to air of sulphur dioxide in breach of section 15(1)(c). Defendant had RMA conviction in 2004 for discharge of fluoride into air and was fined \$15,000, conviction under HSEA in 2003, two abatement notices and six infringement notices. Fined \$14,000 and \$23,000 and ordered to pay reparation of \$8,000 to eight people directly affected.</p>
11 <i>Auckland Regional Council v PVL Proteins Ltd</i> ⁹⁰	\$36,000	Industrial	Rendering plant	<p>Guilty plea to three charges for breach of abatement notice requiring defendant to cease discharge of contaminants into air. Discharge to air in breach of abatement notice occurred on three dates over three month period. Restorative justice process – see Appendix 5 for more details. Convicted and fined \$12,000 on each charge.</p>

⁸⁷ 14/12/2006, Judge Smith, DC Invercargill, CRN 06017500043, 44 and 91.

⁸⁸ 28/04/2008, Judge Jackson – sentencing notes not available. Details provided by Otago Regional Council.

⁸⁹ 24/10/2006, Judge Thompson, DC Napier, CRI-2006-041-4035.

⁹⁰ 13/08/2007, Judge McElrea, DC Auckland, CRI-2006-069-001093.

Case	Fine	Sector	Subsector	Details
12 <i>Canterbury Regional Council v Tradewood Shipping Company</i> ⁹¹	\$35,000	Commercial	Shipping	<p>Not guilty plea. Two offences. Discharge of oil from ship on two occasions on one day. Tradewood was manager of ship. First occasion 50 to 100 litres of oil discharged and second occasion 300 litres of oil. Fined \$10,000 for first spill and \$25,000 for second spill.</p> <p>Cometa the owner of the ship was also convicted and fined – see case No 18. The difference in fine between the two defendants is because Cometa was given an allowance of \$4,250 for clean up costs that it had paid.</p> <p>Both defendants appealed to High Court against conviction and sentence, appeal was dismissed. Both defendants appealed to Court of Appeal against conviction, appeal was dismissed.</p>
13 <i>Waikato Regional Council v Plateau Farms Ltd</i> ⁹²	\$35,000	Agriculture	Dairy	<p>Guilty plea – but disputed facts – given less than guideline credit. One representative charge for discharge of effluent in breach of section 15(1)(b) – discharge to groundwater over period of more than one month. 1,200 cows. Large ponds of effluent on farm – pollution could not be quantified in empirical way – insidious, cumulative and serious. History of problems. Carelessness of high order. Defendant – group of companies controlled by family that owned number of farms. Nature of operations significant – major corporate farmer.</p>
14 <i>Rodney District Council v Turley Earthmoving Ltd</i> ⁹³	\$35,000	Commercial	Cleanfill operation	<p>Guilty plea. One charge for earthworks in breach of section 9(1).</p> <p>Earthworks contractor was instructed by the property owner (Christopher Brown) to deposit fill on property. Resource consent allowed 2,000 m³ of fill over area of 3,000 m³. Volume exceeded 20,000 m³ and was over area of 10,900 m². Court held that culpability was at top end of scale, recklessness of high degree and at a certain point deliberate. Brown's land and neighbour's land was damaged because the work was done without proper engineering works. Profit realised by the offence of \$62,524 after tax. "Serious environmental offending of a deliberate nature on a grand scale."</p> <p>Turley Earthmoving Ltd was also ordered to pay costs under section 314 of \$15,000 to Council for report on earthworks and reparation of \$40,000 to Brown and to neighbour.</p> <p>(Brown was also prosecuted, pleaded guilty and was fined \$7,500 and ordered to pay costs of \$1,380.)</p>

⁹¹ 14/06/2006, Judge Smith, DC Christchurch, CRN 05009502106, 107, 103, 104. 6/10/2006, Fogarty J, HC Christchurch, CRI 2006-409-000128. CA168/07 [2007] NZCA 560, Arnold, Gendall and Priestley JJ.

⁹² 25/01/2007, Judge Thompson, DC Rotorua, CRI – 2005-069-2345. Appeal – 17/09/07, Stevens J, DC Rotorua, CRI2007-463-000016.

⁹³ 25/10/2007, Judge McElrea, DC Auckland, CRI-2007-004-018443.

Case	Fine	Sector	Subsector	Details
15 <i>Auckland City Council v Brian Hudson and BH Property Investment Ltd</i> ⁹⁴	\$35,000	Commercial	Improvements to property	Guilty plea by both defendants to two charges for building double garage without consent and exceeding maximum paved area in breach of section 9(1). Property was owned by company and rented out. Hudson was sole director and shareholder of the company. Court held that offending was deliberate and premeditated. Property in area known for historic value and zoned to protect historic value. Court held that work undertaken was a "direct and serious challenge" to the integrity of provisions of the Plan. Hudson had previous conviction in 2007 for using a property as two residential units without consent (Hudson and another company he owned were each convicted and fined \$2,000 plus costs of \$1,600). Company fined \$18,000 and \$2,000, Hudson fined \$13,500 and \$1,500.
16 <i>North Shore City Council v Robert John Munro and R Munro Building & Earthmoving Contractors Ltd</i> ⁹⁵	\$34,000	Commercial	Contractor	Guilty plea for breach of section 9(1) and abatement notice at three different sites, damage to vegetation and earthworks. Convicted and fined \$24,000, \$5,000 and \$5,000 and enforcement order for remedial work at one site.
17 <i>Manawatu-Wanganui Regional Council v Turks Poultry Farm Ltd</i> ⁹⁶	\$31,000	Industrial	Poultry farm	Guilty pleas. Three charges, one for discharge of poultry material (feathers) as continuing offence and two charges for discharge of offal in breach of section 15(1)(d). Deliberate offending. Fined \$12,500 for discharge of feathers and for discharge of offal \$7,500 on each charge.
18 <i>Canterbury Regional Council v Cometa United Corporation</i> ⁹⁷	\$30,750	Commercial	Shipping	See case No 12. Not guilty pleas. Fined \$10,000 for first spill and \$20,750 (allowing for clean up costs paid of \$4,232) for second spill.
19 <i>Southland Regional Council v Eatwell Development Ltd and TE Eatwell</i> ⁹⁸	\$30,000	Agriculture	Dairy	Guilty pleas. Eatwell Development Ltd – three charges of discharge of dairy effluent in breach of section 15(1)(b) on three dates. T Eatwell – two charges of discharge of effluent on two dates. T Eatwell – sharemilker, company is family business. Considerable downstream effects. Remedial steps taken to improve system. Farm had totally inadequate effluent storage system. "Ongoing and underlying systemic failure due to inadequacy of the holding pond." Eatwell Development Ltd fined \$2,500, \$7,500 and \$10,000. T Eatwell fined \$2,500 and \$7,500.

⁹⁴ 1/04/2008, Judge McElrea, DC Auckland, CRI-2007-004—011655 and 003898.

⁹⁵ 21/02/2006, Judge McElrea, DC Auckland, CRN 05044500991, 993, 2027, 2029, 2030, 0985, 2775 TO 2778.

⁹⁶ 18/10/2006, Judge Ross, DC Palmerston North, CRN 6031500248-50.

⁹⁷ 28/06/06 Judge Smith, DC Christchurch, CRN05009502103-7.

⁹⁸ 9/06/2008, Judge Dwyer, DC Invercargill, CRI-2008-025-001245.

Case	Fine	Sector	Subsector	Details
20 <i>Taranaki Regional Council v Roger Sorrensen</i> ⁹⁹	\$30,000	Agriculture	Dairy	Guilty pleas. Three charges relating to breach of abatement notice and discharge of dairy effluent in breach of sections 15(1)(a) and (b). Offending was deliberate. History of warnings from Council. Fined \$15,000 for breach of abatement notice and \$7,500 each for breach of sections 15(1)(a) and (b).
21 <i>Wellington Regional Council v Exide Technologies Ltd</i> ¹⁰⁰	\$30,000	Industrial	Lead battery recycling plant	Guilty plea. One charge for discharge of lead to air breach of section 15(1)(c). Previous conviction for discharge of lead to air.
22 <i>Waikato Regional Council v Te Kuiti Meat Processors Ltd</i> ¹⁰¹	\$30,000	Industrial	Abattoir	Guilty plea. One charge for discharge of meat processing effluent in breach of section 15(1)(b). One of the holding ponds for the effluent was near a tomo, the tomo collapsed and 800 to 1500 m ³ of effluent discharged overland and underground into stream. Town water supply taken from stream, water used by 5,000 residents. Water had to be boiled before use for three days. Defendant took immediate steps and spent approximately \$600,000 to remedy effects.
23 <i>Manawatu-Wanganui Regional Council v Shetland Farms Ltd and WP Jamieson</i> ¹⁰²	\$30,000	Agriculture	Dairy	Early guilty plea. Shetland Farms Ltd is farm owner and operator. Jamieson is director of company. One charge against each defendant for discharge of dairy effluent in breach of section 15(1)(b) onto neighbouring forest via a pipe, continuing offence over two week period. Effluent ponded and would have entered ground water. 700 cows. Deliberate offence – effluent piped onto neighbouring land “furtively”. Defendants co-operated with Council, no history of non-compliance. Company fined \$30,000 plus costs of report of \$2,025 and lab costs of \$294.75.
24 <i>Manukau City Council v Russell Lesley Heenan</i>	\$30,000	Residential	'Improvements to property'	Guilty plea. One charge for pruning 13 mature pohutakawa trees on Council reserve in breach of section 9(1) so that defendant's property had unobstructed view of sea, substantial damage. Defendant appealed sentence. Appeal was dismissed.
25 <i>Canterbury Regional Council v Takamatua West Ltd</i> ¹⁰³	\$30,000	Commercial	Subdivision	Guilty plea. One charge for discharge of sediment in breach of section 15(1)(b) from earthworks for subdivision and one charge for breach of abatement notice. Fined \$10,000 for discharge, payment to resident's association of \$10,000 and Council costs of \$2,000 and for breach of abatement notice fined \$20,000. Two other defendants – see case 12 of Appendix 2, table on discharges without conviction.

⁹⁹ 22/01/2007, Judge Dwyer, DC Hawera, CRI 2006-021-001444.

¹⁰⁰ 6/06/2008, Judge Thompson, DC Wellington, CRI-2008-032-001297.

¹⁰¹ 30/05/2006, Judge Harland, DC Te Kuiti, CRI-2007-073-000413.

¹⁰² 18/10/2007, Judge Radford, DC Marton, CRN 2007-034 and 2007-034-23.

¹⁰³ 4/04/2008, Judge Smith, DC Christchurch, CRI-2007-009-004858-60-66.

Case	Fine	Sector	Subsector	Details
26 <i>Waikato Regional Council v Robert Wilkin Neal</i> ¹⁰⁴	\$25,000	Commercial	Earthworks contractor	See details in case 1 in table 19. Three charges – excavating the river bed, diverting stream, soil disturbance, roading and tracking in the Waipa River Gorge. Fined \$1,000 for river offences, \$4,000 for stream offences, and \$20,000 for Waipa Gorge offences, plus costs of \$5,000.
27 <i>Northland Regional Council v Lands & Survey Ltd and Michael Elrick</i> ¹⁰⁵	\$25,000	Commercial	Project Manager	Same case as No 5 in this table. Illegal earthworks at a subdivision. Two charges against each defendant for breach of section 9(1) and 15(1)(b). Continuing offences. Lands & Survey Ltd – Project Manager, fined \$12,500. Elrick – Director of Lands & Survey, fined \$12,500.
28 <i>Auckland City Council v Xao Xiang Yu</i> ¹⁰⁶	\$25,000	Commercial	Subdivision	Guilty plea to seven charges for breach of section 9(1), earthworks and destruction/damage of 11 protected trees. Defendant obtained a retrospective resource consent for the earthworks. Restorative justice conference outcomes are listed in Appendix 5. Defendant was fined \$25,000.
29 <i>Waikato Regional Council v Christopher John Carrigan Trower</i> ¹⁰⁷	\$25,000	Agriculture	Earthworks	Guilty plea, earthworks in breach of section 9(3) and discharge of sediment in breach of section 15(1)(b). Defendant undertook earthworks on farm to convert farm to dairy farm, no erosion and sediment control measures, substantial impact of erosion. Fined \$25,000 for earthworks and ordered to pay costs of \$1,095 for report on impact of sediment on tributary. (Also fined \$18,000 for discharge of dairy effluent.)
30 <i>Taranaki Regional Council v Fonterra Co-operative Group Ltd</i> ¹⁰⁸	\$25,000	Industrial	Dairy factory	Guilty plea to one charge for discharge of cream in breach of section 15(1)(b). Approximately 5,000 litres of cream discharged from offshore outfall, cream in form of large globules of fat washed onto 5–6 km length of shore, bad odour, defendant is large entity, substantial clean up by defendant.

¹⁰⁴ 29/11/02, Judge Thompson, DC Auckland, CRN 107500, 04,06, 07, 1075004545, 49, 51, 52, 1075004537, 41,43, 44, 1075004492, 96, 98, 99.

¹⁰⁵ 12/09/06, Judges Newhook and Dwyer, DC Whangarei, CRN 5084500347, 349, 366, 368, 355, 357, 387 and 389.

¹⁰⁶ 12/02/2008, Judge Dwyer, DC Auckland.

¹⁰⁷ 29/09/2005, Judge Smith, DC Hamilton, CRN 05072500040, 55 and 57.

¹⁰⁸ 17/08/2006, Judge Thompson, DC Hawera, CRI-2006-021-560.

Appendix 4: Appeals Against Sentence for the Third Period

Case	Brief details	District Court	High Court	Court of Appeal
1 <i>Papakura District Council v Arthur Rutherford</i> ¹⁰⁹	Defendant had stored car wrecks and other material in an area defined in Council plan as a Flood Hazard Area. Council laid 165 charges. Council and defendant subsequently agreed that if defendant undertook work to comply with Plan then Council would withdraw all but one charge and consent to appellant being discharged without conviction.	District Court convicted defendant and ordered payment of costs of \$342.	Defendant appealed against decision to convict. High Court treated appeal as appeal against both conviction and sentence. High Court dismissed the appeal.	
2 <i>Rodney District Council v Josh Tupou and Sam Wong</i> ¹¹⁰	Guilty plea. Destruction of trees. Tupou was instructed by Wong to do work. Tupou felled 58 protected trees in 800 m ² area.	District Court convicted both defendants, sentenced Wong to 300 hours community work, ordered him to pay Council \$12,000 for restoration work and \$2,500 for costs of prosecution; and sentenced Tupou to 200 hours community work ordered him to pay Council \$2,500 for restoration work and \$1,000 for costs of prosecution.	Defendants appealed against sentence. High Court said it was apparent that District Court favoured a financial penalty over semi-custodial sentence but from information provided it appeared that defendants would not be able to pay fine in addition to reparation. High Court was told that defendants were able to pay a fine. High Court vacated both sentences of community work and fined Wong \$12,500 and Tupou \$2,500. Payment for costs was not changed.	

¹⁰⁹ 22/07/2005, Allan J, HC Auckland, CRI 2005-404-162.

¹¹⁰ 5/08/2005, Harrison J, HC Auckland, CRI-2005-404-146.

Case	Brief details	District Court	High Court	Court of Appeal
3 <i>Waimakariri District Council v Roger Gordon Palmer</i> ¹¹¹	Not guilty plea. Illegal landfill.	District Court convicted defendant and imposed fine of \$2,500 and made enforcement order requiring defendant to spread waste and incorporate into contour of surrounding land.	Defendant appealed against conviction on grounds that materials dumped were not waste and activity was not landfill as defined in Council plan. High Court dismissed appeal against conviction. Defendant also appealed against terms of enforcement order. High Court deleted one word in the enforcement order but otherwise ordered that the terms of the order should stand.	
4 <i>Waikato Regional Council v Wallace Corporation Ltd</i> ¹¹²	See case 22 of Appendix 3 for more details. Guilty plea. Discharge of odour from abattoir and rendering plant, continuing offence over 12 days.	District Court convicted and imposed fine of \$80,000.	Defendant appealed against sentence. High Court reduced fine to \$47,000.	
5 <i>Canterbury Regional Council v Tradewood Shipping Company and Cometa United Corporation</i> ¹¹³	See cases 12 and 18 in Appendix 3 for more details. Not guilty plea. Two offences. Discharge of oil from ship on two occasions on one day. Tradewood was manager of ship. Cometa was the owner of the ship.	District Court convicted and fined Tradewood \$35,000 and Cometa \$30,750.	Both defendants appealed to High Court against conviction and sentence. Appeal was dismissed.	Both defendants appealed to Court of Appeal against conviction. Appeal was dismissed.
6 <i>Manukau City Council v Russell Lesley Heenan</i> ¹¹⁴	Guilty plea. Pruned 13 mature pohutakawa trees on Council reserve so that defendant's property had unobstructed view of sea, substantial damage.	District Court convicted and imposed fine of \$30,000.	Defendant appealed against sentence. High Court dismissed the appeal.	

¹¹¹ 17/10/2005, Panckhurst J, HC Christchurch, CRI 2005-409-000105. Note the District Court decision was on 15/04/2005 which is before the third period. This case has been included in this report because the High Court decision is within the third period.

¹¹² 8/06/06, France J, HC Auckland, CRI 2006-404-26.

¹¹³ 14/06/2006, Judge Smith, DC Christchurch, CRN 05009502106, 107, 103, 104. 6/10/2006, Fogarty J, HC Christchurch, CRI 2006-409-000128. CA168/07 [2007] NZCA 560, Arnold, Gendall and Priestley JJ.

¹¹⁴ 13/02/2006, Judge McElrea, DC Auckland CRN 5092501702. 10/08/2006, Priestley J, HC Auckland, CRI 2006-404-069.

Case	Brief details	District Court	High Court	Court of Appeal
7 <i>Canterbury Regional Council v Steelbro New Zealand Ltd</i> ¹¹⁵	Not guilty plea. Discharge of diesel from Steelbro's premises in breach of section 15(1)(d).	District Court convicted and fined defendant \$10,000 and ordered a reparation payment of \$20,000 in clean-up costs to the Council and made an enforcement order for construction of an underground sump to isolate contaminants at a cost of \$16,000.	Council appealed against sentence. High Court held that the basic approach of the District Court to the sentencing exercise was misplaced and that it had erred in reducing the reparation figure sought by the Council of \$44,656, a figure which had already been significantly discounted. The High Court increased the reparation from \$20,000 to \$44,656 but did not increase the fine.	
8 <i>Southland Regional Council v Sandstone Dairy Ltd</i> ¹¹⁶	See case 8 of Appendix 3 for more details. Not guilty plea. Discharge of dairy effluent in breach of section 15(1)(b) on three dates.	District Court convicted and fined defendants \$60,000.	Defendant appealed conviction and sentence. Appeal against conviction dismissed. Appeal against sentence successful. Fines reduced from \$60,000 to \$40,000.	
9 <i>Waikato Regional Council v Plateau Farms Ltd</i> ¹¹⁷	See case 13 of Appendix 3 for more details. Guilty plea. One representative charge for discharge of dairy effluent in breach of section 15(1)(b), discharge to groundwater over period of more than one month.	District Court convicted and fined defendant \$35,000 and ordered payment of solicitor's costs according to scale under the Costs in Criminal Cases Regulations.	Defendant appealed against sentence. High Court dismissed appeal but allowed appeal against costs award in part.	
10 <i>Marlborough District Council v TL & NL Bryant Holdings Ltd</i> ¹¹⁸	Not guilty plea. Construction of substantial stopbank. Two charges – contravention of section 9 and attempted contravention of section 14.	Convicted. Deliberate offending. Fined \$10,000 on each charge.	Defendant appealed conviction and sentence. The Court directed the information should be reheard in the District Court. The Court found that the fines were not manifestly excessive.	

¹¹⁵ 1/11/2006, Judge Smith, DC Christchurch, CRN 05009503624 and 25. 28/02/2007, Panckhurst J, HC Christchurch, CRI 2006-409-000232.

¹¹⁶ 14/12/2006, Judge Smith, DC Invercargill, CRN 06017500043, 44 and 91. 15/05/2007, Fogarty J, HC Invercargill, CRI 2007-425-000001.

¹¹⁷ 25/01/2007, Judge Thompson, DC Rotorua, CRI – 2005-069-2345. Appeal – 17/09/07, Stevens J, HC Rotorua, CRI2007-463-000016.

¹¹⁸ 25/01/2008, Judge Thompson, DC Blenheim, CRI-2007-006-001041. Appeal – 16/06/2008, Clifford J, HC Blenheim, CRI-2008-406-3.

Appendix 5: Prosecutions in the Third Period in which the Restorative Justice Process has been used¹¹⁹

Case	Brief details	District Court sentence
1 <i>Auckland City Council v Premier Tree and Lawn Services Ltd and Charlie Salelea Laulu and Lolesio Keli</i> ¹²⁰	See case 2 of the community imposed work table in Appendix 2 for more details. Keli and Premier Tree and Lawn Services Ltd undertook work on instructions from property owner. ¹²¹ Keli attended the restorative justice conference.	
2 <i>Auckland City Council v B & C Shaw Ltd and Shaw</i> ¹²²	See case 28 of Appendix 3 for more details. Guilty plea. Felling of large pohutukawa tree without consent. Restorative justice process – described by Judge as worthwhile and meaningful. At restorative justice conference defendant apologised to the community. The outcome of the meeting – defendant was to pay for cost of transplanting an existing large Pohutukawa to be planted in place where fully visible from the road, enforcement order by consent for five-year period binding any future owner of site to pay for arborist to maintain tree and to replace tree if it dies, donate \$20,000 to Community Board for purchase of at least 200 trees to be planted at sites chosen by Board, pay \$50,000 towards Council's costs and remains of felled tree to be made available for community preservation.	Convicted and fined \$80,000, enforcement order for replacement tree. Shaw made voluntary donation of \$20,000 and work for local community. Court ordered that if Shaw failed to pay donation then company would be fined \$25,000.
3 <i>Christchurch City Council v Thomas Christopher Lewis</i> ¹²³	See case 3 in the discharge without conviction table in Appendix 2 for details, restorative justice conference held and discharge without conviction.	

¹¹⁹ There is reference in the High Court decision for the appeal in the case *Rodney District Council v Josh Tupou and Sam Wong* 5/08/2005, Harrison J, HC Auckland, CRI-2005-404-146 to a meeting with residents and this may have been a restorative justice conference. This was not checked as the District Court sentencing notes were not available and this case has not been included in this appendix.

¹²⁰ 7/06/2005, Judge McElrea, DC Auckland, CRN 04004502289 and 2253.

¹²¹ The property owner was Lowe and her company 12 Carlton Gore Road Ltd. These parties were also prosecuted. The decision is in the second period – *Auckland City Council v 12 Carlton Gore Road Ltd and Mary-Anne Katherine Lowe*, 11/04/2005, Judge McElrea, DC Auckland, CRN 04004502283. Guilty plea to charges for breach of section 9(1), destruction and cutting of trees. Restorative justice conference outcome – defendant apologised to neighbour, spent \$8,000 landscaping property and planting trees, contributed \$3,000 to community and proposed payment of \$2,909 for Council costs. Company convicted and ordered to pay costs to Council of \$2,909, Lowe discharged without conviction.

¹²² 2/03/2006, Judge McElrea, DC Auckland, CRN 5004502435 and 436.

¹²³ 24/05/2006, Judge Smith, DC Christchurch, CRN 05009504494.

Case	Brief details	District Court sentence
4 <i>Manukau City Council v Daniel James Hewes</i> ¹²⁴	Guilty plea by owner of property to working within drip line of protected tree – tree had already been substantially damaged by someone else. Restorative justice conference held, outcomes included apology in local paper, payment of costs for articles in paper about need to apply for consents and care and protection of trees, agreed to plant and maintain trees in reserve and met half of cost of conference.	Convicted, suspended sentence and enforcement order requiring defendant to pay \$5,000 towards Council costs.
5 <i>Waitakere City Council v A Mackinnon</i> ¹²⁵	See case 4 of the community imposed work table in Appendix 2 for details. Restorative justice conference held and sentence of community work imposed.	
6 <i>Auckland City Council v A1 Tree Ltd and Gittos</i> ¹²⁶	See case 6 in discharge without conviction table in Appendix 2 for details. Restorative justice conference held.	Gittos discharged without conviction and ordered to pay costs of \$2,500 jointly. A1 Tree Ltd convicted and fined \$2,500. Costs ordered jointly against Mr Gittos and company by way of enforcement order of \$2,500.
7 <i>Auckland City Council v Suresh Makanji Raniga</i> ¹²⁷	Guilty plea to one charge of cutting and pruning 16 protected trees. Successful restorative justice conference. Outcomes included apology to community to be conveyed to neighbours, mitigation plan involving planting of new plants, hedging planted to provide low level mitigation, offer to donate 24 trees to local school and to pay for planting by an arborist, public apology in local newspaper and story in publication "Indian Newslink" and donation of any logs or branches from trees to appropriate organisations so timber could be put to worthwhile use. Defendant spent \$30,000 at date of sentencing to achieve remediation.	Convicted and fined \$6,500.
8 <i>Manukau City Council v Singh Developments Ltd and Germail Bahunda Singh</i> ¹²⁸	Guilty plea to four charges against each defendant of removing protected trees and demolishing part of a heritage building. Restorative justice conference but Judge held that genuine remorse was not demonstrated. Judge said if no restorative justice conference then fines in order of \$20,000 to \$25,000 may have been appropriate.	Convicted and fined \$12,000 and enforcement order requiring remedial work.

¹²⁴ 9/06/2006, Judge McElrea, DC Auckland.

¹²⁵ 13/10/2006, Judge McElrea, DC Auckland. Written sentencing notes not available. Details provided by Waitakere City Council.

¹²⁶ 22/01/2007, Judge McElrea, DC Auckland, CRI -2006-004-018850 and 021361.

¹²⁷ 2/04/2007, Judge McElrea, DC Auckland, CRI -2006-004-023560.

¹²⁸ 2/04/2007, Judge McElrea, DC Auckland, CRI -2006-092-008522.

Case	Brief details	District Court sentence
9 <i>Hutt City Council v Wayne Sproston</i> ¹²⁹	Guilty plea to one charge of breach of section 9(1), extensive earthworks. Restorative justice conference – two lengthy meetings. Outcome – defendant agreed to pay reasonable costs of neighbours and to make a donation to Forest & Bird Society, sent letters of apology, technical plan as to works to be done at time of sentencing had not been approved. Judge said process had worked; albeit one outstanding matter but said sentencing could not be deferred further “... there can become a stage where restorative justice becomes oppressive. It should not be used as a Sword of Damocles to exact and extract from you matters which perhaps may not be fair”. Agreed outcome of conference cost defendant \$39,500.	Convicted and discharged and ordered to pay \$1,500 to Council towards engineering expenses.
10 <i>Manukau City Council v Lisa Cai</i> ¹³⁰	Guilty plea to two charges for breach of section 9(1), removal of tree. Defendant was property manager and developer of property. Defendant instructed contractor to remove vegetation including totara tree. Work also breached conditions of subdivision consent. Restorative justice conference outcome – defendant apologised to neighbours and agreed to programme of reinstatement work to be enforced through enforcement order involving planting of trees to value of \$2,500 and to pay for maintenance of trees for two years, publish apology in local newspaper, pay for publication by Council of educative articles about trees at cost of \$2,800 and to reimburse Council for its costs of \$6,000.	Convicted and discharged and ordered to pay Council costs of \$6,000 and enforcement order made for reinstatement work as agreed at conference.
11 <i>Auckland Regional Council v PVL Proteins Ltd</i> ¹³¹	Guilty plea to three charges for breach of abatement notice requiring defendant to cease discharge of contaminants into air from its rendering plant which are noxious, dangerous, offensive or objectionable in opinion of enforcement officer. Discharge to air in breach of abatement notice occurred on three dates over three-month period. A meeting was held before entry of guilty plea which was not a restorative justice conference. Prosecution was adjourned to allow time for restorative justice process. There was no restorative justice outcome in the sense of a response to wrong-doing but there was an offer of amends. Company got credit for working with Council to produce an agreed enforcement order.	Convicted and fined \$36,000 and ordered to pay costs of \$20,000. Judge took into consideration \$2,000 defendant had paid before the sentencing date to Council for costs for Council staff time.
12 <i>Manukau City Council v Claxton Tree Services Ltd</i> ¹³²	See Appendix 2 for details, restorative justice conference held and discharge without conviction.	

¹²⁹ 17/05/2007, Judge Whiting, DC Wellington, CRI-2006-032-000564.

¹³⁰ 25/07/2007, Judge McElrea, DC Auckland, CRI -2006-092-016504.

¹³¹ 13/08/2007, Judge McElrea, DC Auckland, CRI-2006-069-001093.

¹³² 3/09/2007, Judge McElrea, DC Auckland, CRI -2006-092-012322.

Case	Brief details	District Court sentence
13 <i>Auckland City Council v Xao Xiang Yu</i> ¹³³	<p>Guilty plea to seven charges for breach of section 9(1), earthworks and destruction/damage of 11 protected trees. Defendant obtained a retrospective resource consent for the earthworks.</p> <p>Restorative justice conference outcomes included planting but at date of sentencing the defendant had not undertaken any of the work possibly because of misunderstanding on his part. At the sentencing hearing the defendant said he would undertake the work. Council said if defendant failed to do so it may apply for enforcement order.</p>	Convicted and fined \$25,000.

¹³³ 12/02/2008, Judge Dwyer, DC Auckland.