

Example application for a search warrant

IN THE DISTRICT COURT
AT [LOCATION]

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for a search warrant
pursuant to section 334 of the Act

**SWORN APPLICATION BY [name] FOR WARRANT PURSUANT TO SECTION 334 OF THE
ACT**

Dated this [day] day of [month] [year]

[Authority name]

Tel:

[Authority street address]

Fax:

[Town/city]

Postal address:

Email:

I, **[name]**, Enforcement Officer, [authority name], of [location] swear:

Application

- A. The [authority name] (“the Council”) is the local authority located in the [area]. The Council administers the Resource Management Act 1991 (“the Act”) and its subordinate regulations, including the district plan. The relevant district plan in this case is the [Plan title] (“the District Plan”).
- B. This application relates to the property known by its street address at [address] (“the Property”). The legal description of the Property is [legal description]. The registered owners of the property are [owners]. Attached and marked “**A**” is a copy of the Certificate of Title for the Property.
- C. The grounds for seeking a warrant from the Court under s334 of the Act are that there are reasonable grounds for belief there will be evidence of an offence committed against the Act on the property. The reasons for this belief are set out below.

Introduction

- 1. I am currently employed as a [position title] by [immediate employer], a business unit of the Council and have been since [date].
- 2. I am warranted as an Enforcement Officer by the Council pursuant to Section 38 of the Act, and I am authorised to seek this warrant on the Council’s behalf.

Reasonable grounds to believe

- 3. I am familiar with the District Plan as it applies to the Property.
- 4. The Property is zoned [zoning] in terms of the District Plan.
- 5. Resource Consent was granted on [date] for the construction of a new dwelling at the Property, consent reference number [reference] (“the Resource Consent”). The resource consent approved infringements of the District Plan for location in the [zone], earthworks and excavations only. Attached and marked “**B**” is a copy of the Resource Consent.
- 6. The Resource Consent approved a Site and Drainage Plan titled, *Proposed Residence for [owners] at [address]*, prepared by [building company], dated [date], sheet 1 of 12. Attached and marked “**C**” is a copy of that plan (“the Site Plan”).

7. Rules *a* and *b* of the District Plan provide that sites with an area [*x*] m² or greater require minimum landscaped permeable surfaces of [*y*] % of net site area and maximum paved impermeable surfaces of [*z*] % of net site area.

8. "Net site area" is defined in the District Plan as the difference between the total area of the site and the area of its entrance strip. The Property has a net site area of [*eg, 540*] m² according to the Site Plan.

9. On [*date*] Council received a complaint that the minimum landscaped permeable surface at the Property was not in accordance with plans approved with the applicable Resource Consent.

10. A first inspection of the site to detect whether there was a breach of the District Plan revealed evidence as follows:

i) By measurement undertaken in the front yard and east side yard of the Property, that this portion of the site contained approximately [*eg, 59*] m² landscaped permeable surface.

11. The remaining parts of the property comprise the rear and west side yard. I later calculated the area of these yards in reliance on dimensions shown on the Site Plan, and determined that they total approximately [*eg, 104*] m².

12. The evidence referred to in paragraphs 10 and 11 has established that

i) Even if the entire rear and west side yards were landscaped permeable surface, the total area of landscaped permeable surface at the Property would amount to only [*eg, 163*] m² or [*30.1*] % of net site area. If the rear and west side yards are a mix of landscaped permeable and paved impermeable surface, the total area of landscaped permeable surface at the Property would amount to less than [*30.1*] % of net site area. Therefore, there is a likely breach of the District Plan. No resource consent has been issued for this breach.

ii) The landscaped permeable surface of [*163*] m² or [*30.1*] % does not accord with the statement on the Site Plan that landscaped permeable surface is [*eg, 284.7*] m². Therefore, there is a likely breach of condition 1 of the Resource Consent, that "the proposed activity shall be carried out in accordance with the plans and all information submitted with the application, being described as: Site and Drainage Plan titled,

Proposed Residence for [owners] at [address], prepared by [building company], dated [date], sheet 1 of 12.

13. Because of the evidence obtained from the first inspection and from later calculations, there are reasonable grounds for believing that a search of the Property including measurements in the rear yard and western side yard will gain further evidence and allow an exact determination regarding the breach or breaches of the Resource Consent and District Plan.

Offence punishable by imprisonment

14. The results of the search as described in paragraph 13 will be evidence of an offence or offences against the Resource Management Act 1991 punishable by imprisonment. In particular:

- i) Breach of a rule in a District Plan, unless a resource consent expressly allows the breach, contravenes section 9 of the Act.
- ii) Breach of a condition of a Resource Consent, being contrary to the express terms of a consent that otherwise would satisfy the requirements of section 9 of the Act, also contravenes section 9 of the Act.
- iii) A contravention of Section 9 is an offence pursuant to section 338(1)(a) of the Act and is punishable in the case of a natural person to imprisonment for a maximum term of 2 years or a fine not exceeding \$300,000, or in the case of a person other than a natural person, to a fine not exceeding \$600,000 pursuant to section 339(1) of the Act.

Other relevant background

15. The owner of the Property has refused permission for Council officers to further inspect the Property. In particular:

- i) By letter on [date] I suggested that a Council officer undertake an inspection of the Property to determine the exact level of the breach. This would enable Council to then negotiate the options for the property owner to rectify the situation by way of removal of the infringement, or by applying for further resource consent. Alternatively I suggested that the owner appoint a Licensed Cadastral Surveyor to assess, and report to Council regarding the paving and landscaping at the Property. No response was received.

