

District Courts Amendment Rules (No 2) 1998

PURSUANT to section 122 of the District Courts Act 1947 and section 692ZN of the Local Government Act 1974, His Excellency the Administrator of the Government, acting by and with the advice and consent of the Executive Council, makes the following rules.

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1 Title and commencement

- (1) These rules may be cited as the District Courts Amendment Rules (No 2) 1998, and are part of the District Courts Rules 1992¹ (“the principal rules”).
- (2) These rules come into force on 1 May 1998.

2 Interpretation

- (1) Rule 3(1) of the principal rules is amended by inserting in the definition of the term **the Act**, after the expression “6A”, the words “and in Part 6B”.
- (2) Rule 3(1) of the principal rules is amended by inserting in the definition of the term **working day**, after the expression “means”, the words “, except in Part 6B,”.

¹ SR 1992/109

Amendment No 1: SR 1995/64

Amendment No 2: SR 1995/130

Amendment No 3: SR 1995/319

Amendment No 4: SR 1996/152

Amendment No 5: SR 1998/63

3 Proper Court

Rule 113(4) of the principal rules is amended by omitting the word “Henderson”, and substituting the word “Waitakere”.

4 Proceeding commenced at Auckland, North Shore, Otahuhu, Papakura, or Waitakere

The principal rules are amended by revoking rule 250, and substituting the following rule:

“250

(1) The parties to any proceeding which is defended and which has been commenced in the Court at Auckland, North Shore, Otahuhu, Papakura, or Waitakere may request the Registrar to transfer the proceeding to the Court at such other one of those 5 places as the parties specify in their request.

“(2) Every such request must be in writing and must be signed by or on behalf of all the parties to the proceeding.

“(3) On receipt of any such request the Registrar must transfer the proceeding accordingly.”

5 New Part 6B inserted

The principal rules are amended by inserting, after Part 6A, the following Part:

“Part6B**“Proceedings under Part 43C of the Local Government Act 1974****“461ZM Application of Part**

This Part applies to every proceeding under Part 43C of the Local Government Act 1974.

“461ZN Interpretation

In this Part, unless the context otherwise requires,—

“**The Act** means the Local Government Act 1974

“**Working day** means any day of the week other than—

- “(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and
- “(b) A day in the period commencing with 25 December in any year and ending with 15 January in the following year.

“**461ZO Application of rules in other Parts**

- “(1) The provisions of rules 112, 113, 131, 132, 151 to 167, 208, 258, 259, 300 to 341, 425 to 430, and 531 do not apply to proceedings under Part 43C of the Act.
- “(2) The provisions of a rule that is contained in a Part other than this Part and that is not excluded by subclause (1) apply, so far as they are applicable, and with all necessary modifications, to proceedings under Part 43C of the Act.
- “(3) For the purpose of applying the provisions of a rule in accordance with subclause (2), the term **pleading** includes an application for a removal order and a notice of objection.

“*Removal orders*

“**461ZP Commencement of proceeding**

- “(1) Every proceeding to which this Part applies must be commenced by filing an application for a removal order under section 692ZD of the Act in the Court that is nearest to the property to which the application relates.
- “(2) Subject to rule 7, the proper heading of an application must be in form 1.

“**461ZQ Application for removal order**

- “(1) An application for a removal order must be in form 40H.
- “(2) Every application must state whether the applicant seeks—
 - “(a) Removal or alteration of all or part of the fence, vegetation, or structure:
 - “(b) A consequential order, including an order that entry be made onto any portion of land adjoining the property to which the application relates:

- “(c) Directions as to service under section 692ZD(4) of the Act.
- “(3) If alteration of all or part of the fence, vegetation, or structure is sought, the application—
 - “(a) Must state the nature of that alteration; and
 - “(b) May have a drawing or plan of the alteration attached to it.
- “(4) An affidavit made by or on behalf of the applicant, setting out the matters on which the application is based, must be filed with every application for a removal order.
- “(5) The affidavit must contain sufficient information to inform the Court of—
 - “(a) The grounds on which the application is based; and
 - “(b) The facts relied on in support of the application; and
 - “(c) Where removal of all or part of the fence, structure, or vegetation is sought, the reasons for seeking the proposed removal; and
 - “(e) Where alteration of all or part of the fence, structure, or vegetation is sought, the reasons for seeking the proposed alteration; and
 - “(f) Where entry is sought onto a portion of land adjoining the property to which the application relates, the reasons why entry onto the adjoining land is necessary to enforce the removal or alteration sought.

“461ZR Procedure on applications for removal order

- “(1) If an appearance is necessary or required for an application for a removal order, the Registrar must fix a date and time for a hearing and must inform the applicant accordingly.
 - “(2) If an order is made on an application for which no appearance is necessary or required, the Registrar must immediately inform the applicant of the terms of the order
- “Compare: SR 1992/58, r 17

“461ZS Removal orders

A removal order must be in form 40I.

“461ZT Service of removal order on respondent

- “(1) After a removal order is made, the respondent must, without delay, be served with a copy of—
- “(a) The removal order; and
 - “(b) The application for the order; and
 - “(c) A copy of the affidavit or affidavits filed in support of the application.
- “(2) Despite subclause (1), a Judge or Registrar may direct that the removal order is to be served on the respondent without either or both of the documents referred to in paragraphs (b) and (c) of that subclause, and in that case the Judge or Registrar must direct that the respondent be given an opportunity to collect the documents not served on the respondent from a specified place.
- “(3) Subclause (1) is subject to any direction given by the Court under section 692ZD(4) of the Act.

“461ZU Service of removal order on other parties

- “(1) After a removal order is made, all persons (other than the respondent) entitled to object under section 692ZG(1) of the Act must, without delay, be served with a copy of—
- “(a) The removal order; and
 - “(b) A notice in form 40J.
- “(2) A copy of the application for the order and the affidavit or affidavits filed in support of the application need not be served on a person to whom subclause (1) applies, but the Registrar must, on request, make copies of those documents available to that person.
- “(3) Subclause (1) is subject to any direction given by the Court under section 692ZD(4) of the Act.

“461ZV Mode of service of removal order

- “(1) Subject to subclauses (2) and (3), a removal order must be served personally.
- “(2) A removal order may be served on a respondent who is the occupier of the property to which the order relates by leaving a copy of the order in a prominent position at the property.

- “(3) Where for any sufficient reason service of a removal order cannot be effected in the manner specified by this rule, the Court or a Registrar may give any direction provided for by rule 239 or make any order provided for by that rule.
- “(4) This rule is subject to any direction given by the Court under section 692ZD(4) of the Act as to the manner in which service is to be effected on a specified party.
- “(5) This rule does not apply to service of an order that confirms, varies, or discharges the removal order following the making of an objection.
- “Compare: SR 1996/148, r 53

“Notices of objection

“461ZW Notice of objection

- “(1) A notice of objection must be in form 40K.
- “(2) A notice of objection must state whether the objector seeks a discharge of the removal order or whether a specified variation of the order would meet the objector’s concerns.
- “(3) An affidavit must accompany every notice of objection and must contain sufficient information to inform the Court of—
- “(a) The facts relied on in support of the objection; and
- “(b) Where a variation of the order is sought, the facts relied on in support of the proposed variation.
- “(4) If a party who wishes to object to a removal order fails to file a notice of objection in form 40K accompanied by an affidavit described in subclause (3), the Court may—
- “(a) Strike out the objection; or
- “(b) Where an oral hearing is to be held to decide the objection, allow the party wishing to object to appear at the hearing only on such terms as the Court considers appropriate.
- “(5) Subclause (4) does not limit any other power the Court may exercise where a party fails to comply with these rules.
- “Compare: 1996/148, r 31(1)(b)

“461ZX Manner in which notice of objection to be dealt with

- “(1) If, under section 692ZG(3) or section 692ZG(4)(a) of the Act, an oral hearing is to be held to decide an objection, the Regis-

trar must notify every person who has been served with a copy of the removal order that he or she is entitled—

“(a) To appear at the hearing, either in person or by his or her solicitor or counsel; or

“(b) To make submissions in writing in relation to the objection.

“(2) Where the Court has determined to decide an objection made by a person described in subparagraph (iii), (iv), or (v) of section 692ZD(5)(a) of the Act without an oral hearing, the Registrar must notify the applicant and every other person entitled to object under section 692ZG(1) of the Act that he or she may make written submissions in relation to the objection.

“(3) A written submission made in response to a notice given under subclause (1)(b) or subclause (2) must be lodged with the Court within 5 working days after the date on which the Registrar notifies the objector under either of those subclauses, or within such longer period as the Court may specify in the notice.

“(4) If a copy of the objection has not been previously served on a person to whom notice is given under subclause (1) or subclause (2), the Registrar must ensure that a copy of the objection accompanies the notice.

“(5) A Registrar may exercise the powers of the Court under—

“(a) Section 692ZG(4) of the Act (to determine if objections by persons other than the respondent or the owner are to be decided with or without an oral hearing); and

“(b) Section 692ZG(5) of the Act (to decide whether hearings are to be heard together).

“Interlocutory applications

“461ZY Interlocutory applications

The provisions of rules 255 to 257 and 260 to 299 apply, with all necessary modifications, to interlocutory applications made in proceedings under Part 43C of the Act.

- “461ZZ Applications for enlarging time used as delaying tactic**
No order enlarging time may be made under rule 6 if it appears to the Court or the Registrar, as the case may be, that there is no genuine reason or excuse for the application.

“Entry of land to enforce removal orders

- “461ZZA Notice where land entered to enforce removal order**
“(1) The notice of entry required to be given under section 692ZK(4)(d) of the Act by an applicant to the relevant owner and occupier,—
“(a) Following entry of the property to which the order relates, must be in form 40L:
“(b) Following entry of a property adjoining the property to which the order relates, must be in form 40M.
“(2) A notice referred to in subclause (1) may be served—
“(a) On the occupier by leaving the notice in a prominent position on the property that was entered:
“(b) Where the owner is not the occupier, by posting the notice to the owner’s address.”

6 New forms inserted

Schedule 1 of the principal rules is amended by inserting, after form 40G, the new forms 40H to 40M set out in the Schedule.

| | |
|--|------------|
| Schedule | Rule 6 |
| New forms inserted in Schedule 1 of principal rules | |
| Form 40H | Rule 461ZQ |
| Application for removal order | |
| <i>Section 692ZD, Local Government Act 1974</i> | |
| (General heading—Form 1 and endorsement) | |
| APPLICATION FOR REMOVAL ORDER | |

Form 40H—*continued*

I, [*Full name and description of applicant*], apply for a removal order against [*Full name, address and occupation, if known*], the respondent.

Property

1. The order is sought in respect of the property at

[Give street address or other locality description in sufficient detail to enable it to be clearly identified].

Nature of order
sought

2. The *removal *alteration is sought of the *fence *structure

**vegetation located on [Specify the location of the particular fence, structure, or vegetation on the property in sufficient detail to enable it to be clearly identified].*

- *3. The following alterations are sought to the *fence *structure *vegetation:

[Specify the nature of the alterations sought. Where removal is sought of one part of the fence and alteration of another, specify the proposal in sufficient detail to inform the Court. A drawing or diagram may be attached to explain the orders sought.]

- *4. The following further orders are sought:

State—

(a) Any order sought that any thing attached to the fence, structure, or vegetation is to be removed as a consequence of the removal or alteration:

(b) Any other consequential order sought.

Entry onto adjoining land

Form 40H—*continued*

- *5. A further order is sought authorising entry onto [*Identify any adjoining land that would need to be entered to enforce the removal order sought*].

Costs and expenses of complying with order sought

- *6. A direction is sought that the respondent not be required to pay the costs and expenses of complying with the removal order sought.

[Note that section 692ZK(1)(d) of the Local Government Act 1974 provides that, unless a removal order directs otherwise, the respondent must pay all the costs and expenses of complying with the order.]

Service

7. The respondent is the *owner *occupier.
8. In addition to the respondent, the following persons will also be served with a copy of the order:
- * (a) The owner of the property whose name and address is:
- [Complete where respondent is not owner]*
- * (b) The mortgagee(s) of the property whose name(s) and address(es) *is *are:
- [Complete where the property is subject to a mortgage]*
- * (c) The owners of any property adjoining the property to which the application relates whose names and addresses are:
- *9. A direction as to service is sought in respect of the following *person *persons who are likely to be affected by the outcome of the proceeding:
- [If known give names and addresses of persons concerned and indicate the way in which they are likely to be affected].*

Form 40H—*continued*

OR

- *9. Apart from the persons listed in paragraph 8, there do not appear to be any persons who are likely to be affected by the outcome of the proceeding.
- *10. Directions are sought on the manner in which the following persons are to be served:
[Specify person concerned and the proposed nature of the direction sought.]

Affidavit in support

I rely on the content of the *affidavit *affidavits dated [*Specify date or dates*] filed in support of this application.

I *wish *do not wish to be heard in support of this application.

.....

Applicant or person
authorised to sign on
behalf of applicant

.....

.....

Date

** Delete or omit if inapplicable*

Form 40I
Removal order

Rule 461ZS

Section 692ZF, Local Government Act 1974

(General heading—Form 1 and endorsement)

To: The Respondent

[*Full name and address*].

Form 40I—*continued*

Reasons for removal order

The Court makes this removal order because it is satisfied that the property at [*Give street address or other locality description in sufficient detail to enable it to be clearly identified*] is occupied, or regularly used, by persons who *have been convicted of *have committed, *are committing, *are likely to commit offences and the *fence, *structure, *vegetation described below—

*(a) Has facilitated or contributed to, is facilitating or contributing to, or is intended to facilitate or contribute to,—

*(i) The concealment on the property of any unauthorised weapon or any controlled drug or any tainted property or any property that is stolen or obtained by a crime involving dishonesty [*State reasons why this ground applies*]; or

*(ii) The avoidance of detection or arrest of any person or persons believed or reasonably suspected to have committed any offence or offences [*State reasons why this ground applies*]; or

*(iii) The commission of any offence or offences by any person or persons on or from the property [*State reasons why this ground applies*]; or

*(b) The fence, structure, or vegetation is intended to injure any person [*State reasons why this ground applies*].

Action required to be taken

The Court makes the following *order *orders against the respondent:

1. The respondent must *remove *alter the *fence, *structure, or *vegetation as follows:

Form 40I—*continued*

[Identify, either in the order itself or by reference to documents attached to the order, the location of any fence, structure, or vegetation to be removed or altered; and specify the action required to be taken].

- *2. The respondent must also remove the following attachments from the *fence, *structure, or *vegetation:

[List attachments (such as video cameras, sensors, barbed wire) to be removed as a consequence of the removal or alteration referred to above].

- *3. The Court also makes the following consequential orders *and gives the following directions:

**If this removal order needs to be enforced, entry may be made onto [Identify portion of land adjoining property to which the order relates] in accordance with section 692ZK(4) of the Local Government Act 1974.*

**[Here set out any other consequential orders made, any directions as to service, and any direction relating to the costs of compliance.]*

Period within which action must be taken

The respondent must comply with this order within *[Specify period]*. *[The period must be a reasonable period, having regard to the circumstances giving rise to the removal order]*

.....
Registrar
.....

Date

**Delete or omit if inapplicable*

IMPORTANT INFORMATION FOR RESPONDENT

Form 40I—*continued***Right to object**

You may object to the making of this order. Every other person on whom this order is served may also object. A notice of objection must be in writing and contain certain information. (You can see an example of the form of the notice of objection at any office of the District Court.) It must be lodged with the Court and served on the applicant within 15 working days from the date on which the removal order is served on you (or within such further time as the Court may allow).

If a notice of objection is lodged, the removal order cannot be enforced until the Court has made its decision on the objection.

The Court may confirm, vary, or discharge the order. If the order is confirmed or varied, the Court will specify the date by which you must comply with the order.

Consequences if notice of objection not filed and order not complied with

If no objection is made to the order and you do not comply with this order within the period specified in the order for compliance, the applicant may enter the property without further notice and may use reasonable force to remove or alter the fence, structure, or vegetation in accordance with the terms of the order.

Any materials salvaged in removing or altering the fence, structure, or vegetation will be sold to recover the applicant's costs. If this does not cover all the costs, the applicant can recover the outstanding costs from you.

Assistance

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from ... to ... on Mondays to Fridays inclusive.

Form 40J
Notice of making of removal order

Rule 461ZU

Section 692ZF, Local Government Act 1974

(General heading—Form 1 and endorsement)

To: [*Names of persons other than respondent who are entitled to be served*].

The Court has made a removal order in respect of the property at [*Give street address or other locality description*]. A copy of the order is attached for your information.

You have been served with a copy of this order because you are—

- *the owner of the property
- *the owner of an adjoining property
- *the mortgagee of the property
- *a person who is likely to be affected by the outcome of the proceeding

Right to object

You may object to the order. A notice of objection must be in writing and contain certain information. (You can see an example of the form of the notice of objection at any office of the District Court.) The objection must be lodged with the Court and served on the applicant within 15 working days from the date on which the removal order is served on you (or such further time as the Court may allow).

If an objection is lodged, the removal order cannot be enforced until the Court has made its decision.

If you object, you can tell the Court whether you (or your lawyer) wish to have an oral hearing.

*[*Delete in the case of owner*] The Court can decide to deal with your objection without an oral hearing.

Form 40J—*continued*

Objection decided with oral hearing

If there is to be an oral hearing at which you (or your lawyer) can appear, you will be notified. You can make a written submission to the Court instead of appearing at the hearing. A written submission must be lodged with the Court within 5 days after you are notified of the hearing or within any longer period specified in the notice.

Objection decided without oral hearing

If there will not be an oral hearing to decide the objection, the Registrar will notify you that you can make a written submission to the Court. A written submission must be lodged with the Court within 5 days after you are notified or within any longer period specified in the notice.

Other objections

Certain other people may also be able to object to the order. If so, all the objections may be dealt with together. If those other people do not wish to object they may nevertheless be given an opportunity to comment on your objection before the Court makes its decision.

After considering any objection to a removal order, the Court may confirm the order, vary the order, or discharge the order.

Assistance

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from ... to ... on Mondays to Fridays inclusive.

.....
Registrar

Form 40J—*continued*

.....

Date

** Delete or omit if inapplicable*

Form 40K

Rule 461ZW

Notice of objection to removal order

Section 692ZG, Local Government Act 1974

(General heading—Form 1 and endorsement)

I, [*Full name*],

*the respondent

*the owner of the property to which the removal order relates

*a mortgagee of the property to which the removal order relates

*the owner of any property adjoining the property to which the removal order relates

*a person who has been served with the removal order in accordance with a direction given by the Court

OBJECT to the removal order made on [*Date*] in favour of [*Full name*], the applicant, against *me [*Full name of respondent if objection made by a person other than the respondent*], the respondent, in respect of [*Give street address or other locality description, so as to enable it to be clearly identified*].

The reasons for my objection are [*State sufficient particulars to indicate your reasons*].

I rely on the content of the *affidavit *affidavits dated [*Specify date or dates*] filed in support of this objection.

I request that

Form 40K—continued

*(a) The order be discharged:

*(b) The terms of the order be varied as follows: [*Give a detailed specification of the variation sought. The supporting affidavit must set out the facts relied on in support of the proposed variation*].

*I wish to appear at a hearing before the Court.

*I do not wish to appear before the Court.

.....

Objector

.....

Date

To: The Registrar

District Court

.....

and

To: The Applicant/*Respondent [*If the objector is not the respondent*].

Date of hearing

The Registrar is to complete the following appointment for hearing if an appearance is required.

I appoint [*Date*] at ... am (pm) at the District Court at ... for the hearing of this objection

.....

Registrar

.....

Form 40K—*continued*

Date

* *Delete or omit if inapplicable*

NOTES

Lodging notice of objection

This notice must be lodged in Court within 15 working days of the date on which the removal order was served on you (or such further time as the Court may allow).

Affidavit

This notice must be accompanied by an affidavit that contains sufficient information to inform the Court of the facts relied on in support of the objection; and where a variation of the order is sought, the facts relied on in support of the proposed variation.

Service

You must serve a copy of this notice on the person who applied for the removal order, and if you are not the respondent, on the respondent. Service may be effected at the respondent's address for service.

*Hearing of objection made by respondent or owner of property

If you lodge a notice of objection, you are entitled to appear before the Court either in person or by your lawyer but you must notify the Court if you wish to do so.

*Hearing of objection made by persons other than respondent or owner of property

If you lodge a notice of objection, you may advise the Court that you wish to be heard orally either in person or by your lawyer. The Court will then decide whether or not to hold an oral hearing and will notify you accordingly.

Notification of outcome

Form 40K—*continued*

Whether or not there is an oral hearing on your objection, you will be notified of the outcome. After considering all objections to a removal order, the Court may confirm the order, vary the order, or discharge the order.

Assistance

If you need help, consult a lawyer or contact a District Court office immediately.

Office hours

The office of the District Court is open from ... to ... on Mondays to Fridays inclusive.

Form 40L

Rule 46IZZA(1)(a)

Notice of entry to owner or occupier of property
to which removal order relates

Section 692ZK, Local Government Act 1974

(General heading—Form 1 and endorsement)

TO: [Full name] the *occupier *owner of the property at [Give street address or other locality description].

TAKE NOTICE that the property at [Give street address or other locality description] that you *occupy *own was entered on [Date of entry] to *remove *alter the *fence, *structure, *vegetation which [State full name of respondent] has failed to remove or alter in accordance with the removal order made against [State name of respondent], the respondent, by the District Court at ... on [Date of order] a copy of which is attached.

.....

Applicant

.....

Form 40L—*continued*

Date

NOTES

Costs

Any materials salvaged in removing or altering the fence, structure, or vegetation will be sold to recover the applicant's associated costs. If this does not cover all the costs the applicant can recover the outstanding amount from the respondent and may register a charge against the property under the Statutory Land Charges Registration Act 1928.

Form 40M

Rule 461ZZA(1)(b)

Notice of entry to owner or occupier of property
adjoining property to which removal order
relates

Section 692ZK, Local Government Act 1974

(General heading—Form 1 and endorsement)

TO: [*Full name*] the *occupier *owner of the property at [*Give street address or other locality description*].

TAKE NOTICE that the property at [*Give street address or other locality description*] that you *occupy *own was entered on [*Date of entry*] for the purpose of enforcing a removal order made in respect of the property at [*Give street address or other locality description*] adjoining your property.

A copy of the removal order made against [*State name of respondent*], the respondent, by the District Court at ... on [*Date of order*] is attached.

The removal order authorises entry on your property for the purpose of enforcing the order.

Form 40M—*continued*

It was necessary to enter your property because the respondent failed to *remove *alter the *fence, *structure, *vegetation in accordance with the removal order.

.....

Applicant

.....

Date

MARIE SHROFF,
Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into effect on 1 May 1998, amend the District Courts Rules 1998.

The rules amend the principal rules in 2 ways.

First, they change references to the Court at Henderson to the Court at Waitakere.

Secondly, they prescribe the procedure to be followed in respect of orders, under Part 43C of the Local Government Act 1974, to remove fences, structures, or vegetation linked to the commission or alleged commission of offences.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 23 April 1998.
