

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2018] NZEnvC 53

IN THE MATTER of the Resource Management Act 1991
AND of an application for enforcement orders
pursuant to section 316 of the Act
BETWEEN CANTERBURY REGIONAL COUNCIL
(ENV-2017-CHC-96)
Applicant
AND MICHAEL BENNY LE ROY
JAMISON INVESTMENTS LIMITED
TYRE RECYCLING SERVICES NEW
ZEALAND LIMITED
2016 TYRE SHREDDING LIMITED
Respondents

Court: Environment Judge J R Jackson

Hearing: In Chambers at Christchurch

Date of Decision: 24 April 2018

Date of Issue: 24 April 2018

ENFORCEMENT ORDERS (BY CONSENT)

A: Under sections 279(1)(b) and 314(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) Tyre Recycling Services New Zealand Limited and 2016 Tyre Shredding Limited ("the Companies") remove all the End of Life Tyres ("ELTs") stored at 122 Racecourse Road, Amberley ("the Amberley site") and transfer them to the warehouse approved by the Canterbury Regional Council ("the



Regional Council”) at 37 Buchanans Road, Christchurch (“the Christchurch site”) subject to the following conditions:

- (a) The tyres will be removed at a rate such that:
- (i) at least 31,125 ELTs will be removed from the Amberly site within **7 weeks** of the date of these Enforcement Orders;
 - (ii) at least 62,250 ELTs will be removed from the Amberly site within **14 weeks** of the date of these Enforcement Orders;
 - (iii) at least 124,500 ELTs will be removed from the Amberley site within **28 weeks** of the date of these Enforcement Orders; and
 - (iv) the remainder (if any) will be removed from the Amberley site by **5pm Monday 31 December 2018**.
- (b) The number of loads and ELTs removed shall be recorded and progress monitored by the Companies and the Regional Council as follows:
- (i) the Companies must take a time stamped photograph of every load before removing it from the Amberley site. It shall be taken either with the existing pile in view; or at the gate; and with both the trailer and truck in view and the truck doors open. The photographs are to be provided on a daily basis to the Regional Council so that it can be satisfied that the necessary 6 or more loads per week are being removed;
 - (ii) a weekly inspection of the Christchurch site may be undertaken by Regional Council officers at any time and without prior notice to check capacity and confirm that baling is being carried out by at least 2 people, baling 9-10 hours per day;
 - (iii) completed container order forms must be supplied on a monthly basis by the Companies to the Regional Council;
 - (iv) shipping documentation for every container sent off-shore during the removal process period is to be supplied by the Companies on a monthly basis to the Regional Council;
 - (v) freight documentation with bales per container sent off-shore during the removal process period must be supplied by the Companies on a monthly basis to the Regional Council.
- (c) (i) all photographs taken under (b)(i) above are to be emailed



within 24 hours of being taken to david.baker@ecan.govt.nz or such other email address as he stipulates in writing;

- (ii) all documentation to be supplied under (b) (iii) and (iv) above is to be supplied by the end of the forth working day in the month following to the Canterbury Regional Council addressed Attention Regional Leader RMA Investigations or emailed to david.baker@ecan.govt.nz.

(d) The removal of the tyres will commence with the clearance of the tyres along the east treeline at the Amberley site.

(e) As agreed with the owner of the Amberley site, the Companies may access the Amberley site between the hours of 5am to 8 am on weekdays for the first run of the day; and for the purposes of any second run, access may be up to 6pm until 1 September 2018; and up to 8pm thereafter, if the Companies contact the owner's representative Ms Angelique Hyde and get her agreement on a case by case basis.

B: Under section 321 of the Resource Management Act 1991, any party may apply to the court at any time to change or cancel these orders.

C: Costs are reserved.

REASONS

Introduction

[1] This proceeding concerns an application for enforcement orders by the Canterbury Regional Council seeking to have a pile of End of Life Tyres ("ELTs") at 122 Racecourse Road Amberley removed.

[2] The court has now read and considered the consent memorandum of the parties dated 13 April 2018 which proposes to resolve the matter. The parties have agreed that orders may be made requiring the ELTs to be removed from the Amberley site and stored at a warehouse at 37 Buchanans Road, Christchurch,¹ which has been approved by the

¹ Affidavit of M B Le Roy, dated 2 February 2018, at [19.1].



Canterbury Regional Council.

Other relevant matters

[3] Orders were initially sought against four respondents, however after the proceeding commenced one of the respondents, Mr M B Le Roy, was adjudged bankrupt. The parties entered discussions at the direction of the court and it was agreed that two of the respondent companies, being Tyre Recycling Services New Zealand Limited and 2016 Tyre Shredding Limited ("the Companies"), would take responsibility for the removal of the tyres.

[4] No person has given notice of an intention to become a party under section 274 of the Resource Management Act ("the RMA" or "the Act"). All parties to the proceeding have executed the memorandum requesting these orders.

[5] The court is prepared to make the orders as sought with the exception of: some minor grammatical changes, tightening up of the reporting times and obligations, and the exclusion of proposed orders 1(e) and (f). The reason these orders have been excluded is that any party may apply at any time to change or cancel these orders under section 321 of the Act. This means that any variations to access or timeframes must be sought by way of application to this court. If the parties are able to agree to any changes they seek to put before the court that will enable the changes to be made more efficiently. Nevertheless I encourage the companies to stick to the agreed timeframes as best they can to ensure the end target is reached and further intervention from the court is not required.

Orders

[6] It is recorded that these orders are made under section 279(1)(b) of the Act, being orders made by consent, rather than representing a decision or determination on the merits under section 297. The court is satisfied that the making of these enforcement orders falls within the court's jurisdiction and conform to the purpose and principles of the Act.

Outcome

[7] By consent, the application for enforcement orders is granted. Leave is reserved for any party to apply to change or cancel these orders.



[8] Costs are reserved.

For the court:



J R Jackson
Environment Judge

