

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ**

Decision No. [2022] NZEnvC 7

IN THE MATTER

of the Resource Management Act 1991

AND

of an application for an enforcement
order under s 314, 316 and 319 of the
Act

BETWEEN

CANTERBURY REGIONAL
COUNCIL

(ENV-2021-CHC-115)

Applicant

AND

MACLEE HOLDINGS LIMITED

Respondent

Court: Environment Judge J E Borthwick – sitting alone
Hearing: In Chambers at Christchurch
Last case event: 28 January 2022
Date of Decision: 1 February 2022
Date of Issue: 2 February 2022

ENFORCEMENT ORDER (BY CONSENT)

A: Under sections 279(1)(b) and 314(1)(da) of the Resource Management Act 1991, the Environment Court, by consent, orders that MacLee Holdings Limited, the landowner of 293 Manion Road, Rolleston, Canterbury, legal description Section 25 SO 482782 (“the Property”):



- (1) remove all the contaminants resulting from a tyre fire that occurred on the Property on 17 May 2020 (including burnt tyre residue, firefighting chemicals and contaminated soil) and dispose of them at a landfill approved by the Canterbury Regional Council by 1 June 2022;

subject to the following conditions:

- (a) all waste removal will be undertaken by suitably qualified contractors approved by the Canterbury Regional Council as experienced in the handling, removal and transport of contaminated material;
- (b) all waste and soil removed shall be disposed of appropriately at a facility approved to take that waste type;
- (c) evidence of appropriate disposal by way of invoices/receipts and manifests shall be provided to Canterbury Regional Council within five working days of the respondent receiving the invoice/receipt, manifest;
- (d) on completion of the removal the respondent shall provide to the Canterbury Regional Council a clearance certificate prepared by an independent suitably qualified person approved by the Canterbury Regional Council stating that all residue from the fire and any contaminated soil resulting from the fire have been removed from the Property.

B: Any party may apply to the court under section 321 of the Resource Management Act 1991, to cancel the enforcement order provided:

- (1) all of the burnt waste has been removed from the Property to a facility approved by Canterbury Regional Council; and
- (2) Canterbury Regional Council has confirmed in writing to the landowner that the Property is clear and the land under and around the burnt waste has been remediated to its satisfaction.

C: There is no order as to costs.

REASONS

Introduction

[1] On 2 November 2021, Canterbury Regional Council applied under s 316 of the Resource Management Act 1991 for an enforcement order of the kind specified in s 314(1)(da) of the Act against MacLee Holdings Limited. The location is 293 Manion Road, Rolleston which is a rural property of some 3.52 hectares owned by MacLee Holdings Ltd¹ (“the property”).

[2] The application for enforcement order was supported by affidavits from:

- (a) Joseph Leonard Cronin, Environment Canterbury Resource Management Investigator, dated 1 November 2021; and
- (b) Dr Lisa Caryn Scott, Environment Canterbury Groundwater Science Team Leader, dated 2 November 2021.

[3] The enforcement order would require the respondent to remove to an approved landfill, all burnt waste from the property.

Background

[4] The burnt waste was caused by an accidental fire which spread from a neighbouring property igniting a pile of tyres on 17 May 2020. The waste, which constitutes burnt tyre residue, firefighting chemicals and contaminated soil, must be removed in order to avoid, remedy or mitigate any likely adverse effects of contaminants leaching to groundwater and contaminating downstream bores used for potable supply.

[5] Despite not being responsible for lighting the fire, the respondent, as the owner of the property has been on notice that the Regional Council has concerns

¹ The legal description is Section 25 SO 482782 on identifier 725731.

regarding the burnt waste, those concerns having been communicated to Ms Lisa Bullock, the sole director of MacLee Holdings Limited, prior to the issue of an abatement notice on 23 June 2020.² The abatement notice was not appealed and the date for compliance was 30 September 2021. The waste was not removed, and three infringement notices were subsequently issued dated 23 October 2020, 8 December 2020, and 15 February 2021.³

[6] The risk to surrounding groundwater supplies from the burnt waste is explained in the affidavit of Dr Scott.⁴ Because of that risk and the respondent's lack of action to remove the burnt waste, the Regional Council applied for an enforcement order.

[7] Court-facilitated mediation was held on 25 January 2022. The parties discussed how the removal could be achieved under the terms of the proposed enforcement order and confirmed each other's understanding of the role of the parties in its performance. The parties agreed an amendment to the terms of the enforcement order sought by the Regional Council, regarding the timeframe for the completion of the waste removal and for reporting to the applicant.

[8] A joint memorandum of counsel dated 28 January 2022 was filed detailing the agreement reached between the parties. It requested the court make the enforcement order sought by the application dated 2 November 2021, incorporating the amendments detailed in said memorandum.

[9] The parties are mindful of the possibility that the COVID-19 pandemic could disrupt the supply of services provided by any contractors and consultants engaged by the respondent to complete the necessary works. The Regional Council advised it would be unlikely to oppose an application, under s 321 of the Act, to change a condition of the enforcement order, if services sought were

² Affidavit of J Cronin, dated 1 November 2021 at [29]-[31].

³ Affidavit of J Cronin, dated 1 November 2021 at [31].

⁴ Affidavit of Dr L Scott, dated 2 November 2021.

affected by circumstances beyond the respondent's control.⁵

Proposed enforcement order agreed

[10] The application for enforcement order is sought with the consent of the respondent. The parties having agreed to the terms required for the prompt removal of burnt waste from the property.

[11] The parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction and achieve the purpose of the Act including, in particular Part 2.

Consideration

[12] I am satisfied that the order proposed is necessary under s 314(1)(da) of the Act in order to avoid, remedy or mitigate actual or likely adverse effects on the environment.

[13] It is recorded that this order is made under s 279(1)(b) of the Act, being an order made by consent, rather than representing a decision or determination on the merits under s 279 of the Act. The court is satisfied that the making of this enforcement order falls within the court's jurisdiction and conforms to the purpose and principles of the Act.

Outcome

[14] By consent, the application for an enforcement order is granted.

⁵ Joint memorandum of counsel dated 28 January 2022 at [5].

[15] There is no order as to costs.

Jane S.



J E Borthwick
Environment Judge