

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision No. [2020] NZEnvC 210**

IN THE MATTER

of the Resource Management Act 1991 (**the RMA**)

AND

of an appeal application for enforcement orders under s 316 the RMA

BETWEEN

HAMILTON CITY COUNCIL

(ENV-2019-AKL-000319)

Applicant

AND

GLOBAL METAL SOLUTIONS LIMITED

First Respondent

Court: Environment Judge M Harland  
Environment Commissioner A Gysberts

Hearing: On the papers

Date of Decision: 15 December 2020

Date of Issue: **16 DEC 2020**

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**SECOND INTERIM DECISION OF THE ENVIRONMENT COURT**

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**A: The Court makes the following orders by consent:**

**(1) From the date of this interim order:**

**(a) Except when paragraph 1(b) below applies, the first respondent is prohibited from operating its shredder outside of the following days and times (permitted operating hours):**

**Monday - Thursday: 8.30am-10.30am, 11.00am-1.30pm, 2.00pm-3.30pm (shredder sessions); and**

**Friday (nominated weekday): 9.00am-12.00pm;**

**(b) In the event that the shredder suffers a breakdown during the permitted operating hours in paragraph 1(a) above, the first respondent may make up the lost shredder hours on the nominated weekday during the week that the breakdown occurs, but only within the shredder session times in paragraph 1(a) and without any residual lost hours carried over into any subsequent week. The first respondent will keep a record of the date, time, and duration, of any shredder breakdowns and the reallocated shredder session date, time, and duration;**

**(c) The first respondent is prohibited from operating the shredder on Saturday and Sunday;**

**(d) For the purpose of this interim order, the “shredder” includes the entirety of the operational parts of the shredder process, being the machinery that is highlighted in white in Schedule B of the Court’s Interim Decision [2020] NZEnvC 174 dated 14 October 2020.**

**(2) The interim order set out at paragraph 1 above will remain in force until the Court makes further interim orders as outlined in paragraphs [180] and [188] of the Court’s Interim Decision [2020] NZEnvC 174 dated 14 October 2020.**



## REASONS

### Introduction

[1] This case concerns an application by the Hamilton City Council (**the Council**) against Global Metal Solutions Limited (**GMS**) and Mr Tuhoro (its managing director) for enforcement orders sought to deal with the impact of noise emissions from the metal recycling business GMS operates at 203 Ellis Street, Frankton in Hamilton (**the site**).

[2] The application for enforcement orders alleged that the noise limits set out in the operative Hamilton District Plan (**District Plan**) that apply at Rimmington Drive within the Residential Zone near to the GMS site are exceeded by it, thereby adversely affecting the amenity and wellbeing of some of the residents who live there.

### *The Court's interim decision*

[3] On 14 October 2020 the Court issued decision [2020] NZEnvC 174, being an interim decision. We found that the application for enforcement orders was made out against GMS, but not against Mr Tuhoro.<sup>2</sup>

[4] In regard to GMS, we reached the view that an enforcement order should be made requiring it to comply with the District Plan noise limit, with the date of commencement being 1 December 2021, effectively a 12-month period. In our view this struck a reasonable balance between GMS's interests and the interests of the residents who have had to put up with noise exceedences, described by the independent experts as considerable and appreciable, for many years.<sup>3</sup>

[5] In the interim, until 1 December 2021, we made enforcement orders requiring additional mitigation measures to be implemented to deal with the likely continued exceedences and the impact of them on the residents for the next year. We also determined that the days and hours of operation of the shredder should be reduced to the extent that it should not be permitted to operate on Saturdays and, in addition, one weekday per week it should only be permitted to operate between 1.00pm and 4.00pm. We did not, however, have enough information to fully determine what the "operation of the shredder" should include.

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<sup>2</sup> [2020] NZEnvC 174 at [129], [190].

<sup>3</sup> [2020] NZEnvC 174 at [179].



[6] In addition, Mr Styles (the acoustic expert for the Council) had suggested, and Section D of the Joint Witness Statement prepared by Mr Styles and Mr Bell-Booth (the acoustic expert for GMS) also suggested, additional mitigation measures that could be put in place for the balance of the weekdays. These included:

- (a) Further scheduling the use of the main noise sources, including the shredder, vertical bin loading and deliveries of raw material to defined times of the day when the sensitivity to noise is lowest (for example to afternoons only);
- (b) reducing the operating hours (starting slightly later in the day and finishing slightly earlier);
- (c) erecting further temporary acoustic screening around the noisiest processes and machines (internally and along boundaries);
- (d) moving more plant inside the existing building;
- (e) removing tonal reverse beepers;
- (f) conducting an independent expert review of the noise management plan to explore efficiencies, additional practicable measures or improvements that could be made to further minimise noise emissions.

[7] We required the Council and GMS to liaise about the practicality of these measures, including how they could be independently assessed and monitored (and at whose cost) up until 1 December 2021.

[8] We also invited further submissions in relation to the orders we intended to make regarding the definition of what comprises the "shredder" and the restriction of its hours of operation during one nominated weekday between 1.00pm and 4.00pm.

***Memoranda of counsel***

[9] Both parties filed memoranda as directed. A Judicial Telephone Conference was scheduled to discuss the case management steps required to resolve the outstanding issues. Following discussions, it was clear that the issues between the parties had not been resolved, and a mediation (scheduled to occur on 30 November 2020) and a hearing date (scheduled to occur on 9 December 2020) were arranged.



[10] On 23 November 2020, counsel for GMS filed a memorandum requesting an adjournment of the dates proposed for the mediation and the hearing because GMS had experienced some relatively catastrophic and unexpected staffing issues, which it said had had a severe impact on its operations. Counsel was instructed to relay to the Court that GMS did not have the resources to prepare evidence and prepare for and attend both a mediation and a hearing before the end of the year because of these pressures, and because the lead up to the Christmas shutdown (22 December 2020 to 11 January 2021) meant that the scheduled dates were within the busiest time of the year for it. Without going into details about the staffing issues, it was evident from the material filed that there were significant reasons why the request made by GMS should be acceded to. The Council was sympathetic to the situation in which GMS found itself.

[11] Accordingly, the mediation scheduled for 30 November 2020 was vacated.

[12] On 4 December 2020 a joint memorandum of counsel was filed advising the Court that the parties had been able to agree about asking the Court to make certain interim orders so that the hearing scheduled for 9 December 2020 could be adjourned until early 2021.<sup>4</sup>

#### **The proposed interim orders**

[13] The parties seek orders regarding the operation of the shredder on the site, including an order that, if the shredder suffers a breakdown on one of the scheduled days, GMS be permitted to make up the shredder hours as outlined, but without any residual lost hours being carried over into any subsequent week.

[14] Having considered the interim orders proposed by the parties, we are satisfied that they address, on an interim basis, the issues raised in our interim decision regarding the operating hours of the shredder and we are satisfied that the term "shredder" is now adequately defined.



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<sup>4</sup> The Council and GMS acknowledge that the adjournment means that the interim measures hearing will need to be presided over by another Environment Judge. The parties consent to this and undertake not to raise any jurisdictional challenge based on that hearing being presided over by a different Judge than the Judge who presided over the substantive hearing.

[15] The remaining issues raised in our interim decision will be determined at a re-scheduled hearing in 2021.

### Orders

[16] The following orders are made by consent:

1. From the date of this interim order:
  - (a) Except when paragraph 1(b) below applies, the first respondent is prohibited from operating its shredder outside of the following days and times (**permitted operating hours**).
 

Monday - Thursday: 8.30am-10.30am, 11.00am-1.30pm, 2.00pm-3.30pm (**shredder sessions**).

Friday (**nominated weekday**): 9.00am-12.00pm.
  - (b) In the event that the shredder suffers a breakdown during the permitted operating hours in paragraph 1(a) above, the first respondent may make up the lost shredder hours on the nominated weekday during the week that the breakdown occurs, but only within the shredder session times in paragraph 1(a) and without any residual lost hours carried over into any subsequent week. The first respondent will keep a record of the date, time, and duration, of any shredder breakdowns and the reallocated shredder session date, time and duration.
  - (c) The first respondent is prohibited from operating the shredder on Saturday and Sunday.
  - (d) For the purpose of this interim order, the shredder includes the entirety of the operational parts of the shredder process, being the machinery that is highlighted in white in Schedule B of the Court's interim decision [2020] NZEnvC 174 dated 14 October 2020.
2. The interim order set out at paragraph 1(a) above will remain in force until the Court makes further orders as required by paragraphs [180] and [188] of the Court's interim decision [2020] NZEnvC 174 dated 14 October 2020.



[17] A further judicial telephone conference is to be allocated in early February 2021 to review and to make any further case management directions considered necessary to progress this matter to a conclusion.

For the Court



A handwritten signature in cursive script, appearing to read "M Harland", is written over a horizontal line.

M Harland  
**Environment Judge**