

BEFORE THE ENVIRONMENT COURT

Decision No. [2011] NZEnvC 216

IN THE MATTER of an appeal under Section 120 of the
Resource Management Act 1991 (**the
Act**)

BETWEEN D BROOKS, G & J CLEVELAND
AND R & J WATERHOUSE
(ENV-2011-AKL-000043)
Appellants

LOADEDNZ LIMITED
Applicant

AND WESTERN BAY OF PLENTY
DISTRICT COUNCIL
Respondent

Hearing: At Tauranga Environment Court
Tuesday 12th July – Wednesday 13th July 2011

Court: Environment Judge J A Smith
Environment Commissioner H A McConachy
Environment Commissioner A Leijnen

Appearances: KM Barry Piceno for Brooks and ors (Residents)
ME Casey QC & AJ Davidson for Loaded NZ Ltd
("Loaded")
MH Hill for Western Bay of Plenty District Council
("Council")

DECISION OF THE ENVIRONMENT COURT



THE APPEAL

[1] LoadedNZ Limited (**Loaded**) seeks to establish a claybird shooting range in the rural environs of Taumata. Loaded received consent from the Western Bays District Council (**the Council**). This decision has been appealed by neighbouring property owners Cleveland, Brooks, and Waterhouse (**the residents**). These parties were joined by two further neighbours Sutton and Wilson as Section 274 parties. Loaded also appealed the financial contribution condition, but this issue was resolved at mediation.

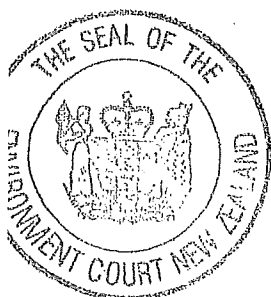
[2] The development is a discretionary activity in the Western Bays Rural G Zone. The focus of this appeal was on noise and amenity effects.

THE PROPOSAL

[3] The proposal is for a “sporting clay bird” shooting facility within a leased area of a working farm owned by Eynon Ltd. That lease has yet to be signed. The facility comprises three shooting fields, a viewing platform, clubhouse, toilet facilities, carpark and storage area. It is also intended that the facility will provide for team building and gun handling training. Other activities may include archery, petanque, mini-put golf, paint ball and darts. Food and non-alcoholic beverages will be available on site and it is likely the premises will hold a special liquor license for special events. The facility has been partially built and a map showing key facts is attached as **A**.

[4] There is an existing subdivision granted on the site for 10 lots (7 additional). The layout of that subdivision falls across the subject leased site and either the proposed activity would need to be relocated (which would require a fresh application for resource consent), or the subdivision would need to be modified to accommodate the proposal. This being the case although the issue of compliance with any noise condition at any home built under this subdivision consent was raised in the course of the hearing, we have decided that the subdivision warrants no further assessment relative to the proposal. We note the draft lease agreement runs until 2014 which aligns with the subdivision consent termination.

[5] It is proposed that the Loaded facility will operate on any 6 days of a week as follows:



- [a] Actual hours of operation are 8am to 10pm with the hours of shooting being 9am - 8pm (or half an hour after sunset whichever is the earliest);
- [b] A maximum of two paid staff will be employed at any one time;
- [c] Parking is limited to 5 vehicles plus 2 mini vans which are proposed to be used for larger or corporate patronage;
- [d] Access and presence on site is by invitation only;
- [e] A maximum of 15 shooters will participate at any one time;
- [f] Each participant will shoot 25 rounds on the three shooting fields.

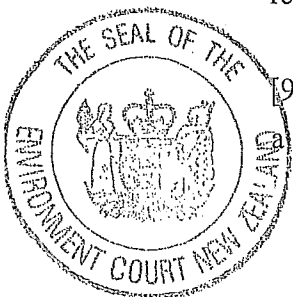
[6] Amongst other things, the conditions limit the hours of operation, number of shots fired in a day and week and the type of shot to be fired. A maximum of a further 35 additional attendees not engaged in shooting may be on the site participating in alternative activities. The proposed conditions are attached as **B**.

The site and locality

[7] The subject site is located at 1026 Taumata Road. The property is just to the south of the intersection of Taumata Road and Pyes Pa Road which is a section of State Highway 36 (**SH36**). Taumata Road is classified as a local road and SH36 as a national road/regional arterial road in the District Plan and in the Proposed Plan a strategic route/primary arterial route.

[8] The facility is within a property of three Certificates of Title having a combined area of approximately 115 hectares. The proposed activity will take place within Pt Taumata 2B. However access to the site is via Section 18 Blk XV Otanewainuku SD. Both Certificates of Title are therefore included in the application. The access road is an extension of a formed road to an existing quarry which is currently utilised at a level of approximately 6 trucks per month. The 750m road is to remain unsealed.

[9] The facility sits within a secluded pastoral bowl with minimal views out and as consequence it is not visible from outside the farm property. The buildings and



parking area sit on a small valley floor with the surrounding hill slopes rising some 20m above the shooting fields. The area is in pasture with some native bush remnants that are proposed to be retained. Eynons Limited runs cattle sheep and horses.

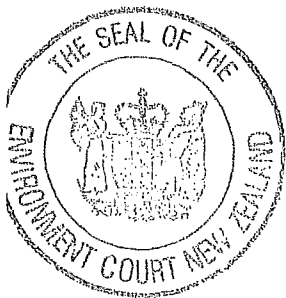
[10] The surrounding land exhibits the same undulating topography. Native bush is a feature on neighbouring properties which are used for pastoral farming, forestry and rural lifestyle purposes. There are a number of houses located within the potential audible range of the facility. These form an almost concentric half circle from the north to the south east generally on elevated ridges. Across Taumata Road to the north at 785m distance lies the Waterhouses' home. Across SH36 is the Cleveland property at 870m distance who have been identified by the parties as being the most elevated neighbouring site and the most exposed to the noise effects from the proposal. The Cleveland property has only a non-residential hut on it at present. The Brooks own the property next to Clevelands and have building consent for a house at 952m distance. Their property boundary is 667 metres from the subject site. The Suttons are the closest of the appellants at 497m distance. They have two houses across the south-east boundary of the Eynon farm accessed from Pyes Pa Road. The Williams property has a boundary with the Eynon farm to the northwest. A state forest adjoins the property on the east to south east border. There are 5 other houses which have given written consent and on whom any effects must be disregarded under Section 104(3) of the Act.

[11] Within the wider environs at around 2 kilometers distance is a 1642 hectare site which is currently being developed as an all terrain outdoor recreation park (ATP)(Consented 2004). It has been located to serve both the Tauranga and Rotorua community specifically to include those sports that are noisy. The ATP property has been used previously for exotic forestry but has some areas of indigenous vegetation. The ATP is of mixed contour and is surrounded by other exotic forestry operations and Department of Conservation forested estate.

The Parties Positions

[12] This hearing was to proceed on a limited basis. Parties at the time of hearing had defined their positions as:

- [a] **Loaded.** Opposed any further limitation on the days and hours of opening and on the duration of events. It opposed the Council's suggestion of a $L_{Amax}50dB$ control. It supported the Council decision



but agreed to the mitigation proposals recommended in paragraph [4.5] of the joint witness statement of the parties' noise experts;

[b] **Brooks & Ors (the appellants).** If the consent was to be upheld however, the appellants sought the following changes to the conditions:

[i] Restricting the days on which shooting activities might occur and in particular excluding most Sundays and public holidays;

[ii] Reducing the hours of operation, particularly in the evenings; and/or

[iii] Limiting the duration of shooting events;

[iv] A $L_{Amax}50dB$ limit to apply to the consent, not a CNR measurement.

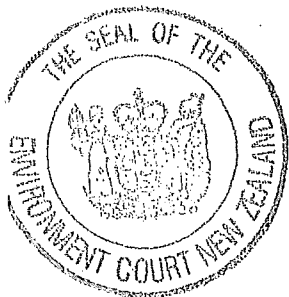
[c] **Western Bay of Plenty Council (the respondent)** supported the grant of consent, but contrary to the commissioner's decision, proposed a limit of $L_{Amax}50dB$ as well as the CNR measurement, as an enforcement control in respect of future permitted dwellings yet to be established. This position was modified at the hearing to a proposal which would impose an initial "*trigger*" standard based on a $L_{Amax}50dB$, but with an option to show compliance with the standard of CNR80 if the trigger standard is exceeded.

KEY ISSUES

[9] The following were the key issues proposed to the Court:

[a] Whether the *mitigation* proposed by the acoustic experts and agreed to by the applicant are sufficient to address the effects of noise on the rural amenities of the appellants;

[b] Whether any additional restrictions on the days, hours and duration of operation should be imposed to achieve better rural amenity;



[c] Whether a numerical (as opposed to operational) noise control ought to be imposed and, if so, what measure;

[10] In addition the following legal matters were considered to be at issue:

[a] Whether the Council may call evidence in support of different and more stringent conditions than imposed in its own decision, without leave of the Court;

[b] Whether effects on possible future owners of dwellings yet to be established can be considered.

RELEVANT PLANNING DOCUMENTS

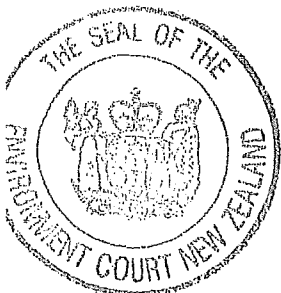
Western Bays District Plan

[11] Both the Western Bay of Plenty Operative and Proposed District Plans are considered to be relevant for the purposes of considering the resource consent.

[12] The provisions of the Proposed District Plan most relevant to this application are, Section 4C *Amenity*, and Section 16 *Rural*. These sections are generally beyond challenge due to the wide ranging effect of a Consent Order dated 31 March 2011 and are deemed to be operative under Section 19 of the Act. Parts of Section 4C and Section 16 however remain under appeal and are yet to be resolved. No appeals affect this site as they relate to Post Harvest Facilities.

[13] While the Proposed Plan has not been made fully operative, significant weight has been given to the relevant provision of the Decision Version released in June 2010. The Proposed Plan was notified in February 2009. Section 151 and 161 of the transitional provision of the *Resource Management (Simplifying and Streamlining) Amendment Act 2009* confirms that the amendments made to the Act do not apply as the District Plan as it was notified before 1 October 2009 when deciding to give legal effect to a rule and the provisions of a Proposed Plan.

[14] The parties were agreed that the activity falls within the definition of a *place of assembly* thus the application is a discretionary activity under Rule 2.3.1(f) of the Western Bay of Plenty Operative District Plan and Rule 16.3.4(e) of the Western Bay of Plenty Proposed District Plan. The parties were also in agreement that the relevant provisions of the Proposed Plan have advanced to the point where in terms of



weighting the proposal can safely be considered under the provisions of the Proposed Plan.

[15] The parties are also agreed that the matter is also not of regional significance such that we do not need to consider the regional planning instruments in respect of the matters now concerning this appeal. It is noted however, that The Bay of Plenty Regional Council has granted consent for *Discharge of Contaminant (Leadshot) to Land* dated 17 March 2011.

Relevant Plan Provisions

[16] The relevant references to noise are found at:

- [a] Amenity - objective Operative Plan. Chapter 13 Amenity and in particular Objective 13.2.2.1 as follows:

13.2.2.1 Objective

An environment free from intrusive noise and vibration

- [b] Amenity - objective corresponding Proposed Plan. Chapter 4C Amenity, and in particular Objective 4C.1.2.1 as follows:

4C.1.2.1 Objective

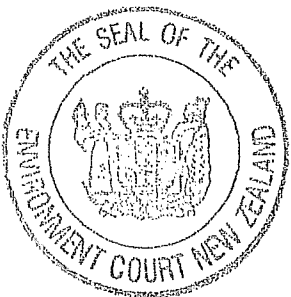
An environment free of unreasonable noise in accordance with the amenity of the zone within which the noise is generated

- [c] Amenity – Policies Operative and Proposed Plans. Chapter 13.2 Amenity (Operative) and Chapter 4C Amenity (Proposed), and in particular, the first policy reference (of three) (reference Operative: 13.2.2.2 and Proposed: 4C.1.2.2) is most relevant and is the same under each plan. This policy is set out below:

4C1.2.2 Policies

1. Ensure activities do not generate noise levels inconsistent with the amenity of the locality in which the generated noise can be discerned

- [d] Policy 2 deals with noise exemptions applying to accepted management practices which are an integral part of rural production and the like.



[e] Policy 3 indicates that regard shall be had to relevant New Zealand standards, guidelines, or codes of practice in the assessment of applications for resource consents.

[17] The relevant objectives and policies in respect of the Rural G zone are found at Chapter 2 of the Operative Plan and Chapter 16 of the Proposed Plan. These were set out for us in the joint statement provided by the planning witnesses. In addition to the general objectives relating to maintaining the productive rural land resource, there is the objective for the *protection and enhancement of the low density character and amenity values of the rural environment*¹. (*our emphasis*)

[18] The more relevant and it would appear unchallenged, policy relating to the proposal is found in the Proposed Plan at Policies 16.2.2.10 set out as follows:

10. Activities with a functional or other legitimate need for a rural location should not be established in rural areas unless they are able to be undertaken without constraining the lawful operation of productive rural land uses which are carried out in accordance with accepted management practices.

[19] In addition Policy 2.2.2(9)(b) of the Operative Plan seeks to *limit* the establishment of activities which either individually or cumulatively:

Reduce the amenity provided by the low density character and primary productive focus of the rural environment unless such incompatibilities or adverse effects can be appropriately avoided, mitigated or remedied.

[20] The rules which govern the management of noise are found in the amenity chapters of both the Operative and Proposed Plans. They are essentially the same except the Proposed Plan adopts the L_{eq} standard (rather than the L_{10}) which is consistent with the most recent New Zealand Standard released in 2008 (see NZS6802:2008). However, both plan standards exclude impulsive noise such as gunfire. This noise is considered to be out of scope of these standards.²

[21] Consistent with the directive provided in the Amenity policies referred to above, the noise experts in this case have looked elsewhere to seek guidance as to the approach which should be used to assess this proposal. In that regard, we note that both experts are agreed on a CNR standard of 80 at the notional boundary of a

¹ Refer Proposed 2.2.1(2) and Operative 16.2.1(14)
Hegley EIC paras [3.1] – [3.2]



dwelling as an appropriate measure for this activity. We comment on this later in our decision.

[22] The District Plans provide assessment criteria to assist in the assessment of discretionary activities in the Rural G Zone. These were helpfully set out at paragraphs [4.13] and [4.14] of Mr Collier's evidence in chief. In a particular, we refer to Clause 16.5.6 of the Proposed Plan and sub-paragraphs (c), (e) and (h) which we set out below:

16.5.6 Discretionary and Non-Complying Activity Criteria – General

...

- (c) Potential for conflict with existing and foreseeable activities in the area.

In justifying any location where potential for conflict and other adverse effects arise, consideration should be made of possible alternative locations and the need to be in the specific area chosen.

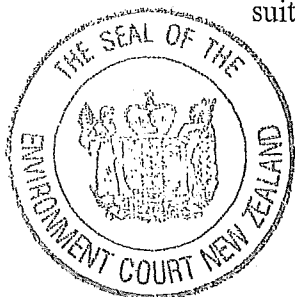
...

- (e) Scale of the activity including number of people carrying out the activity, the hours of operation and how this affects the existing rural character and amenity values.

...

- (h) The background sound level of the surrounding environment and whether the best practicable option of reducing noise emissions has been utilised by rural activities which exceed the relevant noise limits in these Plan rules. In addition how the character of the noise differs from that which is being experienced in the surrounding environment.

[23] Overall, in consideration of the relevant District Plan documents we agree with the view put forward by Mr Hextall that this activity can reasonably be expected to occur in a rural locality. That is implicit in it being provided for as a discretionary activity in the Rural G zone. However, its suitability for the location chosen requires an evaluation under Section 104 of the Act to achieve the purpose of the Act. The mitigation measures which are to be adopted to address certain environmental impacts of the proposal work together to determine whether the proposal is acceptable. In other words, it is a combination of the characteristics of the generated effects of the proposed activity and the ability of any potential adverse environmental impact of these effects to be managed appropriately which influences the decision as to suitability for this site.



[24] There is general acceptance that the proposal is suitable for the site subject to careful management of the noise generated by the gunfire. The effect of noise on the environment is assessed in two ways:

- [a] As a measureable or quantifiable impact; and
- [b] The effect of noise on the amenity of the neighbourhood.

[25] The fact that noise rules are contained in the amenity chapter of the District Plan assists us in understanding that noise is a feature of the amenity encapsulated in the character of the environment. It is one of the descriptors. However, there is no control in the Amenity chapter of the District Plan to control gunfire.

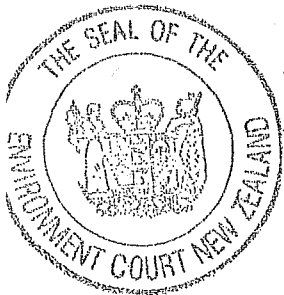
[26] We are provided with the challenge of assessing this aspect of the proposal³ as both an empirical measure (or quantitative measure), and as a subjective qualitative analysis of amenity in its all encompassing character as this applies to this particular site, neighbourhood and the Rural G Zone.

[27] We are guided in our endeavours by the objectives and policies of the plan. We note the objective for an environment *free of unreasonable noise in accordance with the amenity of the zone* within which the noise is generated. In respect of the rural zone, we are also charged with the *protection and enhancement* of the *low density character and amenity values* of the rural environment. In essence this case seeks to address what level of gunfire noise is unreasonable. That is, not only noise level but frequency. In fact, the Court has adapted odour assessment of FIDOL to try and evaluate reasonableness for noise.

The All Terrain Park Zone

[28] During the hearing, evidence was presented in respect of the All Terrain Park. The ATP covers an area of 1642ha and has been established for the purposes of establishing a recreational park for outdoor activities including firearms sports, motor bike riding, rallying, biking and a wide range of active outdoor sports. It is envisaged that the development of the park will be a gradual process over a 30 year period. The rules providing for the park include a noise control which we were referred to by the applicant as being an appropriate standard for the proposed activity. We set out that standard below:

³ Lavranos EIC Para 3.19 & 3.20



(f) Noise limits for activities in the All Terrain Park Zone

- (i) All activities in the Park (except for those involving gunshot noise) shall be conducted so as to ensure that noise shall not exceed the following noise limits within the stated timeframes at any point within the notional boundary of any dwelling existing at 7 February 2009 located outside the zone.

Time Period		Sound Level Not to be Exceeded	
Day	Hours	Leq	Lmax
Monday to Sunday	7am to 10pm	50dBA	N/a
At all other times and Christmas Day, Good Friday and Easter Sunday	7am to 6pm	40dBA	65dBA

- (ii) Firing from any shooting range shall be only within the hours of 7am to 10pm and shall be so conducted as to ensure that gunshot noise does not exceed a composite noise rating (CNR) of 90 at any point within the notional boundary of any dwelling in regard to the properties in private ownership to the east of the subject site in a Rural Zone:

$$\text{CNR} = Y - 25 + 10 \log (N) + 10 \log (R);$$

Where: CNR=composite noise rating;

Y=dB linear peak level of the burst;

N=number of single shots or bursts per day;

R=number of rounds, or detonations, (acoustic events) per burst.

- (iii) Noise shall be measured and assessed in accordance with NZS6801:1999 and NZS6802:1991. Adjustments for special audible characteristics shall not apply to the assessment of gunshot noise.

[29] It was the appellants' opinion that the proposal should be located within the ATP as the District Plan specifically provides for this activity in this area and it is very close to the application site. Mr Collier (Planning witness for the Appellant), opined that the ATP should be considered as an *alternative*. This would *remove the existing potential conflict with neighbours and any potential for cumulative effects* once shooting in the ATP are operational.

[30] While we can understand the logic of this alternative location:

- [a] the fact remains that the proposal (as agreed by all parties) is anticipated within the rural zone as a discretionary activity. Thus, if the generated adverse environmental effects can be avoided, remedied



or mitigated, the activity is likely to be acceptable and consideration of an alternative location is not required; and

[b] the appeal was restricted to conditions of consent only.

Resource Management Act references

[31] In addition to Part 2 which we will address later, there are a number of sections of the Act which are useful to set out here to assist this assessment:

2 Interpretation

...

Amenity values means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

...

16 Duty to avoid unreasonable noise

- (1) Every occupier of land (including any premises and any coastal marine area), and every person carrying out an activity in, on, or under a water body or ... the coastal marine area, shall adopt the *best practicable option to ensure that the emission of noise from that land or water does not exceed a reasonable level.*

(emphasis added)

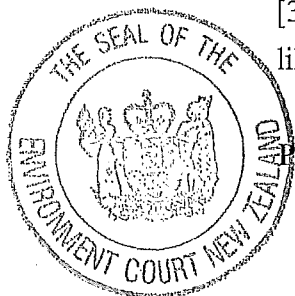
ASSESSMENT OF ENVIRONMENTAL EFFECTS - SECTION 104(1)(A) OF THE ACT

Positive effects

[32] The opportunity for people to access a sporting clay shooting recreational facility was accepted as a positive effect of this enterprise. It is comfortably proximate to two centres of population, Rotorua and Tauranga. Transport provisions will also be in place to facilitate group and corporate and tourist bookings. It is expected to provide some employment opportunities. In addition a range of other recreational activities and training for a variety of age groups are planned for the site.

[33] We accept that this facility will not only have appeal for tourists but is also likely to be used by locals, some of them rural residents.

Potential adverse effects



[34] Given the limited scope of the matters before us, the potential adverse environmental effects of the proposed clay shooting activity come down to two interrelated matters; namely amenity and noise.

Noise and rural character

[35] The natural and physical qualities and characteristics of the neighbourhood have been well described above. The Court visited the subject site and neighbourhood and attended a demonstration of clay shooting noise measurements at the Waterhouse dwelling and the Cleveland building site. While the weather deteriorated during the Court's visit, we were able to gain a reasonable appreciation of the neighbourhood and general amenity.

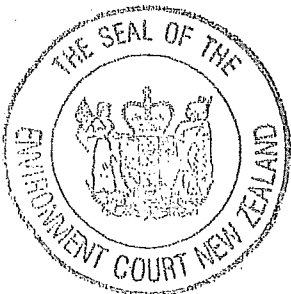
[36] We understand that the features of the neighbourhood which contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes are rural based and we note a description provided under the heading *Significant Issues* in the Proposed District Plan which is useful for this discussion (refer Section 16.1 (3)):

3. The character and associated amenity of the rural environment are what makes the District a sought after place in which to live.

Elements which make up rural character include:

- A predominance of natural features over human made features;
- A high ratio of open space relative to the built environment;
- Significant areas in pasture, crops, horticulture, forestry and indigenous vegetation;
- A working rural production environment;
- Presence of farm animals;
- Noise, odours and other effects associated with the use of rural land for a wide range of primary productive purposes;
- Low population densities relative to urban areas;
- Existence of some narrow and/or unsealed roads;
- General lack of urban infrastructure.

Over half of the District's population lives in rural areas. The rural environment of the District is a popular place in which to live because of the lifestyle opportunities it provides and because of its reasonable proximity to urban employment areas. Demand for lifestyle development in rural areas will therefore be ongoing. Provision to help meet this demand by allowing some additional rural living opportunities is appropriate in selected areas which have the infrastructure capacity and where the productive land resource will not be eroded.



[37] Thus while the amenity experienced on the face of it is tranquil in nature, it is influenced by the productive purpose of this rural area and with that there are attendant noises and odours which form part of the expected environment. The noise standards for the zone provide specifically for exceptions to cater for amongst other things (refer Proposed Plan 4C.1.3.3(c)(ii)):

- (ii) Activities required for primary production activities, including agricultural/horticultural vehicles and equipment; aircraft used for agricultural/horticultural purposes; and portable equipment (excluding portable sawmills and frost protection fans and audible bird scaring devices) associated with agricultural/horticultural activities such as: spraying; harvesting, etc;

[38] Within these standards we note that audible bird scaring devices are controlled as follows:

4C.1.3.5 Audible Bird Scaring Devices – Performance Standard for Permitted Activity

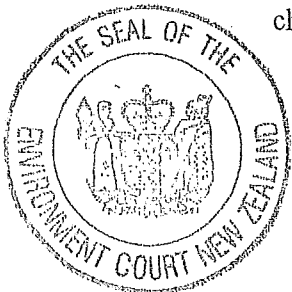
Audible bird scaring devices shall be a Permitted Activity subject to compliance with the following performance standards.

No audible bird scaring device;

- (a) Shall be operated between 9:00pm and 6:00am;
- (b) Shall be set to operate at any greater frequency than 12 times in any period of one hour, that is 12 single discharges or four groups of three discharges;
- (c) Shall be operated for any continuous period exceeding two seconds;
- (d) Shall be operated unless a legible notice is fixed to the road frontage of the property on which it is being used, giving the name and telephone number of the person who is responsible for its operation.

Use of any audible bird scaring device not in compliance with the above performance standards shall fall to be considered as a Restricted Discretionary Activity.

[39] Thus there is an expectation of noise associated with usual rural activity such that the tranquility which might be perceived on first observation of this neighbourhood is slightly deceiving. We recognise though that existing noise within this environment will be related to seasonal activities and that this is recognised and understood by those living and working in the neighbourhood as part of the overall character and amenity expectation.



[40] We also note in respect of the specific character of this local neighbourhood, there is the background (non seasonal) noise from State Highway 36 which carries a significant and growing volume of traffic.

[41] The proposal introduces an activity which requires supervision and potential noise nuisance, so it is bound to be restricted in terms of appropriate site location. The attributes of a rural setting suit the proposal well and that is likely the reason the activity falls to be considered as a discretionary one. The question is whether the impact of the proposal on the amenity experienced in this neighbourhood meets the sustainable purpose of the Act given the baseline amenity expectations of this area.

[42] As argued by the appellants, amenity is made up of a number of characteristic parts of which noise is just one element. The proposition was put to us that while the generated noise might comply with the noise standard it could still generate an adverse environmental effect in terms of its amenity. The noise of the gun shots was described by Mr Collier in questioning, as offensive in character. Mr Waterhouse put it in another way. He stated during questioning, that based on his experience with shooting already occurring at the site, the adverse effect was not so much due to the loudness of the sound but in his opinion is due to the continual banging and disruption and irritation.

[43] These observations are not new to the Court. Ms Barry-Piceno referred us to a recent case *Nelson City Council v Delaware Bay Residents Association Inc & Sharon Harvey and Bruce Reginald Harvey*⁴ (Harvey). That decision is an interim one in reference to enforcement proceedings. It explores the characteristics and operation of a Shooting Range in a rural area in Nelson. That Range encompassed several different gun types and shooting practices, but the decision nevertheless usefully explores when a noise is reasonable or offensive or objectionable. In that case, the Court's earlier observations were cited where the fact that:

... a particular noise complies with standards contained in a district plan does not preclude the Court from determining that it nevertheless exceeds a reasonable level.⁵

[44] In the subject case we of course have no applicable District Plan standard.



⁴ Decision No. [2011] NZEnvC 48

⁵ [2011] NZEnvC 48 at para 64

[45] However, we do need to consider the matter of reasonable noise and whether the proposal will exceed what could be described as reasonable. In the absence of a District Plan standard in this case we have an agreed position between the parties as to an overall acceptable noise standard of CNR 80 but what does that mean in terms of the adverse effect on the *ordinary person representative of the community at large*.⁶

[46] In the subject case, like in *Harvey*, the relevance of the FIDOL factors was examined during questioning of Mr Collier. . We understand FIDOL to mean:

Frequency – how often an individual is exposed to odour

Intensity – the strength of the odour

Duration – the length of a particular odour event

Offensiveness/Character - the hedonic tone of the odour – pleasant, neutral or unpleasant

Location – type of land use and nature of human activities in the vicinity of the odour source

[47] FIDOL is a measure used to assess odour. Its adaption to other areas is a recent occurrence.

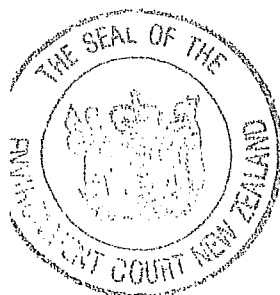
[48] In *Harvey* the noise standard accepted for the Range revolved around agreement to a L_{AFmax} figure not a CNR figure. As for the subject case, the District Plan noise rules were not applicable to noise from gunshots. It would appear that a CNR option was not even discussed in *Harvey* but rather the L_{AFmax} was considered an appropriate descriptor and International Guidelines recommended 50 to 55 dB L_{AFmax} ⁷ with few exceptions. In the case before this Court, both standards of measure were recommended to us. The dB L_{max} was set at 60 in the council consent condition and the CNR at 80.

[49] In *Harvey*, the Court tested the reasonableness of the noise by the application of the FIDOL factors as a checklist for assessing noise effects. The difference promoted by the applicant in the subject case, is that the proposed CNR standard covers the same or similar elements for measure as those identified in the FIDOL approach. Thus we were advised that the CNR noise measure encapsulates a degree of *amenity* measure.

[50] Technically we are advised that that the CNR methodology works on the number of shots fired each day (i.e. frequency), the proportion of days that shooting

⁶ *Zdrahal v Wellington City Council* [1995] 1 NZLR 700

⁷ L_{AFmax} and dB are the ISO equivalents of the terms L_{max} and dBA



occurs (duration), and it addresses the reasonable noise environment by applying a correction based on community adaption⁸. Criteria (adapted and a non-adapted) are applied to the measured noise by noise experts to measure whether noise is reasonable or unreasonable.

[51] We understood that the standard promoted by the applicant and forming part of the consent conditions adopted a conservative community adaption figure (non adapted correction). This last calculation then would appear to relate to *intensity* and potentially *offensiveness/character*; the science behind this calculation was not made clear to us. We also note that the intensity of the shot is to be controlled by the use of a specific gun cartridge loading which will provide some certainty to the intensity of the gunfire at source.

[52] It would appear then that essentially the factors in FIDOL are covered except for *location*. It is the characteristics pertaining to the location and the existing amenity which is precisely the subject at issue in what remains the scope of the subject appeal.

Amenity

[53] The divergence of opinion between the experts in the subject case occurred in relation to what level of amenity was encapsulated in the CNR standard when one viewed amenity in the manner it is intended under the RMA. Mr Collier, sought guidance from the District Plan and in terms of the objectives and policies in the explanatory statement for the zone. He expressed concern particularly about the evenings and Sundays, which he opined is generally a day of rest, as well as public holidays. Upon visiting the various sites around the Loaded NZ site to experience that amenity for himself, Mr Collier opined that it is a very quiet rural location, *in fact it's, in my view a remote rural location*.

[54] We note that in carrying out the noise tests for the joint statement issued by the noise experts a similar observation was made regarding the noise levels experienced at the Waterhouse property which was observed as 25 dB L_{A90} and 28 dB L_{Aeq} . Similar low background noise levels were measured at the Sutton property. A different experience was had at the Cleveland property which is largely influenced by its proximity to and location above State Highway 36. However, it was agreed that the area is generally quiet.

⁸ Hegley, EIC Page 5 Paras [3.7] – [3.8]



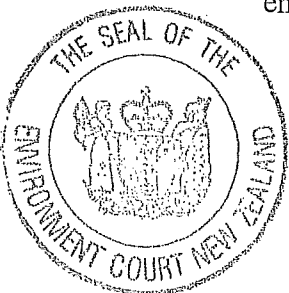
[55] We have some sympathy for the notion that the type of noise influences the potential amenity effect as well as its loudness. The presentation of the noise also in our view influences the manner in which it is received. For instance: duration, staccato, progression, pitch, etc (all elements incidentally which are used to manipulate sound into acceptable forms to the human ear in the composition of music) influence human perception. So there is clearly an amenity perception to sound that affects its reasonableness in terms of noise as measured. Bird song, for example, often exceeds 80dBA but has given rise to no case law compared to dog barking. The difficulty for the Court is to provide some measure of objective analysis to an effect that moves outside the clear ability for objective quantitative measurement to a more subjective qualitative measure.

[56] In practice once a noise standard is agreed, this more subjective aspect of noise may be mitigated through operational management; for instance duration on hours when the noise may occur and the number of days a week or year when it may occur. This technique is offered in the conditions of the consent as currently granted.

Hours of operation to protect amenity

[57] Bird scaring devices are seasonally employed in some horticultural practice. As described above, the District Plan provides for these devices by limiting the duration and frequency of their operation. This facility could not function under the frequency of such sound limitations and it will not have a season as such as it is expected to operate all year. We anticipate it might be at its busiest over the summer period simply because the conditions are better suited to outdoor pursuits and this is generally the holiday and tourist season. Nevertheless, the Plan provisions to give a general guide that hours of operation may be an acceptable management technique.

[58] We note that the proposal will tend to enjoy its busiest times during holiday periods, the weekends and we were told Thursdays during week days (for reasons not explained to us). The proposal is a recreation activity and thus naturally will operate outside the usual working hours and conflict with times when local residents will wish to enjoy the amenity of their homes and gardens. Thus we consider it is reasonable to provide some further control over the operation to address the amenity measure enjoyed in the neighbourhood.



[59] We have thus come to the conclusion that conditions to protect some quality time for neighbours is appropriate given the character of the noise and the receiving amenity of the local environment in this case.

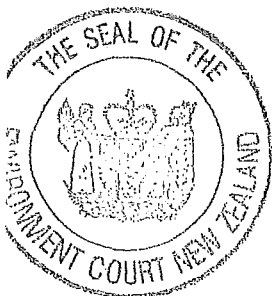
[60] For completeness, and in reference to operational management, a point made to us by the appellants was that the proposal was presented to the Council in *sessional* times as well as overall duration and days of operation. The reference to this sessional operation was found in evidence present to the Council hearing on traffic impacts. We did not find it directly alluded to in the assessment of noise and it was certainly not referred to by the evidence of the noise experts at this hearing. Thus while we understand the point being made by the appellants we find that there is little to be benefitted from examining sessional periods for shooting because no evidence on the effect of limiting the number of sessions per day was provided to us.

[61] We do note though, that the consent conditions deal with the number of shots per day. Given that the proposal as explained to us by Mr Black, is to cater for relatively small private or corporate groups, we consider that effectively the operation could be described as sessional in that it will be limited to the period allocated to a group and field. Once the number of shots permitted per day are fired – that will be it for the day. This will mean that the operator will need to manage his bookings carefully and control the shot allocation accordingly. We have therefore not taken this idea of sessional control further.

Noise standards

[62] The consented standard as encapsulated in Conditions 7, 8 and 13 of the Council decision is as follows:⁹

- [a] CNR 80 and L_{AFmax} 60 dB;
- [b] That a maximum of 4500 shots shall be fired in any one week except that for no more than six weeks in any calendar year a maximum of 5000 can be fired;
- [c] That a maximum of 2000 shots shall be fired on any one day except for no more than six days in a calendar year a maximum of 3000 can be fired.

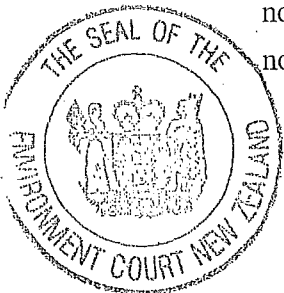


[63] We note the following information from the joint statement of the three noise experts who were originally involved in the case. (The appellants' noise expert Mr Camp did not appear but did contribute to the joint statement):

- [a] The Council consented conditions is based on Mr Hegley's advice that in his view limits of CNR 90 and L_{AFmax} 63dB are acceptable for the proposed shooting range;
- [b] Mr Styles and Mr Camp are generally of the view that a level of L_{AFmax} 50dB is appropriate for the number of shots per day / week and days of operation permitted by the consent as set out in the Council decision;
- [c] The L_{max} 50dB and CNR80 criteria cannot be directly compared because the CNR rating accounts for the number of shots. However, for the consented number of shots on this range, compliance with L_{max} 50dB would result in a CNR value of less than 80;
- [d] Shooting from Field 1 (identified in the attached Figure 1) when measured at the Cleveland property exceeded L_{max} 50dB and it is expected a similar situation would occur with the proposed positioning of Field 2;
- [e] Gunshot noise under all other measured scenarios was less than L_{max} 50 dB, and other than 1 slightly noisier shot during the testing, was less than L_{max} 45dBA.

[64] As mentioned earlier, the Council position changed at the hearing from one advocating a L_{AFmax} 50dB and CNR 80 to one where the L_{AFmax} 50dB was used as a trigger which if exceeded would require compliance to be demonstrated in terms of the CNR 80 standard. During questioning in Court, the two noise experts present agreed that the overall noise standard for the operation of the proposed facility was appropriately set by the Council consent at CNR 80.

[65] The divergence of opinion then at the time of the hearing came down to the trigger point which would lead to enforcement assessment and the manner in which noise should be measured from the point of view of a practicable and enforceable noise condition.



[66] We were told that the computation of the CNR measure needed the input of an appropriately qualified expert which would not be the norm for a Council compliance officer. We were also told that the measure will require a knowledge of what is taking place on the site at the time of measurement so that the computation can be undertaken. Thus the control is cumbersome to operate although it was accepted such a standard is already used in the District Plan in relation to the ATP and is agreed as the appropriate standard.

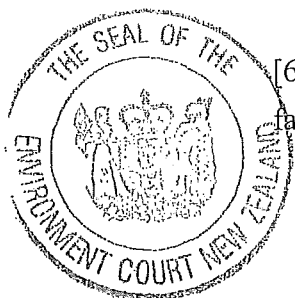
Conclusion on Noise Control

[67] As much as we tried to follow the logic of this argument we could not understand why the Council needed this trigger written into the consent condition. We considered the reference to a standard used in this way was confusing especially when we understood it was agreed that the 60dBAL_{max} was closer to a CNR 80 reading. We can conclude that we should adopt the Council's original condition standard and if the Council wished to adopt a practice for measurement which permitted it to rely on first evidence of a problem by an exceedance of 50dBA L_{max} that was its business and need not be enshrined in a condition of consent. We have regard to the Council decision under Section 290A of the Act and we consider the Council's decision adequately and properly concluded on these limits.

Conclusion of hours of operation

[68] As we have indicated above, we consider that one practical method of addressing amenity relative to the measureable reasonableness of noise, is to manage noise through the hours of operation. We have concluded that based on the character of this neighbourhood environment and the character of the proposed activity it is reasonable to provide residents with a certain period of quietness in the weekend and for certain holiday periods. We have concluded that a limit on Sundays of noon until 6.00pm, and a curfew on the public holidays of Christmas Day, New Years Day and Easter is an appropriate concession to the protection of the rural amenity in this area. Further, we were told that the early part of the week is not favoured by clients of the proposed activity so it is appropriate to consider one fixed day which residents can rely upon as being free of noise from the proposed site. We conclude that Monday should be the free day subject to up to 6 alternate days being chosen.

[69] We heard in evidence presented by Mr Eynon the owner of the subject site and farm, that shooting occurs on site by the resident farmer and Mr Eynon's family and



friends. We also acknowledge that residents will be unable to detect whether shooting occurring on the farm is related to the subject operation or simply a private recreational shoot undertaken by a member of the owner's family. We therefore consider that the day free of gunfire should cover the private recreational use on the subject farm as well as the Loaded facility. We have chosen a Monday as this day was originally nominated by the applicant to the Council. We have allowed for special events where this may overlap Monday as a long weekend type of event.

CUMULATIVE EFFECTS

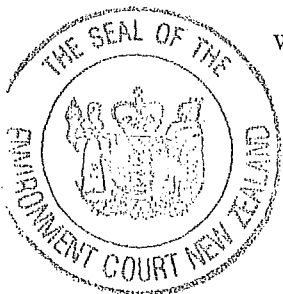
[70] Mr Hegley advised that there would be no cumulative noise effects of the proposal relating to its proximity to the ATP. We accept that advice.

[71] In a more general sense we have also considered the cumulative effects of the proposal on the neighbourhood and we are satisfied that the mitigation and operational constraints offered by the proposal as defined in the application and the remaining consent conditions, such as those concerning traffic effects, site management, reporting and monitoring, and the complaints register, will address potential adverse cumulative effects such that the impact will be no more than minor.

Best Practice

[72] For completeness we note the matter of best practical option was raised. (Section 16 of the Act). This is relevant to the guiding policy referred to earlier (Clause 16.5.6 Proposed Plan). In the end it was agreed between the parties that a suitable standard for noise was appropriately determined by the adoption of CNR 80 measure. We were then set the task of addressing the impact of the activity on the amenity of the existing environment and that moves beyond the pure measure of *loudness* of the gunfire to a number of other factors which we have covered and concluded can be addressed by operational controls.

[73] Written consent to a proposal by neighbours can be helpful for an applicant. It may result in a resource consent not being notified and should the application proceed to court we cannot take into account effects on those who have signed the consent agreement. Mr Black stated that consultation resulted in four parties giving their written approval with a further submission in support.



[74] Frustration and neighbourhood tension will be exacerbated if there are discrepancies between reports and the applicant and a lack of communication during that time. The management of noise will be most appropriately managed where there is a level of communication to allow for best practice. For example, Mr Cleveland asserted that on days when there were westerlies blowing the impact was greater. A response to this may be to direct use to the field with the lesser impact on days when the prevailing wind is from the west. There is provision in the consents for rallies with higher activity levels. Prior notification of these events to neighbours may be a courtesy that is mutually beneficial.

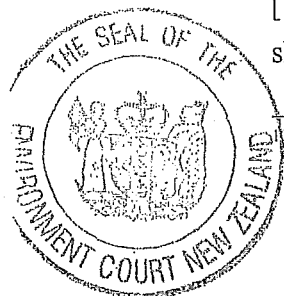
[75] A further concern for neighbours was for stock and other animals including birds. While both Mr Hegley and Ms Lavranos provided the court with a range of material on animal reaction to noise we also had the real experiences of the appellants. When assessing the material we can dissemble that animals generally get used to noises that are constant in their environment and that for some species there are noises to which they become indifferent. However noises such as gunshots are more likely to affect young animals who have not yet adjusted to their environment. Springtime is therefore a period when larger numbers of vulnerable animals will be present. These are factors for community co-operation. Endeavours to internalize noise rather than meeting a notional boundary measurement may have positive ramifications. To minimise noise from the site for neighbours would create an environment where the business may have growth potential.

MATTERS FOR DETERMINATION

Is the acoustic mitigation proposed sufficient to address of noise on rural amenity?

[76] The acoustic mitigation required to achieve compliance with the noise standard could take a number of forms¹⁰. We were advised of the possibility of relocating the noisiest shooting field, the installation of acoustic barriers and we note that the shooting stalls could be better made to absorb some of the noise. Thus it is our view that the consent conditions will set up the control and it will be up to the proponent to meet these by adopting any one of a number of options which we do not think we need to prescribe.

[77] We note that in Mr Styles's opinion, because the noise measurement of a gun shot at the notional boundary of the potential future Cleveland house has currently a



measured level of L_{Amax} 57dBA, it is at the fringe of the permitted level determined by the Council condition of L_{Amax} 60 dBA and CNR 80. He recommended to us possible mitigation measures to address this situation. However, at this stage there is no house located on the Cleveland site nor is there a consent for one. Thus we would recommend that bearing in mind our observations above, it would be sensible for the proponent to give some thought now as to how mitigation might be handled in the event that a house is constructed on the Cleveland site (as this is the Cleavelands' intension) so that the layout of the operation can address this control point.

Are there additional restrictions necessary?

[78] We have concluded there are further operation restrictions necessary to address the specific mitigation of the impact of the generated noise from the gunfire on the amenity of the local area and specifically nearby residents. We note though that such restrictions will not apply to the other activities envisaged for the site which do not involve gunfire. These are restricted by the Council consent condition (131) to L_{Amax} 50 in accordance with the noise standard which applies in the Rural G zoe. We accept that this is appropriate.

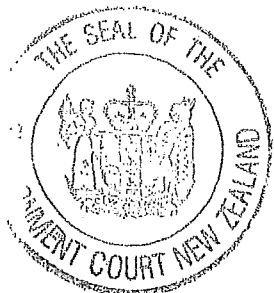
Should a numerical noise control be imposed (as opposed to operational)?

[79] We have concluded that based on the different measure and the ease at which measurements can be taken, the numerical and operational noise methodology proposed by the Council in the original consent conditions appropriately addresses a practical and fair measure of noise for this activity.

Effects on possible future owner dwellings?

[80] The Cleveland property currently has no dwelling upon it. As mentioned earlier, there is the issue of an approved subdivision on the subject site but we were told it cannot be acted upon with the Loaded operation in place. The condition imposed originally by the Council (and accepted by the applicant) otherwise relates to the measurement of noise in relation to the notional boundary of any residential dwelling. Thus future dwellings will need to be considered by the proponent in the normal way in which a District Plan noise standard would apply.

[81] No counsel disputed that the "environment" included that which exists overlain by that which is permitted in the Plan or those unimplemented resource



consents which are likely to be implemented. Thus the condition on noise would have to be satisfied at any dwelling permitted under the Plan.

[82] We conclude that on the basis of the evidence before us the proposal can be mitigated to ensure the potential adverse effects of noise from the operation of the claybird/gunshooting activity are at an acceptable level consistent with the amenity of the local area/neighbourhood.

[83] We conclude that additional operational controls are required to those imposed by the Council in its consent. Such controls are necessary to address the impact on the existing amenity enjoyed in this area and the requirement in terms of the relevant objectives and policies, to manage effects so that the environment is free of *intrusive* noise. We have concluded these modest additional constraints should provide some quiet time for residents free of the gunshot noise. We have devised a number of periods when this should occur which will ensure identified public quiet times are observed and there is certainty around when no shooting will be undertaken from the site.

Part 2

[84] No matters of national importance arise. Section 7 of the Act provides that in achieving the purpose of the Act we should have regard to (relevant to this case) the maintenance and enhancement of amenity values. We have done that.

[85] No counsel disputed that the environment included that which exists overlain by that which is permitted in the Plan, or those unimplemented resource consents which are likely to be implemented. Thus, the conditions on noise would have to be satisfied at any dwelling permitted under the Plan.

[86] All decisions must seek to achieve the single purpose of the Act, that of sustainable management as that term is defined in Part 2. The scope of this appeal was narrowed to essentially the consideration of the control of noise and its effects on the existing amenity enjoyed by persons living in the area. We conclude that overall, the proposal is an acceptable use of this rural land resource and that the potential adverse environmental effects on the amenity values which are inherent in this particular neighbourhood are able to appropriately mitigated. We do however; address the review condition imposed by the Council in its original determination so



that the mitigation can be reviewed should impacts beyond those anticipated become apparent.

Section 290A Council decision

[87] Section 290A of the Act requires the Court to *have regard to* the Council's decision. The Council's view was that the activity has a functional need to be located in a rural area and that subject to compliance with certain conditions any adverse environmental effects are able to be controlled such that they do not exceed an acceptable level. Essentially we agree with that decision except that we do not consider that the operational management went quite far enough in achieving appropriate mitigation in respect of the amenity enjoyed by this particular rural neighbourhood. Accordingly we have addressed that shortcoming by additional operational limitations and some adjustment of the review condition to make the situation clear regarding noise amenity.

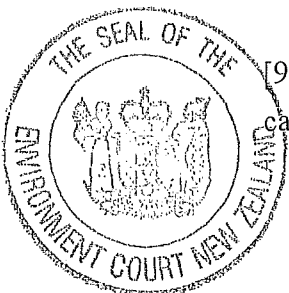
CONCLUSION

[88] In conclusion, we generally concur with the Council consent conditions for this proposal but accept the proposition put forward by the appellants; that there is an amenity issue at large in this proposal which cannot be defined or addressed purely by the application of a noise standard.

[89] We have had to accept the expert advice in terms of what level of noise is considered *reasonable* but we agree that there is a further dimension to noise intrusion which relates to the amenity values of a the particular location into which the noise source is to be placed.

[90] We have concluded that this is a generally quiet area although usual rural industry noises are expected, the noise of gunfire on a relatively continual basis through the year would be intrusive such that the ambient amenity would be adversely affected if not appropriately managed. We have thus made additional operational controls to ensure the ambient amenity is protected to a degree generally acceptable to the rural zone in which the proposal is to be located. We attach those amended conditions as Schedule C to this decision.

[91] The parties are to confer and file final conditions within 15 days. If the parties cannot agree:



- [a] Loaded is to file its conditions within 15 working days;
 - [i] The Residents and Council their comments 5 working days later; and
 - [ii] Loaded is to provide further comments within 5 working days after that.

COSTS

[92] The Court reserves costs.

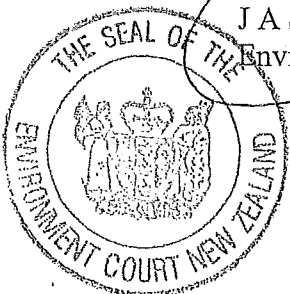
[93] An application for costs is not encouraged however:

- [a] Any application for costs is to be filed within 15 working days:
- [b] Any reply within 10 working days; and
- [c] Final reply within 5 working days thereafter.

DATED at AUCKLAND this 28th day of July 2011

For the Court

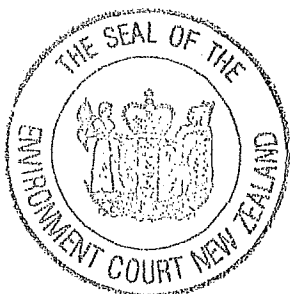
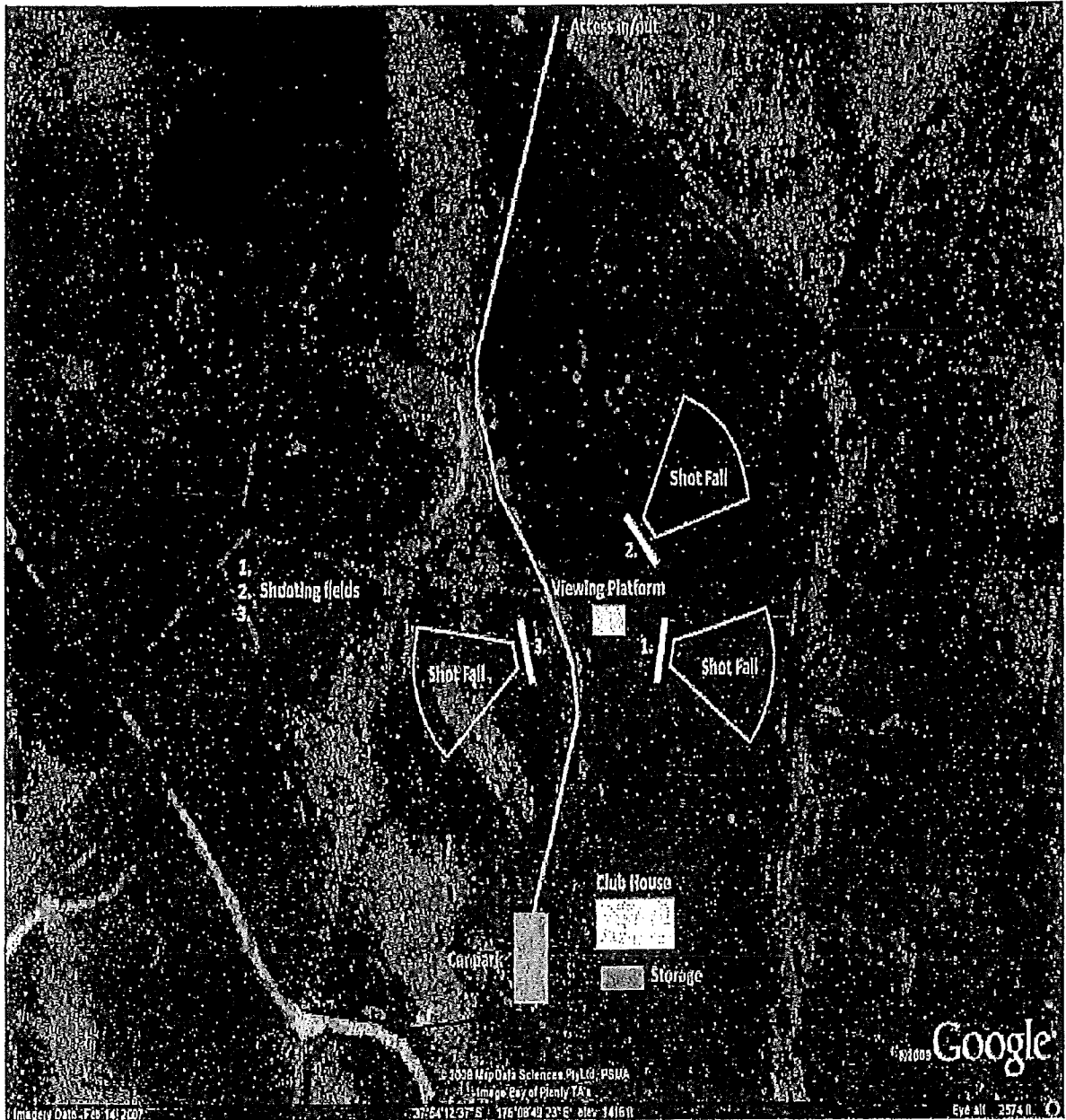
J A Smith
Environment Court Judge



ATTACHMENT A

Detailed site layout

LOADEDNZ LIMITED / 1026 TAUMATA ROAD, PYES PA
37°54'15.38"S 176°08'50.83"E 1420ft



Attachment B

15. DECISION

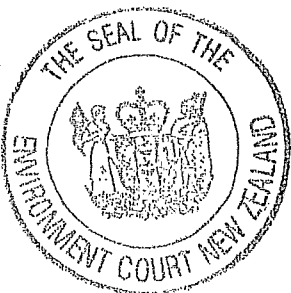
THAT for the reasons set out in the foregoing decision report, and pursuant to sections 104, 104B and 108 of the Resource Management Act 1991, the Western Bay of Plenty District Council grants consent to LoadedNZ Ltd to establish and operate a "sporting clay bird park" on land at 1026 Taumata Road, Pyes Pa, legally described as Section 18 Block XV Otanewainuku SD and Part Taumata 2B Block. Consent is subject to the following conditions:

Nature and scope of consented activity

1. *THAT except where modified by other conditions set out hereunder, the activity shall be undertaken in accordance with the following information provided in relation to the resource consent application:*
 - (a) *The Employment & Environment Law report entitled "Application for Resource Consent to Operate a Sporting Clay Bird Park – LoadedNZ Ltd" submitted with the application under cover of the Employment & Environment Law letter to Council dated 23 June 2010 signed by Danny Jacobson;*
 - (b) *The Harrison Grierson "Overall Site Plan", Drawing No. 130437 – SC03 (Rev 1) and "Shooting Range Lease Area Site Plan" Drawing No. 130437 – SC02 (Rev 1), both dated 22.11.10.*

Intensity of consented activity

2. *THAT no more than three shooting fields or "stands" shall be contained within the facility, in accordance with the Harrison Grierson plans referred to in clause (b) of foregoing condition 1.*
3. *THAT the facility shall operate for no more than six days in any one calendar week, provided that the facility shall be closed on Good Friday, Easter Sunday and Christmas Day.*
4. *THAT the hours of operation of the facility shall be limited to between 8.00am and 10.00pm with shooting activity limited to between 9.00am and 8.00pm or half an hour after sunset as determined by the New Zealand Nautical Almanac as applicable to Tauranga, whichever is the earlier.*
5. *THAT no more than 50 patrons and 5 staff shall be present on site at any one time.*
6. *THAT no more than 15 people shall participate in shooting activity on site at any one time.*



7. *THAT a maximum of 4,500 shots shall be fired in any one week except that for no more than six weeks in any calendar year a maximum of 5,000 shots can be fired.*
8. *THAT a maximum of 2,000 shots shall be fired in any one day except that for no more than six days in any calendar year a maximum of 3,000 shots can be fired.*
9. *THAT gun cartridge loads shall not exceed 12 gauge or 28 grams of shot.*
10. *THAT all cartridges/ammunition shall be supplied by the consent holder.*

Traffic and Roading

11. *THAT a maximum of five visitor vehicles (excluding mini-vans) shall be present on site at any one time.*
12. *THAT prior to the operation of the activity, the existing Taumata Road vehicle entrance to the subject site shall be upgraded so as to comply with Council's Standard Specification Drawing No. W437 Diagram C. An accurate Council issued RAPID (Rural Address Property Identification) plate must be displayed at the vehicle entrance to the property in accordance with Western Bay of Plenty District Council Rural Property Numbering Bylaw 2005.*

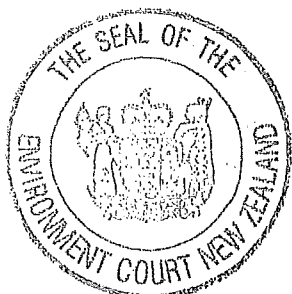
13. *Noise*

THAT all shooting activity within the facility shall be conducted so as to ensure that gunshot noise does not exceed a composite noise rating (CNR) of 80 and an L_{max} of 60dBA as measured at or within the notional boundary of any dwelling located on land not in the same ownership as the subject site. Noise from all other on-site activities shall not exceed L_{Aeq} 50dB.

Site Management Plan

14. *THAT at all times there shall be a current and operational site management plan applying to all on-site activities. Such plan shall be of the same or similar nature as that contained in Appendix 3 of the evidence of Mr Jeffrey Hextall presented at the hearing of the application. For the avoidance of doubt, the compliance obligations of the consent holder in respect of this condition are limited to ensuring that at all times the Council is provided with a current copy of the operational site management plan.*

Monitoring, record keeping and reporting



15. **THAT the consent holder shall on a continuous basis maintain records of:**

(a) **the number of visitors to the site per day and the purpose of their visit; and**

(b) **the total number of shots fired per day.**

For the first six months of the operation of the facility (as from the commencement of this consent) a copy of such records shall be provided to Council within five working days of the end of each calendar month and thereafter within five working days of any written (including email) Council request.

16. **THAT at all times the facility is in operation, contact details for the facility manager (including an all hours phone number) shall be displayed on a sign erected at the Taumata Road vehicle entrance to the subject site.**

17. **THAT a complaints register recording details of any complaints received in respect of the operation of the facility shall be maintained and kept on site at all times. A copy of such register shall be provided to Council within five working days of any written (including email) Council request.**

18. **THAT within three months of the commencement of this consent a noise assessment report of the actual on-site shooting activity prepared by a suitably qualified and experienced acoustician shall be provided to Council. Where such report identifies any non-compliance with the maximum noise levels specified in condition 13 of this consent, all on-site shooting activity shall cease until appropriate remedial measures (approved by Council's Team Leader Compliance) have been implemented so as to ensure compliance.**

Financial contributions

19. **THAT pursuant to the provisions of section 11.3 of the proposed District Plan (annotated version June 2010), and within 20 working days of the commencement of this consent, the following financial contributions shall be paid in respect of the activity to which this consent relates:**

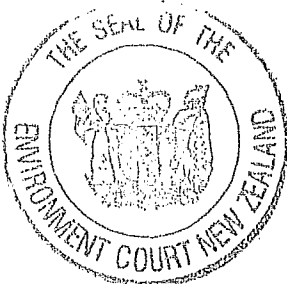
(a) **Transportation Rural Kaimai**

\$11,801.00 x 3.6 = \$42,483.60 + GST

(b) **Transportation Strategic**

\$994.00 x 3.6 = \$3,578.40 + GST

[Note: The foregoing figures are based on the predicted 32 vehicle arrivals per day as set out in Table 2 of the evidence of the



applicant's traffic engineer, Ms Ann Fosberry, presented at the hearing of the application. Given the potential usage of the facility for 309 days per year (6 days per week, excluding Good Friday, Easter Sunday and Christmas Day), this equates to an average over a year of approximately 27 vehicles per day. 27 vehicles x 2 movements each (1 in and 1 out) = 54 movements per day. At 15 vehicle movements per day per household equivalent (refer proposed District Plan definition), the activity's predicted traffic generation equates to 3.6 household equivalents.]

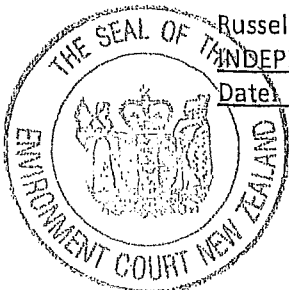
Review

20. THAT in accordance with the relevant provisions of sections 128-132 of the Resource Management Act 1991, the Council may review the conditions of this consent. Such review may be instigated 3 months after the commencement of the consent and thereafter annually. The purpose of the review(s) shall be to determine the effectiveness of the consent conditions in ensuring that any adverse effects on the character and amenity values of the adjacent rural area and on the health and safety of both residents and livestock within that area are being managed at an acceptable level. Through the consent review process, new or amended conditions relating to any identified adverse effects may be proposed.

Advice Notes:

1. Any works undertaken within the road reserve boundaries will require your contractors to file an application for a 'Road Opening Notice' (RON) with Council's customer care department or Council's roading network managers, In3Roads. As part of the RON, a traffic management plan may also be required.
1. Full compliance with the conditions of consent is necessary to carry out the activity to which this consent relates. Your progress towards satisfying the conditions of consent will be monitored by a Council representative and failure to meet these conditions may result in enforcement action being taken in accordance with Council's Monitoring Compliance and Enforcement Strategy. This may involve the issuing of an Infringement Notice (instant fine) and/or a monitoring fee.

Russell De Luca



Russell De Luca
INDEPENDENT HEARING COMMISSIONER
Date: 8 March 2011

ATTACHMENT C

AMENDED CONDITIONS

Nature and scope of consented activity

[1] As per Council decision.

Intensity of consented activity

[2] As per Council decision

[3]

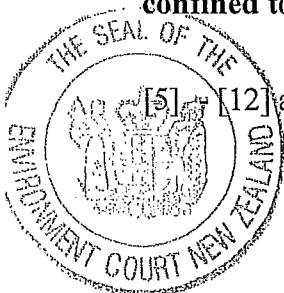
[a] The facility shall operate **between Tuesday to Sunday (inclusive)**, provided that the facility shall be closed on:

- Christmas Day
- New Years Day
- Good Friday and Easter Sunday
- Mondays on any week provided that on no more than 6 occasions in a calendar year the operation may include a Monday.

For clarification, these operational restrictions apply to the operation of all fire arms on the site and thus include the operation of fire arms for recreational purposes of any kind (including private) other than required for a farming operational purpose.

[4] That the hours of operation of the facility shall be limited to between 8.00am and 10.00pm with shooting activity limited to between 9.00am and 8.00pm or half an hour after sunset as determined by the New Zealand Nautical Almanac as applicable to Tauranga, which ever is the earlier; **provided that when operating on a Sunday shooting shall be confined to within the hours of 12.00pm and 6.00pm only.**

[5] [12] as per Council decision



Noise

[13] As per Council decision.

[14] - [17] as per Council decision

[18] **Six (6) months** after the commencement of this consent **the consent holder shall provide (at his/her expense) to the Council** a noise assessment report covering the actual on-site shooting activities, including one full weekend, prepared by an independent suitably qualified and experienced acoustician. Where such report identifies any non-compliance with the maximum noise levels specified in condition 13 of this consent, all on-site shooting activity shall cease until appropriate remedial measures (approved by the Council's Team Leader Compliance) have been implemented so as to ensure compliance.

[19] As per agreement by consent

Review

[20] As per decision with the following addition:

It is noted that as a result of such a review any amended conditions may impose greater restriction on the operational hours of the activity, further on site noise mitigation, and/or amendments to the manner in which noise is controlled and managed.

