

BEFORE THE ENVIRONMENT COURT

Decision No. [2010] NZEnvC 48

ENV-2009-WLG-000221

ENV-2010-WLG-000048

IN THE MATTER of applications under section 316
of the Resource Management Act
1991

BETWEEN NELSON CITY COUNCIL
DELAWARE BAY RESIDENTS
ASSOCIATION INC
Applicants

AND SHARON HARVEY and BRUCE
REGINALD HARVEY
Respondents

Court: Environment Judge B P Dwyer
Environment Commissioner J R Mills
Environment Commissioner H Beaumont

Heard: at Nelson on 2 August 2010

Counsel/ Appearances:

K Beckett for Nelson City Council
N McFadden for Delaware Bay Residents Association Inc
S Goodall for S and B Harvey

INTERIM DECISION

Decision Issued:

31 MAR 2011

A: Applications granted.

B: Costs reserved.



Introduction

[1] This is a joint decision on two separate enforcement order proceedings relating to the operation of the Cable Bay Rifle Range (the Range) situated at Cable Bay Road, R D 1, Nelson, being part of the land in computer freehold registers 9201, NLD6D/326 and NLHC/808, Nelson Land Registration District (the site).

[2] The first set of proceedings is an application for an enforcement order made by Nelson City Council (the Council) against Bruce Reginald Harvey and Sharon Harvey (Mr and Mrs Harvey/the Respondents). The Council sought an order in these terms against Mr and Mrs Harvey.

- (a) *An order under section 314(1)(a)(ii) of the Resource Management Act 1991 prohibiting the respondents from using or allowing any other person to use firearms except .22 calibre firearms on the land shown as the Restricted Shooting Area on the attached Contour Map (Scale 1: 12,500) except on the Cable Bay Rifle Range shown as Area A on the attached Contour Map (Scale 1: 4,000) and then provided the Cable Bay Rifle Range is used in accordance with the restrictions set out in Attachment A.*
- (b) *This order shall not apply to the use of firearms within the restricted shooting area by Jack Harvey, Donald Harvey, Gordon James Harvey, Michael William Noel Harvey, Lisa Yvonne Harvey, Scott Trussler, Brian Isaac Harvey and Clinton James Harvey.*

(Attachment A was a detailed set of restrictions which the Council contended ought be applicable to the operation of the Range).

[3] The second set of proceedings was also an application for enforcement orders made by the Delaware Bay Residents' Association Incorporated (the Residents' Association) against Mr and Mrs Harvey seeking orders in the following terms:

- (i) *An order under Section 314(1)(a)(i) of the Resource Management Act requiring the Respondents to adopt the best practicable option to ensure that the emission of noise emanating from the land occupied by the Respondents from the Respondent's shooting*



ranges does not exceed a reasonable level, namely the relocation of the shooting range activity from its present location to another location at which a noise level not exceeding 50 dBA can be achieved, in combination with restrictions on operating hours, shots fired and an optimum combination of methods to limit noise to the greatest extent achievable.

- (ii) *An order under Section 314(1)(b)(ii) requiring the Respondents to remedy the adverse effects on the environment caused by the emission of unreasonable noise generated from the Respondents shooting range activities.*
- (iii) *An order under Section 314(1)(c) requiring the Respondents to remedy the adverse noise effects on the environment caused by the operation of the Cable Bay Shooting Adventures shooting ranges.*

This application dated 15 July 2010 was an amendment of an initial application filed on 27 April 2010. After receipt of the amended application an order requiring the provision of further particulars was made by the Court and those particulars were provided by way of memorandum dated 21 July 2010.

[4] The further particulars provided by the Residents' Association detailed with some precision the orders then sought, in these terms.

- (i) *An Order under Section 314(1)(a)(i) requiring that the Respondents cease the operation of the Cable Bay Adventures shooting range at its existing location.*
- (ii) *An Order under Section 314(1)(b)(ii) requiring that the Respondents relocate the Cable Bay Shooting Adventures shooting range to the site shown marked "Proposed Range" on the map annexed (Co-ordinates S 41 11.402, E 173 24.783) ("the new site").*



An Order under Section 314(1)(b)(ii) requiring that an acoustic shed (designed and approved by an Acoustic Expert) be constructed at the new site for the purposes of reducing noise emission from firearms and requiring that all firearms be fired

from the acoustic shed save for certain limited exceptions for shotguns.

(iv) *An Order under Section 314(1)(b)(ii) limiting the hours of operation for all firearms and use of the range on the new site as follows:*

(omitted)

(v) *Any other Orders the Court considers necessary to avoid, remedy or mitigate the adverse effects of the Respondents operation.*

[5] The Residents' Association filed a notice pursuant to s274 in respect of the Council's application and the Council filed a s274 notice in respect of the Residents' Association's application. There was accordingly a commonality of parties in respect of the proceedings, although ultimately, each set of proceedings required separate resolution.

[6] Prior to (and during) our hearing there were various discussions between the parties with a view to resolving the matters in dispute between them. Insofar as the Residents' Association and Mr and Mrs Harvey were concerned, those efforts were largely unsuccessful. However, the Council and Mr and Mrs Harvey were able to substantially reach agreement and filed a joint memorandum, dated 30 July 2010, identifying those matters in respect of which they had reached agreement and those matters where there remain disagreement.

[7] The matters of disagreement related to some of the details of the restrictions set out in Attachment A of the Council's application for enforcement order, specifically matters pertaining to:

- Whether or not a suppressor pipe used to suppress the sound of firearms required to be certified as being as effective as an on rifle suppressor;



Whether or not the Sundays on which shotguns might be fired from outside a firing shed on the site should be restricted to being permitted on the first and third Sundays of each month or whether the Sunday

use could be flexible and decided by Mr and Mrs Harvey from time to time;

- The extent of supervision of the Range use which was required.

Resolution of the Council application will be largely confined to consideration of those matters. However, the Council application must also be determined in the context of the considerably more wide ranging Residents' Association's application.

[8] The Council application was more restricted in scope than the Residents' Association application for a reason. The Harveys' operation of the Range has previously been the subject of not less than three decisions of this Court.¹ In September 2007, the Council had issued an abatement notice against Mr and Mrs Harvey pertaining to the operation of the Range. The abatement notice was appealed to the Court. Decision C-77/2008 dismissed the appeal, but required certain modifications of the abatement notice whose final form was fixed (by consent) in order C 086/2008 (No 2) which issued on 2 October 2008.

[9] Operation of the Range since October 2008 has revealed certain ambiguities and shortcomings in the abatement notice and difficulties in its enforcement. The current Council proceedings sought an enforcement order replacing the abatement notice which would remedy the shortcomings, ambiguities and enforcement difficulties whilst at the same time respecting, as far as possible, the controls which had emerged from the Court in the abatement notice appeal.

[10] The Residents' Association's application was similarly a response to the shortcomings and ambiguities which had emerged in operation of the abatement notice and which were ultimately brought to a head by a shooting event held on the site over Labour weekend 2009. We will discuss that in some detail further in this decision.

Status of Rifle Range Activity

The site is contained in the Rural Zone of the Nelson Resource Management Plan (the District Plan). The Range is a permitted activity in that zone. That is a

¹ Decision C 77/2008; C 86/2008 and C 086/08 (No 2).



consequence of the operation of Rule RUr 20.1 which provides that *any activity* is a permitted activity provided it does not contravene any other relevant Rules and does not fall within certain excluded activities. We were told that the only relevant Rule which the activity might possibly contravene was Rule RUr 47 which imposes noise levels within the Rural Zone. Rule RUr 47.1 imposes a daytime noise performance standard in the zone of 55 dBA (L_{10}) which cannot control noise from firearms.

[12] There was no dispute that the Range activity is permitted. The matters in dispute before the Court revolved around questions as to whether or not noise generated by firearms on the Range exceeds a reasonable level (and is accordingly unreasonable) or is offensive or objectionable to such an extent as to have an adverse effect on the environment. In decision C 77/2008 the Court had previously held that the imposition of controls by way of abatement notice was necessary to ensure that the noise of the activity was not objectionable.

[13] We did not understand there to be any dispute that the noise could potentially exceed a reasonable level or be offensive or objectionable unless use of the Range was subject to appropriate controls. The argument between the parties was about the nature, detail and extent of controls which ought be imposed under either the Council's or the Residents' Association's proceedings.

Background

[14] Background matters pertaining to Harveys' operation of the Range were canvassed in considerable detail in Decision No C 77/2008. Among other things it was identified in that decision that there are a number of components of the activity conducted by Mr and Mrs Harvey. Decision C 77/2008 identified two categories of use of the Range, non-police use and police use. (There is also a third category, personal use by members of the Harvey family.)

[15] The term non-police use described commercial use of the Range by recreational and sporting shooters using a variety of firearms. The term police use described firearms training undertaken by police officers and involves the use of a number of types of firearms in various situations. We shall use those terms in this decision also.



[16] We witnessed and listened to examples of both sorts of shooting during our site visit. A number of different firearms were discharged on the Range and coincidentally, a police firearms training exercise was undertaken on the day of our site visit so that we were able to observe that also.

[17] The Range is located on a farm which has been owned by the Harvey family for over 50 years. The site is situated approximately 15 minutes drive northeast of Nelson City. Cable Bay Road runs for a distance of about 7 or 8 kms from SH 6 to Cable Bay.

[18] We did not traverse the full length of the road from the SH 6 turnoff to Cable Bay but that area which we did view, showed that Cable Bay Road is a two-lane rural road running through the floor of a fairly narrow valley bordered by steeply rising hills on either side of the valley floor. That portion of the valley which we saw comprised primarily farming land (particularly along the valley floor and lower hill slopes), with the hill slopes either in native or reverting vegetation.

[19] We understand that for many years the principal activity in the valley was farming. However, in 1996 the Council approved the subdivision of a parcel of land then owned by E and A Ingham which partially adjoins the site, to the north and east. The subdivision created 19 allotments ranging in size from 4ha up to 61ha, thereby creating something of a rural/residential enclave in the valley. A number of the members of the Residents' Association (including some of those who provided evidence to the Court) are persons who have purchased allotments in the Ingham subdivision.

[20] For the sake of completeness, we record that there are presently two other shooting ranges in this vicinity, both operating in quarries on or near the site. One is the range of the Seaborne Rifle Club and the other the Cable Bay Pistol Club. We did not hear evidence of complaints about operation of these ranges.



[21] The Range which is the subject of these proceedings, is situated on the western side of Cable Bay Road. There is a firing shed about 100m or so off the road

and the Range itself runs westward from the shed across a gently rising open paddock into a steep bush-clad slope. There are some distance markers in the paddock and targets can be fixed at various distances on the hill. The firing shed has the appearance of a farm shed and to the casual observer the use of the site for shooting purposes would not be immediately apparent, unless shooting was actually being undertaken at the time of observation.

[22] Members of the Harvey family are enthusiastic shooters. Mr Harvey testified that his father had used the Range as a practice range since 1952. He grew up learning to shoot there as did his children, nieces and nephews and other children in the district. This activity has involved many different types of firearms. The Harvey family also undertake hunting and pest eradication shooting on the site.

[23] In 1989 Mr Harvey moved into a house situated in close proximity to the Range. He is a competitive shooter who has won a number of New Zealand championships. He regularly uses the Range for training purposes as do other persons associated with him in the sport of competitive shooting. Mr Harvey testified that his current personal use of the Range would involve somewhere in the order of 250 rounds per week from shotguns or high powered rifles, together with a considerably greater number of rounds from his .22 rifle. Mr Harvey and his associates regularly shoot sport and clay targets on the Range.

[24] In October 2000, Mr and Mrs Harvey established the business of Cable Bay Shooting Adventures. The business makes the Range available for use by a number of persons for shooting activities. These include:

- Hunters who use the range to sight in their rifles (commonly high calibre rifles) for hunting use;
 - Clay target shooters who use shotguns;
 - What Mr Harvey described as *tourist shooters*, being persons who use the range for entertainment or relaxation and are provided with .22 rifles for that purpose;
- Student groups;
- Competition shoots by various shooting clubs and organisations.



[25] These users of the range are charged a fee to undertake their shooting and we were told by Mr Harvey² that in the last year the Range had earned the Harvey partnership about \$35,000. We were not given details of the breakdown of that income between the various types of users or between non police and police use.

[26] In decision C 086/08 (No 2) the Court imposed a series of hourly, weekly and monthly limits on the numbers of rounds which might be fired on the range by its various users (other than the police). These limitations were imposed on rifles above .22 up to .308 calibre and shotguns but did not apply to .22 calibre firearms.

[27] The limitations appear to apply to all non-police use of the range, including the Harveys' own use. Without going into the fine detail of the restrictions, they allow a total of 1350 shots per week from .308 rifles and 2,500 shots per week from shotguns fired inside the firing shed. Additionally up to 2,000 shotgun shots per month were allowed outside the shed. These restrictions also have further hourly and daily sublimits. The terms of the abatement notice allow two *special event days* per year when the restrictions might be exceeded.

[28] When regard is had to the fact that there is no restriction on the number of .22 calibre shots which might be fired (Mr Harvey advised that constitutes up to about 80 percent of the tourist shooting) it will be apparent that at times there will be very intensive and extensive firing being undertaken on the Range even if it is not up to the limits stipulated in the Council abatement notice.

[29] An example of the extent of shooting allowable under the present restrictions is an annual duck shooting warm up day which has been held twice on the site as a special event. Mrs Harvey advised³ that last year there were 101 participants and the year before, 103. Each participant fired between 50 and 75 shots, so that somewhere between 5,000 and 7,500 shotgun rounds would have been fired on the site on each day.



[30] In addition to the larger scale special events, the restrictions allow for what Mr Harvey referred to as *Gentlemens' Club* shooting, once per month, when a group of his shooting associates carry out clay target shooting on a Sunday. This can involve about 750 shots⁴.

[31] Police use of the Range is in addition to that described above. The Range is ideal for police firearms training as it is easily accessible from Nelson. Firearms training in Nelson occurs twice a year on Mondays to Thursdays over an 8 week period from 9 am to 4 pm with live firing usually occurring during a 2 or 3 hour period in the afternoon. The live firing could be for as little as 45 minutes but might extend for over 2 hours on occasions.

[32] Police training currently involves the use of two types of gun, the Glock semi-automatic pistol and the .223 Bushmaster semi-automatic rifle. The maximum number of participants in a training session is ten per day, but the more usual number is between six and eight. Each shooter would fire 50 pistol rounds and 30-50 rifle rounds per day, on average.

[33] The conditions on police use included in the current abatement notice, restrict use of the range to coincide with the periods and times described above, but do not limit the number of shots fired nor the firearms to be used. On the basis of the figures in the preceding paragraph, police use of the Range might commonly involve somewhere between 500 and 800 shots per day, compressed to within a period of 2-3 hours.

[34] The initial Council abatement notice, Decision C77/2008 and the consequential decisions which followed it, sought to resolve the conflict inherent in use of the site as a rifle range with its adjoining rural/residential neighbours. Whether or not that had been achieved was the subject of a large body of the evidence before us. Issues were raised about compliance (or rather non-compliance) with, practicality of and interpretation of the abatement notice. These issues emerged very shortly after the final form of the Council's abatement notice was confirmed by the Court.

⁴Pages 133-135, NOE.



[35] In October 2008, a monitoring report from Mr S J Lawrence (a warranted officer of Nelson City Council) identified seven examples of alleged breaches of the conditions of the abatement notice.⁵ Many of the instances alleged by Mr Lawrence appear to be minor and were characterised by Mr and Mrs Harvey as *teething problems*. However, one of the allegations in the monitoring report was that the hourly firing rate had been exceeded at least nine times and that cannot be characterised as a minor breach.

[36] Whatever the position about compliance, matters were brought to a head on Labour Weekend 2009 when the Harvey property was the site of a National 3 Gun Event. This event, which involved the firing of shotguns, rifles and pistols on the Friday, Saturday and Sunday of that weekend, was the subject of a considerable amount of the evidence which we heard

[37] Mr H M Black, who is a member of the Residents' Association and resides near the site, deposed that somewhere in the vicinity of 4000 rounds were fired on the Friday and again on the Saturday, with a similar level on the Sunday. Shot counts made by Mr Black were:

- Saturday (8.45 am – 9.45 am), 603 shots;
- Saturday (3 pm – 3.30 pm), 332 shots;
- Sunday (11 am – 11.30 am), 249 shots;
- Sunday (4 pm – 4.30 pm), 315 shots.

[38] Mr Lawrence went out to the site on the Saturday morning as the result of a telephone complaint from Mr Black. He observed the site from two positions, one on nearby Maori Pa Road and one from a building site on a property known as the Cleary property. His observations were undertaken from 10.39 am to midday during which time he counted somewhere between 500 and 550 shots. His count was accordingly, reasonably consistent with Mr Black's figures.



[39] Mr Lawrence described his observations in these terms:⁶

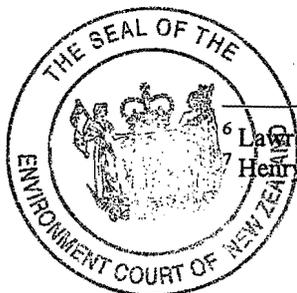
17 For the period I was observing the range and surrounding area the noise from gun shots was virtually non stop. Any gap would be no more than one or two minutes with each gap followed by continuous fire from multiple weapons. The noise was loud and could be heard at a loud level from Maori Pa Road and the surrounding area. In my opinion the noise was very intrusive and objectionable. If this level of firing was maintained for three days and I lived in the vicinity then I would have found it intolerable.

[40] Mr B G V Henry (another Council warranted enforcement officer) went to Cable Bay Road on the Sunday, again in response to a complaint from Mr Black. He spoke to Mrs Harvey at the Range. She confirmed that a shooting competition was being held.

[41] Mrs Harvey told Mr Henry that there were three types of shooting being undertaken by competitors. There were 36 contestants who were divided into three groups of 12. Mr Henry observed shotgun firing being undertaken and was advised by Mrs Harvey that each contestant would fire 46 shotgun rounds on the Range. Other groups of competitors were firing rifles and pistols at other shooting positions on the Harvey property which were not situated on the Range itself.

[42] Mr Henry heard shotgun, rifle and pistol fire while he was doing his inspection. He commented as follows:⁷

23 The shots that I heard while at the range, Maori Pa Road and Mr Black's were reverberating around the valley. I found them disturbing. If the volume of shot gun blasts on and adjacent to the Range that Mrs Harvey related were to be fired on each of the three days I would have found each day's shooting of this type intolerable if I lived on Cable Bay Road or on Maori Pa Road in the vicinity of Mr Black's property. It would have been in my opinion, objectionable.



⁶ Lawrence Affidavit 11 December 2009.
⁷ Henry Affidavit 10 December 2009.

[43] When the proposition was put to Mr and Mrs Harvey that the shooting activities being undertaken were in breach of the abatement notice, they gave a somewhat unexpected answer. That was that the abatement notice applied only to the firing of weapons on the Range itself. Harveys contended that firing undertaken on the site other than at the Range, was not covered by the abatement notice and was accordingly not subject to the controls contained within it.

[44] Arguably, the Harveys were correct in that assertion. Paragraph 1 of the abatement notice provides as follows:

1. Location in respect of which abatement notice applies:

Cable Bay Rifle Range situated at Cable Bay Road, RD1, Nelson adjacent (approximately 100-150metres) to the dwelling occupied by Mr Bruce Harvey on the property with the following legal description:

[45] It is apparent from that description, that the abatement notice applies to the Cable Bay Rifle Range situated approximately 100-150m from the Harvey house, being the Range which we have described in Para [21] of this decision. The Harveys appear to be correct in their assertion that the abatement notice does not, on the face of it, apply to the balance of the site.

[46] We suspect that the drafter of the abatement notice did not turn his/her mind to the issue of off Range use and that although the Labour Weekend event may have been outside of the spirit of the abatement notice, it did not breach the notice on a literal interpretation. It is also apparent from the descriptions of Messrs Black, Lawrence and Henry, that the effects on the neighbours of the site of firearms being discharged off the Range were equally concerning as if they were fired on the Range.

[47] It was the Labour Weekend 2009 incident which was the catalyst for the Council and the Residents' Association seeking the enforcement orders which they have. In addition to the apparent deficiency in the abatement notice in not applying over the whole site, Mr Lawrence also deposed that there were other practical difficulties in enforcing the abatement notice in its existing form. The Residents' Association also pointed to the difficulties arising out of the abatement notice being



restricted to the identified Range but further contended that even if the abatement notice was complied with, the number of rounds being fired and the noise generated, exceeded a reasonable level.

The Expert Evidence

[48] We heard evidence from two expert witnesses. They were Dr J Trevathan for the Residents' Association and Mr S Camp for Mr and Mrs Harvey. Both witnesses are qualified acoustic engineers. Additionally, Dr Trevathan appended to his evidence a document titled:

BEL ACOUSTIC CONSULTING

REPORT ON:

NOISE FROM RIFLE RANGE: CABLE BAY, NELSON

JANUARY 2009

This document is a report prepared by Mr G Bellhouse of Bel Acoustic who had conducted measurements on the level of noise emitted from the rifle range in order to assess the effect on neighbouring properties.

[49] The acoustic engineers had between them taken a number of measurements of the noise emanating from the Range, at various sites. Dr Trevathan took his measurements at what is known as the Cleary property. Mr Bellhouse took measurements at what were referred to as the Phillips and Cleary properties. In 2007, Mr Camp had taken measurements near the boundary of what is known as the Bryant property and at the Phillips' property. There was no challenge to the accuracy of the various readings.

[50] The Bel Acoustic Report contained the following comment about the noise environment at Cable Bay. It said:



The existing ambient level of noise in the area of the Phillips measurement location was also measured. The results are:

L₁₀ 44 dB(A)

L₉₅ 40 dB(A)

L_{eq} 42 dB(A)

This is indicative of a quiet rural area with little intruding noise apart from an occasional vehicle on one of the roads below, which was my assessment of the environment. This is in line with measurements previously taken by others.

Dr Trevathan described the area as neither particularly quiet, nor particularly noisy. The Bel Acoustic description of this being a quiet rural area was consistent with our observation during our site visit.

[51] The Bel Acoustic Report measured the noise using an L_{peak} parameter. Mr Bellhouse considered this an appropriate descriptor for the measurement of impulse noise. He described this as ... *Peak sound pressure level is a measure of the peak pressure of sound present for an extremely short period of time (microseconds or milliseconds) and requires the use of a Class 1 sound level meter (a precision grade type of meter).*

[52] The Bel Acoustic Report measured the noise generated from a variety of firearms in a number of situations. The Report advised that at the Cleary location the L_{peak} level exceeded 80 dBA in all tests but one and at the Phillips location the L_{peak} exceeded 80 dBA in most of the tests and concluded:

At a level of noise emission greater than 80dB L_{peak} gunfire noise should be viewed as unreasonable when it occurs regularly and for prolonged periods. It is very noticeable and likely to be disturbing and intrusive.

[53] Dr Trevathan and Mr Camp both used L_{max} parameters for their measurements. L_{max} is the maximum noise level recorded using a measure which responds to noise as quickly as the human ear. L_{peak} is the peak noise level being the highest level of noise produced. The human ear does not respond quickly enough to impulsive sounds such as gun shots and hence L_{peak} is significantly higher than L_{max} , typically around 30 dB higher so that 80dBA L_{peak} generally (but not precisely) equates to 50dBA L_{max} .



[54] Dr Trevathan's measurements, taken on the Cleary site on 26 March 2010 for .308 and .22 rifles fired from within the firing shed on the Range, measured noise levels of 63 to 65 dB L_{Amax} for the .308 rifle and 53 to 55 dB L_{Amax} for the .22 rifle.

[55] Mr Camp's measurements in 2007 at the Bryant property for .308 rifles, recorded dBA L_{max} readings of between 57 and 63 and a shotgun reading of 55. At the Phillips' property two measurements for a .308 rifle gave L_{max} readings of 62 and 64.

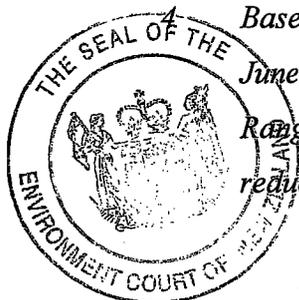
[56] One of the issues which was the subject of debate before us was a proposal that the Range be moved to another position (Relocation Area One) which had been identified on the site. That was considered by Dr Trevathan and Mr Camp particularly as to the issue of whether or not relocation would result in noise levels at neighbouring properties of less than the 80 dB L_{peak} (approximately 50 dBA L_{max}) identified in the Bel Acoustic Report.

[57] The outcome of discussions between the two acoustic consultants was a joint statement dated 27 July 2010 (the Joint Statement). The Joint Statement provided as follows:

Areas of Agreement

- 1 *The District Plan noise rules are not applicable to noise from gunshots.*
- 2 *L_{AFmax} is an appropriate descriptor and International Guidelines recommend 50 to 55 dB L_{AFmax} with few exceptions.*
- 3 *Noise levels at the existing range are well above 50 dB L_{AFmax} even with the mitigation measures that have been implemented. We have measured noise levels from suppressed .308 rifles within the shed of 62 to 67 dB L_{AFmax} at the 'Cleary' and 'Phillips' sites.*

Based on measurements undertaken by Dr Trevathan on 28 June 2010, relocating the Cable Bay Shooting Adventures Range to the area known as "Relocation Area One" would reduce noise levels received at residential sites by around 10dB



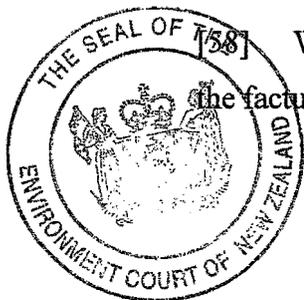
– equivalent to a halving of loudness (without the benefit of a shed at the new site).

- 5 Without the shed, noise levels will be less than 50dB L_{AFmax} with .223 rifles and 9 mm pistols. Shotguns and high calibre rifles will generally be between 50 and 55 dB L_{AFmax} .
- 6 There are noticeably less echoes around the hills at Relocation Site One and this may further reduce the annoyance of the gunshots.
- 7 A small additional noise reduction is likely when an acoustically designed shed is installed at the new site.
- 8 Relocation of the activity to Relocation Area One would provide a significant improvement for residents.

Areas of Disagreement

- 9 Mr Camp argues that noise levels at the existing range (including high powered rifles at 62 to 67 dB L_{AFmax}) are not objectionable. Dr Trevathan's assessment has been limited to a consideration of reasonable noise.
- 10 Dr Trevathan believes that restrictions on use are appropriate in this locality even if noise levels were reduced to less than 50dB L_{AFmax} . Mr Camp is of the view that restrictions are unwarranted at levels less than 55 dB L_{AFmax} to ensure noise emissions are reasonable.

(L_{AFmax} and dB are the ISO equivalents of the terms previously used by the witnesses, L_{max} and dBA. We will also use the term dB L_{AFmax} for the balance of this decision).



[58] We turn to consider the appropriate enforcement orders to be made in light of the factual background and Joint Statement set out above.

Enforcement Orders

[59] The scope of enforcement orders is set out in s314 RMA which relevantly provides as follows:

314 Scope of enforcement order

(1) *An enforcement order is an order made under section 319 by the Environment Court that may do any one or more of the following:*

(a) *Require a person to cease, or prohibit a person from commencing, anything done or to be done by or on behalf of that person, that, in the opinion of the Environment Court,—*

(i) *Contravenes or is likely to contravene this Act, any regulations, a rule in a plan, a rule in a proposed plan, a requirement for a designation or for a heritage order, or a resource consent, section 10 (certain existing uses protected), or section 20A (certain existing lawful activities allowed); or*

(ii) *Is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment:*

(b) *Require a person to do something that, in the opinion of the Environment Court, is necessary in order to—*

(i) *Ensure compliance by or on behalf of that person with this Act, any regulations, a rule in a plan, a rule in a proposed plan, a requirement for a designation or for a heritage order, or a resource consent; or*

(ii) *Avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by or on behalf of that person:*

(c) *Require a person to remedy or mitigate any adverse effect on the environment caused by or on behalf of that person:*

[60] The Council seeks its order pursuant to s314(1)(a)(ii) and the Residents' Association pursuant to ss314(1)(a)(i), 314(1)(b)(i) and 314(1)(c). We consider that any or all of those provisions provide a basis for making the orders sought.



[61] Insofar as the Council application is concerned, the specific basis of the application is the contention in the affidavits of Messrs Lawrence and Henry that the noise from an event such as that of Labour weekend 2009 was intolerable to such an extent as to be *objectionable*. That was the basis of the Council abatement notice upheld by the Court in Decision C 77/2008, which preceded the Labour Weekend 2009 incident.

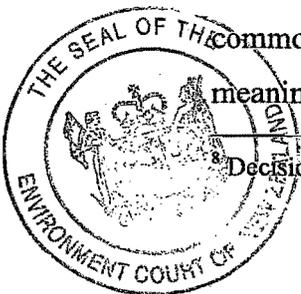
[62] The Residents' Association's application is primarily based on s314(1)(a)(i), more particularly contravention of the obligation contained in s16(1) RMA which requires that...*Every occupier of land...shall adopt the best practicable option to ensure that the emission of noise from that land ... does not exceed a reasonable level.*

[63] The observation was made in the Bel Acoustic Report that unreasonable noise is different to offensive or objectionable noise. It was contended that although offensive or objectionable noise will ipso facto be unreasonable, not all unreasonable noise will necessarily be offensive or objectionable. Although we accept that is the case, we consider that in practice the distinction between noise which exceeds a reasonable level on the one hand and offensive and objectionable noise on the other, will commonly be blurred and will often be a question of degree. We will consider all three matters in our assessment.

[64] A number of decisions of the Court and Planning Tribunal have considered the issue of whether or not noise has exceeded a reasonable level. We refer to the observation in *Auckland Kart Club Inc v Auckland City Council*⁸ that . . . *what is reasonable is a question of fact and degree.* 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.

[65] The terms *offensive* or *objectionable* are not defined in RMA and are commonly cited in conjunction with each other. In normal usage there is a certain commonality of meaning between the two. We refer to the various dictionary meanings of those words considered by the Court in *Donnelly v Gisborne District*

⁸Decision A 124/92, page 21.



*Council*⁹ and adopt the meanings used by the Court in that case of...*undesirable, displeasing, annoying or open to objection.*

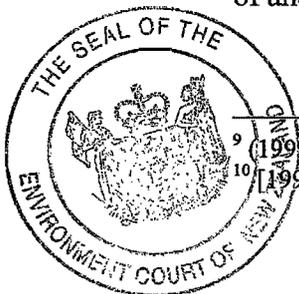
[66] For the sake of completeness we note that a finding that a particular noise is offensive or objectionable, of itself, is not a basis for relief under the relevant provisions. It is also necessary to find the noise has or is likely to have an adverse effect on the environment.

[67] In determining whether noise from the Range exceeds a reasonable level or is offensive or objectionable, we are aware that the test to be applied is an objective one. We repeat the reference from *Zdrahal v Wellington City Council*¹⁰ which was cited in Decision C 77/2008 namely that:

It is not enough that a neighbour or other person within the relevant environment considers the activity or the matter to be offensive or objectionable. It is not enough that the Tribunal itself might think the matter was objectionable ... the Tribunal in a case like this must transpose itself into the ordinary person, representative of the community at large, and so decide the matter.

[68] The Joint Statement of the noise witnesses revealed a disagreement between them as to the level at which noise emissions from the Range exceeded a reasonable level or might be considered objectionable. Their differences revolved around the 50-55 dB L_{AFmax} measurement. However, we understood that Dr Trevathan and Mr Camp agreed that determination of the reasonableness, offensiveness or objectionability of noise involves more than just a consideration of the measured noise levels in isolation.

[69] We also consider that determination of those issues involves wider consideration than the standards contained in district plans or the matters identified in NZS 6802:2008 (Acoustics-Environmental Noise) which is directed at the setting of and compliance with specific noise limits.



⁹ (1999) 5 ELRNZ 138.
¹⁰ [1995] 1 NZLR 700.

[70] The Court suggested to the noise witnesses that an appropriate means of determining whether noise exceeded reasonable levels or was offensive or objectionable in any given instance, might be application of the FIDOL factors identified in the publication *Good Practice Guide for Assessing and Managing Odour in New Zealand*¹¹. Those factors are:

- 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 which may be pleasant, neutral or unpleasant;
- Location- the type of land use and nature of human activities in the vicinity of the odour source.

Both the witnesses agreed that the factors above would provide a useful check list for assessing noise effects (with appropriate amendment). We do not suggest that they provide the only basis for doing so or will be relevant in every instance. We propose to use them in undertaking our assessment as to whether or not noise generated from the Range exceeds a reasonable level or is offensive or objectionable in this case. A number of the witnesses referred to some of these factors in their evidence, albeit not in the structured manner we have done.

Frequency

[71] Under the present operating conditions of the Range (imposed by the abatement notice) there can be thousands of rounds per week fired from rifles up to .308 calibre and shotguns. Mr Harvey estimated that actual use of the range could be up to 2000 rounds per week from both shotguns and rifles¹² and that the busiest day of the week for tourist use is Sundays.¹³

[72] There is no control under the existing abatement notice on the number of rounds from .22 calibre rifles, nor is there any limitation on the number of rounds which might be fired by the police during their use of the Range. In her affidavit, Ms



B R Rounce (a member of the Residents' Association) stated that there appeared to be *hundreds of rounds going off* when the police are using the Range and that is consistent with our earlier calculation (para [33] supra).

[73] It seems that somewhere between 3,000 and 4,000 shots per day would have been fired during the Labour Weekend 2009 shooting competition. We accept that is not typical of Range usage. However, such a level of usage was not in breach of the abatement notice because much of the shooting took place off the Range itself and was accordingly permissible in terms of currently applicable controls.

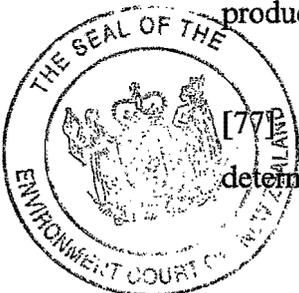
[74] We have noted previously (para [29] supra) that the Harvey site is also used for pre-duck shooting warm-up shoots which can involve somewhere between 5,000 and 7,500 shots per day and that Gentlemen's Club firing on one Sunday per month involves about 750 shots per day (para [30] supra).

[75] It is apparent that shooting on the Range in particular, and on the site in general, can involve many hundreds of shots per day and thousands of shots per week. The activity persists throughout the year with peaks at various times such as the Gentlemen's Club shoot, police shooting and the duck shooting warm-up. Although the controls on discharge of .308 rifles and shotguns on the range require one day per week to be free of firing, that control does not apply to .22 rifle discharges nor off Range discharges. Accordingly, the discharge of firearms is a high frequency activity on the site.

Intensity

[76] We accept that the dB L_{AFmax} measurement used by Dr Trevathan and Mr Camp in their Joint Statement is an appropriate descriptor of the intensity or level of the noise being experienced by at least some neighbours when .308 rifles and shotguns are being fired on the Range. Additionally, we note that in the Bel Acoustic Report the observation is made that police Glock pistols or M4 rifles produce similar levels of noise to the .308 rifle.

[77] Recitation of the bare noise levels of itself, does not greatly assist the Court in determining the actual effects of shots generating that level of noise. However, we



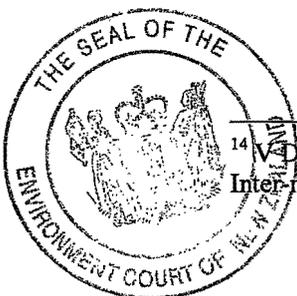
heard .308 rifles and police firing from an observation position off the site and in our subjective view it was very loud and intrusive indeed.

[78] Both Dr Trevathan and Mr Camp referred to a review of international shooting noise regulations¹⁴ in various jurisdictions around the world. Paragraph 2 of the Joint Statement noted that the recommended noise limits at residential receivers contained in the international regulations, were between 50 to 55 dB L_{AFmax} , with few exceptions. It is undisputed that the noise of .308 rifles and shotguns from the site substantially exceeds those levels at some neighbouring properties. Even .22 rifles are at the higher end of this spectrum at some receptors according to Dr Trevathan's measurements (para [54] supra).

[79] It will be seen from the Joint Statement that Mr Camp was of the view that noise levels at 62-67 dB L_{AFmax} were not objectionable. Dr Trevathan considered that noise from the Range should not exceed 50 dB L_{AFmax} at any neighbouring dwelling and that even at that level there should be restrictions (days and hours of operation) in place. Mr Camp was of the view that restrictions are unwarranted at noise levels of less than 55 dB L_{AFmax} .

[80] It was surprising to find such a divergence of views between two expert witnesses on such an issue. However, it became apparent that Mr Camp's opinion as to the appropriate noise level was driven by his view that the Harveys' activities preceded residential development in the area and that the rural/ residential property owners who had moved in to Cable Bay Road had to accept what was in existence, as they had *come to the nuisance*.

[81] In his initial affidavit, Dr Trevathan referred to evidence previously presented by Mr Camp in proceedings in Ashburton regarding establishment of a rifle range. In that evidence, Mr Camp had supported 50 dB L_{AFmax} as being the appropriate level of noise to be received from a rifle range by neighbouring properties.



¹⁴ Desamaulds- Shooting Noise Regulation, Review of Various National Practices, Proceedings of Inter-noise 98 Christchurch.

[82] Mr Camp explained that the 50 dB L_{AFmax} level was applicable to a situation where a new rifle range was to be established in the vicinity of existing dwellings. He went on to contend ... *that same evidence discusses 55 dB L_{AFmax} as being appropriate for existing ranges. My earlier affidavit on this project reiterated that I consider 55dB L_{AFmax} is acceptable for existing ranges with existing residential neighbours, and 60 – 65 dB L_{AFmax} is acceptable in situations where new housing encroaches on existing ranges.*¹⁵ It is that latter view which led to him taking the position he does in this case, that the levels of noise generated from the Range are not offensive or objectionable. We make two observations regarding that proposition.

[83] Firstly, although we accept that pre-existence of a noise generating (or other) activity may commonly be a relevant factor in determining questions of reasonableness, offensiveness or objectionability, we do not consider that it will necessarily be the decisive factor in any case. Noise or other adverse effects may be unreasonable, offensive or objectionable notwithstanding that they existed in a particular area before other people arrived there. Mr Camp's approach of making an automatic loading for the pre-existence of the noise in determining whether it was objectionable is, in our view, far too simplistic.

[84] Secondly, Mr Camp's proposition that the Range pre-dated arrival of rural/residential neighbours, thereby justifying the application of a less stringent noise limit, is demonstrably incorrect. It is correct that a rifle range had been established on the site and used by members of the Harvey family for their private shooting activities since 1952. Mr Harvey deposed that since then his family would have used the Range approximately once a week.¹⁶ In 1989 he moved into the house next to the Range which increased his personal use. He would fire up to 250 rounds of shotgun or high calibre rifle ammunition per week, together with .22 rifle shooting.

[85] The Ingham subdivision was approved in 1998. Mr GH Williams (a witness for the Residents' Association) moved into his property in November 1998. Ms

¹⁵ Para 19 Camp Affidavit of 14 July 2010.

¹⁶ Para 5 Harvey Affidavit of 14 July 2010.



Rounce and her partner bought their land in August 1999 and commenced living on it in February 2000. Neither witness was aware of any rifle range activity at those times and it appears from their affidavits that Mr Harvey's private shooting activities were not of such a degree as to attract their concern.

[86] It was Mr Harvey's evidence that the commercial activity of Cable Bay Shooting Adventures commenced in October 2000 and grew strongly between 2001 and 2004. Regular police use commenced sometime in 2006, although Mr Harvey claims they had used the Range on an intermittent basis previously. The establishment of commercial activity from October 2000 clearly post-dates subdivision and the arrival of rural/residential neighbours to this site.

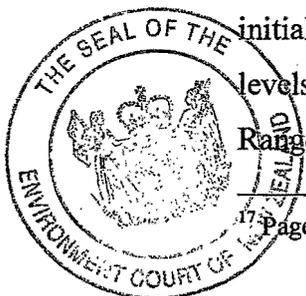
[87] The consequence of establishment of the commercial shooting activity and police shooting is that the discharge of larger calibre rifles and shotguns on the Range has gone from the 250 per week estimated by Mr Harvey for his personal use to (potentially) the 5000 or 6000 per week which are now permissible in terms of the Council abatement notice.

[88] Mr Camp did not think that actual usage would be as high as the 5000-6000 shots per week which are potentially allowed. The Court suggested to him that even at a lesser number of shots actually fired the increase in numbers was an issue. The Notes of Evidence record this exchange¹⁷:

HIS HONOUR: *No, but let us say there is a 10 fold increase to two (thousand) are you seriously suggesting that if you go there when there is 250, you have got to accept two and a half thousand? Or we have got to accept the different standards.*

MR CAMP: *No, I do not think you should be having to accept that huge increase in scale.*

[89] In light of that acknowledgement it is untenable to argue, as Mr Camp initially did, that pre-existence of the limited use, private rifle range means that noise levels of 62-67 dB L_{AFmax} from the thousands of shots now being fired from the Range might not exceed a reasonable level or be offensive or objectionable. That



would have been our view, irrespective of Mr Camp's eventual agreement, in any event. In his evidence in the Ashburton proceedings to which we have referred previously, Mr Camp made the comment:¹⁸

My subjective impression of gunshot noise at 65dB was that it was completely inappropriate for the "back yard" of a residential property.

[90] There was no dispute between Dr Trevathan and Mr Camp that noise from the Range regularly exceeds 50 or 55 dB L_{AFmax} at neighbouring residential sites by a considerable margin. Accordingly, the intensity factor substantially exceeds that which the noise witnesses agreed was appropriate for a residential property, once Mr Camp's views about neighbours coming to the noise are set aside.

Duration

[91] Under the present controls contained in the abatement notice, non-police firing may occur between the hours of 8 am and 8 pm. Police training is permitted for any consecutive period of 3 hours between 12 noon and 4.30 pm. One day per week has to be kept free of firearms activity. That is a *floating* day chosen by the Harveys and notified to their neighbours.

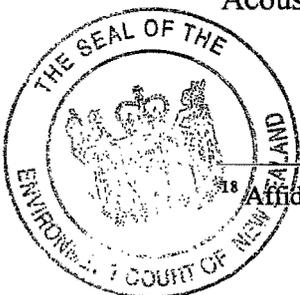
Offensiveness/Character

[92] The noise generated by firearms was described by the expert witnesses as an impulse or impulsive noise. In layman's terms it might be described as a brief *crack*. The Bel Acoustic Report had this to say about the noise of gun fire:

Because of the impulsive nature of the sound, for a given level of noise, gunfire is much more disturbing and intrusive than other types of noise and this needs to be taken into account in an assessment.

[93] A number of the witnesses referred to the echoing effect of shots fired from the existing Range. That was something which we ourselves observed. The Bel Acoustic Report gave this description:

As each shot was fired there was a very noticeable string of echoes (four or five) emanating from the various hillsides down the valley.



The sound of the shot was reflected off the hillsides at increasing distances. This effect tended to enhance the sound and added to the disturbing effect of each impulse.

[94] In her affidavit of 8 February 2010, Ms Rounce described the noise in these terms:

... all of the noise was extremely disruptive because of the intensity of the noise itself, the "shock" that it gives you when a firearm is discharged, and in particular because shotguns are used and the echo from the hills carries right around the valley ...

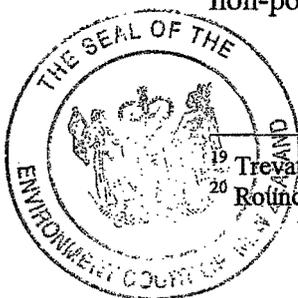
[95] We find that of its very nature, the noise of a firearm discharge has the potential to be disturbing and intrusive. Additionally, police firing commonly involves shooting in volleys¹⁹ which we understand to mean a number of shots fired in quick succession and fired by numbers of officers simultaneously. Mrs Rounce described that in these terms:²⁰

... even now when the Police are using the range it is like a war zone with what would appear to be hundreds of rounds going off, resounding around the hills in the valley while the next volley goes off. It is like continuous "rolling thunder".

Location

[96] The Range is situated in what would normally be described as a typical rural location. That is not to say it is a noiseless location. The point is often made in proceedings before this Court that rural areas can be noisy due to the sound of agricultural processes, agricultural equipment and other rural activities (including the discharge of firearms for hunting and pest extermination).

[97] In this case a particularly significant aspect of location is that the Range is located in close proximity to a rural/residential enclave which predates commercial non-police and police use of the Range. The presence of a number of residential



¹⁹ Trevathan Affidavit, 28 July 2010 para 17.
²⁰ Rounce Affidavit, 8 February 2010.

neighbours with limited separation distances from the site introduces a degree of sensitivity to the location.

[98] It is common ground that rifle ranges and shooting activities are permitted activities in the Rural Zone of this District Plan. We accept as a general proposition that rifle ranges are more likely to be found in rural areas than in other areas. However we do not think it can be suggested (as we understood Ms Goodall to do) that they are such a widespread feature of rural areas that persons moving into such an environment ought be on the lookout for the presence of a rifle range. Even if that was the case, it would be reasonable to expect that rifle ranges would be obliged to comply with standards as to the emission of noise. In this case, the District Plan does not contain a noise standard for the Rural Zone which controls impulsive noise during daylight hours.

[99] The second aspect of location which is relevant in this instance is the physical location of the Range in a situation which produces echoing as the sound of shots is reflected off the surrounding hillsides. This echoing factor was commented on by a number of the witnesses and was observed by us on our site visit. It considerably exacerbates the effect of the shots.

[100] It was noticeable to the Court that when firing was undertaken from Relocation Area One during our site visit, the echoing effect appeared to be substantially diminished. It is agreed that Relocation Area One does have a lesser echoing effect.

Outcome of FIDOL Considerations

[101] When the above factors are taken into account, we consider that the present combination of private, non-police and police activity on the Range and on the site fails all three of the tests to which it is subject in this case. The noise generated by those activities exceeds a reasonable level as well as being offensive and objectionable to such an extent that it has an adverse effect on the environment, specifically the amenity of the properties and residents situated in proximity to the site at Cable Bay Road.



[102] The combination of the frequency of the shots, the loud noise (particularly high calibre rifles and shotguns) at neighbouring properties, their duration for long periods of the day throughout the year, the impulsive character of the noise exacerbated by echoing and the location of the rifle range in a rural/residential situation, lead us to that conclusion.

[103] We understood Mr Camp to implicitly agree with Mr McFadden that the noise being experienced by neighbours was unreasonable. He had directed his attention to the matter of whether or not the best practicable option to avoid such noise had been adopted²¹. In response to a question from the Court he accepted that if the range was considered to be a *new range* then it was probably objectionable²².

[104] We discussed that matter in paras [84]-[86] (*supra*) where we held that the commercial non-police and police activity on the Range was *new* in relation to the rural/residential subdivision and development. In any event, we had not accepted the proposition that because someone moves to a nuisance it means they have to put up with it. Although that might be a relevant factor in determining whether or not any particular effect is unreasonable, offensive or objectionable and if so, what remedy the Court should grant, it will not necessarily be the determinative factor in any given case.

[105] In making that comment we are aware of the common law principle that relief might not be granted to someone who has come to the nuisance. However, we consider that the overriding RMA purpose of promoting sustainable management (as defined in s5(2)) requires the application of considerably wider criteria than just who was there first. We note that s31(1)(d) RMA provides that the functions of local authorities include... *the control of the emission of noise and the mitigation of the effects of noise*. Nothing in RMA suggests that pre-existing noise should be subject to any lesser degree of control or mitigation than more recent noise.



²¹ Cf pages 69-70, NOE.

²² Page 81, NOE.

Remedy

[106] Our finding that the noise generated by the rifle range activity exceeds a reasonable level and is offensive or objectionable brings us to consider the appropriate remedy.

[107] The Residents' Association seeks (inter alia) that Mr and Mrs Harvey be required to adopt the best practicable option to ensure that the emission of noise from the site does not exceed a reasonable level, in accordance with s16 RMA.

[108] Section 2 RMA defines best practicable option in these terms:

Best Practicable Option, in relation to a discharge of contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to –

- (a) *The nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and*
- (b) *The financial implications, and the effects on the environment, of that option when compared with other options; and*
- (c) *The current state of technical knowledge and the likelihood that the option can be successfully applied:*

[109] The best practicable option promoted by the Residents' Association was the relocation of the range from its present location to one where a noise level not exceeding 50dB L_{AFmax} could be achieved in combination with restrictions on operating hours, shots fired and any other methods to limit noise. The evidence before us as to a possible alternative location revolved around Relocation Area One. We now consider the suitability of Relocation Area One and the overall site having regard to the best practicable option criteria.

The nature of the emission and the sensitivity of the receiving environment

[110] The nature of the noise emission (an impulse sound) is the same from the existing Range or anywhere else on the site. The sensitivity of the receiving rural/residential environment remains the same wherever on the site the noise is generated. Dr Trevathan and Mr Camp agreed that moving the Range from its present position



to Relocation Area One would reduce the level of noise received at the Cleary and Phillips properties. Relocation would also reduce the echo effect which is a feature of the present location.

The financial implications and, the effects on the environment, of that option when compared with other options

[111] Mr and Mrs Harvey estimate that the cost to them of relocating the Range would be somewhere in the order of \$35,000. They consider that to be an unreasonable cost for them to bear.

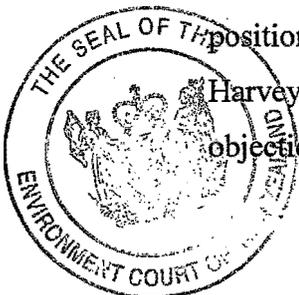
[112] There is a certain unknown element about the effects on the environment of relocation. Shifting to Relocation Area One will probably minimise or at least reduce the echoing effect from the present Range. It also appears that moving to Relocation Area One will substantially reduce noise effects on the Phillips and Cleary building sites although probably not to 50 dB L_{AFmax} for all types of firearms. However, it is unknown whether or not relocating the Range will result in greater adverse effects than at present on other nearby property owners.

The current state of technical knowledge and the likelihood that the option can be successfully applied

[113] We understood that there is nothing further which can be technically done to suppress the noise of firing on the Range. Relocation was the only feasible option which was suggested to us in order to address the noise issues.

[114] In terms of the likelihood of relocation being successfully applied, we refer to our comments in the preceding paragraph that it is presently unknown what the effects of moving to another site might be on properties other than the Cleary and Phillips properties. That is a matter of concern to the Court.

[115] It is far from certain whether or not relocating from the Range's present position to Relocation Area One will ensure that the emission of noise from the Harvey property does not exceed a reasonable level (and is not offensive or objectionable).



[116] It will be apparent from our earlier findings that we consider determination of whether or not any given noise exceeds a reasonable level involves more than just a consideration of the intensity of noise in any instance. It is also the case however, that in considering noise generating activities, the intensity or level of noise is a particularly significant factor. There are two sub-issues to be considered in that regard.

[117] The first of these is the disagreement between Dr Trevathan and Mr Camp as to the appropriate level of noise to be received by neighbours of the site. Dr Trevathan considered that 50 dB L_{AFmax} was the appropriate level, whereas Mr Camp suggested a level of 55dB L_{AFmax} from Relocation Area One. As we have noted, Mr Camp's views on appropriate noise levels were based on the premise that the Range was an existing range not a new one. However, in response to a question from Mr McFadden, Mr Camp conceded that if the range was a *brand spanking new range* the appropriate level should be 50.²³

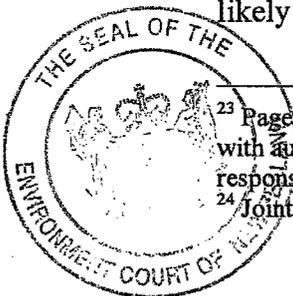
[118] Dr Trevathan and Mr Camp were accordingly in agreement that for a new range, 50dB L_{AFmax} was the appropriate level of noise at neighbouring properties. We consider that is the level which ought to apply in respect of commercial non police and police firing on the Harvey site. When the issue of existing/new range was resolved, it was the agreed position of both acoustic witnesses.

[119] The second sub-issue under this head is that it appears likely that higher calibre firearms and shotguns cannot meet the 50dB L_{AFmax} level from Relocation Area One in any event. The Joint Statement records that at Relocation Area One without an acoustically designed shed, shotguns and high calibre rifles will commonly generate noise at between 50 and 55 dB L_{AFmax} (presumably at the Cleary and Phillips' sites).²⁴

[120] The acoustic witnesses also agreed that a small additional noise reduction is likely if an acoustically designed shed is installed at Relocation Area One. However,

²³ Page 67, NOE. (The NOE did not record Mr Camp's full answer to the question due to problems with audibility however, both the NOE and Judge Dwyer's handwritten notes record Mr Camp's response that 50 was the appropriate level.)

²⁴ Joint Statement, para 5.



Mr Camp testified that the reduction in noise achieved by constructing a shed would not be as great as that achieved by the shed on the existing Range. We understand that an acoustic shed may not reduce the noise level at neighbouring properties to the 50dB L_{AFmax} which we have found to be appropriate.

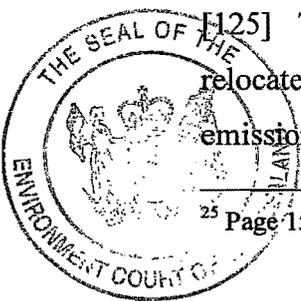
[121] There was some discussion between the Court and Mr and Mrs Harvey as to their ability to meet 50dB L_{AFmax} if that was found to be the required level (as it has been). Although they both expressed a degree of optimism that 50 would be the normal situation, they could not guarantee that all the time. They both pointed to factors such as the wind blowing in a particular direction which could make a substantial difference to the level of noise received by neighbours. Mr Harvey also referred to the different noise effects of different calibres of rifle and the further possibilities of noise reduction from an acoustic shed.

[122] The Harvey property contains over 600ha. Mr Harvey advised²⁵ that he had considered the whole property with a view to locating an alternative site for a rifle range and that any potential sites (other than Relocation Area One) were all closer to residents than the existing Range so the problem would just be shifted.

[123] As an aside, we note that because Relocation Area One is apparently in a flood plain, resource consent is likely to be required for the construction of an acoustic shed in this vicinity. Although it is not anticipated that this would be a problem, there can be no guarantee in that regard.

[124] Accordingly, it is uncertain whether shifting the Range from its existing position to Relocation Area One (or anywhere else on the site) will bring the level of noise received by neighbours within the 50dB L_{AFmax} level which the two noise witnesses agree is appropriate for a new rifle range and which we have accepted as being the appropriate level for the Range in this case.

[125] The Residents' Association's application sought an order that the Range relocates to Relocation Area One as the best practicable option to ensure that the emission of noise did not exceed a reasonable level. However there is considerable



doubt as to the capacity of Relocation Area One to meet the 50dB L_{AFmax} level at neighbouring properties. If that level could be achieved at Relocation Area One it is possible that (subject to the imposition of conditions as to the hours of use and numbers of shots) an order for relocation might represent the best practicable option. The evidence which we heard did not enable us to reach that conclusion.

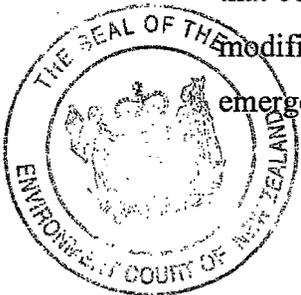
The Council Application

[126] The Council sought an enforcement order which corrected the anomalies in its abatement notice as amended in Decision C 77/2008. The Council contended that the abatement notice represented the appropriate status quo, subject to its ambiguities and shortcomings being resolved.

[127] The most significant aspects of the Council application were, firstly, that it sought to restrict the commercial, non police and police shooting activities to the existing Range and to exclude them from the balance of the site which the Council proposed would be a *Restricted Shooting Area* (except for .22 calibre shooting). This would overcome the problem experienced at Labour Weekend 2009 when restrictions on the use of the Range were *sidestepped* by shooting elsewhere on the site.

[128] Secondly, the Council sought a new set of clarified restrictions on use of the Range itself. Significantly, those restrictions did not extend to imposition of the 50dB L_{AFmax} limit on gunshot noise received by neighbours. There is a condition in the existing abatement notice requiring the noise of bullets or projectiles striking a target to be limited to 50dBA L_{max} but that restriction does not apply to the actual firing of the guns themselves.

[129] The position adopted by the Council cannot be sustained in light of the evidence which we heard. We do not intend to be critical of the Council in making that comment. The position which it advanced represents the status quo with some modifications. The Council has endeavoured to respect, as far as possible, what had emerged from the Court in Decision C 77/2008. It is not to be criticised for that.



[130] However, it is apparent on reading Decision C 77/2008 that the outcome reflected the evidence heard by the Court at that time. In those proceedings, Mr Camp and the Council's noise witness (Mr M J Hunt) had filed a joint statement setting out the appropriate conditions to be imposed on the Range and those conditions formed the basis of the abatement notice which issued from the Court. The conditions contained in those witnesses' joint statement did not impose any limit on the level of noise emitted from the Range and received by neighbouring properties.

[131] The Court did not have before it evidence such as that tendered by Dr Trevathan in this case and that evidence is determinative in our view. Once the issue of existing/new commercial use of the Range was resolved the evidence of Dr Trevathan and Mr Camp was consistent, namely that there ought be a restriction on noise received by neighbours from a new rifle range of 50dB L_{AFmax} .

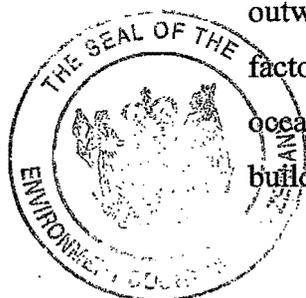
Outcome

[132] In the light of our finding that noise received from the Range not only exceeds a reasonable level but is also offensive and objectionable, we consider it is inevitable that enforcement orders be made. In reaching that determination we have had regard to the factors of:

- The Harvey family's longstanding shooting activities;
- The sporting and recreational benefits to the Harvey family and the wider community;
- The financial benefits of the activity to Mr and Mrs Harvey;
- The need for the police to provide for their firearms training; and
- The fact that the Range is a permitted activity in the Rural Zone.

All of those are positive factors which must be given due weight in our considerations.

[133] Regrettably, we consider that those positive factors are substantially outweighed by the negatives, which emerge from consideration of the FIDOL factors. In particular, the factors of frequency (some thousands of shots per day on occasions), intensity (noise levels of 62-67 dB L_{AFmax} received at neighbours' building sites and houses), offensiveness (the impulsive nature of gunfire) and



location (the proximity of the rifle range to rural/residential development) are, when considered together, decisive in our considerations.

[134] The change in the nature of the environment in 1998 from a primarily agricultural or farming area to a rural/residential area, bringing a number of close neighbours to the site is particularly significant in the context of these proceedings. There was a sense of grievance apparent in the evidence of Mr and Mrs Harvey that relative newcomers to Cable Bay Road oppose an activity which they are undertaking on a property that their family has occupied for many years.

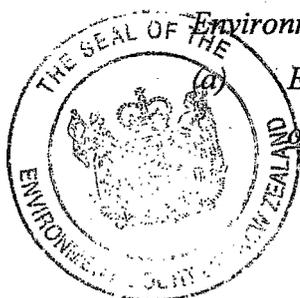
[135] Mr and Mrs Harvey did not object to the Ingham subdivision which, we understand, was carried out by a relative. Doubtless they might have reconsidered that position had they been aware that the subdivision could give rise to opposition to permitted activities on their own property. This is a classic case of reverse sensitivity.

[136] However, the fact is that the commercial, non-police and police use of the Range were not being undertaken on the site at the time of the subdivision. These gave rise to a massive increase in shooting activity on the site. Neither would the extent of Harveys' private shooting activities necessarily have been apparent to those looking to purchase the subdivided lots.

[137] Mr and Mrs Harveys' subsequent actions and, in particular, the incident of Labour Weekend 2009 demonstrate an inability on their part to understand that activities which give them (and many thousands of other New Zealanders) so much pleasure, might be regarded as unreasonable, offensive or objectionable when undertaken in close proximity to neighbours.

[138] The orders which we make are not on all fours with those sought by either the Council or the Residents' Association however we note that s319(1) RMA provides:

(1) *After considering an application for an enforcement order, the Environment Court may-*



Except as provided in subsection (2), make any appropriate order under section 314; (our emphasis)

[139] It is apparent from the highlighted provision that we are not confined by the precise terms of the orders sought by the Council or Residents' Association and may make any appropriate order under s314²⁶. For the record we note that the orders which we make are intended to:

- Ensure compliance by Mr and Mrs Harvey with the provisions of s16 RMA;
- Require them to cease the emission of noise from the site which is offensive or objectionable to such an extent that it has an adverse effect on the environment.
- Require Mr and Mrs Harvey to avoid, remedy or mitigate the adverse effects on the environment caused by shooting on the site.

We make the following orders accordingly.

[140] **Firstly** we order the Respondents to cease forthwith on issue of this decision, use of the site for the discharge of firearms over .22 calibre (including shotguns) which generate noise **exceeding 50 dB L_{AFmax}** measured within **20 metres** of the position of any dwelling or approved dwelling site on **any property** (other than the site) not owned by the Respondents. This order does not apply to:

- Target/sport shooting undertaken on the Range by or under supervision of the Respondents for which no charge is made, not exceeding **250 shots per week**;
- Clay target shooting with shotguns undertaken on the Range by or under supervision of the Respondents on not more than **six Sundays** per annum. Such shooting not to take place on any two consecutive Sundays, to be limited to no more than **750 shots** on each occasion and to be undertaken during the hours of **10.00am and 4.00pm**. The Respondents are to notify Nelson City Council in writing of their intention to undertake such shooting no later than **76 hours** prior to each occasion.
- ~~Game~~ and pest eradication shooting undertaken on the site by or under supervision of the Respondents.



²⁶ *Russell v Manukau City Council* [1996] NZRMA 35.

[141] This order seeks to preclude use of the entire site (including the Range) for shooting by higher calibre rifles and shotguns and events such as that of Labour Weekend 2009, which exceed the appropriate noise level identified by Dr Trevathan and Mr Camp.

[142] We accept that the order will preclude police firearms training in its present form on the Range. We are keenly aware of the need for police officers to maintain their competence with firearms. However when the nature of police training which involves eight week periods, intensive volleying and similar noise levels to .308 rifles, is taken into account we consider that imposition of the identified noise limit is a minimum protection for neighbours.

[143] If the police do not have an immediately available alternative range we would consider a ~~motion~~ to vary the order hereby made to allow ~~one further police training~~ exercise. We issue this decision as an interim decision to leave these proceedings extant for the time being. This will enable consideration of any appropriate refinements of the orders which we now make without the need to commence proceedings afresh.

[144] The order is intended to allow target/sport shooting by the Respondents and people under their supervision for which no charge is made. This allows a continuation of Mr and Mrs Harvey's recreational activity at the level (250 shots per week) at which it has been undertaken.

Is this over 250?

*Is this at current site?
Does it mean 50 days?*

[145] The second exception allows continuation of the Gentlemen's Club shoots although on a more restricted basis than the once per month which was previously allowed. We recognise that clay target shooting is an activity which takes place on rural properties from time to time. We have endeavoured to balance the permitted activity rights of the Respondents against expectations of neighbours that a reasonable level of noise will be maintained in the environment and we have had regard to the FIDOL factors in imposing the restrictions which we have.

[146] We have not included provision for the special days such as the duck shooting warm up days. Again we recognise that such events will take place on rural



properties from time to time and are limited in number. However when the 5,000-7,500 shots per day and the level of noise received by neighbours are factored into the equation, we consider that the warm up days go well beyond what a non participating neighbour ought reasonably be required to tolerate and would also be offensive and objectionable.

[147] We have not attempted to restrict the Respondents' game and pest eradication shooting on the site. Those are activities which might reasonably be expected to be undertaken on rural properties.

[148] Secondly, we order the Respondents to cease within ~~six months~~ of the issue of this decision, use of the Range and site for the discharge of firearms of ~~.22 calibre or less~~ which generate noise exceeding 50 dB L_{AFmax} measured within 20 metres of the position of any dwelling or approved dwelling site on any property (other than the site) not owned by the Respondents. This order does **not apply to:**

- ~~X → Target/sport shooting~~ undertaken on the Range by or under supervision of the Respondents for which **no charges** are made;
- ~~Game and pest~~ eradication shooting undertaken on the site by or under supervision of the Respondents.

[149] This order enables continuation of tourist shooting with .22 calibre rifles for a term of six months to enable the respondents to investigate whether it is feasible for them to carry on their commercial shooting activities elsewhere on the site, should they wish to do so. We are conscious of the income which the Range provides to Mr and Mrs Harvey, although we were not given any breakdown of income between tourist shooting with .22 calibre firearms and other commercial shooting and police shooting.

[150] We appreciate that in light of the controls to which shooting is to be subject, the Respondents may not consider it feasible to establish another range elsewhere on the site, however that outcome is the direct result of the manner in which the Respondents have undertaken their activities.



- 250/yrk. High Calibre.
- Uncontrolled Pest & Game eradication.
- Monitoring.

[151] In any event, we issue this decision as an ~~interim decision~~ so that should the Respondents establish or seek to establish another rifle range on the site which can comply with the 50 dB L_{AFmax} noise level at neighbouring properties, we might also consider what other controls ought be imposed on shooting in terms of numbers of shots and shooting days. Any party to these proceedings may seek further orders regarding those matters at any time on 15 working days notice.

[152] Pursuant to s314(5) RMA we direct that these orders apply to the successors and assigns of the Respondents to the same extent as they apply to the Respondents themselves.

[153] We direct the ~~Council~~ to submit to the Court for execution under seal a ~~formal order~~ embodying the orders contained in paras [140], [148] and [152] of this decision.

[154] We allow a period of 10 working days from the date of this decision for any parties to submit memoranda seeking to clarify any aspect of the formal order which is not apparent on the face of the decision. We make the observation that ensuring ~~compliance~~ with the terms of this order falls within the ~~functions of the Council~~ pursuant to s31(1)(d) RMA notwithstanding some reservations on the part of Counsel for the Council in that regard.

[155] Notwithstanding our intention that this decision be embodied in the form of an order, it is to take effect from the date on which this decision is received by Mr and Mrs Harvey pursuant to s315(1) RMA.

[156] Costs are reserved. Any costs application by the Council and/or the Residents' Association shall be made and processed in accordance with para 4.5.6 of the Court's Consolidated Practice Note 2006.

Dated this 1st day of March 2011
For the Court:

B P Dwyer
Environment Judge

