Decision No. W 120/97

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application by **PALMERSTON NORTH CITY COUNCIL** for a declaration pursuant to s.311 of the Act concerning the Rifle Rod and Gun Club Manawatu Incorporated

(ENF 128/97)

BEFORE THE ENVIRONMENT COURT

His Honour Judge Treadwell sitting alone pursuant to s.309(1) of the Act

DECISION

This is an application for a declaration couched in the following terms:

> That the use of land located at Turitea Road, Palmerston North, which was the subject of a resource consent by the Kairanga County Council dated 1 March 1967 and being part of that parcel of land containing 5.2371 hectares more or less situated in the Kairanga County being Lot 1 on Deposited Plan 61687 (Wellington Registry) and being part of that land in Certificate of Title Volume 31C Folio 372, and for all or any of the purposes specified in Schedule I below is contrary to Section 9 of the Resource Management Act 1991 (RMA) in that such activities are contrary to the Palmerston North Transitional District Plan and the proposed Palmerston North District Plan and that such activities have neither been expressly permitted by a resource consent nor are such activities existing uses allowed by Section 10 or section 10(a) of the Resource Management Act 1991.
>
> Schedule I
> (i) The firing of rifles exceeding .22 calibre
> (ii) The firing of pistols of any calibre
> (iii) The firing of shotguns
> (iv) The firing of black powder firearms
> (v) The firing of semi-automatic firearms
> (vi) The firing of automatic firearms
> (vii) Operational training by the New Zealand Police.

The council take a stance which is largely neutral in that it is seeking clarification of the ambit of an original consent because of complaints it is receiving as land near the rifle range land becomes used for rural/residential purposes. It is a classic example

of the inevitable conflict which arises as an urban area extends and becomes urbanised, whether it be by high intensity or low density development as is the present case. Some of those who have built in the area appeared before us and told us of their concerns, in particular Mr John McCaskill who lives at 357 Turitea Road and would be the closest affected resident. He desires to take advantage of the proposed plan which zones his farmlet rural/residential thus enabling subdivision. His farm surrounds some two sides of the gun club property and he told us that interest in its development for rural/residential purposes by prospective purchasers is very low caused by the amenity detraction posed by the Rifle Club. I also noted on a site inspection that some parts of the property which could be used for residential purposes were directly in line of fire from the pistol range, the escape of bullets onto that land being prevented by a horizontal wooden bar designed to catch shots fired at an angle which would reach that part of the McCaskill property. Nevertheless the noise and the psychological fear of being in line of fire I am satisfied would have a severe effect on the saleability of any such properties.

I would comment in passing at this stage that whilst the Rifle Club may well say that they were there first and that people should not come to them, the other side of that coin is that an activity such as a Rifle Club should not be permitted to cast a blight across adjoining properties which might otherwise be suitable for residential or rural/residential purposes. If the club wishes to keep such a buffer around it then it must face the cost of land acquisition.

Those matters I have raised are merely by comment because the issue I am required to determine is the meaning of the original consent granted. I am also concerned with establishing whether subsequent permissions given to construct further buildings were or were not within the ambit of that original application and consent. I am certainly not assisted by a paucity of records from the Kairanga County, that County having now been absorbed within Palmerston North City.

<u>The History</u>

On 24 November 1965 the Rifle Rod and Gun Club Manawatu (Incorporated) (the Rifle Club) wrote to the County requesting permission to purchase five acres of land *"for the purpose of constructing a rifle range and erecting ancillary buildings"*.

The second paragraph of that letter defined the land and defined the purpose of the application as *"for the purpose of conducting rifle shooting as a responsible club"*.

The letter then goes on to give a brief description of the club and commences by pointing out that as the name of the club implies it has *"widely diversified interests ..."*. The author of the letter comments, following that general statement:

> *"However the small-bore rifle section is one of our strongest branches and now with the growing demand for outdoor shooting, of the type performed by Mr Lacey of Levin, while at the Commonwealth Games in Jamaica, we wish to provide our members with the opportunity and facilities to train up to Olympic standards in outdoor shooting. We do not want just a rifle range but the very best outdoor Small-bore Range in New Zealand."*

The foregoing paragraph is of prime importance in that the commencing comment places full stress on the name of the club, i.e. Rifle Rod & Gun, and makes clear to the consent authority that the name indicates the widely diversified interests which it has. I do not read the reference to small-bore rifles as being intended to restrict the overall ambit of the application but as indicative of one of the strengths of the club and of its desire to construct a high quality range.

The letter refers to the applicant as having been active as a club for 21 years without any *"trouble in shooting, fishing or hunting trips"* and that it can therefore *"approach you as a responsible and reliable organisation"*. I note that the reference to hunting trips immediately would alert a consent authority to the fact that the club is active in the use of weapons other than small-bore.

The application goes on to state that training sessions will be held for the purpose of training persons in the use of rifles and on the safe handling of *"guns and rifles"*. A particular emphasis is placed on youth.

A full copy of that original application is annexed to my decision.

It was accompanied by a plan showing the positioning of the rifle range within the property and the plan indicates one range with proposed butts and 25, 50 and 100 yard *"mounds"*. Proposed clubrooms and carparks were also shown as was the distance to existing houses. I noted from the evidence that *"mounds"* are not necessarily structures but are simply flat places where shooters may lie. Therefore, apart from the clubroom and caretaker's flats, together with public toilets, the consent authority was dealing with a flat piece of land and I do not construe the plan lodged with the application as preventing the applicant from having some reasonable flexibility in organising its internal affairs but on the other hand I do not accept the plan as of no moment but consider it to be indicative of the general area within which shooting would take place. The plan can certainly not be ignored to the extent that the members of the gun club can shoot where they choose within the whole property.

I record that at this stage the application was being processed under s.38A of the Town and Country Planning Act 1953 (the plan not being operative) and this section required consent of the territorial authority to changes of land use which might have an adverse effect upon amenities of the neighbourhood. The plan which the club produced is of importance in this context in enabling the council to assess matters of safety and detraction to those with common boundaries. A declaration lodged shows that the then president of the club attended on site with the councillors concerned with the hearing and that it was made clear to them that the club's intention was to use the new range for shotgun and large-calibre rifles, as well as .22 rifle shooting. I was told by Mr Cook by means of a statutory declaration that he showed the two councillors round the property and pointed out the locations where the club intended to establish the small-bore range, the *"clay bird"* area and the sighting-in facilities for large-bore rifles. He told me that this was also explained to the owners of immediately adjacent properties, it being made clear to them that the range would be used for all kinds of shooting contemplated by the rifle club and indeed, as I have held, that is a purport of their original application.

On 2 December 1966 the club was advised concerning subdivision approvals and change of use approvals and that letter of notification contains a curious sentence, namely *"the committee did not express any wish to view the site of the proposed rifle range"*. I find this strange in view of the statutory declaration filed by Mr Cook and in the circumstances must accept his sworn testimony in preference to the letter from council.

Consents were obtained from adjoining occupiers and public notice given. The public notice gave the name of the applicant rifle club and indicated that it was *"to establish a rifle range and erect ancillary buildings ..."*. Letters were sent to interested persons in similar terms. Both public notice and the letters indicated a right of objection and the right to be heard by council but no interested parties appeared in opposition other than an initial lodgement of opposition by the city of Palmerston North which was concerned with detraction from neighbourhood amenities, traffic hazards, and the preservation of a property nearby as a water works and bush reserve.

That objection was subsequently withdrawn and the tenor of that letter indicates that the positioning of the range itself was the factor motivating the council's withdrawal which again indicates that the general area shown on the plan lodged with the application was assuming some importance.

Consent was given by council *"to establish a rifle range ..."*.

Various buildings were erected subsequently, namely 11 April 1969 a covered mound for rifle shooting and from time to time various other buildings including the pistol shooting facilities. Apparently the buildings had from time to time appeared or been extended until a council building inspector discovered them and some building permits were issued retrospectively. No further planning or resource management consents were sought or given.

The original consent being given under s.38A of the Town and Country Planning Act 1953 does not establish a use for the purpose of forming a springboard for existing use defences. The further buildings on site and the activities being presently carried on must therefore either come within the ambit of the original consent or constitute illegal activities.

To complete the picture when complaints started some time in 1971 the question of large-bore shooting was first raised. At that stage the club had a large membership, exceeding 300, and the property was also used by the Police, not only for range shooting but for the training of Police in the handling of situations where offenders may have weapons, such training being both for ordinary members of the force and members of the Armed Offenders Squad. According to Mr McCaskill this type of activity can involve quite a bit of shouting and yelling with the Police ordering mock offenders to lay down weapons, give up etc, that type of activity not being an activity or noise normally associated with a rifle or gun club. There is now upon the property the clubroom and caretaker's flats, the 100 metre range to which I have previously referred together with an ancillary sighting range whereby shots are fired into the same general area, an area chosen obviously for the safety afforded by the large tree covered mound behind. The Police also have a range of their own, firing

into the same mound and the hunting fraternity have a *"running boar"* range in the same general vicinity. Thus all those activities I have just described are within the area or very close to the area of the original application and present the same safety factors as did the siting of the range in the original application.

The pistol range is however a different matter with shots, were they to escape the wooden baffle to which I have already referred, being able to find their way onto the McCaskill property.

The Issues

I am satisfied that the original application disclosed that the rifle club would be carrying on all the activities of a rifle club upon this property within the part of the site identified by the plan. I am satisfied that any average citizen or neighbour reading of or receiving a copy of an application by a rifle and gun club to establish a rifle range would naturally reach the conclusion that this activity would include all the sorts of things that the members of such a club would do. It would not be logical to assume that the club would be severing various activities one from the other when it was going to the expense of constructing clubrooms etc on a piece of land it had found after long investigation. Therefore I have concluded that the expression *"rifle range"* would cover all the activities which a rifle and gun club normally carries out, including the shooting of shotguns, black powder weapons, and pistols. In reaching that conclusion I do not however make any comment on the provisions of the Resource Management Act 1991 in relation to abatement of noise or enforcement.

I do not accept that an ordinary member of the public would expect activities of a mock nature involving the Armed Offenders Squad or Police upon the site but, as Mr McCaskill told me, would expect shooting activity with some spasmodic events during the week and the main activity during weekends. Lastly I would not expect a reasonable person to expect that shooting activities would extend beyond the ambit of the land shown on the plan to any marked degree if that movement resulted in the owners of adjoining properties not having the protection of a physical barrier as is present behind the main range.

I have therefore concluded that the declaration sought should be granted in part but should be modified by amending Schedule I. In reaching that conclusion I have concluded that the mythical reasonable man would have accepted rifles, pistols, shotguns and black powder firearms as forming part of the original application.

I do not accept that semi-automatic or automatic firearms have any part in the activities which would have been carried out by a rifle and gun club at the time of the original application, or indeed even now, having regard to the legality of some such weapons and I am not prepared to accept them as a natural adjunct to the club activities.

Schedule I is therefore amended by deleting (i), (ii), (iii), (iv). The schedule shall now read:

(i) The firing of semi-automatic firearms
(ii) The firing of automatic firearms

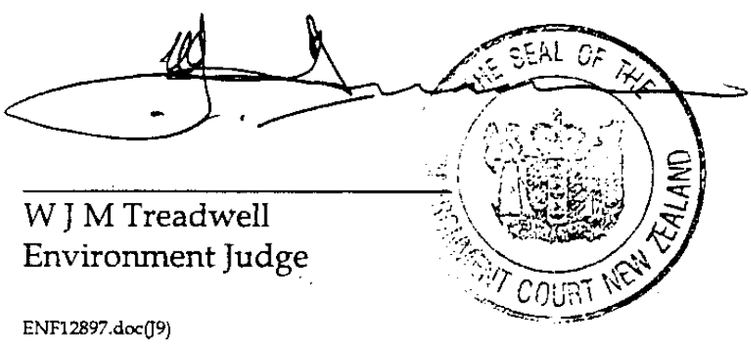
(iii) Simulated exercises by the Police for the purpose of training the Police in the apprehension or control of armed offenders, or other armed persons who may be suffering as an example from mental disability or domestic stress. (The normal use of the range by Police for training in firearms is not excluded).

(iv) The use of the facilities known as the pistol firing range, being within buildings designed for that purpose and not shown on the original application plan.

I make perfectly clear that my decision is based on the original application and is not to be regarded as precluding the lodgement of the further applications, but were further applications lodged the rifle club should perhaps consider the safety aspect of the present pistol range and in particular its potential psychological effect on any person wishing to build in a position where the house would be visible directly ahead of that range. There may well be other ways of ensuring safety which would be satisfactory to neighbours.

I am prepared to allow a period of 14 days from the date of this decision to hear submissions from any of the parties as to any suggested modifications to the wording of the four scheduled activities I have recorded.

DATED at WELLINGTON this 12th day of December 1997



W J M Treadwell
Environment Judge

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DOUBLE SIDED

ORIGINAL

Decision No. [illegible]

IN THE MATTER of the Resource Management Act 1991

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IN THE MATTER of an application by **PALMERSTON NORTH CITY COUNCIL** for a declaration pursuant to s.311 of the Act concerning the Rifle Rod and Gun Club Manawatu Incorporated

(ENF 128/97)

BEFORE THE ENVIRONMENT COURT

His Honour Judge Treadwell sitting alone pursuant to s.309(1) of the Act

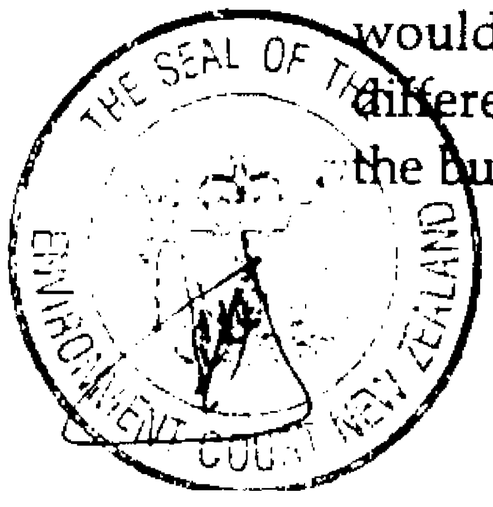
DECISION

I have now had the opportunity of considering the further submissions filed. In the light of the material placed before me it appears that semi-automatic firearms would have been in contemplation at the time of the original application being perhaps more properly described as self-loading firearms.

In relation to pistols I am not prepared to exclude the firing of such weapons, my concern being with the location of the pistol range.

I therefore accept the submissions lodged by the Rifle Rod and Gun Club Manawatu (Incorporated) and accordingly item (i) of the amended Schedule is deleted with consequent items renumbered.

I now accept that the original plans filed with the application showed the area presently occupied by the pistol range as being within the area marked for the purposes of the gun club. The plan shows the distance from side to side of the property as 165 yards approximately ie. 149 metres. The exact distance from a left hand boundary fence which still exists to the other fence marked on the original plan is 146 metres. I therefore accept that the area originally proposed encompasses the area presently occupied by the pistol shooting range. I do not however accept that adjoining occupiers, and particularly occupiers in line of fire would have anticipated that the property would be developed in a manner different from that shown on the plan, which showed firing mounds occupying the bulk of the area.



Whilst accepting that the club are undoubtedly safety conscious, I do not consider that the original consent envisaged the pistol range buildings which are presently upon the property nor do I accept that the original consent envisaged any firing ranges without full and adequate physical shields preventing the escape of bullets from land owned by the club. In the circumstances I am not prepared to delete the item shown as item (iv) from the Schedule (that clause now being renumbered (iii)).

I make clear that this ruling does not preclude the club from making further application should it so wish and in that regard I express no opinion at all as to the desirability or otherwise of legitimising the activity presently carried on. However, as a matter for consideration by the club, but without in any way binding any hearings committee and/or Court, it would be my view that the owners of properties in line of fire should be entitled to expect full and adequate physical protection from stray bullets. How this is achieved is not my concern.

Lastly I am unable to grant amnesty periods or allow any particular activity to continue for a specified length of time, my sole jurisdiction being in respect of the declarations sought by council.

This decision is accordingly a final decision with the Schedule amended as I have outlined.

DATED at WELLINGTON this 5th day of June 1998

W J M Treadwell
Environment Judge

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