BEFORE THE HEARING PANEL APPOINTED BY THE CENTRAL OTAGO DISTRICT COUNCIL

Under the	Resource Management Act 1991
In the Matter	of RC250077 being an application to undertake mining at Sandy Point Queensberry
By	**AWA KOURA MINING LIMITED** Applicant
Submitter	**R AND P FEE**

Relevant Case Law Relied on by **R and P Fee** Submitter 06

Dated: 3 November 2026

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INTRODUCTION

1. The Panel asked for copies of decisions where the existing noise environment was not remote but included anthropogenic noise, and the Environment Court refused consent we are predicted noise would comply with the relevant district plan noise limits, or set noise limits below the district plan limits.

Cable Bay Wines Ltd v Auckland Council

2. *Cable Bay* is not cited in the Fees' submissions dated 30 October 2026. Mr Styles referred to it in answer to questions from the Panel at the hearing, as one example of *"many"* cases where the noise limit set for a consent is lower than the district plan noise standard.

3. *Cable Bay* comprises five Environment Court decisions.[1] It concerned the Cable Bay winery and restaurant on Waiheke Island, in the Rural 2 Zone of the Auckland Council District Plan.

4. The winery, including an ancillary restaurant and function facility, operated under a resource consent granted in 2006.

5. The case concerned an application for further activities at the winery: an enclosed restaurant and pizza kitchen (the Verandah), outdoor seating, and use of about 7000 m² of lawn for informal dining and functions. The Court described the application as *"a substantial expansion of the previously consented activities"*.[2] Most were already operating, so the application was in part retrospective. The Council had refused consent, finding the proposal failed both s 104D gateways and was significantly more intensive than could reasonably be expected in a low density rural environment. The winery appealed.

6. The Court found the existing environment was the winery and buildings under the 2006 and later consents, with outdoor hospitality confined to limited alfresco

[1] *Cable Bay Wines Ltd v Auckland Council* ENV-2018-AKL-000010: First Interim [2018] NZEnvC 226; Second Interim [2019] NZEnvC 29; Third Interim [2019] NZEnvC 170; Fourth Interim [2020] NZEnvC 075; Final [2020] NZEnvC 154.
[2] Third Interim at [59].

dining.[3] The consented noise environment included limits of 45 dBA L_{10} by day and 35 dBA L_{10} at night.[4]

7. The applicable zone limits in the district plan were 50 dBA L_{Aeq}(15 min) by day and 40 dBA L_{Aeq}(15 min) at night.[5] At the hearing, the appellants' case relied on compliance with those limits.[6]

8. The Court did not treat compliance with the district plan zone limits as the measure. In its view, the plan limits *"spring from policy considered appropriate by the council for a rural-residential area"*, and the proposal *"could enable a substantially different noise environment to that provided for in the District Plan, in terms of scale, intensity, duration, and characteristics"*.[7] The Council's acoustic witness, Mr Humpheson, said an applicant could meet the plan limits and still cause a more than minor adverse effect because of the scale and nature of the activity.[8]

9. The acoustic experts recorded that the proposal would allow daytime L_{Aeq} levels about 15 to 18 dB above the median background L_{A95}. The Court found the effects of that increase *"would be significantly more than minor"*.[9]

10. The Court agreed with Mr Styles that *"the plan limits would not achieve the required plan outcomes for an activity of the scale and intensity applied for"*. The plan limits were therefore not the appropriate measure of acceptable noise amenity. The plan's objective and policies were *"directive"*. They required the character and amenity of rural areas to be maintained, and rural-residential living to be provided for and protected, while avoiding adverse effects.[10]

11. The Court set limits of 42 dB L_{Aeq} by day and 32 dB at night, measured at or within the notional boundary of neighbouring dwellings.[11] Each is 8 dB below the zone limits of 50 and 40 dBA L_{Aeq}(15 min).

[3] Second Interim at [23].
[4] Second Interim at [47].
[5] Second Interim at [48] (Rule 10c.5.3).
[6] Second Interim at [58].
[7] Second Interim at [59].
[8] Second Interim at [61].
[9] Second Interim at [65].
[10] Second Interim at [68] and [69].
[11] Second Interim at [70] and [72]. Final at [11] and condition 43.

12. The Court held that, provided the lower noise limits were met at all times, they would enable the relevant objectives and policies to be met and satisfy s 16 of the Act, and noise effects would be no more than minor.[12]

13. *Cable Bay* is an example of the Court relying on the district plan's objectives and policies, applied to the locality, to decide the appropriate noise limits.[13] It did not adopt the plan's noise limits, because they would not achieve the plan's outcomes for an activity of that scale and intensity in that locality[14].

14. The applicant here relies on compliance with the 55 dB L_{A10} standard and proposes a limit of 53 dB L_{Aeq} at the notional boundary. The Fees say the same reasoning applies here as in *Cable Bay*. Compliance with a plan limit does not decide whether amenity is protected, and Policy 12.4.2 makes the specific characteristics and amenity values of the locality where the application site is located, which includes existing background noise levels, relevant to the consideration of whether the proposed noise is acceptable in the locality.

O'Brien v Upper Hutt City Council

15. *O'Brien* concerned a mechanical engineering workshop in Whitemans Valley, a rural valley in Upper Hutt, used for pastoral farming, lifestyle blocks and forestry.[15] The workshop was built under a building consent. After the neighbours complained of noise, the Council required a resource consent.[16] The activity was non-complying under both the transitional district plan and the proposed district plan.[17] The Council granted consent with noise conditions and the neighbour appealed.[18]

16. Both a transitional and a proposed district plan were in play. Neither plan set noise limits for the rural zone as such.[19] Under the transitional plan, home occupations were permitted in the zone subject to a noise limit of 50 dBA L_{10} by day.[20] The

[12] Third Interim at [20].
[13] Third Interim at [59]
[14] Second Interim at [68]–[69] and Third Interim at [20].
[15] *O'Brien v Upper Hutt City Council* ENC Wellington W91/99, 17 September 1999 at [12]–[13].
[16] *O'Brien* at [2]–[4].
[17] *O'Brien* at [51].
[18] *O'Brien* at [9]–[10].
[19] *O'Brien* at [64]; Council's planner, Mr Van Kregten, at [69].
[20] *O'Brien* at [39]–[40] (Ordinance 6.2.1).

applicant relied on that limit as a comparator.[21] The Court did not accept the comparison as valid.[22]

17. Noise from the proposed workshop was predicted at about 44 dB(A) at the residential boundary, and hammering was measured at up to 51.6 dBA L_{10} at the neighbour's notional boundary, against a measured ambient (background) level of 36 dBA L_{10}.[23] The Court noted that hammering at that level would be intrusive against the ambient. It found the effect on the neighbours would be *"major"* if the Council's conditions were not amended, because the existing ambient noise level was low.[24]

18. The ambient environment was not silent. The Court recorded that tractors, farm vehicles, forestry harvesting and noise from implement sheds may be expected.[25]

19. The Court found that a noise limit of 45 dBA L_{10} by day at the notional boundary of any rural dwelling was appropriate. The Court accepted that limit was more restrictive than the limits in the transitional and proposed plans for residential areas, but required it because *"this is a very quiet area even during the day and noise is a significant issue"*.[26] It confirmed consent subject to that limit and a lower limit for hammering, and added insulation works.[27]

LRG Investments Ltd v Christchurch City Council

20. *LRG Investments* concerned a proposed 16-unit motel on a residential site at 287–289 Riccarton Road, Christchurch, in a mature suburban residential area.[28] The Christchurch City proposed district plan set night-time limits of 41 dBA L_{eq} and 65 dBA L_{max} at the site boundary.[29] Noise from the motel was predicted to comply with the proposed plan's noise limits, including at night.[30]

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[21] *O'Brien* at [40] and [132].
[22] *O'Brien* at [52]–[53]. The Court held the proposed workshop was not a home occupation under either plan.
[23] *O'Brien* at [62], [64], [67] and [77].
[24] *O'Brien* at [77] and [79].
[25] *O'Brien* at [104].
[26] *O'Brien* at [119].
[27] *O'Brien* at [146] and [149].
[28] *LRG Investments Ltd v Christchurch City Council* ENC Christchurch C064/98, 11 June 1998 (applicant's bundle of authorities, Tab 3) at pp 2–3.
[29] *LRG Investments* at pp 3 and 8 (Rule 1.3.2(c)(ii)–(iii)).
[30] *LRG Investments* at p 11 (evidence of the appellant's acoustic expert, Mr Camp).

21. The Council's evidence was that noise from individual vehicle movements in the rear carpark would be around 65 dBA L_{max} at neighbouring properties. That noise would be clearly noticeable against the low night-time background, which fell below 30 dBA L_{95} in the early morning.[31]

22. The Court found that noise from the rear carpark at night would be an adverse effect of some significance for the neighbours, notwithstanding compliance with the district plan noise limits.[32] It recorded that noise standards tend to be of general application, and that regard must be had to the particular circumstances of the case in deciding whether they provide adequate protection for the amenities the plan seeks to protect. It concluded that the standard was unlikely to do so, principally because the site was narrow, which placed the carparking close to neighbours.[33] Consent was refused.[34]

23. The case is also addressed in Appendix D of the Fees' submissions dated 30 October 2026.

Brooks v Western Bay of Plenty District Council

24. *Brooks* concerned a clay bird shooting facility on a working farm in the Rural G Zone of the Western Bay of Plenty District Plan. It was a discretionary activity. Neighbours appealed the Council's grant of consent.

25. The area was generally quiet but not silent. At a neighbouring property, the Waterhouse home about 185 m from the site, 25 dB L_{A90} and 28 dB L_{Aeq} were observed.[35] The Court said the area looked tranquil, but *"the tranquility which might be perceived on first observation of this neighbourhood is slightly deceiving"*, because seasonal rural noise is expected.[36] State Highway 36 provided non-seasonal background traffic noise.[37] The Court concluded it was *"a generally quiet area although usual rural industry noises are expected"*.[38]

[31] *LRG Investments* at p 12 (evidence of the Council's environmental health officer, Mr Pulley).
[32] *LRG Investments* at p 19.
[33] *LRG Investments* at p 20.
[34] *LRG Investments* at p 21.
[35] *Brooks* at [10] and [54].
[36] *Brooks* at [37] and [39].
[37] *Brooks* at [40].
[38] *Brooks* at [90].

26. The district plan noise standards did not cover gunfire.[39] The Court recorded, citing an earlier decision, that compliance with a district plan standard *"does not preclude the Court from determining that [the noise] nevertheless exceeds a reasonable level"*.[40] It concluded that *"there is an amenity issue at large in this proposal which cannot be defined or addressed purely by the application of a noise standard"*.[41]

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[39] *Brooks* at [20] and [25].
[40] *Brooks* at [43], citing *Nelson City Council v Delaware Bay Residents Association Inc* (*Harvey*).
[41] *Brooks* at [88].