IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2025] NZEnvC 210

IN THE MATTER	of the Resource Management Act 1991
AND	an appeal under clause 14(1) of the First Schedule of the Act
BETWEEN	NEW ZEALAND DEFENCE FORCE
	(ENV-2023-CHC-110)
	Appellant
AND	SELWYN DISTRICT COUNCIL
	Respondent
AND	an appeal under s174 of the Act against a decision of the Minister of Defence under s172
BETWEEN	SELWYN DISTRICT COUNCIL
	(ENV-2024-CHC-1)
	Appellant
AND	MINISTER OF DEFENCE
	Respondent

Court:	Environment Judge P A Steven Environment Commissioner J T Baines Environment Commissioner C J Wilkinson
Hearing:	at Christchurch on 17-19 February 2025
Appearances:	S J Mitchell and C J Ryan for New Zealand Defence Force and Minister of Defence J D Silcock and E A Everingham for Selwyn District Council L Halliday in person J Larason in person
Last case event:	2 April 2025
Date of Decision:	26 June 2025
Date of Issue:	26 June 2025

DECISION OF THE ENVIRONMENT COURT

A: The appeals are allowed. Directions are made for Selwyn District Council to amend the Partially Operative Selwyn District Plan as set out in Appendices 1-3 and file a reporting memorandum once that is completed.

B: The appeals are otherwise dismissed.

C: Costs are reserved and related directions made.

REASONS

The appeals

[1] This case involves two related appeals associated with the appropriate management of reverse sensitivity effects related to New Zealand Defence Force (NZDF) activities at the West Melton Rifle Range (WMRR or range) being:

(a) the appeal by the Selwyn District Council (the Council) against a decision of the Minister of Defence (the Minister) to reject a

recommendation for inclusion of a condition requiring development of a noise management plan on the Designation MDEF-3 for the WMRR; and

(b) the appeal by the NZDF against a decision regarding various provisions of the Proposed District Plan[1] (Proposed Plan) relevant to the WMRR.

[2] At the request of the Council, the NZDF and the Minister, and given the inter-related nature of the issues, the court agreed to hear and determine the appeals together.[2]

[3] However, prior to commencement of the hearing, the Council and the Minister reached agreement on the Council's appeal, with the Minister agreeing to a condition requiring a Noise Management and Communication Plan (NMCP) which had previously been resisted.

[4] Consent order documentation, signed by the Minister and the Council, was filed with the court prior to commencement of the hearing of the appeal.[3]

[5] Due to the inter-related nature of the issues arising on the Minister's appeal, the court decided to refrain from considering the consent order until it had heard all the evidence for the parties on the related appeal by the NZDF, including from the s274 parties, in relation to the content of the NMCP. For completeness we record as a result of this decision that consent memorandum is now irrelevant and will not be considered any further.

[6] As to the appeal by the NZDF, many amendments were sought to the Proposed Plan. In opening legal submissions, the Council raised scope issues in relation to some of these. We address all amendments sought by the NZDF,

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1 Now referred to as the 'Partially Operative District Plan'.

2 Joint memoranda dated 5 July 2024 and Minute dated 11 July 2024.

3 Joint Memorandum of counsel in support of consent order dated 13 December 2024.

including those where scope issues arise.

Section 274 parties

[7] Two of the s274 parties (Mr Halliday and Mr Larason) to the NZDF appeal appeared at the hearing. Neither party called expert evidence, although both had prepared written statements, described as statements of lay evidence, which were duly considered by the court. Mr Roberts did not participate in the hearing at all.

[8] We note also that a fourth s274 party (Bryan and Letesha Dempster) notified the court by email[4] that they "no longer want to be a party to the appeal".

[9] There were no parties to the Council's appeal.

The WMRR

[10] The WMRR has existed since the 1940s and occupies 422 hectares. The WMRR is subject to designation MDEF-3 under the partially operative Selwyn district plan with a designation purpose stated as "Defence Purposes – Military Training Area".[5] Defence purposes are those contained in s5 of the Defence Act 1990, including the defence of New Zealand and the protection of the interests of New Zealand or elsewhere.[6]

[11] The WMRR is used primarily as a rifle range, and also for grenade practice, training in the use of explosives and general military training. It is considered a nationally important training facility for the NZDF and is the main defence range and the only long-range facility in the South Island.[7]

[12] The WMRR provides for purpose-built range practices that enable soldiers

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4 Email of B and L Dempster to the Registry(16 July 2024).

5 The WMRR has been authorised by a designation since at least 1974.

6 Sub-sections 5(a) and (b) of the Defence Act 1990.

7 NZDF notice of appeal, dated 6 October 2023; NZDF opening submissions at [1.2].

based in the South Island to achieve the required standards of weapon proficiency at 300m and 600m, whilst also providing the safest purpose-built grenade training environment in the South Island.[8]

[13] Range usage will depend on training needs necessary to meet Government requirements. Usage is high during periods of personnel deployment in combat operations,[9] although, since the Covid-19 pandemic, usage has been less frequent than it was prior to 2020.

[14] We were told that currently:[10]

> (a) night-time firing is limited and takes place only approximately 20 times or less per year, mainly on the Wooster Ranges (which are protected by the noise bunds along the southern perimeter of Wooster A and B ranges);
> (b) under current [Range Standing Orders], no grenade training, including the use of grenade simulators (thunder flashes), or demolitions charges are able to be conducted at night;
> (c) the WMRR is not authorised for use by armoured vehicles which can fire ammunition. All weapons used on the Range are therefore handheld;
> (d) heavy weapons, such as the NZDF's L119 105 mm light gun (Howitzer), are not used at the Range.

[15] A range of other non-live firing activities are also conducted on the WMRR land not occupied by the firing ranges, including:[11]

(a) vehicle and dismounted personnel blank firing practices;
(b) pyrotechnic simulation activities;
(c) helicopter procedure training;
(d) Remotely Piloted Aircraft System training; and
(e) accommodation and rationing facilities for 167 personnel.

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8 NZDF opening submissions at [3.5] and [6.12].

9 Such as those to East Timor in the early 2000s or Afghanistan in the 20 years prior to 2021.

10 V Irwin EIC, at [4.6].

11 V Irwin EIC, at [4.8].

[16] All activities are coordinated through a centralised online booking system controlled from the Burnham Military Camp Headquarters and facilitated at the WMRR through the Range Wardens.[12]

[17] The WMRR also supports New Zealand Police to conduct firearm training and is used by the defence force's Explosive Ordnance Disposal team.[13]

[18] In conjunction with the Burnham Military Camp,[14] the Weedons Depot and Communications Site, the Glentunnel Ammunitions Depot, all of which are located in the Selwyn District, the WMRR is essential to national security and defence operations both in the South Island and nationally, ensuring that the NZDF meets its responsibilities under the Defence Act 1990.

[19] The WMRR is located within the General Rural Zone (GRUZ), although past land use planning provisions have enabled considerable rural lifestyle development to occur north of West Melton township, moving progressively closer to the WMRR and consequently making it vulnerable to reverse sensitivity effects.

[20] The NZDF and the Council are agreed on the need to protect the WMRR, and to manage noise emanating from the range and any reverse sensitivity effects. However, they disagreed on the most appropriate way to achieve those objectives.

[21] Historically, the Selwyn district plan has not had rules in place to manage reverse sensitivity associated with the WMRR. The Council has been engaging with the NZDF in respect of the Proposed Plan provisions since 2015 and has recognised the need to have greater protection for the WMRR. This process has

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12 V Irwin EIC, at [4.9].

13 The EOD is a New Zealand Defence Force unit made up of members from the army, navy and air force. They are trained to deal with all kinds of explosives, including chemical, biological and radioactive weapons. They also handle the disposal of obsolete military ordnance, unusable explosives and other weapons that are still potentially dangerous.

14 Which is a 20-minute drive from the WMRR.

also involved substantial community input, seeking to strike an appropriate balance between:

(a) the protection of important infrastructure;
(b) managing the effects of noise-generating activities on the environment including residents; and
(c) the effective and efficient management of reverse sensitivity effects.

Overview of the Proposed Plan in relation to the WMRR

[22] Under the decisions version of the Proposed Plan the range is subject to designation MDEF-3, the designation purposes being for Defence Purposes – Military Training Area. The designation affords wide scope for the NZDF to undertake military training activities without limitation.[15]

[23] All NZDF facilities come within the definition of "important infrastructure". The Proposed Plan further contains an objective and policy framework that recognises the need for managing reverse sensitivity effects on important infrastructure, including avoidance directives.

[24] As to the methods, the Proposed Plan contains:

(a) a 55 dB Ldn overlay and a 65 dB Ldn overlay. Although not operating as a compliance limit on noise from the range, the overlays are for the purpose of establishing appropriate land use controls on surrounding land;[16]
(b) rules requiring acoustic insulation for new buildings accommodating noise sensitive activities within the 55 dB Ldn overlay, or where an existing building is to be used for a new or different noise sensitive

15 There are no conditions imposed upon the designation for the WMRR.
16 NOISE-P4.

use, constituting discretionary activity status for non-compliance;[17]

(c) rules for new noise sensitive activities within the 55 dB and 65 dB overlays constituting discretionary activity and non-complying activity status (respectively);[18] and

(d) controls on subdivision within the 55 dB and 65 dB overlays constituting discretionary activity and non-complying activity status (respectively).[19]

Amendments sought by NZDF

[25] NZDF seeks amendments[20] to the Proposed Plan provisions that:

(a) amends NOISE-R7 in relation to the acoustic attenuation requirements:

(i) to capture a change in use of an existing building to a new or different noise sensitive activity;[21] and

(ii) to change activity status for non-compliance within the 55 dB overlay from discretionary to restricted discretionary activity status.

(b) requires limited notification on the NZDF for applications under rules NOISE-R7 and SUB-R26 unless written approval from the NZDF is obtained;

(c) introduces a requirement in SUB-R26 and NOISE-R7 for registration of a "no-complaints" covenant for new noise sensitive activities within the 55 dB overlay by way of a controlled activity resource consent, together with a requirement for a restricted discretionary activity resource consent where a covenant is not agreed to by the applicant;

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17 NOISE-R7.

18 NOISE-R7.1 and NOISE-R7.3.

19 SUB-R26.

20 An appeal point on NOISE-R9.1 was withdrawn by the NZDF in closing submissions.

21 Non-compliance with which is a non-complying activity rule in the 65 dB overlay.

(d) amends policy EI-P6.

[26] Closing submissions record agreement (in principle) on the amendments in sub-paragraphs (a), and (b), the differences being limited to drafting.

[27] Similarly, in relation to the Council's appeal, by the close of the hearing, there was agreement between the parties that a further amendment ought to be made to the NMCP condition addressing matters raised by the s274 parties in relation to unfavourable meteorological conditions and monitoring. There is little difference in the drafting advanced by the Council and the NZDF. We make our determination on our preferred drafting further on.

[28] Accordingly, we address the least contentious aspects of the appeals before moving to the amendments referred to above in paragraph [25](c) and (d).

[29] Before we do, we set out:

(a) an overview of the position of the s274 parties; and
(b) a summary of the witness caucusing.

Section 274 parties' position

[30] Two of the s274 parties, Mr Jerome Larason and Mr Lindsay Halliday, represented themselves at the hearing, both having previously prepared written statements of lay evidence and both of whom were given, and both accepted, the opportunity at the hearing to make submissions to the court.

Mr Larason

[31] Mr Larason described himself as "an original co-founder and representative" of the nearly 300 local residents of West Melton who are members

of the group, "Rein in the Range"[22] (RITR). Whilst the court had no evidence to support the status and standing of RITR this did not detract from Mr Larason being able to present his position personally. The interest in this appeal was focused on four issues:[23]

(a) his assertion that "the requested 'no noise covenant' on landowner's property titles will cause those properties to be devalued significantly and harder to sell";

(b) his reference to an historical relationship with a previous commander of Burnham Military Camp and the WMRR who had "worked out a mutually beneficial arrangement at the satisfaction of both parties". He stated he wanted a 'Good Neighbour Policy', that arrangement meant residents are notified of upcoming usages of the range. It has worked "acceptably well since then with only one noise complaint having been received by SDC since 2009"; and

(c) while accepting that "the West Melton Rifle Range has in fact been legally operating since the 1940s", he asserts that the range of military uses of the WMRR have changed significantly over time, and states that "Residents clearly want no increase in noise levels, yet they are generally tolerant of the status quo"; and

(d) his assertion that "there are other NZDF facilities in the south island which are much more appropriate for louder activities than a basic rifle range near a growing residential area".

[32] Mr Larason resides at Bells Road "on the outer edge of this whole area".[24]

[33] Furthermore, he was somewhat focused on seeking clarification in relation to his own property being partly inside the 55 dB noise contour and whether his whole property would be affected by a reverse sensitivity covenant (whether for

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22 J W Larason Jr s274 notice.

23 At [6].

24 Transcript p 371 at l 18.

subdivision or new noise sensitive activity) which also tends to suggest he was acting personally and not with any recognised mandate from the RITR group.

[34] Mr Larason's concerns, and indeed the formation of RITR, appear to have originated as a consequence of an accidental detonation at the WMRR back in 2009, following which a good neighbour policy was implemented. This policy included prior notification to residents of noise events.

[35] Some of Mr Larason's concerns were based on his assertions that a 'no noise covenant' will be highly detrimental, especially as it "will be likely to undermine (property) values"[25] and that it "will cause those properties to be devalued significantly and harder to sell".[26] There was no evidence however provided to support this assertion.

[36] Indeed, we have no evidence (other than Mr Larason's) that residents are bothered at all about how the site is being used, despite his assertion that "residents clearly want no increase in noise levels, yet they are generally tolerant of the status quo"[27], and that "current levels are basically OK".[28]

[37] In giving evidence, Mr Larason gave an assurance that RITR was not formed to stop the rifle range but to facilitate communication and feedback with the NZDF.[29] Furthermore, he estimated that "98% of the people that are in Rein in the Range membership would not feel that removing the range is necessary, required, or even logical."[30]

[38] Having said that, he was concerned that NZDF "explain exactly what they plan to produce as future noise or take it elsewhere",[31] whilst also producing as

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25 J W Larason Jr Lay evidence 4 October 2024 at [6].
26 J W Larason Jr s274 notice at [6](a).
27 J W Larason Jr s274 notice at [6](c).
28 J W Larason Jr Lay evidence at [11].
29 Transcript p 365 at lines 31-32.
30 Transcript p 378 at lines 21-23.
31 J W Larason Jr Lay evidence at [11].

Exhibit 7 his letter to the (then) Minister seeking constraints on the operation at the range but also vowing to "fight … for the full and complete removal of the range from our locality"[32] in the event that the NZDF continued to seek the rule framework sought in this appeal. This stance certainly validates the concerns of the NZDF about the potential for future constraints or restrictions on the operations of the range.

[39] That was helpful in assisting our understanding of his concerns which can be summarised as:

(a) wanting no increased activity on the WMRR;
(b) having a good neighbour policy (his idea of a good neighbour and others may differ of course);
(c) seeking some protocol for activities (and notification) during abnormal or unusual weather events;
(d) provision for noise monitoring; and
(e) perhaps a misconception of his "punitive" opinion of reverse sensitivity covenants.

Mr Halliday

[40] Mr Halliday's interest in the appeal focused on two issues:[33]

(a) his assertion that "the potential levels of annoyance to neighbours likely to be caused by the noise levels predicted in the "updated" noise model appear to have been underestimated"; and
(b) his objection to the imposition of a 'no-complaints' covenant on properties within the 55 dB overlay because, in his view, "the neighbours should be able to continue their right to complain if noise levels become excessive", and also because he considered the

32 Exhibit 7, email of J W Larason Jr to Right Honourable Ron Mark (26 May 2025).
33 L A Halliday s274 notice.

covenant to be "unreasonable and would result in lowered property values".

[41] Mr Halliday, whilst initially also concerned with potential lowering of property values, was primarily focused on the noise modelling used and comparisons with overseas jurisdictions. As with Mr Larason, Mr Halliday did not produce evidence to support his assertion as to this potential effect on property values.

[42] He was supportive of a NMCP as proposed, to include general practice and procedures to be adopted to ensure that the noise generated on the WMRR does not exceed a reasonable level; notification to neighbouring landowners/occupiers of forthcoming noisy training activities; a complaints procedure for recording complaints, actions taken, and remedial actions taken.

[43] In part, this would duplicate existing Range Standing Orders, parts of which are understood to contain restricted and classified information which cannot and should not be made public.

[44] However, he was also concerned that firstly there was no requirement to share the results (subject to the sensitivity of the data as mentioned above) and secondly, that noise monitoring should be undertaken both on the range and outside the range.[34]

[45] Both Mr Halliday and Mr Larason raised the issue of the procedures for checking whether there is temperature inversion occurring so that the time of detonation events avoids situations when temperature inversions and other adverse climatic conditions occur – in the words of the post-hearing Noise JWS "certain meteorological conditions can enhance sound propagation".

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34 Transcript p 358 at l 27.

[46] This has been addressed in the proposed NMCP condition with the suggested wording to cover "methods and processes for mitigating adverse noise effects, including when unfavourable meteorological conditions prevail".[35]

[47] Mr Halliday was further concerned with "adverse or abnormal events"[36] such as detonations and the use of claymore mines (charged directional fragmentation devices) by the NZDF. Mr Irwin, under cross-examination from him, assured him that the usage was constrained and limited to four per day, although they were not used all year.[37]

Witness caucusing

[48] Prior to the hearing, expert caucusing occurred between:

(a) the noise/acoustic experts – Darran Humpheson for the NZDF and the Minister, and Jeremy Trevathan for the Council;
(b) the planning experts – Karen Baverstock for the NZDF and the Minister, and Vicki Barker for the Council.

[49] On direction from the court, these experts were further directed to re-convene their expert caucusing to address specific questions pertaining to the proposed NMCP which had arisen during the hearing.

Noise experts caucusing

[50] Pre-hearing caucusing on noise focused on a wide range of issues, including:

(a) the noise generated by the WMRR, the existing management measures applied by NZDF, and the noise overlays;
(b) the no-complaints covenant approach in the proposed district plan

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35 Noise JWS (Post-Hearing), Annexure A at 1.
36 Transcript p 359 at l 28 and L A Halliday Lay evidence at [34].
37 Transcript p 100 at l 15.

sought by NZDF; and

(c) the NMCP condition on WMRR as sought by SDC.

[51] As to the first of these issues, the experts agree that:[38]

(a) all noise generated at the range is 'impulsive' – brief loud sounds, heard as 'cracks', 'thuds' or 'booms'. It may occur at any time during the day, and on occasional nights;

(b) key differences with civil shooting ranges are the hours of use, types and variety of weapons, spatial spread, the need for a realistic training environment. Non-firearm explosives (grenades, mortars, high explosives) are also not a feature of civil shooting ranges;

(c) Mr Humpheson considers that noise mitigation measures implemented at the range to be the best practicable option for the site, taking into account acoustic and military training requirements, while Mr Trevathan considers that the measures appear to be reasonable from a noise perspective;

(d) the noise experts are not aware of any physical mitigation measures which are in place elsewhere and could be practicable to adopt at WMRR. Any further barrier/earth bunds would need to be very large, and close proximity screening is not possible for grenades and mortars;

(e) for new residential receivers, the noise overlays are appropriate for land use planning purposes, but will result in some residual effects between the 55 dB Ldn and 65 dB Ldn, although for existing residential receivers, the noise management measures are of more relevance than the noise overlays for the purposes of managing noise effects;

(f) the noise experts understand that between the 55 dB Ldn and 65 dB Ldn overlays new residential receivers are permitted, however, sound

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38 Noise JWS, Annexure A.

insulation is required but no new residential receivers are permitted within the 65 dB Ldn;

(g) other key agreed assumptions in relation to the noise modelling include:

(i) the information[39] on future activity levels expected at the range provided by Mr Owen (NZDF), represents a realistic future situation, that could arise at the range, being activity levels that would enable the NZDF to have a degree of flexibility with regard to future operations;

(ii) the range would be active on 250 days/year; and

(iii) the outer extent of the overlay is largely controlled by grenades and detonations.

NMCP condition

[52] Caucusing on the NMCP condition occurred in circumstances where the Council, and the Minister/NZDF had agreed to its inclusion. However, this issue was nevertheless addressed in the caucusing of the noise experts. As to this condition, the noise experts agree that certain benefits may arise where noise management plans are used, including by:

(a) ensuring compliance with consent or designation conditions that set noise limits;

(b) ensuring noise complies with s16 RMA (whether or not there are specific noise limit conditions in place); and

(c) formalising established practices of noise management.

[53] They further agreed that it is appropriate for the following matters to be addressed in the NMCP:[40]

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39 D Humpheson EIC at [7.9].

40 See K Baverstock's EIC, Appendix 4.

(a) practices and procedures to be adopted to ensure that noise generated on the range does not exceed a reasonable level. This will include setting out:
   (i) roles and responsibilities for noise effects mitigation and management;
   (ii) methods and processes for mitigating adverse noise effects; and
   (iii) procedures for monitoring noise sources and noise generating activities.

(b) how owners and occupiers of land within the West Melton Rifle Range 55 dB Ldn Noise Control Overlay and the West Melton Rifle Range 65 dB Ldn Noise Control Overlay will be given prior notice of forthcoming noisy training activities, including:
   (i) a description of how they will be informed;
   (ii) the rationale for identifying which training activities require prior notification; and
   (iii) the information that will be provided about the training activities.

(c) a complaints procedure that includes recording any complaint(s) received by the NZDF, specifying actions to be taken following receipt of any complaint(s), and recording any remedial action(s) taken. Records of any complaint(s) shall be made available to the Council on request;

(d) the identification of the circumstances in which it would be appropriate to initiate a review of the contents of the NMCP.

No-complaints covenant approach

[54] The experts were not agreed on the merits of a covenant, although they did agree that:

(a) the intent of a covenant approach is to protect WMRR from potential reverse sensitivity effects;

(b) a covenant is not relevant for existing noise sensitive activities but may provide a degree of forewarning to people wishing to undertake a noise sensitive activity, and thereby may result in fewer people sensitive to WMRR noise living within the overlay. However, they acknowledge that they are not aware of any specific research which tested the efficacy of no-complaints covenants from a noise perspective;

(c) a covenant would have no impact on the actual noise emissions;

(d) there is still a duty for the NZDF to comply with s16 of the RMA, irrespective of a covenant, and also that a covenant focused on the making of complaints may have the effect of discouraging legitimate complaints that warrant investigation.

Post-hearing caucusing

[55] Post-hearing caucusing took place on topics of relevance that arose during the hearing, mostly in light of the matters raised by the s274 parties, being:

(a) consideration of temperature inversion circumstances within the proposed NMCP designation condition; and

(b) noise monitoring; and

(c) temporary military training assessment (TMTA) location.

[56] As to the first of these, the noise experts agree that:[41]

(a) certain meteorological conditions can enhance sound propagation such as a positive temperature inversion or downwind conditions;

(b) it will not always be practicable to avoid training activities in these conditions, however in the past the NZDF has sometimes delayed certain activities when they believed a strong temperature inversion may be present;

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41 Noise JWS (Post-Hearing), Annexure A at 1.

(c) more definition and precision around these situations and associated processes is appropriate; and

(d) the NMCP is where that detail should be presented.

[57] The noise experts therefore agreed that it may be appropriate if the following wording was added to the NMCP condition:[42]

> …. methods and processes for mitigating adverse noise effects, <u>including when unfavourable meteorological conditions prevail</u>; and

[58] As to the second, the experts agree that:[43]

(a) all types of possible monitoring (short or long-term, tallies of weapon usage, noise measurements on the site, noise measurements in the wider area) should be considered when drafting the NMCP;

(b) the findings of any of these types of monitoring would have many potential uses, including assisting with the refinement of the noise overlays in the future, and the detailed assessment of noise effects in specific receiver locations;

(c) NZDF has already identified concerns around the practicality of collating data, and the sensitivity of data which are likely to limit what they will commit to in the NMCP;

(d) noise monitoring for the specific purpose of confirming the location of the noise overlays is challenging and is unlikely to be practicable; and

(e) one situation where the noise experts would expect the NMCP to direct noise measurements be undertaken is if a new weapon or ammunition was used on the range.

[59] The noise experts therefore agreed that it may be appropriate if the

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42 Noise JWS (Post-Hearing), Annexure A at 1.

43 Noise JWS (Post-Hearing), Annexure A at 1-2.

following wording was added to the NMCP condition:[44]

> …. procedures for monitoring noise sources and noise generating activities, including when a new weapon or ammunition was used on the Range.

[60] As to the third of the issues, an amendment was sought to the location of the assessment of noise associated with the TMTA in NOISE-R9.1. However, this amendment was not addressed in the evidence for the NZDF. In opening submissions, the Council opposed the amendment on grounds of scope, a position that the court agrees with.[45] In closing submissions this appeal point was withdrawn by the NZDF, and accordingly it will not be further addressed.

Planners' expert caucusing

[61] Pre-hearing caucusing occurred with the planners, although the issues of principal relevance to be determined by the court (other than addressing the relevant statutory/planning framework) related to:

(a) the no-complaints covenants approach sought by the NZDF; and
(b) the Noise Management Plan conditions on WMRR sought by SDC.

The planning framework relevant to WMRR

[62] There were no disagreements or reservations expressed by either planning expert in relation to this topic.[46] We have considered these provisions in coming to our decision.

Non-contentious issues

[63] Caucusing by the planning experts included several questions related to the

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44 Noise JWS (Post-Hearing), Annexure A at 3.

45 An appeal was filed seeking an amendment to this provision, although the original submission supported the rule.

46 Planning JWS, Annexure A at 1-2.

appropriate activity status that should apply in various planning circumstances, particularly:

(a) the choice between discretionary and restricted discretionary status when engaging with rules NOISE-R7.3 and SUB-R26.6 (Ms Barker agreed to support a restricted discretionary status in principle, subject to confirming acceptable matters of discretion);[47] and

(b) whether to apply a no-complaints covenant to a controlled activity subdivision application within the 55 dB overlay (Ms Barker did not support controlled activity status with a no-complaints covenant, since she considers that there is no likelihood of a large-scale developer-led subdivision and did not accept the covenant approach in principle, while Ms Baverstock considers it is to provide a simple and efficient pathway for developers through a more enabling activity status).[48]

[64] Two other issues were considered to be subject to a scope issue, namely amendments to EI-P6 and the addition of a limited notification clause to rule NOISE-R7-2A and SUB-R26.6.[49]

[65] One final issue, regarding how to treat an application for a change in use of an existing building to a different or new noise sensitive activity, appeared unresolved.[50]

[66] There was considerable agreement[51] as to the function of the proposed NMCP, noting in particular that:

(a) it demonstrates how NZDF's s16 duty is being met;

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47 Planning JWS, Annexure A at 11.
48 Planning JWS, Annexure A at 12.
49 Planning JWS, Annexure A at 10-11.
50 Planning JWS, Annexure A at 12.
51 Planning JWS, Annexure A at 12-13.

(b) it makes established practices transparent and understood by the community;
(c) it provides information at a level that can be made public, acknowledging that some information is classified for security reasons;
(d) it contains community engagement and complaints procedures; and
(e) it works in tandem with land use and subdivision provisions.

— which led them to conclude that a NMCP is an appropriate designation condition to have in the plan, possibly with some minor word changes.[52]

[67] Although the court had only directed post-hearing caucusing on additions to the NMCP condition, the planners voluntarily caucused a range of issues that arose during the hearing:

(a) in relation to the proposed NMCP, whether the designation condition should make explicit reference to 'temperature inversion' and whether the noise monitoring procedures should make explicit reference to 'new weapons';
(b) in relation to the precise wording of matters of discretion in rules NOISE-R7 and SUB-R26;
(c) in relation to the activity status of certain new noise sensitive activities, namely small-scale visitor accommodation such as Airbnb establishing within an existing dwelling;
(d) the amendment sought to EI-P6.

[68] The planners reached a high level of agreement on these four issues, with their only reservations being focused on achieving wording that ensures clarity and consistency of interpretation.[53]

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52 Planning JWS, Appendix 4.
53 Planning JWS (Post-Hearing), Annexure A at 1-5.

The no-complaints covenant sought by NZDF

[69] When caucusing on this topic, the planning experts began by addressing questions, which they had agreed upon, relating to the need for additional plan provisions, namely that:

(a) current Proposed Plan provisions addressed indoor noise levels, but not outdoor noise levels,[54] and not reverse sensitivity effects;[55]
(b) there is the potential for ~35 additional residential units within the WMRR 55 dB overlay;
(c) while the Proposed Plan does not preclude consents being sought, such consent applications are not actively enabled under the current policy and rule framework;[56]
(d) Selwyn growth at the district level is directed towards Rolleston, Lincoln and Prebbleton, while West Melton growth is confined to the township and its margins;[57]
(e) the nature of the noise is different from airports or ports, although they did not agree that this provided a basis for different plan provisions;[58]
(f) no-complaints covenants are provided for in provisions included elsewhere in the Proposed Plan, in relation to the Darfield Gun Club and Lincoln Sewage Treatment Plant (LSTP), although they note that both were developer-led initiatives, provided for as part of private plan change processes.[59]

[70] As to the potential effectiveness of no-complaints covenants, the planners

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54 Planning JWS, Annexure A at 3.
55 Planning JWS, Annexure A at 4.
56 Planning JWS, Annexure A at 4.
57 Planning JWS, Annexure A at 7.
58 Planning JWS, Annexure A at 6.
59 Planning JWS, Annexure A at 5.

agree that:

(a) although they are not aware of research which has tested the efficacy of no-complaints covenants, a covenant would not protect noise sensitive activities from WMRR noise. However, Ms Baverstock noted that this is not the intended purpose;[60]

(b) a covenant could result in legitimate complaints not being made;[61]

(c) in addition to mapping overlays and LIM provisions, registering such a covenant on a land title would provide a degree of forewarning, although they differed as to how much effect that would have in keeping out potentially sensitive newcomers;[62]

(d) there is a difference between land use and subdivision and that a covenant would be more appropriate at the time of subdivision, since the subdivision process creates new titles on each of which the covenant is placed. Covenants are more often employed where developers are trying to achieve a plan change or consent. But in the context of West Melton, the planners held different views on the likely efficiency of such an approach due to the limited amount of remaining subdivision potential in the affected area;[63]

(e) the noise experts had already agreed that further physical mitigation on the range site is not a practicable option, in terms of limiting range noise. Ms Baverstock noted that the NZDF is entitled to operate in accordance with the purpose of its designation and is still subject to s16 requirements.[64]

[71] A further aspect on which the planning experts also expressed differing views was whether or not a no-complaints covenant would be at odds with a

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60 Planning JWS, Annexure A at 6-7.
61 Planning JWS, Annexure A at 7.
62 Planning JWS, Annexure A at 9.
63 Planning JWS, Annexure A at 7.
64 Planning JWS, Annexure A at 8.

NMCP or complementary to it. As discussed elsewhere in this decision, such a dichotomy may well be resolved by replacing the label 'no-complaints covenant' with the label 'reverse sensitivity covenant'.

[72] Finally, while not in agreement that a covenant should be required, they agreed that:

(a) if rule SUB-R26 is amended as sought by the NZDF, a reverse sensitivity covenant would then be required as a condition of controlled activity status where any part of the property to be subdivided is within the 55 dB overlay, and

(b) if rule NOISE-R7 is amended as sought by the NZDF, where a new building containing a noise sensitivity activity is proposed within the 55 dB overlay (other than a minor residential unit), or an existing building within that overlay is to be changed to a different or new noise sensitive activity, a reverse sensitivity covenant would then be required as a condition of permitted activity status.

Our consideration of the non-contentious issues

NOISE-R7

Activity status change

[73] As to the NOISE-R7 amendments, the Council agreed that any new noise sensitive activities within the 65 dB overlay should be non-complying. Ms Barker proposed an amended rule that states:[65]

> 3. Any ~~new building for a~~ noise sensitive activity, ~~and~~ <u>or</u> any addition or alteration ~~of a habitable room~~ to an existing building ~~containing a noise sensitive activity, and any change in use of an existing building to a different~~

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65 Planning JWS (Post-Hearing), Annexure A at 5.

~~or new noise sensitive activity~~ which creates a new habitable room.

[74] The NZDF did not agree with this redrafting and proposed an amended rule that states:[66]

> 3. Any new noise sensitive activity or new building for a noise sensitive activity, and any addition or alteration ~~of a habitable room~~ to an existing building ~~containing a noise sensitive activity,~~ which creates a new habitable room or will be occupied by a noise sensitive activity.

[75] We prefer Ms Baverstock's redrafting of the rule as its captures reuse of existing habitable rooms, say, for an Airbnb activity, which would not be captured by Ms Barker's drafting.

[76] The Council also agreed that the activity status for a breach of NOISE R7.1 within the 55 dB overlay should be changed from discretionary to restricted discretionary, and the planners were agreed on the matters over which discretion should be restricted.

[77] We have considered the same and find that these are appropriate provisions to be included in the plan, in substitute for discretionary activity status for a breach of this rule.

[78] The Council also agreed to the inclusion of an advisory note to NOISE-R7.1 and SUB-R26.6 that would state:

> To assist in assessing the extent to which a site is predicted to be affected by noise from the range, the West Melton Rifle Range noise control overlays are available from Selwyn District Council in 1 dB increments between the 55 dB Ldn noise control contour and the 65 dB Ldn noise control contour.

[79] We agree with the addition of an advisory note.

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66 Planning JWS (Post-Hearing), Annexure A at 4.

Breadth of the rule

[80] The rule applies where "any new building for a noise sensitive activity, and any addition or alteration of a habitable room to an existing building containing a noise sensitive activity" is proposed within the 55 dB overlay and requires acoustic attenuation measures. Within the 65 dB overlay, any such activity is a non-complying activity.

[81] The NZDF seeks to amend the rule so that it also applies to any change in use of a building to a different or new noise sensitive activity. This would capture a proposal to introduce visitor accommodation on a scale that is permitted within the GRUZ, namely, involving no more than five guests for reward or payment at any one time, where the registered proprietor resides permanently on site where that wouldn't otherwise be captured.

[82] In her evidence-in-chief for the Council, Ms Barker stated that the change of use wording was not sought in NZDF's submissions in respect of this rule, reverting to legal submissions on that scope issue. That issue aside, she did not consider that the changes were needed.

[83] However, having considered this further in the second caucusing after the hearing, Ms Barker agreed to some changes to the rule for the purposes of clarification although the wording is not agreed to by the NZDF. Closing submissions do not pursue the scope issue.

[84] We have considered the NZDF's position on this scope issue, which states that its original submission had supported the notified version of the rule "in part", expanding on that qualified support by stating that "[n]ew noise sensitive activities should not be anticipated or provided for within this noise contour" on the basis that they "impose an unacceptably high risk to the West Melton Rifle Range from a reverse sensitivity perspective".

[85] The decision may not have expressly requested that the rule be amended to

address new noise sensitive activities, although it is implicit that the NZDF's partial only support for the rule was due to the absence of that explicit reference. We consider that the amendment is fairly and reasonably anticipated by the NZDF's original submission, and expressly sought its notice of appeal.[67] Moreover, we find that it is an appropriate amendment, subject to resolving the minor drafting dispute.

Limited notification rules

[86] The NZDF sought an amendment to NOISE-R7, which contained a limited notification requirement on the NZDF for any application arising from NOISE-R7.2 which requires noise attenuation in a new dwelling. The amendment is the addition of the words "… unless their written approval is provided". This is a minor amendment.

[87] Although initially opposed by the Council, in closing submissions this amendment was agreed to. We agree that the amendment is able to be made, although we consider that this amendment is effectively "belts and braces". This is because the effect of s95E(3)(a) is that limited notification is not required where a person qualifying as an "affected person" has provided written approval.

[88] The NZDF sought a further rule requiring limited notification on the NZDF in SUB-R26.6 where subdivision is proposed within the WMRR noise overlays.

[89] The NZDF's original submission supported the notified version of SUB-R26.6, although it had sought provision for a "no-complaints covenant", which it routinely requests when it is served with a resource consent application. The NZDR submitted that the limited notification provision fell reasonably and fairly within its submission and appeal, and although the Council initially opposed that

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67 Although the appeal proposed a differently drafted amendment, the intent is the same as now proposed.

relief, in closing submissions this amendment was supported.

[90] In the course of our consideration of this request, we have referred back to provisions of the Proposed Plan on limited notification in the Subdivision Chapter. We have taken note of the number of rules where public or limited notification is restricted by existing rules for subdivision.

[91] SUB-R26 contains no restriction on public or limited notification. Accordingly, application of the RMA provisions will determine whether an application should be publicly notified or only limited notified, and upon which persons.

[92] The rule proposed by the NZDF and eventually agreed to by the Council would mean that the application of the statutory tests for notification (in either form) would be overridden. Only the NZDF would be notified of such application. There may be other persons who are potentially affected to an extent that is more than minor.

[93] Having reflected on the evidence from the planners, the court is unclear whether this is what was intended by the parties. However, having further reflected on the NZDF's argument in support of this rule, we note that it was connected to its request for a covenant, and quite probably a fall-back provision in the event that this was not allowed by the court, which as we go on to explain, is not the decision we have come to.

[94] The evidence from the NZDF is that when served with an application for subdivision, or a new dwelling within the WMRR noise overlays, it will request a 'no-complaint' covenant from the applicant, otherwise it will oppose the application. However, absent a limited notification requirement, the NZDF cannot be assured that a notification decision will be made that the NZDF is an affected person.

[95] As we have decided to include the covenant sought by the NZDF, the

argument for the limited notification rule is considerably weaker, if not, non-existent.

[96] Accordingly, we decline to make this amendment.

Remaining issues

[97] The remainder of the decision will focus on the contentious issue pertaining to the NZDF's request for a "no-complaint" covenant, (which as we will further explain, is inaptly described as such); although we first address the amendment sought to EI-P6.

EI-P6

[98] Before we consider the amendment sought to EI-P6, brief reference to the background context warrants further explanation.

[99] Prior to commencement of the hearing,[68] a memorandum of consent of counsel of a number of named appellants had been filed with the court stating that parties had settled a number of appeals to EI-P6 (EI-P6 memorandum). With the exception of the NZDF, none of the parties were involved in hearing of the appeals to be heard by the court.

[100] When the EI-P6 memorandum was filed with the court on the eve of the scheduled hearing, we understood that it addressed an appeal point raised by the NZDF appeal, which was to be determined at the hearing amongst other appeal points.[69]

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68 On Friday 14 February 2025.

69 Scheduled to commence 17 February 2025.

[101] The EI-P6 memorandum acknowledged that the s274 parties to the NZDF's appeal[70] had not signed the consent memorandum, although the Council's intention was to address the issue at the commencement of the hearing.

[102] The EI-P6 memorandum stated that many appeal points on EI-P6 had been earlier settled through mediation,[71] although other elements had been deferred, including those described by counsel as "line items" sought to be included in the agreed new non-exhaustive list of locations where particular activities (treated in the plan as important infrastructure) should be avoided.

[103] The EI-P6 memorandum stated that the list of locations had been sought by one of the named appellants, Christchurch International Airport Limited (CIAL). It also stated that this amendment had not been sought by the NZDF and accordingly scope to make the amendment sought by the NZDF was addressed.

[104] Because none of the appellants who were signatories to the memorandum, other than the NZDF, were involved in the hearing, the court declined to address the EI-P6 memorandum at the commencement of the hearing as the Council had sought.

[105] With the exception of the "line item" amendment sought by the NZDF, which we are about to consider, the remainder of the appeal points addressed in the EI-P6 memorandum will be separately addressed.

[106] EI-P6 addresses effects on important infrastructure. The decision version[72]

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70 Who were not parties to any other appeal by the appellants who were signatories to the consent memorandum.

71 *Horticulture New Zealand & Ors v Selwyn District Council* [2024] NZEnvC 323, *Chorus New Zealand Ltd & Ors v Selwyn District Council* [2025] NZEnvC 18.

72 This provision is the subject of a number of other appeals, referred to in this decision, where a consent order has been filed with the court, agreeing to various amendments, including amendments to the chapeau of the policy, along with a new non-exclusive list (referred to as the line items) addressing the location of various infrastructure activities, although the consent order has not yet been the subject of the court's determination.

of this provision is:

> Avoid incompatible activities that may affect or cause reverse sensitivity effects on the efficient operation, maintenance, repair, replacement, upgrading, renewal, or development of important infrastructure and renewable electricity generation unless the activity is located:
>
> 1. At a distance or in a position that does not adversely affect the important infrastructure or renewable electricity generation activity;
> 2. In a position that does not obstruct access to important infrastructure as required for the operation , maintenance, repair, replacement, or emergency purposes.

[107] The NZDF seeks to be expressly listed in this policy as an example of the "important infrastructure" that is a focus of the policy by the inclusion of an additional line that states:[73]

> 2. and including by:
>
> …
>
> g. avoiding noise sensitive activities within the West Melton Rifle Range 65 dBA Ldn Noise Control Overlay.

[108] Pre-exchanged evidence[74] given to the court had stated that this amendment was sought by the NZDF, which we took to mean that it was sought in its appeal (and original submission).

[109] However, having received the EI-P6 memorandum and the accompanying documentation, it became apparent to the court that the NZDF had not sought this amendment in its appeal.[75]

[110] Rather, the NZDF was relying on its s274 party status in support of aspects of the relief being sought by CIAL in its appeal. CIAL sought the inclusion of line

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73 Parties' draft order filed in support of consent order, Appendix 1 at 2.

74 Which had been read by the court before the EI-P6 memorandum was filed.

75 Joint memorandum in support of consent order dated 14 February 2025 at [29].

items in EI-P6 referring to CIAL, the Port Zone, the Dairy Processing Zone. CIAL's relief did not request that the WMRR or any other NZDF facilities within the district be included in that list.

[111] None of this became apparent to the court until after the hearing, when the documents submitted in support of the EI-P6 memorandum were considered in more detail, including in relation to scope.[76]

[112] As earlier stated, the hearing was *not* about CIAL's appeal. As it transpired that the NZDF did not have its own appeal seeking the amendment, we were being asked to determine an issue that should not have been addressed at the hearing.[77] However, we will nevertheless proceed to determine the issue as it is readily disposed of.

[113] Relevantly, s274 RMA enables a person to become a party to an appeal (in support or opposition to the appeal)[78] if that person made a submission about the subject matter of the proceedings (the appeal). The s274 party (here, the NZDF) is not able to define and argue for its own desired outcome but is confined to supporting or opposing what is raised by the scope of the appeal.[79]

[114] Accordingly, the court has no jurisdiction to make the amendment sought by the NZDF to EI-P6 and accordingly, this will not be considered any further.

[115] We earlier note that, following the hearing, the planners were to undertake further caucusing. The court had directed witnesses to consider the wording of

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76 A scope hearing was directed by the court in relation to the amendments sought in the EI-P6 memorandum which will be the subject of a separate decision.

77 Curiously, this was addressed by the planners in the post-hearing caucusing where agreement was reached that there was scope to allow this amendment although as noted elsewhere, the court had not directed the planners to caucus on this issue.

78 Section 274(3)(b), RMA.

79 Hon Peter Salmon KC (ed) *Salmon Environmental Law* (looseleaf ed, Thomson Reuters, updated to 16 May 2025) at [RM274.01]. citing the High Court judgment in *Transit NZ v Pearson* [2002] NZRMA 318.

additional amendments to the NMCP condition.

[116] At their own initiative the planners also discussed and reported back as to whether there was scope for the NZDF to amend EI-P6 agreeing that scope existed to make the amendment. We record the court is not bound by their agreement that there is scope – a conclusion that we disagree with.

Covenant

[117] The most contentious aspect of the NZDF's appeal relates to the request for a rule requiring what was termed a "no-complaints" covenant within the 55 dB overlay and proposed a template for such a covenant requiring that occupiers of the land must not:

> initiate or take any enforcement action under the Resource Management Act 1991 (**RMA**) (and any successive or replacement legislation) for any noise and vibration effects associated with lawful activities undertaken at the Range;
>
> complain or sue the NZDF for any nuisance caused from noise and vibration effects associated with lawful activities undertaken at the Range; and
>
> oppose the Designation on grounds of noise and vibration effects, or any modification, roll over, or alteration to the designation for the Range.

[118] The NZDF sought that it be a condition of controlled activity status for subdivision within the 55 dB overlay and as a standard in NOISE-R7 where development of a new noise sensitivity activity, other than minor residential units, is proposed or there is a change in use of an existing building to a different or new noise sensitive activity.

[119] The NZDF placed much emphasis on the fact that the applicant would not be obligated to enter into a no-complaints covenant and that this requirement would also only apply to new development within the overlay. Agreement to enter the covenant would be voluntary and would give the applicant the ability to pursue a more permissive consenting pathway.

[120] However, if the applicant elected not to agree a covenant, they would need to pursue a resource consent for non-compliance with NOISE-R7, in circumstances where the application would likely be served on the NZDF who would likely request that a covenant be entered into. Accordingly, the NZDF consider it would be more efficient if the covenant became a requirement of a rule in the proposed plan.[80]

[121] The Council stated that it is fundamentally opposed to the covenant as it is opposed to the notion that people should be prevented from making submissions under the RMA or from opposing the rollover, modification or alteration of the designation, while holding concerns over its practical implementation.[81]

NMCP condition

[122] As earlier noted, this had been the focus of caucusing after the hearing, at which agreement as to the wording of the further amendment to the NMCP condition had been reached. The planning experts proposed new conditions 6(ii) and (iii) in relation to the practices and procedures to be adopted to ensure that noise generated on the range does not exceed a reasonable level, as follows:[82]

> (ii) methods and processes for mitigating adverse noise effects, including when there are unfavourable meteorological conditions; and
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> (iii) procedures for monitoring noise sources and noise generating activities, including when new weapons or ammunition are to be used on the Range.

[123] We find that this drafting is preferable to that proposed by the Council in closing submissions for reasons advanced by the NZDF.

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80 EIC R Owen at [7.11]-[7.13].

81 Closing submissions of the Council, at [1.10].

82 Planning JWS (Post-Hearing), Annexure A at 1.

The covenant

[124] As earlier stated, the Council was firmly opposed to the introduction of a requirement for a covenant, regardless of how it is described or what its focus may be.

[125] We had been referred to existing requirements for a covenant in the rules relating to the Darfield Gun Club (Gun Club) and in relation to the LSTP in the evidence for the NZDF. The Gun Club operates once a month on a Sunday in the afternoons, notably, under existing use rights. The noise contours and covenant requirement formed part of a package in the context of a privately requested plan change seeking a residential zoning for surrounding land.

[126] The Council contended that the covenant was offered (and inserted into the plan) on a basis akin to an *Augier*[83] condition on a resource consent.[84] The Council's closing submissions referred to a number of other factual differences between the WMRR and the Gun Club:[85]

(a) the "totally different" nature and extent of the noise, noting that the noise effects associated with the Gun Club activities are "predictable and repeatable";[86]
(b) the size of the area surrounding the Gun Club comprises 13ha, only part of which is within the contours, in contrast to the 422ha area surrounding the WMRR, with the 55 dB overlay including properties almost 3km away;
(c) that provision for further development is limited to 20 new sites within the outline development area, the majority of which is within the 55 dB LAFmax contour.

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83 *Augier v Secretary of State for the Environment* (1979) 38 P & C R 219.
84 Council closing submissions, at [11.4].
85 Council closing submissions at [11.8]-[11.11].
86 Transcript p 251 at l 15.

[127] Within the 50 dB LAFmax and 60 dB LAFmax contours around the club site, there are requirements for acoustic attenuation; a consent notice,[87] or covenant addressing restrictions stated in the Proposed Plan, including a no-complaints covenant "to ensure that new owners are aware of and cannot complain against the noise generated by the Gun Club".[88,89]

[128] We note that the Proposed Plan does not include a template for the no-complaint covenant, although if a consent notice under s221 RMA is the selected mechanism, the content of that would likely reflect the restriction against complaints in the subdivision consent conditions, as stated in the preceding paragraph.

[129] There is also a requirement for a no-complaints covenant around the LSTP. This requirement also resulted from a side agreement between the proponent of a privately requested plan change and the Council.[90]

[130] In closing submissions, the Council introduced reference to a further example of a district plan requirement for a "restrictive non-complaint covenant" in relation to the Ports of Auckland, under the Auckland Unitary Plan (AUP). The AUP provision[91] requires the covenantor "not to complain as to effects generated by the lawful operation of the port", noting that this had not been the topic of any consideration in the evidence presented at the hearing.[92]

[131] In seeking to distinguish the circumstances, Council submits that reverse sensitivity issues have been a key concern for the port company for a long time,

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87 Which has the effect of a covenant running with the land, when registered by s221(4) RMA.

88 Transcript p 307 at l 8.

89 Part 3 – Area Specific Matter/Development Areas/DA-Darfield.

90 The change was to the operative district plan, although it has been carried over into the Proposed Plan.

91 Standard 1201.6.

92 Council closing submissions at [11.24].

unlike the circumstances pertaining to the WMRR.

[132] Counsel further notes that the relevant standard states that there is no requirement for the covenantor to forego any right to lodge submissions in respect of resource consent applications or plan changes in relation to port activities.

[133] However, in brackets, the standard states that an individual restrictive non-complaint covenant may do so. As there is no template for a covenant included in the AUP, the Council could have no input into the final terms of the covenant required to be entered into.

What is in a name – no-complaint or reverse sensitivity covenant?

[134] During the course of the hearing, it became apparent that some of the experts (and the Council) considered that residents should not be prevented from making complaints, particularly with where the reason for the complaint warrants investigation and (possibly) follow-up action.

[135] Although range activities are not subject to any plan-imposed noise limits, the ability of surrounding residents to make complaints to the Council and/or the NZDF may serve a useful purpose in revealing the ongoing effectiveness of the NMCP.

[136] Accordingly, we agree that the ability to make complaints, and for those to be investigated and acted upon when that response is justified, ought not to be curtailed.

[137] We observe that the focus of consideration of the potential emergence of reverse sensitivity is generally on the incidence of complaints, and accordingly, the covenant mechanism is almost always referred to as a 'no-complaints' covenant, as it was in this case. However, we consider that the focus on the incidence of complaints is misplaced, despite (we accept), that there can be a connection.

[138] This is evident in the oft-cited and longstanding definition of the concept given in an article by Bruce Pardy and Janine Kerr: *Reverse Sensitivity – The Common Law Giveth, and the RMA Taketh Away*:[93]

> **Reverse sensitivity** is the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for that land. The "sensitivity" is this: if the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity.

[139] Although the NZDF would prefer that complaints about its activities are stifled, their primary concern is to be able to continue activities within the scope of the designation without restriction.

[140] In considering the Proposed Plan provisions on reverse sensitivity in connection to the range, the Council implicitly accepts that new residents who choose to live in the area surrounding the range should *not* expect to be able to attempt to curtail military training activities because they are disturbed by range noise and/or vibration.

[141] However, it is apparent that the Council considers that rights of participation in the RMA processes, including in opposition to the range activities in any rollover of the designation (say), should be preserved along with the ability to make complaints about range activities. The Council is strongly opposed to any 'signal' in the plan that rights to participate in RMA proceedings may be curtailed in this manner.

[142] The Council's closing submissions also questioned how a covenant could be enforced in an RMA proceeding. Counsel rejected the notion that the existence of a covenant may be sufficient reason for rejecting the *substance* of any submission

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93 Bruce Pardy and Janine Kerr: "*Reverse Sensitivity – The Common Law Giveth, and the RMA Taketh Away"* (1999) 3 NZJEL 93.

or pleading in an RMA procedure, seeking to curtail the range activities,[94] as opposed to requiring an affirmative response such as a strike out application.

[143] The Council's closing submissions makes much of the expense in having to obtain legal advice on the content and legal implications of a covenant of this kind, as a further justification for rejecting this relief in the s32 RMA context. However, these arguments could also have been raised in opposition to the covenant requirements in relation to the Gun Club and LSTP, and indeed, in the case of any covenant (which includes a consent notice) required by a resource consent condition.

[144] Moreover, that the requirement for a 'non-complaint' covenant in relation to the Gun Club, or the LSTP was offered in the context of a privately requested plan change process is irrelevant and without merit. Methods (rules) used for implementing relevant policies and objectives must be subject to the s32 analysis regardless of who is proposing them.

[145] Moreover, a resource consent condition offered on an *Augier* basis has long been recognised as a valid resource consent condition.[95] However, no equivalent empowering provision exists in relation to the content (particularly methods) of a district plan.

[146] The majority of grounds for the Council's opposition to the covenant in this context, as set out in its closing submissions, would equally apply to and militate against the existing Proposed Plan covenant requirements were we to accept them, which we are unable to do on this occasion.

[147] Of further relevance, and unlike the WMRR, the Gun Club is not identified in the Proposed Plan as important infrastructure. As stated in the NZDF closing

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94 That is, operating as a shield rather than a sword.

95 Including under s108AA RMA which was inserted, as from 18 October 2017, by s147 Resource Legislation Amendment Act 2017 (2017 No 15).

submissions, it is not logical or appropriate that the plan has provisions providing "unimportant infrastructure", i.e. the Gun Club, with greater protection from reverse sensitivity effects than 'important infrastructure'.[96]

[148] In evidence for the NZDF, Ms Baverstock noted that while not in proximity to a growth area between 2001 and October 2024:[97]

(a) 31 subdivision consents were granted within the 55 dB overlay, authorising 100 additional lots;
(b) 370 building consents were granted within the 55 dB overlay, with a further 17 in the 65 dB overlay, approximately 186 of which were for a noise sensitive activity.

[149] Mr Owen produced aerial photographs illustrating the gradual development of closer subdivision and associated intensification of the land use over a 65-year period such that the locality now has a lifestyle rather than a generally rural character.[98]

[150] The NZDF's experience elsewhere has shown the importance of reacting early and decisively to any and all potential for reverse sensitivity effects. The NZDF considers that it is imperative that any further development in proximity to the WMRR does not create operational issues, or restrict or prevent the NZDF from carrying out its functions or prevent it from achieving its obligations under the Defence Act 1990.

[151] Operational restrictions would diminish force proficiency and would impact on the NZDF's ability to maintain armed forces, as required by the Government and the Defence Act. Moreover, due to land area requirements, it would be economically unfeasible and logistically difficult for this facility to be

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96 NZDF closing submissions at [3.57].
97 K Baverstock rebuttal evidence at [4.3].
98 R Owen EIC, Appendix A. The photographs produced by Mr Owen were dated 1955, 1984 and 2020.

relocated elsewhere.

[152] Mr Owen had referred to the NZDF's experience of reverse sensitivity effects in relation to land adjacent to the Royal New Zealand Air Force Base Auckland in Whenuapai. The issue emerged in declaratory proceedings in the Environment Court where a developer challenged the engine testing activities undertaken at the base in reliance on the NZDF designation, with the apparent aim of forcing changes to existing activities in order to advance the applicant's own development aspirations.

[153] The outcome of that declaration was that the noise of engine testing was held to come within the scope of a noise limit condition imposed on the airport operations undertaken in accordance with the designation, with the result that the engine testing could no longer be carried out. However, without engine maintenance and subsequent testing, aircraft could not fly, and accordingly, the (then) Minister of Defence issued a certificate under s4(2) RMA, on grounds of national security to enable that activity to continue.[99]

[154] Mr Owen also gave evidence of the eight complaints received from a single B&B operator located in the area around the range, regarding the impact of noise and vibration effects from the range on their guests.[100]

[155] While we were told that there is 'strong community opposition' to inclusion of the (mis-named) no-complaints covenant mechanism in the Proposed Plan, we consider it likely that community discussions were persistently misinformed as to the nature and purpose of the covenant, particularly regarding the perception that the covenants were being 'imposed' and the assumptions that the covenants would prevent complaints about unreasonable noise events under s16 RMA.

[156] Even if there is strong community opposition to such a requirement, and

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99 R Owen EIC at [6.3](b)-(f).

100 R Owen EIC at [5.5](b).

we had no evidence of that, the Council is obligated to give effect to objectives and policies in the RPS and to its own objectives and policies regarding the protection of critical infrastructure – and Ms Barker acknowledged this when cross-examined. We see no sound reason why persons who 'come to the nuisance' should retain a right to seek restrictions on the 'nuisance' causing activity.

[157] We consider that the requirement for the reverse sensitivity covenant should be included in the Proposed Plan as requested by the NZDF. That said, the covenant proposed by the NZDF should have minor modifications involving deletion of the provisions preventing the making of complaints, and the bringing of any civil proceedings for nuisance or damage.

[158] We consider that the covenants should be limited to involvement in RMA proceedings. At the hearing, we indicated that the covenant should not include the provision requiring that occupiers of the land must not:

> complain or sue the NZDF for any nuisance caused from noise and vibration effects associated with lawful activities undertaken at the Range.

[159] Our conclusion is informed by the following findings:

(a) we accept that there will be a graduation of residual noise effects of the range experienced outdoors not managed by the attenuation requirements for dwellings, and that, on the evidence of Dr Trevathan, these effects are "not going to be the same everywhere within the 55dB Overlay";[101]

(b) residual noise effects experienced at the perimeter of the 65 dB overlay, would be significant;[102]

(c) the graduation in residual noise exposure means that the Proposed Plan provisions do not mitigate reverse sensitivity effects to an extent

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101 Transcript p 256 at l 23.

102 D Humpheson rebuttal evidence at [5.6]-[5.7].

that implements the "avoid" standard in GRUZ-P7.3 as the Council contends;

(d) a reverse sensitivity covenant will apply only to new arrivals to the area (i.e. to land currently without noise sensitive activities), not to existing residents;

(e) a reverse sensitivity covenant avoids the likelihood and inefficiency of pointless litigation and gives greater certainty to all parties' expectations, a material consideration when carrying out a s32 assessment.

[160] Although there was initial uncertainty regarding how the planning rules (primarily the covenant requirement) would apply to properties that would be bisected by the noise control overlays, particularly the 55 dB overlay, this was clarified during the hearing as applying to subdivision applications for properties bisected by the overlay, but not to new resulting dwellings located outside the overlay. This was one of Mr Larason's key concerns.

[161] There needs to be clear messaging that complaints and/or neighbour communications/questions direct to the NZDF are not prevented, and that NZDF operations at WMRR are still subject to the s16 RMA obligation. The version of the modified reverse sensitivity covenant attached to the NZDF's closing submissions addresses this concern.

[162] Unusual noise events may still occur – there can be no absolute guarantee that they will not. However, they should always be duly investigated and can lead to a review of mitigation measures that do not constrain the NZDF from carrying out legitimate activities that are within the designated purposes at WMRR.

[163] The historical 'unusual event' that occurred during temperature inversion conditions should trigger a review of possible methods/technologies for improving the reliability of determining such conditions, and adopted where practicable.

[164] We consider that this eventuality has been addressed by having the NMCP address methods and processes for mitigating adverse noise effects, including 'unfavourable meteorological conditions'.

Our decision

[165] We direct that the amendments proposed by the NZDF attached to its closing submissions are made to the Proposed Plan, **except** in relation to:

(a) the limited notification requirement for SUB-R26.6; and
(b) the amendment proposed to EI-P6.

– which we find to be out of scope.

[166] The template for the reverse sensitivity covenant as proposed by the NZDF in Appendix 2 of its closing submissions, should be included in the Proposed Plan in the interests of certainty for persons who may come to live in proximity to the range.

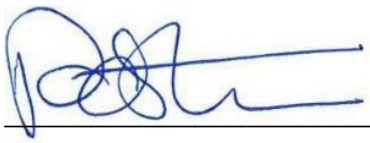
[167] For completeness we have appended:

(a) **Appendix 1**, being the approved amendments to the proposed plan. The proposed limited notification requirement for SUB-R26.6 and the amendment proposed to EI-P6 have been struck through and coloured red;
(b) **Appendix 2**, the approved template for the reverse sensitivity covenant; and
(c) **Appendix 3**, the NMCP Condition.

[168] The Council is directed to amend the Partially Operative Selwyn District Plan as set out in Appendices 1-3.

[169] Costs are reserved, although discouraged. Any application is to be made and served within 15 working days and any reply within a further 10 working days.

For the court



P A Steven
Environment Judge

Appendix 1: Proposed Plan provision amendments

Key

- *Black text – indicates Partially Operative Selwyn District Plan (Appeals Version).*
  - *Changes to this agreed through the noise experts and planning experts joint witness statements post the Environment Court hearing are shown as ~~strike-through~~ and underlined.*
  - *Where the changes are agreed in principle but the specific wording is not agreed, this is shown in green text.*
- *Purple shaded text – indicates changes sought by NZDF*
- *Blue shaded text – indicates changes agreed in the consent documentation dated 14 February 2025*
- *Red shaded text – indicates changes sought that are not approved by this decision.*

~~Energy and Infrastructure~~

~~Effects on Important Infrastructure~~	
~~EI-P6~~	~~*Avoid or manage activities, including sensitive activities, to avoid reverse sensitivity effects on important infrastructure and ensure other* Avoid incompatible activities *that may affect or cause reverse sensitivity effects on do not compromise the* efficient operation, maintenance, repair, replacement, upgrading, renewal, or development of important infrastructure and renewable electricity generation *unless the activity is located:*~~ ~~*1. unless the activity is located:*~~ ~~*a. 1.* at a distance or in a position that does not adversely affect the important infrastructure or renewable electricity generation activity; and~~ ~~*b. 2.* in a position that does not obstruct access to important infrastructure as required for operation, maintenance, repair, replacement, upgrading, renewal, development, or emergency purposes.~~ ~~*2. and including by:*~~ *a. avoiding noise sensitive activities within the Airport 50 dBA Ldn Noise Control Overlay;* *b. managing bird strike risk within the:* *i. 13 km Bird Strike Risk Management Overlay for any:* *1. landfill activity; or* *2. mineral extraction activity* *ii. 8km Bird Strike Risk Management Overlay for any:* *1. earthworks, where the permitted volume for the relevant activity is exceeded;* *2. commercial food processing activity where the permitted area is exceeded;* *3. public and community wastewater treatment and disposal facility;* *4. meat or fish processing facility where the permitted area is exceeded; or* *5. waste and diverted material facility;*

~~Effects on Important Infrastructure~~	
	c. *avoiding noise sensitive activities within the Port Zone 55 dBA LAeq Noise Control Overlay;* d. *managing noise sensitive activities within the Dairy Processing Zone Noise Control Overlay;* e. *avoiding the following sensitive activities within the Dairy Processing Zone Odour Control Overlay:* i. *visitor accommodation where the permitted thresholds are exceeded;* ii. *camping ground facility;* iii. ~~*community facility;*~~ iv. ~~*health care facility;*~~ v. *education facility;* f. *avoiding sensitive activities within the National Grid Yard and identified setbacks from Significant Electricity Distribution Lines and avoiding other activities that compromise the National Grid or Significant Electricity Distribution Lines; and* g. *avoiding noise sensitive activities within the West Melton Rifle Range 65 dBA Ldn Noise Control Overlay.*

NOISE - Rules

NOISE-R7	Noise Sensitive Activity within the West Melton Rifle Range Noise Control Overlays	
West Melton Rifle Range **55 dB L_{dn} Noise Control Overlay**	**Activity status:** PER 1. The establishment of any building for a noise sensitive activity, and any addition or alteration to an existing building which creates a new habitable room or will be occupied by a noise sensitive activity. **Where:** a. The building is designed and constructed to ensure that the following indoor design noise levels do not exceed: i. 35dB L_{dn} inside bedrooms; ii. 40dB L_{dn} inside any other habitable room. b. Where windows need to be closed to achieve the internal noise levels specified in NOISE-R7.1.a., an alternative ventilation system shall be provided which for habitable rooms: i. provides mechanical ventilation to satisfy clause G4 of the New Zealand Building Code; and	**Activity status when compliance not achieved:** ~~2~~X. When compliance with any of NOISE-R7.1.a, ~~or~~ NOISE-R7.1.b, NOISE-R7.1.c or NOISE-R7.2 is not achieved: ~~DIS~~ **RDIS** **Matters for discretion:** X. The exercise of discretion in relation to NOISE-R7.X is restricted to the following matters: a. The extent to which the site is predicted to be affected by noise from activities carried out at the West Melton Rifle Range.

NOISE-R7	Noise Sensitive Activity within the West Melton Rifle Range Noise Control Overlays	
	ii. is adjustable by the occupant to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour; and iii. provides relief for equivalent volumes of spill air; and iv. provides cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18°C and 25°C; and v. does not generate more than 35 dB LAeq(30s) when measured 1m way from any grille or diffuser; and c. Additionally, for the establishment of any building for a new noise sensitive activity (other than a minor residential unit): i. a restrictive reverse sensitivity covenant shall be secured on the record of title which protects the West Melton Rifle Range from reverse sensitivity effects. 2. The change in use of an existing building to a different or new noise sensitive activity. **Where:** a. A restrictive reverse sensitivity covenant is secured on the record of title which protects the West Melton Rifle Range from reverse sensitivity effects.	b. <u>The extent to which any noise from activities carried out at the West Melton Rifle Range will affect habitable rooms and outdoor living space.</u> c. <u>The extent to which noise sensitive activities will give rise to reverse sensitivity effects in relation to activities at the West Melton Rifle Range.</u> d. <u>The extent of environmental effects as a result of any noise mitigation measures.</u> **Notification:** 2X. Any application arising from NOISE-R7.X shall not be subject to public notification and shall be limited notified to the New Zealand Defence Force <u>unless its written approval is provided.</u>
	Advisory note: 1. In order to comply with NOISE-R7.1.a. for the purpose of sound insulation calculations, the external noise levels for a site shall be determined by the application of the Ldn overlays. The calculations shall be determined by ~~linear interpolation between the contours~~ <u>1 dB increments between the 55 dB Ldn noise control contour and the 65 dB Ldn noise control contour (Refer to Advisory note 3).</u> 2. To demonstrate compliance, a design report (including calculations) prepared by a suitably qualified acoustic engineer shall be submitted to the Council with the application for Building Consent. 3. <u>To assist in assessing the extent to which a site is predicted to be affected by noise from the Range, the West Melton Rifle Range Noise Control Overlay contours are available from Selwyn District Council in 1 dB increments between the 55 dB Ldn noise control contour and the 65 dB Ldn noise control contour.</u>	

NOISE-R7	Noise Sensitive Activity within the West Melton Rifle Range Noise Control Overlays	
	4. In NOISE-R7.1c. and R7.2a. the restrictive reverse sensitivity covenant represents a binding agreement to protect the West Melton Rifle Range from adverse reverse sensitivity effects. The restrictive reverse sensitivity covenant is limited to the noise ~~and vibration effects~~ that could be lawfully generated by the Range's operation. ~~A template reverse sensitivity covenant is available from the Council on request.~~	
West Melton Rifle Range 65 dB L_{dn} Noise Control Overlay	**Activity Status:** NC 3. Any new noise sensitive activity or new building for a noise sensitive activity, and any addition or alteration ~~of a habitable room~~ to an existing building ~~containing a noise sensitive activity~~ which creates a new habitable room or will be occupied by a noise sensitive activity.	**Activity status when compliance not achieved:** N/A

Subdivision – Rules

SUB-R26	Subdivision and Noise	
West Melton 55 dB Ldn Noise Control Overlay	**Activity Status:** CON X. Subdivision within the West Melton 55 dB L_{dn} Noise Control Overlay. This rule does not apply to any subdivision under any of SUB-R13 or SUB-R15. **Where:** a. Prior to the grant of resource consent for a subdivision creating a new site within the West Melton 55 dB L_{dn} Noise Control Overlay, a restrictive reverse sensitivity covenant shall be secured on the record of title which protects the West Melton Rifle Range from reverse sensitivity effects.	
	Advisory note: 1. In SUB-R26.Xa. the restrictive reverse sensitivity covenant represents a binding agreement to protect the West Melton Rifle Range from adverse reverse sensitivity effects. The restrictive reverse sensitivity covenant is limited to the noise ~~and vibration effects~~ that could be lawfully generated by the Range's operation. ~~A template reverse sensitivity covenant is available from the Council on request~~.	

SUB-R26	Subdivision and Noise	
	Activity Status: ~~DIS~~ RDIS 6. Subdivision within the West Melton 55 dB Ldn Noise Control Overlay that does not meet R26Xa above. This rule does not apply to any subdivision under any of SUB-R13 or SUB-R15. **Matters for discretion:** x. The exercise of discretion in relation to SUB-R26.6 is restricted to the following matters: a. The extent to which the site is predicted to be affected by noise from activities carried out at the West Melton Rifle Range. b. The extent to which any noise from activities carried out at the West Melton Rifle Range will affect habitable rooms and outdoor living spaces. c. The extent to which noise sensitive activities will give rise to reverse sensitivity effects in relation to activities at the West Melton Rifle Range. d. The extent of environmental effects as a result of any noise mitigation measures. **Advisory note:** 1. To assist in assessing the extent to which a site is predicted to be affected by noise from the Range, the West Melton Rifle Range Noise Control Overlay contours are available from Selwyn District Council in 1 dB increments between the 55 dB Ldn noise control contour and the 65 dB Ldn noise control contour. ~~**Notification:**~~ ~~6x. Any application arising from SUB-R26.6 shall not be subject to public notification and shall be limited notified to the New Zealand Defence Force unless its written approval is provided.~~	**Activity status when compliance not achieved:** N/A
West Melton 65 dB Ldn Noise Control Overlay	**Activity Status:** NC 8. Subdivision within the West Melton 65 dB Ldn Noise Control Overlay. This rule does not apply to any subdivision under any of SUB-R13 or SUB-R15.	**Activity status when compliance not achieved:** N/A

Appendix 2: Template reverse sensitivity covenant

Form 26

Covenant Instrument to note land covenant

(Section 116(1)(a) & (b) Land Transfer Act 2017)

Covenantor

[*Name of owner of Burdened Land*]

Covenantee

His Majesty The King in right of His Government in New Zealand acting by and through the Chief of Defence Force pursuant to section 25(5) of the Defence Act 1990

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Schedule A *Continue in additional Annexure Schedule, if required*

Purpose of covenant	**Shown**	**Burdened Land (Record of Title)**	**Benefitted Land (Record of Title) or in gross**
Land covenant – no objections covenant	[*legal description of burdened title*]	[*Complete for each lot*]	CB45A/650

Covenant rights and powers (including terms, covenants and conditions)

Delete phrases in [ ] and insert Memorandum number as require; continue in additional Annexure Schedule, if required

The provisions applying to the specified covenants are those set out in in the Annexure Schedule

Annexure Schedule

1. Definitions

In this instrument:

1.1 "Designation" means the designation for Defence Purposes – Military Training Area (designation MDEF-3 West Melton Rifle Range) in the Proposed Selwyn District Plan (or any successor or replacement plan), as may be modified by the Minister of Defence from time to time;

1.2 "Land" means the land described as the Burdened Land in Schedule A of this instrument;

1.3 "NZDF" means the New Zealand Defence Force and other parties permitted by NZDF to use the NZDF Land for the Operations and Activities;

1.4 "NZDF Land" means the land described as the Benefitted Land in Schedule A of this Instrument including the subsoil beneath it and the airspace above it; and

1.5 "Operations and Activities" means any:

1.5.1 existing or future defence operations and activities carried on by the NZDF on the NZDF Land;

1.5.2 operations and activities as may be permitted under the Designation.

2. Covenants

2.1 The Covenantor will not:

2.1.1 make any submission, or initiate or participate in any enforcement action, under the Resource Management Act 1991 (and any

successive or replacement legislation) relating to any lawful noise and vibration effects associated with the Operations and Activities;

2.1.2 oppose on the grounds of noise or vibration effects, the Designation or any roll over, modification or alteration to the Designation;

2.1.3 otherwise bring any application, objection, or proceeding that relates to any lawful noise and vibration effects associated with the Operations and Activities;

2.1.4 aid, abet, counsel or procure any other person or entity to exercise any of the actions restricted in clauses 2.1.1 to 2.1.3 (inclusive) above.

2.2 Despite clause 2.1 above, and for the avoidance of doubt, the Covenantor may initiate or participate in any application, objection, or proceeding pertaining to section 16 of the Resource Management Act 1991 (or the equivalent section in any successive or replacement legislation).

2.3 The Covenantor and its successors in title will only be liable for breaches of the restrictions which occur while they are registered as proprietor of the Burdened Land.

2.4 This covenant shall be binding on all transferees, tenants (to the extent permitted by law), lessees, mortgagees, charge holders and their respective successors in title and assigns of any interest in the Burdened Land.

2.5 If the Covenantor leases, rents, licences or otherwise parts with possession of the Land, it will obtain written confirmation from any lessee, tenant, licensee or occupier that it agrees to be bound by the terms of this instrument as if it were the Covenantor.

3. Remedies

The Covenantor:

3.1 acknowledges and agrees that damages may not be an adequate remedy in the event of a breach by the Covenantor of the Covenants; and

3.2 will indemnify and keep indemnified the Covenantee for any damage or loss the Covenantee suffers as a result of any breach of the Covenants by the Covenantor.

4. Discharge

4.1 NZDF will discharge this Covenant if the NZDF or His Majesty the King is no longer the registered proprietor of the NZDF Land or required or held for the purposes of the Operations and Activities. The NZDF will pay its own legal costs associated with any discharge under this clause 4.1.

4.2 The Covenantor may make submissions to the NZDF for the discharge of this Covenant where the Covenantor believes it can demonstrate the Covenant creates an unreasonable restriction against the Burdened Land, any decision in relation to a request under this clause 4.2 shall be at the sole discretion of the NZDF and His Majesty the King. The Covenantor will pay the NZDF's costs associated with considering any submission made under this clause 4.2.

Appendix 3: NMCP Condition (tracked changes)

MDEF-3: NMCP CONDITION
1. On behalf of the requiring authority, the New Zealand Defence Force (**NZDF**) shall prepare a Noise Management and Communication Plan (**NMCP**), the primary objectives of which are to:
a. identify management and mitigation measures for noise effects associated with training activities at the Range;[1] b. set out roles and responsibilities for noise effects management and implementation of the NMCP;
c. establish processes for engaging with the community and responding to complaints about unreasonable noise from training activities; and d. ensure the Range continues to be used for its designated purpose without the generation of unreasonable levels of noise.
2. The NMCP shall cover all training activities that generate noise at the Range including firearms, detonation, and aircraft activities at the Range.
3. Before finalising the NMCP in accordance with Condition 4 below, the NZDF on behalf of the requiring authority shall: a. make a draft of the NMCP available to the owners and occupiers of land within the West Melton Rifle Range 55 dB Ldn Noise Control Overlay and the West Melton Rifle Range 65 dB Ldn Noise Control Overlay and provide an opportunity for comment; and b. provide a summary of the comments received and any changes made to the draft NMCP in response.
4. The NZDF on behalf of the requiring authority shall provide the proposed NMCP to Council's Executive Director Development and Growth (or equivalent position), no later than 6 months after the designation is included in the district plan pursuant to section 175(2) of the RMA, demonstrating that the NMCP meets the requirements of these conditions. Within 15 working days, the Executive Director Development and Growth may request changes. The NZDF on behalf of the requiring authority shall amend the NMCP where appropriate, noting why the requested changes were or were not adopted.
5. The NMCP may be varied by the NZDF on behalf of the requiring authority as a result of experience in managing noise generating activities at the Range, or at any time the Council's Executive Director Development and Growth may request NZDF on behalf of the requiring authority undertake a review of the NCMP to deal with specific issues which have arisen. Any changes made to the NMCP shall be provided to the Council's Executive Director Development and Growth in accordance with the process in Condition 4 above.

1 Training activities includes activities undertaken to develop, practise and maintain relevant skills, expertise and experience.

6. The NMCP shall cover the following matters:

a. Practices and procedures to be adopted to ensure that noise generated on the Range does not exceed a reasonable level. This will include setting out:

   i. roles and responsibilities for noise effects mitigation and management;

   ii. methods and processes for mitigating adverse noise effects, including when there are unfavourable meteorological conditions; and

   iii. procedures for monitoring noise sources and noise generating activities, including when a new weapon or ammunition are to be used on the Range.

b. How owners and occupiers of land within the West Melton Rifle Range 55 dB Ldn Noise Control Overlay and the West Melton Rifle Range 65 dB Ldn Noise Control Overlay will be given prior notice of forthcoming noisy training activities, including:

   i. a description of how they will be informed;

   ii. the rationale for identifying which training activities require prior notification; and

   iii. the information that will be provided about the training activities.

c. A complaints procedure that includes recording any complaint(s) received by the NZDF specifying actions to be taken following receipt of any complaint(s), and recording any remedial action(s) taken. Records of any complaint(s) shall be made available to the Council on request.

d. The identification of the circumstances in which it would be appropriate to initiate a review of the contents of the NMCP.