
POST ENGAGEMENT PREFERRED OPTION UPDATE REPORT TO DISTRICT PLAN COMMITTEE

DATE: 26 June 2019

TOPIC NAME: Post Engagement Update on Preferred Option for NZDF West Melton Rifle Range

SCOPE DESCRIPTION: Noise and Vibration - NZDF West Melton Rifle Range

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EXECUTIVE SUMMARY

<i>Summary of Preferred Option Endorsed by DPC for Further Engagement:</i>	(i) Option 1 (Objective and policy framework) is agreed to regardless to better recognise strategic infrastructure and the need to manage reverse sensitivity effects; (ii) The Committee agree to pursue Option 4 (No-complaints covenant). Note that if Option 4 is not agreed to then Council will be obligated to pursue Option 3 (Acoustic Attenuation) in order to give effect to the CRPS and NZDF may still decide to pursue their preferred option by way of a submission on the District Plan; (iii) The preferred option will be progressed further with NZDF and stakeholder and landowner engagement will be initiated as part of the District Plan Review process.
<i>Summary of Feedback Received:</i>	The feedback received from landowners was not supportive of the endorsed preferred option (Option 4 - No-complaints covenant).
<i>Recommended Option Post Engagement:</i>	The Preferred Option for the NZDF West Melton Rifle Range of no-complaints covenant (Option 4) previously endorsed by DPC not be progressed and instead that acoustic attenuation (Option 3) be progressed to the 'Drafting and Section 32 Evaluation Phase. In conjunction with this, placing notes on titles (where possible) or LIMS is recommended as a further measure to advise of the provisions that apply.'
<i>DPC Decision:</i>	<i>The Preferred Option for the NZDF West Melton Rifle Range of no-complaints covenant (Option 4) previously endorsed by DPC not be progressed and instead that acoustic attenuation (Option 3) be progressed to the 'Drafting and Section 32 Evaluation Phase. In conjunction with this, placing notes on titles (where possible) or LIMS is recommended as a further measure to advise of the provisions that apply.'</i>



1.0 Introduction

1.1 Overview of Preferred Option Endorsed by DPC

On 5 February 2019 draft provisions were received from New Zealand Defence Force (NZDF) proposing an objective and policies and a no-complaints covenant approach as a method to protect the on-going operation of the West Melton Rifle Range (the Range). NZDF sought that both subdivision and land use provisions apply, including

- Subdivision - any subdivision within the proposed noise control boundary is a restricted discretionary activity if a no-complaints covenant is included on each new title and is otherwise a non-complying activity;
- Land use development - any new dwellings/noise sensitive buildings in the buffer area is permitted if a no-complaints covenant is entered into, otherwise a restricted discretionary activity resource consent is required. Alternatively, if permitted activity status is not feasible, restricted discretionary resource consent would apply.

At the District Plan Committee (the DPC) meeting on 17 April 2019, four options, including that preferred by the NZDF, were considered by the DPC on how to progress possible protection provisions for the Range in the District Plan Review (DPR), which would also then be subject to a public engagement process.

The four options considered were:

Option 1	Objective and policy framework - Include objectives and policies for reverse sensitivity that recognise the importance of the Range
Option 2	New extended designation and associated land use controls - Lodging a Notice of Requirement (NoR) for a buffer designation over land surrounding the Range based on noise contours
Option 3	Restrictions on subdivision and land use within a noise buffer area surrounding the Range. The noise contours would inform the extent of the buffer and rules would be sought which would manage subdivision and land use, and a requirement for acoustic attenuation could form part of the measures. For example, prevent new noise sensitive activities within the Ldn 65d contour and otherwise require acoustic attenuation between the Ldn 55 and 65 contour for new noise-sensitive development.
Option 4 (preferred option of NZDF and recommended by SDC staff)	Restrictions on subdivision and land use within a noise buffer area (within the Ldn 55 contour) surrounding the Range, but requiring a no-complaints covenant instead of acoustic attenuation requirements. No-complaints covenants can be used to restrain incoming activities from complaining about the adverse effects of an existing activity.

The DPC endorsed Option 4 (in combination with Option 1) as its Preferred Option for further development and engagement, including Section 32 and plan drafting.

Option 4 was based around controlling development within an identified noise control boundary based on a NZDF commissioned Malcolm Hunt Associates Ltd (MHA) noise study and modelling. The proposed noise control boundary is based on a Ldn 55 contour line surrounding the Range. The MHA Noise Report also includes a Ldn 65 contour line which is not directly relevant to the Option 4 approach, but could be used as part of Option 3, which is discussed further below. The preliminary noise map showing both contours, and the noise control boundary map based on the Ldn 55 contour is attached as **Appendix 1**.

What the proposed rules of Option 4 mean in effect is that any future subdivision or land use development for a noise sensitive activity within the proposed noise control boundary (i.e. Ldn 55 contour) would require a covenant to be registered on the title of the property waiving rights of complaint about the Range in relation to noise and vibration. The covenant would be entered into between NZDF and the property owner.

No District Plan mechanism is proposed to protect the Range from complaints from owners and occupiers of existing development in the area (i.e. the provisions cannot be applied retrospectively) and would only apply to new building development or new additions/alterations to existing buildings.

Option 4 was subject to public engagement with those land owners directly affected by the proposed provisions within the Ldn 55 noise contour. The feedback received is summarised in the Section 2 below.

Overall, the direction of this report in light of the land owner feedback, is that the recommended Option 4 not be carried forward and that instead Option 3 be endorsed. Option 3 retains the use of the Ldn 55 noise contour as identified in **Appendix 1** (subject to any refinement following acoustic peer review of the noise report), however rather than using a 'no complaints' covenant there would likely be a two tiered approach to protecting the Range including:

- Avoiding new noise sensitive activities within the Ldn 65 contour and;
- Requirement of acoustic attenuation for new noise-sensitive developments between the Ldn 55 and 65 contours¹.

2.0 Summary of Feedback Received

A list of landowners whose property lies within the proposed noise control boundary was generated from Council's database and letters were sent to all of these land owners and identified stakeholders. A copy of the Council letter dated 7 May 2019 is attached as **Appendix 2**.

2.1 Landowner Feedback

The landowner feedback was extensive. Approximately 200 letters were sent and approximately 80 individual responses were received, with almost all in opposition. Only one response expressed unconditional support. Overall, most appreciate the need for the Range and recognise its importance

¹ The Ldn 55 contour represents a threshold of annoyance above which land use planning restrictions are considered warranted. The Ldn 65 contour is a threshold beyond which is generally found to be unacceptable for residential and other sensitive land uses.

and value to the community, but consider protection for both NZDF and landowners is not best achieved by the proposed no-complaints covenant approach.

A summary of the feedback is outlined below, including:

- The key issues with the endorsed preferred option of a no-complaints covenant;
- Other matters raised;
- The key issues with the Council process;
- Alternative options (the land owners were requested to consider alternatives to the endorsed preferred option in their feedback).

The key issues with the proposed no complaints covenant option identified in the feedback include:

1. Concern about the ability for NZDF to escalate and intensify activity following a covenant being entered into and a lack of transparency - Need to understand what NZDF are legally allowed to do now and what their operational thresholds are; what does the designation provide for and any conditions; requests to see the Range Standing Orders (RSO's) to understand what the current operational parameters are and how these are proposed to change. Can't sign away rights when no limits to noise and vibration are agreed beforehand. NZDF not divulging their future plans - question why are they seeking this approach unless they are expecting complaints.
2. Unfair and unjust - Heavy-handed approach; restricting freedom of speech and right to complaint; blackmail - covenant or consent; need ability to complain if the Range exceeds current operational parameters; what will protect landowners against unreasonable activities (i.e. question if public notices are to continue); NZDF no longer accountable to land owners once covenant in place; no ability to discuss and address issues if and when they arise; deteriorating relationship between NZDF and community.
3. Reduced property values and compensation required.
4. Costs to landowners - Not fair for residents to pay - NZDF and Selwyn District Council (SDC) should pay as they benefit.
5. Unnecessary and illogical - Trying to fix a problem that doesn't exist; insufficient justification for the need for the provisions and costs; another layer of unnecessary bureaucracy.
6. Insurance implications - If damage does occur, how is insurance affected?
7. Question reliability of noise information and boundaries - Some mentioned that township should also be included for consistency and in some instances township closer than the properties identified; noise affected by wind; some properties marginally affected and are seeking to be excluded.
8. Not clear if covenant explicit to noise and vibration only.
9. Practical considerations - Not clear how it will work in practice for existing land owners - on LIM report at time house put on market or triggered at time of development?; shouldn't apply to all additions/alterations to existing dwellings if the size or potential for occupants is not increasing.
10. No consideration of future-proofing existing homes.

Other matters raised:

1. Temporary Military Training Activities - no mention of this as an option.
2. SDC did not disclose they lease land to NZDF and ECan lease-holders not made aware.
3. Differences between the map in the Preferred Option report and the map attached to the letter.

The key concerns with the process include:

1. Inadequate feedback time - not enough time to consider information, digest, seek advice if needed (legal, planning).
2. No prior warning - letter was the first communications; should have had a public meeting first; needed consultation prior to preferred option.
3. Letter not in plain English and tone discourteous.
4. Not enough information provided.
5. Information inaccurate.
6. Not transparent - trying to rush it through the back door; intentionally misleading.
7. Referring to background report regarding alternatives is not acceptable - does not meet Council's statutory responsibilities; no reference to covenant option in PO report of 22 August 2018.
8. The implications with respect to those affected has not been assessed.
9. Need further community consultation and to reset the timeline - need at least a 1 month consultation period and expect to be directly notified and kept informed of next steps.

Many respondents did not provide alternatives, but of those who did, the comments included:

1. Status quo - Many supported the existing level of operation combined with newspaper ads and direct communications advising of particularly noise and vibration events; there was mention of an existing agreement between NZDF and some landowners that is working well (made approx. 10-12 years ago) that limits noise and certain explosives. Need ongoing clear communication between NZDF and the community; i.e. duration, intensity of exercises.
2. Acoustic insulation - The most supported alternative option.
3. Move the operation to Tekapo where there is more space.
4. Focus on stopping subdivision only near to the Range.
5. Reduce the noise buffer to the inner noise control boundary (65 dB contour line).

2.2 Other Stakeholder Feedback

No stakeholder feedback was received from Environment Canterbury or Mahaanui Kurataio Limited.

2.3 NZDF Comment on the Feedback

NZDF have been provided with a Council summary of the feedback received and have also been provided with some of the more detailed letters received from land owners.

NZDF require further time to consider the issues raised by land owners. However, NZDF has advised that at this point in time they wish to pursue the no-complaints covenant approach, and will provide a letter which can be tabled at the DPC Meeting of 26 June, or alternatively can be provided to land owners after that date if it is not available by 26 June.

3.0 Analysis of Feedback Received

3.1 Issues with No-Complaints Covenant Approach

Intensified future activity and lack of transparency

The primary concern of the land owners is about the level of future activity at the site and the ability for NZDF to escalate and intensify their activity, and a lack of transparency about their future plans. There were requests to better understand the existing designation and the Range Standing Orders (RSO's) operational parameters, and how these are proposed to change.

The Resource Management Act provides for a 'requiring authority', which includes any Minister of the Crown (i.e. Minister of Defence), to designate a site for a public work or project. Once designated the requiring authority responsible for the designation may do anything that is in accordance with the designation². The Range is designated in the Operative Selwyn District Plan for 'Defence Purposes - Military Training Area' and no conditions are attached to the designation³. The designation has been in effect, without conditions, since at least 1985 as it formed part of the Operative Paparua Plan. The designation was 'rolled over' into the current plan in the last district plan review (early 2000s).

Before notifying a Proposed District Plan, a Council must invite all requiring authorities with an existing designation in the district plan to advise whether they want to have the existing designation 'rolled over' into the proposed plan or not. The requiring authority can elect to do so with or without modifying the purpose of the designation or any limits or conditions. It is understood that NZDF will be seeking to 'roll over' their existing designation, however it is not clear at this stage whether they will be seeking any modifications. This process will present an opportunity for the requiring authority to consider if any modifications to the designation or any limits or conditions are required, such as noise and vibration limits. Currently any issues with noise and vibration are dealt with through direct engagement with NZDF or SDC Compliance and Monitoring.

The RSO's are self-imposed by NZDF, however are not legally binding. The RSO's address the timing and frequency of operations, ammunition type and advertising. NZDF are not proposing any changes to the

² Recourse could be had to sections 16 and 17 of the Resource Management Act which outline a duty to avoid unreasonable noise and to avoid, remedy, or mitigate adverse effects respectively. However for a designation as broad as 'Defence Purposes - Military Training Area', with no conditions, there may be a high threshold on effects to enable the use of Sections 16 and 17.

³ Designation DE3 in the Operative Selwyn District Plan.

RSO's at this time, but note that they can be amended if and when required to reflect operational changes.

It is acknowledged that there is uncertainty about the future scale and character of operations at the range, which is of concern to landowners.

Unfair and Unjust

A further theme of the feedback was that the approach is heavy-handed and unjust in restricting the right to complain. Others also considered there was not sufficient justification for the provisions, and that it introduces another layer of unnecessary bureaucracy.

The Council sought legal advice at the Preferred Options stage about the legality of the approach and received advice that the approach was legal. It is also noted that such an approach is employed in other District Plans. However it can also be seen that without any clear indication of future operational parameters of activity, that the removal of the right of complaint is also leaving land owners without certainty.

In terms of justification for the provisions, a key factor is that the Range is identified as strategic infrastructure in the Canterbury Regional Policy Statement (CRPS) and there is clear policy direction requiring that new development does not affect the efficient operation, use and development of strategic infrastructure. Council is therefore obligated to better recognise and provide for the Range in the Proposed District Plan. The existing provisions are considered insufficient and therefore the Council needs to implement one of the options identified (or any viable identified alternative), including strengthening the objectives and policies. At the Preferred Option report stage the recommendation between Option 3 (Acoustic Attenuation) and Option 4 (No-complaints Covenant) was finely balanced, and there is now the opportunity to revisit that earlier recommendation taking the feedback and any further information into account.

Reduced property values and compensation

Reduced property values was raised in feedback as a possible consequence of a no-complaints covenant approach and this was noted in the Preferred Options report. Likewise, a requirement for acoustic attenuation, as Option 3 would require, could also result in actual or perceived reduced property values. However this is a subjective matter, and impacts on property values are not a direct effect considered under the Resource Management Act. It is also of note that the Range is likely to pre-date most dwellings in the area.

Costs to landowners

Many considered it is not fair for residents to pay and that NZDF and/or SDC should pay as they benefit.

The legal costs of compliance to land owners was intended to be reduced by preparing a standard covenant template, however it is acknowledged that legal costs would still exist in order to register the covenant on the title, as well as potential consent costs. The alternative option of acoustic attenuation could also result in land owner design and construction costs, acoustic reporting costs, and potential consent costs.

The costs are difficult to quantify, but for a template no-complaint covenant they are not expected to be significant, particularly within the context of subdivision and development. Costs in relation to acoustic attenuation need to be considered taking into account existing Building Code requirements.

Lack of accountability

Many commented that once a covenant is in place NZDF are no longer accountable to land owners and there is no ability to discuss and address issues if and when they arise, which will result in a deteriorating relationship between NZDF and the community. We would expect that NZDF would maintain an ongoing relationship and communication with the community as required, i.e. informing of the duration and intensity of exercises via newspaper ads, and have requested that this matter is addressed in their letter.

Insurance implications

There was also feedback about how insurance is affected if damage does occur. This may be a valid consideration for land owners, however this is a separate property matter and not a RMA matter for consideration as part of this process.

Reliability of noise information and boundaries

The position of the proposed noise control boundary has been based on an NZDF commissioned acoustic report prepared by MHA. The proposed noise control boundary has been positioned to align with the Ldn 55 noise contour identified in the acoustic report, which is a “threshold” of annoyance above which the effects could be considered significant and warrant land use planning restrictions. To date NZDF have indicated that this boundary has not been absolutely confirmed, but provides a sound starting point and may be subject to refinement.

It has always been the intention that Council would seek peer review of this acoustic report and any updated information received from NZDF by our acoustic consultants to ensure that the position of the noise control boundary is reasonably justified. It is recognised that opinion between experts may differ and there are variables that need to be taken into account, hence the need for peer review. The peer review has not occurred as some certainty about what direction DPC wanted to head down post engagement was preferred first.

There is also an opportunity to further revise the line to exclude some marginally affected properties. For example, if a non-buildable corner of a property is affected it makes little sense to be included in the noise control boundary. Any refinements to the noise control boundary will be supported by expert acoustic input (noting that regardless of the whether a no-complaints covenant or acoustic attenuation is pursued, a noise control boundary or boundaries⁴ needs to be identified to set a boundary beyond which noise and vibration is at an acceptable level and reverse sensitivity effects do not need to be managed).

Parameters of the covenant

⁴ If acoustic attenuation is pursued it may be more appropriate to avoid development completely within the Ldn 65 contour and require attenuation within the Ldn 55 contour.

Some commented that it is not clear if such a covenant would be explicit to noise and vibration only. It is the intention that any such covenant would be restricted to complaints about noise and vibration only as these are the two key environmental effects as a result of the Range operations.

Practical considerations

Some commented that it is not clear how a covenant will work in practice for existing land owners. The intention is for a covenant to be triggered at the time of any proposed subdivision or new land use development, including new additions and alterations to existing buildings. Matters such as whether or not there is a LIM notice and other details such as whether all additions/alterations are captured in detail that would need to be worked through further.

Existing homes not addressed

The proposed provisions would apply to new development only and new additions and alterations to existing dwellings, and the intention is that the requirement for a covenant would be triggered by rule requirements in the District Plan and a subsequent consent process. Consideration of future-proofing existing homes is not possible as Council has no power to retrospectively require existing home owners who are not proposing any new development to comply with the proposed requirements.

3.2 Other Matters

Temporary Military Training Activities

There was no mention of Temporary Military Training Activities (TMTA) provisions as an option in the preferred options report for the West Melton Rifle Range as the TMTA provisions are intended to apply to TMTA activities in the District outside of the NZDF designated sites. TMTA is being dealt with as part of the Noise and Temporary Activities Chapters and NZDF are seeking relatively minor amendments to the existing TMTA provisions.

Map differences

Two maps were provided by NZDF - a map which was included in the preferred option report showing a Ldn 65 Inner Control Boundary and a Ldn 55 Outer Control Boundary, and a subsequent map showing the 'noise control boundary' based on the Ldn 55 Outer Control Boundary only. The intention of the second map was to produce a map for the purposes of stakeholder engagement in association with the no-complaints covenant option, which shows a 'noise control boundary' line consistent with the outer Ldn 55 contour. The second map was produced with the intention that it be simpler and easier to understand for the purposes of engagement than the first map which has additional detail pertinent to the acoustic attenuation option which we considered could have been confusing. The position of the noise control boundary/contours has always intended to be subject to further refinement based on expert acoustic advice.

3.3 Process

Much of the feedback was critical about the process the Council has used to communicate about the preferred option and seek feedback.

The Preferred Option Report of 17 April 2019 noted that no stakeholder engagement has been undertaken until such time as the preferred option is endorsed. The Committee endorsed that the preferred option be progressed further with NZDF, including stakeholder and landowner engagement. This is the standard process that Council has followed to date as part of the District Plan Review - the preliminary background assessments are undertaken, the options narrowed, and a preferred option identified in an effort to make engagement more targeted and efficient. The preferred option is not concrete. The engagement provides the opportunity for feedback and based on that feedback there is the ability for Council to reconsider its approach.

The Council letter sent to landowners on 7 May 2019 intended to provide an overview of the proposed option, the reasons why it is proposed, answers to common questions, and to seek an understanding of what alternative options were supported by land owners if the preferred option wasn't supported. The link to the preferred option report was also provided to provide some context and to explain the alternatives considered. The letter also offered a phone number and email address should there be any further information required or should anyone wish to discuss the matter in further detail. Staff responded to phone calls and correspondence received.

The intention was to provide 10 working days for a response, however it is acknowledged that in reality this was less due to mail delivery delays. In hindsight a longer time period should have been provided, however staff were still accepting feedback and corresponding with land owners after the feedback due date specified in the letter.

The letter was the first communication with land owners as it was considered the best first step in order to make contact with a large number of people to outline the matter and seek feedback. A public meeting was not considered the best approach at the outset to disseminate initial information and understand the community's views on the preferred option and possible alternatives.

Care was taken to word the letter in Plain English and explain planning terms. All of the information contained within the letter is considered accurate and transparent and there is absolutely no intention to mislead in any way.

The implications with respect to those affected has been assessed and will continue to be assessed, and is informed by this feedback.

It is also recognised that further community consultation is required and that the community need to be informed of the next steps. Further communications will be scheduled in line with the Summary Communication Plan.

Feedback noted some land owners were not notified, including ECan lease holders. The landowner list was generated based on SDC's database and every effort was made to correspond with land owners and leaser holders within the proposed noise control boundary. Some feedback also inferred that Selwyn District Council is a land owner in the area and leases land to NZDF, however it has been confirmed by SDC Property Staff that SDC does not own land in the area, nor leases land to NZDF.

3.4 Alternative Options

Status Quo

Of the individual responses received, most preferred the status quo based on the existing level of operation combined with newspaper ads and direct communications advising of particularly noise and vibration events. There was also mention of an existing agreement between NZDF and some landowners that is working well (made approx. 10-12 years ago) which limits noise and certain explosives, however it is understood that any such agreement is not legally binding.

However the status quo is not an option. Council is required to protect the Range under the CRPS as it is identified as Significant Infrastructure. The status quo continues to be discounted as an option.

Acoustic Attenuation

Acoustic insulation was the most popular alternative option identified.

A letter dated 6 June has also been received from Mr Adrian McFedries. A copy of this letter is attached as **Appendix 3**. Mr McFedries comments that based on his discussions with landowners and the feedback he has received, 70+ land owners do not support the no-complaints covenant approach in any way. The letter suggests that Options 1 and 3 form the basis of the solution. In particular, he suggests:

- a title note is placed on each title within the zone as “buyer beware” as not all people obtain a LIM pre-purchase;
- the noise report confirms the extent of the buffer zone is correct;
- the Building Code should deal with any attenuation requirements for alterations or new builds and any future subdivision would be covered by the Title note and Building Code;
- a “benchmark activity” definition is developed for the Range.

Other Alternative Options

Other alternative options mentioned included:

- moving the operation to Tekapo where there is more space;
- stopping subdivision only near to the Range, and;
- reducing the noise buffer to the inner noise control boundary affecting less property.

Moving the facility to Tekapo is not a viable option from NZDF’s perspective. They are committed to the West Melton location long-term.

Stopping subdivision near the range does not address land use development and this could potentially still occur on already subdivided and vacant land.

The noise control boundary has been aligned with the Ldn 55 contour as this contour represents a threshold of annoyance above which land use planning restrictions are considered warranted. The Ldn 65 contour is a threshold beyond which is generally found to be unacceptable for residential and other sensitive land uses. As mentioned in the introduction, if the acoustic attenuation option was pursued a two tiered framework could be appropriate - i.e. new development within the Ldn 65 contour to be avoided and acoustic attenuation required between the Ldn 55 and 65 contours.

4.0 Conclusion

NZDF wish to pursue the no-complaints covenant option at this point in time and may provide further information in a subsequent letter.

However in light of the extensive, and negative, feedback from landowners it is recommended to no longer peruse the no-complaints covenant approach as per the previously endorsed Option 4. The key issue for land owners is the lack of certainty about the future activity within the NZDF site and the lack of parameters around development, which does not currently provide land owners with the assurances they are seeking to support waiving their rights of complaint.

As the decision between no-complaints covenants (Option 4) and acoustic attenuation (Option 3) was finely balanced at the Preferred Options Report stage, and acoustic attenuation is the most preferred alternative option identified by land owners, it is now recommended that the Option 3 to control effects through acoustic attenuation should now be pursued. It is also of note that the approach of requiring acoustic attenuation within an identified noise contour is one that Council is pursuing in association with other strategic infrastructure (e.g. Inland Ports and Christchurch Internal Airport) and other existing developments (e.g. Dairy Processing Management Areas). Such an approach for the Range will also provide consistency across the Proposed Plan.

Other matters that will need to be considered or progressed further in accordance with Option 3 include:

- Determining to what degree the Building Code requirements address acoustic insulation to an appropriate level. This matter needs to be explored further, but based on preliminary discussions with our acoustic advisers it is expected that specific District Plan acoustic attenuation rules will be required in addition to the Building Code⁵;
- Placing notes on titles⁶ or LIMS as a further measure to advise of the provisions that apply;
- Peer review of the acoustic report to determine the robustness of the proposed noise contour(s).

NZDF still have the ability to pursue their preferred option of no-complaints covenant by way of a submission on the Plan supported by evidence at a hearing. Likewise, the public has the ability to submit and be involved in the process of confirming the provisions or challenging them further.

⁵ While a “typical modern dwellings” under the Building Code are likely to be appropriately acoustically insulated, there are modern lightweight materials that also comply with the Building Code and are poor acoustically. Also the Building Code does not require mechanical ventilation and relies on the ability to open windows, so to meet indoor noise levels to living/sleeping areas mechanical ventilation will be required which is above and beyond the Building Act. As such there will likely be a need for District Plan provisions to control building design beyond that required in the Building Code.

⁶ This will be difficult to do other than through a subdivision process creating new titles. To put a covenant on existing titles, which may be sold without a LIM, would have to be volunteered by the existing land owner. Outside a subdivision process Selwyn District Council’s powers, with regards to advisory notes, may be limited to LIMs.

5.0 Recommended Option Post Engagement

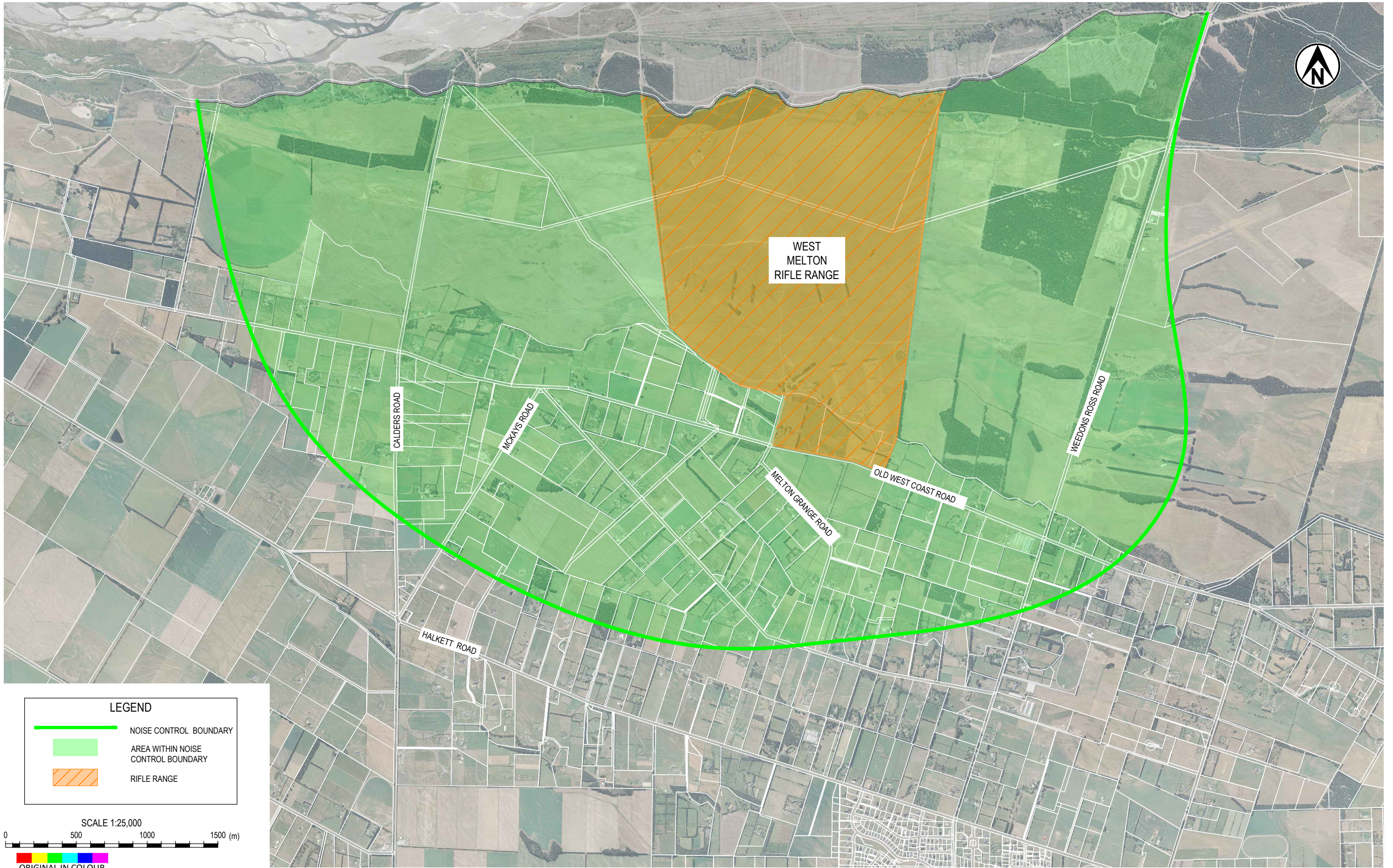
It is recommended that:

- The Preferred Option for the NZDF West Melton Rifle Range of no-complaints covenant (Option 4) previously endorsed by DPC not be progressed and instead that acoustic attenuation (Option 3) be progressed to the 'Drafting and Section 32 Evaluation Phase'. In conjunction with this, placing notes on titles (where possible) or LIMS is recommended as a further measure to advise of the provisions that apply.

Appendix 1 - Noise Contour Map and Noise Control Boundary Map



Figure 1 An example of predicted future Ldn noise contours for WTMA (ref. MHA Report No.2 (above)).



DRAFT FOR CONSULTATION

Appendix 2 - Council Letter

7 May 2019

Name
Address
Address
Address
Address

Dear Sir / Madam

DISTRICT PLAN REVIEW: DRAFT RULES AFFECTING DEVELOPMENT NEAR NZDF WEST MELTON RIFLE RANGE

As part of the current District Plan Review, the Selwyn District Council is proposing new rules affecting development surrounding the New Zealand Defence Force (NZDF) West Melton Rifle Range (the Range). The new rules are proposed to better protect the Range from reverse sensitivity effects.

This letter is to provide you with information about the proposed draft rules and to seek any feedback you may have, and to inform you of the next steps for the District Plan Review.

Background

The NZDF has operated the West Melton Rifle Range at Range Road, West Melton, since the 1940s. It is used primarily as a rifle range, but also for grenade, explosives and general military training. The NZDF has advised it is a nationally important facility and critical to meeting Defence Act 1990 obligations.

As the Range is a noise-generating activity in a rural lifestyle environment it is particularly susceptible to reverse sensitivity effects. Reverse sensitivity is the vulnerability of an established land use (such as the Range) to complaints from a new more sensitive land use (such as new housing development), which can compromise the established land use by restricting when or how it operates.

The Range in the current District Plan

The Range is currently designated in the Selwyn District Plan by the Minister of Defence for Defence Purposes. A designation is a planning technique used to authorise works and activities by a requiring authority (such as a government department, council or network utility operator) on a particular site without the need for resource consent. The NZDF intend to retain the designation and in due course will seek that it be included in the new Proposed District Plan to continue to permit its defence operations within the site.

There are currently policies, but no specific rules, in the Selwyn District Plan to manage reverse sensitivity in relation to new development around the Range.

The Range in the new District Plan

It is proposed that a noise control boundary is established around the Range and that any proposed subdivision or new noise sensitive¹ building development within the defined noise control boundary will require a 'no complaints covenant'. The covenant would need to be entered into between the landowner(s) and the NZDF to prevent complaints about noise and vibration from the Range. The covenant would need to be registered on the property title.

In the case of subdivision, the covenant would be addressed as part of the resource consent process (all subdivision requires resource consent in any case). If a covenant is not entered into, it is proposed that a more restrictive resource consent process would apply, and the application would be subject to a greater degree of scrutiny by the Council.

Any new noise sensitive building development, including alterations and additions to existing noise sensitive buildings within the noise control boundary, would be permitted if a no complaints covenant is entered into. If a no complaints covenant is not entered into, a resource consent would be required and the Council would consider matters such as the location of the building platform and the distance from the Range, any proposed mitigation measures such as acoustic insulation of the proposed building, fencing etc, and any consultation undertaken with NZDF and the outcome of that consultation.

A template 'no complaints covenant' is proposed to be developed and included in the Proposed District Plan for landowners to use to ensure consistency and to make it easier for landowners.

Existing buildings within the noise control boundary will not be affected by the proposed changes.

The land within the proposed noise control boundary is based on a preliminary noise study undertaken by noise experts for NZDF and is shown on the attached map.

Answers to most common questions

What is a 'no complaints' covenant?

A 'no complaints' covenant is a legal agreement which prevents the owner of land from complaining or taking action about an activity, such as complaining to the Council about an activity and seeking that the Council take action under the Resource Management Act 1991 to stop an activity or the way it operates.

In the case of the Range, the covenant would be formed between the landowner and NZDF, and then registered on the land owner's property title. Once registered on the title, the covenant would restrict the current owner and future owners from complaining about noise and vibration effects arising from NZDF activities on or over the Range.

What are the costs to landowners?

There would be legal costs involved in entering into a no complaints covenant with NZDF. A landowner would need to engage a legal professional to deal with the covenant registering process. However, it is proposed that a covenant template be developed and included within the Proposed District Plan to ensure the covenant is consistent and as effective as possible, which will lessen costs for landowners.

There are also resource consent costs in the case of subdivision (which would be incurred in any case as all subdivision requires consent) and possibly land use development, as resource consent is required for noise sensitive developments if a no complaints covenant is not entered into.

Why is the Council proposing these changes?

The NZDF presented other potential options for addressing reverse sensitivity effects to the Council, including extending their existing designation over private land and requiring noise insulation with respect to new residential development. However, on balance, both NZDF and the Council consider the proposed no complaints covenant approach to be the most effective and efficient option to manage reverse sensitivity effects. Key reasons for the proposed approach include:

- The Range is defined as strategic infrastructure in the Canterbury Regional Policy Statement and there is clear policy direction requiring that new development does not affect the efficient operation, use and development of strategic infrastructure;
- While a new approach for Selwyn District Council, a no complaints covenant is a planning mechanism that is used by other councils;
- There is still land development potential around the Range which means there is also potential for subsequent complaints;
- While the history of complaints against the Range is relatively limited to date, this could change with new development in the area and new residents with a different or higher expectation about rural amenity, or who may be unaware of the proximity and operation of the Range;
- Acoustic insulation assists with managing indoor noise but not outdoor noise and is not as effective at addressing reverse sensitivity;
- The Council can rely on the existence of covenants to exercise its discretion not to undertake enforcement action if a party complains to the Council.

You can find more information on the draft changes in the endorsed preferred option report *Noise and Vibration: NZDF West Melton Rifle Range*, developed as part of the current District Plan Review, which is available on the Council's website at www.selwyn.govt.nz/dprsi.

Your feedback

To give us your feedback or if you have any questions please contact the District Plan Review Team. The District Plan Review Team can be contacted by phone on 347 1856 or email districtplanreview@selwyn.govt.nz The deadline for providing us with your feedback on the proposed approach is **20 May 2019**.

It is important to note that as the Range is identified as strategic infrastructure, the Council is obligated to ensure reverse sensitivity effects are appropriately managed and will be pursuing the preferred option in the first instance. Therefore, if you do not support the proposed no complaints covenant approach, please state the reasons why and identify an alternative option outlined in the preferred option report you consider to be the most appropriate.

¹ 'Noise sensitive' will be defined in the Proposed District Plan and will include residential development and possibly other noise sensitive activities like education facilities.

Next steps for the District Plan Review

Once we receive feedback, the Council will consider it and will work on further developing and refining the provisions for the Proposed District Plan. It's expected the Proposed District Plan will be notified for formal public consultation in early 2020. At that stage you will have an opportunity to make a formal submission on the proposed changes.

The longer timeframe for the notification of the Proposed Plan is due to the local government elections taking place at the end of 2019 and ensuring that the newly-elected Council endorses the Proposed District Plan before it is notified for public consultation.

Anyone submitting their feedback on the Proposed District Plan will also have an opportunity to speak to their submission at a formal hearing. Following the hearing, the Hearing Panel will make recommendations on proposed amendments and the Council will then make final decisions.

We expect the new District Plan to become largely operative by March 2022, subject to any Environment Court appeals.

Yours sincerely

Jesse Burgess
Planning Manager
SELWYN DISTRICT COUNCIL

Appendix 3 - Letter from Adrian McFedries

June 6 2019

West Melton Rifle Range

Jess Burgess
Selwyn District Council
c/o Jesse email.

Hi Jesse

As discussed, I have provided a summary overview of what I believe may be a path forward to explore that balances the needs of all stakeholders with regards to the West Melton Rifle Range (Range). The details are based on having received feedback and/or spoken with 70+ residents in the impacted area surrounding the Range.

Process Summary

- There has been significant angst with landowners created by the short window for landowner feedback and grossly misleading cover letter – net result misinformed
- I sought to rectify this with a letterbox drop of my letter that has to an extent driven more existing owners into feedback who previously did not think it applied
- I now know from 70+ landowners Option 4 is not supported in any way
- The Option 4 impact on existing owner property values is unacceptable
- The approach has left a flavour of why mislead, what are NZDF and council intentions which can all be addressed with clearer and more open communication

Practical Reality – Conclusions from my conversations/feedback with landowners

- There is clear recognition that the Range has been in existence for 70+ years and people moved in knowing this and it should continue operations
- Recent times have shown very low levels of complaint which proves the (RSO's) Range Standing Orders self imposed by Range and not legally binding (timing, frequency, ammunition type and advertising) are working for the current levels of activity
- It is recognised the status quo of no protection for the Range can not remain

We believe a common sense approach to resolving this could be along the following lines

Process Fixes

- An updated communication needs to go to all landowners in the buffer zone to rectify the misleading nature of the original letter. In particular reinforcing feedback is still possible and that existing landowners may have property value impacts in the future under Option 4.

- There is critical information missing that will help make informed decision:
 - 1- Details of Malcolm Hunt Associates Noise report to be shared confirming basis of zoned area and what military activity this was based on
 - 2- Definition of the current usage/noise levels/frequency/activity type by the Range so we can define the status quo "Benchmark Activity"
 - 3- Confirmation any material changes to the "Benchmark Activity" in the future (frequency, noise levels/activity) are being proposed or reasonably predictable
 - 4- Confirmation if the RSO's will remain under any new option or will be relaxed

Solutions

With any solution we need to respect and balance the needs of NZDF at the Range and the existing AND future land owners. The solution below seeks to separate existing and future landowners to an extent.

Overall the solution could be as follows:

- Option 1 and Option 3 form the backbone of the solution
- A "Title note" is placed on each title within the zone as a sort of "Buyer Beware" as not all people look/purchase LIM pre any property deals so this protects for future purchases being fully informed (a Benchmark Activity Report) reference could also be included so everyone is aware the Benchmark Activity exists and is supported by locals
- The Noise Report confirms the size of the buffer zone is correct
- The Building Code and related regulation can and should sufficiently deal with any internal noise attenuation requirements for "alterations" or new builds.
- A "Benchmark Activity" definition +/- 10% would sufficiently give confidence of existing landowners that any solution is at a level the majority deem acceptable now
- Any future land subdivision would be covered by the Title Note and Building Code.

Existing Landowners

- 1- There is general acceptance with the "Benchmark Activity" at the Range to the extent if this is clarified and defined any proposal that seeks to ensure it remains materially around these levels support will be pretty straight forward from landowners
- 2- Existing landowners can continue to make house alterations within Building Code regulations and/or sell their properties to new owners on a "Buyer Beware" basis but in a fashion that means any alterations/extensions new owners are thinking are needed are not penalised by the Option 4... which may in fact result in a lower sale price or no sale.

Future Landowners

- 1- This is the easier group as it relates to subdivision of land as new houses and property would all operate within Building Code regulations operated by council.

It is acknowledged, Option 1 and Option 3 do not mitigate a complaint about Range activity as it relates to outside noise in a rural area. A landowner does also have a higher expectation of higher

outdoor use than in a residential section in town. However, the combination of a Note on Title and Benchmark Activity being defined along with RSO's being clarified that the vast majority of existing owners are happy with the status quo. The proof is in the low to non-existent complaints in the past few years. For new owners/subdivision of land they are informed on the way in so simply have to live with the consequence of making an informed decision prior to buying.

We appreciate there is detail to be fleshed out, regulatory and District Plan requirements to all fit within but the purpose of this letter is to provide constructive perspective and a sensible solution that is workable.

It is acknowledged NZDF may continue to focus on Option 4 as may council but this is going to become a much wider and more public issue if we do as the opposition to it is profound so my personal preference is to frame up some options we know would be very straight forward to get the landowner support whilst still protecting the NZDF requirements.

As conveyed, to be professional and constructive moving forward I have set up a feedback and communication opportunity at rangefeedback@gmail.com which has 70+ people engaged. The letterbox drops covered around 150 so there are some gaps to fill but sentiment and a path forward have become very clear.

I welcome the opportunity to sit and discuss this to the extent it is valued and happy to meet with NZDF or its representatives to understand their concerns/views on this approach.

Either way, I'd appreciate being kept in the loop via email or mobile.

Thanks for being approachable and having a practical chat – appreciate it.

Regards



Adrian McFedries

238 Bells Road, West Melton

021 900 340

agm@kpx.co.nz

DW Noise and vibration (NZDF West Melton Rifle Range) – communications and engagement summary plan (post engagement report)

Key messages

(as of 18 June 2019)

Background

- As part of the Selwyn District Plan Review, objectives, policies and rules in the current District Plan for noise and vibration are being reviewed.
- Last year the Council endorsed draft changes to how noise and vibration would be managed in the Proposed District Plan. There were, however, some areas of noise related rules that required some further work, including the West Melton Rifle Range.
- The New Zealand Defence Force (NZDF) has operated the West Melton Rifle Range since the 1940s. The range is used primarily as a rifle range, but also for grenade, explosives and general military training.
- NZDF have advised the Council that the Range is a nationally important facility and critical to meet Defence Act 1990 obligations. As the range is a noise generating activity in a rural lifestyle environment, it is particularly susceptible to reverse sensitivity effects.

Current District Plan

- The Range is currently protected by way of designation and there are no conditions attached to the designation. (A designation is an area of land identified in a district plan that is intended to be used for a particular work or project (such as a road or school) by a requiring authority).
- The underlying zone of the Range is Rural (Inner Plains).
- NZDF informed the Council they would be investigating seeking greater statutory protection for the Range and its activities in the Proposed District Plan. This is mainly due to the fact that there are no rules in place to manage reverse sensitivity effects that may arise as a result of future development in the vicinity of the Range.
- There are different ways of protecting strategic or significant infrastructure from reverse sensitivity effects, for example by having setbacks or applying noise control boundaries based on noise contours around the infrastructure.
- NZDF are seeking a no-complaints covenant approach to protect their infrastructure from reverse sensitivity effects. A no-complaints covenant is usually used to restrain incoming activities from complaining about the adverse effects of an existing activity.

About endorsed preferred option

- The Council endorsed the following key draft change for the new District Plan for further development and consultation with affected landowners:
 - Introducing a no-complaints covenant which would mean that if an owner of land in the buffer area proposes to subdivide land or build a new dwelling they would need to have a covenant registered on the title of the property, waiving rights of complaints about noise from the Range. The covenant would be entered into between the NZDF and the property owner. The buffer area follows a Ldn 55 noise contour developed by NZDF and is shown on the map in the Preferred Option Report.
 - The no-complaint covenant wouldn’t apply to owners and occupiers of existing development in the area who would want to complain about the Range, ie new provisions cannot be applied retrospectively. The covenant would only apply to new building development or new additions/alterations to existing buildings.

Recommended changes following consultation on endorsed preferred option

- As a result of consultation and further analysis, it’s recommended not to progress with the previously endorsed preferred option but instead progress with preferred option 3 ie properties within a noise control boundary area (aligned with the Ldn 55 noise contour) would require certain acoustic insulation when developing new building or making changes to existing buildings. In addition, this could include the avoidance of development within the Ldn 65 noise contour, which is closer to the Range.

Audiences¹

Internal	Partners	Key stakeholders ²	Landowners /occupiers ³	General public
DPC	ECan		Landowners in the proposed buffer area	Selwyn ratepayers
	Te Ngāi Tuāhuriri Rūnanga (represented by Mahaanui Kurataiao)		New Zealand Defence Force (also stakeholder)	News media
	Te Taumutu Rūnanga (represented by Mahaanui Kurataiao)			Wider public

Legend	High level of interest/ High level of influence (“Manage closely”)	High level of interest/ Low level of influence (“Keep informed”)	Low level of interest/ high level of influence (“Keep satisfied”)	Low level of interest/ Low level of influence (“Watch only”)

¹ “...Differing levels and forms of engagement may be required during the varying phases of consideration and decision-making on an issue, and for different community groups or stakeholders. The Council will review the appropriateness and effectiveness of the engagement strategy and methods as the process proceeds.” [Significance and Engagement Policy: Adopted 26 November 2014; p.6]

² Key stakeholders “...will advocate for or against decisions that will need to be made...” and “For the District Plan Review, stakeholders include any party that can influence decisions or be influenced by decisions made on policies or rules.” (DPR Engagement Framework)

³ Landowners are “the individuals and businesses that could be affected by the proposed changes in the District Plan.” (District Plan Review Community Engagement Implementation Plan; p.6)

Engagement until early 2020

(from the time initial public consultation period finished and Proposed District Plan is notified)

Review phases	Internal	ECan	Rūnanga	Key stakeholders	Landowners/occupiers	General public
Preferred option consultation						
Post engagement report update						
Draft provisions consultation						
Proposed District Plan formal public consultation						

2019 – 2020 communications and engagement approach

Audiences	May-June 2019 (post PO report’s endorsement by DPC)	July 2019 (engagement following endorsement of post engagement report)	August 2019 (engagement on detailed draft provisions)	Early 2020 (Proposed District Plan gets notified for formal public consultation)
ECan	Direct contact via email	Direct contact via email	Direct contact via email	
Rūnanga	Direct contact via email	Direct contact via email	Direct contact via email	
Key stakeholders	Direct contact via email, phone and face to face meetings	Direct contact via email/ phone	Direct contact via email/ phone	
Landowners/occupiers	Direct contact via email/letter and phone	Direct contact via letter/email		
General public		Post engagement report published on Council website		
DPC		DPC workshop		