



**PUBLIC AGENDA**

**FOR THE MEETING OF**

**DISTRICT PLAN COMMITTEE**

**TO BE HELD AT THE**

**SELWYN DISTRICT COUNCIL OFFICES,**  
**COUNCIL CHAMBERS**

**ON WEDNESDAY 17 April 2019**

**COMMENCING AT 9:00AM**

## **Committee Members**

### Chair

Environmental Services Manager Tim Harris

### Selwyn District Council

Mayor Sam Broughton

Councillor Mark Alexander

Councillor Jeff Bland

Councillor Debra Hasson

Councillor Murray Lemon

Councillor Malcolm Lyall

Councillor Pat McEvedy

Councillor Grant Miller

Councillor John Morten

Councillor Bob Mugford

Councillor Nicole Reid

Councillor Craig Watson

Chief Executive David Ward

### Te Taumutu Rūnanga

Hirini Matunga

### Environment Canterbury

Councillor Peter Skelton

### Te Ngāi Tūāhuriri Rūnanga

Tania Wati

### Project Sponsor

Jesse Burgess  
Phone 347-2773

### Project Lead

Justine Ashley  
Phone 027 285 9458

## **Agenda Items**

Item	Page	Type of Briefing	Presenter(s)
<b>Standing Items</b>			
1. Apologies	4	Oral	The Chair
2. Declaration of Interest	4	Oral	
3. Deputations by Appointment	4	Oral	
4. Outstanding Issues Register	4	Written	
5. Confirmation of Minutes	5-9	Written	
<b>Specific Reports</b>			
6. Noise and Vibration – NZDF West Melton Rifle Range <ul style="list-style-type: none"><li>• Preferred Option Report</li><li>• Communications and Engagement Summary Plan</li></ul>	10-24	Written	Vicki Barker (Barker Planning)

## **Standing Items**

### **1. APOLOGIES**

Councillor M Alexander

### **2. DECLARATION OF INTEREST**

Nil.

### **3. DEPUTATIONS BY APPOINTMENT**

Nil.

### **4. OUTSTANDING ISSUES REGISTER**

<b>Subject</b>	<b>Comments</b>	<b>Report Date</b>	<b>Item Resolved or Outstanding</b>
Energy & Infrastructure –Orion Protection Corridors	<ul style="list-style-type: none"> <li>• Clarification on Orion's responsibilities in regards to maintaining vegetation under the lines in the protection corridors.</li> <li>• Clarification if Orion has considered the financial implications of potentially having to purchase land for a protection corridor when constructing new electricity distribution lines.</li> </ul>	27 March 2019	Outstanding

### **5. CONFIRMATION OF MINUTES**

Minutes from the meeting of the District Plan Committee on 27/03/2019



**District Plan Committee meeting  
Held on Wednesday 27 March 2019 at 9.00am  
at Selwyn District Council,  
Rolleston**

**Present:** Councillors M Alexander, M Lemon, D Hasson, N Reid, B Mugford, M Lyall, J Bland, J Morten, Mr P Skelton (Environment Canterbury), Mr D Ward (CEO Selwyn District Council), Mr H Matunga (Te Taumutu Rūnanga) and Mr T Harris (Chair).

**In attendance:** Messrs' J Burgess (Planning Manager), B Rhodes (Strategy & Policy Team Leader), S Hill (Business Relationship Manager), M Washington (Asset Manager), B Wong (Transportation Asset Planner), R Love (Strategy and Policy Planner), B Baird (Strategy and Policy Planner), A Mactier (Strategy and Policy Planner), Mesdames' J Ashley (District Plan Review Project Lead), J Lewes (Strategy and Policy Planner) and T Van der Velde (District Plan Administrator – Note taker).

**Standing Items:**

**1. Apologies**

Mayor S Broughton, Councillors C Watson & P McEvedy and Ms T Wati (Te Ngāi Tūāhuriri Rūnanga) for absence and Councillors M Alexander and G Miller for lateness.

**Moved** – Councillor Alexander / **Seconded** – Councillor Bland

*'That the apologies from Committee members S Broughton, C Watson, P McEvedy and T Wati for absence and M Alexander and G Miller for lateness be received for information.'*

**CARRIED**

**2. Declaration of Interest**

Nil.

**3. Deputations by Appointment**

Nil.

#### 4. Outstanding Issues Register

Subject	Comments	Report Date	Item Resolved or Outstanding
Energy & Infrastructure – Orion Protection Corridors	<ul style="list-style-type: none"> <li>Clarification on Orion's responsibilities in regards to maintaining vegetation under the lines in the protection corridors.</li> <li>Clarification if Orion has considered the financial implications of potentially having to purchase land for a protection corridor when constructing new electricity distribution lines.</li> </ul>	27 March 2019	Outstanding

#### 5. Confirmation of Minutes

Taken as read and accepted.

**Moved** – Councillor Lemon / **Seconded** – Councillor Morten

*'That the Committee accepts the minutes of the 13/03/2019 as being true and correct. '*

**CARRIED**

## 6. Preferred Option Report and Communications and Engagement Summary Plan for Energy and Infrastructure – Orion Protection Corridors

The Chair noted that Council has a significant interest in Orion as a shareholder, however it was considered that the conflict of interest could be managed through the use of independent commissioners on the hearings panel who will be making decisions on the Proposed Plan.

Ms Rykers spoke to her report. As a result of the 5 December 2018 District Plan Committee meeting, the Committee asked that there be further assessment of the land uses under and around the sub-transmission lines and for there to be an assessment to be undertaken of the provisions in the Canterbury Regional Policy Statement (RPS). In addition there has been a legal opinion from Adderley Head as to whether the Council should have protection corridors in the proposed plan. The outcome is there is strong support in the RPS for this particular infrastructure to be protected. The assessment undertaken has been reviewed by Environment Canterbury who have supported what has been done. The recommendation from Adderley Head is that Council should consider putting in protection corridors and adopt the New Zealand Electrical Code of Practice for electrical safe distances and Council should only impose setbacks that are prescribed in the Code unless there is compelling or persuasive evidence from Orion for provisions.

Ms Rykers discussed the compelling reasons to consider adopting the Orion 5m and 10m setbacks for the Proposed District Plan and discussed the reasons as per report.

A Committee member questioned the types of trees being planted and locations of these trees along the corridors highlighting potential impacts the trees might have. An example of an impact addressed was power outages. Ms Rykers replied that there are regulations for managing trees outside the District Plan for transmission and electricity lines and a link to this will be provided in the proposed rules.

A Committee member asked for clarification on Orion's responsibilities in regards to maintaining the vegetation under the lines in the protection corridor. The Chair noted this issue to be included in the outstanding issues register and the project team will provide a verbal report when District Plan Committee next meets.

There was discussion in regards to whether Orion has considered the financial impact to their business model with new power lines and obtaining land for the protection corridors.

The Chair clarified this is a preferred options report and there will be further dialogue with stakeholders on this topic.

**Moved** – Councillor Alexander / **Seconded** – Councillor Mugford

## Recommendation

*“That the Committee:*

- a) Notes the report.*
- b) Endorses the Preferred Option for Orion Protection Corridors for further development and engagement, including Section 32 and plan drafting.*
- c) Notes the summary report.’*

**CARRIED**

### **7. Post Engagement Report and Communications and Engagement Summary Plan for Existing Development Areas, Porters Ski Area, and Tourism**

Mr Baird spoke to his report. The preferred options report for this topic was endorsed late last year. Mr Baird provided a summary of the report to update the Committee on the post engagement addressing Existing Development Areas (EDA's), Porters Ski Area and Tourism.

Letters were sent out to EDA's, Porters Ski Area and relevant Tourism Stakeholders, discussions were held with Grasmere and Porters and meetings were held with affected communities. Feedback was received from landowners and stakeholders.

The main concerns of EDA landowners was over removing provisions - even those that may be redundant as the landowners felt like they may lose their community recognition. There were also concerns of future impacts of removal of provisions. The report concludes these concerns outweigh the benefits of trying to streamline the plan, therefore it is recommended that those provisions are rolled over into the Proposed Plan as a site specific overlay recognising what was there in the past.

Hospitality New Zealand provided feedback on the impact of private rentals on commercial operators. They would like to see short-term visitor accommodation to be treated the same. The preferred option approach is to classify accommodation in definitions with subsequent activities related to that. This is not a critical issue in Selwyn.

Other landowner and stakeholder feedback was generally supportive of the current direction.

In summary the recommendation is to continue with proposed changes with amendments to EDA's.

**Moved** – Councillor Lyall / **Seconded** – Councillor Alexander



## Recommendation

*'That the Committee:*

- a) Notes the report.*
- b) Endorses the Preferred Options for the Existing Development Areas (EDAs), Porters Ski Area, and Tourism that have previously been endorsed by DPC so as to progress to the 'Drafting and Section 32 Evaluation Phase', subject to the following amendments:*
  - Provisions relating to the addition to and replacement of dwellings on existing undersized lots are confirmed to be retained in the rural chapters; and*
  - For rural EDA sites, a site-specific overlay relating to the subdivision of sites and the establishment of a new dwelling, be rolled over from the operative plan and included in the Proposed District Plan.*
- c) Notes the updated summary plan.'*

**CARRIED**

*'The Meeting adjourned at 9.30am, with the District Plan Committee Workshop commencing at 9.40am.'*

## **Specific Report**

### **6. Preferred Option Report and Communications and Engagement Summary Plan for Noise and Vibration – NZDF West Melton Rifle Range**

Author:	Vicki Barker (Consultant Planner –Barker Planning)
Contact:	(03) 347 1810

#### **Purpose**

To brief the Committee on the Preferred Option Report for the ‘Noise and Vibration – NZDF West Melton Rifle Range’ workstream that has arisen from a request by the New Zealand Defence Force (NZDF) to protect the West Melton Rifle Range from reverse sensitivity effects. The Range is currently protected by way of designation but there are no rules in place to manage reverse sensitivity. The report provides an update and recommendation on the preferred option for addressing this issue in the Proposed District Plan.

The attached Communications and Engagement Summary Plan is to inform the Committee of the engagement activities to be undertaken in relation to the ‘Noise and Vibration – NZDF West Melton Rifle Range’ workstream.

#### **Recommendation**

*‘That the Committee:*

- a) “Notes the report”.*
- b) “Endorses the Preferred Option for Noise and Vibration – NZDF West Melton Rifle Range’ for further development and engagement, including Section 32 and plan drafting.”*
- c) “Notes the communications and engagement summary plan.”*

#### **Attachments**

‘Preferred Option Report for ‘Noise and Vibration – NZDF West Melton Rifle Range’

‘NZDF West Melton Rifle Range’– communications and engagement summary plan’

# PREFERRED OPTION REPORT TO DISTRICT PLAN COMMITTEE

**DATE:** 17 April 2019

**TOPIC NAME:** Noise and Vibration

**SCOPE DESCRIPTION:** NZDF West Melton Rifle Range

**TOPIC LEAD:** Justine Ashley

**PREPARED BY:** Vicki Barker

## EXECUTIVE SUMMARY

<i>Issue(s)</i>	<i>To protect the West Melton Rifle Range from reverse sensitivity effects</i>
<i>Preferred Option</i>	<p>(i) Option 1 (Objective and policy framework) is agreed to regardless to better recognise strategic infrastructure and the need to manage reverse sensitivity effects;</p> <p>(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 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;</p> <p>(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.</p>
<i>Recommendation to DPC</i>	<p>That the Committee:</p> <p>a) Notes the report,</p> <p>b) Endorses the Preferred Option for 'Noise and Vibration – NZDF West Melton Rifle Range' for further development and engagement, including Section 32 and plan drafting,</p> <p>c) Notes the communications and engagement Summary Plan.</p>
<i>DPC Decision</i>	



## 1.0 Introduction

### 1.1 Background

The New Zealand Defence Force (NZDF) has operated the West Melton Rifle Range ('the 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. NZDF have advised it 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. The Range is currently protected by way of designation but there are no rules in place to manage reverse sensitivity. NZDF informed Council they would be investigating seeking greater statutory protection for the Range and its activities through the District Plan Review.

In July 2018, the Noise and Vibration Preferred Option Report<sup>1</sup> noted that NZDF would like further discussions with Council about managing reverse sensitivity effects in relation to the Range and their Burnham facility. NZDF are pursuing changes in relation to the Range only and are not seeking any change in planning approach with respect to their Burnham site.

### 1.2 Preliminary Range of Options Proposed by NZDF

In August 2018, NZDF provided a letter to Council setting out four potential options to provide greater statutory protection of the Range, including:

1. Option 1: Objective and policy framework - Include objectives and policies for reverse sensitivity that recognise the importance of the Range
2. 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
3. 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 65dBA Ldn contour and otherwise require acoustic attenuation between the 55 and 65dBA Ldn contour for new noise-sensitive development.
4. Option 4: Restrictions on subdivision and land use within a noise buffer area (within the 55 dBA Ldn 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.

A copy of the NZDF letter setting out these options is attached as **Appendix 1** and the options were also summarised in the Noise Post Engagement Report<sup>2</sup>.

<sup>1</sup> [https://www.selwyn.govt.nz/\\_data/assets/pdf\\_file/0007/282166/Noise-and-Vibration-Endorsed-Preferred-Option-Report.pdf](https://www.selwyn.govt.nz/_data/assets/pdf_file/0007/282166/Noise-and-Vibration-Endorsed-Preferred-Option-Report.pdf)

<sup>2</sup> [https://www.selwyn.govt.nz/\\_data/assets/pdf\\_file/0004/288202/PER-Noise-and-Vibration.pdf](https://www.selwyn.govt.nz/_data/assets/pdf_file/0004/288202/PER-Noise-and-Vibration.pdf)

The Noise Post Engagement Report notes that further information was requested from NZDF in order to progress any changes and that the options have the potential to impact on development and private property owners and targeted landowner engagement will be required. In particular, a map of the preliminary noise contours around the range (i.e. the 'buffer area') was requested to understand the extent of private land beyond the existing designation that would be affected by the options.

NZDF advised in late October 2018 that Option 2 (New extended designation) was not its preferred option at this point in time as the extent of the new designation would be extensive and from a landowner's perspective is likely to be the most intrusive approach (and still remains a default option to NZDF at some later point by way of a NoR process). At that stage NZDF were advised that Option 4 (No-complaints covenants) was not preferred as it is a unique approach for the District and is untested and uncertain, and that Options 1 (Objective and Policy Framework) and 3 (Restrictions on subdivision and land use within a noise overlay area) in combination appeared to be the most feasible for further development.

### 1.3 NZDF Proposed Approach

On 5 February 2019 draft provisions were received from NZDF proposing Options 1 (Objective and Policy Framework) and 4 (No-complaints covenants) in combination. A copy of the draft provisions are attached as **Appendix 2**.

In summary, NZDF are seeking both subdivision and land use provisions:

- Subdivision - any subdivision within the proposed buffer area is a restricted discretionary activity if a no-complaints covenant is included on each new title (10.x.1), and is otherwise a non-complying activity.
- Land use development - any new dwellings/noise sensitive buildings in the buffer area are permitted if a no-complaints covenant is entered into (3.x.1), otherwise a restricted discretionary activity resource consent is required. Alternatively, if permitted activity status is not feasible, NZDF propose restricted discretionary resource consent would be required for land use development.

The proposed buffer area is based on a preliminary Malcolm Hunt Associates Ltd (MHA) noise study and modelling and may be subject to change (although not expected to be substantial). The Range is shown with a red outline on the map below and the buffer area would be all that land between the green Ldn 55 contour line and the range designation boundary (disregard the orange Ldn 65 contour line in relation to the proposed Option 4 approach).



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

What these proposed rules mean in effect is that any future subdivision or land use development for a noise sensitive activity within the 55 dBA Ldn contour would require a covenant to be registered on the title of the property waiving rights of complaint about the Range. 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).

## 2.0 Summary of Issue

### Reverse sensitivity

The key issue is to protect the Range from reverse sensitivity effects that may arise as a result of future subdivision and development in the area.

## 3.0 Statement of Operative District Plan approach

The Range is designated in the Operative District Plan for 'Defence Purposes – Military Training Area' (Rural Volume - Appendix 2 - DE3). The underlying zoning is Rural Inner Plains. There are no conditions attached to the designation.

The site is surrounded by Rural (Inner Plains) and Rural (Outer Plains) zoned land (the Inner/Outer Plains divide is at Calders Rd/Thompsons Rd to the west).

The Rural Volume recognises reverse sensitivity as a particular issue (B.3.4 Quality of the Environment Issues) and the Plan contains a specific policy which seeks to protect existing activities in the Rural zone

from potential reverse sensitivity effects<sup>3</sup>. There is also a policy that provides for the establishment of rural residential activities within the Greater Christchurch area covered by Chapter 6 of the RPS in locations adopted in the SDC Rural Residential Strategy 2014 to reduce the risk of potentially adverse reverse sensitivity effects on the productive function of rural zoned land, strategic infrastructure and on established education and research facilities<sup>4</sup>. The area around the Range is outside the identified West Melton growth areas adopted in the SDC Rural Residential Strategy 2014. Mushroom and intensive farming are among the specific activities mentioned which require protection from reverse sensitivity, however there is no specific mention of reverse sensitivity in relation to the Range or other NZDF facilities. In addition, there is no specific policy about reverse sensitivity in relation to strategic infrastructure.

In terms of subdivision there are also policies which reference reverse sensitivity<sup>5</sup>, and allotments that do not meet the minimum size require restricted discretionary consent where a matter of discretion includes consideration of potential reverse sensitivity effects. There are no assessment matters which specifically reference the Range.

## 4.0 Council's Legal Advice - No-Complaints Covenants

Legal advice has been obtained from Council's legal advisors which addresses: whether no-complaints covenants can and should be included as a rule requirement in a district plan; the form of a no-complaints covenant and whether this should be in an Appendix to the Plan; precedent risks; other options; responsibility and enforcement of a covenant; and the scope and terms of any covenant (i.e. explicit to noise rather than waiving all rights of complaint, submission, appeal or objection). A copy of the legal advice is contained in **Appendix 3**.

In summary, the legal advice received advises:

- (i) It is lawful for Council to include a no-complaints covenant within a District Plan rule (except for a permitted activity rule) and the inclusion of a no-complaints covenant within District Plan rules is an appropriate means of addressing reverse sensitivity effects.
- (ii) Should Council choose to include a no-complaints covenant, a template covenant should be included within the District Plan as an Appendix. Reference to the covenant should also be made in the policies as well as having a suitable linkage with the relevant objective.
- (iii) There is a risk that other strategic infrastructure providers will be able to demonstrate a 'like' factual scenario and may request similar rules, relying on the Range rules as a precedent. This could give rise to further costs for landowners, increased administration demands on Council and present uncertainty for the public in interpreting and understanding the District Plan covenant requirements.
- (iv) Plan provisions requiring acoustic attenuation is an alternative approach, however would not prevent noise complaints and mitigating outdoor noise would not be achieved.

<sup>3</sup> Policy B3.4.21

<sup>4</sup> Policy B3.4.22

<sup>5</sup> Policy B4.1.2 and B4.1.9



- (v) A no-complaints covenant is readily enforceable by the parties to it subject to it being correctly drafted. Also the existence of a no-complaints covenant serves as 'notice' to landowners and could assist Council in its enforcement role.
- (vi) If the no-complaints covenant is intended to be restricted to complaints in relation to noise and/or vibration, this should be made clear within the template covenant. If it is to be broader in scope then this outcome too needs to be clear.

A key finding of the legal advice is that a no-complaints covenant should not be imposed for a permitted activity if it renders the permitted status of the activity subject to a discretion of the Council. For instance, the current drafting of the provision (3.x.1) provided by NZDF states that "*A no-complaints covenant shall be entered into in a form acceptable to the Council*" (underlining for emphasis). Our legal advisors state there is substantial case law that reinforces that a permitted activity must not be dependent on a subjective judgement of a Council. This means that as the land use covenant provision is currently drafted it is considered legally unacceptable.

A potential option is to redraft the permitted activity rule so that there is no Council discretion. For example, delete the above mentioned problematic wording and include a clear covenant template in the Plan. NZDF have provided an Auckland Unitary Plan example of permitted activity status which applies to the City Centre Port Noise Overlay, whereby if a no-complaints covenant is entered into (and noise attenuation is provided) the activity is permitted, and otherwise restricted discretionary activity resource consent is required.<sup>6</sup>

Alternatively if permitted activity status cannot be achieved, a resource consent process would be required to impose a covenant in relation to any land use development. Consent is required in any case for subdivision, but for land use developments this could potentially be the only reason for resource consent.

NZDF have advised that they are also seeking their own legal advice in relation to the ability to apply a permitted activity no-complaints covenant rule, and the implications for Council if there is a complaint from a property with a no complaints covenant in place. Council will also need to revisit this matter with our legal advisors.

## 5.0 Summary of relevant statutory and/or policy context and other background information

### 5.1 RMA

Providing for reverse sensitivity effects within the District Plan is within the range of functions prescribed for territorial authorities under the RMA. Section 31(1)(b) provides that one of the functions of territorial authorities is "the control of any actual or potential effects of the use, development, or protection of land....". Council's legal advisors note that the Environment Court confirmed Councils could include provisions within a district plan that provide for reverse sensitivity ([1997] NZRMA 205 (ARC v ACC).

<sup>6</sup> D25.6.1 (6) City Centre Port Noise Overlay



## 5.2 Canterbury Regional Policy Statement

The CRPS recognises both the Burnham and West Melton Defence facilities as ‘strategic infrastructure’ and the relevant policies seek that:

- New development in the greater Christchurch area does not affect the efficient operation, use, development....of existing strategic infrastructure (Policy 6.3.5.4);
- The effects of land use activities on infrastructure are managed, including avoiding activities that have the potential to limit the efficient and effective provision, operation, maintenance and upgrading of strategic infrastructure (Policy 6.3.5.5);
- That rural-residential development does not compromise the operational capacity of the Burnham Military Camp or West Melton Military Training Area (6.3.9.5(e)).

Given the Range is identified as strategic infrastructure the Council needs to be confident that the approach ‘gives effect to’ the objectives and policies for strategic infrastructure in the CRPS (s75(3)(c) of the RMA). Based on legal advice it is considered that the inclusion of a no-complaints covenant would be legal and it is considered that the approach would give effect to the policies and objectives for strategic infrastructure in the CRPS (as would Option 3).

## 5.3 Proposed approach of other strategic infrastructure/industry operators to manage noise and reverse sensitivity effects

No other strategic infrastructure operators in Selwyn are seeking a no-complaints covenant approach.

In summary, LPC is seeking that the Inland Port is protected from reverse sensitivity effects by applying noise control boundaries based on noise contours around their strategic infrastructure. They are proposing two noise control boundaries - a wider 45dB contour and a more confined 55dB contour, both of which extend over privately owned adjacent rural land. They propose that any noise sensitive activity within the 55dB contour is a non-complying activity and that any noise sensitive activity within the 45dB contour is designed and constructed to meet specified internal noise levels and that an acoustic report is provided to confirm compliance.

CIAL have existing provisions in the Plan which manage reverse sensitivity and are seeking that these be retained with some amendment, which includes continuing to permit noise sensitive activities within the 55dB airport noise contour where acoustic attenuation standards are met, and non-complying activity status for subdivision within the contours where density is not met.

As part of the District Plan Review, NZTA and Kiwirail are seeking enhanced reverse sensitivity provisions including setbacks from the state highway/railway applicable to noise sensitive activities (setbacks also currently apply from the state highway in some areas) to control outdoor noise, and to manage indoor noise by allowing development within the setback if acoustic attenuation is provided to meet specified levels accompanied by an acoustic report.

Although not defined as strategic infrastructure, the existing Dairy Processing Management Activities also employ a noise control boundary approach and a requirement for acoustic attenuation which they are seeking to retain.

## 5.4 Development potential around the Range

NZDF were asked to quantify the existing and future development potential within the buffer area to assist with gauging the scale of the potential issue and whether their approach is necessary and justified. The analysis completed by NZDF shows that there are a substantial number of properties within the buffer area that could be subject to either subdivision<sup>7</sup> and/or land use development and that there is potential for further development in the vicinity of the Range that should be managed to avoid reverse sensitivity effects. Refer to the Map in **Appendix 4**.

## 5.5 Complaints History

NZDF were also asked to provide information about the complaints history at the site to assist in gauging how much of an issue reverse sensitivity effects on the Range is/has been, but noting that this only provides a snapshot of past complaints history and that the situation could readily change if new development proceeds or new residents oppose the activity at some stage in the future.

NZDF have advised they manage the Range carefully to control noise and reduce the incidence of complaints. This includes notification to the surrounding area of exercises. Refer to the example notice attached as **Appendix 5**. NZDF has also assessed, and in some cases implemented, measures within the Range to reduce noise effects outside of its designation. NZDF therefore currently receives very few complaints at the moment. The NZDF Range Warden noted (in August 2018) the following complaints that he is aware of:

- Mid 2018 a call was received regarding noise at the range. This was caused by earthmoving trucks on the next block blowing out tyres, and nothing to do with NZDF.
- Helicopters flown by RNZAF have created a small problem due to them being flown at night but that was three years ago.
- Post- earthquake period (2011-2012) the range received some complaints due to people being sensitised to noise.
- Historically some complaints from a local who was very opposed to NZDF. Refer to <https://www.stuff.co.nz/the-press/news/our-communities/6359997/Rifle-range-in-firing-line>

The Range Warden also notes the limited issues regarding complaints from normal day to day activities could be in part due to the self-imposed Range Standing Orders (RSO's). RSO's restrict the time, ammunition natures and days the range operates and, along with local advertising, mitigates most issues as long as people are aware or upcoming training (refer attached notice for a recent exercise). A noise bund was also constructed in the mid to late 1990s due to issues with noise and complaints.

Council's Monitoring and Compliance Team have advised they only have one record of complaint on file from January 2013 where a caller rang to inform Council about the Range operating beyond 10pm.

Overall, noise and reverse sensitivity has been an issue in the past, and the current situation could also change with new development in the area.

<sup>7</sup> Based on the existing (and anticipated proposed) densities of 1 dwelling/4 ha in the Inner Plains and 1 dwelling/20 ha in the Outer Plains.

## 6.0 Summary of reverse sensitivity management responses – Other Districts

### 6.1 No-complaints covenants

There are a range of examples of no-complaints covenants in relation to strategic and significant infrastructure employed in District Plans. Some key examples are outlined below.

#### Auckland Unitary Plan - Airports, Quarries, Port, Stadia

The Auckland Unitary Plan has set no-complaints covenant rules around airports, quarries, ports and stadia. For example, the chapter for the Britomart Precinct provides at Rule I201.6.1 that any post-rule new dwellings and visitor accommodation must be subject to a no-complaints covenant in favour of the Ports of Auckland for the purpose of avoiding reverse sensitivity effects on the Port.

NZDF have noted that the no-complaints covenant which applies to the D5. City Centre Port Noise Overlay in the Auckland Unitary Plan applies to a permitted activity (which is not in accordance with our legal advice), but that more typically such covenants are tied to a consent requirement (typically restricted discretionary through to non-complying activity status).

#### Christchurch District Plan - Lyttelton Port

The Christchurch District Plan deems a range of residential activities within the Lyttelton Port Influences Overlay restricted discretionary on the condition a no-complaints covenant is registered against the relevant property. If a covenant is not registered, the activity is non-complying, the purpose being to avoid reverse sensitivity effects.

### 6.2 Noise Contours and Acoustic Attenuation

Applying setbacks or noise contours and requiring acoustic attenuation for noise sensitive development within such setbacks/contours is a common approach across district plans to address reverse sensitivity. For example, the Christchurch District Plan applies acoustic attenuation requirements in relation to the state highway and railway network and Christchurch Airport.

## 7.0 Summary of Options to address Issues

For the purposes of this analysis, NZDF is not pursuing extending the designation at this point in time, and objectives and policies (Option 1) are inherent in either of the remaining options and therefore have not been analysed as a stand-alone option.

Therefore, the two key options (Option 3 and 4) are analysed in the table below:

Factors considered	Option 3 (Restrictions on subdivision and land use within the buffer area, including acoustic attenuation)	Option 4 (No Complaints Covenant)

Precedent for the approach in other district plans	✓	✓
Precedent for the approach in Selwyn	✓	✗ Unique approach for Selwyn compared to other strategic infrastructure operators to manage reverse sensitivity
Gives effects to the CRPS	✓	✓
Legal approach	✓	✓
Requires resource consent	✓ Subdivision (but consent required regardless)  ✓/✗ Land use development activity could potentially be a permitted activity subject to acoustic attenuation, alternatively resource consent required.	✓ Subdivision (but consent required regardless)  ✓/✗ Land use development activity could potentially be a permitted activity subject to a covenant, alternatively resource consent required.
Financial costs to landowners	Land use development could potentially be a permitted activity (subject to acoustic attenuation requirements being met), otherwise consent costs would apply.  Acoustic attenuation - design and construction costs  Acoustic compliance reporting costs	Land use development could potentially be a permitted activity (subject to covenant being entered into), otherwise consent costs would apply.  Legal costs - covenant (could be reduced by providing a clear covenant template)  Covenant runs with the land - may be a concern affecting property prices/sales
Costs to the council	Permitted activity compliance costs or additional consent administration costs	Permitted activity compliance costs or additional consent administration costs
Ability for a layperson to understand the rules	Low to medium – typically quite complex provisions and associated acoustic standards, but could be assisted by stakeholder engagement.	Low to medium - a unique approach and could present uncertainty for the public in interpreting and understanding the requirements, but could be assisted by a clear covenant template (NZDF willing to

		provide first draft) and stakeholder engagement.
Precedent risks	Low	Medium to High. Other strategic infrastructure providers or incompatible activities may also seek such an approach instead of or in addition to their existing approach.
Effectiveness in addressing the issue: Reverse sensitivity and noise	High with respect to indoor noise, but low with respect to outdoor noise. Considered by NZDF to be a more appropriate approach where there is more constant rather than intermittent noise and/or night time noise.  Not as effective at addressing reverse sensitivity as a no-complaints covenant.	Does not address potential noise effects on people (indoors and outdoors); however it is understood that modern construction standards largely achieve acoustic insulation to a level appropriate for indoors.  High with respect to reverse sensitivity resulting from new development.
	With both options, neither address existing development and the potential for complaints. NZDF has noted that while ideally the approach should address both existing and future development, focusing on the latter recognizes that new landowners may have different and higher expectations of rural amenity.	
Responsibility and Enforcement	With an acoustic attenuation approach this could be built into the building consent (PIM check) process if permitted, or a resource consent process. Acoustic certification is required to demonstrate compliance.  Still nothing to prevent complaints and Council would need to investigate.	The covenant would be registered against the party in favour of the NZDF.  If a party complains to Council, Council could rely on the covenant to exercise its discretion not to undertake enforcement action.
Project budget or time implications	Both options anticipated to be similar to progress budget and time wise.	
Stakeholder and community interests	Both options will be of significant interest to stakeholders and the community as the options affect private property rights. Stakeholder engagement will be required.	

## 8.0 Summary of stakeholder engagement

No stakeholder engagement has been undertaken until such time as the preferred option is endorsed.

## 9.0 Conclusion

Overall, NZDF considers Option 4 (No-complaints covenant) is the most effective and efficient approach in the circumstances.

Both approaches are considered to give effect to the CRPS and could potentially be provided for as a permitted activity subject to further legal advice, alternatively land use resource consent would be required (resource consent is required for subdivision regardless). The key difference between the two approaches is the ability to manage reverse sensitivity and noise effects, and precedent. Option 4 is considered to better manage reverse sensitivity than Option 3, but Option 3 is expected to better ensure indoor noise is managed. However, even without acoustic attenuation requirements modern construction is understood to achieve acoustic insulation to an acceptable level so Option 4 will also manage indoor noise by default. Option 4 could set a precedent for other strategic infrastructure operators to also seek no-complaints covenants, however this would need to be evaluated as to costs and benefits and effectiveness in relation to any particular proposal.

Which option to pursue is finely balanced, but based on the above analysis and NZDF's preference for Option 4, Option 4 is the recommended preferred option.

## 10.0 Preferred Option for further engagement

The Project Team recommends that:

- (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 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.

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

## Key messages

(as of 8 April 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 status

- 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 preferred option

- The Council is considering the following key draft change for the new District Plan for further development and consultation with stakeholders and 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 55 dbA Ldn 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.
- If the preferred option is not endorsed by the Committee, the Council will pursue applying a buffer area around the Range where new rules would manage subdivision and the development of land, including requiring noise insulation of new dwellings within the buffer area. New dwellings would need to be designed and constructed to meet specific indoor noise levels.

## Audiences<sup>1</sup>

Internal	Partners	Key stakeholders	Landowners /occupiers <sup>2</sup>	General public
DPC	ECan	Canterbury Aero Club	Landowners in the proposed buffer area <sup>3</sup>	Selwyn ratepayers
	Te Ngāi Tuāhuriri Rūnanga (represented by Mahaanui Kurataiao)	Moore Park	New Zealand Defence Force (also stakeholder)	News media
	Te Taumutu Rūnanga (represented by Mahaanui Kurataiao)		Environment Canterbury	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”)

<sup>1</sup> “...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]

<sup>3</sup> Council’s GIS team can identify the affected property owners and assist with preparing for stakeholder engagement.

Engagement during review phases

Review phases	Internal	ECan	Rūnanga	Key stakeholders	Landowners/occupiers	General public
Baseline assessments (Noise and Vibration)						
Preferred option development				[only NZ Defence Force]	[only NZ Defence Force]	
Preferred option consultation						

2019 communications and engagement key tasks/milestones per month

(more detailed action plans to be developed for each major milestone or as required)

Audiences	Pre-April	April	April-May
ECan			Share endorsed option report and gather further feedback
Rūnanga			Share endorsed option report and gather further feedback
Key stakeholders	[only NZ Defence Force]		Share endorsed option report and gather further feedback
Landowners/occupiers			Targeted letter/email to help inform detailed provisions
General public			Publish endorsed PO report on Council’s website
DPC		Preferred option report goes to DPC for endorsement	