

All correspondence to:

LEWIS TROJAN HORSE PTY LTD (ACN 693 680 509)
as Trustee of the **Owen Robert Inter Vivos Trust**

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COMPLAINT — MOORABOOL SHIRE COUNCIL

Victorian Ombudsman File C/26/3280

Related complaint: C/26/15485

Lal Lal Wind Farm — historical administration and enforcement of Planning Permit
PL-SP/05/0461

18 August 2026

Dear Victorian Ombudsman,

I write on behalf of **LEWIS TROJAN HORSE PTY LTD** as Trustee of the **Owen Robert Inter Vivos Trust** to lodge a complaint concerning the administrative conduct of Moorabool Shire Council in its investigation and administration of matters concerning Lal Lal Wind Farm and Planning Permit PL-SP/05/0461.

This complaint does not ask the Ombudsman to undertake an acoustic assessment, determine wind farm noise compliance itself, or substitute its technical opinion for that of an acoustic consultant.

Rather, it concerns whether Council:

1. adequately investigated material matters before reaching an affirmative conclusion in December 2022 that Lal Lal Wind Farm was not in breach of the Planning Permit;
2. established and retained the foundational records necessary to support that conclusion;
3. adequately examined whether technical material upon which it relied addressed the requirements actually imposed by the Planning Permit and endorsed Noise Compliance Testing Plan;
4. adequately reconciled material inconsistencies or deficiencies in the administrative record; and
5. has subsequently taken reasonable steps to clarify or correct that record when those matters have been brought to its attention.

The Trustee considers that the documentary record now raises sufficiently serious questions about Council's historical administrative process to warrant independent investigation by the Ombudsman.

1. Capacity and historical record

For clarity, the **Owen Robert Inter Vivos Trust** was established in December 2025.

Accordingly, complaints, enquiries, correspondence and FOI applications predating establishment of the Trust were undertaken by Owen Robert in his private capacity as the Beneficiary.

Those earlier materials are relied upon by the Trustee as part of the historical documentary record. They are not represented as having been undertaken by the Trustee.

References to the Trustee concern **LEWIS TROJAN HORSE PTY LTD** acting as Trustee following establishment of the Trust.

This distinction is maintained deliberately throughout this complaint.

2. Related Ombudsman complaint — C/26/15485

The Trustee has separately complained to the Victorian Ombudsman concerning Council's failure to provide substantive responses to more recent administrative enquiries.

That complaint has been acknowledged under reference:

C/26/15485

The present complaint is related to, but substantively different from, that matter.

C/26/15485 concerns Council's failure to respond to enquiries.

This complaint concerns the underlying quality, adequacy and documentary foundation of Council's historical administration and investigation of the Lal Lal Wind Farm Planning Permit, particularly its December 2022 determination that the wind farm was not in breach.

The recent unanswered correspondence is relevant here principally because Council has been afforded a further opportunity to identify, explain or reconcile its historical administrative record.

The Trustee does not seek duplicate findings in relation to the same non-response conduct.

3. Council's December 2022 investigation and no-breach determination

The starting point is a complaint made by the Beneficiary concerning Lal Lal Wind Farm.

Following involvement by the Victorian Ombudsman, Council provided a substantive response through Council officer Henry Bezuidenhout on 14 December 2022.

Council recorded that it had opened an investigation, reviewed documentation provided by the Beneficiary, sought information from Lal Lal Wind Farm and discussed the complaint with relevant government and regulatory bodies.

Council's response demonstrates that Council did not merely refer the matter elsewhere.

Council actively investigated the matter and exercised an administrative function under the Planning Permit.

In particular, Council recorded that it received the Lal Lal Wind Farm Post-Construction Noise Monitoring material and that it had been awaiting completion/finalisation of the post-construction assessment before completing its consideration of the complaint.

Council further determined that a dispute existed between the Beneficiary and Lal Lal Wind Farm and requested that LLWF commission a suitably qualified expert to provide an opinion concerning whether a breach of the Planning Permit existed.

Council subsequently received further technical material and ultimately advised the Beneficiary that:

“Council has concluded that the LLWF is not in breach of the planning permit.”

That was an affirmative administrative conclusion.

The present complaint concerns whether Council had established an adequate factual, documentary and regulatory foundation before reaching that conclusion.

4. Nature and independence of the expert material relied upon under Condition 10

Condition 10 placed responsibility for determining whether a breach existed upon the Responsible Authority.

Where Council determined that a dispute existed, Condition 10(c) required Council to determine whether there was a breach of the permit and, if such a breach existed, to take action to enforce compliance.

For the purpose of making that determination, Condition 10 expressly permitted Council to require the wind energy facility operator to:

“Commission a suitably qualified expert to provide an opinion as to whether a breach exists; and/or conduct compliance testing.”

Council exercised that mechanism during its investigation of the Beneficiary's complaint.

The technical material subsequently provided to the Beneficiary by Council through Henry Bezuidenhout included an SLR letter dated 1 December 2022.

Importantly, that document was not an independent report commissioned by Council.

The SLR letter was addressed to Lal Lal Wind Farms/RES and expressly records that SLR had been engaged by Lal Lal Wind Farms Nom Co Pty Ltd to provide the relevant assessment.

The Trustee does not suggest that this circumstance, of itself, prevented Council from considering the opinion. Condition 10 expressly contemplated that the wind energy facility operator could be required to commission a suitably qualified expert.

There is, however, an additional and material issue concerning the independence of the substantive review undertaken.

SLR was not being asked to assess technical work produced entirely by an unrelated acoustic consultant. Its December 2022 opinion materially reviewed and relied upon SLR's own earlier monitoring, assessments, methodology and conclusions, including SLR's work concerning K15aa and the subsequent use of K15aa in assessing J14aa.

Accordingly, in responding to Council's Condition 10 requirement for an expert opinion as to whether a breach existed, SLR was, in material respects, being asked to assess whether a compliance pathway founded upon its own previous work demonstrated compliance.

The Trustee does not allege actual bias, bad faith or professional misconduct merely from that circumstance.

The concern is instead one of independence, administrative scrutiny and the evidentiary weight Council reasonably placed upon the resulting opinion when exercising its own decision-making responsibility under Condition 10.

K15aa and SLR's characterisation of its own underlying work

This issue is particularly significant in relation to K15aa.

SLR's December 2022 opinion relied upon its earlier K15aa work and characterised the relevant monitoring as pre-construction baseline noise monitoring.

That was not an immaterial description.

The status of the K15aa measurements as valid background/baseline measurements was foundational to the subsequent compliance pathway because J14aa did not have its own previous baseline monitoring and SLR instead relied materially upon K15aa in assessing J14aa.

The subsequently established documentary chronology raises a material question concerning that characterisation.

The relevant replacement K15aa monitoring occurred after wind turbines had already been constructed or installed in the area and during the broader turbine energisation/commissioning period.

The issue is therefore not merely whether the numerical measurements obtained by SLR were acoustically reliable.

The issue is whether those measurements satisfied the temporal and methodological requirements applicable to background sound under the governing NZS 6808:2010 framework, including the definition relied upon by the Trustee concerning background sound being measured prior to installation of wind turbines in the area.

That distinction is especially important because the same consultancy responsible for the underlying K15aa work subsequently provided the Condition 10 opinion which relied upon and effectively validated that work.

In other words, the December 2022 opinion did not provide Council with an independent check upon whether SLR's earlier characterisation of the K15aa monitoring as “pre-construction” was factually and administratively sustainable.

The Trustee does not ask the Ombudsman to infer that SLR deliberately mischaracterised the monitoring.

The administrative question is whether Council independently verified that foundational factual proposition before relying upon SLR's later opinion to determine that no permit breach existed.

That required consideration not simply of the label applied to the monitoring in an acoustic report, but of the underlying project chronology, including:

- when the relevant K15aa monitoring actually occurred;
- whether wind turbines had already been constructed or installed in the area when that monitoring occurred;
- the energisation and commissioning status of relevant turbines during the monitoring periods;
- whether the monitoring therefore satisfied the applicable requirements for background sound measurement under NZS 6808:2010; and
- whether SLR's characterisation of the monitoring as “pre-construction” was supported by the actual construction and commissioning record.

These are factual and administrative matters capable of verification against contemporaneous records. They did not require Council to substitute its own acoustic expertise for that of SLR.

SLR's reliance upon K15aa in assessing J14aa

The independence issue becomes more significant because SLR's December 2022 reasoning concerning J14aa depended materially upon K15aa.

SLR acknowledged that previous baseline monitoring had not been undertaken at J14aa.

Instead, SLR treated K15aa as the relevant reference location and relied upon the K15aa noise limit and associated assessment in reaching its opinion concerning J14aa.

The resulting reasoning was therefore substantially circular from an administrative-assurance perspective:

SLR undertook the underlying K15aa work → SLR characterised that work as pre-construction/background monitoring → SLR subsequently relied upon its own K15aa work as a foundation for assessing J14aa → LLWF commissioned SLR under the Condition 10 process to provide an opinion concerning whether a breach existed → SLR's opinion relied materially upon that same underlying work → Council relied upon the resulting opinion in determining that no breach existed.

The Trustee does not suggest that this sequence necessarily invalidated SLR's technical opinion.

It does, however, raise the question of what independent scrutiny Council itself applied to the foundational K15aa material before treating SLR's Condition 10 opinion as sufficient to determine that the Planning Permit had not been breached.

That question assumes greater significance in light of the subsequent documentary record concerning K15aa, including the timing of the replacement monitoring, the measurement location, the NCTP requirements and the absence, in subsequent statutory disclosure, of an identified instrument authorising departure from the relevant NZS definitions relied upon by the Trustee.

The qualified nature of SLR's ultimate opinion

There is a further distinction between the conclusion expressed by SLR and the conclusion ultimately expressed by Council.

SLR did not state that direct testing had conclusively established the actual wind-turbine-generated contribution at J14aa.

Its ultimate conclusion was expressed in the qualified terms that “all indications” were that the wind farm noise level at J14aa was compliant.

SLR then identified further means by which the actual WTG-contributed noise level at J14aa could be confirmed, including On/Off testing or extrapolation from a closer intermediate monitoring location.

Council nevertheless proceeded to the categorical administrative conclusion:

“Council has concluded that the LLWF is not in breach of the planning permit.”

The distinction is material.

Condition 10 placed the ultimate responsibility for determining whether a breach existed upon Council as the Responsible Authority. The expert opinion was evidence available to Council in making that determination; it was not itself Council's determination.

The Trustee therefore asks what consideration Council gave to the qualified nature of SLR's opinion and to SLR's express identification of further testing capable of confirming the actual wind-turbine contribution at J14aa.

Council's separate ability to require compliance testing

This is particularly relevant because Condition 10 did not limit Council to obtaining an expert opinion.

Condition 10(c) expressly contemplated that, when determining whether a breach existed, Council could require the wind energy facility operator to:

- (i) commission a suitably qualified expert to provide an opinion as to whether a breach existed; and/or
- (ii) conduct compliance testing.

Council therefore had available to it a separate compliance-testing mechanism.

The Trustee considers that this warrants examination because:

- the expert commissioned by the operator was SLR;
- SLR was materially reviewing and relying upon its own previous work;
- that work included the K15aa foundation upon which the J14aa assessment depended;
- SLR's description of the K15aa work as pre-construction/background monitoring was itself a matter requiring verification against the construction and commissioning chronology;
- no previous baseline monitoring had been undertaken at J14aa;
- SLR's ultimate opinion concerning J14aa remained expressed as “all indications” being that the location was compliant; and
- SLR itself identified additional testing capable of confirming the actual WTG-contributed noise level at J14aa.

Against that background, the Trustee respectfully considers it reasonable for the Ombudsman to examine what Council considered before deciding that the material obtained through the expert-opinion limb of Condition 10 was sufficient and whether Council considered exercising the separate compliance-testing mechanism available under Condition 10(c)(ii).

Matters requested for investigation

The Trustee therefore asks the Ombudsman to examine whether, in making its determination under Condition 10, Council adequately considered:

1. that the expert opinion was commissioned by the wind energy facility operator rather than independently commissioned by Council;
2. that the expert selected was SLR, whose opinion materially reviewed and relied upon SLR's own previous monitoring, assessments, methodology and conclusions;
3. whether that circumstance affected the degree of independent assurance provided by the opinion and therefore the scrutiny reasonably required of Council;
4. whether Council independently verified SLR's characterisation of the relevant K15aa monitoring as “pre-construction” against the actual turbine construction, installation, energisation and commissioning chronology;
5. whether Council established that the K15aa background assessment upon which SLR's later reasoning depended satisfied the applicable NZS 6808:2010 and endorsed NCTP requirements;
6. whether Council adequately examined the use of K15aa as the foundation for conclusions concerning J14aa, notwithstanding that J14aa had no previous baseline monitoring;
7. whether Council independently considered the measurement-location and other methodological requirements applicable under Condition 23(a), NZS 6808:2010 and the endorsed NCTP;

8. the distinction between SLR's qualified conclusion that “all indications” were that J14aa was compliant and Council's subsequent categorical conclusion that LLWF was not in breach of the Planning Permit;
9. SLR's identification of further testing capable of confirming the actual WTG-contributed noise level at J14aa;
10. whether an independent review of the underlying SLR work was warranted before Council relied upon SLR's opinion to determine that no breach existed; and
11. whether Council considered exercising the separate power expressly available under Condition 10(c)(ii) to require compliance testing, and, if it did, what administrative record explains why further compliance testing was considered unnecessary.

The Trustee does not contend that Condition 10 prohibited Council from considering an opinion provided by SLR or required Council in every case to appoint an entirely independent consultant.

The concern is narrower.

Condition 10 left the ultimate determination of whether a breach existed with Council.

Where the operator-selected expert was materially reviewing and relying upon its own underlying work; where a foundational characterisation of that work as “pre-construction” itself required verification against the construction and commissioning chronology; where J14aa lacked its own previous baseline monitoring; and where the expert's ultimate conclusion remained qualified and identified further testing capable of confirming the actual contribution at J14aa, the Trustee asks whether Council exercised its own decision-making responsibility with sufficient independence and scrutiny before reaching the categorical conclusion that Lal Lal Wind Farm was not in breach of the Planning Permit.

That is the administrative conduct the Trustee respectfully asks the Ombudsman to investigate.

5. Condition 23(a) — the requirement Council was administering

This issue becomes particularly important when the actual terms of Condition 23(a) are considered.

Condition 23 required operation of the wind energy facility to comply with NZS 6808:2010, subject to the modifications specified by the permit.

Condition 23(a) required wind farm sound levels to be:

determined in accordance with the Standard at noise sensitive locations (as defined in the Standard).

The requirement was therefore not merely a numerical noise ceiling.

The permit also prescribed the basis upon which operational sound levels were to be determined.

The Trustee's concern is that Council's investigation appears to have concentrated upon the ultimate technical conclusion of compliance without it being apparent that Council separately established whether the measurements and assessment relied upon satisfied the methodology and location requirements incorporated by Condition 23(a).

This is particularly relevant to the treatment of receiver J14aa and reference receiver K15aa.

6. J14aa and reliance upon K15aa

The technical material records that previous baseline monitoring had not been undertaken at J14aa.

Instead, the K15aa noise limit was treated as representative or as an appropriate substitute for J14aa.

The December 2022 SLR reasoning consequently depended materially upon K15aa.

SLR reasoned, in substance, that if wind farm noise was compliant at K15aa, compliance at J14aa could also be inferred because of the relative circumstances of those locations.

This created an evidentiary chain:

no J14aa baseline → reliance upon K15aa → K15aa compliance assessment → inference concerning J14aa → SLR's qualified opinion → Council's no-breach determination.

The administrative significance is that the reliability of K15aa was therefore not peripheral.

It was foundational to the reasoning used in addressing the Beneficiary's complaint.

7. K15aa — required updated background report and Council's administrative record

The endorsed Noise Compliance Testing Plan (NCTP) identified K15aa as requiring further background noise monitoring.

Section 3.0 records that earlier monitoring at K15aa had been significantly affected by a local noise source and was not considered suitable for representing typical background noise levels around the dwelling.

The NCTP therefore imposed a specific documentary and temporal requirement:

“Prior to commencement of operation of the wind farm, an updated background noise report is to be submitted to the responsible authority”

detailing the K15aa monitoring results together with any additional background monitoring.

Council was the Responsible Authority during the relevant historical period.

Accordingly, a foundational administrative question is:

Did Council receive the required updated K15aa background noise report before commencement of operation of the wind farm, and what contemporaneous Council record establishes its receipt and consideration?

That question is particularly important because K15aa subsequently became a material foundation for the assessment of J14aa and, ultimately, for technical material considered by Council in determining the Beneficiary's Condition 10 complaint.

Council's 2023 FOI search established that the purported 2018 K15aa report did not exist

The uncertainty concerning the K15aa documentary pathway is not a matter raised for the first time by the Trustee in 2026.

In March 2023, the Beneficiary, acting in his private capacity, made an FOI request to Council seeking:

“SLR 2018 Pre-construction Baseline Noise Monitoring Report @ location K15aa”.

Council undertook an extensive search.

Its FOI decision dated 12 April 2023 records searches of existing files, documents and electronic files by officers within Community Planning and Development; Council's electronic document-management system and archive folders; Council's customer-request management system; consultation with relevant department managers; and consultation with Lal Lal Wind Farm.

Council recorded that 20 hours were expended conducting the search.

Council then made the express finding:

“Following a thorough and diligent search, I am satisfied that the document you have requested does not exist.”

Council further stated:

“As far as it is possible for us to determine, there are no relevant documents in the possession of the Council.”

That FOI outcome is significant because the purported 2018 K15aa pre-construction report had been expressly referenced in the Interim Report.

Council therefore consulted Lal Lal Wind Farm about the discrepancy.

Council's FOI decision records LLWF's explanation that the reference in the Interim Report to the:

“SLR 2018 Pre-construction Baseline Noise Monitoring Report @ location K15aa”

was a clerical error.

Council recorded that LLWF advised that the correct reference should instead have been to:

“noise limits for K15aa referenced in the SLR background report dated February 2021”.

Council further recorded that LLWF had committed to obtaining a corrected Interim Report.

The significance of that response is that, by April 2023, Council's own statutory FOI process had established that the 2018 K15aa report expressly cited in the compliance material did not exist, and LLWF had identified the February 2021 SLR background report as the report which should instead have been referenced.

That did not, however, answer the separate and more important administrative question arising under the endorsed NCTP:

When was the February 2021 K15aa report submitted to Council as the Responsible Authority?

The Beneficiary subsequently asked Council that precise question

The Beneficiary subsequently sought to establish that matter directly.

On 18 October 2024, he asked Council about the report titled:

“LAL LAL WIND FARM COMPLIANCE Baseline Noise Monitoring 640.11872-R01-v1.1 | 16 February 2021”.

Henry Bezuidenhout's response dated 28 November 2024 expressly records Council's understanding that the Beneficiary wished to establish:

1. whether Council held a copy of that report; and
2. if so, the date it was received.

Those were significant historical administrative questions.

They did not ask Council to undertake a new acoustic assessment or determine present-day operational noise compliance.

They sought to establish whether Council had received a document which the endorsed NCTP required to be submitted to the Responsible Authority before commencement of operation of the wind farm.

Council did not answer either factual question.

Instead, Council reiterated its position that information requests were required to be made under the Freedom of Information Act 1982 and stated that the Minister for Planning was by then the Responsible Authority for administration and enforcement of conditions concerning noise testing and compliance. Council referred the Beneficiary to DTP.

The Trustee does not dispute that responsibility for relevant noise conditions had subsequently transferred to the Minister for Planning.

That later transfer of responsibility does not, however, answer the historical records question.

The question was whether Council itself had received the February 2021 K15aa report, and when.

That question concerned Council's own historical administrative record during the period in which Council had been the Responsible Authority.

Significance to Council's December 2022 no-breach determination

This chronology is particularly relevant to Council's December 2022 Condition 10 determination.

The technical pathway upon which Council relied materially depended upon K15aa.

Yet the subsequent Council record establishes that:

- the purported 2018 pre-construction K15aa report cited in the Interim Report did not exist;
- Council's own extensive FOI search did not locate it;
- LLWF subsequently told Council that the reference was a clerical error;
- LLWF identified the February 2021 SLR background report as the report which should have been referenced instead; and
- when the Beneficiary subsequently asked Council whether it held that February 2021 report and when it had been received, Council did not provide those historical facts.

The Trustee does not contend that the 2023 FOI outcome means Council necessarily knew in December 2022 that the report reference was erroneous.

Nor does the Trustee ask the Ombudsman to infer from Council's November 2024 response that Council never received the February 2021 report.

Rather, the later documentary record exposes an unresolved question concerning the documentary foundation of Council's earlier determination.

If the February 2021 report was the actual updated K15aa background report upon which the compliance pathway depended, the endorsed NCTP required the updated report to be submitted to the Responsible Authority prior to commencement of operation.

Accordingly, the relevant administrative questions are:

What K15aa background report did Council hold and rely upon when making its December 2022 determination?

When did Council receive that report?

Did Council establish that it had been submitted to the Responsible Authority before commencement of operation as required by the endorsed NCTP?

What commencement-of-operation date did Council use when making that assessment, and what contemporaneous documentary record established that date?

Did Council identify the erroneous reference to a non-existent 2018 K15aa report before reaching its December 2022 determination, or did Council's investigation proceed upon material containing that erroneous reference?

These questions become more significant when considered together with the separate matters addressed elsewhere in this complaint concerning the actual timing and location of the replacement K15aa monitoring and SLR's subsequent characterisation of that monitoring as pre-construction.

The Trustee therefore respectfully asks the Ombudsman to investigate the complete K15aa documentary pathway within Council's historical administrative record, including what Council received, when it received it, what version it relied upon, what commencement-of-operation date was applied, and how Council satisfied itself that the foundational K15aa requirement had been met before relying upon K15aa in determining that Lal Lal Wind Farm was not in breach of the Planning Permit.

8. Measurement location requirements

The endorsed NCTP is also explicit concerning operational compliance-monitoring locations.

Section 4.1 identifies K15aa as one of six preferred noise-sensitive receiver locations.

It then records the key NZS 6808:2010 measurement-location requirements, including that:

- measurements shall not occur within 3.5 metres of a vertical reflecting surface;
- measurements shall occur within 20 metres of the dwelling; and
- measurements shall occur as close as practically possible to the background monitoring location.

The NCTP further states that operational measurements shall be conducted in accordance with NZS 6808:2010, subject to the identified project-specific clarifications and requirements.

The later documentary record raises questions concerning the actual K15aa background-monitoring position and its relationship with the dwelling/notional boundary.

Again, the Trustee does not ask the Ombudsman to undertake an acoustic assessment.

The administrative question is whether Council identified and tested compliance against the measurement-location requirements incorporated into the permit/NCTP before relying upon K15aa as part of its no-breach conclusion.

9. Council was waiting for the post-construction noise assessment — NCTP section 4.3

This issue becomes particularly significant because Council's own complaint-handling record demonstrates that it was waiting for the post-construction noise assessment/report before completing its investigation.

The timing of that assessment was not discretionary or open-ended.

Section 4.3 of the endorsed NCTP required compliance measurements to occur in two stages.

Stage 1:

“shall be commenced within two (2) months following the commissioning of the last turbine of the Lal Lal Wind Farm.”

Stage 2:

“shall commence between 10 and 12 months following the commissioning of the last turbine of the Lal Lal Wind Farm.”

The NCTP explains that this program was selected to capture conditions during the first 12 months of operation and enable final compliance reporting.

Accordingly, if Council was waiting for the post-construction noise assessment as evidence upon which to resolve the Beneficiary's complaint, the commissioning date of the last turbine was a foundational administrative fact.

Without establishing that date, Council could not readily test whether the monitoring it was awaiting had occurred in accordance with the timetable imposed by the endorsed NCTP.

10. NCTP section 6.0 — reporting within six weeks

The timing issue does not end with the monitoring itself.

Section 6.0 of the endorsed NCTP provides:

“Compliance reports shall be submitted to the Minister for Planning within six (6) weeks of completing each stage of the compliance **monitoring**.”

It further requires the reports to contain supporting wind-speed documentation, details concerning filtered measurements, attended observations and any supplementary procedures used.

Accordingly, Council's investigation should be capable of being reconciled against a documentary sequence:

last turbine commissioned → Stage 1 within two months → Stage 1 report within six weeks of completion → Stage 2 between 10 and 12 months → Stage 2 report within six weeks of completion.

The Trustee asks the Ombudsman to investigate whether Council established and recorded those dates before relying upon the post-construction assessment.

11. Final-turbine commissioning date

This is not a theoretical concern.

In later correspondence Council communicated an understanding that commissioning of the last turbine occurred in mid-2021, and relied upon that chronology in connection with other permit obligations.

The Beneficiary also sought clarification directly from LLWF concerning the relevant commissioning dates.

Following establishment of the Trust, the Trustee subsequently used FOI to seek the underlying Council record, including any formal commissioning certificate, last-turbine commissioning

certificate, written notification received by Council or internal milestone/database record evidencing the date relied upon by Council.

The resulting Council FOI search reported no responsive documents found.

The Trustee does not contend that the later FOI outcome, by itself, proves that a particular commissioning date is wrong.

The concern is narrower and administrative:

What date did Council actually use in 2022 when assessing whether the post-construction monitoring had complied with NCTP section 4.3, and what contemporaneous documentary source established that date?

This question is especially important because section 4.3 expressly uses commissioning of the last turbine as the trigger for both stages of monitoring.

12. Separate commencement-of-operation trigger

The NCTP therefore contains at least two distinct temporal concepts relevant to Council's investigation.

First:

commencement of operation, before which the updated K15aa background report was required to be submitted to the Responsible Authority.

Second:

commissioning of the last turbine, from which the Stage 1 and Stage 2 operational monitoring periods were calculated.

The Trustee asks the Ombudsman to examine whether Council identified and distinguished those trigger dates when conducting its investigation.

If Council did not establish either date from a reliable contemporaneous record, the Trustee questions how Council satisfied itself that the compliance-monitoring material upon which it relied had been produced in accordance with the endorsed NCTP.

13. Wind-speed data and meteorological monitoring

The NCTP also imposes detailed requirements concerning the wind-speed information used in operational noise compliance assessment.

Section 4.2.2 requires site wind speeds to be collected throughout the measurement period and used to determine wind speed at 93 metres AGL corresponding to free-field conditions at the identified reference mast locations.

It further requires the procedures used to determine those reference wind speeds to be validated and documented by the wind engineer for the project.

The NCTP's responsibilities table reinforces this. It assigns the wind engineering consultant responsibility for verifying the sources of wind data before noise surveys, supplying appropriate assessment wind-speed datasets and providing a statement detailing the measurement and analysis procedures used to synthesise those datasets.

This is relevant to the separate administrative issue concerning the Elaine meteorological monitoring facility.

14. Elaine meteorological monitoring facility

In August 2024, in response to enquiries made by the Beneficiary in private capacity, Council gave an affirmative administrative explanation concerning meteorological monitoring facilities.

Council stated, in substance, that the Planning Permit allowed two permanent meteorological monitoring facilities and explained a secondary-consent pathway for relocation.

Council further indicated its understanding that LLWF had obtained secondary consent from DTP on 4 April 2024 for an amended Substation Layout Plan which included a meteorological mast.

Following establishment of the Trust, the Trustee subsequently sought through FOI the underlying formal Council approval, consent, authorisation or endorsement relating to the establishment or operation of the Elaine Meteorological Monitoring Facility.

Council's April 2026 FOI decision reported:

“No documents found within scope.”

The Trustee does not contend that this establishes that the meteorological facility was unauthorised.

Nor does the Trustee suggest Council must possess an approval issued exclusively by another authority.

The administrative issue is whether Council's own historical record adequately identified the planning/authorising pathway upon which Council relied when administering the development and giving its earlier explanation.

Given the role of site wind-speed data in the NCTP compliance process, the matter also warrants consideration as part of the broader question of what Council established concerning the provenance and status of the data upon which the noise-compliance assessment depended.

15. Sonus pre-construction noise assessment and peer review

A separate documentary-integrity issue concerns the Sonus pre-construction noise assessment.

In April 2018, LLWF publicly advised that a new Sonus pre-construction noise assessment would be undertaken from first principles and that Sonus' noise assessment would be peer reviewed by an EPA-accredited auditor.

The historical material also referred to the applicable planning guidance concerning peer review of noise reports.

In April 2024, the Beneficiary sought through FOI the auditor report/peer review associated with the Sonus LLWF Pre-construction Noise Assessment S54664C11 dated June 2018.

Council's response made a material distinction.

Council stated that the June 2018 assessment itself was not subject to an EPA Auditor Report/Peer Review on or after June 2018.

Council instead understood that an earlier version of the Sonus pre-construction assessment had been peer reviewed, with that review finalised in April 2018.

The issue is therefore not simply whether “the Sonus report” was peer reviewed.

The relevant administrative questions are:

- which version was ultimately relied upon in administering the Planning Permit;

- what changes occurred between the peer-reviewed version and the June 2018 assessment;
- whether the June 2018 assessment was treated administratively as having been verified by the earlier peer review; and
- if so, what documentary basis supported that treatment.

The Trustee does not ask the Ombudsman to determine whether the Sonus assessment was acoustically correct.

The concern is document integrity and administrative reliance: whether Council's record demonstrates that the technical report ultimately relied upon had the review status attributed to it.

16. Why these matters affect Council's December 2022 conclusion

Considered individually, Council may regard some of the matters above as technical, historical or documentary anomalies.

Considered together, however, they concern the foundations of the compliance process Council relied upon.

The pathway appears to have included:

K15aa background assessment → operational monitoring → wind-speed correlation → Stage 1/Stage 2 monitoring → post-construction reporting → technical opinions → Council's Condition 10 investigation → Council's categorical no-breach conclusion.

The endorsed NCTP itself required the acoustic consultant to conduct testing, analysis and reporting in accordance with the Planning Permit and NCTP and contemplated supplementary information being submitted where deviation from the NCTP was required.

The Trustee therefore considers it reasonable to ask whether Council verified the integrity of that pathway before relying upon its end product.

The concern is not that Council was required to reproduce an acoustic consultant's calculations.

It is whether Council established that the conditions precedent, timing requirements, source records and authorised methodology underlying the compliance conclusion had been satisfied.

17. Condition 17 — separate example of unresolved permit administration

The Trustee has also sought clarification from Council concerning Condition 17 of the Planning Permit and the final monitoring/reporting record associated with that condition.

The relevant enquiries commenced on 13 July 2026, with follow-ups on 23 July, 29 July and 10 August 2026.

The enquiries sought basic administrative information concerning the relevant final report or reports, including confirmation of receipt, title/date and an access route or identification of the record held by Council.

No substantive response identifying the requested record has been received.

The non-response itself forms part of the separate Ombudsman complaint C/26/15485 and is not duplicated here.

It is nevertheless relevant to the present complaint because it demonstrates the continuing difficulty encountered by the Trustee in establishing from Council's administrative record

whether key permit-triggered reporting obligations were completed and what documents Council holds or relied upon.

The Trustee asks that the substantive Condition 17 record issue be considered insofar as it assists the Ombudsman in assessing Council's broader record-keeping and permit-administration practices.

18. Later documentary reconciliation is not hindsight criticism

The Trustee recognises an important distinction.

Some information now available through later FOI decisions and administrative enquiries may not have been available to Council in exactly the same form in December 2022.

The Trustee therefore does not contend that Council should retrospectively have known every fact disclosed years later.

The significance of the subsequent record is different.

It permits the documentary foundation of Council's earlier decision to be tested.

Where Council held or considered relevant material in 2022, the question is what Council did with that information.

Where later disclosure has identified an absence, inconsistency or uncertainty in a foundational record, the question is what contemporaneous evidence Council actually relied upon when it made its decision.

This complaint therefore seeks investigation, not retrospective assumption.

19. Opportunity subsequently afforded to Council to clarify and reconcile its administrative record

The Trustee has not proceeded directly from subsequent documentary disclosures to allegations concerning Council's historical administration.

During 2026, Council was provided with repeated opportunities to identify, clarify or reconcile relevant aspects of its own administrative record concerning Lal Lal Wind Farm and Planning Permit PL-SP/05/0461.

Those enquiries were distinct from requests to reconsider completed Freedom of Information decisions. They concerned the substantive administrative record revealed by those decisions and Council's earlier correspondence, including the documentary basis upon which particular historical positions or assumptions had been formed or relied upon.

The correspondence concerned, among other matters:

- commissioning and operational status;
- the documentary basis for commissioning timing and related permit-trigger dates;
- meteorological monitoring infrastructure and the authorisation status of the Elaine meteorological monitoring facility;
- post-construction noise assessment material; and
- inconsistencies or gaps emerging from subsequent Freedom of Information outcomes when compared with Council's earlier administrative correspondence.

Council acknowledged receipt of relevant correspondence on 24 April 2026. The Trustee followed up on 1 May 2026 seeking confirmation as to whether any further response would be provided.

On 14 May 2026, the Trustee again wrote to Council's Governance team, copying Henry Bezuidenhout.

That correspondence expressly identified earlier communications dated 9 April, 15 April and 22 April 2026 concerning administrative-record clarification matters associated with the Planning Permit, Council's acknowledgement dated 24 April and the Trustee's follow-up dated 1 May.

The Trustee explained that those communications sought clarification concerning matters arising from:

- Council correspondence previously issued in relation to commissioning, operational status, meteorological monitoring infrastructure and post-construction noise assessment material;
- documentary outcomes arising through Freedom of Information processes; and
- the basis upon which particular administrative positions or assumptions appeared to have been formed or relied upon within the available record.

The Trustee further recorded that no substantive clarification had been received and that Council had been afforded multiple opportunities to clarify or supplement the disclosed administrative record.

Two matters were expressly identified: whether a concluded administrative position had been formed concerning the authorisation status of the Elaine meteorological monitoring facility; and whether a concluded administrative position had been formed concerning commissioning timing or related permit-trigger matters, including the documentary basis upon which such a position had been recorded or relied upon.

The Trustee also expressly confined the nature of that correspondence. It stated that the correspondence did not assert breach, wrongdoing or legal consequence, did not seek enforcement action or an outcome, and was provided to ensure that the administrative record accurately reflected the state of the correspondence and non-response.

Council's Governance team responded later that day.

Council stated that decisions had been made and issued in relation to all FOI requests submitted, that those statutory processes were complete and that Governance's involvement in those matters had concluded.

Council then stated:

“Governance will not be providing any further response in relation to these matters.”

The Trustee considers the distinction between the two positions significant.

The Trustee was not asking Council to reopen or reconsider completed FOI decisions. Rather, the FOI outcomes had exposed questions concerning the substantive historical administrative record, including the documentary foundation for positions previously communicated or apparently relied upon by Council.

The Trustee was seeking an opportunity for Council to explain that record.

Council's response did not substantively address those questions. Instead, it treated completion of the FOI processes as bringing Governance's involvement to an end.

That distinction is relevant to the present complaint because the Trustee does not rely upon the absence of documents disclosed through FOI as automatically establishing that Council acted improperly. The Trustee has repeatedly sought to ascertain whether Council possessed some

other documentary or administrative explanation capable of reconciling the apparent gaps or inconsistencies.

Council was afforded an opportunity to provide that explanation before the present underlying administrative matters were escalated.

On 6 July 2026, following Council's statement that it would provide no further response, the Trustee supplied Council with its Notice — Crystallisation of Administrative and Regulatory Record and advised that the present phase of its continuing administrative and evidentiary record had been completed.

Importantly, the Trustee expressly stated that the 6 July correspondence was provided for information and administrative-record purposes only and was “not intended to seek any further response, clarification or administrative action.” The Trustee stated that its purpose was simply to ensure that Council's administrative record reflected completion of that phase of the documentary record and the availability of the resulting material.

The Trustee therefore does not rely upon Council's failure to respond to the 6 July correspondence as a separate failure to respond.

Rather, the significance of that correspondence is that, after Council had declined to provide further substantive clarification, the Trustee ensured that Council was nevertheless provided with notice of the developed documentary record and an opportunity to consider that material in the exercise of its statutory responsibilities.

The subsequent 2026 governance correspondence and Notices addressed elsewhere in this complaint provided further notice of particular matters as the documentary record continued to develop.

The Trustee's position is therefore not that Council was required to accept the Trustee's interpretation of the record.

The concern is that Council was repeatedly afforded an opportunity to identify the documentary foundation for its own historical administrative positions, or to explain and reconcile the apparent inconsistencies revealed through later statutory disclosure, but substantive clarification was not provided.

That history is relevant to the Ombudsman's consideration of the underlying administrative issues because it demonstrates that the present complaint is not based merely upon assumptions drawn from missing documents or upon an attempt to retrospectively challenge Council without first seeking an explanation.

The Trustee has sought that explanation from Council.

The underlying questions concerning Council's historical decision-making and documentary foundation therefore remain unresolved and are now respectfully placed before the Ombudsman for independent examination.

20. Administrative concerns raised

On the documentary record presently available, the Trustee is concerned that Council may have:

- a. reached a categorical no-breach determination without establishing all foundational facts necessary to test the compliance process upon which that determination depended;
- b. relied materially upon proponent-commissioned technical opinions without adequately recording its own scrutiny of the assumptions and source records underlying those opinions;

- c. failed to establish or retain a reliable record of the final-turbine commissioning date despite that date being an express trigger under section 4.3 of the endorsed NCTP;
- d. failed adequately to establish whether the updated K15aa background report was submitted in accordance with the NCTP requirement applicable before commencement of operation;
- e. failed adequately to examine whether the measurement locations and assessment pathway relied upon complied with Condition 23(a), NZS 6808:2010 and the endorsed NCTP;
- f. relied upon K15aa as a foundation for assessment of J14aa without adequately establishing and documenting the validity of that foundation;
- g. failed adequately to reconcile the version and peer-review status of the Sonus pre-construction noise assessment;
- h. failed to maintain or identify an adequate administrative record concerning the meteorological-monitoring/authorising pathway relevant to information subsequently relied upon in the compliance process;
- i. failed adequately to maintain or identify records demonstrating completion of other permit-triggered requirements, including Condition 17; and/or
- j. failed subsequently to reconcile or correct its historical administrative record when these matters were specifically brought to its attention.

These are matters for investigation. The Trustee does not present them as predetermined findings by the Ombudsman.

21. Matters requested for investigation

The Trustee respectfully asks the Ombudsman to investigate:

1. Council's December 2022 investigation, including the steps taken by Henry Bezuidenhout and any other Council officers before Council concluded that LLWF was not in breach of the Planning Permit.
2. The documentary foundation of that determination, including what primary records Council relied upon rather than only the conclusions contained in technical reports.
3. Condition 23(a) — whether Council established that operational wind farm sound levels relied upon in its investigation had been determined in accordance with the Standard at noise sensitive locations as required by the permit.
4. K15aa — whether Council established that the updated background noise report required by the endorsed NCTP was submitted to the Responsible Authority before commencement of operation and what document Council relied upon to establish that fact.
5. J14aa/K15aa reliance — whether Council adequately examined the basis upon which K15aa was used to support conclusions concerning J14aa.
6. Measurement locations — whether Council established that the relevant monitoring complied with the measurement-location requirements of the endorsed NCTP and applicable Standard.
7. Final-turbine commissioning — what date Council used for commissioning of the last turbine, the documentary source for that date and whether Council retained that record.
8. NCTP section 4.3 — whether Council tested the commencement of Stage 1 and Stage 2 monitoring against the mandatory timetable calculated from commissioning of the last turbine.

9. NCTP section 6.0 — whether Council tested whether the associated compliance reports were submitted within six weeks of completion of each **monitoring stage**.
10. Commencement of operation — whether Council established the commencement-of-operation date separately from the final-turbine commissioning date and applied that date to the K15aa pre-operation requirement.
11. Sonus peer review — which version of the Sonus pre-construction noise assessment was peer reviewed, which version Council relied upon and how any difference was administratively reconciled.
12. Meteorological monitoring — whether Council's records adequately establish the planning/authorising pathway applicable to the Elaine meteorological monitoring facility and the provenance of relevant wind-speed data.
13. Condition 17 — insofar as relevant to Council's broader record-keeping and permit administration, whether Council can identify the final reporting record associated with the condition.
14. Record keeping generally — whether Council's record-keeping was adequate for a regulatory function involving permit conditions dependent upon specific trigger dates, technical reports, endorsed plans and staged compliance processes.
15. Subsequent reconciliation — whether Council has acted reasonably when later documentary inconsistencies and gaps have been brought expressly to its attention.

22. Outcome sought

The Trustee does not seek a predetermined finding that Lal Lal Wind Farm is non-compliant.

Nor does the Trustee ask the Ombudsman to undertake the functions of the Responsible Authority, EPA or an acoustic expert.

The Trustee seeks an independent investigation into Council's administrative conduct.

In particular, the Trustee asks that Council be required, where appropriate, to:

- identify the documentary basis upon which its December 2022 no-breach determination was made;
- explain how the foundational timing, monitoring and reporting requirements of the endorsed NCTP were assessed;
- identify the commissioning and commencement-of-operation dates actually relied upon and their documentary sources;
- reconcile the K15aa, Sonus, meteorological-monitoring and other documentary issues identified above;
- correct any inaccurate or unsupported historical administrative position identified through that investigation;
- identify any records which ought reasonably to have been created or retained but cannot now be located; and
- reconsider any administrative conclusion materially dependent upon a factual or documentary foundation that cannot be substantiated.

If the Ombudsman concludes that Council's December 2022 investigation was adequate, the Trustee respectfully seeks an explanation of what documentary material demonstrates that adequacy, particularly in relation to the matters identified above.

23. Why Ombudsman investigation is warranted

The Trustee recognises that planning-permit administration can involve complex technical material and multiple responsible agencies.

That complexity is not itself the subject of this complaint.

The concern is that complexity makes reliable administration and record keeping more, rather than less, important.

Council reached an affirmative and categorical conclusion that LLWF was not in breach of its Planning Permit.

The documentary record now raises legitimate questions about whether Council had established some of the foundational matters necessary to reach that conclusion, including:

- the status of K15aa;
- compliance with Condition 23(a);
- the commencement-of-operation trigger;
- the last-turbine commissioning trigger;
- the timing of Stage 1 and Stage 2 monitoring;
- the timing of compliance reporting;
- the status of the Sonus peer review;
- the relevant meteorological-monitoring record; and
- other permit-triggered reporting records.

The Trustee has attempted to resolve those questions through correspondence, administrative enquiry and FOI.

The purpose of this complaint is therefore not to reopen a historical disagreement simply because the Beneficiary disagreed with Council's conclusion.

It is to determine whether Council's conclusion was reached through a reasonable administrative process supported by an adequate and identifiable documentary foundation.

That is the issue upon which the Trustee respectfully seeks the Ombudsman's assistance.

24. KEY DOCUMENTS PROVIDED WITH THIS COMPLAINT

The following documents are provided with this complaint to assist the Ombudsman in considering the matters raised.

The attachment schedule is intentionally confined to documents materially relevant to the administrative issues identified in this complaint. The Trustee does not seek to reproduce the entire historical record or material already held by the Ombudsman in connection with related correspondence.

Attachment A — Planning Permit PL-SP/05/0461

Relevant planning permit governing the Lal Lal Wind Farm, including Conditions 10 and 23 and the framework within which Council undertook the investigation addressed in this complaint.

Attachment B — Endorsed Noise Compliance Testing Plan — 23 January 2018

The Noise Compliance Testing Plan relevant to the matters considered by Council, including the requirements concerning the updated K15aa background assessment, commencement of operation, post-construction monitoring stages and reporting.

Attachment C — SLR Letter to Lal Lal Wind Farms — 1 December 2022

The expert opinion commissioned in connection with Council's Condition 10 process and subsequently relied upon by Council in reaching its December 2022 determination. This document is particularly relevant to the matters raised concerning K15aa, J14aa, the characterisation of the earlier monitoring as pre-construction, and the further confirmatory testing identified by SLR.

Attachment D — Moorabool Shire Council Determination — 14 December 2022

Council's communication recording its conclusion that the Lal Lal Wind Farm was not in breach of the planning permit following the Condition 10 investigation.

Attachment E — SLR K15aa Background Noise Assessment

The SLR material concerning the updated background noise assessment at K15aa upon which subsequent assessment and the December 2022 expert opinion materially relied.

Attachment F — NZS Extracts

The provisions of NZS 6808:2010 relevant to the issues raised in this complaint, including the definitions and provisions concerning background sound level, noise-sensitive locations, measurement locations and notional boundary.

Attachment G — DTP FOI Decision and Clarification — August 2026

The Department of Transport and Planning FOI material relevant to the subsequent documentary reconciliation, including the Department's inability to locate an instrument authorising departure from the identified NZS 6808:2010 definitions and its records concerning the K15aa material.

Attachment H — Council FOI Material — Final Turbine Commissioning

Council's FOI material relevant to whether Council held an identifiable documentary record establishing the date on which the last turbine was commissioned, being a date relevant to the timing requirements addressed in this complaint.

Attachment I — Council FOI Material — Meteorological Facility / Authorisation

Council's FOI material relevant to the documentary basis for the meteorological facility and wind-speed information relied upon in the noise assessment pathway addressed in this complaint.

Attachment J — Council FOI SR 62774 — Sonus Peer Review — 17 April 2024

Council's FOI response concerning the peer-review status of Sonus Pre-construction Noise Assessment S54664C11 dated June 2018, including Council's advice that the June 2018 assessment itself was not subject to an EPA Auditor Report/Peer Review on or after June 2018 and that an earlier version had instead been peer reviewed.

Attachment K — Governance Notice to Moorabool Shire Council — 20 July 2026

The Trustee's subsequent Governance Notice giving Council an express opportunity to review, clarify, supplement or correct the documentary record concerning its historical administration of Planning Permit PL-SP/05/0461.

Attachment L — Council Governance Correspondence — Administrative Record Clarification — April–July 2026

The subsequent correspondence recording the opportunity afforded to Council to substantively address and reconcile the identified documentary matters before this complaint was made.

Attachment M — Condition 17 / Commissioning Correspondence

The relevant Council correspondence concerning Condition 17 and the last-turbine-commissioning date, insofar as it demonstrates the later attempts to establish or reconcile the documentary trigger date relevant to Council's historical administration.

Attachment N — Council FOI SR 23397 — K15aa Report — 12 April 2023

Council's FOI decision recording its search for the purported "SLR 2018 Pre-construction Baseline Noise Monitoring Report @ location K15aa", its conclusion that the document did not exist, and LLWF's advice that the reference was a clerical error and should instead have referred to the February 2021 SLR background report.

Attachment O — Council K15aa Enquiry Response — 28 November 2024

Council correspondence recording the Beneficiary's subsequent enquiry as to whether Council held the February 2021 K15aa background report and, if so, the date upon which Council received it, relevant to the unresolved historical question of submission of that report to the Responsible Authority.

Note concerning the attachment record

These documents are provided to enable the Ombudsman to examine the administrative and documentary foundation of Council's investigation and December 2022 determination.

Their inclusion should not be understood as asking the Ombudsman to independently determine acoustic compliance or to substitute its technical judgment for that of an acoustic expert.

Some of the documents post-date Council's December 2022 determination. As explained in this complaint, they are not relied upon on the basis that Council should retrospectively have known information that became available later. They are provided because they assist in identifying and testing what contemporaneous records existed, what matters were established or not established at the time, and whether the documentary foundation subsequently identified by Council is capable of supporting or reconciling its earlier administrative conclusion.

The Trustee has also subsequently provided Council with opportunities to clarify, supplement or correct that documentary record before referring these matters to the Ombudsman.

Yours faithfully,

LEWIS TROJAN HORSE PTY LTD

as Trustee of the **Owen Robert Inter Vivos Trust**