

Before Independent Commissioners Appointed by the Canterbury Regional Council

In the matter of The Resource Management Act 1991

And

In the matter of Proposed Plan Change 7 to the Canterbury Land
and Water Plan

And

In the matter of A submission by the Isaac Conservation and Wildlife
Trust on Map B-C05 and Schedule 17 – Salmon
Spawning Sites

**MEMORANDUM OF COUNSEL FOR THE ISAAC CONSERVATION AND
WILDLIFE TRUST SEEKING LEAVE TO ADMIT SUPPLEMENTARY EVIDENCE**

DATED: 18 SEPTEMBER 2020

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MAY IT PLEASE THE COMMISSIONERS:

1. This Memorandum is filed on behalf of The Isaac Conservation and Wildlife Trust¹ (**Trust**). It relates to that part of the Trust's submission concerned with identification of Salmon Spawning Sites within the Trust's landholding.
2. The purpose of this Memorandum is to respectfully request leave for the Trust to file an additional item of evidence in respect of Salmon Spawning Sites. The intended statement of supplementary evidence has been prepared by Shelley McMurtrie and is **attached** to this Memorandum.

Context for the request

3. The Joint Memorandum of Counsel (dated 11 August 2020) explains the genesis of the Trust's involvement in the issue of Salmon Spawning Sites, by reference to the Trust's submission on Plan Change 7.² The Joint Memorandum also records the general absence of expert engagement on this issue, aside from that of the Trust (through its expert witness, Ms McMurtrie) and the Regional Council (through its expert witness, Jarred Arthur)³.
4. In finalising her brief statement of Rebuttal Evidence,⁴ Ms McMurtrie provided the Trust (and its consultants) a diagram showing:
 - (a) The waterways on the Trust's land originally proposed for inclusion in Schedule 17; and
 - (b) Which, of the proposed waterways, are not in fact Salmon Spawning Sites according to the opinions of Mr Arthur and Ms McMurtrie (as expressed in the Joint Witness Statement (**JWS**) they produced).
5. The diagram included a waterway called "Stopbank Creek". Circulation of the diagram (on Wednesday 16 September) prompted discussion between the Trust's representatives and advisors. In the course of those discussions it became apparent a survey of Stopbank Creek had been inadvertently omitted from Ms McMurtrie's scope of work.

¹ Submitter ID 371

² Joint Memorandum of Counsel Requesting Expert Caucusing Regarding Salmon Spawning Sites Within the Landholding of the Trust (11 August 2020), paragraph 6

³ Ibid at paragraphs 7 to 9

⁴ To that of Emily Arthur-Moore, whose evidence in chief was discussed at paragraph 9(b) of the Joint Memorandum dated 11 August 2020

6. Arrangements were made for the requisite survey to occur as soon as possible. This was undertaken the next day (Thursday 17 September). Ms McMurtrie has since interpreted the results and drawn conclusions from them. The Trust proposes to present those results and conclusions in a Statement of Supplementary Evidence, which Ms McMurtrie has prepared today (Friday 18 September).
7. The proposed Supplementary Evidence is relatively short. Ms McMurtrie has documented the survey results and her conclusions in the same way as for her earlier Evidence. Ms McMurtrie ultimately concludes Stopbank Creek does not provide salmon spawning habitat.

Scope to seek deletion of Stopbank Creek

8. If the Commissioners agree to Ms McMurtrie's Supplementary Evidence being admitted, the Trust will rely on it to also support deletion of Stopbank Creek from the waterways identified in Schedule 17 and Map B-C05. The scope for this arises from the Trust's original submission on Plan Change 7, which:
 - (a) Opposed Map B-C05 (Schedule 17 describes the Salmon Spawning Sites narratively and provides map references; Planning Map B-C05 shows the sites so described); and
 - (b) Sought (relevantly) the following relief:
 - (i) *Delete the Salmon Spawning Sites identified within the north and eastern parts of the Isaac Trust landholdings; and*
 - (ii) *Such further or other consequential relief, to the identified provisions or to other provisions under the Proposal as may be necessary to give full effect to the relief sought in this submission; and*
 - (c) Provided the following reasons for the submission:
 - (i) *Large sections of the Salmon Spawning Sites identified within the Isaac Trust landholdings (Lot 2 DP 318887 and Lot 1 DP 83039) are ephemeral, dry for the majority of the year and with permanently grassed beds, which are understood to be not conducive to salmon spawning.*

9. Stopbank Creek is one of the proposed *Salmon Spawning Sites identified within the north and eastern parts of the Isaac Trust landholdings*, as per the item of relief requested and quoted at paragraph 8(b)(i) above.

Prejudice to other parties

10. It is submitted no prejudice arises from the admission of Ms McMurtrie's Supplementary Evidence.
11. The only other expert witness on this subject is Mr Arthur. Ms McMurtrie provided a draft of the intended evidence to Mr Arthur for comment. However, Mr Arthur has advised Ms McMurtrie he cannot provide feedback on the advice of the Regional Council's lawyers.
12. As noted in the 11 August Joint Memorandum, Emily Arthur-Moore is the only other witness whose evidence touches upon this topic although *her written material does not discuss how a factual assessment of spawning habitat should be made*⁵. Ms Arthur-Moore's statement⁶ runs to one page and does not attest to any expertise in aquatic ecology. Accordingly, it is submitted to be highly unlikely that Ms Arthur-Moore might wish to respond to Ms McMurtrie's Supplementary Evidence. However, in the event Ms Arthur-Moore wishes to file rebuttal of the same, the Trust would not oppose such a request. Given the brevity of Ms McMurtrie's Supplementary Evidence, it is suggested this could be done well in advance of the Trust's 2 October appearance.
13. In the interests of transparency and expediency, this Memorandum has been served upon Counsel for the Regional Council and Ms Arthur-Moore at the same time it is filed with the Plan Change 7 Hearings Administrator.


⁵ Joint Memorandum of Counsel Requesting Expert Caucusing Regarding Salmon Spawning Sites Within the Landholding of the Trust (11 August 2020), paragraph 9(b)

⁶ Dated 17 July 2020 and filed on behalf of North Canterbury Fish and Game Council

Request for leave

14. For the reasons outlined above, the Trust respectfully seeks leave for Ms
McMurtrie's Supplementary Evidence (as **attached**) to be admitted in these
proceedings.

Dated this 18th day of September 2020



A C Limmer

Counsel for the Isaac Conservation and Wildlife Trust (Submitter 371)