

**BEFORE THE CHRISTCHURCH REPLACEMENT DISTRICT PLAN  
HEARINGS PANEL**

**IN THE MATTER** of the Resource Management Act 1991 and the Canterbury  
Earthquake (Christchurch Replacement District Plan) Order  
2014

**AND**

**IN THE MATTER** of submissions and further submissions by The Isaac  
Conservation and Wildlife Trust on Chapter 2 (Definitions) of  
the Replacement District Plan

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**MEMORANDUM OF COUNSEL FOR THE ISAAC CONSERVATION  
AND WILDLIFE TRUST REGARDING CONSEQUENTIAL CHANGES TO  
CHAPTERS 17 AND 18  
(SUBMITTER ID 2146)**

Dated 29 August 2016

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## **MAY IT PLEASE THE PANEL:**

1. This memorandum is filed on behalf of The Isaac Conservation and Wildlife Trust (**Trust**) pursuant to the Panel's Minute dated 12 August 2016. The Panel has requested parties to file any comments on the Council's Appendix C<sup>1</sup> by today.
2. This memorandum is set out in two parts:
  - (a) Comments on Appendix C; and
  - (b) Request for a consequential amendment omitted from Appendix C.

### **Appendix C**

3. Relevant to the Trust's interests, Appendix C proposes changes to:
  - (a) The activity standards (ie second column) of Rule 18.4.2.1 P2 (save for the reference to a 2000m setback for fireworks, which should now be 4000m); and
  - (b) The activity standards (ie second column) of Rule 18.4.2.1 P4 (with the same proviso as above regarding fireworks).
4. The Trust supports those proposed amendments. The Trust also supports Council's submissions that they are:
  - (a) *necessary or desirable...to ensure...the replacement district plan is coherent and consistent; and*
  - (b) *...of minor effect.*
5. In particular, the changes proposed:
  - (a) Overcome the effect of the "clarification" inserted at P2, which permits a wider range of Recreation Activities than understood at the time the Chapter 18 provisions were discussed and agreed during the hearing; and
  - (b) Addresses the amendment of the Major Sports Facilities definition, which was previously defined to *have the same meaning as* a Minor Sports Facility and include some additional activities. The Trust's

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<sup>1</sup> CCC's Closing Legal Submission for Chapter 2 (11 August 2016) at Appendix C

concerns with this amendment are explained in its opening legal submissions and the subsequent memorandum.<sup>2</sup> It is satisfied the amendments proposed address changes and do not alter the effect of what was agreed during the Chapter 18 hearing.

#### **Request for a consequential amendment to Rule 17.4.2.1 P11**

6. In its comments on the Revised Definitions the Trust noted several consequential changes would be desirable from its perspective<sup>3</sup>. It set those changes out at Appendix A to the memorandum. It also explained its understanding that the changes had been agreed to (and would be subsequently sought by) the Council<sup>4</sup>.
7. As it eventuated, the Council's Appendix C proposes all the same changes as the Trust set out except to Rule 17.4.2.1.P11. The Trust enquired of the Council as to whether this was inadvertent or deliberate. As set out in the Trust's closing legal submissions on Chapter 2, the Council advised it was inadvertent and it continues to support the change set out at Appendix A of the Trust's earlier memorandum<sup>5</sup>.
8. The Trust continues to pursue a change to Rule 17.4.2.1 P11. The effect of the change sought (re-attached as **Appendix A** for ease of reference) is to isolate those aspects of recreation activities that are not permitted in the Rural Waimakariri Zone – either entirely<sup>6</sup> or only in close proximity to the Trust's land.<sup>7</sup>
9. At a high-level, the reasons for the change sought are:
  - (a) When participating in the Chapter 17 hearing, the Trust did not understand the permitted activity rule for Recreation Activities/Facilities to encompass Major Sports Facilities, Minor Sports Facilities and Motorised Sports Facilities<sup>8</sup>. It understood these other, separately defined recreation-related activities defaulted to a non-complying status;<sup>9</sup>

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<sup>2</sup> Opening Legal Submissions on behalf of the Trust for Chapter 2 (1 April 2016) at paragraphs 12 to 14; Memorandum of Counsel on behalf of the Trust in Response to Redrafted Definitions (1 August 2016) at paragraph 5

<sup>3</sup> Memorandum of Counsel on behalf of the Trust in Response to Redrafted Definitions (1 August 2016)

<sup>4</sup> Memorandum of Counsel on behalf of the Trust in Response to Redrafted Definitions (1 August 2016) at paragraph 8

<sup>5</sup> Closing Legal Submissions on behalf of the Trust (18 August 2016) at paragraph 8

<sup>6</sup> As for motorised sports activities

<sup>7</sup> As for fireworks, starter guns, air horns or public address systems

<sup>8</sup> Evidence of Kim Seaton on behalf of the Trust for Chapter 2 (3 March 2016) at paragraph 20

<sup>9</sup> Evidence of Kim Seaton on behalf of the Trust for Chapter 2 (3 March 2016) at paragraphs 20 to 24

- (b) The Trust devoted considerable resource to arguing about appropriate controls on recreation-related activities in the adjacent Open Space McLeans Island Zone. It did not have to specifically argue about Motorised Sports Activities because they were always proposed to be non-complying in the relevant Open Space Zone. However, it did call evidence and legal submissions in Chapter 6 opposing permitted status for noise levels from go-karts in the Rural Zone surrounding the Trust's land. It did not call the same evidence or address the status of any of these activities in the Rural hearing, having proceeded on the basis the activities of concern would require consent anyway.
- (c) If changes are not made to Chapter 17 the planning framework impacting on the Trust's land will be inconsistent for no resource management reason. Activities that are subject to control to the west of the Trust's land could occur as permitted activities (subject to standards) on land to the south and south-west of Peacock Springs.
- (d) The Trust wishes Peacock Springs to have the same protection from potentially disruptive activities at all relevant boundaries.

#### Jurisdiction

##### *Clause 13(5) of the Order in Council*

10. The Trust submits the change it seeks is both necessary and desirable to ensure consistency and coherency in the Plan:
  - (a) Decision 34 on Chapter 17 has recently issued. It permits "Recreation Activity" in all Rural zones, including the Trust's land adjacent to the Rural Waimakariri Zone (and except Rural Templeton). The Activity tables for each of the Rural zones do not list any of the other recreation-related activities separately (ie Major Sports Activity, Minor Sports Activity and Motorised Sports Activity); and
  - (b) Decision 35 on Chapter 18 was also released recently. It provides an activity status for each defined recreation-relative activity/facility separately. For example, in the Open Space McLeans Island Zone Recreation Activities, Major Sports Facilities and Minor Sports Facilities are each separately listed as permitted activities and Motorised Sport Activity/Facility is separately listed as non-complying. In the Open Space Natural Zone, Recreation Activity is specified as permitted, Minor Sports Facilities are restricted discretionary, Major Sports

Facilities are either discretionary or non-complying and Motorised Sports Activity/Facility is non-complying.

11. As a result, it is respectfully submitted the plan user is left wondering why Chapter 18 separately lists the recreation-related activities if the definition is in fact a nested one.
12. The Council's Appendix C does not propose to alter either the definitions or the provisions of Chapter 17 in order to clarify whether the recreation-related definitions are nested or not. However, the Council is proposing changes to the Recreation Activity/Facility standards in Chapter 18.<sup>10</sup> Those changes affect the context for interpretation of the "Recreation Activity/Facility" – a context which was particularly influential in the Trust's understanding of Chapter 17 and apparently other expert planning witnesses too.<sup>11</sup> It appears the changes now proposed by Council are intended to support a nested approach to interpretation of the "Recreation Activity/Facility" term.
13. The Trust submits such an amendment, without the change also requested by the Trust, would prejudice the Trust.<sup>12</sup> From the Trust's perspective it will only be of "minor effect" if the change it seeks to Rule 17.4.2.1 P11 is also made. This is the basis upon which the Trust sought and obtained agreement from the Council on the suite of consequential amendments required.
14. With respect to Clause 13(5) of the Order in Council, it is submitted there is jurisdiction to make a somewhat equivalent clarification to Chapter 17 in order to achieve consistency and coherency - at least between the two chapters the Trust has focussed its considerations on.

*Clause 13(6)(a) of the Order in Council*

15. The Trust concurs with the meaning of Clause 13(6)(a) of the Order in Council as set out in the Council's closing legal submissions at paragraphs 13.3 and 13.4.

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<sup>10</sup> For example, see Appendix C of the Council's Closing Submissions, page 87, proposed change to Rule 18.3.2.1 P1: *Clarification, Refer to the activity status tables in this zone to determine the activity status and standards for: (i) Major sports facility, (ii) Gymnasium; (iii) Use of motorised water craft (iv) Motorised sports facility*

<sup>11</sup> Evidence of Kim Seaton on behalf of the Trust for Chapter 2 (3 March 2016) at paragraphs 20 to 24, relying on advice from Chapter 17 lead Ms Hogan for the Council; Evidence of Janice Carter on behalf of the Council for Chapter 18 (19 January 2016) at paragraphs 10.4 and 10.5; Evidence of Kelly Andrew on behalf of the Council for Chapter 6 (4 February 2016) at paragraph 14.2

<sup>12</sup> Opening Legal Submissions on behalf of the Trust for Chapter 2 (1 April 2016) at paragraph 19

16. It submits the consequential change it seeks to the Rural rule (Rule 17.4.2.1.P11) would not prejudicially affect the rights of any other person(s) because:
- (a) The evidence discloses a consistent approach between planners as to interpretation of the permitted activity standard<sup>13</sup>. There was no evidence from any other party suggesting a different interpretation.
  - (b) The submission of Mr Francis – who has taken an active interest in the issue of kart noise at McLeans Island and might be affected by the amendment – also proceeded on the basis a kart track (being a Motorised Sports Activity) would require resource consent.<sup>14</sup>
  - (c) The Rule is confined to affecting only a very small range of activities:
    - (i) Motorised Sports Activity;
    - (ii) Fireworks within 4km of Peacock Springs; and
    - (iii) Starter guns, air horns or public address systems within 500m of Peacock Springs.
  - (d) It is therefore submitted no person will be prejudiced by the change and jurisdiction exists to make it.

*Clause 13(6)(b) of the Order in Council*

17. In the event the Panel is concerned about whether such an amendment qualifies under Clause 13(6)(a) to the Order in Council, the Trust requests a direction under Clause 13(6)(b). This is because the Trust will be prejudiced by the consequential changes proposed to Chapter 18 by the Council<sup>15</sup> and more particularly the influence they have on context and therefore interpretation of "Recreation Activity/Facility".

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<sup>13</sup> Evidence of Kim Seaton on behalf of the Trust for Chapter 2 (3 March 2016) at paragraphs 20 to 24, relying on advice from Chapter 17 lead Ms Hogan for the Council; Evidence of Janice Carter on behalf of the Council for Chapter 18 (19 January 2016) at paragraphs 10.4 and 10.5; Evidence of Kelly Andrew on behalf of the Council for Chapter 6 (4 February 2016) at paragraph 14.2

<sup>14</sup> Original Submission #5079: *The nett governance outcome this submission is seeking is for a clear indication that noise from Karts Racing would be a permitted activity on the McLeans Island site...It is submitted other effects can be deferred to resource consent stage*

<sup>15</sup> For example, see Appendix C of the Council's Closing Submissions, page 87, proposed change to Rule 18.3.2.1 P1: *Clarification, Refer to the activity status tables in this zone to determine the activity status and standards for: (i) Major sports facility, (ii) Gymnasium; (iii) Use of motorised water craft (iv) Motorised sports facility.* The same note is added to numerous permitted activity rules

18. The Trust seeks this prejudice be redressed by the consequential amendment it pursues.

Dated: 29 August 2016

A handwritten signature in blue ink, consisting of a stylized initial 'A' followed by a long horizontal stroke.

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**A C Limmer**

Counsel for The Isaac Conservation and Wildlife Trust

## APPENDIX A

### Chapter 17 Rural

Note: base document is the Revised Proposal for Chapter 17 (Rural), as appended to Closing Legal Submissions for the Council dated 8 December 2015, with the agreed changes set out in red underlined and ~~strikethrough~~ text and definitions relied upon identified using green text or green highlighted text.

Rural Waimakariri Zone - Amend **Rule 17.4.2.1 P11** as follows:

P11	<u>Recreation activity</u>	<p>a. Any <u>Recreation activity</u> shall:</p> <ul style="list-style-type: none"><li>i. limit any <u>building</u> and/or <u>impervious surfaces</u> to an area of less than 100m<sup>2</sup></li><li>ii. <del>exclude Motorised Sports Facilities.</del></li><li>iii. <u>exclude:</u><ul style="list-style-type: none"><li>a. <u>The setting off of any fireworks within 2,000m of the Peacock Springs Conservation Area as shown in Appendix 17.9.X;</u></li><li>b. <u>The use of starter guns, air horns or public address systems within 500m of the Peacock Springs Conservation Area as shown in Appendix 17.9.X.</u></li></ul></li></ul>
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