

UNDER the Local Government Act 2002
AND Section 22AB of the Land Transport Act 1998
IN THE MATTER of a proposed Bylaw using a Special
Consultative Procedure

PROCEDURAL MINUTE 1
ISSUED BY COMMISSIONERS
Dated 18 November 2021

- 1 This minute is issued for the purposes of case management. Commissioners have not formed a view on the merits of the proposed bylaw, which is the subject of a special consultative procedure, with a hearing scheduled for 23, 24, 25 November 2021.
- 2 Commissioners have received a copy of a letter from Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura dated 12 October 2021, addressed to Council.¹ The letter raises procedural issues relating to the pending bylaws hearing, and accordingly Commissioners were provided with the letter on 3 November 2021.
- 3 As a starting point, the letter is addressed to the Mayor and Councillors. We requested confirmation that Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura consent to release of the letter to Commissioners, and submitters, including Te Rūnanga a Rangitāne o Wairau (**Rangitāne o Wairau**). This may seem obvious, but the letter was not (to our knowledge) copied to Rangitāne o Wairau (or other submitters). By email dated 17 November 2021, consent was received to release the letter. Absent that consent, we would have disregarded the letter (to ensure procedural fairness).
- 4 Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura are not submitters on the proposed bylaws, for reasons explained in the letter. At this stage, neither Rūnanga has requested leave to file a late submission.

¹ Commissioners held a preliminary discussion about the letter on 12 November 2021.

- 5 Te Rūnanga o Ngāti Kuia and Rangitāne o Wairau are submitters on the bylaws, scheduled to present their respective cases on day one of the hearing. The letter advises that Te Rūnanga o Kaikōura is the administrative body mandated to represent Ngāti Kurī interests.
- 6 The letter identifies that Ngāti Kurī asserts tangata whenua status, as recognized by Te Rūnanga o Ngāi Tahu Act 1996, and that the proposed Bylaw area is within the statutorily recognized takiwā of Ngāi Tahu Whānui.²
- 7 The submission by Rangitāne o Wairau identifies that it has ancestral relationships with the land that may be subject to the proposed bylaw. The submission refers to case law, and submits that their interests should be treated as “equal to those of Ngāi Tahu and its hapū”.³
- 8 The submission by Te Rūnanga o Ngāti Kuia does not appear to raise any issue of competing claims to tangata whenua status. It appears to be more inclusive.⁴
- 9 Commissioners must have regard to the relevant statutory criteria, relevant information identified in the Statement of Proposal and related technical reports, and relevant matters identified by submitters to the terms of the Bylaw.
- 9 The preliminary view of Commissioners is that they do not consider it is relevant to their role, and is not relevant to determination of the merits of the Bylaw, to make determinations on the competing claims to strength of relationship between the relevant Iwi Authorities and their hapū. Commissioners consider that they can discharge their role to assess the merits, without making such findings. Commissioners are not bound by background statements set out in the Technical Report dated July

² Not a summary of all matters identified in the letter. We may have regard to the identified statutory framework, to the extent relevant.

³ Not a summary of all relevant matters raised in the submission. Relevance of the cited case law is at issue.

⁴ The submission identifies what it says was “limited iwi engagement by Council” and “..each iwi having a position in this post settlement world we have created..” Not a summary of all relevant matters raised in the submission.

2021 (the report is recommendatory only).⁵ In that regard, submitters may wish to consider the relevance of the High Court decision in *Ngāti Maru v Ngāti Whātua Ōrākei*, noting that this decision related to the RMA regime (**attached**).⁶

- 10 We wish to give advance warning to all submitters of our preliminary view, in case any submitter wishes to raise this issue as relevant to the merits of the Bylaw.
- 11 We direct that:
 - (1) the letter dated 12 October 2021 be released to all submitters;
 - (2) this minute is to be provided to all submitters and posted to the Council website;
 - (3) Leave is reserved to all submitters to respond to matters raised in this minute, which can be addressed during the hearing, or subsequently (if additional time is needed by submitters with a relevant interest). Any procedural issues will be addressed at the start of the hearing on 23 November 2021.
- 12 A separate minute (Minute 2) is issued to identify our proposed site visit.

Dated 18th November 2021



Rob Enright
Chair

⁵ The technical report quotes from Te Rūnanga o Kaikōura in the extract on pg6.

⁶ Resource Management Act 1991 (**RMA**). As an aside, Commissioner Enright is involved (as Counsel) in these proceedings in the Environment Court.