

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 4
ISSUED BY COMMISSIONERS
Dated 26 November 2021**

- 1 This minute is issued for the purposes of case management. The proposed bylaw is the subject of a special consultative procedure. An initial hearing of submitters was held on 23, 24, 25 November 2021 (**the hearing**). We wish to acknowledge all submitters that participated in the hearing for their constructive and focused presentations on the proposed Bylaw, and the various options available.
- 2 We have decided to reconvene in February 2022 so that we can consider further information identified below, which may be relevant to our recommendations. Commissioners will also undertake a second site visit, and we will report back to submitters on our itinerary.
- 3 In making these directions, Commissioners have not come to any view on the merits. All submitters will have the opportunity to respond to the further information below, in writing, and/or by attending our reconvened hearing (if preferred). Subject to confirmation by Council, our reconvened hearing will be on **15 and (if needed) 16, 17 February 2022**.

Further information

- 4 At the conclusion of the hearing, following presentations by submitters, we made the following directions: ¹

¹ In our Minute 3, we identified a draft timetable. We have generally kept to this timetable, but have allowed extra time given the Christmas period.

- (1) The hearing is adjourned pending receipt of further information identified below, and will be reconvened on **15 February 2022** (or such other date as identified by Council to submitters).
- (2) Direction under s83(3) LGA 2002 to receive the letter dated 12 October 2021 from Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura;
- (3) Direction under s83(3) LGA 2002 that Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura may provide any additional response to our Minutes 1 and 3, and the memorandum filed by Te Rūnanga a Rangitāne o Wairau (dated 22 November 2021) by **15 December 2021**;
- (4) Direction under s83(3) LGA 2002 requesting the following information by **15 December 2021**:
 - (a) That Council request James Bentley to provide a written report to explain his opinion that enabling continued vehicle access within the proposed Bylaw area does not adversely affect the Outstanding Natural Landscape values identified in the Proposed Marlborough Environment Plan for the Limestone Coast. In providing this opinion, Mr Bentley should certify compliance with the Environment Court Expert Code of Conduct. For clarity we do not require a lengthy report, but the ONL status is clearly relevant to the proposed Bylaw, and the options under consideration.
 - (b) Saltworks Ltd to identify on a map the area within which they seek an exemption at the Saltworks jetty point at Marfells beach, and explain why vehicle access to this area is required. Commissioners need to understand what is a reasonable working area, and what type of machinery may be required to gain access. For example, 50 metres each side of the jetty? What type of machinery? We request that Saltworks provide a copy of any relevant resource consents held for the jetty structure, such as occupation consents. Saltworks may attend our

proposed hearing in February 2022 to explain their position on a requested exemption, if they wish.

- (c) The Department of Conservation (**DOC**) made a submission, but did not attend the hearing. DOC has a statutory responsibility for management of marine mammals that may be affected by any vehicle access, as well as conservation estate that may be affected (directly or indirectly) by vehicle access. DOC has other relevant statutory functions in the coastal environment, including (for example) ability to fence off dunes areas on conservation land where subject to restoration works. Accordingly, we request that a relevant representative of DOC attend the proposed hearing in February 2022, to answer questions. These may include whether it would be appropriate (if the proposed Bylaw is approved) for conditions to be imposed relating to vehicle access (if granted) below high tide mark, and seasonal restrictions relevant to breeding seasons for marine mammals, rare and threatened fauna, and any other relevant matter (such as protection of rare and threatened flora). DOC may also lodge a written response on these matters, if they wish, by 15 December 2021.
- (d) The MDC Harbour Master is requested to provide a report on the safety of the proposed boat access point at Ward Beach, and whether this should enable public access. We may have additional questions, and these will be advised to the Harbour Master (and notified to submitters).
- (e) Ministry of Primary Industries (**MPI**) is requested to provide relevant surveys/baseline data/information relating to impacts on marine species within the coastal marine area/takutai moana (flora and fauna) caused by the 2016 earthquake/uplift. We are particularly interested in information & surveys relevant to the subject area (MDC southern boundary to Awatere River mouth).

- (f) MDC staff are requested to provide a report on:
- (i) whether the Bylaw may include a licensing requirement for persons that wish to obtain access by motor vehicle to the subject beach areas. We understand that Tauranga City Council operates a licensing system for some beach access, and we ask that Council staff report back on the feasibility and validity of such an approach.
 - (ii) What is an appropriate definition of “quad bike”, and vehicles under 1000cc. Does Council have a duty under HSE legislation (or otherwise) to require that vehicles seeking access to the subject areas are warranted and registered?
 - (iii) Whether we can recommend restrictions on vehicle access from Wharenui south to the MDC district boundary. Is this within the notified parameters of the proposed bylaw ?
 - (iv) Whether we can recommend signage and fenced areas at certain pinch-points for access and/or areas of high biodiversity or dune restoration areas (if vehicle access is granted). Is this within the notified parameters of the proposed bylaw? (We are aware that we cannot through a bylaw introduce a requirement for Council to incur expenditure, therefore this can only be a recommendation.)
 - (v) Whether Council has additional information available relating to presence of rare and threatened flora and fauna at Awatere river mouth and Waima (Ure) river mouth.
 - (vi) Whether Council has additional information available relating to effects of motor

vehicles on biodiversity within the intertidal zone.

- (vii) Draft contour maps that identify 200m, 300m, 400m, 500m, 1km no-drive areas at Awatere river mouth, Waima (Ure) river mouth, and adjacent to the DOC reserve at Marfells beach.
- (5) Direction that Burkhart Fisheries Ltd/Lanfar Holdings (No.4) Ltd may by **10 December 2021** provide an amended version of:
- (a) their proposed amendments to the Bylaw (if approved) including identified spatial area where they seek an exemption at Ward Beach access point, and at Saltworks Jetty point;
 - (b) their suggested terms of reference to the Harbour Master (to assess the safety of proposed beach access under the Bylaw);
 - (c) copies of their resource consent for gravel extraction (and related activities allowing boat access) at Ward Beach, and their resource consent (for salt water extraction, and related activities) at Saltworks jetty point.
- (6) Several submitters offered to provide additional information by **1 December 2021** (including the East Coast Protection Group Inc and Royal Forest & Bird Protection Society Inc). All information will be posted to the Council website for public and submitter review.

Submitter response to further information

- 5 We would like to emphasise that we have not made any decisions on vehicle access under the proposed Bylaw. We would like more information on all the options so that we can make an informed recommendation to Council.

- 6 Any submitter may respond in writing by **Friday 4 February 2022** to the further information identified above. Submitters should email or hand deliver this information to Council (or provide hard copies to Council). The email address is EastCoast@marlborough.govt.nz. All responses will be posted to the Council website.
- 7 Submitters that wish to address the Commissioners at a reconvened hearing in February 2022, in relation to the further information, may request a time slot from Council for 15 February 2022 (and, if needed, 16, 17 February).
- 8 The email address for all information to be submitted to Council is EastCoast@marlborough.govt.nz or hard copies may be provided at Council offices.
- 9 Covid19 protocols will apply to our reconvened hearing. If required, the hearing will be conducted by Zoom.

Dated 26th November 2021

A handwritten signature in black ink, appearing to be 'Rob Enright', written over a light grey rectangular background.

Rob Enright
Chair