

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 3
ISSUED BY COMMISSIONERS
Dated 22 November 2021**

- 1 This minute is issued for the purposes of case management. The proposed bylaw is the subject of a special consultative procedure, with a hearing scheduled for 23, 24, 25 November 2021 (**the hearing**). Commissioners have not formed any view on the merits.
- 2 This minute addresses preliminary matters, as follows:
 - (1) Disclosure of background information
 - (2) Background reports
 - (3) Update on our site visit
 - (4) Proposed directions under s83(3) LGA 2002
 - (5) Summary of proposed directions
 - (6) Addendum

Background information

- 3 In the interests of transparency, Commissioners wish to advise that:
 - (a) Commissioner Enright has previously been engaged as Counsel to represent the Royal Forest & Bird Protection Society Inc. (**RFB**) in unrelated RMA proceedings;¹ and is Counsel for Kā Rūnaka on unrelated RMA matters relating to the QLDC partly operative district plan.²

¹ RFB and their branch offices are submitters on the proposed Bylaw. Commissioner Enright does not presently act for or represent RFB in any matters.

² Kā Runaka is (relevantly) mandated to represent hapū of Te Rūnanga o Ngāi Tahu in the Queenstown Lakes District Council (**QLDC**) area in relation to the QLDC proposed district plan

- (b) Commissioner Ma-rea Clayton has whakapapa to Ngāi Tahu, Ngāti Rarua, Rangitāne o Wairau, Ngāti Toa, Te Atiawa. Commissioner Enright's spouse and children whakapapa to Ngāi Tahu (Otago).
 - (c) Finally (and as might be expected), Commissioner David Croad is a Marlborough District Councillor, and is therefore likely to personally know some or many of the submitters.
- 4 Commissioners are satisfied that the above issues do not create any issues for our role in the hearing, but are disclosed in the interests of transparency. As below, any procedural issues or concerns may be raised at the start of the hearing.

Background reports

- 5 We have requested that Council proactively release all relevant background reports referred to in **Appendix 14** to the Technical Report dated July 2021. We have directed that the reports (while publicly accessible on request) should also be posted on the Council website, for ease of reference.³
- 6 A high-level summary of this information is already provided by the July 2021 Technical Report (available to all submitters during the submissions process). The background reports provide additional detail and context.
- 7 Any submitter that wishes to review and respond to the background reports may do so, by providing a written response to Council by **20 December 2021**. Commissioners will then review that response as part of their deliberations on the

process; RMA refers to the Resource Management Act 1991. The *Saxmere* decision (citing *Aussie Airlines*) relevantly identifies that a barrister is engaged to act as their client's legal advocate, does not become part of or identified with the client, and can equally be briefed to fulfil the same task for the opposite side: *Saxmere* [2009] NZSC 72 at [7], [2009] NZSC 122 (recall).

³ Council was requested to post the reports on the website as soon as possible, this request was initially made on 11 Nov. Commissioners received hard copies on 18th Nov, but we were unable to review these reports prior to our site visit on 19th Nov. We understand there have been some technical delays in making the reports available, hence we have allowed all submitters extra time (until 20 Dec 2021) to review and respond to these reports.

proposed Bylaw. Submitters may also address the background reports (if they wish) during the hearing.

Update on Site visit

- 8 We completed our site visit on 19th November 2021, generally in accordance with the itinerary provided in Minute 2, and in fine weather conditions. We observed the natural character and scenic qualities, various landmarks, seabirds and wild-life (including Banded Dotterell nesting), evidence of ATV/4-WD tracks (both above and below high-water tide mark), recreational users driving, cycling and walking, two diggers parked at the beach access point at Ward Beach, and contractors on the beach (at the Saltworks jetty/beach access point).

Correspondence from Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura (Minute 1)

- 9 This correspondence is produced in Minute 1. Our tentative view, subject to hearing from submitters, is that we will exercise our powers under s83(3) Local Government Act 2002 to receive this correspondence, so that it is on the record, despite the fact that the Rūnanga are not submitters on the Bylaw process.
- 10 All submitters with a relevant interest may then respond to the letter, both during the hearing, and with further time for a written response by **20 December 2021**.
- 11 In parallel, we will invite Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura to provide any response to Minutes 1 and 3, by 3 December 2021.⁴ This will be done under s83(3) LGA 2002. Submitters may then respond in writing by 20 December 2021.

Summary

- 12 Subject to (13) below, a summary of our proposed directions are as follows:

⁴ For clarity, this includes any response to the memorandum dated 22 Nov 2021 filed by Te Rūnanga a Rangitane o Wairau.

- (i) 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;
 - (ii) 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, by 3 December 2021;
 - (iii) Any submitter that wishes to respond in writing to the Background Reports, or information provided by Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura, may do so by 20 December 2021.
 - (iv) At the conclusion of the hearing, on 25 November, we will confirm our directions and timetable. This may include additional matters that arise during the hearing.
- 13 The above information and proposed directions are preliminary, and subject to submitter response.
- 14 Submitters may address Commissioners on these preliminary matters, at the commencement of the hearing on 23 November 2021. Submitters rostered to speak on 23, 24, 25 November may address timetabling issues when they present their submission.⁵

Addendum

- 15 Following completion of this minute, we received a memorandum today from Te Rūnanga a Rangitāne o Wairau. A copy is **attached**. We will address this, when we hear from Rangitāne o Wairau. We set out for clarity our preliminary view of our jurisdiction so that submitters may comment.⁶

⁵ Submitters should note that the hearing will commence with a Whakatau (formal opening), therefore preliminary matters will be addressed after the Whakatau. Any concerns about Commissioner background disclosures should be raised at the start of the hearing. Any concerns about the 20 December 2021 deadline should be raised at the start of the hearing, or when submitters present their information (as rostered for 23, 24, 25 November).

⁶ By “preliminary”, we have not decided (one way or the other) the jurisdictional and relevance issues, pending submitter comments.

- 16 We accept that the Iwi Authorities and hapū identified in Minute 1 have ancestral and contemporary relationships with the areas subject to the proposed Bylaws. This includes (of course) Rangitāne o Wairau. We understand that these areas overlap. If the proposed Bylaws are confirmed, then they will apply equally to Iwi and hapū, and our preliminary view is that our reasoning will not address the issue of which Iwi or hapū has a stronger claim to mana whenua, mana moana, tangata whenua status, or strength of relationship and association.
- 17 Based on that preliminary view, we would be assisted by evidence directed at the purpose and merits of the proposed Bylaw. For example:
- Whether and the extent to which the proposed Bylaw may affect the relationship and tikanga of Iwi and hapū with their ancestral lands and sites, waters, customary or contemporary practices, wāhi tapu, beliefs and taonga;
 - Whether the Iwi or Hapū agrees with the wording of the Bylaw, or seeks alteration or deletion;
 - Any other relevant matters identified by the submitter.
- 18 Rather than seeking a “restart” of the whole process, Counsel for Te Rūnanga a Rangitāne o Wairau may wish to reflect on alternative ways forward, to ensure that we receive all relevant information on the proposed Bylaw. For example, providing additional information on sites of significance to Rangitāne o Wairau affected by the proposed Bylaw, and how the proposed Bylaw may affect their customary rights and interests. If there have been perceived flaws in the consultation process, this may be remedied by providing additional time and opportunity for input. But to be clear, we have not decided anything, including the “status” of Rangitāne o Wairau (or other Iwi and hapū).
- 19 Rangitāne o Wairau should therefore feel comfortable presenting their submission at the hearing as they see fit. We will allow more time for Rangitāne o Wairau (and any other interested submitter) to respond to Minutes 1, 3 and the associated correspondence. We have suggested 20 December 2021 as an initial time-frame.

- 20 Finally, all other submitters that have identified they wish to be heard, will have the opportunity to address matters they identify as relevant to the proposed Bylaw. We have also received and will give due consideration to submissions and information provided by submitters that do not wish to attend the hearing.

Dated 22nd November 2021

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

Rob Enright
Chair